

Understanding Land Issues and Their Impact on Tourism Development

A Political Economy Analysis of Pohnpei, Federated States of Micronesia

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Access to land is a primary requirement for tourism development. Land is needed for tourism infrastructure and facilities, and for tourism-associated businesses and services. In the Federated States of Micronesia (FSM), the limited land area, the growing population, and the increasing economic activities in the region have placed greater pressure on the traditional landownership and the need to improve security of rights, land management, and investment policies. Tourism will not develop without the involvement of local villages and community members who are the major landowners in the FSM. The complex landownership system makes access to land difficult and risky. Both formal and informal institutions fall short in coping with the modern land market. These compounding issues have led to underutilized and unproductive lands, hampering the growth of the tourism industry.

The Government of the FSM is keen to improve the business environment for tourism, setting out an agenda for key tourism development reforms.

To guide the planning and implementation of tourism development in the FSM, the Asian Development Bank (ADB) conducted a political economy analysis of the impact of land issues on tourism development, focusing on Pohnpei, one of the FSM's largely autonomous four states.



The Liduduhniap Falls, a privately owned tourism site in Pohnpei, remains undeveloped. Occasional visitors informally pay the landowners a small amount to explore the site.

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The deep-rooted and complex land ownership systems, the intricate political and cultural behavior, and the weak policies and institutional systems have a significant impact on tourism development. In the short and medium term, community involvement and fragility-

sensitive approaches can be considered so as not to do harm when planning and implementing development reforms, particularly in tourism. Land reform, on the other hand, may be considered a long-term solution.

Setting the Scene

The FSM comprises four states—Chuuk, Kosrae, Pohnpei, and Yap—each with its own government and identity. The planning, management, and delivery of public services are largely the responsibility of each state government. The state governments have exclusive power to deal with lands and leases, and over the regulation of foreign investment, distribution of federal tax revenue, and access to the United States (US) Compact of Free Association (Compact) grants.¹

The FSM's economy is dominated by the public sector, with a private sector producing



Large business establishments in Pohnpei are usually owned by a family or a clan. A family may own a very diversified chain of businesses, including resort, restaurant, gasoline station, and grocery store.



The sectors that seem to offer the most potential for short-term income-generation are fisheries and tourism. Agriculture has some potential, particularly for the domestic market, but the small land area limits large-scale farming for export.

goods and services mainly for government consumption. Apart from the government, the leading sector contributing to GDP is construction. The overall economic growth remains sluggish with expected GDP of 2.3% in 2015.² The country's economic performance in agriculture, domestic fisheries, and tourism is weak. Key development challenges, such as underdeveloped private sector, rising trade deficit, and high migration rates, are compounded by limited and costly air and sea transport.

¹ When the FSM became independent in 1986, it entered into the Compact which “provides for US economic assistance (including eligibility for certain US federal programs), defense of the FSM, and other benefits in exchange for US defense and certain other operating rights in the FSM, denial of access to FSM territory by other nations, and other agreements.” The Compact was amended in 2003, and the FSM and US governments officially implemented the amended Compact in 2004. The US provides direct assistance to the FSM, including additional federal grants and services, every year until 2023. See UScompact.org. About the Compact of Free Association. www.uscompact.org/about/cofa.php and US Department of State. www.state.gov/r/pa/ei/bgn/1839.htm

² ADB. 2015. *Asian Development Outlook 2015: Financing Asia's Future Growth*. Manila.

The government is keen to push tourism development as one of the key drivers of the economy and to adopt a national tourism policy to help meet its challenges. Access to land is central to tourism challenges as it enables

tourism growth particularly through tourism site management, expansion of supportive tourism infrastructure and facilities, and promotion and diversification of tourism sites and products.

Land Issues Affecting Tourism Growth and Development

As there are not enough public lands (owned by the government) for tourism development in Pohnpei,³ access to private lands (owned by individuals, families, or clans) is important. However, the complex system of traditional ownership that dates back centuries, the political and cultural dynamics, and the land policies and institutions have been factors in the sluggish performance of the tourism industry.

COMPLEXITIES OF TRADITIONAL LANDOWNERSHIP

The government describes landownership in the FSM as “one of smallholdings. Most property is held as family trusts, and land use rights are passed down from generation to generation within the extended family system. Subsurface property rights are synonymous with surface rights. There are no state-owned subsurface mineral or water rights in any of the states. Landownership is limited by the Constitution to citizens. Even domestic corporations that have noncitizen shareholders may not own land. Noncitizen individuals and corporations may lease either public or private lands.”⁴ Although it is illegal to sell lands in Pohnpei, there are many recorded cases of “gifts” of land with widely known, but unrecorded, concurrent payments.

FSM citizens treat land as their most significant asset. The government states that “leasing of private lands in particular can be time-consuming, due to fractional ownership and uncertain boundaries and titles. Many parcels of land are held by families or clans that may have different factions, all of whom assert interest in the land” (footnote 4).

In Pohnpei, unless a deceased’s will specifies otherwise, children inherit land in equal portions. This has led to an increasing number of smaller land parcels, with some prospective, or actual, titleholders residing overseas, making for an increasingly fragmented and complex system of ownership and use.

POLITICAL AND CULTURAL DYNAMICS

Land as identity rather than economic commodity. The land system in Pohnpei, as in the rest of the FSM, is intricately connected to people’s perceptions of their identity and purpose. Land is not primarily an economic commodity or a factor of production as it is in more developed countries; it is more broadly embodied in a sense of history and community. Any effort to alienate land, alter the present use of land, and reform the land management system must, therefore, be carefully and sensitively addressed taking into account the local culture.

³ Public lands are Kolonia, Sokehs, the Madolenihmw old agriculture holding, high watersheds, and areas below the high water mark.

⁴ Government of the Federated States of Micronesia. www.fsmsgov.org/info/geog.html

Adherence to traditional leadership. The elected and executive leadership of Pohnpei and the FSM have acted as champions of tourism development and required reform, but they are also subject to the traditional leadership of the *nahnmwarkis*.⁵ The *nahnmwarkis* are village-based traditional chiefs who play a significant role in protecting and maintaining the state's traditional culture and in ensuring political and social stability. Their roles also include protecting the ancestral lands that are much needed for tourism development.

International and religious influence. The earlier US government administrations as well as local church officials have long encouraged the FSM and the previous Trust Territory of the Pacific Islands⁶ to protect resources, assets, and opportunities for local development, thus deterring foreign investment. Investment by the state government in the production of goods and services, which is usually the domain of the private sector, has also been encouraged. FSM has a long history of public sector dominance of the economy, which has left little room for private sector development. The states pursue policies of state investment and private sector protection, creating a difficult environment for business. These policies have hardly changed since the US administration of the Trust Territory of the Pacific Islands. The four states and the national government have committed to investments by the state and have not supported private sector-led growth, with direct foreign investment most noticeably repelled.



The *nahs* is a meetinghouse in Pohnpei used for traditional leaders' meetings as well as for special feasts and celebrations. The *nahnmwarkis* are highly respected by the communities and are given a more special seat in the *nahs* than a public elected government official.

POLICY AND INSTITUTIONAL CONSTRAINTS

The Pohnpei government has some of the apparatus of a more modern land management system. Systems of land survey, recording of land titles, land registration, securing registered title, recording land transactions, and using public lands (with mandated development) are all established. The means to assess the environmental impact of any land investment proposal and the settling of landownership and use disputes go through the Court of Land Tenure and, if necessary, the higher courts.

However, the policies in place and limitations of the institutional systems constrain the productive use of private lands for economic growth. The FSM Strategic Development Plan 2004–2023 acknowledges these constraints (Box 1).

⁵ Each municipality or territory in Pohnpei has *nahnmwarkis* or traditional chiefs, who are treated and respected like kings. The chieftainship is passed on within the chief's clan. A *nahnmwarki* has a designated servant called the *wasahi*. The clan of the *wasahi* is bound to serve the clan of the *nahnmwarki*.

⁶ The Trust Territory of the Pacific Islands was a United Nations trust territory in Micronesia (western Pacific) administered by the United States from 1947 to 1986.

Box 1: Land Tenure System Constraints on Economic Use

Limitations in systems to support individual titles. A concern is the suitability of land management systems needed to support evolving land tenure based on individual titles and rights to the current system of communal ownership. Effective institutions and systems are needed for land title registration, land purchase and leasing, mortgage, and increasing public awareness and understanding. Weak systems have resulted in (i) constraints in accessing government and private lands for production and investment purposes, (ii) barriers to new business entry, (iii) obstacles to long-term land or lease-secured lending, and (iv) distorted allocation and land use patterns. The extent to which land can be leveraged and mortgaged is important for increasing productive activity and incomes. Land assets that become locked outside the modern market economy cannot be leveraged or redeployed for production. The overall effect is that many landowners are asset-rich and income-poor.

Slow land title registration. The Federated States of Micronesia (FSM) uses a compulsory adjudication and registration system that aims for a complete survey of FSM lands and registration of titles. Some factors contribute to a failure to meet survey and titling targets, e.g., incomplete, out-of-date, and deteriorating land registers.

Inefficient land markets. In a typical land transaction in the FSM, sales require individual titles, and the ability to understand and manage land use and transfer processes from owner to buyer is important. In Pohnpei, however, it is illegal to sell lands. According to the Constitution of the State of Pohnpei (Article 12, Section 5), “No land shall be sold, except as authorized by statute.” This includes how to arrange financing and lease land or to sell it for a fair price. Lack of information on prices and land values can bring difficulties to owners and buyers. The lack of public (or private) dissemination of land transaction information and the informal property market could result to inefficient land markets.

Restrictions on leases. Restrictions on the length of leases may not give sufficient time for investors to realize an adequate or competitive return on investment.^a The lessors often do not understand the nature of the lease and the different ways in which rents can be charged to ensure the intended use of the land, a fair income, and security of tenure for the lessee. Lease conditions may not be in the best interests of either party.

Limitations on the use of secured loans raising lending risks. Currently, only the FSM Development Bank and the housing authorities are permitted to directly secure loans through mortgages. Foreign commercial banks are not permitted to own land and, therefore, cannot arrange mortgage-secured lending. The alternative, Deed of Trust, is often poorly understood by borrowers and considered a second-best option by banks. This limits the options on loan foreclosures and, therefore, increases the risks from poor loan management and default. This also limits access to commercial finance for development.

^a According to the Constitution (Article 12, Section 1), “No lease of land, except from the Government or as provided in Section 4 of this Article, may exceed twenty-five years [subsequently increased to 55 years]. The right for option to renew and other protections shall be provided by statute.”

Source: FSM. Strategic Development Plan (2004–2023).

Weak policy on foreign investment. In addition to the issues outlined by the FSM Strategic Development Plan, weak policies on foreign investment can deter tourism growth. Foreign investments can greatly fill in the capacity gaps of local investors in Pohnpei. However, Pohnpei has not fully liberalized foreign investment, including investment in tourism. Foreign investment challenges are apparent in legislation and by the protective actions of local business leaders when vested interests are at stake. This has resulted in foreign investors’ hesitation, as seen in minimal investments, and consequent deterioration of the few foreign-owned tourism assets.



Typical commercial establishments in Pohnpei are usually one-story or two-story buildings. Pohnpei’s economy is mostly driven by the public sector, which is more capable of establishing high-rise buildings than the private sector.

Pohnpei has recorded a series of commercial disputes between government and business that includes the few foreign investors, foreign nongovernment organizations, and traders. These disputes have covered access to land and the legality of existing contracts and permits. This litigious history leaves a legacy that can deter new foreign investment, especially the kind of investment that is interested in establishing a long-term presence, expanding that presence, employing local people, contracting local services, and adding local economic value.

Limitation to foreign investments can also hinder private sector development. Pohnpei's law on foreign investment has changed a number of times, with the Foreign Investment Act, 2011 as the most recent. The aim was to liberalize the law, but it remains in favor of domestic business interests (Box 2).

Box 2: Limitations on Foreign Ownerships

All of the states have limits on foreign ownership of small and medium-sized businesses. Large projects are assessed on a case-by-case basis. The states require separate applications for foreign investment permits. Foreign investment is strictly limited by local ownership (51%–60%) or a residency requirement of more than 5 years.

While the Government of the Federated States of Micronesia (FSM) expresses public interest in finding ways to increase foreign investment, there are so many structural impediments to foreign investment and economic progress in general that would require constitutional changes, which are unlikely in the foreseeable future. The FSM scores in the lowest quintile in almost all measures of economic activity and the climate for doing business. The most important impediments derive from land and contract issues. Foreign ownership of land is prohibited and much of the land is owned and passed on within the clan structure, leading to conflicting title claims, the need to negotiate leases with multiple parties, and the possibility of dramatic changes when the original senior lessor dies. There is no system for land title insurance in any of the four states. The combination of these factors placed the FSM at 189 out of 189 in registering property in the World Bank's Doing Business 2015 report.

Sources: US Department of State. Diplomacy in Action. www.state.gov/r/pa/prs/ps/2014/01/220521.htm (accessed 4 December 2014); World Bank Group. 2015. *Doing Business 2015*. Washington, DC. www.doingbusiness.org/data/exploreconomies/micronesia/

What Can Be Done

In the early part of the first decade of 2000s, land reform was attempted under ADB's Private Sector Development Program. The program's objectives are to (i) assist the government in implementing its economic development strategy for private sector-led economic growth; (ii) improve the policy and legal environment for private sector development; and (iii) strengthen capacity to manage land, labor, and capital resources. However, the desired outcomes were only partially achieved due to highly constrained use of private lands. ADB's Independent Evaluation Department reports that "access to land use and lease remains highly constrained, and the difficulty in use of land as collateral continues to limit access to commercial bank lending."⁷

The complex landownership systems and intricate political and cultural behavior that have been there for centuries may be impossible to uproot; however, community involvement and fragility-sensitive approaches could be considered in the short or medium term so as not to do harm when planning and implementing development reforms particularly in tourism. In the long term, and depending on the government's commitment and the presence of political will, land and institutional reforms may be considered to advance the productive use of land and to address the remaining weaknesses of land use and management system.

⁷ ADB. 2013b. *Federated States of Micronesia: Private Sector Development Program*. Manila. See also ADB. 2014. *Federated States of Micronesia: Private Sector Development Program*. Manila. www.adb.org/documents/federated-states-micronesia-private-sector-development-program-0

COMMUNITY INVOLVEMENT

Since community members dictate land use, community involvement and participation are critical in tapping private lands for productive use, especially for the tourism industry. The government and private investors have to deal with landowners directly or indirectly. Any prospect for tourism-related development relies on the enthusiasm and perceived incentives of private landowners. However, convincing the community to use their private lands for tourism is not only about the economic incentives; the roles of the local communities have to be clearly communicated and the required capacity building should be provided.

The government is maintaining 18 tourism sites, and four of these are privately owned. The private owners appear to be dependent on the government in maintaining their own properties for tourism. In addition, access to state-owned tourist sites would require tourists to pass through privately owned lands where they need to pay for the right-of-way. Going to Nan Madol, for example, requires a tourist to pay three times since, in order to reach the site, he or she needs to pass through three pieces of lands with different owners; otherwise, the tourist would need a boat ride (which is currently not commercially available).

The likelihood of pursuing tourism development is, therefore, strong where community interest is present. The case of the Nan Madol is a good example of an initiative led by the community (Box 3).

FRAGILITY-SENSITIVE APPROACHES

The fragile situation⁸ of the FSM as a whole may have been compounded with the complex political, cultural, and traditional dynamics in Pohnpei. It is, therefore, important that application of fragility-sensitive approaches

Box 3: Community Initiative to Promote Historical Site

Nan Madol is one of the historical sites in Pohnpei considered a marvel of ancient engineering. The Pohnpei state government constitutionally owns the site. However, it is also regarded as the property of the *nahnmwarki* (traditional chief) of Madolenihmw and his clan; Nan Madol is in Madolenihmw. Under the leadership of the *nahnmwarki*, the landowners organized a corporation to help establish Nan Madol as a United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Site and, at the same time, fund site clearance. UNESCO's requirement is to preserve the area by having a buffer zone around the site where commercial establishments would not be allowed. Around 36 landowners have been consulted in this initiative. Having a landowners' corporation is expected to facilitate a more convenient and rightful way of collecting tourists' access fees to be given to surrounding landowners. The site has been on the tentative list of UNESCO since 2012.



One of the sections of Nan Madol is believed to host gatherings of nobility and chiefs many centuries ago.

Source: Consultant interviews.

should fit into the local context as well as into the existing traditions and norms.

Exploring easily accessible lands. Given the limited public lands in Pohnpei, there should be a mapping of private lands whose owners are open to development and of lands that are less problematic in terms of ownership. Access to land

⁸ A fragile situation can be characterized by a country's remoteness, economic insecurity, weak governance, and vulnerability to natural hazards.

will most likely determine the most achievable projects. Interviews with some landowners show their willingness for their properties to be developed as long as they have a fair share of the investment return and government support. These projects, when implemented successfully and where impacts are noticeable, could attract more investments. Lessons will also serve as important inputs on how tourism ventures could be successful.

Full participation and bottom-up approach.

A 360-degree approach to participation, including all stakeholders when possible, should be considered for a meaningful design of tourism projects. As landownership cuts across sectors and positions, reforms in tourism development need to involve responsible government officials and officers, business owners (foreign and local), nongovernment organizations, landowners, visitors, and, most importantly, the traditional leaders. Consulting people at the grassroots level (government officers working directly with the community, the community people themselves) should not be overlooked because they are directly affected and they are the ones who will practically determine the sustainability of any forms of tourism development. Thus, their views should be incorporated.

Getting the support of traditional leaders is the most important participatory approach, they are highly regarded by both the government and

community people on traditional landownership. It is also a practical approach to look for opportunities where there are already tourism initiatives that are already led and owned by the community (Box 3).

Strategic communication. Complementing the participatory approach, strategic and meaningful communication can contribute to well-informed stakeholders from top to bottom. Often, it is the lack of understanding among stakeholders that make them not support the proposed tourism investments. Proper communication and education of the draft National Tourism Policy⁹ to legislative bodies (whose approval will dictate the rolling out of tourism plans), as well as to the communities, particularly the landowners (whose support is needed to upgrade and maintain the tourism sites), should not be undermined.

Long-term support. Tourism development involving the full participation of landowners may take time, but this can warrant a more sustainable venture. Gradual steps on implementing tourism projects will allow time for the community members (including landowners) to understand the requirements and benefits of tourism development. To maximize local benefits, community members could be employed and undergo capacity building and training in the process. Long-term support from the government to monitor, regulate, and protect quality tourism activities should be established.

⁹ ADB supported the FSM government draft their National Tourism Policy under SSTA: 8494-FSM: Support for a National Tourism Sector Framework and State Government Tourism Action Plans.

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