

STANDING COMMITTEE REPORT NO. CC-SCR-04-08

March 12, 2020

RE: CC-PR-4-52

The Honorable Redley Killion
President
Fourth Constitutional Convention of the Federated States of Micronesia
Palikir, Pohnpei FM 96941

Dear Mr. President:

Your Committee on General Provisions, to which was referred Delegate Proposal No. CC-PR-4-52, entitled;

TO AMEND ARTICLE XI, SECTION 6 OF THE CONSTITUTION OF THE FEDERATED STATES OF MICRONESIA TO PROVIDE THE STATE COURTS THE EXCLUSIVE JURISDICTION OF CASES WHERE INTEREST OF LAND IS AT ISSUE.

begs leave to report as follows:

Article XI, Section 6 of the Constitution currently provides:

“Section 6.

- (a) The trial division of the Supreme Court has original and exclusive jurisdiction in cases affecting officials of foreign governments, disputes between states, admiralty or maritime cases, and in cases in which the national government is a party except where an interest in land is at issue.
- (b) The national courts, including the trial division of the Supreme Court, have concurrent original jurisdiction in cases arising under this Constitution; national law or treaties; and in disputes between a state and a citizen of another state, between citizens of different states, and between a state or a citizen thereof, and a foreign state, citizen or subject.
- (c) When jurisdiction is concurrent, the proper court may be prescribed by statute.”

The intent and purpose of the proposal is to give State courts exclusive jurisdiction over cases where an interest in land is at issue.

Currently, Article XI, Section 6(a) which establishes the FSM Supreme Court’s exclusive jurisdiction includes an explicit exception for cases “where an interest in land is at issue.”

Article XI, Section 6(b) which establishes the types of cases where there is concurrent jurisdiction in the national courts and the trial division of the Supreme Court does not include an

explicit exception for cases “where an interest in land is at issue.” This has led to many cases that should have been heard in State Court because there is an interest in land at issue being filed in and heard by the FSM Supreme Court. This was not the intent of the delegates to the 1975 Constitutional Convention or the people who ratified the Constitution and has led to a disruption of the division of power between the States and the national government.

Article XI, Section 6(c) establishes that when jurisdiction is concurrent, the proper court may be prescribed by statutes. Congress has not established other national courts.

Land issues received considerable attention in the 1975 Convention. See 1975 Con.Con., SCREP Nos. 33, 36, and 48. It was the intent of the 1975 Convention that “[t]he powers . . . reserved to the states include . . . Land law [and] Inheritance law . . .” 1975 Con.Con., SCREP 33, Vol. II at 814 (Oct. 10, 1975). Your Committee agrees with the founders of this Nation that land law and legal issues surrounding land are state law matters which should be heard in the State Courts.

Your Committee believes that it is important to restate and reaffirm the intent of 1975 Convention:

“Your Committee is aware of the importance of land to all Micronesians and the need to give separate attention to land issues. . . . Traditional laws and customs still govern the ownership of land in all but a small number of cases. Land disputes are thus different from many other types of disputes which have been resolved by importation of foreign law and concepts. Our original laws are still with us to a large degree in the area of land. Your Committee believes there is a consensus at this convention in favor of preserving the viability of such traditional laws and customs – particularly in land cases.

At the same time, it is also clear to your Committee that the laws and customs in each state differ. There is no one “Micronesian land tenure law” which can easily be applied by a court to any case involving a land ownership dispute. **For this reason, it is your Committee’s belief that land issues must be resolved by the judicial system on the state level.”**

1975 Con.Con., SCREP 36, Vol. II at 858 (Oct. 14, 1975) (emphasis added).

Your Committee was in unanimous agreement that State Courts have exclusive jurisdiction in cases where an interest in land is at issue. See also 1975 Con.Con., SCREP 36, Vol. II at 851 (Oct. 14, 1975) (“Your Committee has noted the strong feeling among delegates to this Convention that land is a local matter, and has therefore provided accordingly in the judicial system.”).

Your Committee unanimously agreed that all cases where the judgment may result in the transfer of ownership of land is the exclusive jurisdiction of the State Court where the land is located.

Your Committee is in unanimous agreement that cases where an “interest in land is at issue,” defined as where ownership of land, transfer of title to land, and registration of land is at issue,

the State courts where the land is located have exclusive jurisdiction. The national courts do not have jurisdiction over these cases.

For the reasons stated herein, your Committee on General Provisions is in accord with the intent and purpose of the committee proposal attached hereto and recommends its passage on First Reading, and that it be placed on the Calendar for Second Reading for review by your Committee of the Whole, then placed on the Calendar for Final Reading after review by your Committee on Style and Arrangement.

Respectfully submitted,



Yoslyn G, Sigrav, Chairwoman

Delegate Salvador Iriarte, Iso Nahken



Andy P. Choor, Vice Chairman

Delegate Tency Tesiwo Liwy

Delegate Jack S. Fritz

Delegate Berney Martin

Delegate Kind K. Kanto

Delegate Salomon Saimon

Delegate ~~Cindy S. Mori~~ SIREN MORI

Delegate Johnson A. Asher

Delegate Marcus Samo

Delegate Victor Nabeyan

Delegate Asterio Takesy

Committee Proposal No. 04-07
Committee on General Provisions
Standing Committee Report No. 04-08

Relating to providing exclusive jurisdiction of cases where an interest of land is at issue in the State Courts.

RESOLVED, that the following be agreed upon as an amendment to the Constitution:

ARTICLE XI

Section 6.

- (a) The trial division of the Supreme Court has original and exclusive jurisdiction in cases affecting officials of foreign governments, disputes between states, admiralty or maritime cases, and in cases in which the national government is a party except where an interest in land is at issue.
- (b) The national courts, including the trial division of the Supreme Court, have concurrent original jurisdiction in cases arising under this Constitution; national law or treaties; and in disputes between a state and a citizen of another state, between citizens of different states, between a state or a citizen thereof, and a foreign state, citizen, or subject, provided, however, that the state courts shall have exclusive jurisdiction in cases where an interest in land is at issue.
- (c) When jurisdiction is concurrent, the proper court may be prescribed by statute.

Date: March 12, 2020

Offered by: Committee on General Provisions