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DIRECTORS**

ASIAN DEVELOPMENT BANK

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**TECHNICAL ASSISTANCE TO THE FEDERATED STATES OF MICRONESIA
FOR IMPROVING ACCESS TO LAWS**

The attached Report is circulated for the information of the Board. The President approved the technical assistance on 29 September 2000.

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ASIAN DEVELOPMENT BANK

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CURRENCY EQUIVALENTS

The Federated States of Micronesia uses the US dollar as its currency.

ABBREVIATIONS

ADB	–	Asian Development Bank
AG	–	attorney general
GC	–	general counsel
FSM	–	Federated States of Micronesia
LC	–	Legislative Counsel
LIS	–	Legal Information System
TA	–	technical assistance
Telecom	–	Telecommunications Corporation of FSM

NOTES

- (i) The fiscal year (FY) of the Government ends on 30 September.
- (ii) In this report, "\$" refers to US dollars.

I. INTRODUCTION

1. A technical assistance (TA) for law and governance was included in the Asian Development Bank's (ADB) country assistance plan 2000–2002 for the Federated States of Micronesia (FSM). During the Country Programming Mission fielded in March 2000, it was agreed that the three-year (2000-2002) law and governance TA program would be downsized to a single-year TA¹ in 2000. The new TA design would address an immediate need to establish a law information system; \$300,000 equivalent was allocated to support this work. The TA fact-finding mission was fielded in June 2000 to design the TA. The Mission reached an understanding with the Government on the objectives, scope of work, costs and financing plan, and implementation arrangements of the TA. The TA framework is attached as Appendix 1.

II. BACKGROUND AND RATIONALE

2. The legal sector in the FSM is characterized by multiple levels of government, constitutionalism, federalism, separation of powers, use of the common law, heavy reliance on lawyers from abroad, inadequately trained local practitioners, and continuing tension with traditional law. Like many developing nations, the FSM is in the transition from a system of traditional law based on the rule of individuals to a modern government based on the rule of law. The modern institutions are in place, but often they do not function as they should. Moreover, many people in the FSM, both inside and outside of government, would benefit from a better understanding of the elements of an effective and properly functioning legal system. Improvement of governance is ADB's key strategy in the Pacific, including the FSM. ADB's operational strategy in the FSM aims to improve the performance of the public sector and promote private sector development. In particular, a private sector development program in 2001 aims to improve the enabling environment for private sector development through legal reforms and investments in the establishment of essential legal infrastructure. ADB TA to support governance reforms in both public and private sectors are also programmed in the country assistance plan for 2001 – 2003.²

3. Unlike its neighbors Palau and the Marshall Islands, the FSM has almost completed the transition to a judiciary in which only local practitioners are the judges. Most of these judges have little or no formal training in the law. The possibility of training for existing judges was closely examined. But most of the alternatives are expensive, already being financed by the FSM governments, or (based on past experience) of uncertain impact. Much the same can be said for assistance to those courts (mainly in Chuuk and Pohnpei) that have large backlogs of unresolved cases, many of them quite old. The ideas for improving court administration are already known. What is needed now is the discipline to implement them and ongoing appropriations to hire qualified staff. There is a continuing need for more and better trained local practitioners, such as could be provided through more scholarships for FSM people to attend law school, and proper funding of the training of trial counselors. These needs, however, are either not appropriate for TA—being more a problem of operational funding—or too expensive to fit within a particular TA.

4. Access to laws is crucial to the proper functioning of the rule of law. People must have access to the laws if they are to obey them; yet in the FSM, such access is frequently lacking. Statutes, regulations, and court decisions are not published regularly or, in some cases, not at

¹ The TA first appeared in *ADB Business Opportunities* on 13 January 2000.

² Besides this TA, TAs for privatization, corporate governance reforms, and state government capacity building are included.

all. Codification of statutes is absent in some jurisdictions and not up-to-date in any. The FSM Congress has started a codification project. Pohnpei State completed its codification project by the Office of Legislative Counsel (LC), and other state codes exist in looseleaf format and need updating. Yet, the national and state governments' executive and judicial branches do not have access to complete sets of national and state laws, let alone regulations. Case annotations to statutes, headnotes to court opinions, digests, indices, and other law-finding tools are the exception rather than the rule. Valuable documents, such as journals of the state and national constitutional conventions, are only available in limited numbers, and are rapidly deteriorating or disappearing. Court decisions at the National Supreme Court and state courts have been published to a limited extent, but a complete set of decisions is not available for the national and state courts. An urgent effort is needed to gather, organize, and publish the existing body of law in the FSM and its four states. Of equal importance in the future will be keeping that body of law up-to-date.

5. Access to laws is not enough for people who lack a fundamental understanding of the legal system. To be sure, lawyers will always be necessary, but people must know enough about the system to know when to seek counsel and how to use it most effectively. The Kosrae Court has undertaken a public education program of law and wishes to continue the program. At this stage of legal capacity in the FSM, a community education program at the most basic level is needed. Since there are no local newspapers, television and especially radio are the preferred media for such education in the FSM.

III. THE TECHNICAL ASSISTANCE

A. Objectives

6. The objectives of the TA are to assist the national and state governments to improve the efficiency and responsiveness of the legal system by making existing and future laws more available to the public and by advancing public understanding of the system. The TA will create a legal information system (LIS) and a program of community education on basic aspects of the legal system.

B. Scope

7. The scope of the TA will include (i) establishment of an LIS and (ii) community education on the legal system.

1. Legal Information System

8. The TA will create an electronic database eventually containing the statutes, regulations, court rules and forms, court decisions, attorney general (AG) opinions, constitutions, constitutional convention journals, appellate briefs, treaties, executive orders, policy statements, legislative rules, and other sources or statements of law in the FSM national and four state governments. The database will be located on an Internet web site to facilitate widespread access and frequent updating. The FSM has relatively high quality access to the Internet. Main government offices and education establishments have Internet access and the Telecommunications Corporation of the FSM (Telecom) provides Internet services to the public at a reasonable price. The web site will be designed for ease of use, preferably using HTML (as opposed to PDF) format. It will permit entire chapters or cases to be downloaded at a time, browsing that follows the structural framework of the codes, key word searching, and pinpoint links to individual sections as well as links to larger units.

9. Once established, the LIS will be managed by a part-time web master, who will periodically solicit each LC for recently passed statutes, a staff attorney in each court for recently issued opinions, and each AG for recently promulgated regulations. This person will be selected by the FSM Supreme Court and paid by the Government. Since these documents are already routinely produced in electronic form, it should be easy for the various government lawyers to comply with the requests of the web master. Indeed, given their own interest in obtaining greater access to laws, these government lawyers may well establish their own procedures for automatically sending completed documents to the web master.

10. In creating the LIS, the initial tasks will receive priority in the following order:

- (i) design the web site;
- (ii) codify and index the statutes in Chuuk;
- (iii) complete and update the statutory codes and indices in the other states;
- (iv) complete and update the national statutory code (starting with the official code kept by the national LC);
- (v) add state and national constitutions;
- (vi) add key regulations selected by each government;
- (vii) add court rules and, where available in electronic or scannable form, court decisions, including headnotes;
- (viii) conduct demonstrations of the LIS to users;
- (ix) produce users' manuals; and
- (x) provide training to users.

Thereafter, law sources not included above will be added to the database as time and resources permit.

11. It is proposed that the database be located at and operated from the Telecom headquarters in Pohnpei, where additional equipment will be necessary to accommodate the large amount of data available. The TA will include provision of that equipment and related software, together with any setup charges and necessary assistance in negotiating an appropriate agreement between the Government and Telecom. Thereafter, maintenance and operation of the LIS will be the Government's responsibility. Telecom indicated its willingness to accommodate the LIS in its headquarters. However, the consultant will be free to suggest alternative arrangements with other agencies including foreign agencies for setting up the LIS if they will be more cost effective than Telecom.

12. While the LIS web site will provide valuable access to many whose need for particular categories of law is sporadic, printed hard copies will still be needed for libraries, those without Internet access, and practitioners whose need to consult certain categories of law is frequent. It is expected that this need for hard copy, and its regular updating, will eventually be met by the

private sector, but that is unlikely to happen in the short term. Thus the TA will include the printing and binding of initial sets of at least the five statutory codes in sufficient number to permit reasonable distribution to interested parties.

2. Community Education

13. The TA will produce written materials, television programs, and a radio program explaining certain elements of the legal system for a variety of audiences. The audiences include adults and youths at primary, secondary, and tertiary school levels. The television programs will be in English and offered to the local television channel in each state.³ The radio programs will be translated into the four major indigenous languages and offered to the appropriate state-run radio stations. Experience has shown that such productions, if done right, will be popular and rerun several times.⁴

14. Likely topics include the meaning of rule of law as opposed to the rule of individuals, conflict of interest by government officials, the meaning of an independent judiciary (especially as a check on improper action by the other branches of government), and when and how to use the courts. Specific topics to be covered in the productions will be determined by the steering committee, with input from the consultant. The state courts will provide editorial review for appropriateness and relevance of content, level of sophistication, approach, and language.

15. Assistance will also be provided to the Kosrae state court, which has demonstrated a desire and capacity to produce legal education materials for purely local consumption. This will provide the potential for a greater focus on local peculiarities than is permitted by the primary, nationwide programs, and if successful, provide a useful model for legal associations or offices in the other states to follow.

C. Cost Estimates and Financing Plan

16. The total cost of the TA is estimated at \$370,000 equivalent, of which \$210,000 is the foreign exchange cost and \$160,000 equivalent the local currency cost. ADB will finance \$300,000 equivalent, covering the entire foreign exchange cost and \$90,000 equivalent of the local currency cost. The TA will be financed by ADB on a grant basis from the ADB-funded TA program. The Government will finance the balance of \$70,000 equivalent through the provision of office accommodation, remuneration of counterpart staff including a part-time web master, local ground transportation, local official telecommunications, and secretarial support. The detailed cost estimates and financing plan are provided in Appendix 2.

D. Implementation Arrangements

17. The TA will be implemented by the FSM Supreme Court, with primary staff assistance from its general counsel. The general counsel will be guided by a steering committee chaired by the chief justice of the FSM Supreme Court and have additional members representing private sector legal practitioners, a state court, the national and state AGs, the national and state LCs, the Department of Economic Affairs, the College of Micronesia, a chamber of commerce, and a local nongovernment organization.

³ Kosrae currently does not have access to television, but is expected to have it by the end of this year.

⁴ This has been the case with similar productions by Micronesian Seminar, a local nongovernment organization, funded under a recent ADB TA to improve use of land.

18. An international consultant will be recruited for a total of 6 person-months to create the LIS. A separate international consultant will be recruited for 5 person-months to prepare the community education materials. The international consultants to be financed by ADB will be individual consultants and will be selected and engaged in accordance with ADB's *Guidelines on the Use of Consultants*. Both will undertake work that is likely to entail the use of the College of Micronesia and its state campuses and local nongovernment organizations. The TA is planned to commence in November 2000, and end in November 2001. The terms of reference is in Appendix 3.

IV. THE PRESIDENT'S DECISION

19. The President, acting under the authority delegated by the Board, has approved the provision of technical assistance, on a grant basis, to the Government of the Federated States of Micronesia in an amount not exceeding the equivalent of \$300,000 for the purpose of Improving Access to Laws, and hereby reports such action to the Board.

TECHNICAL ASSISTANCE FRAMEWORK

Design Summary	Performance Targets	Monitoring Mechanisms	Assumptions and Risks
1. Goal			
Enhance governance by improving the efficiency and responsiveness of the Federated States of Micronesia (FSM) legal system.	Improved public access to and understanding of laws	<ul style="list-style-type: none"> Progress reports Technical Assistance steering committee TA final report 	Government commitment to improve governance
2. Purpose			
Improve access to laws by creating a legal information system (LIS).	<ul style="list-style-type: none"> Improved judging Improved legal advocacy and advising Improved law making Improved implementation of laws Improved knowledge of the law by the public, including local and foreign investors Preservation of important legal documents 	<ul style="list-style-type: none"> Progress reports TA steering committee TA final report Feedback from stakeholders 	<ul style="list-style-type: none"> Capacity of state and national legal offices to aid in creating the LIS and thereafter maintain it Suitable contractual arrangements with operator of the databank and with the web master
Improve public understanding of the legal system.	<ul style="list-style-type: none"> Greater appreciation of the proper roles of courts, when and how to use them, when assistance of counsel is needed, and how to find it Increased awareness of and vigilance against conflict of interest on the part of public officials Increased resort to alternative dispute resolution Greater understanding of the difference between rule of law and rule of individuals 	<ul style="list-style-type: none"> Progress reports TA steering committee TA final report Feedback from stakeholders 	Positive response and understanding of the population with regard to the community education program
3. Outputs			
Legal information system	<ul style="list-style-type: none"> Creation of web-based, electronic database of laws and court decisions of all five FSM governments 	<ul style="list-style-type: none"> Progress reports Acceptance Letter issued by TA steering committee TA final report 	<ul style="list-style-type: none"> Cooperation of state and national government legal offices
Community education program	<ul style="list-style-type: none"> Creation of 2 articles, 2 videos, and 1 radio program for distribution throughout the FSM Creation of more focused booklet and radio programs for use in one state as a potential model for others 	<ul style="list-style-type: none"> Progress reports TA steering committee TA final report Feedback from public 	<ul style="list-style-type: none"> Cooperation from local radio and television stations Public apathy

(Reference in text: page 1, para. 1)

Design Summary	Performance Targets	Monitoring Mechanisms	Assumptions and Risks
Establishment of LIS	<ul style="list-style-type: none"> • LIS consultant for 6 person-months • Computer hardware and software • Local counterpart staff 	<ul style="list-style-type: none"> • Progress reports • TA final report 	<ul style="list-style-type: none"> • Cost estimates are sufficient • Availability and timeliness of inputs • Assignment of sufficient local staff to the TA
Community education	<ul style="list-style-type: none"> • Community education consultant for 5 person-months • Local counterpart staff and cooperating agencies. 	<ul style="list-style-type: none"> • Progress reports • TA final report 	

COST ESTIMATES AND FINANCING PLAN
(\$'000)

Item	Foreign Exchange	Local Currency	Total Cost
A. Asian Development Bank Financing			
1. Consultants			
a. Remuneration and Per Diem	160	0	160
b. International and Local Travel	15	5	20
c. Data Collection and Input	0	40	40
2. Equipment	15	0	15
(Computer hardware and software)			
3. Translation, printing, and binding	0	25	25
4. Local Travel for Consultation	0	10	10
5. Contingencies	20	10	30
Subtotal (A)	210	90	300
B. Government Financing			
1. Office Accommodation and Transport	0	40	40
2. Remuneration and Per Diem of Counterpart Staff	0	20	20
3. Others	0	10	10
Subtotal (B)	0	70	70
Total	210	160	370

Source: Staff estimates.

(Reference in text: page 4, para. 16)

OUTLINE TERMS OF REFERENCE

1. Two international consultants will be engaged under the Technical Assistance (TA). One will have expertise in establishing electronically based legal information systems (LISs). The other will have expertise in community education. Both will undertake work that is likely to entail the College of Micronesia and its state campuses and local nongovernment organizations for activities not requiring the level of expertise of the consultant (for example, scanning and inputting documents, printing and binding, narrating or acting, translation, or videography).

A. The LIS Consultant

2. The LIS consultant will perform the following duties:

- (i) Meet with legal practitioners in each of the national and state legislative council (LC) offices, supreme courts, and attorney general (AG) offices to identify the exact status of statutes, cases, regulations, and other law sources within the purview of each such office. Obtain copies of such laws in the most usable form available.
- (ii) Organize the Chuuk State statutes into a code, including an index, along lines similar to those of the other Federated of Micronesia (FSM) codes and following such reasonable suggestions as may be received from the Chuuk AG and LC.
- (iii) Design a web site to accommodate the existing and future codes, regulations, cases, rules, constitutions, and other law sources in the FSM; the web site will comply with the description within the body of this TA report.
- (iv) Recommend partner web sites, e.g., the University of South Pacific law school web site, to which the LIS can be linked to maximize dissemination of information.
- (v) Specify and assist in procuring the necessary computer hardware and software.
- (vi) Update or produce electronic versions of the codes (including indices), cases, court rules, selected regulations, and other documents and place them on the web site.
- (vii) Assist in developing headnotes and digests for court decisions where they are not being produced already.
- (viii) Develop protocols for backing-up web site data to protect against its loss, correcting errors discovered in the web site, and periodically updating the data in the web site by adding newly enacted statutes, newly issued case decisions, etc.

(Reference in text: page 4, para. 18)

- (ix) Test and debug the web site; demonstrate the LIS to users.
 - (x) Produce users' manuals and provide training to users.
 - (xi) Print and bind, in loose-leaf format suitable for periodic updating through insertion of replacement pages, 90 copies of the national constitution and statutory code, and 60 copies each of the state constitutions and statutory codes, or such other combination of numbers as the steering committee may direct provided that the total cost to the consultant is not thereby increased.
 - (xii) Deliver the hardcopy codes to the steering committee, and propose a distribution to libraries, courts, AGs, LCs, Micronesian Legal Services, public defenders, other government offices, and the private sector, both within and outside of the FSM.
 - (xiii) Develop a job description and statement of qualifications for the web master and advise the steering committee on filling the position, ideally with a citizen of the FSM.
3. The LIS consultant should have a postbaccalaureate degree in law or a related field, experience in codifying laws, experience in creating computer databases and web sites, and experience working in Pacific island nations.
4. Upon TA completion, the LIS consultant will have produced and delivered a functioning, FSM-wide legal information system that contains at least the documents specified in the body of this TA report (plus the hardcopies specified in this appendix). The FSM will then assume responsibility for operating, updating, and expanding the system.
5. The LIS consultant will produce an inception report to ADB and the steering committee within two weeks after the commencement of the TA and thereafter quarterly progress reports. The consultant will submit a draft final report two weeks before TA completion. The final report will be finalized and submitted to ADB and the steering committee after incorporating the comments from ADB and the governments.

B. The Community Education Consultant

7. The community education consultant will perform the following duties:
- (i) Work with the steering committee to identify the areas of law and governance that are most amenable to and in need of public education, and the specific messages to be imparted in those areas.
 - (ii) Work with the state courts to review appropriateness and relevance of material content, level of sophistication, approach, and language.

- (iii) Write two plain-language articles and distribute them broadly throughout the FSM by mail, e-mail, and posting on a suitable web site in a form that can be easily downloaded.
- (iv) Develop and produce two programs of approximately 30 minutes each on videotape targeted at the general English-speaking audience throughout the FSM and to be aired on the public television (TV) station in each state and sent in taped copy to communities that lack television. At least partial duty will be done by utilizing the same material for both the radio and TV shows. TV shows will be designed in a way that the voice track can be used, at least in part, on radio shows.
- (v) Develop and produce one radio program of approximately 30 minutes in English, Chuukese, Kosraean, Pohnpeian, and Yapese to be aired on the public radio station in each state and sent in taped copy to communities that lack radio. Seek to develop local capacity to produce similar programs in each state by assisting local radio personnel to do the translations from English and necessary retaping.
- (vi) Provide assistance to the Kosrae State Court in its project to utilize a summer law clerk, under the supervision of the chief staff counsel, to produce a simple booklet and radio program explaining in plain language certain basic laws of Kosrae State and possibly the nation.
- (vii) Identify appropriate persons and institutions and train them to continue with the education program.

8. The community education consultant should have experience in designing community education programs, preferably in Pacific island nations, experience producing videos and radio programs, and a proven ability to communicate effectively with indigenous people.

9. At the completion of the TA, the community educational consultant will have produced and distributed two written articles, two TV programs, one radio program, and (in Kosrae only) a booklet and radio program.

10. The community education consultant will produce an inception report to ADB and the steering committee within two weeks after the commencement of the TA and thereafter quarterly progress reports. The consultant will submit a draft final report two weeks before the end of the TA. The final report will be finalized and submitted to ADB and the steering committee after incorporating the comments from ADB and the governments.