

FEDERATED STATES OF MICRONESIA



CEDAW Legislative Compliance Review

LEGISLATIVE COMPLIANCE OF THE FEDERATED STATES OF MICRONESIA

2.1 Introduction

This Chapter examines and assesses the legislative compliance of the Federated States of Micronesia (FSM) with CEDAW. FSM consists of a national government and four states: Chuuk, Kosrae, Pohnpei and Yap. FSM ratified CEDAW on 1 September 2004, obliging it to work towards the modification of its constitution and legislation to accord with the provisions of CEDAW. However, it is recognised that FSM is at the beginning of its compliance process and that legislative compliance will be achieved through gradual and incremental change.

This review's assessment of FSM's legislative compliance with CEDAW is based on the indicators identified in Chapter One and should be read in conjunction with the commentary on each indicator included in that Chapter. However, the indicators against which the FSM and its four states are measured against have been reduced by two to account for the reservations the FSM has placed on CEDAW. Reservations have been entered against Article 11(1)(d) which requires the enactment of comparable worth legislation (pay equity), Article 11(2)(b), requiring the adoption of maternity leave with pay or with comparable social benefits, and Articles 2(f), 5, and 16 which relate to the succession of certain well-established traditional titles, and to marital customs that divide tasks or decision-making in purely voluntary or consensual private conduct. This review has not measured FSM and the four states' compliance with indicators [11.7] which deals with pay equity and [11.11] which relates to maternity leave, as they are expressly excluded by the reservations. Compliance information on these indicators has however been included in the tables for general interest. The last reservation relating to traditional titles and marital customs is not specific

enough to completely remove the obligations created under any of the indicators for Article 5 and 16 and therefore the legislative compliance of the FSM and its four states has been measured on these indicators. Therefore, in sum, the FSM and its four states have each been measured against 111 indicators.

It should also be noted that, through the national constitution of the FSM, which is the basis for all legal authority, the power to legislate is divided between the FSM parliament and the state parliaments. Whilst the FSM has express power over areas such as tax, trade and national crimes, it *may* also establish systems of social security and public welfare concurrently with the states. This review has measured FSM against both the indicators which concern its express powers to legislate and against the indicators that relate to its power to implement systems of social security and public welfare. Although the FSM is not obligated to legislate in the areas of social security and public welfare which includes many of the areas covered by CEDAW, the authors take the view that the national government, which has a direct obligation to implement CEDAW, should lead and encourage the four states towards compliance with CEDAW.

In sum, FSM has achieved full compliance with 26 of 111 indicators, partial compliance with 18 indicators and no compliance in relation to the remaining 69 indicators. Yap has achieved full compliance with 29 of 111 indicators, partial compliance with 16 indicators and no compliance in relation to the remaining 68 indicators. Kosrae has achieved full compliance with 33 of 111 indicators, partial compliance with 18 indicators and no compliance in relation to the remaining 62 indicators. Chuuk has achieved full compliance with 30 of 111 indicators, partial compliance with 21 indicators and no

compliance in relation to the remaining 62 indicators. Pohnpei has achieved full compliance with 36 of 111 indicators, partial compliance with 17 indicators and no compliance in relation to the remaining 60 indicators. The next section provides a brief synopsis of the findings of the review. Following the synopsis is five sets of tables (one set for the FSM and each of the four states) each related to an article of CEDAW, and each containing the relevant indicators, the level of compliance achieved (i.e. yes, no or partial compliance), the relevant legislation and finally where required, a brief commentary explaining how the legislation does or does not meet the indicator.

It should be noted that the legislative reviews of the FSM, Chuuk, Kosrae, Pohnpei and Yap were conducted using all materials available at the time, and that although every effort was made to obtain the most recent and up-to-date legal material, it is possible that there will be errors or omissions.

2.2 Synopsis of Findings

1. Article 1 defines discrimination and Article 2 requires States Parties to guarantee a range of fundamental rights and freedoms in their constitutions including substantive equality and freedom from discrimination on the grounds of sex, marital status, sexual orientation, HIV status and disability. The constitutions of the FSM and the states guarantee the rights and freedoms of all citizens in most of the areas required by CEDAW. However, whilst they uniformly guarantee men and women the equal *protection* of the law they do not guarantee equal benefits or outcomes as required by CEDAW. FSM and all states except Kosrae, have anti-discrimination clauses through which individuals who have experienced sex discrimination can seek remedies. None, however, extend their anti-discrimination protection to include indirect discrimination (enabling challenge to a rule that appears to apply to a group of people in the same way but in practice places on particular members of that group a burden not faced by the majority). Although the FSM, Chuuk and Pohnpei also provide protection from discrimination on the ground of social status (which could include marital status) there is no protection for women from discrimination on the grounds of sexual orientation, HIV status and disability. The FSM Constitution also provides protection against discrimination on the ground of gender in the equal enjoyment of any service, goods, facilities or advantages by any public institution or any private organisation that provides services to the public. A criminal penalty of 5 years and an express right to bring civil action ensures discrimination in these contexts is seriously regarded and in compliance with CEDAW.
2. Articles 2 and 3 together mandate the establishment by legislation of national bodies and machinery to monitor the implementation of law and policy to foster the advancement of women. Neither FSM nor any of the states have instituted such a mechanism. However, although not established with enabling legislation (which leaves it vulnerable during times of political or economic upheaval) FSM has established a National Gender Office located in the Department of Health Education and Social Affairs.
3. Article 2 condemns discrimination against women in all its forms and obligates States Parties to eliminate discrimination against women without delay. General Recommendation 19, which concerns violence against women, makes explicit that the definition of discrimination includes gender violence and recommends that 'sanctions,

penalties and compensation' be introduced in relation to gender based violence. Sexual assault is a form of gender violence as it is overwhelmingly perpetrated against girls and women, and therefore must be prevented and remedied, as far as possible, through legislative means. FSM has not legislated in the area of sexual assault and is non-compliant with CEDAW. The four states have legislated and have identical (non-compliant) legislation consisting of two categories of sexual assault offences. The first category is sexual assault by penetration with 2 penalties depending on whether serious injury was inflicted, imposing a 10 year sentence with and 5 years without serious injury. Although penetration is widely defined the sentences are low implying that sexual assault is not a serious offence. In particular, a 5 year sentence for a rape that does not cause *serious* injury is an inadequate punishment and deterrent. Regardless of the level of injury, rape is a violation of personal integrity which should be severely punished. The second category is sexual contact with girls under 13, and in the case of Pohnpei 15, with the (non-compliant) result that it is lawful to have sexual contact with girls (and women) 13 (or 15) and over.

4. Further, in Pohnpei, an offender cannot be charged in relation to sexual assault and sexual abuse if the complainant cohabits with the offender in an ongoing voluntary sexual relationship. Such immunity is out of step with most other Pacific countries, and implies that women provide an ongoing and irrebuttable consent to sexual relations with their husbands and partners if they live with them. This denies their autonomy and their right to say no to sexual relations.
5. The admission of the prior sexual history of a victim in order to establish that she consented to the sexual act in question is a discriminatory common law rule which perpetuates the myth that a victim's previous sexual relationship with either the accused or others makes it more likely she consented. All the states, except Pohnpei, have legislated against the use of evidence of the victim's prior sexual conduct with persons other than the accused, although evidence of sexual conduct with the accused can still be admitted if it is offered to prove consent.
6. Corroboration (independent evidence such as that of a witness that connects the accused person with the crime) is a common law rule that requires a judge to advise the jury that it is dangerous to convict the accused on uncorroborated evidence. None of the states have legislated against the necessity for corroboration in sexual offence prosecutions.
7. Proof of resistance is a common law rule which requires victims to establish that they physically resisted the perpetrator otherwise consent may be inferred. It is discriminatory because physical resistance may be an unrealistic expectation of a victim against a strong or armed perpetrator and does not take into account that fear and power imbalances may immobilise the victim. None of the states have legislated against the requirement for proof of resistance by the victim. Further, in all states except Pohnpei there is a defence in 'sexual contact' prosecutions for the accused to claim that he did not know the girl was under 13. This places the onus (erroneously) on the minor to reveal her age rather than upon the offender to ascertain her age.
8. Minimum sentences and mandatory prosecution ensure that sexual violence against women is treated seriously. However, none of the states have mandatory prosecution or minimum sentences for sexual assault offences. Bail, which should not be granted if there is any risk to a sexual assault victim, is available in all

states as a matter of entitlement unless the charge is murder.

9. Although the CEDAW Committee in General Recommendation 19 identifies domestic violence as a form of discrimination that inhibits women's ability to enjoy rights and freedoms on a basis of equality with men, none of the states have as yet incorporated domestic violence offences into their criminal laws.
10. Infanticide (in contrast to abortion which refers to the destruction of a foetus) refers to the killing of a child by its mother. Full compliance with CEDAW requires that an offence of infanticide replaces a charge of murder or manslaughter and has a reduced sentence recognising the societal pressures that lead women to kill their children. Women who do so should not be held accountable to charges of murder or manslaughter. None of the states, however, have included an offence of infanticide in their criminal codes thereby rendering any woman in this situation subject to a charge of murder or manslaughter which carries penalties ranging from 10 years to life imprisonment.
11. Article 4 requires that special measures provisions be introduced into national constitutions and legislation. Neither the FSM nor any of the states have incorporated affirmative action provisions into their constitutions or into any legislation for the advancement of women. The lack of special measures is detrimental for women because they are an equality measure with real potential to redress historical discrimination and achieve substantive equality for women.
12. Article 5 requires States Parties to abolish or modify customary practices that discriminate against women. The constitutions of the FSM and all the states give constitutional status to customary law in a range of capacities. The FSM Constitution states that 'nothing in the Constitution takes away the functions of traditional leaders'. Additionally, the Constitution allows the protection of the 'traditions of the people of FSM' by statute and declares that no challenge can be made to such a statute on the basis that it is in violation of Article IV (Declaration of Rights). Finally, the FSM Constitution empowers Congress to establish a Council of Chiefs. All states also expressly recognise customary law in their constitutions and Yap has created two councils charged with overseeing tradition and custom. The constitutional status given to customary law throughout the FSM coupled with the absence of a provision that guarantees the precedence of equality law over custom law leaves women with uncertain legal recourse against discriminatory customary practises.
13. Article 6 requires States Parties to suppress all forms of trafficking in women and exploitation of women in prostitution whilst Articles 2 and 11 require the elimination of discrimination against women in employment. Cumulatively, these articles mandate both the protection of sex workers from exploitation whilst also affording them the rights and protections of other workers. FSM has not legislated in the area of sex work. In Yap and Kosrae soliciting is not an offence, in compliance with CEDAW. In Chuuk and Pohnpei soliciting is an offence and although the offence applies equally to men and women these two states are non-compliant since CEDAW requires that soliciting is decriminalised. In Chuuk and Pohnpei, aiding and abetting, soliciting and the operation of organised premises are also offences. Since research indicates that organised premises rather than street work is safer for sex workers, legalising brothels and implementing safeguards that are present in other workplaces

would provide greater safety for sex workers and the community. Both Chuuk and Pohnpei are therefore non-compliant in this area.

14. None of the states provide adequate protection for girls and women who are procured against their will or trafficked. Whilst Yap provides no legislative protection, Kosrae, Chuuk and Pohnpei provide only minimal protection. Chuuk and Pohnpei penalise non-consensual procurement with a minimal penalty of one year imprisonment or \$500. Kosrae does not have specific provisions regulating sex work but the sexual assault offences include 'causing a person to have either sexual penetration or sexual contact with another' with a penalty of a 5 year sentence or \$10000 for the first and 3 years or \$5000 for the second. There are no offences for trafficking or sex tourism in any of the states and therefore none of the states are compliant with this aspect of Article 6 of CEDAW.
15. Article 7 obligates States Parties to take all appropriate measures to eliminate discrimination in women's political and public lives. Universal suffrage and equal legal rights for women to political representation has been achieved in FSM and all the states. However, no women have yet achieved political representation in the FSM or any of the four state parliaments and the absence of minimum quotas for women to ensure women enter parliament and participate in the governance of their countries means that the FSM is not fully compliant with Article 7 of CEDAW.
16. Article 8 requires States Parties to ensure that women have equal opportunities to represent government at the international level. Although there are no legal barriers preventing women from representing their governments in the FSM and the states, the low numbers of women who do so requires the introduction of quotas to raise participation to achieve full compliance with Article 8.
17. Article 9 requires States Parties to eliminate discrimination in the areas of nationality, citizenship and domicile. This is an area within the express jurisdiction of the FSM national government and it has achieved equality in this area.
18. Article 10 obligates States Parties to ensure women equal rights and opportunities in education. The provision of compulsory education is essential to ensure girls are equally prioritised and not discriminated against in education. FSM has guaranteed free elementary education for all throughout the country, established student loans for all young men and women to undertake higher education and all states have introduced compulsory schooling at both primary and secondary levels. Pohnpei has established a fund specifically for the vocational training of women. However, girls and women continue to access education in lower numbers than boys and men and therefore full compliance with CEDAW requires the FSM and the states to adopt special measures for the advancement of women in education. FSM and the states also do not prohibit expulsion from school because of pregnancy, in non-compliance with CEDAW.
19. Article 11 requires States Parties to eliminate sex discrimination in employment and to place specific guarantees that protect the labour rights of women into legislation. Whilst discussions with the ILO are continuing to encourage the introduction of a comprehensive employment code, the FSM and the four states are yet to put into place legislation, mechanisms to protect the employment and labour rights of workers other than in the Public Service and the judiciary. There are therefore no anti-discrimination provisions, no maternity leave provisions (note that this an area reserved by the FSM) except in the Chuuk judiciary where female employees may take 3 months of

- accumulated sick leave and unpaid leave, no sexual harassment protection (see below), no guarantee of child care, no breaks for mothers to enable them to nurse young children during work hours and no equal pay provisions except in Pohnpei. Conversely, however, and in compliance with CEDAW, women's employment choices are not restricted in the FSM or in any of the states as in other Pacific countries leaving women to lawfully undertake night work and manual work.
20. The CEDAW Committee in General Recommendations 12 and 19, which concern violence against women, identifies sexual harassment in the workplace as a form of discrimination against women. General Recommendation 19 defines sexual harassment as unwelcome sexually determined behaviour such as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands whether by words or actions. Such actions can be humiliating for the recipient and are discriminatory when they create a hostile work environment. Protection from sexual harassment is absent in the FSM and for the state codes and there is no scope for a remedy under the criminal code as provided in the Solomon Islands; or in human rights legislation as in Fiji; or in public sector legislation as available in PNG.
 21. Article 12 requires States Parties to ensure that women have access to health care services including those related to family planning. Whilst Kosrae, Pohnpei and Yap have no legislation that criminalises abortion, access to facilities to have an abortion is limited. In Chuuk however, abortion is criminalised with an exception only to save the mother's life and access to safe abortion facilities are therefore denied other than in an emergency.
 22. Article 13(b) of CEDAW provides that women should be afforded equal rights to bank loans, mortgages and other forms of financial credit free from discrimination. Although there is no legislative barrier to women in the FSM or in any of the states to accessing such services, discrimination continues to hinder women from obtaining credit and loans to purchase property or businesses, interfering with their autonomy and ability to earn a livelihood. Article 13(c) of CEDAW requires that women have an equal right to participate in recreational activities, sports and all aspects of cultural life and there are no legislative barriers in any of the states preventing women from doing so.
 23. Article 14 obligates States Parties to put in place measures to ensure the equality of rural women. Rural women often play a significant role in the economic survival of their families and communities although they are frequently disadvantaged in areas such as land ownership, health, education and housing to name a few. The achievement of substantive equality for rural women and compliance with CEDAW requires special measures provisions to be incorporated into legislation. However, the FSM and the states have not as yet implemented measures to achieve such ends.
 24. Article 15 requires States Parties to guarantee women equality before the law and equal rights to participate in all aspects of civil life. FSM and all states provide for the equal protection of the law (the right of all persons to be treated equally by the law) and are compliant with this indicator. In addition, there are no legislative barriers in the FSM and the states to women's participation in court and tribunal processes or that deny women the right to conclude contracts and administer property.

25. Article 16 obligates States Parties to remove discrimination in family and personal laws including marriage, separation, divorce, maintenance, child custody, property division, paternity and inheritance.
26. In the area of marriage, FSM and the states have low compliance. The CEDAW Committee in General Recommendation 21 has nominated 18 as the minimum age of marriage for both males and females. It has stated that marriage should be entered into only with full and free consent and that all marriages should be registered. FSM has not legislated in this area. However since marriage is an aspect of public welfare and therefore an area which falls within the legislative power of the FSM, the lack of legislation means that the FSM is non-compliant in this area. Yap has also not legislated in the area of marriage with the similar result that it is non-compliant. Further, Kosrae, Chuuk and Pohnpei have nominated 18 as the age of marriage for males and 16 for females and are also non-compliant with CEDAW. If the female is under 18 then the consent of either parent is required in all three states. Although formally equal this does not constitute full compliance with CEDAW which would require the consent of both parents to ensure that the father does not assume the role of authority in such matters. In Chuuk and Pohnpei, customary marriages are valid and may therefore be conducted without adherence to the marriage provisions. However in both states, the registration of all marriages including customary marriages is required. Bigamy however is prohibited only in Pohnpei.
27. FSM and the states have identical legislation in the area of divorce. Fault based divorces, which require proof of a matrimonial offence such as desertion or habitual rape, place women in the difficult position of having to provide evidence of situations that may be humiliating, embarrassing, or that may interfere with their dignity and privacy. Women also face discrimination in proving fault, particularly cruelty and adultery if they choose not to be witnesses or they do not wish to attend court. Divorce in FSM and all states is permitted either on fault based criteria (including adultery, desertion and cruelty) or on the basis that there has been a two year separation. In the FSM and all states, forgiveness, which can include restoration of marital rights, will prevent divorce from proceeding, failing to account for possible power imbalances between the spouses. In Yap and Pohnpei, customary marriages are exempt from the divorce provisions. FSM and all the states are non-compliant in the area of divorce as a result.
28. General Recommendation 19(23) (which deals with violence against women, in relation to Articles 16 and 5 of CEDAW) states that a lack of economic independence or an inability to gain custody of children upon separation forces many women to stay in violent or difficult relationships. FSM and all states *do* provide for maintenance orders during separation and after divorce for both children and spouses. The criteria by which the court determines the amount of the order is uniformly based on 'justice' and 'the best interests of all'. This leaves the basis on which maintenance is to be provided largely to the discretion of the court and does not comply with the CEDAW recommended standards of need, the means of both parties, the financial commitments of both parties to themselves and others, their respective capacities to earn and the needs of any children for whom maintenance is sought.
29. In General Recommendation 21, which relates to equality in marriage and family and relations, the CEDAW Committee states that the division of marital property should include recognition of non-financial contributions

during a marriage such as raising children, caring for elderly relatives, and discharging household duties. In the FSM and all the states, property division upon divorce, like maintenance and custody, is determined on the basis of 'justice' and 'the best interests of all'. This is unlikely to lead to a property settlement in which women's non financial contributions to the marriage are recognised. Defacto relationships, including same-sex relationships, are not recognised in the FSM and any of the states, leaving women without any support and right to an equal division of property after the breakdown of a relationship.

30. The best interests of the child as the paramount consideration is universally accepted as the principle on which custody determinations should be based, according to Article 16(f) of CEDAW, General Recommendation 21 and the *Convention on the Rights of the Child* 1989. Although all states include 'the best interests of all' in the criteria to determine custody and access issues

this does not place the child's interests as paramount and is not compliant with Article 16 of CEDAW.

31. Article 16 requires that legislation embodies inheritance laws that apply equally to males and females. There is no legislation in any of the states dealing with inheritance leaving it instead to be determined according to custom. Although inheritance throughout the FSM is matrilineal, which means that land and property are passed through females, men still control of many aspects of land and property.
32. A series of tables detailing the FSM and the four states' compliance with CEDAW (five sets of tables in total) is provided in the following pages. Each table relates to an article of CEDAW and contains the applicable indicator(s), the level of compliance achieved, the relevant legislation and finally where required, a brief commentary explaining how the constitution and legislation of the FSM and the four states does or does not meet the indicator.

FSM: Detailed Analysis of Indicators

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATIONS TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.1 Does the Constitution guarantee fundamental rights and freedoms to men and women equally including in the political, economic, social, cultural, civil or any other field?	Partial	<ul style="list-style-type: none"> <i>Constitution of the Federated States of Micronesia 1979, Article IV, s 1-13.</i> Freedom of expression, peaceable assembly, association, petition, right to life, liberty, property unless deprived by due process of law, right to equal protection of the law, right to be secure against unreasonable search, seizure and invasion of privacy, right to travel within the States, criminal defendant has the right to a speedy trial, to be informed of accusation, to have counsel, and not to be compelled to give evidence against his interest, or to face double jeopardy, right to be free from excessive bail, fines, cruel or unreasonable punishment, bill of attainder, capital punishment, slavery, involuntary servitude and imprisonment for debt are prohibited. 	<p>The rights protected include most of those required by CEDAW. There is therefore substantial compliance with this indicator but</p> <ul style="list-style-type: none"> The right to the highest attainable standard of physical and mental health is not a guaranteed right. Substantive equality is not a guaranteed right.
1.2 Is there a constitutional guarantee of substantive equality between men and women?	Partial	<ul style="list-style-type: none"> <i>Constitution of the Federated States of Micronesia 1979, Article IV, s 3, 4.</i> A person may not be denied the equal protection of the law on account of sex. <i>FSM Code 1997 [Title 1, Cap 1] s 107.</i> A person may not be denied the equal protection of the law on account of sex. <i>FSM Code [Title 1, Cap 1] 1997, s 107.</i> No law shall be enacted in the Trust Territory which discriminates against any person on account of sex. 	A guarantee of equal protection of the law requires that the law does not discriminate in its application but does not guarantee equal benefits or outcomes as required by CEDAW.
1.3 Does the Constitution contain an anti-discrimination clause on the ground of sex/gender?	Yes	<i>FSM Code [Title 11, Cap 7] 1997, s 702 (1)(a).</i> All persons entitled without discrimination on the grounds of gender, to the full and equal enjoyment of goods, services, facilities, privileges, advantages, and accommodations of (i) any department, agency, or institution of the FSM; or (ii) any public accommodation (establishment which provides lodging, is engaged in selling food, beverage, or gasoline to public, any place of recreation, amusement, exhibition, sightseeing, or entertainment which is open to public, any facility for the public transportation of persons or goods) which affects commerce (travel, trade, traffic, transportation, communication, and all other forms of commerce among States, or between any State and any foreign country).	
1.4 Does the Constitution contain an anti-discrimination clause on the ground of marital status?	No		

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATIONS TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.5 Does the Constitution contain an anti-discrimination clause on the ground of sexual orientation?	No		
1.6 Does the Constitution contain an anti-discrimination clause on the ground of HIV status?	No		
1.7 Does the Constitution contain an anti-discrimination clause on the ground of disability?	No		
1.8 Does the breadth of anti-discrimination clause encompass direct and indirect discrimination?	No		
1.9 Does the anti-discrimination clause bind public authorities and institutions?	Partial	<p><i>FSM Code [Title 1, Cap 1] 1997, s 107.</i> No law shall be enacted in the Trust Territory which discriminates against any person on account of sex.</p> <p><i>FSM Code [Title 11, Cap 7] 1997-</i></p> <ul style="list-style-type: none"> <i>s 702 (1)(a).</i> All persons shall be entitled, without discrimination on the grounds of gender, to the full and equal enjoyment of goods, services, facilities, privileges, advantages, and accommodations of (i) any department, agency, or institution of the FSM; or (ii) any public accommodation (establishment which provides lodging, is engaged in selling food, beverage, or gasoline to public, any place of recreation, amusement, exhibition, sightseeing, or entertainment which is open to public, any facility for the public transportation of persons or goods) which affects commerce (travel, trade, traffic, transportation, communication, and all other forms of commerce among States, or between any State and any foreign country). 	<p>Binds the legislature but not public authorities and institutions.</p> <p>Binds public institutions that provide goods, services, facilities, privileges, advantages, and accommodations including places of recreation and transportation.</p>
1.10 Does the anti-discrimination clause bind any person, organisation or enterprise?	Partial	See above at 1.9.	Binds private institutions that provide goods, services, facilities, privileges, advantages, and accommodations including places of recreation and transportation.
1.11 Are sanctions imposed for breach of anti-discrimination provisions?	Yes	<p><i>FSM Code [Title 11, Cap 7] 1997</i></p> <ul style="list-style-type: none"> <i>s 701(1).</i> A person commits a crime if wilfully, whether or not acting under the 	The penalties provided are significant.

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATIONS TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		<p>colour of law, deprives another of, or injures, oppresses, threatens, or intimidates another in the free exercise or enjoyment of any right, privilege, or immunity secured to him by the Constitution or laws of the FSM, the laws of the Trust Territory of the Pacific Islands, or the Constitution or laws of the United States of America which are applicable to FSM - 10 years imprisonment.</p> <p><i>FSM Code, 1997 [Title 11, Cap 7]</i> For breaches of s 702 (1)(a) as described in 1.9.</p> <ul style="list-style-type: none"> • s 702(3). Crime to withhold, deny, deprive, (or attempt to) any right or privilege protected under this section - 5 years imprisonment. • s 701(3). A person who deprives another of any right or privilege protected under this section shall be civilly liable to the party injured in an action at law. • s 702(5). Can be civilly liable without regard to whether a criminal case has been brought or conviction obtained. 	
1.12 Are there specific domestic violence offences in criminal law legislation (Penal Code)?	No		FSM has not legislated in the area of personal criminal offences. However as domestic violence is a matter of public welfare it does have the power to legislate and therefore is non compliant with this indicator.
1.13 Is stalking a criminal offence?	No		As above 1.12
1.14 Is a restraining order available in situations of sexual and domestic violence regardless of marital status?	No		As above 1.12
1.15 Is there mandatory prosecution for domestic violence offences?	No		As above 1.12
1.16 Does the criminal law legislation contain a broad range of sexual assault offences graded on the basis of seriousness to the victim?	No		As above 1.12
1.17 Does the definition of rape and/or sexual assault offences include penetration of non-penile objects to anus, vagina and mouth?	No		As above 1.12
1.18 Is there an offence of incest for girls and women? If there is no offence of incest then there is full compliance with this indicator.	No		As above 1.12

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATIONS TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.19 Have the terms indecency, carnal knowledge, defilement and insulting modesty been removed from the criminal law legislation?	No		As above 1.12
1.20 Is consent specifically defined in the criminal law legislation outlining coercive circumstances?	No		As above 1.12
1.21 Is there a legislative prohibition on the use of prior sexual conduct to establish consent?	Partial	FSM Rules of Evidence, Article IV, Rule 412. <ul style="list-style-type: none"> • (a)(b). In a criminal case in which a person is accused of rape or of assault with intent to commit rape, reputation or opinion evidence of the past sexual behaviour of an alleged victim, or evidence of a victim's past sexual behaviour is not admissible unless such evidence other than reputation or opinion evidence is (A) Past sexual behaviour with persons other than the accused, offered by the accused with respect to the source of semen or injury; or (B) Past sexual behaviour with the accused and is with respect to whether the alleged victim consented. • (c) If the person accused intends to offer evidence of specific instances of the alleged victim's past sexual behaviour, the accused shall make a written motion and the court shall order a hearing in chambers to determine if such evidence is relevant and if its probative value outweighs the danger of unfair prejudice. 	The use of prior sexual history to establish consent is discriminatory as it perpetuates a view that a previous relationship or history of promiscuity makes it 'more likely' that a woman consented to the act in question.
1.22 Is there a legislative prohibition on the requirement for corroboration?	No		As above 1.12
1.23 Is there a legislative prohibition on a requirement to provide proof of resistance?	No		As above 1.12
1.24 Is there a defence of honest and reasonable belief that the victim is of legal age? If there is no defence of honest and reasonable belief then there is full compliance with this indicator.	No		As above 1.12
1.25 Is a defence of consent unavailable in relation to a victim under 18?	No		As above 1.12
1.26 Is there an exemption from prosecution for marital rape? If there is no exemption in the legislation then there is full compliance with this indicator.	No		As above 1.12

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN
ARTICLE 2: OBLIGATIONS TO ELIMINATE DISCRIMINATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.27 Is there mandatory prosecution for sexual offences?	No		As above 1.12
1.28 Is bail unavailable for sexual offences if risk to victim?	No		As above 1.12
1.29 Are there minimum sentences legislated for sexual offences?	No		As above 1.12
1.30 Is there a provision in the criminal law legislation which states that customary practices of forgiveness shall not affect criminal prosecution or sentencing?	No		As above 1.12
1.31 Is there legislative provision for compensation for victims of sexual and domestic violence?	No		As above 1.12
1.32 Does the criminal law legislation allow for infanticide to replace a charge of murder or manslaughter?	No		As above 1.12
1.33 Does the definition of infanticide include environmental and social stresses?	No		As above 1.12

ARTICLE 3: GUARANTEE OF BASIC HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
3.1 Is there legislation establishing national human rights machinery charged with promoting and protecting human rights including women's rights?	No		
3.2 Is there legislation establishing a funded body to monitor the implementation of non-discriminatory law and policy for the advancement of women?	No		FSM has a National Gender Office located in the Department of Health, Education and Social Affairs. The Office is not established by legislation and therefore is more easily subject to removal in times of economic or political upheaval.

ARTICLE 4: ACCELERATION OF EQUALITY BETWEEN MEN AND WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
4.1 Does the Constitution contain a temporary special measures provision?	No		
4.2 Are special measures exempt from discrimination on the grounds of sex, marital status, sexual orientation, disability, and HIV status?	No		

ARTICLE 5: SEX ROLES AND STEREOTYPES

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
5.1 Is there a provision in the Constitution which gives precedence to a constitutional guarantee of equality if there is a conflict between custom and equality law?	No	<p><i>Constitution of the Federated States of Micronesia 1979, Article V</i></p> <ul style="list-style-type: none"> • s 1. Nothing in Constitution takes away function of traditional leader as recognised by custom or prevent traditional leader from being recognised honoured and given formal or functional roles at any level of government. • s 2. Traditions of the people may be protected by statute and cannot be challenged by Article IV (Declaration of Rights). • s 3. Congress may establish a Chamber of Chiefs consisting of traditional leaders from each state. State constitutions may provide active roles for such leaders. <p><i>FSM Code [Title 1, Cap 1] 1997, s 114.</i> Due recognition shall be given to local customs in providing a system of law, and nothing in this chapter shall be construed to limit or invalidate any part of the existing customary law, except as otherwise provided by law.</p>	The Constitution provides authority for legislation that protects custom law. It expressly enables such custom law to take precedence over the fundamental rights and freedoms in the Bill of Rights.

ARTICLE 6: EXPLOITATION OF WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
6.1 Is the act of soliciting decriminalised?	Yes		Soliciting by either females or males is not a criminal offence in the FSM in full compliance with this indicator and with CEDAW.
6.2 Is aiding and abetting consensual acts of soliciting decriminalised?	Yes		
6.3 Is it a criminal offence to procure any woman without consent or any girl under 18?	No		Compliance with CEDAW requires that soliciting is not a criminal offence. However, girls and women who should be forced into sex work against their will are protected from exploitation with specific targeted offences. The FSM has not legislated in this area and is non-compliant with CEDAW.
6.4 Does employment legislation including occupational health and safety legislation protect sex workers?	No		
6.5 Is the trafficking of women prohibited?	No		
6.6 Is sex tourism prohibited?	No		

ARTICLE 7: POLITICAL AND PUBLIC LIFE

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
7.1 Is there an equal right to vote?	Yes	<ul style="list-style-type: none"> • <i>Constitution of the Federated States of Micronesia 1979 Article VI, s 1.</i> A citizen of 18 years may vote in national elections. • <i>FSM Code [Title 9, Cap 1] 1997, s 102.</i> Every citizen of the FSM is eligible to vote for Members of the Congress of the FSM if (1) 18 years of age or older on the day of the election (2) a resident or domiciliary of the State of Kosrae, Pohnpei, Chuuk, or Yap and a registered voter therein for at least 30 days immediately preceding the election (3) not currently under a judgment of mental incompetency or insanity (4) not currently under parole, probation, or sentence for any felony for which he or she has been convicted by any court of the FSM. 	

ARTICLE 7: POLITICAL AND PUBLIC LIFE

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
7.2 Is there equal eligibility for political representation?	Partial	<i>FSM Code [Title 9, Cap 2] 1997, s 202.</i> To be eligible for election as a Member of the Congress of the Federated States of Micronesia, a person shall (1) have attained the age of 30 years on the day of the election; (2) be a resident for at least five years of the State from which he is elected; (3) be a citizen of the FSM for at least 15 years (4) not be under a judgment of mental incompetency or insanity; and (5) not have been convicted of a felony. But <i>Constitution of the Federated States of Micronesia 1979, Article V, s 1.</i> Nothing in Constitution takes away function of traditional leader as recognised by custom or prevent traditional leader from being recognised honoured and given formal or functional roles at any level of government.	Traditional leaders can be given formal and functional roles at any level of government and although there are no formal barriers to women becoming traditional leaders they rarely do.
7.3 Is there legislative provision for minimum quotas of women in Parliament?	No		No women have held or currently hold any of the 14 seats in the FSM parliament. Quotas, which have raised numbers of women in parliament in other countries, may assist in achieving substantive equality in this area.
7.4 Do women have an equal right to participate in NGOs?	Yes		There is no legal barrier to participation in NGOs.
7.5 Is there legislation (other than Charitable Societies legislation) enabling NGOs to register and mobilise to promote the advancement of women without political interference?	No		

ARTICLE 8: INTERNATIONAL REPRESENTATION AND PARTICIPATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
8.1 Do women have equal opportunity to represent government at international level and participate in the work of international organisations?	Partial	There are no legal barriers to representing the FSM government at international level and participating in the work of international organisations.	Few women represent the national government at the international level and the introduction of a quota system into legislation would ensure full compliance with this indicator.

ARTICLE 9: NATIONALITY AND CITIZENSHIP

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
9.1 Do women have an equal right to acquire, change or retain their nationality?	Yes	<i>Constitution of the Federated States of Micronesia 1979, Article III, s 1.</i> A person who is a citizen immediately prior to the effective date of the Constitution is a citizen and national of FSM.	
9.2 Does marriage to an alien or change of husband's nationality affect wife's nationality? If there is no change to a wife's nationality after marriage there is full compliance with this indicator.	Yes		To be compliant with this indicator, the marriage of a woman to a non-national should not affect her nationality. The FSM legislation does <i>not</i> alter the nationality of female citizens upon marriage and therefore there is full compliance with this indicator in compliance with CEDAW.
9.3 Do both spouses have equal rights to residency, citizenship and employment when married to a non-national?	Yes		
9.4 Do both spouses have an equal right to determine the nationality of children?	Yes	<i>Constitution of the Federated States of Micronesia 1979, Article III, s 2.</i> A person born of parents one or both of whom are citizens of the FSM is a citizen and national of the FSM by birth.	
9.5 Do women have an equal right to obtain a passport?	Yes	<i>FSM Code [Title 50, Cap 2] 1997, s 202.</i> No passport shall be granted to any person other than a citizen of the Federated States of Micronesia.	

ARTICLE 10: EDUCATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
10.1 Do women and girls have equal access to education?	Partial	<p><i>Constitution of the Federated States of Micronesia 1979, Article IX, s 2(r)</i>. The legislature of FSM has the power to promote education by setting minimum standards, providing training and assistance to the states and providing support for post-secondary educational programs and projects.</p> <p><i>FSM Code [Title 40, Subcap III] 1997, National Student Loan Revolving Fund Act 1982</i></p> <ul style="list-style-type: none"> • <i>s 325</i>. It is important to identify and educate more of the talented young men and women of the FSM in order to provide the fullest development of their mental resources and technical skills. This subchapter establishes an ongoing fund to provide long-term, low-interest loans from a revolving fund to qualified students who are in need of such financial assistance in order to pursue a full-time course of study at an institution of higher education. • <i>s 327</i>. Loans shall be made only to a student who (1) is a citizen of the FSM (2) is in need of the amount of the loan to pursue a course of study on a full-time basis as an undergraduate, graduate, or professional student at an institution of higher education; and (3) has been accepted for enrolment as a full-time student at an institution of higher education or in the case of a student already attending such an institution, is in good standing at such institution and is carrying a full-time academic work load. <p><i>FSM Code 1997 [Title 1, Cap 1] s 109</i>. Free elementary education shall be provided throughout the Trust Territory.</p>	The FSM government has introduced free elementary education and student loans which assist girls in achieving equal access to education.
10.2 Is there legislation that creates special measures for the advancement of women in education?	No		
10.3 Is there compulsory primary education for girls and boys?	No		Although the four states have introduced compulsory education, FSM has not legislated in this area, in non-compliance with CEDAW.
10.4 Is there compulsory secondary education for girls and boys?	No		See above 10.3
10.5 Is family life (reproductive and sexual health) education compulsory in schools?	No		See above 10.3
10.6 Is there a legislative prohibition on expulsion from school because of pregnancy?	No		See above 10.3

ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.1 Are there anti-discrimination provisions in employment legislation on the grounds of sex, marital status, disability, pregnancy, sexual orientation and HIV status, with sanctions?	Partial	<i>FSM Code [Title 52, Cap 1, Subcap I] 1997, s 116.</i> No employee in the public service shall be suspended, demoted, dismissed, laid off, or otherwise discriminated against because of sex, marital status, race, religious or political preference, place of origin, or ancestry.	Protection from discrimination is provided for public service workers but not other workers.
11.2 Are there special measures provisions for the advancement of women in employment?	Partial	<i>FSM Code [Title 52, Cap 1, Subcap I] 1997, s 113.(1).</i> The State Public Service System shall provide equal opportunity for all regardless of sex, race, religion, language, ancestry, social status, or place of origin.	The Public Service has affirmative action measures but no similar provisions exist for other workers.
11.3 Do women enjoy equal conditions of work including leave, superannuation and Workers Compensation?	Partial	<i>FSM Code 1997 [Title 52 Cap 4] Employees' Health Insurance Plan, s 403 (1).</i> All full-time employees of the National Government of the FSM may participate in the plan. <i>FSM Code [Title 53, Subtitle II, Cap 6] 1997, Federated States of Micronesia Social Security Act</i> <ul style="list-style-type: none"> <i>s 603(8).</i> Employment means any service by an employee for an employer incorporated or doing business within the FSM irrespective of where such employment is performed, except family employment. <i>s 603(9).</i> Family employment means employment of a worker by a member of the household, a parent or a son or daughter. 	The exclusion of part time worker will disproportionately impact upon women. The exclusion of family employment will disproportionately impact upon women.
11.4 Does the legislation provide sexual harassment protection from employers and co-workers?	No		
11.5 Does the definition of sexual harassment include the breadth of unwanted behaviours?	No		
11.6 Does the legislation contain an equal pay provision?	No		
11.7 Does the legislation contain pay equity provisions?	No		Note that FSM has placed a reservation on the pay equity provisions of CEDAW (Article 11 (1) (d)).
11.8 Does the legislation provide for an equal retirement age?	No		There are no provisions for retirement in the legislation in non-compliance with CEDAW.
11.9 Are there restrictions on women's choice of employment? If there are no restrictions on women's choice of employment then there is full compliance with this indicator.	Yes		There are no legislative restrictions on women's choice of employment as there are in all other Pacific countries except the Marshall Islands. This is in full compliance with the indicator and with CEDAW.

ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.10 Does the legislation provide for health protection during pregnancy?	No		There is no workplace health and safety legislation in FSM.
11.11 Does the legislation provide paid maternity leave of not less than 14 weeks?	No		Note that FSM has placed a reservation on the paid maternity leave provisions of CEDAW (Article 11(2) (b).
11.12 Does the legislation provide protection from dismissal because of pregnancy or maternity leave?	No		
11.13 Does the legislation guarantee the provision of childcare by employer or state?	No		
11.14 Does the legislation provide reasonable nursing time during work hours?	No		

ARTICLE 12: HEALTH CARE AND FAMILY PLANNING

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
12.1 Do women have access to safe and legal abortion facilities?	Partial	<i>Constitution of the Federated States of Micronesia 1979, Article IX s 2.</i> Congress has the power to promote health by setting minimum standards.	The FSM legislation does not criminalise abortion and the Constitution directs Congress to enact legislation to promote health by setting minimum standards. However, access to abortion facilities throughout the FSM states is limited and therefore further legislation is required to guarantee access to achieve full compliance with this indicator.

ARTICLE 13: ECONOMIC AND SOCIAL BENEFITS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
13.1 Do women have an equal right to family benefits regardless of marital status?	Yes		There is no comprehensive social security system in the FSM.
13.2 Do women have equal right to receive bank loans, mortgages and financial credit?	Yes		There is no legislative barrier preventing women from receiving bank loans, mortgages and financial credit.
13.3 Do women have an equal right to participate in recreational activities, sports and cultural life?	Yes		There is no legislative barrier to participate in recreational activities, sports and cultural life.

ARTICLE 14: RURAL WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
14.1 Is there legislation that provides for special measures to advance substantive equality for rural women?	No		Many women throughout the FSM live in rural communities and it is crucial that the FSM incorporates special measures into either the national constitution or legislation to advance substantive equality.

ARTICLE 15: EQUALITY BEFORE THE LAW AND CIVIL MATTERS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
15.1 Does the Constitution guarantee equality before the law?	Yes	<i>Constitution of the Federated States of Micronesia 1979, Article IV. 3, 4.</i> A person may not be denied the equal protection of the law on account of sex. <i>FSM Code 1997 [Title 1. Cap 1] s 107.</i> A person may not be denied the equal protection of the law on account of sex.	Equal protection of the law requires that both females and males are treated equally before the law.
15.2 Do women have an equal capacity in civil matters – can women sue?	Yes		There is no legal barrier to women's right to sue.
15.3 Do women have an equal right to participate in courts and tribunals at all stages?	Yes		There is no legal barrier to women's right to participate in court proceedings.
15.4 Do women (regardless of marital status) have an equal right to conclude contracts and administer property?	Yes		There is no legal barrier to women's right to conclude contracts and administer property.
15.5 Do women have an equal right to be executors or administrators of estates?	Yes		There is no legal barrier to women's right to conclude contracts and administer property.

ARTICLE 15: EQUALITY BEFORE THE LAW AND CIVIL MATTERS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
15.6 Is there legislation that nullifies all contracts and instruments that limit women's legal capacity?	No		There is no specific prohibition on discriminatory contracts and therefore there is no compliance with this indicator.
15.7 Do women have an equal right to choose their residence and domicile?	Yes		There is no legal barrier to women's right to choose their residence and domicile.

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.1 Does the legislation guarantee entry into marriage with full and free consent?	No		The FSM has not legislated in the area of marriage. However, it has the power to do so and therefore is non-compliant on all indicators in the area of marriage.
16.2 Does the legislation allow marriages to be nullified if they took place under force, duress or undue influence?	No		See above 16.1.
16.3 Is there an equal minimum age of 18 for marriage?	No		See above 16.1.
16.4 Is there a legislative prohibition on child marriage?	No		See above 16.1.
16.5 Does the legislation require registration of marriage in official registry?	No		See above 16.1.
16.6 Does the legislation prohibit bigamy?	No		See above 16.1.
16.7 Do women have an equal right to choose a family name?	Yes		There is no legislative barrier to women choosing their family name and therefore there is full compliance with this indicator.
16.8 Is the consent of both parents equal in marriage of minors?	No		See above 16.1.
16.9 Are both spouses equal in the ownership, acquisition, management, administration, enjoyment and disposition of property?	No		The legislation does not guarantee equality to both spouses in the ownership, acquisition, management, administration, enjoyment and disposition of property.

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
			Property rights are largely determined by custom and although customary land tenure is based on a matrilineal inheritance system the control and use of land and other resources often falls on men in the FSM, who are looked upon to provide for and to protect their families. Further, the failure to guarantee equality in the legislation leaves women vulnerable to changes in custom and therefore there is no compliance with this indicator.
16.10 Does the legislation provide for a maintenance and custody order during separation based on need?	Partial	<p><i>FSM Code [Title 6, Cap 16, Subcap 2] 1997,</i></p> <ul style="list-style-type: none"> • s 1622. While an action for annulment or divorce is pending, the court may make temporary orders for custody of minor children for their support, for support of either party as it deems justice and the best interests of all concerned may require covering any of these matters pending final decree. • s 1614. Nothing contained in this chapter shall apply to any divorce effected in accordance with local custom. 	<ul style="list-style-type: none"> • The criteria of ‘justice and the best interests of all concerned’ does not provide sufficient guidance in relation to earning capacity, commitments and needs of the parties. • Customary marriages fall outside the legislation in non-compliance with CEDAW.
16.11 Is there legislation to enable women to occupy the marital home when settlement is not possible or in situations of domestic violence?	No		
16.12 Does the legislation provide an order for restitution of conjugal rights? If there is no provision for restitution of conjugal rights then there is full compliance with this indicator.	Yes		To be compliant with this indicator, the legislation should not empower the courts to provide an order for restitution of conjugal rights. The legislation does <i>not</i> provide for orders for restitution of conjugal rights (which are discriminatory as they take away a woman’s autonomy to choose when and with whom she has sexual relations). The FSM is therefore is in full compliance with this indicator and with CEDAW.

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.13 Does the legislation provide for no-fault divorce?	No	<p><i>FSM Code</i> [Title 6, Cap 16, Subcap 2] 1997-</p> <ul style="list-style-type: none"> • s 1626(1)-(9). Divorce granted for adultery, cruel treatment, neglect or personal indignity, wilful desertion for one year, habitual intemperance, imprisonment for three years, insanity for three years or more, leprosy, the separation of the parties for two consecutive years without cohabitation, whether or not by mutual consent, wilful neglect by a husband to provide suitable support for his wife when able to do so or when failure to do so is because of his idleness, profligacy or dissipation. • s 1628. The Court does not issue a decree of divorce if the injured party has forgiven the ground for the divorce. Proof of forgiveness may be by an express showing or by the voluntary cohabitation of the parties with knowledge of the fact and restoration of the forgiving party to all marital rights. Forgiveness implies a condition that the forgiven party treat the forgiving party with conjugal kindness. • s 1629. The Court may not issue a decree of divorce for adultery when the adultery is with the procurement or connivance of the plaintiff. • s 1614. Nothing contained in this chapter shall apply to any divorce effected in accordance with local custom. 	<ul style="list-style-type: none"> • Fault based criteria disadvantages women who are more likely to be in vulnerable situations and have difficulty establishing cruelty or adultery. • Customary marriages fall outside the legislation. • Forgiveness does not take into account the power imbalance between the parties.
16.14 Is there a duty on the court to promote reconciliation? If there is no duty on the court to promote reconciliation then there is full compliance with this indicator.	Yes		<p>To be compliant with this indicator the legislation should not place a duty on the court to promote reconciliation between estranged spouses. Such a duty is discriminatory and non-compliant because it removes women's choices or reduces their autonomy to choose to leave a relationship. The legislation does not place a duty on the court to promote legislation and therefore is in full compliance with the indicator and with CEDAW.</p>

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.15 Does the legislation provide for an equal division of property after divorce including recognition of unpaid contribution, future needs, and future earning capacity calculated?	Partial	<p>FSM Code [Title 6, Cap 16, Subcap 2] 1997.</p> <ul style="list-style-type: none"> • s 1622. In granting or denying an annulment or a divorce, the court may make such orders for the disposition of either or both parties' interest in any property in which both have interests, as it deems justice and the best interests of all concerned may require. • s 1614. Nothing contained in this chapter shall apply to any divorce effected in accordance with local custom. 	<p>Although there is provision for property division after divorce the legislation does not fully comply with the indicator because:</p> <ul style="list-style-type: none"> • The criteria of 'justice and the best interests of all concerned' does not provide sufficient guidance in relation to earning capacity, commitments and needs of the parties. • There is no criteria for the calculation of women's non financial contributions. • Customary marriages fall outside the legislation of the FSM in non-compliance with CEDAW.
16.16 Does the legislation provide for the payment of child support upon divorce based on need?	Partial	<p>FSM Code [Title 6, Cap 16, Subcap 2] 1997,</p> <ul style="list-style-type: none"> • s 1622. In granting or denying a decree of an annulment or a divorce, the Court may make an order for support of a minor as it finds justice and the best interests of all concerned may require. • s 1614. Nothing contained in this chapter shall apply to any divorce effected in accordance with local custom. 	See above 16.10
16.17 Does the legislation provide for maintenance for woman based on commitments, income, earning capacity, assets?	Partial	<p>FSM Code [Title 6, Cap 16, Subcap 2] 1997,</p> <ul style="list-style-type: none"> • s 1622. In granting or denying a decree of an annulment or a divorce, the Court may make an order for support of a minor as it finds justice and the best interests of all concerned may require. • s 1614. Nothing contained in this chapter shall apply to any divorce effected in accordance with local custom. 	See above 16.10
16.18 Is custody and access to children based on best interests of child regardless of relationship of parents?	Partial	<p>FSM Code [Title 6, Cap 16, Subcap 2] 1997,</p> <ul style="list-style-type: none"> • s 1622. In granting or denying an annulment or a divorce, the court may make such orders for custody of minor children as it deems justice and the best interests of all concerned may requires • 1614. Nothing contained in this chapter shall apply to any divorce effected in accordance with local custom. 	Although the best interests of the child is relevant it is not paramount and is therefore non-compliant with the indicator.

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.19 Does the legislation provide damages for adultery? If the legislation does not make provision for damages then there is full compliance with this indicator.	Yes		The legislation does <i>not</i> provide a right to damages for adultery and therefore is in full compliance with the indicator and with CEDAW. Damages for adultery are discriminatory as they seek to punish the sexual behaviour of consenting adults and interferes with their autonomy.
16.20 Do women have equal rights to guardianship, wardship, trusteeship and adoption?	Partial	<p><i>FSM Code [Title 6, Cap 16, Subcap 3] 1997:</i></p> <ul style="list-style-type: none"> • s 1632. Any suitable person who is not married, or is married to the father or mother of a child, or a husband and wife jointly may by decree of court adopt a child not theirs by birth, and the decree may provide for change of the name of the child. • S 1634 (1). No adoption shall be granted under this subchapter without the child proposed for adoption appearing before the court, and the adoption shall be granted only if the court is satisfied that the interests of the child will be promoted thereby. • s 1614. Nothing contained in this chapter shall apply to any adoption effected in accordance with local custom. 	Although equal in the legislation customary law falls outside the legislation.
16.21 Does the legislation recognise de facto rights (including same-sex couples) on the same basis as marriage?	No		
16.22 Does the legislation provide an order for establishing parentage?	Yes	<i>FSM Code [Title 6, Cap 17, Subcap 3] 1997, s 1751.</i> If the obligor (of a maintenance order) asserts that he is not the father of the child for whom support is sought and it appears to the court that the defence is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue.	
16.23 Does the legislation provide for a contribution to pregnancy and childbirth costs by father to unmarried mother?	No		

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.24 Does the legislation provide child support payable for children born outside of marriage?	No		
16.25 Does the legislation provide for equal inheritance laws?	No		FSM has not legislated in the area of inheritance.
16.26 Is there legislation requiring the application of CEDAW and CRC to domestic family law when relevant?	No		

Chuuk: Detailed Analysis of Indicators

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.1 Does the Constitution guarantee fundamental rights and freedoms to men and women equally including in the political, economic, social, cultural, civil or any other field?	Partial	<i>Constitution of the State of Chuuk 1989, Article III, s 1-13.</i> Freedom of speech, press, freedom from discrimination, unreasonable search, seizure, invasion of privacy, double jeopardy, from compulsion to give incriminating evidence, excessive bail, from cruel and unusual punishment, from capital punishment, slavery, involuntary servitude, bill of attainder, ex post facto law, law impairing the obligations of contract or restricting the freedom of residents of the State of Chuuk to move and migrate within the State, from imprisonment for debt, or quartering any soldier without the owner's consent, the right to assemble peaceably, join any association, petition, life, liberty, to a speedy trial, equal protection under the law, to be informed of the nature of accusation, to confront opposing witnesses, to compel attendance of supporting witnesses, to be assisted by defence counsel, habeas corpus,.	The rights protected include most of those required by CEDAW. There is therefore substantial compliance with this indicator but <ul style="list-style-type: none"> • The right to the highest attainable standard of physical and mental health is not a guaranteed right. • Substantive equality is not a guaranteed right.
1.2 Is there a constitutional guarantee of substantive equality between men and women?	Partial	<i>Constitution of the State of Chuuk 1989, Article III, s 2.</i> No person may be denied equal protection under the law.	A guarantee of equal protection of the law requires that law is equally in substance and application but does not guarantee equal benefits or outcomes as required by CEDAW.
1.3 Does the Constitution contain an anti-discrimination clause on the ground of sex/gender?	Yes	<i>Constitution of the State of Chuuk 1989, Article III, s 2.</i> No person may be discriminated against in the exercise of their civil rights, on account of sex.	
1.4 Does the Constitution contain an anti-discrimination clause on the ground of marital status?	Yes	<i>Constitution of the State of Chuuk Article III, s 2.</i> No person may be discriminated against in the exercise of civil rights, on account of social status.	Social status can be interpreted to mean marital status.
1.5 Does the Constitution contain an anti-discrimination clause on the ground of sexual orientation?	No		
1.6 Does the Constitution contain an anti-discrimination clause on the ground of HIV status?	No		
1.7 Does the Constitution contain an anti-discrimination clause on the ground of disability?	No		

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.8 Does the breadth of the anti-discrimination clause encompass direct and indirect discrimination?	No		
1.9 Does the anti-discrimination clause bind public authorities and institutions?	Partial	<i>Constitution of the State of Chuuk Article III, s 2.</i> No person may be discriminated against in the exercise of civil rights.	The Constitution does not expressly specify who is bound by the anti-discrimination clause but it implies that it encompasses all aspects of a person's life.
1.10 Does the anti-discrimination clause bind any person, organisation or enterprise?	Partial	<i>Constitution of the State of Chuuk Article III, s 2.</i> No person may be discriminated against in the exercise of civil rights.	The Constitution does not expressly specify who is bound by the anti-discrimination clause but it implies that it encompasses all aspects of a persons' life and is not limited to public authorities.
1.11 Are sanctions imposed for breach of anti-discrimination provisions?	No		
1.12 Are there specific domestic violence offences in criminal law legislation (Penal Code)?	No	<i>Chuuk State Code [Title 12, Part I, Cap 4] 2001</i> <ul style="list-style-type: none"> s 2057(1). Assault with a dangerous weapon if he attempts to cause or purposely causes bodily injury to another person with a dangerous weapon - five years imprisonment, \$5,000.00, or both. s 2058. Offence of assault to unlawfully offers or attempts, with force or violence, to strike, beat, wound, or do bodily harm to another - three years imprisonment, \$100.00, or both. s 2059(1). Offence of assault and battery to unlawfully strike, beat, wound or otherwise do bodily harm to another - 6 months imprisonment, \$250.00 or both. s 2060(1). Mayhem if with intent to maim or disfigure, does cut, bite, or slit the nose, ear, or lip, or cut off or disable the tongue, or put out or destroy an eye, or cut off or disable a limb or any member of another person - 3 years imprisonment, \$1,000.00, or both. 	Although the general assault provisions could be used in situations of domestic violence they fall short of compliance because: <ul style="list-style-type: none"> The provisions do not embrace the variety of situations that constitute domestic violence. The penalties are low.

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.13 Is stalking a criminal offence?	No		
1.14 Is a restraining order available in situations of sexual and domestic violence regardless of marital status?	No		
1.15 Is there mandatory prosecution for domestic violence offences?	No		
1.16 Does the criminal law legislation contain a broad range of sexual assault offences graded on the basis of seriousness to the victim?	Partial	<p><i>Chuuk State Code</i> [Title 12, Part I, Cap 4] 2001</p> <ul style="list-style-type: none"> • s 2053(1). Offence to intentionally subject another person to sexual penetration, against the other person's will, or under conditions in which the defendant knows or should know that the other person is mentally or physically incapable of resisting or understanding the nature of his conduct (2)(a). If a dangerous weapon was used by the defendant - nine years imprisonment, \$10,000, or both (b) otherwise five years imprisonment, or \$5,000, or both. • s 2054(1). A person commits the offence of sexual abuse if he intentionally has sexual contact with another person who is less than 13 years old or causes such a person to have sexual contact with him - 5 years imprisonment, \$5,000.00, or both. 	<p>The sexual assault offences whilst providing some protection for women who are victims of sexual violence are not compliant with the indicator because:</p> <ul style="list-style-type: none"> • The sentences are light implying that sexual assault is not a serious offence. In particular 5 years for a rape that does not cause <i>serious</i> injury is an insufficient punishment and deterrent. Regardless of the level of injury rape is a violation of personal integrity which should be severely punished. • Although penetration is widely defined there are no other offences and therefore many of ways in which women are sexually violated are therefore excluded from the Act. • Sexual contact is available only for girls under 13 with the result that it is lawful to have sexual contact with girls 13 and over. This is discriminatory.

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.17 Does the definition of rape and/or sexual assault offences include penetration of non-penile objects to anus, vagina and mouth?	Yes	<i>Chuuk State Code [Title 12, Part I, Cap 4] 2001, s 2051.</i> Sexual penetration means sexual intercourse, cunnilingus, fellatio, or anal intercourse, or the causing of penetration to any extent and with any object of the genital or anal opening of another whether or not there is any emission.	
1.18 Is there an offence of incest for girls and women? If there <i>is</i> an offence of incest, for girls and women then there is no compliance with this indicator.	No	<i>Chuuk State Code [Title 12, Part I, Cap 4] 2001, s 2055.</i> Every person who shall unlawfully engage in sexual intercourse with another of such a close blood relationship or affinity that marriage between the two who so engage is prohibited by law or custom, shall be guilty of incest - 3 months; provided, however, that the burden of proof of such relationship or affinity shall rest with the prosecution.	<p>There <i>is</i> an offence of incest in the Code which does not specify age which means that women and girls under 18 can be charged and therefore there is no compliance with this indicator. It is discriminatory, because:</p> <ul style="list-style-type: none"> No girl under 18 should be charged with any sexual offence and there is no exception on the basis of age. Incest is typically perpetrated by men against girls and women in non consensual coercive circumstances. Charging women and girls with incest fails to recognise the power imbalance between girls and women and male relatives.
1.19 Have the terms indecency, carnal knowledge, defilement and insulting modesty been removed from the criminal law legislation?	Yes		
1.20 Is consent specifically defined in the criminal law legislation outlining coercive circumstances?	No		

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN
ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.21 Is there a legislative prohibition on the use of prior sexual conduct to establish consent?	Partial	<p><i>Chuuk Rules of Evidence, Article IV,</i></p> <ul style="list-style-type: none"> Rule 412 (a)(b). In a criminal case in which a person is accused of rape or of assault with intent to commit rape, reputation or opinion evidence of the past sexual behaviour of an alleged victim, or evidence of a victim's past sexual behaviour is not admissible unless such evidence other than reputation or opinion evidence is (A) Past sexual behaviour with persons other than the accused, offered by the accused with respect to the source of semen or injury; or (B) Past sexual behaviour with the accused and is with respect to whether the alleged victim consented. Rule 412 (c) If the person accused intends to offer evidence of specific instances of the alleged victim's past sexual behaviour, the accused shall make a written motion and the court shall order a hearing in chambers to determine if such evidence is relevant and if its probative value outweighs the danger of unfair prejudice. 	This provision is substantially compliant with the indicator but past sexual conduct with the accused is admissible in relation to proving consent which allows the prosecution to imply that past consent equates to consent in the current case.
1.22 Is there a legislative prohibition on requirement for corroboration?	No		Corroboration is difficult for sexual assault victims to establish as there are rarely witnesses. Corroboration is not required for other offences and it is discriminatory to view sexual assault victims as unreliable witnesses.
1.23 Is there a legislative prohibition on a requirement to provide proof of resistance?	No	<i>Chuuk State Code [Title 12, Part I, Cap 4] 2001, s 2053.(1)</i> Offence to intentionally subject another person to sexual penetration, against the other person's will, or under conditions in which the defendant knows or should know that the other person is mentally or physically incapable of resisting or understanding the nature of his conduct.	This provision implies that physical resistance is expected. Sexual assault victims may not be able to physically resist an armed or threatening perpetrator or may be immobilised by fear and power imbalances.
1.24 Is there a defence of honest and reasonable belief that the victim is of legal age? If there is no defence of honest and reasonable belief then there is full compliance with this indicator.	No	<i>Chuuk State Code [Title 12, Part I, Cap 4] 2001, s 2054 (2).</i> It is an affirmative defence to the offence of sexual abuse that the defendant reasonably believed the child to be older than 13.	To be compliant with this indicator, there should be no defence available to the perpetrator of 'honest and reasonable belief that the victim is of legal age'. This defence places the

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
			onus on the minor to reveal her age rather than on the perpetrator to ascertain age. The Chuuk State Code <i>does</i> provide such a defence and is therefore non-compliant with the indicator.
1.25 Is a defence of consent unavailable in relation to a victim under 18?	No		
1.26 Is there an exemption from prosecution for marital rape? If there is no exemption then there is full compliance with this indicator.	Yes		To be compliant with this indicator, men should <i>not</i> be exempted from prosecution for marital rape. The Criminal Code does <i>not</i> exempt husbands from prosecution for marital rape and is therefore in full compliance with this indicator and with CEDAW.
1.27 Is there mandatory prosecution for sexual offences?	No		
1.28 Is bail unavailable for sexual offences if risk to victim?	No	<i>Chuuk State Code [Title 12, Part III, Cap 35] 2001, s 9071(1)</i> Any person arrested for a criminal offence, other than murder in the first degree, shall be entitled as a matter of right to be released on bail before conviction	The rights of the perpetrator are prioritised rather than the safety of the victim.
1.29 Are there minimum sentences for sexual offences?	No	All sexual offences carry imprisonment and fine penalties of 'not more than' the maximum specified amount and no minimum is set.	
1.30 Is there a provision in the criminal law legislation which states that customary practices of forgiveness shall not affect criminal prosecution or sentencing?	No	<i>Chuuk State Code [Title 12, Part I, Cap 11] 2001, s 6001.</i> In imposing or suspending the execution of sentences, or in suspending the imposition of sentence and granting probation, due recognition shall be given to the customs of the inhabitants of the State of Chuuk	The legislation specifically <i>provides</i> for customary law to affect criminal sentencing in non-compliance with CEDAW.

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.31 Is there legislative provision for compensation for victims of sexual and domestic violence?	Partial	<i>Chuuk State Code 2001</i> <ul style="list-style-type: none"> [Title 12, Part I, Cap 4] s 2059 (3). It shall be mandatory to compensate any bodily injury by the accused when convicted for assault and battery. The Court shall have the power to determine the amount and the manner in which such restitution be satisfied accordingly. [Title 12, Part I, Cap 11] s 6006. If a defendant is convicted of a wilful wrong causing damage to another, a court, may, in lieu of or in addition to other lawful punishment, order restitution or compensation to the owner or person damaged. 	Although the State Code provides for compensation for bodily injury this does not represent full compliance with the indicator. This is because the way in which bodily injury is defined may be limiting and exclude psychological and other injuries which women typically experience as a result of sexual and domestic violence. In addition the scope is limited to convictions for assault and battery which does not cover the range of violations which women may experience.
1.32 Does the criminal law legislation allow for infanticide to replace a charge of murder or manslaughter?	No		
1.33 Does the definition of infanticide include environmental and social stresses?	No		

ARTICLE 3: GUARANTEE OF BASIC HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
3.1 Is there legislation establishing national human rights machinery charged with promoting and protecting human rights including women rights?	No		
3.2 Is there legislation establishing a funded body to monitor the implementation of non-discriminatory law and policy for the advancement of women?	No		

ARTICLE 4: ACCELERATION OF EQUALITY BETWEEN MEN AND WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
4.1 Does the Constitution contain a temporary special measures provision?	No		
4.2 Are special measures exempt from discrimination on the grounds of sex, marital status, sexual orientation, disability, and HIV status?	No		

ARTICLE 5: SEX ROLES AND STEREOTYPES

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
5.1 Is there a provision in the Constitution which gives precedence to a constitutional guarantee of equality if there is a conflict between custom and equality law?	No	<p><i>Constitution of the State of Chuuk 1989, Article III.</i></p> <ul style="list-style-type: none"> • s 1. Existing Chuukese custom and tradition shall be respected. • s 2. Nothing in this Constitution takes away the role or function of a traditional leader as recognised by Chuukese custom and tradition, or prevents a traditional leader from being recognised, honoured, and given formal or functional roles in government. • s 4. Traditional rights over all reefs, tidelands, and other submerged lands, including their water columns, and successor's rights are recognised. The legislature may regulate their reasonable use. 	Customary law has constitutional legal status in Chuuk and is also incorporated into legislation. Although there are anti-discrimination provisions in the Constitution which women can call upon, the absence of a constitutional guarantee of the precedence of equality over customary law in the event of any conflict results in non-compliance with this indicator.

ARTICLE 5: SEX ROLES AND STEREOTYPES

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		<i>Chuuk State Code 2001 [Title 12, Part I, Cap 11] s 6001.</i> In imposing or suspending the execution of sentences, or in suspending the imposition of sentence and granting probation, due recognition shall be given to the customs of the inhabitants of the State of Chuuk.	

ARTICLE 6: EXPLOITATION OF WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
6.1 Is the act of soliciting decriminalised?	No	<i>Chuuk State Code [Title 12, Part II, Cap 28], s 9025.</i> Sex work is prohibited in Chuuk State - one year imprisonment, \$500, or both.	Although this offence applies to both males and females compliance with CEDAW requires that soliciting is decriminalised to give consenting women the ability to engage in sex work.
6.2 Is aiding and abetting consensual acts of soliciting decriminalised?	No	<i>Chuuk State Code [Title 12, Part II, Cap 28] 2001, s 9025.</i> In any way taking part or aiding in sex work is prohibited in Chuuk State - one year imprisonment, \$500, or both.	
6.3 Is it a criminal offence to procure any woman without consent or any girl under 18?	No	<i>Chuuk State Code [Title 12, Part II, Cap 28] 2001, s 9025.</i> In any way taking part in sex work is prohibited in Chuuk State - one year imprisonment, \$500, or both.	Although broad enough to encompass many situations in which women are exploited in sex work this provision provides minimal protection for girls or women procured into sex work without their consent. The penalty is very low and does not provide any real deterrent.
6.4 Does employment legislation including occupational health and safety legislation protect sex workers?	No		Chuuk has no employment health and safety legislation and therefore sex workers (along with all other workers) are not protected in non-compliance with CEDAW.
6.5 Is the trafficking of women prohibited?	No		
6.6 Is sex tourism prohibited?	No		

ARTICLE 7: POLITICAL AND PUBLIC LIFE

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
7.1 Is there an equal right to vote?	Yes	<i>Constitution of the State of Chuuk 1989, Article XII, s 2.</i> A citizen of the FSM who is a resident of the State of Chuuk and has attained the age of 18 may vote in the State. <i>Chuuk State Code [Title 13, Cap 2] 2001, s 1102,</i> Every person not confined to a mental institution, nor judicially declared insane, nor committed under a sentence of imprisonment, who is a citizen of the FSM over 18 years of age, who is a resident of Chuuk is entitled to vote at any primary, general, runoff, special, or local election to be held within the State of Chuuk.	
7.2 Is there equal eligibility for political representation?	Yes	<i>Chuuk State Code [Title 13, Cap 4] 2001, s 1304(1).</i> No person is eligible to serve as a Representative unless at least 25 years of age, or as a Senator unless at least 35 years of age, on the day of election; was a born Chuukese, has been a resident and registered voter of the Representative District or Senatorial Region from which elected for at least 5 years prior to the day of election, and is a citizen of the FSM.	
7.3 Is there legislative provision for minimum quotas of women in Parliament?	No		Despite equal eligibility to enter parliament no woman has yet served as a representative in the Chuuk parliament. A minimum quota is a means of achieving representation of women in parliament leading to substantive equality.
7.4 Do women have an equal right to participate in NGOs?	Yes		There is no legal barrier to participation.
7.5 Is there legislation (other than Charitable Societies legislation) enabling NGOs to register and mobilise to promote the advancement of women without political interference?	No		

ARTICLE 8: INTERNATIONAL REPRESENTATION AND PARTICIPATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
8.1 Do women have equal opportunity to represent government at international level and participate in the work of international organisations?	Partial	There are no legal barriers to representing government at international level and participating in the work of international organisations.	Few women represent the Chuuk government at the international level and the introduction of a quota system into legislation would ensure full compliance with this indicator.

ARTICLE 9: NATIONALITY AND CITIZENSHIP

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
9.1 Do women have an equal right to acquire, change or retain their nationality?	Yes	<i>Constitution of the Federated States of Micronesia 1979, Article III, s 1.</i> A person who is a citizen immediately prior to the effective date of the Constitution is a citizen and national of FSM.	
9.2 Does marriage to an alien or change of husband's nationality affect wife's nationality? If there is no change to a wife's nationality after marriage, there is full compliance with this indicator.	Yes		To be compliant with this indicator, the marriage of a woman to a non-national should not affect her nationality. The legislation does <i>not</i> alter the nationality of female citizen upon marriage and therefore there is full compliance with this indicator with CEDAW.
9.3 Do both spouses have equal rights to residency, citizenship and employment when married to a non-national?	Yes		
9.4 Do both spouses have an equal right to determine the nationality of children?	Yes	<i>Constitution of the Federated States of Micronesia 1979, Article III, s 2.</i> A person born of parents one or both of whom are citizens of the FSM is a citizen and national of the FSM by birth.	
9.5 Do women have an equal right to obtain a passport?	Yes	<i>FSM Code [Title 50, Cap 2] 1997, s 202.</i> No passport shall be granted to any person other than a citizen of the FSM.	

ARTICLE 10: EDUCATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
10.1 Do women and girls have equal access to education?	Partial	<i>Constitution of the State of Chuuk 1989, Article X, s 2.</i> The State Government shall provide for the establishment, management, and support of a state-wide system of public schools which shall, within the limits of its resources, provide an education of quality and relevancy, free from sectarian control and available to all persons in the State of Chuuk.	The Constitution provides a guarantee of availability of education to all. It falls short of incorporating a guarantee of equality of access.
10.2 Is there legislation that creates special measures for the advancement of women in education?	No		

ARTICLE 10: EDUCATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
10.3 Is there compulsory primary education for girls and boys?	Yes	<i>Constitution of the State of Chuuk 1989, Article X. s 1.</i> Free compulsory public elementary shall be provided in the State of Chuuk as prescribed by statute.	
10.4 Is there compulsory secondary education for girls and boys?	Yes	<i>Constitution of the State of Chuuk 1989, Article X. s 1.</i> Free compulsory public secondary education shall be provided in the State of Chuuk as prescribed by statute.	
10.5 Is family life (reproductive and sexual health) education compulsory in schools?	No		
10.6 Is there a legislative prohibition on expulsion from school because of pregnancy?	No		

ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.1 Are there anti-discrimination provisions in employment legislation on the ground of sex, marital status, disability, pregnancy, sexual orientation and HIV status with sanctions?	Partial	<i>Chuuk State Code 2001 [Title 9, SubCap B], s 1013. (2).</i> No employee in the Public Service shall be suspended, demoted, dismissed, laid off, retired or otherwise discriminated against because of sex, marital status, race, religious or political affiliation, place of origin, or ancestry.	Full compliance with this indicator has not been achieved because: <ul style="list-style-type: none"> • There is no similar provision protecting workers not in the Public Service. • The provision does not protect workers from discrimination on the grounds of disability, pregnancy, sexual orientation and HIV status. • There are no sanctions.
11.2 Are there special measures provisions for the advancement of women in employment?	Partial	<i>Chuuk State Code [Title 9, SubCap B] 2001, s 1011.</i> The State Public Service System shall be administered in accordance with the merit principles of (1) Equal opportunity for all regardless of sex.	The Public Service has affirmative action measures but no similar provisions exist for other workers.
11.3 Does the legislation guarantee women equal conditions of work including leave, superannuation and Workers Compensation?	No		There is no comprehensive employment code in Chuuk and therefore women are <i>not</i> guaranteed equal conditions of work.

ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.4 Does the legislation provide sexual harassment protection from employers and co-workers?	No		
11.5 Does the definition of sexual harassment include the breadth of unwanted behaviours?	No		
11.6 Does the legislation contain an equal pay provision?	No No		Note that FSM has a reservation on the pay equity provisions of CEDAW (Article 11 (1) (d).
11.7 Does the legislation contain pay equity provisions?			
11.8 Does the legislation provide for an equal retirement age?	Partial	<i>Chuuk State Code [Title 9, SubCap B] 2001, s 1202(1).</i> Any employee of the Chuuk State Public Service System, upon reaching the age of 60 years, shall retire from the Public Service.	This provision provides an equal retirement age for public service workers. There is no equivalent provision for non-public service workers.
11.9 Are there restrictions on women's choice of employment? If there are no restrictions then there is full compliance with this indicator.	Yes		To be compliant with this indicator, there should be no restrictions on a woman's choice of employment. There are no legislative restrictions on women's choice of employment in Chuuk (as there is in most Pacific countries). Chuuk is therefore in full compliance with this indicator and CEDAW.
11.10 Does the legislation provide for health protection during pregnancy?	No		
11.11 Does the legislation provide paid maternity leave of not less than 14 weeks?	Partial	<i>Chuuk Judicial Service System Travel and Property Regulations, Part II</i> <ul style="list-style-type: none"> s 2A. Female employees of the Judicial Branch of the Chuuk State Government shall be allowed to use up to three (3) months of their accumulated sick leave in the case of maternity immediately before, during, or after the birth of their child. s 3A. After exhausting their sick leave, female employees who are permanent employees may be granted leaves of 	<ul style="list-style-type: none"> Although there is provision for 3 months leave for female employees in the judicial service it must be taken as sick leave and unpaid leave which does not meet the CEDAW recommended

ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		absence without pay for reasons of maternity. The total length of sick leave plus leave without pay shall not exceed three (3) months.	<p>period of paid leave of 14 weeks.</p> <ul style="list-style-type: none"> • There is no legislative provision for maternity leave for other workers. • Note that FSM has a reservation on the paid maternity leave provisions of CEDAW (Article 11 (2) (b)).
11.12 Does the legislation provide protection from dismissal because of pregnancy or maternity leave?	No	<i>Chuuk Judicial Service System Travel and Property Regulations Part III, s 3.</i> Upon completion of leave employees are entitled to return to their positions with full rights and privileges except that the period of maternity leave shall serve to change the employee's service anniversary date by the length of time between the effective date of the leave and the date the employee returned to duty.	<ul style="list-style-type: none"> • No opportunity is given to women to spend a longer period of time caring for young children without the loss of their job. • Provision for extended unpaid leave should be provided to enable women to have the choice to spend longer with their children if they wish. • No protection for female employers in other occupations.
11.13 Does the legislation guarantee the provision of childcare by employer or state?	No		
11.14 Does the legislation provide reasonable nursing time during work hours?	No		

ARTICLE 12: HEALTH CARE AND FAMILY PLANNING

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
12.1 Do women have access to safe and legal abortion facilities?	No	<p><i>Constitution of the State of Chuuk 1989, Article X, s 6.</i> The State Government shall provide for the protection and promotion of health, and shall ensure, within the limits of its resources, that no person is discriminated against in the distribution of medical care, or is refused medical care because of that person's inability to pay.</p> <p><i>Chuuk State Code [Title 12 Cap 4] 2001</i></p> <ul style="list-style-type: none"> s 2068(1). Abortion means the intentional or knowing destruction of the life of an unborn child, or the intentional or knowing expulsion or removal of an unborn child from the womb of the mother other than for the purpose of producing a live birth, or removing a dead foetus, or to save the life of the mother. s 2068(2). It is unlawful for a person (medical doctor, the mother herself, or an individual person) to perform, or cause to perform an abortion - 9 years imprisonment. 	Although there is a constitutional guarantee that no person shall be discriminated against in the distribution of medical care, abortion is a criminal offence. This denies women access to safe medical facilities for the purposes of abortion unless it is to save the life of the mother and there is therefore no compliance with the indicator.

ARTICLE 13: ECONOMIC AND SOCIAL BENEFITS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
13.1 Do women have an equal right to family benefits regardless of marital status?	Yes		There is no system of social security in Chuuk.
13.2 Do women have equal right to receive bank loans, mortgages and financial credit?	Yes		There is no legal barrier to receiving bank loans, mortgages and financial credit.
13.3 Do women have an equal right to participate in recreational activities, sports and cultural life?	Yes		There is no legal barrier to equal participation in recreational activities, sports and cultural life.

ARTICLE 14: RURAL WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
14.1 Is there legislation that provides for special measures to advance substantive equality for rural women?	No		Many women in Chuuk live in rural communities and it is crucial that Chuuk incorporates special measures into either the national constitution or legislation to advance substantive equality.

ARTICLE 15: EQUALITY BEFORE THE LAW AND CIVIL MATTERS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
15.1 Does the Constitution guarantee equality before the law?	Yes	<i>Constitution of the State of Chuuk 1989, Article III, s 2.</i> No person may be denied equal protection under the law.	Equal protection of the law requires that both females and males are treated equally before the law.
15.2 Do women have an equal capacity in civil matters – can women sue?	Yes		There is no legal barrier to women's right to sue.
15.3 Do women have an equal right to participate in courts and tribunals at all stages?	Yes		There is no legal barrier to women's right to participate in court proceedings.
15.4 Do women (regardless of marital status) have an equal right to conclude contracts and administer property?	Yes		There is no legal barrier to women's right to conclude contracts and administer property.
15.5 Do women have an equal right to be executors or administrators of estates?	Yes		There is no legal barrier to women's right to conclude contracts and administer property.
15.6 Is there legislation that nullifies all contracts and instruments that limit women's legal capacity?	No		There is no specific prohibition on discriminatory contracts as required by CEDAW and therefore there is no compliance with the indicator.
15.7 Do women have an equal right to choose their residence and domicile?	Yes		There is no legal barrier preventing women from choosing their residence and their domicile.

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.1 Does the legislation guarantee entry into marriage with full and free consent?	No	<i>Chuuk State Code [Title 23, Cap 2] 2001, s 1042.</i> Marriage contracts between parties, both of whom are citizens of the FSM solemnised in accordance with recognised custom shall be valid.	<ul style="list-style-type: none"> • Customary marriages may include arranged marriages without full and free consent • There is no provision that states that marriages cannot take place under duress, force or coercion.

ARTICLE 16: PERSONAL AND FAMILY LAW			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.2 Does the legislation allow marriages to be nullified if they took place under force, duress or undue influence?	No		
16.3 Is there an equal minimum age of 18 for marriage?	No	<p><i>Chuuk State Code [Title 23, Cap 2] 2001</i></p> <ul style="list-style-type: none"> • s 1021(1). In order to make valid the marriage contract between two non citizens or between a non citizen and a citizen of the FSM the male at the time of contracting the marriage be at least 18 years of age and the female at least 16 years of age. • s 1024. Marriage contracts between parties, both of whom are citizens of the Federated States of Micronesia solemnised in accordance with recognised custom, shall be valid. 	<p>These provisions are not compliant because:</p> <ul style="list-style-type: none"> • The provisions do not apply to marriages between citizens which are governed by customary law. • Age of marriage is not equal. • The age of marriage for females is 16 below the CEDAW recommended age of 18.
16.4 Is there a legislative prohibition on child marriage?	Partial	See above 16.3	<p>Compliance with this indicator is partial because:</p> <ul style="list-style-type: none"> • There is no explicit prohibition on child marriage. • 16 is below the CEDAW Committee's recommended marriageable age. • Customary marriages are exempt from the provisions and therefore it is lawful to marry at any age that is recognised by custom.
16.5 Does the legislation require registration of marriage in official registry?	Yes	<p><i>Chuuk State Code [Title 23, Cap 2] 2001</i></p> <ul style="list-style-type: none"> • s 1025 (1)(2). It shall be the duty of every person authorised to perform marriages to send a copy of the marriage certificate, not later than ten days after the granting of the same, to the Clerk of Courts to be recorded in the marriage register. • s 1024. Marriage contracts between parties, both of whom are citizens of the Federated States of Micronesia solemnised in accordance with recognized custom, shall be valid. A notice of such marriage, showing the names and addresses of the 	All marriages including customary marriages are required by legislation to be registered.

ARTICLE 16: PERSONAL AND FAMILY LAW			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		persons married, their ages and the date of marriage, shall be sent to the Clerk of Courts, who shall record the same in the marriage register.	
16.6 Does the legislation prohibit bigamy?	No		
16.7 Do women have an equal right to choose a family name?	Yes		There is no legal barrier preventing women from choosing a family name.
16.8 Is the consent of both parents equal in marriage of minors?	Partial	<i>Chuuk State Code [Title 23, Cap 2] 2001, s 1021(1).</i> If the female is less than 18 years of age she must have the consent of at least one of her parents or her guardian.	Although formally equal, the failure to require both parents' consent is likely to lead to women's consent having lesser value.
16.9 Are both spouses equal in the ownership, acquisition, management, administration, enjoyment and disposition of property?	No	<i>Constitution of the State of Chuuk 1989, Article III, s 4.</i> Traditional rights over all reefs, tidelands, and other submerged lands, including their water columns, and successors' rights are recognised. The legislature may regulate their reasonable use.	The legislation does not guarantee equality to both spouses in the ownership, acquisition, management, administration, enjoyment and disposition of property. Although land tenure is based on a matrilineal inheritance system women are not fully equal in the ownership, acquisition, management, administration, enjoyment and disposition of property. The control and use of land and other resources often falls on Chuukese men, who are looked upon to provide for and to protect their families. Further, the failure to guarantee equality in the legislation leaves women vulnerable to changes in custom and therefore there is no compliance with this indicator.
16.10 Does the legislation provide for a maintenance and custody order during separation based on need?	Partial	<i>Chuuk State Code [Title 23, Cap 2] 2001.</i> While an action for annulment or divorce is pending, the court may make temporary orders for custody of minor children for their support, for support of either party as it deems justice and the best interests of all concerned may	Although there is provision for maintenance during separation it does not fully comply with the indicator because:

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		require covering any of these matters pending final decree.	<ul style="list-style-type: none"> Assessment is not based on criteria such as respective earning capacity and means, needs of both parties and other commitments. The absence of such criteria to guide judicial discretion leaves women without a guarantee of maintenance based on need.
16.11 Is there legislation to enable women to occupy the marital home when settlement is not possible or in situations of domestic violence?	No		
16.12 Does the legislation provide an order for restitution of conjugal rights? If no order is provided there is full compliance with this indicator.	Yes		To be compliant with this indicator, the legislation should not empower the courts to provide an order for restitution of conjugal rights. The legislation does <i>not</i> provide for orders for restitution of conjugal rights (which are discriminatory as they take away a woman's autonomy to choose when and with whom she has sexual relations) and therefore is in full compliance with this indicator and with CEDAW.
16.13 Does the legislation provide for no-fault divorce?	No	<p><i>Chuuk State Code</i> [Title 23, Cap 3, Subcap C] 2001</p> <ul style="list-style-type: none"> s 1081(1)-(9). Divorce granted for adultery, cruel treatment, neglect or personal indignity, wilful desertion for one year, habitual intemperance, imprisonment for three years, insanity for three years or more, leprosy, the separation of the parties for two 	<ul style="list-style-type: none"> Fault based criteria for divorce disadvantages women who are more likely to be in untenable situations and have difficulty establishing cruelty or adultery.

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		<p>consecutive years without cohabitation, whether or not by mutual consent, wilful neglect by a husband to provide suitable support for his wife when able to do so or when failure to do so is because of his idleness, profligacy or dissipation.</p> <ul style="list-style-type: none"> • s 1083. No divorce if the injured party has forgiven the ground for the divorce. Proof of forgiveness may be by an express showing or by the voluntary cohabitation of the parties with knowledge of the fact and restoration of the forgiving party to all marital rights. Forgiveness implies a condition that the forgiven party treat the forgiving party with conjugal kindness. If the forgiven party commits an act constituting a similar ground for divorce or is guilty of conjugal unkindness sufficiently habitual and gross to show that he has not accepted or fulfilled the conditions of forgiveness in good faith, revocation of forgiveness and revival of the ground for divorce results. • s 1084. The Court may not issue a decree of divorce for adultery when the adultery is with the procurement or connivance of the plaintiff. <p><i>Chuuk State Code [Title 23 Cap 1] 2001, s 1003.</i> Does not apply to any divorce, or adoption effected in accordance with local custom.</p>	<ul style="list-style-type: none"> • Customary marriages fall outside the legislation. • Forgiveness does not take into account the power imbalance between the parties and denies the autonomy of both parties to choose sexual relations without such consequences.
16.14 Is there a duty on the court to promote reconciliation? If there is no duty then there is full compliance with this indicator.	Yes		<p>To be compliant with this indicator, there should not be a duty on the court to promote reconciliation between estranged spouses. Such a duty is discriminatory and non-compliant because it removes women's choices or reduces their autonomy to choose to leave a relationship. The legislation does <i>not</i> place a duty on the court to promote reconciliation and there is therefore full compliance with this indicator and with CEDAW.</p>

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.15 Does the legislation provide for an equal division of property after divorce including recognition of unpaid contribution; future needs and future earning capacity calculated?	Partial	<i>Chuuk State Code [Title 23, Cap 3, Subcap C] 2001, s 1042.</i> In granting or denying an annulment or a divorce, the court may make such orders for the disposition of either or both parties' interest in any property in which both have interests, as it deems justice and the best interests of all concerned may require.	The criteria of 'justice and the best interests of all concerned' does not provide sufficient guidance in relation to earning capacity, commitments and needs of the parties. It provides no criteria for the calculation of women's non financial contributions.
16.16 Does the legislation provide for the payment of child support upon divorce based on need?	Partial	<i>Chuuk State Code [Title 23, Cap 2] 2001.</i> The court may make for the support of minor children as it deems justice and the best interests of all concerned .	See above 16.10
16.17 Does the legislation provide for maintenance for woman based on commitments, income, earning capacity, assets?	Partial	<i>Chuuk State Code [Title 23, Cap 2] 2001.</i> The court may make an order for support of either party as it deems justice and the best interests of all concerned may require .	See above 16.10
16.18 Is custody and access to children based on best interests of child regardless of relationship of parents?	No	<i>Chuuk State Code [Title 23, Cap 3, Subcap C] 2001, s 1042.</i> In granting or denying an annulment or a divorce, the court may make such orders for custody of minor children as it deems justice and the best interests of all concerned may require.	Although the best interests of the child is relevant it is not paramount and is therefore non compliant with the indicator.
16.19 Does the legislation provide damages for adultery? If there is no provision for damages in the legislation then there is full compliance with this indicator.	Yes		To be complaint with this indicator, the legislation should not provide damages for adultery Damages for adultery are discriminatory as they seek to punish the sexual behaviour of consenting adults and interferes with their autonomy to choose sexual relations.. The legislation does <i>not</i> provide damages for adultery and therefore there is full compliance with this indicator.
16.20 Do women have equal rights to guardianship, wardship, trusteeship and adoption?	Partial	<i>Chuuk State Code [Title 23, Cap 3, Subcap C] 2001, s 1402(1).</i> Any suitable person who is not married, or is married to the father or mother of a child, or a husband and wife jointly may by decree of court adopt a child not theirs by birth, and the decree may provide for	Although adoption is equal in the legislation, custom is excluded from these provisions and may discriminate against women.

ARTICLE 16: PERSONAL AND FAMILY LAW			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		change of the name of the child. <i>Chuuk State Code [Title 23 Cap 1] 2001, s 1003.</i> Does not apply to any adoption effected in accordance with local custom.	
16.21 Does the legislation recognise de facto rights (including same-sex couples) on the same basis as marriage?	No		
16.22 Does the legislation provide an order for establishing parentage?	No		
16.23 Does the legislation provide for a contribution to pregnancy and childbirth costs by father to unmarried mother?	No		
16.24 Does the legislation provide child support payable for children born outside of marriage?	No		
16.25 Does the legislation provide for equal inheritance laws?	No		There is no legislation dealing with intestate succession in Chuuk and succession is determined by customary law. Although Chuuk has a matrilineal system which means that land rights are acquired through women, the failure to incorporate equal rights into the legislation leaves women vulnerable to change in customary practices.
16.26 Is there legislation requiring the application of CEDAW and CRC to domestic family law when relevant?	No		

Kosrae: Detailed Analysis of Indicators

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.1 Does the Constitution guarantee fundamental rights and freedoms to men and women equally including in the political, economic, social, cultural, civil or any other field?	Partial	<i>Constitution of Kosrae 1984, Article II, s 1(a)-(l).</i> Freedom of expression, peaceable assembly, association, petition, right to life, liberty, property unless deprived by due process of law, right to equal protection of the law, right to be secure against unreasonable search, seizure and invasion of privacy, right to travel within the States, criminal defendant has the right to a speedy trial, to be informed of accusation, to have counsel, and not to be compelled to give evidence against his interest, or to face double jeopardy, right to be free from excessive bail, fines, cruel or unreasonable punishment, bill of attainder, capital punishment, slavery, involuntary servitude and imprisonment for debt are prohibited. But s 1. The rights do not apply when a tradition protected by statute provides to the contrary.	The rights protected include most of those required by CEDAW. There is therefore substantial compliance with this indicator but <ul style="list-style-type: none"> • The right to the highest attainable standard of physical and mental health is not a guaranteed right. • Substantive equality is not a guaranteed right. • Despite their constitutional status the fundamental rights and freedoms do not prevail over customary law that is protected by statute.
1.2 Is there a constitutional guarantee of substantive equality between men and women?	Partial	<i>Constitution of Kosrae 1984. Article II, s 4.</i> No person shall be denied the equal protection of the laws on the ground of sex.	A guarantee of equal <i>protection</i> of the law requires that the law does not discriminate in its application but does not guarantee equal benefits or outcomes as required by CEDAW.
1.3 Does the Constitution contain an anti-discrimination clause on the ground of sex/gender?	No		
1.4 Does the Constitution contain an anti-discrimination clause on the ground of marital status?	No		
1.5 Does the Constitution contain an anti-discrimination clause on the ground of sexual orientation?	No		
1.6 Does the Constitution contain an anti-discrimination clause on the ground of HIV status?	No		

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.7 Does the Constitution contain an anti-discrimination clause on the ground of disability?	No		
1.8 Does the breadth of the anti-discrimination clause encompass direct and indirect discrimination?	No		
1.9 Does the anti-discrimination clause bind public authorities and institutions?	No		
1.10 Does the anti-discrimination clause bind any person, organisation or enterprise?	No		
1.11 Are sanctions imposed for breach of anti-discrimination provisions?	No		
1.12 Are there specific domestic violence offences in criminal law legislation (Penal Code)?	No	<p><i>Kosrae State Code [Title 13, Cap 3] 1997.</i></p> <ul style="list-style-type: none"> • s 13.301. Aggravated assault is assaulting, striking, beating, or wounding another with a dangerous weapon, with intent to kill, rape, rob, inflict grievous bodily harm - 10 years imprisonment, \$20,000, or both. • s 13.302. Assault is offering or attempting, with force or violence, to strike, beat, wound, or to do bodily harm to another - 6 months imprisonment, \$500 or both. • s 13.303. Assault and battery is striking, beating, wounding, or otherwise doing bodily harm to another. - 1 year imprisonment, \$1000 or both. • s 13.307. Mayhem is cutting, biting, or slitting the nose, ear, or lip, or cutting off or disabling the tongue, or putting out or destroying an eye, or cutting off or disabling a limb or any member or part of another person with intent to maim or disfigure - 10 years imprisonment, \$20,000, or both. 	These provisions do not embrace the variety of situations that constitute domestic violence. Some have low penalties although aggravated assault and mayhem are seriously regarded. The provisions, however, fall short of compliance with this indicator.
1.13 Is stalking a criminal offence?	No		
1.14 Is a restraining order available in situations of sexual and domestic violence regardless of marital status?	No		
1.15 Is there mandatory prosecution for domestic violence offences?	No		

**ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN
ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION**

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.16 Does the criminal law legislation contain a broad range of sexual assault offences graded on the basis of seriousness to the victim?	Partial	<p><i>Kosrae State Code 1997 [Title 13, Chapter 3]</i></p> <ul style="list-style-type: none"> • s 13.311. Sexual assault is intentionally subjecting another person to sexual penetration, or forcing another person to make a sexual penetration on himself or another or on an animal, against the other person's will, or under conditions in which the offender knows or should know that the other person is mentally or physically incapable of resisting or understanding the nature of his conduct - If serious bodily or psychological injury - 10 years imprisonment, \$20,000, or both. If not - 5 years imprisonment, \$10,000, or both. • s 13.312. Sexual abuse is intentionally having sexual contact with another person who is less than 13 years old or causing the person to have sexual contact with the offender. Sexual contact means any touching of the sexual or other intimate parts of another done with the intent of gratifying the sexual desire of either party - 3 years imprisonment, \$5000 or both. 	<p>The sexual assault offences whilst providing some protection for women who are victims sexual violence are not fully compliant with the indicator because:</p> <ul style="list-style-type: none"> • The sentences are low implying that sexual assault is not a serious offence. In particular 5 years for a rape that does not cause <i>serious</i> injury is an insufficient punishment and deter deterrent. Regardless of the level of injury rape is a violation of personal integrity which should be severely punished. • Although penetration is widely defined there are no other offences and therefore many of ways in which women are sexually violated are therefore excluded. • Sexual contact is available only for girls under 13 with the result that it is lawful to have sexual contact with girls 13 and over. This is discriminatory.
1.17 Does the definition of rape and/or sexual assault offences include penetration of non-penile objects to anus, vagina and mouth?	Yes	<p><i>Kosrae State Code [Title 13, Chapter 3] 1997, s 13.311.</i> Sexual penetration is sexual intercourse, cunnilingus, fellatio, anal or oral intercourse, or the causing of penetration of the genital, anal, or oral opening of another to any extent and with any object whether or not there is an emission.</p>	

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN
ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.18 Is there an offence of incest for girls and women? If there is no offence of incest there is full compliance with this indicator.	Yes		To be compliant with the indicator the legislation should not contain an offence of incest. Charging women and girls with incest is discriminatory because it does not recognise that incest primarily occurs within a context of unequal power relations and because it is typically perpetrated by men against girls and women in non-consensual coercive circumstances. The Kosrae State Code does <i>not</i> contain an offence of incest for women and girls in full compliance with the indicator and with CEDAW.
1.19 Have the terms indecency, carnal knowledge, defilement and insulting modesty been removed from the criminal law legislation?	Yes		
1.20 Is consent specifically defined in the criminal law legislation outlining coercive circumstances?	No		
1.21 Is there a legislative prohibition on use of prior sexual conduct to establish consent?	Partial	<p><i>Kosrae Rules of Evidence, Article IV, Rule 412.</i></p> <ul style="list-style-type: none"> • (a)(b). In a criminal case in which a person is accused of rape or of assault with intent to commit rape, reputation or opinion evidence of the past sexual behaviour of an alleged victim, or evidence of a victim's past sexual behaviour is not admissible unless such evidence other than reputation or opinion evidence is (A) Past sexual behaviour with persons other than the accused, offered by the accused with respect to the source of semen or injury; or (B) Past sexual behaviour with the accused and is with respect to whether the alleged victim consented. 	This provision is substantially compliant with the indicator but past sexual conduct with the accused is admissible in relation to proving consent which allows the prosecution to imply that past consent equates to consent in the current case.

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN

ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		<ul style="list-style-type: none"> (c) If the person accused intends to offer evidence of specific instances of the alleged victim's past sexual behaviour, the accused shall make a written motion and the court shall order a hearing in chambers to determine if such evidence is relevant and if its probative value outweighs the danger of unfair prejudice. 	
1.22 Is there a legislative prohibition on requirement for corroboration?	No		
1.23 Is there a legislative prohibition on a requirement to provide proof of resistance?	No	<i>Kosrae State Code [Title 13, Chapter 3] 1997, s 13.311.</i> Sexual assault is intentionally forcing another person to make a sexual penetration on another, against the other person's will, or under conditions in which the offender knows or should know that the other person is mentally or physically incapable of resisting.	This provision implies that physical resistance is <i>expected</i> . Sexual assault victims may not be able to physically resist an armed or threatening perpetrator or may be immobilised by fear and power imbalances.
1.24 Is there a defence of honest and reasonable belief that the victim is of legal age? If there is no defence then there is full compliance with this indicator.	Yes		To be compliant with this indicator, the legislation should not provide a defence to the perpetrator of 'honest and reasonable belief that the victim is of legal age'. The Kosrae State Code does <i>not</i> provide a defence by which a perpetrator of sexual offences can argue that he believed the victim was of legal age. Therefore there is full compliance with this indicator and with CEDAW.
1.25 Is a defence of consent unavailable in relation to a victim under 18?	No		
1.26 Is there an exemption from prosecution for marital rape? If there is no exemption in the legislation then there is full compliance with this indicator.	Yes		To be compliant with this indicator, men should not be exempted from being prosecuted for marital rape. If the Criminal Code contains a law which protects men from being charged with marital rape, then there is no

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN
ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
			compliance with this indicator. The Kosrae State Code does <i>not</i> exempt husbands from prosecution for marital rape and therefore is in full compliance with this indicator and with CEDAW.
1.27 Is there mandatory prosecution for sexual offences?	No		
1.28 Is bail unavailable for sexual offences if risk to victim?	No	<i>Kosrae State Code [Title 6, Part IV, Cap 46] 1997, s 6.4601.</i> A person arrested for an offence has the right to release by the Court on bail before conviction, unless he is under the influence of intoxicating drink or drugs and the Court determines that he will be offensive to the general public.	The rights of the perpetrator are prioritised rather than the safety of the victim.
1.29 Are there minimum sentences for sexual offences?	No	All sentences are 'not exceeding'.	
1.30 Is there a provision in the criminal law legislation which states that customary practices of forgiveness shall not affect criminal prosecution or sentencing?	No	<i>Kosrae State Code [Title 6, Part IV, Cap 49] 1997, s 6.4901.</i> In imposing or suspending the sentence, or in suspending the imposition of sentence and granting probation, the Court gives due recognition to the State's custom and tradition.	The legislation specifically <i>provides</i> for customary law to affect criminal sentencing in non-compliance with CEDAW.
1.31 Is there legislative provision for compensation for victims of sexual and domestic violence?	Yes	<i>Kosrae State Code [Title 6, Part IV, Cap 49] 1997, s 6.4904.</i> Upon conviction of a wilful wrong causing damage to another, in lieu of or in addition to other lawful punishment, the Court may order restitution or compensation to the owner or person damaged.	
1.32 Does the criminal law legislation allow for infanticide to replace a charge of murder or manslaughter?	No		
1.33 Does the definition of infanticide include environmental and social stresses?	No		

ARTICLE 3: GUARANTEE OF BASIC HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
3.1 Is there legislation establishing national human rights machinery charged with promoting and protecting human rights including women rights?	No		
3.2 Is there legislation establishing a funded body to monitor the implementation of non-discriminatory law and policy for the advancement of women?	No		

ARTICLE 4: ACCELERATION OF EQUALITY BETWEEN MEN AND WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
4.1 Does the Constitution contain a temporary special measures provision?	No		
4.2 Are special measures exempt from discrimination on the grounds of sex, marital status, sexual orientation, disability, and HIV status?	No		

ARTICLE 5: SEX ROLES AND STEREOTYPES

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
5.1 Is there a provision in the Constitution which gives precedence to a constitutional guarantee of equality if there is a conflict between custom and equality law?	No	<i>Constitution of Kosrae 1984, Article II, s 1.</i> Fundamental rights and freedoms are not protected when a tradition protected by statute provides to the contrary:	This provision means that custom that discriminates against women if protected by statute takes precedence over the fundamental rights and freedoms of women.

ARTICLE 6: EXPLOITATION OF WOMEN			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
6.1 Is the act of soliciting decriminalised?	Yes		There is no legislation criminalising sex work in Kosrae with the result that soliciting is lawful.
6.2 Is aiding and abetting consensual acts of soliciting decriminalised?	Yes		
6.3 Is it a criminal offence to procure any woman without consent or any girl under 18?	Partial	<p>Kosrae State Code [Title 13, Cap 3] 1997.</p> <ul style="list-style-type: none"> • s 13.311. Sexual assault includes intentionally forcing another person to make a sexual penetration on another, against the other person's will, or under conditions in which the offender knows or should know that the other person is mentally or physically incapable of resisting or understanding the nature of his conduct - If serious bodily harm 10 years imprisonment, \$20,000, or both. If not 5 years imprisonment, \$10,000 or both. • s 13.312. Sexual abuse includes causing the person to have sexual contact with the offender. Sexual contact means any touching of the sexual or other intimate parts of another done with the intent of gratifying the sexual desire of either party - 3 years imprisonment, \$5000 or both. 	<p>Although these provisions are not specifically targeted at the exploitation of women for prostitution they could be utilised in that context. However, they are deficient in providing full protection for women exploited for prostitution because:</p> <ul style="list-style-type: none"> • The sentences are low implying that forcing sexual penetration or contact upon another is not a serious offence. In particular 5 years for a rape that does not cause <i>serious</i> injury is an insufficient punishment and deterrent.
6.4 Does employment legislation including occupational health and safety legislation protect sex workers?	No		Kosrae has no employment health and safety legislation and is non-compliant with this indicator and CEDAW.
6.5 Is the trafficking of women prohibited?	No		
6.6 Is sex tourism prohibited?	No		

ARTICLE 7: POLITICAL AND PUBLIC LIFE

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
7.1 Is there an equal right to vote?	Yes	<ul style="list-style-type: none"> <i>Constitution of Kosrae 1984, Article III, s 1.</i> A citizen of the FSM who is a domiciliary of the State, has attained the age of eighteen, and is registered to vote in the State is entitled to vote in secret in all State Government elections, subject only to a residence requirement and disqualification for mental incompetence and conviction of a crime which shall be prescribed by law. <i>Kosrae State Code [Title 3, Part I, Cap 1] 1997, s 3.1204(1).</i> To register to vote a person is (a) a citizen of the FSM and (b) a domiciliary of the State; and (c) at least eighteen years of age on or before the next election and (d) a resident of the district of registration for any ninety consecutive day period prior to the date of registration. 	
7.2 Is there equal eligibility for political representation?	Yes	<i>Constitution of Kosrae 1984, Article IV s 6.</i> No person is eligible to serve as a Senator unless he has been, at the time of election or appointment, a citizen of the FSM for not less than 10 years, a resident of the State for not less than 5 consecutive years immediately preceding the election, and a resident of his electoral district for a period of not less than one year immediately preceding the election or appointment, and is able to read and write, and is not less than twenty-five years of age on the day of election.	
7.3 Is there legislative provision for minimum quotas of women in Parliament?	No		Despite equal eligibility to enter parliament no women have yet served as representatives in the Kosrae parliament. A minimum quota is a means of achieving representation of women in parliament leading to substantive equality.
7.4 Do women have an equal right to participate in NGOs?	Yes		There is no legal barrier to participation.
7.5 Is there legislation (other than Charitable Societies legislation) enabling NGOs to register and mobilise to promote the advancement of women without political interference?	No		There is no legislation enabling NGOs to register so as to enable them to promote the advancement of women without political interference. Registration clarifies the legal roles of NGOs.

ARTICLE 8: INTERNATIONAL REPRESENTATION AND PARTICIPATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
8.1 Do women have equal opportunity to represent government at international level and participate in the work of international organisations?	Partial		There is no legal barrier to equal participation. However, few women represent government at the international level and the introduction into legislation of a quota system would ensure full compliance with this indicator.

ARTICLE 9: NATIONALITY AND CITIZENSHIP

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
9.1 Do women have an equal right to acquire, change or retain their nationality?	Yes	<i>Constitution of the Federated States of Micronesia 1997, Article III, s 1.</i> A person who is a citizen immediately prior to the effective date of the Constitution is a citizen and national of FSM.	
9.2 Does marriage to an alien or change of husband's nationality affect wife's nationality? If there is no change to a wife's nationality after marriage, there is full compliance with this indicator.	Yes		To be compliant with this indicator, the marriage of a woman to a non-national should not affect her nationality. The legislation does <i>not</i> alter the nationality of female citizens upon marriage and therefore there is full compliance with this indicator and with CEDAW.
9.3 Do both spouses have equal rights to residency, citizenship and employment when married to a non-national?	Yes		
9.4 Do both spouses have an equal right to determine the nationality of children	Yes	<i>Constitution of the Federated States of Micronesia 1979, Article III, s 2.</i> A person born of parents one or both of whom are citizens of the FSM is a citizen and national of the FSM by birth.	
9.5 Do women have an equal right to obtain a passport?	Yes	<i>FSM Code [Title 50, Cap 2] 1997, s 202.</i> No passport shall be granted to any person other than a citizen of the Federated States of Micronesia.	

ARTICLE 10: EDUCATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
10.1 Do women and girls have equal access to education?	Partial	<i>Constitution of Kosrae 1984, Article XII, s 1.</i> The State Government shall promote education.	The Kosrae government provides for compulsory education for all children until 15. However, other measures such as free education and support for tertiary levels for girls are required to ensure equal access.
10.2 Is there legislation that creates special measures for the advancement of women in education?	No		
10.3 Is there compulsory primary education for girls and boys?	Yes	<i>Kosrae State Code 1997 [Title 12, Part I, Cap 1] s 12.102.</i> A person attends a public or private school from his sixth through his fifteenth years, or until his graduation from elementary school, whichever occurs earlier. But note the Department of Education may delay a student's entry in school for one year if it cannot accommodate the student because of inadequate facilities or an insufficient number of personnel.	
10.4 Is there compulsory secondary education for girls and boys?	Yes	<i>Kosrae State Code 1997 [Title 12, Part I, Cap 1] s 12.102.</i> A person attends a public or private school from his sixth through his fifteenth years, or until his graduation from elementary school, whichever occurs earlier. But note the Department of Education may delay a student's entry in school for one year if it cannot accommodate the student because of inadequate facilities or an insufficient number of personnel.	
10.5 Is family life (reproductive and sexual health) education compulsory in schools?	No		
10.6 Is there a legislative prohibition on expulsion from school because of pregnancy?	No		

ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.1 Are there anti-discrimination provisions in the employment legislation on the ground of sex, marital status, disability, pregnancy, sexual orientation and HIV status with sanctions?	Partial	<i>Kosrae State Code [Title 18, Cap 1] 1997, s 18.106.</i> No employee in the public service shall be suspended, demoted, dismissed, laid off, or otherwise discriminated against because of sex, marital status, race, religious or political preference, place of origin, or ancestry.	Protection from discrimination is provided for public service workers on some of the grounds required by CEDAW, but there is no similar protection for non-public service workers.
11.2 Are there special measures provisions for the advancement of women in employment?	Partial	<i>Kosrae State Code [Title 18, Cap 1] 1997, s 18.103.</i> (1)The State Public Service System shall provide equal opportunity for all regardless of sex, race, religion, political affiliation, ancestry or place of origin.	The Public Service has affirmative action measures on some of the grounds required by CEDAW, but there are no similar provisions for non public service workers.
11.3 Does the legislation provide women with equal conditions of work including leave, superannuation and Workers Compensation?	No		There is no legislative protection of conditions of work in Kosrae.
11.4 Does the legislation provide sexual harassment protection from employers and co-workers?	No		
11.5 Does the definition of sexual harassment include the breadth of unwanted behaviours?	No		
11.6 Does the legislation contain an equal pay provision?	No		
11.7 Does the legislation contain pay equity provisions?	No		Note that FSM has a reservation on the pay equity provisions of CEDAW (Article 11 (1) (d)) and therefore compliance with this indicator has not been included in the assessment.
11.8 Does the legislation provide for an equal retirement age?	No		

ARTICLE 11: EMPLOYMENT			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.9 Are there restrictions on women's choice of employment? If yes there is no compliance with this indicator.	Yes		To be compliant with this indicator, there should be no restrictions on a woman's choice of employment. There are no legislative restrictions on women's choice of employment (as there are in many other Pacific countries). Kosrae is therefore in full compliance with the indicator and CEDAW.
11.10 Does the legislation provide for health protection during pregnancy?	No		
11.11 Does the legislation provide paid maternity leave of not less than 14 weeks?	No		Note that FSM has a reservation on the paid maternity leave provisions of CEDAW (Article 11(2)(b) and therefore compliance with this indicator has not been included in the assessment.)
11.12 Does the legislation provide protection from dismissal because of pregnancy or maternity leave?	No		
11.13 Does the legislation guarantee the provision of childcare by employer or state?	No		
11.14 Does the legislation provide reasonable nursing time during work hours?	No		

ARTICLE 12: HEALTH CARE AND FAMILY PLANNING

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
12.1 Do women have access to safe and legal abortion facilities?	Partial	<i>Constitution of Kosrae 1984, Article XII, s 1.</i> The State Government shall promote health.	There is no legislation that criminalises abortion in Kosrae and the Constitution affords the government a duty to promote health. However, abortion facilities in Kosrae are limited denying women access to safe facilities. Full compliance with this indicator requires legislation guaranteeing women access to abortion facilities.

ARTICLE 13: ECONOMIC AND SOCIAL BENEFITS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
13.1 Do women have an equal right to family benefits regardless of marital status?	Yes		There is no social security system in Kosrae.
13.2 Do women have an equal right to receive bank loans, mortgages and financial credit?	Yes		There is no legislative barrier to receive bank loans, mortgages and financial credit.
13.2 Do women have an equal right to participate in recreational activities, sports and cultural life?	Yes		There is no legislative barrier to participate in recreational activities, sports and cultural life.

ARTICLE 14: RURAL WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
14.1 Is there legislation that provides for special measures to advance substantive equality for rural women?	No		Many women in Kosrae live in rural communities and it is crucial that Kosrae incorporates special measures into either the national constitution or legislation to advance substantive equality.

ARTICLE 15: EQUALITY BEFORE THE LAW AND CIVIL MATTERS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
15.1 Does the Constitution guarantee equality before the law?	Yes	Constitution of Kosrae 1984. Article II, s 4. No person shall be denied the equal protection of the laws on the ground of sex.	A guarantee of equal <i>protection</i> of the law also constitutes a guarantee of equality before the law.
15.2 Do women have an equal capacity in civil matters – can women sue?	Yes		There is no legal barrier to women's right to sue.
15.3 Do women have an equal right to participate in courts and tribunals at all stages?	Yes		There is no legal barrier to women's right to participate in court proceedings.
15.4 Do women (regardless of marital status) have an equal right to conclude contracts and administer property?	Yes		There is no legal barrier to women's right to conclude contracts and administer property.
15.5 Do women have an equal right to be executors or administrators of estates?	Yes	General Court Order 2001 s2. General Court Order Procedure and Standard Form for Appointment of Administrator of Estate II, s 1. Males and females can apply to be administrator of estate.	
15.6 Is there legislation that nullifies all contracts and instruments that limit women's legal capacity?	No		There is no specific legislative prohibition on discriminatory contracts.
15.7 Do women have an equal right to choose their residence and domicile?	Yes		There is no legal barrier preventing women from choosing their residence and domicile.

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.1 Does the legislation guarantee entry into marriage with full and free consent?	No		There is no legislative provision that states that marriages cannot take place under duress, force or coercion.
16.2 Does the legislation allow marriages to be nullified if they took place under force, duress or undue influence?	No		
16.3 Is there an equal minimum age of 18 for marriage?	No	<i>Kosrae State Code [Title 16, Part I, Cap 1] 1997, s 16.101.(1)</i> A marriage performed in the State is valid, if: (a). The male at the time of marriage is at least 18 years of age and the female at least 16 years of age.	The age of marriage is different for males and females and below CEDAW's recommended age of 18.
16.4 Is there a legislative prohibition on child marriage?	Partial	As above at 16.3	Full compliance would require the age of 18 for females.
16.5 Does the legislation require registration of marriage in official registry?	Yes	<i>Kosrae State Code [Title 16, Part I, Cap 1] 1997, s 16.103.</i> A person makes and preserves a record of each marriage performed by him, and within ten days after the marriage he sends a copy of the marriage certificate to the Division of Planning and Statistics.	
16.6 Does the legislation prohibit bigamy?	Yes	<i>Kosrae State Code [Title 16, Part I, Cap 1] 1997, s 16.101 (1)</i> A marriage performed in the State is valid, if (b) Neither party has a lawful living spouse.	
16.7 Do women have an equal right to choose a family name?	Yes		There is no legislation preventing women from choosing a family name in full compliance with the indicator.
16.8 Is the consent of both parents equal in marriage of minors?	Partial	<i>Kosrae State Code [Title 16, Part I, Cap 1] 1997, s 16.101(1)(a).</i> If the female is less than 18 years of age, the marriage must have the consent of at least one of the female's parents or her guardian.	Although formally equal, the failure to require both parents' consent is likely to lead to women's consent having lesser value and therefore does not represent full compliance with the indicator.
16.9 Are both spouses equal in the ownership, acquisition, management, administration, enjoyment and disposition of property?	No		The legislation does not guarantee equality to both spouses in the ownership, acquisition, management, administration, enjoyment and disposition of property. Land tenure is instead

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
			based on custom and since Kosrae has a matrilineal inheritance system women may not be disadvantaged in relation to acquisition of land. However, the control and use of land and other resources often fall on Kosrae men, who are looked upon to provide for and to protect their families. Further, the failure to guarantee equality in the legislation leaves women vulnerable to changes in custom and therefore there is no compliance with this indicator.
16.10 Does the legislation provide for a maintenance and custody order during separation based on need?	Partial	<i>Kosrae State Code</i> [Title 6, Part III, Cap 32] 1997, s 6.3202. While an action for annulment or divorce is pending, the Court may make a temporary order for custody of a minor child, for its support, for support of a party, as it finds justice and the best interests of all concerned may require.	The criteria of 'justice and the best interests of all concerned' does not provide sufficient guidance in relation to earning capacity, commitments and needs of the parties.
16.11 Is there legislation to enable women to occupy the marital home when settlement is not possible or in situations of domestic violence?	No		
16.12 Does the legislation provide an order for restitution of conjugal rights? If no order is provided there is full compliance with this indicator.	Yes		To be compliant with this indicator, the legislation should not empower the courts to provide an order for restitution of conjugal rights. The legislation does <i>not</i> provide for restitution of conjugal rights and therefore is in full compliance with the indicator and with CEDAW.
16.13 Does the legislation provide for no-fault divorce?	No	<i>Kosrae State Code</i> [Title 6, Part III, Cap 32] 1997: • s 6.3207(1)-(9). Divorce granted for	• Fault based criteria for divorce disadvantages women who are

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		<p>adultery, cruel treatment, neglect or personal indignity, wilful desertion for one year, habitual intemperance, imprisonment for three years, insanity for three years or more, leprosy, the separation of the parties for two consecutive years without cohabitation, whether or not by mutual consent, wilful neglect by a husband to provide suitable support for his wife when able to do so or when failure to do so is because of his idleness, profligacy or dissipation.</p> <ul style="list-style-type: none"> • s 6.3209. The Court does not issue a decree of divorce if the injured party has forgiven the ground for the divorce. Proof of forgiveness may be by an express showing or by the voluntary cohabitation of the parties with knowledge of the fact and restoration of the forgiving party to all marital rights. Forgiveness implies a condition that the forgiven party treat the forgiving party with conjugal kindness. If the forgiven party commits an act constituting a similar ground for divorce or is guilty of conjugal unkindness sufficiently habitual and gross to show that he has not accepted or fulfilled the conditions of forgiveness in good faith, revocation of forgiveness and revival of the ground for divorce results. • s 6.3210. The Court may not issue a decree of divorce for adultery when the adultery is with the procurement or connivance of the plaintiff. 	<p>more likely to be in untenable situations and have difficulty establishing cruelty or adultery.</p> <ul style="list-style-type: none"> • Forgiveness does not take into account the power imbalance between the parties.
16.14 Is there a duty on the court to promote reconciliation? If there is no duty then there is full compliance with this indicator.	No		<p>To be compliant with this indicator, the legislation should not provide a duty on the court to promote reconciliation between estranged spouses. Such a duty is discriminatory and non-compliant because it removes women's choices or reduces their autonomy to choose to leave a relationship. The legislation does <i>not</i> place a duty on the court to promote reconciliation and therefore is in full compliance with the indicator and with CEDAW.</p>

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.15 Does the legislation provide for an equal division of property after divorce including recognition of unpaid contribution; future needs and future earning capacity calculated?	Partial	<i>Kosrae State Code [Title 6, Part III, Cap 32] 1997, s 6.3202.</i> In granting or denying a decree of an annulment or a divorce, the Court may make an order for the disposition of property in which both parties have an interest, as it finds justice and the best interests of all concerned may require.	The criteria of 'justice and the 'best interests of all concerned' does not provide sufficient guidance in relation to earning capacity, commitments and needs of the parties. It provides no criteria for the calculation of women's non financial contributions.
16.16 Does the legislation provide for the payment of child support upon divorce based on need?	Partial	<i>Kosrae State Code [Title 6, Part III, Cap 32] 1997, s 6.3202.</i> In granting or denying a decree of an annulment or a divorce, the Court may make an order for support of a minor as it finds justice and the best interests of all concerned may require.	See above 16.15
16.17 Does the legislation provide for maintenance for woman based on commitments, income, earning capacity, assets?	Partial	<i>Kosrae State Code [Title 6, Part III, Cap 32] 1997, s 6.3202.</i> In granting or denying a decree of an annulment or a divorce, the Court may make an order for support of a party, as it finds justice and the best interests of all concerned may require.	See above 16.15
16.18 Is custody and access to children based on best interests of child regardless of relationship of parents?	Partial	<i>Kosrae State Code [Title 6, Part III, Cap 32] 1997, s 6.3202.</i> In granting or denying a decree of an annulment or a divorce, the Court may make an order for custody of a minor child as it finds justice and the best interests of all concerned may require.	Although the best interests of the child is relevant it is not paramount and is therefore non-compliant with the indicator.
16.19 Does the legislation provide damages for adultery? If there is no provision for damages in the legislation then there is full compliance with this indicator.	Yes		To be complaint with this indicator, the legislation should not provide damages for adultery. Damages for adultery are discriminatory as they seek to punish the sexual behaviour of consenting adults and interferes with their autonomy. The legislation does <i>not</i> provide a right to damages for adultery and therefore is in full compliance with the indicator and with CEDAW.
16.20 Do women have equal rights to guardianship, wardship, trusteeship and adoption?	Partial	<i>Kosrae State Code [Title 6, Part III, Cap 31] 1997</i> <ul style="list-style-type: none"> s 6.3102. The Court may grant adoption of a child to a suitable unmarried person, a person who is married to the father or 	Although women are equal with men in the legislation in relation to adoption, customary adoptions are also lawful

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		<p>mother of the child, or a husband and wife jointly. The decree may provide for a change of the child's name.</p> <ul style="list-style-type: none"> • s 6.3106. Except as otherwise provided herein, this chapter does not place a restriction or limitation on an adoption occurring by tradition. <p>Kosrae State Code [Title 6, Part III, Cap 37] 1997, s 6.3703(1). The father and mother of an incapacitated person are jointly and severally the natural guardians of his person and property. If either parent dies or abandons the family or is incapable for ant reason to act as guardian, the guardianship is transferred upon the other parent. When the parents live apart, the court may award guardianship to either of them, having special regard to the interests of the incapacitated person.</p>	and may discriminate against women.
16.21 Does the legislation recognise de facto rights (including same-sex couples) on the same basis as marriage?	No		
16.22 Does the legislation provide an order for establishing parentage?	No		
16.23 Does the legislation provide for a contribution to pregnancy and childbirth costs by father to unmarried mother?	No		
16.24 Does the legislation provide child support payable for children born outside of marriage?	No		
16.25 Does the legislation provide for equal inheritance laws?	No		There is no legislation dealing with intestate succession in Kosrae and succession is determined by customary law. Although Kosrae has a matrilineal system which means that land rights are acquired through women the failure to incorporate equal rights into the legislation leaves women vulnerable to change in customary practices.
16.26 Is there legislation requiring the application of CEDAW and CRC to domestic family law when relevant?	No		

Pohnpei: Detailed Analysis of Indicators

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.1 Does the Constitution guarantee fundamental rights and freedoms to men and women equally including in the political, economic, social, cultural, civil or any other field?	Partial	<i>Constitution of Pohnpei 1984, Article 4, s 1-14.</i> Freedom of speech, association, petition, right to life, liberty, property unless deprived by due process of law, habeas corpus, equal rights, right to equal protection of the law, right to be secure against unreasonable search, seizure, freedom of movement, criminal defendant has the right to a speedy trial, to be informed of accusation, to have counsel, and not to be compelled to give evidence against his interest, or to face double jeopardy, right to be free from excessive bail, fines, cruel or unreasonable punishment, bill of attainder, capital punishment, slavery, involuntary servitude and imprisonment for debt are prohibited. But Article 5, s 2. Statute that upholds custom cannot be challenged for violating fundamental rights and freedoms.	The rights protected include most of those required by CEDAW. There is therefore substantial compliance with this indicator but <ul style="list-style-type: none"> The right to the highest attainable standard of physical and mental health is not a guaranteed right. Substantive equality is not a guaranteed right. Despite their constitutional status the fundamental rights and freedoms do not prevail over custom law that is protected by statute.
1.2 Is there a constitutional guarantee of substantive equality?	Partial	<i>Constitution of Pohnpei 1984. Article 4, s 3.</i> No person shall be denied the equal protection of the laws on the ground of sex.	A guarantee of equal protection of the law requires that the law does not discriminate in its application but does not guarantee equal benefits or outcomes as required by CEDAW.
1.3 Does the Constitution contain an anti-discrimination clause on the ground of sex/gender?	Yes	<i>Constitution of Pohnpei 1984. Article 4, s 3.</i> No law or government action may deny or impair the equal rights of all persons on account of gender.	
1.4 Does the Constitution contain an anti-discrimination clause on the ground of marital status?	Yes	<i>Constitution of Pohnpei 1984. Article 4, s 3.</i> No law or government action may deny or impair the equal rights of all persons on account of social status.	Social status could include marital status.
1.5 Does the Constitution contain an anti-discrimination clause on the ground of sexual orientation?	No		
1.6 Does the Constitution contain an anti-discrimination clause on the ground of HIV status?	No		

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.7 Does the Constitution contain an anti-discrimination clause on the ground of disability?	No		
1.8 Does the breadth of anti-discrimination clause encompass direct and indirect discrimination?	No		
1.9 Does the anti-discrimination clause bind public authorities and institutions?	Yes	<i>Constitution of Pohnpei 1984. Article 4, s 3.</i> No law or government action may deny or impair the equal rights of all persons on account of gender.	
1.10 Does the anti-discrimination clause bind any person, organisation or enterprise?	No		
1.11 Are sanctions imposed for breach of anti-discrimination provisions?	No		
1.12 Are there specific domestic violence offences in criminal law legislation (Penal Code)?	No	<i>Pohnpei State Code [Title 61, Cap 5] 2006.</i> <ul style="list-style-type: none"> • s 5.132. Assault or battery with a dangerous weapon if bodily injury - 10 years imprisonment, \$10,000, or both, if not 5 years imprisonment, \$5,000 or both. • s 5.133. Unlawful and intentionally strikes, beats, wounds and does serious bodily harm. \$10,000, 10 years imprisonment or both. • s 5.131. Mayhem is cutting, biting, or slitting the nose, ear, or lip, or cutting off or disabling the tongue, or putting out or destroying an eye, or cutting off or disabling a limb or any member or part of another person with intent to maim or disfigure - 10 years imprisonment, \$10,000, or both. • s 5.134. Unlawful and intentionally strikes, beats, wounds and does bodily harm. \$500, 2 years imprisonment or both. • s 5.136. Unlawful and intentionally offers or attempts to strike, beat, wound. \$100, 6 months imprisonment or both. 	These provisions do not embrace the variety of situations that constitute domestic violence. Some have low penalties although aggravated assault and mayhem are seriously regarded. The provisions, however, fall short of compliance with this indicator.
1.13 Is stalking a criminal offence?	No		
1.14 Is a restraining order available in situations of sexual and domestic violence regardless of marital status?	No		
1.15 Is there mandatory prosecution for domestic violence offences?	No		

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN
ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.16 Does the criminal law legislation contain a broad range of sexual assault offences graded on the basis of seriousness to the victim?	Partial	<p><i>Pohnpei State Code [Title 61, Cap 5] 2006.</i></p> <ul style="list-style-type: none"> • s 5.141(1). Sexual assault is intentionally subjecting another person to sexual contact or penetration, or forcing another person to make a sexual penetration on himself or another or on an animal, without the other person's consent, or under conditions in which the offender knows or should know that the other person is mentally or physically incapable of resisting or understanding the nature of his conduct - If serious bodily or psychological injury - 10 years imprisonment, \$10,000, or both. If not - 5 years imprisonment, \$5,000, or both. • s 13.312. Sexual abuse is intentionally having sexual contact or sexual penetration with another person who is 15 years old or less causing the person to have sexual contact or penetration with the offender. Sexual contact means any touching of the sexual or other intimate parts of another done with the intent of gratifying the sexual desire of either party - 5 years imprisonment, \$5000 or both. 	<p>The sexual assault offences whilst providing some protection for women who are victims sexual violence are not fully compliant with the indicator because:</p> <ul style="list-style-type: none"> • The sentences are low implying that sexual assault is not a serious offence. In particular 5 years for a rape that does not cause <i>serious</i> injury is an insufficient punishment and deterrent. Regardless of the level of injury rape is a violation of personal integrity which should be severely punished. • Although penetration is widely defined there are no other offences for persons over 15 and therefore many ways in which women are sexually violated are therefore excluded from the Act. • Sexual contact is available only for girls under 16 with the result that it is lawful to have sexual contact with girls 16 and over. This is discriminatory.
1.17 Does the definition of rape and/or sexual assault offences include penetration of non-penile objects to anus, vagina and mouth?	Yes	<p><i>Pohnpei State Code [Title 61, Cap 5] 2006, s 5.141(4).</i> Sexual penetration is sexual intercourse, cunnilingus, fellatio, anal or oral intercourse, or the causing of penetration of the genital or anal opening of another to any extent and with any object whether or not there is an emission.</p>	

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN
ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.18 Is there an offence of incest for girls and women? If there is no offence of incest there is full compliance with this indicator.	No	<i>Pohnpei State Code</i> [Title 61, Cap 7] 2006, s7.102. Every person who knowingly engages in sexual intercourse contact or penetration with grandparent, parent, brother, sister, children or their children guilty of incest. 3 years or \$3,000 or both.	The State Code contains an offence for incest that includes women and girls under 18. The offence is discriminatory and non-compliant with CEDAW because: <ul style="list-style-type: none"> • No girl under 18 should have the capacity to consent to a sexual encounter. • The offence fails to recognise the power imbalance between girls and women and male relatives and the situations in which coercive sexual relations might occur.
1.19 Have the terms indecency, carnal knowledge, defilement and insulting modesty been removed from the criminal law legislation?	Yes		
1.20 Is consent specifically defined in the criminal law legislation outlining coercive circumstances?	No		
1.21 Is there a legislative prohibition on use of prior sexual conduct to establish consent?	No		
1.22 Is there a legislative prohibition on requirement for corroboration?	No		
1.23 Is there a legislative prohibition on a requirement to provide proof of resistance?	No	<i>Pohnpei State Code</i> [Title 61, Chapter 5, Part E] 2006, s 5.142. Sexual assault is intentionally subjecting another person to penetration or sexual contact without the persons consent or under circumstances in which the offender knows or should know that the other person is mentally or physically incapable of resisting.	This provision implies that physical resistance is <i>expected</i> . Sexual assault victims may not be able to physically resist an armed or threatening perpetrator or may be immobilised by fear and power imbalances.

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.24 Is there a defence of honest and reasonable belief that the victim is of legal age? If there is no defence then there is full compliance with this indicator.	Yes		To be compliant with this indicator, there should be no defence available to the perpetrator of 'honest and reasonable belief that the victim is of legal age'. The Pohnpei State Code does <i>not</i> provide a defence by which a perpetrator of sexual offences can argue that he believed the victim was of legal age. Therefore there is full compliance with this indicator and with CEDAW.
1.25 Is a defence of consent unavailable in relation to a victim under 18?	No		
1.26 Is there an exemption from prosecution for marital rape? If there is no exemption in the legislation then there is full compliance with this indicator.	No	<p><i>Pohnpei State Code [Title 61, Cap 5] 2006,</i></p> <ul style="list-style-type: none"> • s 5.141(2). A defendant cannot be convicted of a sexual assault if cohabiting with complainant in an ongoing voluntary sexual relationship or the complainant is their spouse of the defendant unless accomplice to an assault by a third person or separated. • s 5.142. A defendant cannot be convicted of sexual abuse if married to the complainant. 	To be compliant with this indicator, men should not be exempt from being prosecuted for marital rape. If the Criminal Code contains a law which protects men from being charged with marital rape, then there is no compliance with this indicator. The Pohnpei State Code <i>does</i> exempt both married and de facto spouses from prosecution for marital rape and is therefore non-compliant with this indicator and with CEDAW. A failure to criminalise sexual assault in either marriages or de facto relationships suggests an obligation upon women to submit to sexual relations at any time which is discriminatory.
1.27 Is there mandatory prosecution for sexual offences?	No		

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN
ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.28 Is bail unavailable for sexual offences if risk to victim?	No	<i>Pohnpei State Code</i> [Title 62, Cap 5] 2006, s 5.101. A person arrested for an offence other than murder in the first degree is entitled as of right to be released on bail before conviction unless he is under the influence of intoxicating drink or drugs and the Court determines that he will be offensive to the general public.	The rights of the perpetrator are prioritised rather than the safety of the victim.
1.29 Are there minimum sentences legislated for sexual offences?	No	All sentences are 'not exceeding'.	There are no minimum sentences leaving the severity of the penalty to the discretion of the judge. The issuing of short sentences, which often occurs in relation to sexual offences, sends a message that sexual offences are not seriously regarded.
1.30 Is there a provision in the criminal law legislation which states that customary practices of forgiveness shall not affect criminal prosecution or sentencing?	No		
1.31 Is there legislative provision for compensation for victims of sexual and domestic violence?	Yes	<i>Pohnpei State Code</i> [Title 64, Cap 1] 2006, s 1.105. Upon conviction of a wilful wrong causing damage to another, in lieu of or in addition to other lawful punishment, the Court may order restitution or compensation to the person damaged.	
1.32 Does the criminal legislation allow for infanticide to replace a charge of murder or manslaughter?	No		
1.33 Does the definition of infanticide include environmental and social stresses?	No		

ARTICLE 3: GUARANTEE OF BASIC HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
3.1 Is there legislation establishing national human rights machinery charged with promoting and protecting human rights including women rights?	No		
3.2 Is there legislation establishing a funded body to monitor the implementation of non-discriminatory law and policy for the advancement of women?	No		

ARTICLE 4: ACCELERATION OF EQUALITY BETWEEN MEN AND WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
4.1 Does the Constitution contain a temporary special measures provision?	No		
4.2 Are special measures exempt from discrimination on the grounds of sex, marital status, sexual orientation, disability, and HIV status?	No		

ARTICLE 5: SEX ROLES AND STEREOTYPES

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
5.1 Is there a provision in the Constitution which gives precedence to a constitutional guarantee of equality if there is a conflict between custom and equality law?	No	<p><i>Constitution of Pohnpei 1984, Article 5,</i></p> <ul style="list-style-type: none"> s 1. Constitution upholds respects and protects the customs and traditions of the traditional kingdoms of Pohnpei. s 2. Statutes may be enacted to uphold customs or traditions and fundamental rights and freedoms are not protected when a tradition protected by statute provides to the contrary. 	In Pohnpei, the Constitution provides in contrast to the indicator, that custom that discriminates against women if protected by statute takes precedence over the fundamental rights and freedoms of women.

ARTICLE 6: EXPLOITATION OF WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
6.1 Is the act of soliciting decriminalised?	No	<i>Pohnpei State Code [Title 61, Cap 8] 2006, s 8.112.</i> Offence to engage in sex work, 6 months imprisonment, \$500 or both.	Although the offence applies equally to men and women criminalising the act of soliciting denies sex workers the right to choose their employment and to have their workplace lawfully protected.
6.2 Is aiding and abetting consensual acts of soliciting decriminalised?	No	<i>Pohnpei State Code [Title 61, Cap 8] 2006, s 8.112.</i> Offence to aid in sex work, 6 months imprisonment, \$500 or both.	Organised premises provide a safer work environment for sex workers. Criminalising those who aid and abet prostitution therefore does not assist sex workers to carry out their work in a non-exploitative and protected environment.
6.3 Is it a criminal offence to procure any woman without consent or any girl under 18?	Partial	<i>Pohnpei State Code [Title 61, Cap 8] 2006, s 8.111(2).</i> Causing, inducing persuading or encouraging any person by promises, threats violence or by any device or scheme to engage in sex work. 1 year imprisonment, \$500 or both.	Compliance with CEDAW requires that girls and women who are forced into sex work against their will are protected from exploitation. This provision does not adequately protect women and girls procured against their will because the penalty is low implying that forcing sexual penetration or contact upon another is not a serious offence.
6.4 Does employment legislation including occupational health and safety legislation protect sex workers?	No		Pohnpei has no employment health and safety legislation and is non-compliant with CEDAW.
6.5 Is the trafficking of women prohibited?	No		
6.6 Is sex tourism prohibited?	No		

ARTICLE 7: POLITICAL AND PUBLIC LIFE

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
7.1 Is there an equal right to vote?	Yes	<ul style="list-style-type: none"> • <i>Constitution of Pohnpei 1984, Article 6, s 1.</i> A citizen of the Pohnpei who has attained the age of eighteen, and has not committed a felony for which he is on parole or probation or under a sentence shall be entitled to vote. • <i>Pohnpei State Code [Title 10, Cap 4] 2006, s 4.101(1).</i> A citizen of Pohnpei, 18 years not on parole, mentally competent is qualified to vote in elections. 	
7.2 Is there equal eligibility for political representation?	Yes	<i>Pohnpei State Code [Title 10, Cap 4] 2006,</i> <ul style="list-style-type: none"> • <i>s 5.101(1).</i> To be elected governor or lieutenant, citizen of Pohnpei by birth, at least 35, and not convicted of a felony. • <i>s 5.101(2).</i> To be eligible for the legislature at least 25, citizen of Pohnpei for 25 years and not convicted of a felony. 	There is equal eligibility for men and women in compliance with the indicator.
7.3 Is there legislative provision for minimum quotas of women in Parliament?	No		Despite equal eligibility to enter parliament no woman has yet served as a representative in the Pohnpei parliament. A minimum quota is a means of achieving a representation of women in parliament leading to substantive equality.
7.4 Do women have an equal right to participate in NGOs?	Yes		There is no legal barrier to participation.
7.5 Is there legislation (other than Charitable Societies legislation) enabling NGOs to register and mobilise to promote the advancement of women without political interference?	No		

ARTICLE 8: INTERNATIONAL REPRESENTATION AND PARTICIPATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
8.1 Do women have equal opportunity to represent government at international level and participate in the work of international organisations?	Partial		Although there is no legal barrier to participation in Pohnpei, few women represent government at the international level. The introduction into legislation of a quota system would ensure full compliance with this indicator.

ARTICLE 9: NATIONALITY AND CITIZENSHIP

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
9.1 Do women have an equal right to acquire, change or retain their nationality?	Yes	<i>Constitution of the Federated States of Micronesia 1997, Article III, s 1.</i> A person who is a citizen immediately prior to the effective date of the Constitution is a citizen and national of FSM.	
9.2 Does marriage to an alien or change of husband's nationality affect wife's nationality? If there is no change to a wife's nationality after marriage, there is full compliance with this indicator.	Yes		
9.3 Do both spouses have equal rights to residency, citizenship and employment when married to a non-national?	Yes		
9.4 Do both spouses have an equal right to determine the nationality of children?	Yes	<ul style="list-style-type: none"> <i>Constitution of the Federated States of Micronesia 1979, Article III, s 2.</i> A person born of parents one or both of whom are citizens of the FSM is a citizen and national of the FSM by birth. <i>Constitution of Pohnpei 1984, Article 3, s 1(1).</i> A person is a citizen if either of his parents was at the time of birth a citizen. 	
9.5 Do women have an equal right to obtain a passport?	Yes	<i>FSM Code [Title 50, Cap 2] 1997, s 202.</i> No passport shall be granted to any person other than a citizen of the Federated States of Micronesia.	

ARTICLE 10: EDUCATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
10.1 Do women and girls have equal access to education?	Yes	<p><i>Constitution of Pohnpei 1984, Article 7,</i></p> <ul style="list-style-type: none"> • s (1). The government shall provide compulsory free educational services. • s (2). The government will establish and execute comprehensive plans for the continual improvement of educational standards and services. <p><i>Pohnpei State Code [Title 18, Cap 1, Cap10] 2006,</i></p> <ul style="list-style-type: none"> • s 1.102. The legislature declares and recognises the right of the people to education and the obligation of the state to take every step reasonable and necessary to provide education. • s 10.104(1). Authorisation for a monetary sum for vocational training for women by any public or private educational institution. 	<p>Full compliance with the indicator has been achieved because:</p> <ul style="list-style-type: none"> • The provision of free compulsory education is essential to ensure the equal access of girls to primary and secondary education. • The provision of funding targeted at women for vocational education assists in addressing the disadvantage women and girls face in education and employment.
10.2 Is there legislation that creates special measures for the advancement of women in education?	No		
10.3 Is there compulsory primary education for girls and boys?	Yes	<i>Pohnpei State Code [Title 18, Cap 1] 2006, s 1.111.</i> All minors 6-16 shall attend either a public or private school.	
10.4 Is there compulsory secondary education for girls and boys?	Yes	<i>Pohnpei State Code [Title 18, Cap 1] 2006, s 1.111.</i> All minors 6-16 shall attend either a public or private school.	
10.5 Is family life (reproductive and sexual health) education compulsory in schools?	No		
10.6 Is there a legislative prohibition on expulsion from school because of pregnancy?	No		

ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.1 Are there anti-discrimination provisions in the employment legislation on the ground of sex, marital status, disability, pregnancy, sexual orientation and HIV status with sanctions?	Partial	<i>Pohnpei State Code [Title 9, Cap 2] 2006, s 2.106(2).</i> No employee in the public service systems shall be suspended, demoted, dismissed, laid off, retired early, or otherwise discriminated against because of sex, race, religion, age, political affiliation, ancestry, family or place of origin.	Protection from discrimination is provided for public service workers on some of the grounds recommended by CEDAW, but there is no equivalent provision for non-public service workers.
11.2 Are there special measures provisions for the advancement of women in employment?	Partial	<i>Pohnpei State Code [Title 9, Cap 2] 2006, s 2-104(1).</i> The Pohnpei Public Service System shall provide equal opportunity for all regardless of sex, race, age, religion, political affiliation, ancestry, family or place of origin.	The Public Service provides affirmative action measures on some of the grounds recommended by CEDAW, but there is no equivalent provision for non-public service workers.
11.3 Does the legislation provide women with equal conditions of work including leave, superannuation and Workers Compensation?	No	<i>Pohnpei State Code [Title 19, Cap 3] 2006, s 3.103(4)(a).</i> Employee excludes an immediate family member employed by the employer and therefore such persons are <i>not</i> provided with minimum wage, maximum hours and wage discrimination protection. <i>Pohnpei State Code [Title 17, Cap 4] 2006,</i> <ul style="list-style-type: none"> <i>s 4.104(4).</i> Employee must work more than 20 hours per week to receive benefits under the health care plan. <i>s 4.104(4).</i> Dependant includes spouse but not de facto. 	The exclusion of family members and part time workers from the protections provided in the legislation are likely to exclude women disproportionately since these are the capacities in which women are typically employed.
11.4 Does the legislation provide sexual harassment protection from employers and co-workers?	No		
11.5 Does the definition of sexual harassment include the breadth of unwanted behaviours?	No		
11.6 Does the legislation contain an equal pay provision?	Yes	<i>Pohnpei State Code [Title 19, Cap 3] 2006, s 3.106.</i> No employer shall discriminate in any way in the payment of wages between the sexes.	
11.7 Does the legislation contain pay equity provisions?	No		Note that FSM has a reservation on the pay equity provisions of CEDAW (Article 11 (1) (d) and therefore compliance with this indicator has not been measured.

ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.8 Does the legislation provide for an equal retirement age?	Partial	<i>Pohnpei State Code [Title 9, Cap 2] 2006, s 2.107(1).</i> Any employee of the public service, upon reaching the age of 60 years, must retire from public service in the calendar year during his or her attainment of 60 years.	An equal retirement age is provided in the public service but there is no similar guarantee for non-public service workers.
11.9 Are there restrictions on women's choice of employment? If yes there is no compliance with this indicator.	Yes		To be compliant with this indicator, there should be no restrictions on a woman's choice of employment. There are no legislative restrictions on women's choice of employment (as there are in all other Pacific countries except FSM). Pohnpei is therefore in full compliance with the indicator and CEDAW.
11.10 Does the legislation provide for health protection during pregnancy?	No		
11.11 Does the legislation provide paid maternity leave of not less than 14 weeks?	No		Note that FSM has a reservation on the paid maternity leave provisions of CEDAW (Article 11 (2) (b) and therefore compliance with this indicator has not been included in the assessment.
11.12 Does the legislation provide protection from dismissal because of pregnancy or maternity leave?	No		
11.13 Does the legislation guarantee the provision of childcare by employer or state?	No		
11.14 Does the legislation provide reasonable nursing time during work hours?	No		

ARTICLE 12: HEALTH CARE AND FAMILY PLANNING

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
12.1 Do women have access to safe and legal abortion facilities?	Partial	<i>Constitution of Pohnpei 1984, Article 7, s 4(1).</i> The government of Pohnpei shall provide health care services for the public.	There is no legislation that criminalises abortion in Pohnpei and the government has an obligation to promote health. However, despite a guarantee of health care services abortion facilities in Pohnpei are limited denying women access to safe facilities. To comply fully with this indicator, legislation guaranteeing access to abortion facilities should be enacted.

ARTICLE 13: ECONOMIC AND SOCIAL BENEFITS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
13.1 Do women have an equal right to family benefits regardless of marital status?	Yes		There is no social security system in Pohnpei.
13.2 Do women have an equal right to receive bank loans, mortgages and financial credit?	Yes		There is no legislative barrier to receiving bank loans, mortgages and financial credit.
13.3 Do women have an equal right to participate in recreational activities, sports and cultural life?	Yes		There is no legislative barrier to participating in recreational activities, sports and cultural life.

ARTICLE 14: RURAL WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
14.1 Is there legislation that provides for special measures to advance substantive equality for rural women?	No		Many women in Pohnpei live in rural communities and it is crucial that Pohnpei incorporates special measures into either the national constitution or legislation to advance substantive equality.

ARTICLE 15: EQUALITY BEFORE THE LAW AND CIVIL MATTERS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
15.1 Does the Constitution guarantee equality before the law?	Yes	<i>Constitution of Pohnpei. 1984, Article 4, s 3.</i> No person shall be denied the equal protection of the law.	A guarantee of equal <i>protection</i> of the law also constitutes a guarantee of equality before the law.
15.2 Do women have an equal capacity in civil matters – can women sue?	Yes		There is no legal barrier to women's right to sue.
15.3 Do women have an equal right to participate in courts and tribunals at all stages?	Yes		There is no legal barrier to women's right to participate in court proceedings.
15.4 Do women (regardless of marital status) have an equal right to conclude contracts and administer property?	Yes		There is no legal barrier to women's right to conclude contracts and administer property.
15.5 Do women have an equal right to be executors or administrators of estates?	Yes		There is no legal barrier preventing women from acting as executors or administrators of estates.
15.6 Is there legislation that nullifies all contracts and instruments that limit women's legal capacity?	No		There is no specific legislative prohibition on discriminatory contracts.
15.7 Do women have an equal right to choose their residence and domicile?	Yes		

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.1 Does the legislation guarantee entry into marriage with full and free consent?	No		There is no legislative provision that states that marriages cannot take place under duress, force or coercion.
16.2 Does the legislation allow marriages to be nullified if they took place under force, duress or undue influence?	No		
16.3 Is there an equal minimum age of 18 for marriage?	No	<p><i>Pohnpei State Code [Title 51, Cap 2] 2006,</i></p> <ul style="list-style-type: none"> • s 2.101.(1) A marriage performed in the State between two non citizens or a non citizen and a citizen is valid, if the male at the time of marriage is at least 18 years of age and the female at least 16 years of age. • s 2.105. Marriage between two citizens in accordance with recognised custom is valid. 	<p>These provisions do not comply with the indicator because:</p> <ul style="list-style-type: none"> • In marriages involving non-citizens the age of marriage is different for males and females. • For citizens customary marriages apply and no age is stipulated.
16.4 Is there a legislative prohibition on child marriage?	Partial	As above at 16.3	Full compliance would require a prohibition on marriage under 18 including customary marriages.
16.5 Does the legislation require registration of marriage in official registry?	Yes	<i>Pohnpei State Code [Title 51, Cap 2] 2006, s 2.104, s2.105.</i> A marriage certificate must be sent within ten days after the marriage (including customary marriages) to the Clerk of the Pohnpei Supreme Court to be recorded in the marriage register.	
16.6 Does the legislation prohibit bigamy?	Yes	<ul style="list-style-type: none"> • <i>Pohnpei State Code [Title 51, Cap 2] 2006, s 2.101(2).</i> A marriage performed in Pohnpei is valid if neither party has a lawful living spouse. • <i>Pohnpei State Code [Title 61, Cap 7] 2006, s 7.101.</i> Bigamy a criminal offence - 3 years imprisonment. 	
16.7 Do women have an equal right to choose a family name?	Yes		
16.8 Is the consent of both parents equal in marriage of minors?	Partial	<i>Pohnpei State Code [Title 51, Cap 2] 2006, s 2.101(1).</i> If the female is less than eighteen years of age, the marriage must have the consent of at least one of her parents or her guardian.	Although formally equal, the failure to require both parents' consent is likely to lead to women's consent having lesser value and therefore does not represent full compliance with the indicator.

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.9 Are both spouses equal in the ownership, acquisition, management, administration, enjoyment and disposition of property?	No		The legislation does not guarantee equality to both spouses in the ownership, acquisition, management, administration, enjoyment and disposition of property. Land tenure is instead based on custom however since Pohnpei has a matrilineal inheritance system women may not be disadvantaged in relation to acquisition of land. However, the control and use of land and other resources often fall on Pohnpei men, who are looked upon to provide for and to protect their families. Further, the failure to guarantee equality in the legislation leaves women vulnerable to changes in custom and therefore there is no compliance with this indicator.
16.10 Does the legislation provide for a maintenance and custody order during separation based on need?	Partial	<i>Pohnpei State Code [Title 51, Cap 3] 2006, s 3.102.</i> While an action for annulment or divorce is pending, the Court may make a temporary order for custody of a minor child, for its support, for support of a party, as it finds justice and the best interests of all concerned may require.	The criteria of 'justice and the best interests of all concerned' does not provide sufficient guidance in relation to earning capacity, commitments and needs of the parties.
16.11 Is there legislation to enable women to occupy the marital home when settlement is not possible or in situations of domestic violence?	No		
16.12 Does the legislation provide an order for restitution of conjugal rights? If no order is provided there is full compliance with this indicator.	Yes		To be compliant with this indicator, the legislation should not empower the courts to provide an order for restitution of conjugal rights. The legislation does <i>not</i> provide for

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
			orders for restitution of conjugal rights (which are discriminatory as they take away a woman's autonomy to choose when and with whom she has sexual relations) and therefore is in full compliance with this indicator and with CEDAW.
16.13 Does the legislation provide for no-fault divorce?	No	<p><i>Pohnpei State Code</i> [Title 51, Cap 3] 2006,</p> <ul style="list-style-type: none"> • s 3.107(1)-(9). Divorce granted for adultery, cruel treatment, neglect or personal indignity, wilful desertion for one year, habitual intemperance, imprisonment for three years, insanity for three years or more, leprosy, the separation of the parties for two consecutive years without cohabitation, whether or not by mutual consent, wilful neglect by a husband to provide suitable support for his wife when able to do so or when failure to do so is because of his idleness, profligacy or dissipation. • s 3.109. The Court does not issue a decree of divorce if the injured party has forgiven the ground for the divorce. Proof of forgiveness may be by an express showing or by the voluntary cohabitation of the parties with knowledge of the fact and restoration of the forgiving party to all marital rights. Forgiveness implies a condition that the forgiven party treat the forgiving party with conjugal kindness. • s 6.3210. The Court may not issue a decree of divorce for adultery when the adultery is with the procurement or connivance of the plaintiff. • s 1.105. Customary divorce is exempt from the above provisions. 	<ul style="list-style-type: none"> • Fault based criteria for divorce disadvantages women who are more likely to be in untenable situations and have difficulty establishing cruelty or adultery. • Forgiveness does not take into account the power imbalance between the parties. • Customary divorce is exempt from the provisions in the title which could leave women with even less protection.
16.14 Is there a duty on the court to promote reconciliation? If there is no duty then there is full compliance with this indicator.	No		

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.15 Does the legislation provide for an equal division of property after divorce including recognition of unpaid contribution; future needs and future earning capacity calculated?	Partial	<i>Pohnpei State Code [Title 51, Cap 3] 2006, s 3.102.</i> In granting or denying a decree of an annulment or a divorce, the Court may make an order for the disposition of property in which both parties have an interest, as it finds justice and the best interests of all concerned may require.	The criteria of 'justice and the best interests of all concerned' does not provide sufficient guidance in relation to earning capacity, commitments and needs of the parties. It provides no criteria for the calculation of women's non financial contributions.
16.16 Does the legislation provide for the payment of child support upon divorce based on need?	Partial	<i>Pohnpei State Code [Title 51, Cap 3] 2006, s 3.102.</i> In granting or denying a decree of an annulment or a divorce, the Court may make an order for support of a minor as it finds justice and the best interests of all concerned may require.	See above at 16.10.
16.17 Does the legislation provide for maintenance for woman based on commitments, income, earning capacity, assets?	Partial	<i>Pohnpei State Code [Title 51, Cap 3] 2006, s 3.102.</i> In granting or denying a decree of an annulment or a divorce, the Court may make an order for support of a party, as it finds justice and the best interests of all concerned may require.	See above at 16.10.
16.18 Is custody and access to children based on best interests of child regardless of relationship of parents?	Partial	<i>Pohnpei State Code [Title 51, Cap 3] 2006, s 3.102.</i> In granting or denying a decree of an annulment or a divorce, the Court may make an order for custody of a minor child as it finds justice and the best interests of all concerned may require.	Although the best interests of the child is relevant it is not paramount and is therefore non compliant with the indicator.
16.19 Does the legislation provide damages for adultery? If there is no provision for damages in the legislation then there is full compliance with this indicator.	Yes		To be complaint with this indicator, the legislation should not provide damages for adultery. Damages for adultery are discriminatory as they seek to punish the sexual behaviour of consenting adults and interferes with their autonomy. The legislation does <i>not</i> provide a right to damages for adultery and therefore is in full compliance with the indicator and with CEDAW.

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.20 Do women have equal rights to guardianship, wardship, trusteeship and adoption?	Partial	<p><i>Pohnpei State Code [Title 51, Cap 5] 2006, s 5.102</i></p> <ul style="list-style-type: none"> • s 6.3102. The Court may grant adoption of a child to a suitable unmarried person, a person who is married to the father or mother of the child, or a husband and wife jointly. The decree may provide for a change of the child's name. • s 1.105. Customary adoption is exempt from the above provisions. 	Although women are equal with men in the legislation in relation to adoption, customary adoptions are also lawful and may discriminate against women.
16.21 Does the legislation recognise de facto rights (including same-sex couples) on the same basis as marriage?	No		
16.22 Does the legislation provide an order for establishing parentage?	No		
16.23 Does the legislation provide for a contribution to pregnancy and childbirth costs by father to unmarried mother?	No		
16.24 Does the legislation provide child support payable for children born outside of marriage?	No		
16.25 Does the legislation provide for equal inheritance laws?	No		There is no legislation dealing with intestate succession in Pohnpei and succession is determined by customary law. Although Pohnpei has a matrilineal system which means that land rights are acquired through women, the failure to incorporate equal rights into the legislation leaves women vulnerable to change in customary practices.
16.26 Is there legislation requiring the application of CEDAW and CRC to domestic family law when relevant?	No		

Yap: Detailed Analysis of Indicators

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.1 Does the Constitution guarantee fundamental rights and freedoms to men and women equally including political, economic, social, cultural, civil or any other field?	Partial	<ul style="list-style-type: none"> <i>Constitution of Yap, s 4.</i> No person shall be deprived of life, liberty, or property, without due process of law, or be denied the equal protection of the laws, or be denied the enjoyment of his civil rights, or be discriminated against. <i>Constitution of the Federated States of Micronesia 1979, Article IV. s1-13</i> Sets out the civil rights (as above) of all Micronesians. Freedom of expression, peaceable assembly, association, petition, right to life, liberty, property unless deprived by due process of law, right to equal protection of the law, right to be secure against unreasonable search, seizure and invasion of privacy, right to travel within the States, criminal defendant has the right to a speedy trial, to be informed of accusation, to have counsel, and not to be compelled to give evidence against his interest, or to face double jeopardy, right to be free from excessive bail, fines, cruel or unreasonable punishment, bill of attainder, capital punishment, slavery, involuntary servitude and imprisonment for debt are prohibited. 	<p>The rights protected include most of those required by CEDAW. There is therefore substantial compliance with this indicator but</p> <ul style="list-style-type: none"> The right to the highest attainable standard of physical and mental health is not a guaranteed right. Substantive equality is not a guaranteed right.
1.2 Is there a constitutional guarantee of substantive equality between men and women?	Partial	<ul style="list-style-type: none"> <i>Constitution of Yap, s 4.</i> No person shall be denied the equal protection of the laws. 	A guarantee of equal <i>protection</i> of the law requires that the law does not discriminate in its application but does not guarantee equal benefits or outcomes as required by CEDAW.
1.3 Does the Constitution contain an anti-discrimination clause on the ground of sex/gender?	Yes	<ul style="list-style-type: none"> <i>Constitution of Yap, s 4.</i> No person shall be discriminated against in the exercise of his civil rights on account of sex. 	

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.4 Does the Constitution contain anti-discrimination clause on the ground of marital status?	No		
1.5 Does the Constitution contain anti-discrimination clause on the ground of sexual orientation?	No		
1.6 Does the Constitution contain anti-discrimination clause on the ground of HIV status?	No		
1.7 Does the Constitution contain an anti-discrimination clause on the ground of disability?	No		
1.8 Does the breadth of anti-discrimination clause encompass direct and indirect discrimination?	No		
1.9 Does the anti-discrimination clause bind public authorities and institutions?	Partial	See above at 1.3	The Constitution does not expressly specify who is bound by the anti-discrimination clause but it implies that it encompasses all aspects of a person's life.
1.10 Does the anti-discrimination clause bind any person, organisation or enterprise?	Partial	See above at 1.3	The Constitution does not expressly specify who is bound by the anti-discrimination clause but it implies that it encompasses all aspects of a person's life.
1.11 Are sanctions imposed for breach of anti-discrimination provisions?	No		
1.12 Are there specific domestic violence offences in criminal law legislation (Penal Code)?	No	Yap State Code [Title 11, Cap 2] 2000- <ul style="list-style-type: none"> s 207. Aggravated assault is an attempt to cause serious bodily injury to another or causes serious bodily injury intentionally, knowingly, or recklessly under circumstances showing extreme indifference to the value of human life - 5 years imprisonment, \$5,000.00, or both. s 209. Assault is offering or attempting, with force or violence, to strike, beat, wound, or to do bodily harm to another – 6 months imprisonment or \$100 or both. 	These provisions are not targeted at domestic violence and do not embrace the variety of situations that constitute domestic violence. All have low penalties and fall short of compliance with this indicator.

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		<ul style="list-style-type: none"> • s 210. Assault and battery is striking, beating, wounding, or otherwise doing bodily harm to another - 3 years imprisonment, \$100 or both. • s 211. Mayhem is cutting, biting, or slitting the nose, ear, or lip, or cutting off or disabling the tongue, or putting out or destroying an eye, or cutting off or disabling a limb or any member or part of another person with intent to maim or disfigure - 3 years imprisonment, \$100 or both. • s 213. Threaten any crime of violence with purpose to terrorise – 6 months imprisonment, \$100 or both. 	
1.13 Is stalking a criminal offence?	No		
1.14 Is a restraining order available in situations of sexual and domestic violence regardless of marital status?	No		
1.15 Is there mandatory prosecution for domestic violence offences?	No		
1.16 Does the criminal law legislation contain a broad range of sexual assault offences graded on the basis of seriousness to the victim?	Partial	<p><i>Yap State Code [Title 11, Cap 2] 2000-</i></p> <ul style="list-style-type: none"> • s 205. Offence to intentionally subject another person to sexual penetration by force or engage in sexual penetration with another person whom he knows is mentally or physically incapable of resisting or understanding the nature of his conduct, or who is an accomplice or accessory to the sexual assault by a third person If serious bodily or psychological injury to the victim results or if a dangerous weapon was used by the defendant - ten years, \$10,000.00, or both. If such injury does not result and no weapon was used – 5 years imprisonment, \$5,000.00, or both. • s 206 (a). Offence to intentionally have sexual contact with another person who is less than thirteen years old or causes such a person to have sexual contact with him - 10 years imprisonment, \$10,000.00, or both. 	<p>The sexual assault offences whilst providing some protection for women who are victims sexual violence are not compliant with the indicator because:</p> <ul style="list-style-type: none"> • The penalties are low implying that sexual assault is not a serious offence. In particular 5 years for a rape that does not cause <i>serious</i> injury is an insufficient punishment and deterrent. Regardless of the level of injury rape is a violation of personal integrity which should be severely punished. • Although penetration is widely defined there are no other offences for girls and women over 13 and therefore many of ways in which women are sexually

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
			<p>violated are therefore excluded from the legislation.</p> <ul style="list-style-type: none"> Sexual contact is available only for girls under 13 with the result that it is lawful to have sexual contact with girls 13 and over and women. This is discriminatory. Sexual penetration requires force and therefore will not constitute an offence if it occurs through duress, threats or coercion.
1.17 Does the definition of rape and/or sexual assault offences include penetration of non-penile objects to anus, vagina and mouth?	Yes	<i>Yap State Code [Title 11, Cap 2] 2000, s 201(f).</i> Sexual penetration means sexual intercourse, cunnilingus, fellatio, or anal intercourse, or the causing of penetration to any extent, and with any object, of the genital or anal opening of another.	
1.18 Is there an offence of incest for girls and women? If there is no offence of incest there is full compliance with this indicator.	No	<i>Yap State Code [Title 11, Cap 2] 2000, s 602.</i> Offence to unlawfully engage in sexual intercourse with another of such a close blood relationship or affinity that marriage between the two who so engage is prohibited by law or custom - 3 years imprisonment.	<p>The Yap State Code <i>does</i> contain an offence of incest which applies to girls and women in non compliance with the indicator and with CEDAW. The offence is discriminatory because:</p> <ul style="list-style-type: none"> No girl under 18 should be charged with any sexual offence and there is no exception on the basis of age. An offence of incest against women and girls fails to recognise the power imbalance between girls and women and male relatives. Incest is typically perpetrated by men against girls and women in non consensual coercive circumstances.

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.19 Have the terms indecency, carnal knowledge, defilement and insulting modesty been removed from the criminal law legislation?	Yes		
1.20 Is consent specifically defined in the criminal law legislation outlining coercive circumstances?	No	<i>Yap State Code [Title 11, Cap 2] 2000</i> Sexual penetration specifically requires force to be an offence unless knows the victim is 'mentally or physically incapable of resisting or understanding the nature of his conduct'.	
1.21 Is there a legislative prohibition on use of prior sexual conduct to establish consent?	Partial	<p><i>FSM Rules of Evidence, Article IV, Rule 412.</i></p> <ul style="list-style-type: none"> • (a)(b). In a criminal case in which a person is accused of rape or of assault with intent to commit rape, reputation or opinion evidence of the past sexual behaviour of an alleged victim, or evidence of a victim's past sexual behaviour is not admissible unless such evidence other than reputation or opinion evidence is (A) Past sexual behaviour with persons other than the accused, offered by the accused with respect to the source of semen or injury; or (B) Past sexual behaviour with the accused and is with respect to whether the alleged victim consented. • (c) If the person accused intends to offer evidence of specific instances of the alleged victim's past sexual behaviour, the accused shall make a written motion and the court shall order a hearing in chambers to determine if such evidence is relevant and if its probative value outweighs the danger of unfair prejudice. 	The use of prior sexual history to establish consent is discriminatory as it perpetuates a view that a previous relationship or history of promiscuity makes it 'more likely' that a woman consented to the act in question.
1.22 Is there a legislative prohibition on requirement for corroboration?	No		
1.23 Is there a legislative prohibition on a requirement to provide proof of resistance?	No	<i>Yap State Code [Title 11, Cap 2] 2000, s 205.</i> Sexual assault is intentionally forcing another person to make a sexual penetration on another, against the other person's will, or under conditions in which the offender knows or should know that the other person is mentally or physically incapable of resisting.	This provision implies that physical resistance is <i>expected</i> . Sexual assault victims may not be able to physically resist an armed or threatening perpetrator or may be immobilised by fear and power imbalances.

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.24 Is there a defence of honest and reasonable belief that the victim is of legal age? If there is no defence then there is full compliance with this indicator.	No	<i>Yap State Code</i> [Title 11, Cap 2] 2000, s 206(b). It is an affirmative defence that the defendant reasonably believed the child to be older than 13.	The State Code contains a defence of honest and reasonable belief that the child was older than 13 and is therefore not compliant with the indicator and CEDAW. This defence places the onus on the minor to reveal her age rather than on the perpetrator to ascertain her age.
1.25 Is a defence of consent unavailable in relation to a victim under 18?	No		
1.26 Is there an exemption from prosecution for marital rape? If there is no exemption in the legislation then there is full compliance with this indicator.	Yes		To be compliant with this indicator, men should not be exempt from prosecution for marital rape. If the legislation contains a law which protects men from being charged with marital rape, then there is no compliance with this indicator. The Yap State Code does <i>not</i> exempt husbands from prosecution for marital rape and is therefore in full compliance with this indicator and with CEDAW.
1.27 Is there mandatory prosecution for sexual offences?	No		
1.28 Is bail unavailable for sexual offences if risk to victim?	No		
1.29 Are there minimum sentences for sexual offences?	No	All sexual assault offences have sentences of 'not more than'.	
1.30 Is there a provision in the criminal law legislation which states that customary practices of forgiveness shall not affect criminal prosecution or sentencing?	No	<i>Yap State Code</i> [Title 11, Cap 11] 2000, s1101. In imposing or suspending the execution of sentences, or in suspending the imposition of sentence and granting probation, due recognition shall be given to the customs of the inhabitants of the State of Yap.	The legislation specifically <i>provides</i> for customary law to affect criminal sentencing in non-compliance with CEDAW.

**ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN
ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION**

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.31 Is there legislative provision for compensation for victims of sexual and domestic violence?	Yes	<i>Yap State Code [Title 11, Cap 11] 2000, s 1106(a)</i> . If a conviction is based upon a wilful wrong causing damage to another, a court may, in lieu of or in addition to other lawful punishment, order restitution or compensation to the owner or person damaged.	
1.32 Does the criminal law legislation allow for infanticide to replace a charge of murder or manslaughter?	No		
1.33 Does the definition of infanticide include environmental and social stresses?	No		

ARTICLE 3: GUARANTEE OF BASIC HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
3.1 Is there legislation establishing national human rights machinery charged with promoting and protecting human rights including women rights?	No		
3.2 Is there legislation establishing a funded body to monitor the implementation of non-discriminatory law and policy for the advancement of women?	No		

ARTICLE 4: ACCELERATION OF EQUALITY BETWEEN MEN AND WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
4.1 Does the Constitution contain a temporary special measures provision?	No		
4.2 Are special measures exempt from discrimination on the grounds of sex, marital status, sexual orientation, disability and HIV status?	No		

ARTICLE 5: SEX ROLES AND STEREOTYPES

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
5.1 Is there a provision in the Constitution which gives precedence to a constitutional guarantee of equality if there is a conflict between custom and equality law?	No	<p><i>Constitution of Yap, Article III.</i></p> <ul style="list-style-type: none"> • s 1. There shall be a Council of Pilung and Council of Tamol which shall perform functions which concern tradition and custom. • s 2. 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 recognised tradition or custom. <p><i>Yap State Code [Title 16, Cap 1] 2000.</i></p> <ul style="list-style-type: none"> • s 101. The local school board of each elementary school in the Yap Islands may employ a person as a culture teacher to instruct students in various aspects of Yapese heritage and culture. 	<ul style="list-style-type: none"> • Custom law is made lawful through the Constitution of Yap. In the absence of a constitutional guarantee that equality law (and anti-discrimination provisions) take precedence over custom law that discriminates against women is lawful. • The instruction of school students in Yapese custom in the absence of a constitutional guarantee of equality may result in the perpetuation of discriminatory customary practices.

ARTICLE 6: EXPLOITATION OF WOMEN			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
6.1 Is the act of soliciting decriminalised?	Yes		Yap has not legislated in the area of sex work and therefore soliciting by either females or males in Yap is not a criminal offence, in full compliance with this indicator and CEDAW.
6.2 Is aiding and abetting consensual acts of soliciting decriminalised?	Yes		
6.3 Is it a criminal offence to procure any woman without consent or any girl under 18?	No		Compliance with CEDAW requires that girls and women who are forced into sex work against their will are protected from exploitation. The failure of Yap to legislate in this area means there is no compliance with CEDAW.
6.4 Does employment legislation including occupational health and safety legislation protect sex workers?	No		There is no employment health and safety legislation in Yap and therefore sex workers (along with other workers) are not protected in non-compliance with CEDAW.
6.5 Is the trafficking of women prohibited?	No		
6.6 Is sex tourism prohibited?	No		

ARTICLE 7: POLITICAL AND PUBLIC LIFE

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
7.1 Is there an equal right to vote?	Yes	<p><i>Constitution of Yap, Article IV.</i></p> <ul style="list-style-type: none"> s 1. A citizen of the FSM who has attained the age of 18 years and is registered to vote in the State shall be qualified to vote in state elections. <p><i>Yap State Code [Title 7, Cap 1] 2000.</i></p> <ul style="list-style-type: none"> s 102. Every citizen of the FSM shall be entitled to vote in every election conducted under the provisions of this title who (a) Is 18 years of age or older on the day of an election (b) Has fulfilled the residence requirements for registration (c) Is not currently under judgment of mental incompetency or insanity entered in a court of competent jurisdiction (d) Is not currently under parole, probation, or sentence for any felony and (e) Is registered to vote under the provisions of this title. 	
7.2 Is there equal eligibility for political representation?	Yes	<i>Yap State Code [Title 7, Cap 5] 2000.</i>	
7.3 Is there legislative provision for minimum quotas of women in Parliament?	No		Despite equal eligibility to enter parliament no woman has yet served as a representative in the Yap parliament. A minimum quota is a means of achieving representation of women in parliament leading to substantive equality.
7.4 Do women have an equal right to participate in NGOs?	Yes		There is no legal barrier to participation.
7.5 Is there legislation (other than Charitable Societies legislation) enabling NGOs to register and mobilise to promote the advancement of women without political interference?	No		

ARTICLE 8: INTERNATIONAL REPRESENTATION AND PARTICIPATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
8.1 Do women have equal opportunity to represent government at international level and participate in the work of international organisations?	Partial		There is no legal barrier to equal participation however few women do represent government at the international level. The introduction into legislation of a quota system would ensure full compliance with this indicator.

ARTICLE 9: NATIONALITY AND CITIZENSHIP

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
9.1 Do women have an equal right to acquire, change or retain their nationality?	Yes	<i>Constitution of the Federated States of Micronesia 1979, Article III, s 1.</i> A person who is a citizen immediately prior to the effective date of the Constitution is a citizen and national of FSM.	
9.2 Does marriage to an alien or change of husband's nationality affect wife's nationality? If there is no change to a wife's nationality after marriage, there is full compliance with this indicator.	Yes		To be compliant with this indicator, the marriage of a woman to a non-national should not affect her nationality. The legislation does <i>not</i> alter the nationality of female citizens upon marriage and therefore there is full compliance with this indicator in compliance with CEDAW.
9.3 Do both spouses have equal rights to residency, citizenship and employment when married to a non-national?	Yes		
9.4 Do both spouses have an equal right to determine the nationality of children?	Yes	<i>Constitution of the Federated States of Micronesia 1979, Article III, s 2.</i> A person born of parents one or both of whom are citizens of the FSM is a citizen and national of the FSM by birth.	
9.5 Do women have an equal right to obtain a passport?	Yes	<i>FSM Code 1997, [Title 50, Cap 2] s 202.</i> No passport shall be granted to any person other than a citizen of the FSM.	

ARTICLE 10: EDUCATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
10.1 Do women and girls have equal access to education?	Partial	<i>Constitution of Yap, Article XII, s 2.</i> The State Government shall provide for public education and schools. Public elementary education shall be free.	The Yap government provides that elementary education shall be free which ensures that parents can afford to send both boys and girls to school. However, full compliance with the indicator requires similar provision at secondary and tertiary levels.
10.2 Is there legislation that creates special measures for the advancement of women in education?	No		
10.3 Is there compulsory primary education for girls and boys?	Yes	<i>Yap State Code [Title 16, Cap 2] 2000</i> <ul style="list-style-type: none"> • s 202(a). All children required to attend elementary school in the school district in which he resides. • (b). Attendance at school shall be obligatory. • (c). Any parent, guardian or other person having responsibility under custom for the child whose attendance at school is obligatory shall send the child to school - \$25.00 for each day the child is absent from school. 	
10.4 Is there compulsory secondary education for girls and boys?	No		
10.5 Is family life (reproductive and sexual health) education compulsory in schools?	No		
10.6 Is there a legislative prohibition on expulsion from school because of pregnancy?	No		

ARTICLE 11: EMPLOYMENT			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.1 Are there anti-discrimination provisions in the employment legislation on the ground of sex, marital status, disability, pregnancy, sexual orientation and HIV status with sanctions?	Partial	<i>Yap State Code [Title 8, Cap 1, Subcap III] 2000, s 123(b)</i> . No employee in the Public Service shall be suspended, demoted, dismissed, laid off, or otherwise discriminated against because of sex, race, religion, language, ancestry, social status, or place of origin.	Protection from discrimination is provided for public service workers on some of the grounds recommended by CEDAW, but there is no equivalent provision for non-public service workers.
11.2 Are there special measures provisions for the advancement of women in employment?	Partial	<i>Yap State Code [Title 8, Cap 1, Subcap III] 2000, s 121(a)</i> . The State Public Service System shall provide equal opportunity for all regardless of sex, race, religion, language, ancestry, social status, or place of origin.	The Public Service provides affirmative action measures on some of the grounds recommended by CEDAW, but there is no equivalent provision for non-public service workers.
11.3 Does the legislation provide women with equal conditions of work including leave, superannuation and Workers Compensation?	No		
11.4 Does the legislation provide sexual harassment protection from employers and co-workers?	No		
11.5 Does the definition of sexual harassment include the breadth of unwanted behaviours?	No		
11.6 Does the legislation contain an equal pay provision?	No		
11.7 Does the legislation contain pay equity provisions?	No		Note that FSM has a reservation on the pay equity provisions of CEDAW (Article 11 (1) (d) and therefore compliance against this indicator has not been assessed.

ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.8 Does the legislation provide for an equal retirement age?	No		
11.9 Are there restrictions on women's choice of employment? If yes there is no compliance with this indicator.	Yes		To be compliant with this indicator, there should be no restrictions on a woman's choice of employment. There are no legislative restrictions on women's choice of employment (as there are in all other Pacific countries except FSM). Yap is therefore in full compliance with the indicator and CEDAW.
11.10 Does the legislation provide for health protection during pregnancy?	No		The Yap legislation does not provide any employment health and safety legislation. Therefore pregnant workers are not protected in non-compliance of CEDAW.
11.11 Does the legislation provide paid maternity leave of not less than 14 weeks?	No		Note that FSM has a reservation on the paid maternity leave provisions of CEDAW (Article 11 (2) (b) and therefore compliance with this indicator has not been measured.
11.12 Does the legislation provide protection from dismissal because of pregnancy or maternity leave?	No		
11.13 Does the legislation guarantee the provision of childcare by employer or state?	No		
11.14 Does the legislation provide reasonable nursing time during work hours?	No		

ARTICLE 12: HEALTH CARE AND FAMILY PLANNING

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
12.1 Do women have access to safe and legal abortion facilities?	Partial	<i>Constitution of Yap, Article XI, s 1.</i> The State Government shall provide for the protection and promotion of the public health.	There is no legislation that criminalises abortion in Yap and there is a constitutional guarantee for the protection of health. However, access to facilities to have an abortion is limited and full compliance with the indicator requires that legislation guarantees access.

ARTICLE 13: ECONOMIC AND SOCIAL BENEFITS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
13.1 Do women have an equal right to family benefits regardless of marital status?	Yes		There is no social security system in Yap.
13.2 Do women have an equal right to receive bank loans, mortgages and financial credit?	Yes		There is no legislative barrier to receive bank loans, mortgages and financial credit.
13.3 Do women have an equal right to participate in recreational activities, sports and cultural life?	Yes		There is no legislative barrier to participate in recreational activities, sports and cultural life.

ARTICLE 14: RURAL WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
14.1 Is there legislation that provides for special measures to advance substantive equality for rural women?	No		Many women in Yap live in rural communities and it is crucial that Yap incorporates special measures into either the national constitution or legislation to advance substantive equality.

ARTICLE 15: EQUALITY BEFORE THE LAW AND CIVIL MATTERS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
15.1 Does the Constitution guarantee equality before the law?	No		
15.2 Do women have an equal capacity in civil matters – can women sue?	Yes		There is no legal barrier to women's right to sue.
15.3 Do women have an equal right to participate in courts and tribunals at all stages?	Yes		There is no legal barrier to women's right to participate in court proceedings.
15.4 Do women (regardless of marital status) have an equal right to conclude contracts and administer property?	Yes		There is no legal barrier to women's right to conclude contracts and administer property.
15.5 Do women have an equal right to be executors or administrators of estates?	Yes		There is no legal barrier preventing women from acting as executors or administrators of estates.
15.6 Is there legislation that nullifies all contracts and instruments that limit women's legal capacity?	No		There is no specific prohibition on discriminatory contracts
15.7 Do women have an equal right to choose their residence and domicile?	Yes		There is no legal barrier preventing women from choosing their residence and domicile.

ARTICLE 16: PERSONAL AND FAMILY LAW			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.1 Does the legislation guarantee entry into marriage with full and free consent?	No		Yap has not legislated in the area of marriage and is therefore non-compliant with all indicators in this area.
16.2 Does the legislation allow marriages to be nullified if they took place under force, duress or undue influence?	No		As above 16.1
16.3 Is there an equal minimum age of 18 for marriage?	No		As above 16.1
16.4 Is there a legislative prohibition on child marriage?	No		As above 16.1
16.5 Does the legislation require registration of marriage in official registry?	No		As above 16.1
16.6 Does the legislation prohibit bigamy?	No		As above 16.1
16.7 Do women have an equal right to choose a family name?	Yes		There is no legal barrier to women choosing their family name.
16.8 Is the consent of both parents equal in marriage of minors?	No		As above 16.1
16.9 Are both spouses equal in the ownership, acquisition, management, administration, enjoyment and disposition of property?	No	<i>Constitution of Yap, Article XIII, s 3.</i> Title to land may be acquired only in a manner consistent with traditions and customs.	The legislation does not guarantee equality to both spouses in the ownership, acquisition, management, administration, enjoyment and disposition of property. Land tenure in Yap is instead based on custom. However, since it is a matrilineal inheritance system women may not be disadvantaged in relation to the acquisition of land. However, the control and use of land and other resources often fall on Yap men, who are looked upon to provide for and to protect their families. Further, the failure to guarantee equality in the legislation leaves women vulnerable to changes in custom and therefore there is no compliance with this indicator.

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.10 Does the legislation provide for a maintenance and custody order during separation based on need?	Partial	<p><i>FSM Code [Title 6, Cap 16, Subcap 2] 1997,</i></p> <ul style="list-style-type: none"> • s 1622. While an action for annulment or divorce is pending, the court may make temporary orders for custody of minor children for their support, for support of either party as it deems justice and the best interests of all concerned may require covering any of these matters pending final decree. • s 1614. Nothing contained in this chapter shall apply to any divorce effected in accordance with local custom. 	<ul style="list-style-type: none"> • The criteria of 'justice and the best interests of all concerned' does not determine maintenance on the basis of need. • Customary marriages fall outside the legislation in non-compliance with CEDAW.
16.11 Is there legislation to enable women to occupy the marital home when settlement is not possible or in situations of domestic violence?	No		
16.12 Does the legislation provide an order for restitution of conjugal rights? If there is no order provided there is full compliance with this indicator.	Yes		To be compliant with this indicator, the legislation should not empower the courts to provide an order for restitution of conjugal rights. The legislation does <i>not</i> provide for orders for restitution of conjugal rights (which are discriminatory as they take away a woman's autonomy to choose when and with whom she has sexual relations) and therefore is in full compliance with this indicator and with CEDAW.
16.13 Does the legislation provide for no-fault divorce?	No	<p><i>FSM Code, 1997 [Title 6, Cap 16, Subcap 2],</i></p> <ul style="list-style-type: none"> • s 1626. (1)-(9). Divorce granted for adultery, cruel treatment, neglect or personal indignity, wilful desertion for one year, habitual intemperance, imprisonment for three years, insanity for three years or more, leprosy, the separation of the parties for two consecutive years without cohabitation, whether or not by mutual consent, wilful neglect by a husband to provide suitable 	<ul style="list-style-type: none"> • Fault based criteria for divorce disadvantages women who are more likely to be in untenable situations and have difficulty establishing cruelty or adultery. • Customary marriage

ARTICLE 16: PERSONAL AND FAMILY LAW			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		<p>support for his wife when able to do so or when failure to do so is because of his idleness, profligacy or dissipation.</p> <ul style="list-style-type: none"> • s 1628. The Court does not issue a decree of divorce if the injured party has forgiven the ground for the divorce. Proof of forgiveness may be by an express showing or by the voluntary cohabitation of the parties with knowledge of the fact and restoration of the forgiving party to all marital rights. Forgiveness implies a condition that the forgiven party treat the forgiving party with conjugal kindness. If the forgiven party commits an act constituting a similar ground for divorce or is guilty of conjugal unkindness sufficiently habitual and gross to show that he has not accepted or fulfilled the conditions of forgiveness in good faith, revocation of forgiveness and revival of the ground for divorce results. • s 1629. The Court may not issue a decree of divorce for adultery when the adultery is with the procurement or connivance of the plaintiff. • s 1614. Nothing contained in this chapter shall apply to any divorce effected in accordance with local custom. 	<p>ges fall outside the legislation.</p> <ul style="list-style-type: none"> • Forgiveness does not take into account the power imbalance between the parties.
16.14 Is there a duty on the court to promote reconciliation? If there is no duty then there is full compliance with this indicator.	Yes		To be compliant with this indicator, the legislation should not empower the courts to provide an order for restitution of conjugal rights. The legislation does <i>not</i> provide for orders for restitution of conjugal rights (which are discriminatory as they take away a woman's autonomy to choose when and with whom she has sexual relations) and therefore is in full compliance with this indicator and with CEDAW.
16.15 Does the legislation provide for an equal division of property after divorce including recognition of unpaid contributions; future needs and future earning capacity calculated?	Partial	<p>FSM Code [Title 6, Cap 16, Subcap 2] 1997:</p> <ul style="list-style-type: none"> • s 1622. In granting or denying an annulment or a divorce, the court may make such orders for the disposition of either or both parties' interest in any property in which both have interests, as it deems justice and the best interests of all concerned may require. • s 1614. Nothing contained in this chapter shall apply to any divorce effected in accordance with local custom. 	<ul style="list-style-type: none"> • The criteria of 'justice and the best interests of all concerned' does not provide sufficient guidance in relation to earning capacity, commitments and needs of the parties. It provides no criteria for the calculation of women's non

ARTICLE 16: PERSONAL AND FAMILY LAW			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
			financial contributions. <ul style="list-style-type: none"> Customary marriages fall outside the legislation in non-compliance with CEDAW.
16.16 Does the legislation provide for the payment of child support upon divorce based on need?	Partial	<i>FSM Code [Title 6, Cap 16, Subcap 2] 1997,</i> <ul style="list-style-type: none"> s 1622. In granting or denying a decree of an annulment or a divorce, the Court may make an order for support of a minor as it finds justice and the best interests of all concerned may require. s 1614. Nothing contained in this chapter shall apply to any divorce effected in accordance with local custom. 	See above at 16.10
16.17 Does the legislation provide for maintenance of the woman based on commitments, income, earning capacity, assets?	Partial	<i>FSM Code [Title 6, Cap 16, Subcap 2] 1997,</i> <ul style="list-style-type: none"> s 1622. In granting or denying a decree of an annulment or a divorce, the Court may make an order for support of persons affected as it finds justice and the best interests of all concerned may require. s 1614. Nothing contained in this chapter shall apply to any divorce effected in accordance with local custom. 	See above at 16.10
16.18 Is custody and access to children based on best interests of child regardless of relationship of parents?	No	<i>FSM Code [Title 6, Cap 16, Subcap 2] 1997,</i> <ul style="list-style-type: none"> s 1622. In granting or denying an annulment or a divorce, the court may make such orders for custody of minor children as it deems justice and the best interests of all concerned may require. 	Although the best interests of the child is relevant, it is not paramount and is therefore non-compliant with the indicator.
16.19 Does the legislation provide damages for adultery? If there is no provision for damages in the legislation then there is full compliance with this indicator.	Yes		To be compliant with this indicator, the legislation should not provide damages for adultery. Damages for adultery are discriminatory as they seek to punish the sexual behaviour of consenting adults and interferes with their autonomy. The legislation does <i>not</i> provide a right to damages for adultery and therefore is in full compliance with the indicator and with CEDAW.

ARTICLE 16: PERSONAL AND FAMILY LAW			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.20 Do women have equal rights to guardianship, wardship, trusteeship and adoption?	Partial	<p>FSM Code [Title 6, Cap 16, Subcap 3] 1997.</p> <ul style="list-style-type: none"> • s 1632. Any suitable person who is not married, or is married to the father or mother of a child, or a husband and wife jointly may by decree of court adopt a child not theirs by birth, and the decree may provide for change of the name of the child. • s 1634 (1). No adoption shall be granted under this subchapter without the child proposed for adoption appearing before the court, and the adoption shall be granted only if the court is satisfied that the interests of the child will be promoted thereby. • s 1614. Nothing contained in this chapter shall apply to any adoption effected in accordance with local custom. 	Although adoption is equal in the legislation, custom is excluded from these provisions and may discriminate against women.
16.21 Does the legislation recognise de facto rights (including same-sex couples) on the same basis as marriage?	No		
16.22 Does the legislation provide an order for establishing parentage?	No		
16.23 Does the legislation provide for a contribution to pregnancy and childbirth costs by father to unmarried mother?	No		
16.24 Does the legislation provide child support payable for children born outside of marriage?	No		
16.25 Are the inheritance laws equal?	No		Yap has not legislated in the area of inheritance leaving it to be determined by custom. Although Yap has a matrilineal system which means that land rights are acquired through women, the failure to incorporate equal rights into the legislation leaves women vulnerable to change in customary practices. Compliance with this indicator

ARTICLE 16: PERSONAL AND FAMILY LAW			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
			therefore requires the introduction of legislation providing equal inheritance rights for men and women.
16.26 Is there legislation requiring the application of CEDAW and CRC to domestic family law when relevant?	No		