March 16, 2012

The Honorable Isaac V. Figir
Speaker
17th FSM Congress
Palikir, Pohnpei State, FM 96941

Dear Speaker Figir:

I have approved the following congressional act to become Public Law No. 17-38, as follows:

Congressional Act No. 17-37, "AN ACT TO FURTHER AMEND TITLE 11 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA, AS AMENDED BY PUBLIC LAW NO. 11-72, BY CREATING A SUBCHAPTER I UNDER CHAPTER 6 CONSISTING OF EXISTING SECTIONS 601 THROUGH 610. CREATING A NEW SUBCHAPTER II UNDER CHAPTER 6 DEFINING CRIMES RELATING TO TRAFFICKING IN PERSONS AND RELATED OFFENSES, AND PRESCRIBING APPROPRIATE PENALTIES FOR THEIR VIOLATION, AND FOR OTHER PURPOSES."

This congressional act is an important first step in implementing some of the obligations that FSM assumed by accession to the Palermo Convention and the United Nations Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime.

The offenses that are defined in the act, and for which appropriate penalties for their violation are provided, are as follows: (i) human smuggling, (ii) aggravated human smuggling, (iii) human trafficking, (iv) trafficking in children, (v) aggravated human trafficking, (v) exploiting a trafficked person, and (vi) offenses relating to fraudulent travel or identity documents. The congressional act also establishes legal obligation of commercial carriers, and their staff, to verify that every passenger possesses the necessary travel documents, such as passports, visas and other supporting papers, and failing on this duty, a commercial carrier - and their staff - could be liable for a fine of $1,000 for every passenger. Repeated failure to comply with the obligation could result in revocation of license or cancellation of authority to operate.

Moreover, Congress further strengthened the version of the executive bill on the subject by providing an additional offense of aggravated human trafficking, in view of circumstances that would render an offense more serious - such as for instance - where a victim dies or
The Honorable Isaac V. Figir  
March 16, 2012  
Page 2

has suffered serious injury, or where a victim was exposed to HIV/AIDS. I also appreciate the initiative of Congress in vesting in the Secretary of Justice the authority to establish national guidelines and procedures for providing assistance and protection to victims and witnesses of trafficking.

Allow me to extend to Members of Congress and Staff my appreciation for their hard work during the regular session to ensure the immediate passage of the act, which is critical in the fight against human trafficking and for protection of human rights.

With warm personal regards, I remain.

Sincerely,

[Signature]

Manny Mori  
President

Enclosure:

cc:    Chief Justice, FSM Supreme Court  
Acting Secretary, Department of Justice  
Director, Office of SBOC  
Legislative Counsel, FSM  
Library, FSM  
PIO, FSM
February 21, 2012

His Excellency Manny Mori  
President  
Federated States of Micronesia  
Palikir, Pohnpei FM 96941  

Dear President Mori:

I have the honor to transmit herewith Congressional Act No. 17-37, "AN ACT TO FURTHER AMEND TITLE 11 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA, AS AMENDED BY PUBLIC LAW NO. 11-72, BY CREATING A SUBCHAPTER I UNDER CHAPTER 6 CONSISTING OF EXISTING SECTIONS 601 THROUGH 610, CREATING A NEW SUBCHAPTER II UNDER CHAPTER 6 DEFINING CRIMES RELATING TO TRAFFICKING IN PERSONS AND RELATED OFFENSES, AND PRESCRIBING APPROPRIATE PENALTIES FOR THEIR VIOLATION, AND FOR OTHER PURPOSES.", which was passed by the Seventeenth Congress of the Federated States of Micronesia, Third Regular Session, 2012, by a two-thirds vote of all the State delegations as required and as duly certified.

Sincerely yours,

[Signature]

Liwiana Ramon Ioanis  
Chief Clerk, Congress of the  
Federated States of Micronesia  

Enclosures
ACT NO. 17-37  
(CONGRESSIONAL BILL NO. 17-78, C.D.1)

We hereby certify that on February 9 the foregoing act passed Second and Final Reading of the Seventeenth Congress of the Federated States of Micronesia, Third Regular Session, 2012, by a two-thirds vote of all the State delegations as required under article IX, section 20, of the Constitution of the Federated States of Micronesia.

Isaac V. Figir  
Speaker  
Congress of the  
Federated States of Micronesia

Liwiana Ramon Ioanis  
Chief Clerk  
Congress of the  
Federated States of Micronesia
SEVENTEENTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA

THIRD REGULAR SESSION, 2012

CONGRESSIONAL BILL NO. 17-78, C.D. 1

PUBLIC LAW NO. 17-38

AN ACT

To further amend title 11 of the Code of the Federated States of Micronesia, as amended by Public Law No. 11-72, by creating a subchapter I under chapter 6 consisting of existing sections 601 through 610, creating a new subchapter II under chapter 6 defining crimes relating to trafficking in persons and related offenses, and prescribing appropriate penalties for their violation, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1. Section 1. Title 11 of the Code of the Federated States of Micronesia, as amended by Public Law No. 11-72, is hereby

2. further amended by creating a new subchapter I under chapter 6

3. entitled "General Offenses", comprised of existing sections 601 through 610.

4. Section 2. Title 11 of the Code of the Federated States of Micronesia, as amended by Public Law No. 11-72, is hereby

5. further amended by inserting a new subchapter II under chapter 6, entitled "Trafficking in Persons".

6. Section 3. Title 11 of the Code of the Federated States of Micronesia, as amended by Public Law No. 11-72, is hereby

7. further amended by inserting a new section 611 to subchapter II of chapter 6, to read as follows:

8. “Section 611. Citation. This act shall be known and

9. may be cited as the Trafficking in Persons Act of

10. 2012.”
Section 4. Title 11 of the Code of the Federated States of Micronesia, as amended by Public Law No. 11-72, is hereby further amended by inserting a new section 612 to subchapter II of chapter 6, to read as follows:

"Section 612. Definitions.

(1) "Child" means any person below the age of eighteen at the time of the commission of an offense under this chapter.

(2) "Commercial carrier" means a legal or natural person that engages in international or interstate transportation of goods or people for commercial gain.

(3) "Exploitation" means:

(a) the obtaining of financial or other material benefit from the prostitution of another person;

(b) the exaction of forced labor or services, or the obtaining of labor or services through deceit, fraud, or by means of a material misrepresentation;

(c) slavery or practices similar to slavery.

(4) "Forced labor or services" means work or services, the solicitation of financial or material benefits, or the donation of body parts or organs, exacted under the threat of any penalty and for which the person concerned has not offered himself or herself voluntarily. It does not include the
performance of reasonable and lawful work or services
by a child at the behest of a parent or legal
 guardian.

(5) "Practices similar to slavery" include debt
bondage, serfdom, and forced marriage.

(6) "Prostitution" means illicit sexual services
performed for financial or material benefit."

Section 5. Title 11 of the Code of the Federated States of
Micronesia, as amended by Public Law No. 11-72, is hereby
further amended by inserting a new section 613 to subchapter II
of chapter 6, to read as follows:

"Section 613. Offense of human smuggling. A person
who knowingly or recklessly arranges or assists
another person's illegal entry into any country,
including the Federated States of Micronesia, of which
the other person is not a citizen and has no lawful
right to enter, shall be guilty of human smuggling,
regardless of whether the smuggled person successfully
arrives in the receiving country. Upon conviction, a
person guilty of this offense shall be imprisoned for
not more than 10 years, fined not less than $5,000 but
not more than $20,000, or both."

Section 6. Title 11 of the Code of the Federated States of
Micronesia, as amended by Public Law No. 11-72, is hereby
further amended by inserting a new section 614 to subchapter II
of chapter 6, to read as follows:

"Section 614. Offense of aggravated human smuggling. A person who engages in human smuggling, as defined under section 613 of this title, by means of violence or kidnapping or under circumstances in which the life or safety of a smuggled person is or is likely to be endangered, shall be guilty of aggravated human smuggling, regardless of whether the smuggled person successfully arrives in the receiving country. Upon conviction, a person guilty of this offense shall be imprisoned for not more than 15 years, fined not less than $5,000 but not more than $25,000, or both."

Section 7. Title 11 of the Code of the Federated States of Micronesia, as amended by Public Law No. 11-72, is hereby further amended by inserting a new section 615 to subchapter II of chapter 6, to read as follows:

"Section 615. Offense of human trafficking. A person who knowingly recruits, transports, transfers, harbors or receives another person for the purpose of exploitation, by threat, use of force, abduction, fraud, deception, abuse of power or of a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation, shall be guilty of human trafficking.
Upon conviction, a person guilty of this offense shall be imprisoned for not more than 15 years, or fined not less than $5,000 but not more than $25,000, or both."

Section 8. Title 11 of the Code of the Federated States of Micronesia, as amended by Public Law No. 11-72, is hereby further amended by inserting a new section 616 to subchapter II of chapter 6, to read as follows:

"Section 616. Offense of trafficking in children. A person who knowingly recruits, transports, transfers, harbors, or receives a child by any means for the purpose of exploitation shall be guilty of child trafficking. Upon conviction, a person guilty of this offense shall be imprisoned for not more than 30 years, or fined not less than $5,000 but not more than $50,000, or both."

Section 9. Title 11 of the Code of the Federated States of Micronesia, as amended by Public Law No. 11-72, is hereby further amended by inserting a new section 617 to subchapter II of chapter 6, to read as follows:

"Section 617. Offense of aggravated human trafficking. A person who engages in human trafficking as defined under section 615 of this title or trafficking in children as defined under section 616 of this title shall be guilty of aggravated human trafficking if any of the following circumstances are
present:

(a) the offense involves serious injury or death of the victim or another person;

(b) the offense involves a victim who is particularly vulnerable, including a pregnant woman;

(c) the offense exposed the victim to a life-threatening illness, including HIV/AIDS;

(d) the victim is physically or mentally handicapped;

(e) the offense involves more than one victim;

(f) the crime was committed as part of the activity of an organized criminal group;

(g) drugs, medications or weapons were used in the commission of the crime;

(h) a child was adopted for the purpose of trafficking;

(i) the offender has been previously convicted for the same or similar offenses;

(j) the offender is a public official;

(k) the offender is a spouse or the conjugal partner of the victim;

(l) the offender is in a position of responsibility or trust in relation to the victim;

(m) the offender is in a position of authority concerning a child victim.
Upon conviction, a person guilty of this offense shall be imprisoned for not more than 30 years, or fined not less than $5,000 but not more than $50,000, or both."

Section 10. Title 11 of the Code of the Federated States of Micronesia, as amended by Public Law No. 11-72, is hereby further amended by inserting a new section 618 to subchapter II of chapter 6, to read as follows:

"Section 618. Offense of exploiting a trafficked person. A person who knowingly engages or participates in or profits from the exploitation of a trafficked person shall be guilty of an offense. Upon conviction, a person guilty of this offense shall be imprisoned for not more than 10 years, or fined not less than $5,000 but not more than $20,000, or both."

Section 11. Title 11 of the Code of the Federated States of Micronesia, as amended by Public Law No. 11-72, is hereby further amended by inserting a new section 619 to subchapter II of chapter 6, to read as follows:"

"Section 619. Consent of trafficked or smuggled person irrelevant. Consent to the act or acts constituting an offense on the part of a smuggled person under sections 613 and 614, or a trafficked person under sections 615, 616, 617, and 618, is not a legal defense."

Section 12. Title 11 of the Code of the Federated States
of Micronesia, as amended by Public Law No. 11-72, is hereby
further amended by inserting a new section 620 to subchapter II
of chapter 6, to read as follows:

"Section 620. Rights of Victims.

(1) A trafficked person shall not be subject to
criminal prosecution with respect to:

(a) the act of human trafficking;

(b) that person's entry into the receiving
country;

(c) that person's unlawful residence in the
receiving country; and

(d) that person's procurement or possession of
any fraudulent travel or identity document.

(2) The Secretary of the Department of Justice
shall establish national guidelines and procedures for
providing assistance to victims of trafficked persons
and witnesses of trafficking in persons, including but
not limited to:

(a) ensuring that victims, witnesses, and their
families are provided adequate protection if their
safety is at risk, including measures to protect them
from intimidation and retaliation by traffickers and
their associates;

(b) providing victims with the opportunity to
present their views, needs, interests and concerns for
consideration at appropriate stages of any judicial or administrative proceedings relating to the offense, either directly or through their representative, without prejudice to the rights of the defense;

(c) where the victim is an unaccompanied child, providing for the appointment of a legal guardian to represent the interests of the child, taking all necessary steps to establish his or her identity and nationality, and making every effort to locate his or her family when this is in the best interest of the child;

(d) where the victim is a national of the Federated States of Micronesia, facilitating and accepting the return of the victim without undue or unreasonable delay and with due regard for his or her rights and safety;

(e) where the victim is not a national of the Federated States of Micronesia and requests to return to his or her country of origin or the country in which he or she had the right of permanent residence at the time he or she was trafficked, facilitating such return, including arranging for the necessary travel documents, without undue delay and with due regard for his or her rights and safety;

(f) providing information to all victims on the
nature of protection, assistance and support to which they are entitled and the possibilities of assistance and support by non-governmental organizations and other victim agencies, as well as information on any legal proceedings related to them. Such information shall be provided in a language and form that the victim understands."

Section 13. Title 11 of the Code of the Federated States of Micronesia, as amended by Public Law No. 11-72, is hereby further amended by inserting a new section 621 to subchapter II of chapter 6, to read as follows:

"Section 621. Scope of application. The offenses defined in this chapter shall apply regardless of whether the conduct constituting an offense took place inside or outside the jurisdiction of the Federated States of Micronesia if:

(1) the Federated States of Micronesia is the receiving country, or if the exploitation occurs herein; or

(2) the acts or conduct constituting an offense under this chapter started, ended or occurred in part in the jurisdiction of the Federated States of Micronesia; or

(3) the offense is committed by a national of the Federated States of Micronesia or by a person who is
not a citizen of any country but has his or her habitual residence in the Federated States of Micronesia at the time of the commission of the offense; or

(4) the offense is committed against a victim who is a national of the Federated States of Micronesia."

Section 14. Title 11 of the Code of the Federated States of Micronesia, as amended by Public Law No. 11-72, is hereby further amended by inserting a new section 622 to subchapter II of chapter 6, to read as follows:

"Section 622. Offense relating to fraudulent travel or identity documents. A person who makes, obtains, gives, sells, or possesses fraudulent travel or identity documents or supporting papers for the purpose of facilitating human smuggling or human trafficking or for the purpose of facilitating the continued presence of a smuggled or trafficked person in the receiving country shall be guilty of an offense. Upon conviction, a person guilty of this offense shall be imprisoned for not more than 8 years, or fined not less than $5,000 but not more than $15,000, or both."

Section 15. Title 11 of the Code of the Federated States of Micronesia, as amended by Public Law No. 11-72, is hereby further amended by inserting a new section 623 to subchapter II
of chapter 6, to read as follows:

"Section 623. Obligation of commercial carriers.

(1) A commercial carrier shall verify that every passenger possesses the necessary travel documents, including passports, visas and other supporting papers, to enter the destination country and any transit countries.

(2) The requirement in subsection (1) of this section applies both to staff of the commercial carrier selling or issuing tickets, boarding passes or similar travel documents and to staff collecting or checking tickets prior to or subsequent to boarding.

(3) Commercial carriers, or persons referred to under subsection (2) of this section, which fail to comply with the requirements of this section shall be fined $1,000 for every passenger. Repeated failure to comply may be sanctioned by revocation of license, permit, certificate or authority to operate."
Section 16. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

March 16, 2012

Manny Mori
President
Federated States of Micronesia