

Proposal No.: CC-PR-4-27

Assigned to: Committee on Civil Liberties & Traditions

PROPOSAL TO AMEND CONSTITUTION

To enact a new section 14 of Article IV of the Constitution of the Federated States of Micronesia to recognize the right to a healthy environment.

Section 14.

Every person has the right to a healthy environment, and to reasonable government measures that protect and conserve the environment.

PURPOSE AND INTENT OF AMENDMENT:

This proposal intends to enshrine a constitutional right to a healthy environment. More than 100 States (i.e., countries) recognize the right to a healthy environment at the national level, including over 90 States in their national constitutions. Numerous major international human rights instruments—particularly regional instruments—also recognize this right. This recognition has accelerated in the last half-century or so, partly in reaction to major international environment conferences and their outcome documents and growing concerns about the state of the environment. According to a 2018 report by the United Nations Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: “Taking into consideration the ratification of regional human rights agreements and environmental treaties, constitutions and national legislation, more than 150 States have already established legal recognition of the right to a healthy environment, with corresponding obligations.”¹ Such recognition sometimes refers to different or additional qualifiers for “environment”—e.g., “clean,” “sustainable,” “safe”—than just “healthy,” but for the sake of conciseness as well as in recognition that several of those qualifiers are near-synonyms, this proposal focuses on a “healthy” environment. Only if the environment is “healthy” can all other benefits flow, including benefits to human societies (who will be the ones to enjoy a “clean,” “safe,” and “sustainable” environment).

Despite the global trend discussed above, the Federated States of Micronesia has not formally established legal recognition of the right to a healthy environment. The placement of this proposed amendment in Article IV of the Constitution of the Federated States of Micronesia is intended to underscore that someone who does not benefit from a healthy environment will likely not be able to enjoy a large number of other core human rights, including the rights to life, to adequate food, to adequate water, to health, to an adequate standard of living (including adequate housing), to the productive use and enjoyment of property, and to cultural practices and traditions; as well as the rights already enshrined in Article IV.

Enshrining a constitutional right to a healthy environment will, among other things, spur (if not obligate) the national and state governments of the Federated States of Micronesia to take

¹ See the report at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/231/04/PDF/N1823104.pdf?OpenElement> or <https://bit.ly/2R85vgz>.

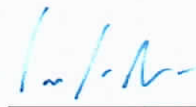
concrete actions to fulfill the right (e.g., provide clean and safe water to the people of the Federated States of Micronesia, manage local/municipal waste sites in ways that minimize harms to human populations, reduce harmful emissions from government structures and activities, embrace renewable energy) and protect that right from being infringed through official governmental action. Enshrining the right will also give courts in the Federated States of Micronesia broader authority to strike down laws, regulations, and other governmental decrees and actions that undermine the right as well as provide the basis for enhancing public involvement in decision-making about government decrees and actions that could undermine that right.

On the international level, a constitutional recognition of a right to a healthy environment enhances the ability of the Federated States of Micronesia to hold accountable major emitters of greenhouse gases and other substances that are harmful to the environment. The more States recognize the right to a healthy environment—particularly small island developing States like the Federated States of Micronesia that are particularly vulnerable to environmental harms—the greater the likelihood of success for an argument that the right is now part of customary international law applicable to all States, including major contributors to the climate change crisis and related harms to the environment. Such harms would therefore be human rights violations, among other things.

The proposed amendment recognizes that everyone—not just citizens of the Federated States of Micronesia—has the right to a healthy environment. This is in line with most of the provisions in Article IV of the Constitution, where the enumerated rights belong to any and all persons rather than just citizens of the Federated States of Micronesia (with the exception of section 12, as pertaining to the free movement of such citizens within the Federated States of Micronesia). It is also in line with the above-mentioned national constitutions, many (if not most) of which recognize the right as belonging to every person; as well as with relevant international law.

It is the intent of this proposal that the right to a healthy environment is self-executing, just like the other rights currently enshrined in Article IV of the Constitution. However, in order to give guidance to the various branches of the national and state governments in their interactions with the right, the proposal also enshrines a corollary right, one pertaining to the sort of government measures that could be taken by those branches as well as the framework under which those measures could be taken in order to supplement the enjoyment of the right to a healthy environment. The second part of the proposal aims at achieving that corollary purpose.

Introducer:



Victor Nabeyan

By request of the Delegation

Date: January 14, 2020