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### **Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21**

#### **Federated States of Micronesia\***

The present report is a summary of 3 stakeholders' submissions<sup>1</sup> to the universal periodic review. It follows the general guidelines adopted by the Human Rights Council in its decision 17/119. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. As provided for in Human Rights Council resolution 16/21, where appropriate, a separate section is provided for contributions by the national human rights institution of the State under review that is accredited in full compliance with the Paris Principles. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the periodicity of the review and developments during that period.

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\* The present document was not edited before being sent to United Nations translation services.



## **I. Information provided by stakeholders**

### **A. Background and framework**

#### **1. Scope of international obligations<sup>2</sup>**

1. KALEIDOSCOPE stated that although the Federated States of Micronesia had not ratified many significant human rights treaties, which form the foundation of international human rights law, it had ratified both the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child.<sup>3</sup>

2. KALEIDOSCOPE recommended that the Federated States of Micronesia ratify all significant human rights treaties and their Optional Protocols to reinforce the implementation of, and compliance with, international human rights law for the benefit of the Lesbian, Gay, Bisexual, Transgender/Transsexual and Intersexed (LGBTI) community in the Federated States of Micronesia.<sup>4</sup>

#### **2. Constitutional and legislative framework**

3. International Center for Advocates Against Discrimination (ICAAD) noted that the national and state Governments of the Federated States of Micronesia guaranteed equal protection of the law regardless of gender. The national and state Governments also gave constitutional status to customary laws. For example, the Federated States of Micronesia Constitution states that “nothing in the Constitution takes away the functions of traditional leaders as recognized by custom and tradition”. Additionally, the Constitution states that “the traditions of the people of the Federated States of Micronesia may be protected by statute”. A challenge cannot be made to such a statute on the basis that it is in violation of Article IV (Declaration of Rights). Finally, the Constitution empowers Congress to establish a Chamber of Chiefs consisting of traditional leaders from each state.<sup>5</sup>

4. In this connection, ICAAD expressed concern that such constitutional authority for legislation that protects customary law expressly enables such customary law to take precedence over the fundamental rights and freedoms in the Federated States of Micronesia’s Bill of Rights. The effect of constitutional status being given to customary law throughout the Federated State of Micronesia, coupled with the absence of a provision that guarantees the precedence of equality law over customary law, leaves women with uncertain legal recourse and redress against discriminatory customary practices.<sup>6</sup>

5. KALEIDOSCOPE emphasized that the most fundamental protections and freedoms of the people of the Federated States of Micronesia were enshrined in the *Constitution of the Federated States of Micronesia*. Article IV of the Constitution was titled “Declaration of Rights” and it set out the definitive collection of legal freedoms and protections of the people of Micronesia. Article IV section 4 specifically dealt with the equality of persons before the law and states “equal protection of laws may not be denied or impaired on account of sex, race, ancestry, national origin, language or social status.” Notably absent from this list, however, was the sexual orientation and gender identity of a person.<sup>7</sup> In this connection, KALEIDOSCOPE recommended that constitutional amendments be made to include sexual orientation and gender identity as prohibited grounds of discrimination in Article IV.<sup>8</sup>

## **B. Implementation of international human rights obligations**

### **1. Equality and non-discrimination**

6. KALEIDOSCOPE highlighted that the Federated States of Micronesia had obligations under its existing international law commitments to prevent and prohibit discrimination against women and children, and a child's parents or legal guardians, based on sexual orientation and gender identity.<sup>9</sup>

7. KALEIDOSCOPE noted that Micronesia had in recent years given several indications of its support for human rights, including those of LGBTI persons. Despite this, the Federated States of Micronesia was yet to introduce legislative change or take other meaningful steps to recognise these rights. In particular, the Federated States of Micronesia had not yet introduced any laws prohibiting discrimination against persons based on their sexual orientation or gender identity.<sup>10</sup> In this connection, KALEIDOSCOPE recommended that the Federated States of Micronesia enact comprehensive anti-discrimination legislation that prohibits discrimination on the grounds of sexual orientation and gender identity/expression.<sup>11</sup>

8. KALEIDOSCOPE stated that during the Federated States of Micronesia's first Universal Periodic Review in 2011, it was recommended that the Federated States of Micronesia include sexual orientation and gender identity as prohibited grounds for discrimination in legislation and equality initiatives, which was accepted by the Federated States of Micronesia. Despite the Federated States of Micronesia having accepted this recommendation, no steps had been taken to implement such initiatives.<sup>12</sup>

9. KALEIDOSCOPE stressed that a framework of legal reform needed to be implemented that will actively prevent and prohibit discrimination of LGBTI persons in all facets of life and society including employment, health and education in the Federated States of Micronesia. Such a framework should include legislation that specifically prohibits discrimination based on sexual orientation and gender identity in all aspects of Micronesian society, including, but not limited to, employment, education, and housing.<sup>13</sup>

10. KALEIDOSCOPE stated that in 2013, there were no known reports of violence, official societal discrimination or workplace discrimination against LGBTI people. However, the culture stigmatized public acknowledgement or discussion of certain sexual matters, and it is rare for individuals to identify themselves publically as LGBTI people.<sup>14</sup> In this connection, KALEIDOSCOPE recommended that the Federated States of Micronesia take other positive steps to counter stigma, stereotypes and prejudice against LGBTI people, including appropriate policy or educational initiatives.<sup>15</sup>

11. KALEIDOSCOPE also noted that the Federated States of Micronesia currently had in place laws which discriminate against LGBTI individuals. Under the *Code of the Federated States of Micronesia (1999)* joint adoption by same-sex couples was not permitted. In addition, the law did not permit the marriage of same-sex couples.<sup>16</sup> KALEIDOSCOPE recommended that the Federated States of Micronesia amend the *Code of the Federated States of Micronesia (1999)* to allow adoption of children by same-sex couples.<sup>17</sup>

### **2. Right to life, liberty and security of the person**

12. ICAAD stated that national laws did not appear to legislate with regard to sexual offenses, but the laws of the four States acknowledged sexual assault as a crime.<sup>18</sup> ICAAD further noted that the sentences for sexual offenses were relatively light, which implies that sexual assault is not considered a serious criminal offence.<sup>19</sup>

13. ICAAD emphasized that marital rape was not expressly prohibited in the Federated States of Micronesia. In *Pohnpei*, an offender cannot be charged with sexual assault and sexual abuse if the complainant cohabits with the offender in an ongoing voluntary sexual relationship or if the offender is married to the complainant. ICAAD also highlighted that despite the Federated States of Micronesia's acceptance of France's recommendation to address marital violence during the previous UPR, yet, a comprehensive encompassing all 4 States and clear prohibition did not yet exist.<sup>20</sup>

14. According to ICAAD, outside of *Kosrae* State, there is no mandatory prosecution of domestic violence in the Federated States of Micronesia, nor a specific domestic violence offence. Domestic violence offences are prosecuted under general assault laws. The general assault laws are overly narrow in the definition of the applicable offense and did not include psychological or economic violence. Further, the general assault laws do not consider the unique nature of domestic violence due to the intimate relationship between the perpetrator and the victim. These provisions do not embrace the variety of situations that constitute domestic violence.<sup>21</sup>

15. ICAAD also noted that there were no governmental facilities to shelter and support women in abusive situations. In *Chuuk*, there was a private multi-purpose facility funded by an international donor in connection with an initiative of the *Chuuk* Women's Association. Such multi-purpose women's centre was established to house women's activities and raise awareness about women's issues, including domestic and sexual violence, but it does not include a shelter.<sup>22</sup>

16. ICAAD further noted that the State codes of *Chuuk*, *Pohnpei* and *Yap* contained an offense of incest that does not specify age, which means that women and girls under 18 can be charged with incest. Incest was typically perpetrated by men against girls and women in non-consensual coercive circumstances. Charging women and girls with incest failed to recognize the power imbalance between girls and women and male relatives.<sup>23</sup>

17. Global Initiative to End All Corporal Punishment of Children (GIECPC) emphasized that corporal punishment of children was still lawful, despite the country's accession to the Convention on the Rights of the Child in 1993 and the Government's acceptance of recommendations made during the UPR in 2010 to end all forms of violence against children and to ensure its laws comply with the Convention on the Rights of the Child.<sup>24</sup>

18. GIECPC further specified that in the Federated States of Micronesia, corporal punishment of children was unlawful as a sentence for crime and possibly in schools, but it was lawful in the home, alternative care settings, day care and penal institutions. There were immediate opportunities for prohibiting corporal punishment in the context of the review of the Criminal Code and of child protection legislation.<sup>25</sup>

19. GIECPC recommended that the Federated States of Micronesia prohibit all corporal punishment of children in all settings, including the home.<sup>26</sup>

### **3. Administration of justice, including impunity and the rule of law**

20. ICAAD highlighted that legal representation was necessary to file a claim and obtain legal remedies for safety, at restraining or protection order; restitution for physical injuries and property damage, and payment of legal fees and medical bills. ICAAD also emphasized that no information was found as to the availability or quality of free and independent legal representation in the Federated States of Micronesia for sex and gender-based violence survivors.<sup>27</sup>

#### 4. Right to marriage and family life

21. KALEIDOSCOPE noted that marriage between same-sex couples was not permitted in the Federated States of Micronesia: the marriage laws in the State of *Kosrae* state that a marriage performed in the state will only be valid if the male at the time of marriage is at least eighteen years of age and the female at least 16 years of age. As such, marriage is conceptualised and permitted between a man and a woman only.<sup>28</sup>

22. KALEIDOSCOPE also noted that same-sex couples were not permitted to adopt in the Federated States of Micronesia: the *Code of the Federated States of Micronesia (1999)* states that any suitable person who is not married or is married to the father or mother of a minor child, or a husband and wife may adopt a child not theirs by birth. While any "suitable person who is not married" may adopt, this would only allow one member of a same-sex couple to adopt as a single person. Joint adoption by a same-sex couple is not permitted.<sup>29</sup>

23. KALEIDOSCOPE recommended that the Federated States of Micronesia enact legislation permitting same-sex marriage or civil unions, as well as same-sex adoption.<sup>30</sup>

24. According to ICAAD, divorce in the Federated States of Micronesia is permitted either on fault based criteria (e.g. adultery, desertion and cruelty) or on the basis that there has been a two year separation. Fault-based divorces require proof of a matrimonial offense such as habitual rape or desertion placing women in the difficult position of having to proffer evidence that is often humiliating and affronting to her dignity. Consequently, women may choose not to attend a proceeding thereby increasing the difficulty of proving fault.<sup>31</sup>

25. ICAAD noted that all Federated States of Micronesia States included "the best interests of all" in determining custody. This did not place the child's interests as paramount and therefore violated the best interest of the child standard required under Article 16(f) of CEDAW.<sup>32</sup>

#### 5. Right to participate in public and political life

26. ICAAD noted that cultural factors in the male-dominated society limited women's representation in government and politics. Women were represented in the middle and lower ranks of government, at both the national and state level, but participation of women at the highest levels of decision making remained very limited. ICAAD went on to state that the Federated State of Micronesia National Congress was composed of fourteen seats and none had ever been filled by a woman.<sup>33</sup>

#### 6. Right to work and to just and favourable conditions of work

27. ICAAD noted that none of the Federated States of Micronesia or its island states had enacted legislation or mechanisms to protect the employment and labour rights of workers other than in the public service and the judiciary. There were no anti-discrimination provisions, no sexual harassment protection, no breaks for mothers to enable them to nurse young children during work hours, and no equal pay provisions except in *Pohnpei*, and limited maternity leave.<sup>34</sup>

Notes

<sup>1</sup> The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: [www.ohchr.org](http://www.ohchr.org).

*Civil society*

Individual submissions:

GIEACPC	Global Initiative to End All Corporal Punishment of Children, London, (United Kingdom of Great Britain & Northern Ireland);
ICAAD	International Center for Advocates Against Discrimination, New York (United States of America);
KALEIDOSCOPE	Kaleidoscope Human Rights Foundation , Clayton, Victoria (Australia).

<sup>2</sup> The following abbreviations are used in UPR documents:

ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
OP-ICESCR	Optional Protocol to ICESCR
ICCPR	International Covenant on Civil and Political Rights
ICCPR-OP 1	Optional Protocol to ICCPR
ICCPR-OP 2	Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
OP-CEDAW	Optional Protocol to CEDAW
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OP-CAT	Optional Protocol to CAT
CRC	Convention on the Rights of the Child
OP-CRC-AC	Optional Protocol to CRC on the involvement of children in armed conflict
OP-CRC-SC	Optional Protocol to CRC on the sale of children, child prostitution and child pornography
OP-CRC-IC	Optional Protocol to CRC on a communications procedure
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CRPD	Convention on the Rights of Persons with Disabilities
OP-CRPD	Optional Protocol to CRPD
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance.

<sup>3</sup> KALEIDOSCOPE, para. 3.1.

<sup>4</sup> KALEIDOSCOPE, para. 7.5.

<sup>5</sup> ICAAD, para. 29.

<sup>6</sup> ICAAD, para. 30.

<sup>7</sup> KALEIDOSCOPE, para. 6.1.

<sup>8</sup> KALEIDOSCOPE, para. 6.3.

<sup>9</sup> KALEIDOSCOPE, para. 3.3.

<sup>10</sup> KALEIDOSCOPE, para. 1.2.

<sup>11</sup> KALEIDOSCOPE, para. 1.4 (a).

<sup>12</sup> KALEIDOSCOPE, para. 2.4. Please see Recommendations 61.52 of the 1<sup>st</sup> cycle UPR Working Group report (A/HRC/16/16) recommended by Canada.

<sup>13</sup> KALEIDOSCOPE, para. 5.3.

<sup>14</sup> KALEIDOSCOPE, para. 5.2.

<sup>15</sup> KALEIDOSCOPE, para. 5.5.

<sup>16</sup> KALEIDOSCOPE, para. 1.3.

<sup>17</sup> KALEIDOSCOPE, para. 1.4 (b).

<sup>18</sup> ICAAD, para. 1.

- <sup>19</sup> ICAAD, para. 2.  
<sup>20</sup> ICAAD, para. 3. Please see Recommendations 61.25 of the 1<sup>st</sup> cycle UPR Working Group report (A/HRC/16/16) recommended respectively by France.  
<sup>21</sup> ICAAD, para. 5.  
<sup>22</sup> ICAAD, para. 25.  
<sup>23</sup> ICAAD, para. 8.  
<sup>24</sup> GIECPC, p. 1.  
<sup>25</sup> GIECPC, para. 2.1.  
<sup>26</sup> GIECPC, p. 1.  
<sup>27</sup> ICAAD, para. 17.  
<sup>28</sup> KALEIDOSCOPE, para. 4.2.  
<sup>29</sup> KALEIDOSCOPE, para. 4.4.  
<sup>30</sup> KALEIDOSCOPE, para. 4.6.  
<sup>31</sup> ICAAD, para. 21.  
<sup>32</sup> ICAAD, para. 20.  
<sup>33</sup> ICAAD, paras. 26 – 27.  
<sup>34</sup> ICAAD, para.18.
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