

II. Safeguarding System & Policy

Current Policies in FSM's Constitution Protecting ICH

Currently, there are articles within the constitutions of the FSM, Pohnpei, Chuuk, and Yap that specifically address traditional rights and the preeminence of traditional leaders and traditions over laws enacted by the Constitution. In most cases the wording of these articles is very general.

Article 5 of the FSM Constitution

Section 1. Nothing in this Constitution takes away a role or function of a traditional leader as recognized by custom and tradition, or prevents a traditional leader from being recognized, honored, and given formal or functional roles at any level of government as may be prescribed by this Constitution or by statute.

Section 2. The traditions of the people of the Federated States of Micronesia may be protected by statute. If challenged as violative of Article IV, protection of Micronesian tradition shall be considered a compelling social purpose warranting such governmental action.

Section 3. The Congress may establish, when needed, a Chamber of Chiefs consisting of traditional leaders from each state having such leaders, and of elected representatives from states having no traditional leaders. The constitution of a state having traditional leaders may provide for an active, functional role for them.

Article 5 of the Pohnpei Constitution

Section 1. This Constitution upholds, respects, and protects the customs and traditions of the traditional kingdoms of Pohnpei.

Section 2. The Government of Pohnpei shall respect and protect the customs and traditions of Pohnpei. Statutes may be enacted to uphold customs or traditions. If such a statute is challenged as violating the rights guaranteed by this Constitution, it shall be upheld upon proof of the existence and regular practice of the custom or tradition and the reasonableness of the means established for its protection, as determined by the Pohnpei Supreme Court.

Article 4 of the Chuuk Constitution

Section 1. Existing Chuukese custom and tradition shall be respected. The Legislature may prescribe by statute for their protection. If challenged as violative of Article III, protection of Chuukese custom and tradition shall be considered a compelling social purpose warranting such governmental action.

Section 2. Nothing in this Constitution takes away the role or function of a traditional leader as recognized by Chuukese custom and tradition, or prevents a traditional leader from being recognized, honored, and given formal or functional roles in government.

Article 3 of the Yap Constitution

Section 1. Due recognition shall be given to the Dalip pi Nguchol and their traditional and customary roles.

Section 2. There shall be a Council of Pilung and Council of Tamol which shall perform functions which concern tradition and custom.

Section 3. Due recognition shall be given to traditions and customs in providing a system of law, and nothing in this Constitution shall be construed to limit or invalidate any recognized tradition or custom.

However, the Yap Constitution does describe the traditional leadership in greater detail specifically the Council of Pilung and the Council of Tamol which today continue to play an integral role in the governance of the island. Title 5, Chapter 1 of the Yap State Code (See Relevant Laws section) continues on to describe in greater detail the functions and structure of these traditional councils. It should be no surprise then that it is only in Yap where the traditional leaders via the councils described in detail in the Constitution may be seen to have any real effect within the political framework of the State. It is only by defining and integrating the roles of the leadership that such traditions have an effect.

Because the custom and traditions in other states tend to be poorly defined there is greater ambiguity as to how to interpret these articles. At times conflict between the general traditional ways and the prescribed legal order nullify the each other or create a stalemate situation. For example, the ownership of Nan Madol has been in question for decades. Traditionally, the site has been overseen by the Nahnmwarki of Madolenihmw but legally it is the property of that state. The traditional right articles stated above protects the right of the traditional leader while at the same the Pohnpei State Code states that Nan Madol is the property of the state. Because these two statutes are in conflict with one another one or the other are rendered meaningless though exactly which has yet to be resolved. Currently, this situation is being mediated by putting the ownership issue aside with both the traditional and modern political systems working in unison. In many cases this is the only possible answer. Unless, the resolution is stated specifically though the ambiguity of the situation will hinder the efficient protection of cultural sites such as the World Heritage protection of Nan Madol.

Traditional systems of conflict resolution are also practiced alongside the legal system. For example, in Yap a penalty requiring a sum of traditional monies including stone and shell money which is found today only in a limited supply may be required of those guilty of a crime such as fishing in protected waters. In Pohnpei a traditional apology ceremony whereby the entire extended family of a wrongdoer apologizes and debases themselves in front of the family of the victim

will lead the victim's family to drop any charges. These examples and more will be discussed later in this report.

It is the recommendation of this report that specific examples of ICH including the role of traditional leaders be more narrowly defined and laws include these specific definitions so as to protect specific ICH. In most states of the FSM the state historic preservation office has been charged with this duty. However, given the massive scope of Intangible Cultural Heritage it is difficult for these small, resource-deprived offices to know where to start. The following sections will focus on the specific states and suggest specific examples of ICH for which protection may be addressed.

Historic Preservation Laws

Though elements of cultural heritage protection may be seen in the constitutions of the states of FSM as described above they are still lacking in specific regulations. The ratification of historic preservation bills to ensure the protection of historic sites has still yet to be passed in Chuuk and Kosrae despite the presence of historic preservation offices for quite some time. The resulting situation is that many historic preservation offices lack the legal backing to carry out the tasks their office is meant to perform. In Pohnpei their Historic Preservation review board has yet to be ratified by the Governor and no historic sites can be registered until this is done.

The registration of historic sites can be seen as the backbone on which the inventory of intangible cultural heritage will rest. It provides the example on which the inventory process may be based. Until the registry of historic sites is developed it is difficult to imagine the development of a registry of ICH.

Cultural Research Policy

The National Archives, Culture and Historic Preservation Office (NACH) has recently drafted a cultural research policy to ensure the benefits of cultural research are shared with the people of FSM without impinging unnecessary hardships that would scare away potential researchers. Individual states such as Yap and Kosrae are currently in the process of developing research policies for their states as well.

FSM Cultural Policy

In 2011, *Into the Deep: Launching, Culture and Policy in the Federated States of Micronesia* was published and subsequently adopted by the FSM. This cultural policy proposal includes several policy options and objectives to strengthen the role of traditional culture including: establishing educational programs, certifying traditional experts, establishing cultural observatories, establishing copyright legislation, establishing protocols for traditional knowledge sharing, promoting creative industries, and promoting the performing arts.

Subsequent consultation occurred to adopt the cultural policy proposals focused on certain areas.

Policies Concerning Foreign Research

Specific policies should be adopted for the coordination of cultural offices with foreign researchers. Coordination should occur between the National government who will be providing the entry permit and the State Historic Preservation Office which will provide the research permit. Specific conditions of the research permit should state by what method the final product of the research will be submitted to their office for review and authentication. A refundable fee may be mandated to ensure that the research product is submitted whereby the fee is refunded at the time the product is submitted. Careful records should be taken of the researchers and their products by each state and submitted to a master database at the National Archives, Culture and Historic Preservation office (NACH).

Policies Concerning State Compliance with Section 106 Permitting Process

All government offices and private corporations should be held accountable for compliance with section 106 and all applicable protocols to ensure the protection of historic properties from development. Efforts should be made to incorporate all development regardless of funding within a cultural resource management framework and should not be limited to US federally funded projects.

Policies Concerning the Registration of Historic Sites

It should be a priority of historic preservation offices to develop a functioning system whereby historic and cultural resources may be inventoried and registered. While an inventory of historic and cultural resources is a very useful

tool it is only through the registration of historic properties that effective laws may be enforced and funds allocated for preservation measures. Plans for registering historic sites under private ownership should be developed. Traditional chiefs and village leaders should be recognized and empowered to maintain historic properties where they exist.

Policies Concerning the Development of Traditional Societies and Schools

The Cultural Preservation Offices are to recognize and encourage traditional artisan societies and schools, meaning centers of traditional knowledge, within their states. They shall bring attention to these institutes as credible sources of traditional knowledge that are integral to the preservation of traditional culture.

An accreditation system modeling the traditional system should be recognized whereby a commission is established of the traditional experts who will bestow accreditation. Space should be set aside for locations for these traditional schools. Festivals should be supported where the learned traditional skills may be displayed and promoted. Records should be kept on the attendance and meetings held within the schools. Traditional craft production may be incorporated into these traditional schools.

Each state's historic preservation office should maintain an inventory, or list, of knowledgeable experts in traditional fields to the best of their abilities. This inventory will fulfill requirements by UNESCO for the Intangible Cultural Heritage treaty. It should be recognized that certain crafts such as traditional medicinal healers are more capable of being inventoried than others such as itang.

A plan should be developed for future participation in performing arts festivals. Create competitions for traditional performances. Encourage traditional performances within the planning committees to be valued higher than nontraditional imported dances.

Create label for hand-crafted to promote local production and local inventory businesses. Create website to promote local handicrafts.