

CIRCULAR

FILE: ORG 1/2, CONV 1/3/1, CONV 1/5/1 **TO:** SPREP National Focal Points
DATE: 25 August 2021 **CC:** CROP Organisations
CIRCULAR: 21/95
SUBJECT: **Withdrawal of Micronesian States from Pacific Islands Forum and effect on Waigani and Noumea Conventions**

Dear Members,

This Circular serves as SPREP's legal position regarding the withdrawal of the 5 Micronesian States (Federated States of Micronesia, Kiribati, Marshall Islands, Nauru and Palau) from membership in the Pacific Islands Forum Secretariat and the potential effect on their membership in the Waigani and Noumea Conventions

Waigani Convention, 1995

1. The Waigani Convention was opened for signature in September 1995. Article 22 relevantly states "The Convention shall be subject to ratification, acceptance or approval by Members of the South Pacific Forum."
2. The signature block of the Waigani Convention includes the above-cited Micronesian States, indicating they were all members of the South Pacific Forum (SPF) in September 1995, Palau being the last to join in 1995.
3. Federated States of Micronesia (FSM) became a Party to the Waigani Convention in 1996 and Kiribati in 2001.

Nauru and Palau both signed the Convention in 1995 but have not become Parties, however as signatories they still have an obligation under the Convention.

Marshall Islands neither signed nor is a Party to the Convention.

4. The South Pacific Forum is now, for all intents and purpose, the Pacific Islands Forum.
5. On 8 February 2021, the 5 Micronesian States jointly agreed to initiate withdrawal from the Pacific Islands Forum by denunciation. Currently, denunciation requires notification of the depositary government and takes effect 1 year from receipt of the notification by the depositary government.

6. It is submitted that once the criterion (need to be a member of SPF) to becoming a Party to the Waigani Convention was met, continuing membership in SPF (now Pacific Islands Forum) was not a necessary condition of retaining membership in the Waigani Convention. In other words, FSM and Kiribati will remain as Parties to the Waigani Convention despite no longer being members of Pacific Islands Forum.
7. The proper procedure for withdrawing from the Waigani Convention occurs in accordance with article 26 of the Waigani Convention. Neither FSM nor Kiribati have shown any intention to exercise that provision.
8. We therefore conclude that there is **no** effect on status or obligations of the 4 Micronesian States, (FSM and Kiribati as Parties and Nauru and Palau as signatories) under the Waigani Convention.

NOUMEA Convention 1986

1. The Noumea Convention, under art. 28, was opened for signature in November 1986 “by States which were invited to participate in the Plenipotentiary Meeting of the HighLevel Conference on the Protection of the Natural Resources and Environment of the South Pacific Region held at Noumea, New Caledonia from 24 November 1986 to 25 November 1986.” This meeting was attended by all 5 Micronesian States.
2. FSM (1988), Marshall Islands (1987) and Nauru (1995) are all Parties to the Noumea Convention.

Palau (1986) is a signatory only, however that still carries an obligation.

Kiribati is neither a signatory nor a Party.

3. Unlike the Waigani Convention, there is no requirement that membership of the Noumea Convention first requires membership of the Pacific Islands Forum. Accordingly, denouncing the Agreement Establishing the Pacific Islands Forum 2005 has no effect on the status of the Micronesian States in relation to the Noumea Convention.
4. Denunciation under the Noumea Convention occurs in accordance with article 32. None of the 3 Micronesian Parties has shown any intention to exercise that provision.
5. We therefore conclude that there is no effect on status or obligations of the 4 Micronesian States (FSM, Marshall Islands and Nauru as Parties and Palau as signatory) under the Noumea Convention.



Depositary

Under both the Waigani and Noumea Conventions the Secretary General of the Pacific Islands Forum Secretariat is the depositary. This function is entirely administrative and is unaffected by the Micronesian States' withdrawal from the Pacific Islands Forum. We note that other, non-Pacific Islands Forum States, can also become Parties to both Conventions.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Kosi Latu", is positioned above the printed name.

Kosi Latu
Director General

KL/CP/rmg