

Customary Law to Acquire Full Force of Law

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A number of the constitutions limit recognition of customary law to those customs and/or usages, which have the “force of law” in their respective territories. The question as to whether a custom has the “force of law” may be variously interpreted depending upon whether it is the community, the courts, or the legislature, which has the power to identify when a custom becomes law. Determining just when a custom acquires the “force of law” is of much importance for its wider recognition and application. This in turn is linked to the question of proof of customary law. A key aspect of Papua New Guinea (PNG)’s approach is that it brought the multiplicity of regimes of different cultures under a national framework and has given a place to customary law which is now constitutionally recognized as superior to the inherited common law. It places the local and traditional over the inherited and imported law, with the constitution placed over both. In this paper I examine customary law as in the context of the PNG Constitution.

Keywords: constitution, customary law, indigenous customs, human rights, courts, PNG

Introduction

Aristotle believed that law (*lus*) could arise by nature (*natura*), by statute (*lege*), and by custom (*consuetudine*), as well as by other ways (Aristotle *Rhetorica Ad Herennium* cited in Murphy, 2007, p. 57). The Greek philosophers distinguished between written law *nomos eggraphos* and unwritten laws *nomos agraphos*, used primarily to describe “... innate ‘laws’, or natural law” (Bergh, 1995, p. 6) and, much less frequently, customary law (Schiller, 1995, p. 33). For Aristotle customary law was, Murphy argues, considered superior to positive law an attitude, he suggests, stemmed from a belief that customary law was a manifestation of natural law and therefore immutable (Murphy, 2014).

Determining just when a custom acquires the “full force of law” is of much importance for its wider recognition and application. This is in turn linked to the question of proof of customary law. The PNG Constitution¹ (GovPNG refers to the Government of Papua New Guinea) attempts to clarify the regulation of customary law in Schedule 1.2 (Regulations of acts, etc.): “A provision of a Constitutional Law that provides for the regulation of an act or thing does not extend to prohibition, whether in law or in effect”.²

This partial limitation breaks with the common law tradition that to be recognized as binding a custom must be immemorial. In fact, the definition of “custom” or “customary law” does not insist on “immemorial” as its necessary property for recognition. For many years’ indigenous people struggled for recognition of their own customary laws, a non-state law which they consider binding upon them. It is their only source of law. Jennifer

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¹ Constitution of the Independent State of PNG available at www.paclii.org/.

² Constitution, Schedule 1.2, GovPNG (1975).

Corrin Care expressed that, “The Constitution of PNG elevates the status of custom and makes it clear that it will continue to develop and form part of the legal system” (Corrin Care, 2000).

And in so doing it recognizes and embraces the dynamic nature of customary law. PNG Constitution recognizes the continuing applicability of English common law but subordinate to the customary law³, albeit given recognition also in the Constitution.⁴

The article aims to illustrate the customary law in the context of the PNG people. It will focus on the area of customary law most important to the majority of, if not all, indigenous peoples—customary law, traditions, and customs related to the use of land, waters, and natural resources. I examine customary law as in the context of the PNG Constitution. The indigenous peoples’ right to self-determination is affirmed; the question which arises is just what this right entails.

PNG, Constitution, Customs & Recognition Act, and Underlying Law Act

PNG is the largest developing country in the Pacific. It gained its independence from Australia on 16 September 1975. It is located 160 km north of Australia in the South Pacific and shares a land border with Indonesia to the west, and ocean borders with the Solomon Islands to the east, and Australia to the south. With a population of about eight million, it is made up of more than 600 islands. It has over 860 different languages and tribes with their own distinct cultures. Administratively, it is made up of 19 provinces and 89 districts including the Autonomous Government of Bougainville. About 87 per cent of the population of PNG live in rural areas, and most rely on subsistence agriculture as their primary means of living. Accessibility to these rural areas is extremely difficult because of the rugged terrain. Most places are only accessible by air transport or on foot. PNG is a lower-middle-income country with a gross national income per capita of US\$2,530 in 2016 (World Bank, 2018).

Constitution

Of PNG contains what are generally called the National Goals and Directive Principles (NGDPs). These are guiding principles for governance and are non-justiciable. While not enforceable in a court of law per se, it is a requirement that all constitutional laws affecting the rights of an individual must have a reference point in these goals and principles.

The Preamble provides that respect for the dignity of the individual and community interdependence are basic principles of society; that we guard with our lives, national identity, integrity, and self-respect; that we reject violence and seek consensus as a means of solving common problems and that national wealth, won by honest, hard work, should be equitably shared by all.

The National Goals and Directive Principles direct all persons and bodies, incorporated and unincorporated, to be guided by the declared Directives in pursuing and achieving their aims.⁵ I state the National Goals and Directive Principles (NGDPs) of the Constitution both constitute aspirational principles and road signs for the development of the country—

Goal 1: Integral Human Development; Goal 2: Equality and Participation; Goal 3: National Sovereignty and Self-Reliance; Goal 4: Natural Resources and Environment; and Goal 5: Papua New Guinean Ways ...

³ Constitution Sch. 2.2(c), GovPNG (1975).

⁴ Constitution Section 9(f), GovPNG (1975).

⁵ Constitution, National Goals and Directive Principles (NGDPs), GovPNG (1975).

This last goal is designed to achieve development primarily through the use of PNG forms of social, political, and economic organization and is of special relevance to the present discussion. PNG Customs are assured mainly under Goal 5. It calls for the following—

1. A fundamental re-orientation of our attitudes and the institutions of government, commerce, education, and religion towards PNG forms of participation, consultation, and consensus, and a continuous renewal of the responsiveness of these institutions to the need and attitudes of the people; and

2. Particular emphasis in our economic development to be placed on small-scale artisan, service, and business activity; and

3. Recognition that the cultural, commercial, and ethnic diversity of our people is a positive strength, and for the fostering of a respect for, and appreciation of, traditional ways of life and culture, including language, in all their richness and variety, as well as for a willingness to apply these ways dynamically and creatively for the tasks of development; and

4. Traditional villages and communities remain as viable units of PNG society, and for active steps to be taken to improve their cultural, social, economic, and ethical quality.

Customs, Customs & Recognition Act 1963

The customary law, as one of the two parts of the underlying law, is declared one of “the laws” in Section 9(f) of the Constitution. The Constitution and other laws acknowledge customs but as part of the underlying laws of PNG. There are two Acts of Parliament which provide for the enforcement and application of customs or customary law in PNG, namely the Underlying Law Act (ULA)⁶; and the Customs & Recognition Act (CRA).⁷ Within the Constitution the concept of custom is defined in Schedules 1 and 2, and the Interpretation Act. The laws including the Constitution (1975), the ULA, and Interpretation Act, define custom in the same way. In Schedule 1.2 of the Constitution, the term “custom” is defined to mean:

The customs and usages of indigenous inhabitants of the country existing in relation to the matter in question at the time when and the place in relation to which the matter arises, regardless of whether or not the custom or usage has existed from time immemorial.

The wording of Schedules 2.1 and 2.2(1) is sufficiently important to set out in detail:

Sch. 2.1 Recognition, etc., of custom.

1. Subject to subsections (2) and (3), custom is adopted, and shall be applied and enforced, as part of the underlying law.

2. Subsection (1) does not apply in respect of any custom that is, and to the extent that it is, inconsistent with a Constitutional Law or statute, or repugnant to the general principles of humanity.

3. An Act of Parliament may—

(a) Provide for the proof and pleading of custom for any purpose; and

(b) Regulate the manner in which, or the purposes for which, custom may be recognized, applied or enforced; and

(c) Provide for the resolution of conflicts of custom”.

Sch. 2.2 Adoption of a common law.

1. Subject to this Part, the principles and rules that formed, immediately before Independence Day, the principles and rules of common law and equity in England are adopted, and shall be applied and enforced, as part of the underlying law, except if, and to the extent that—

⁶ Underlying Law Act, GovPNG (2000).

⁷ Customs & Recognition Act, GovPNG (1963).

- (a) They are inconsistent with a Constitutional Law or a statute; or
- (b) They are inapplicable or inappropriate to the circumstances of the country from time to time; or ...

Sch. 2.3(1) (Development, etc. of the underlying law) states that where,

There appears to be no rule of law that is applicable and appropriate to the circumstances of the country, the courts (and in particular the Supreme Court and the National Court) have a duty to formulate an appropriate rule as part of the underlying law. In doing so, the court is to have regard to the NGDPs and Basic Social Obligations set out in the Preamble to the Constitution, the Basic Rights in the Constitution, analogies to be drawn from relevant statutes and custom, legislation and case law from countries with similar legal systems to that of PNG, relevant decisions of Papua New Guineans courts at any time, and “the circumstances of the country from time to time”.

Sch. 2.4, the courts, and especially the Supreme Court and the National Court, have a duty—

To ensure that, with due regard to the need for consistency, the underlying law develops as a coherent system in a manner that is appropriate to the circumstances of the country from time to time, except in so far as it would not be proper to do so by judicial act.

Underlying Law Act 2000

An Act of Parliament was passed as contemplated in Schedule 2.1(3), the ULA which co-exists with CRA subject to any constitutional law, as an Act of Parliament by virtue of Schedule 2.6 of the Constitution. The terms under Sections 3(1), 4, and 5 of this Act set out:

3. Recognition of custom.

1. Subject to this Act, custom shall be recognised and enforced by, and may be pleaded in, all courts except so far as in a particular case or in a particular context—

(a) Its recognition or enforcement would result, in the opinion of the court, in injustice or would not be in the public interest; or ...

4. Criminal cases.

Subject to this Act and to any other law, custom may be taken into account in a criminal case only for the purpose of—

(a) ascertaining the existence or otherwise of a state of mind of a person; or ...

5. Civil cases.

Subject to this Act and to any other law, custom may be taken into account in a case other than a criminal case only in relation to—

(a) the ownership by custom of or of rights in, over or in connexion with customary land or—

(i) anything in or on customary land or—

(ii) the produce of customary land, including rights of hunting or gathering; or ...

Finally, Section 7 of CRA allows the Court in a situation of conflict of custom to adopt that system of custom, or make such other order, having regard to the “ordinary rules of the underlying law” (modified as may be necessary), as the justice of the case demands. It follows from the constitutional and statutory provisions above that in relation to a custom which appears to be relevant in a civil or criminal case there are potential grounds for refusing to adopt that custom as part of the underlying law.

The adoption and enforcement of custom in a particular case is never automatic, but is rather the result of a complicated screening process. There are six principles, three from the wording of Schedule 2.1 of the Constitution itself, and three from Section 3 of CRA and they are:

1. Inconsistency with the Constitution;

2. Inconsistency with a statute;
3. Repugnancy to the general principles of humanity;
4. Resulting in injustice;
5. Contrary to the public interest; and
6. Contrary to the best interests of a child under 16 years of age.

Although the “repugnancy” test has not been replicated from Sch. 2 of the Constitution along with the “inconsistency” tests in the Underlying Law Act 2000 which, by virtue of Section 20 of the Constitution, is the law for development of the underlying law, nevertheless the Supreme Court and the National Court continue to apply as authoritative present previous decisions founded on repugnancy.

It is not necessary or possible in this review to examine each of these (they are often overlapping) grounds.

Role of Customs

Custom plays a particular role in the context of PNG and is in fact recognised under Section 9 of the Constitution. However, its adoption, application and enforcement are subject to certain exceptions. Schedule 2.1 of the Constitution provides for the recognition of custom through its adoption, and shall be applied and enforced, as part of the underlying law.

The CRA sets out the application of custom. It provides that custom shall be recognised and enforced by, and may be pleaded in, all courts except where its recognition would result in injustice or would not be in the public interest or in a case affecting the welfare of a child under the age of 16 years, its recognition or enforcement would not be in the best interest of the child.

Whilst there is concern about rights being breached by custom, there is also the sad fact that many of the traditional cultures have either eroded or do not exist anymore. For example, in the author’s home area, barter trade between different tribes has stopped. Large ocean canoes used for trading are not built anymore. The loss is enormous; canoe-making skills and exchange of traditional monetary items like clay pots and wooden dishes are gone together with the loss of important relationships along traditional trade routes.

Reform Customary Law

The need to reform customary law is recognized in PNG.⁸ Customary law stems from the indigenous customs of various communities and its rules and norms are habitual practices of the general local community (Aleck & Rannels, 2011). In the words of clan elders of Kawaliap village in Manus PNG,

Our elders before us saw real meaning in what they did to keep together and help one another. We too, do the same things they taught us. We share food and we do things together, we build houses, canoes, we look after our sick ones. We respect the elders and we recognize, respect, protect and guarantee the communal right of the members of the clans.

Customary law is obeyed by the people in their communities who are subject to it. It is distinctly different from the other sources of law. Efforts in PNG recently is for a consistent usage of similar custom throughout PNG communities, rejecting those which are against humanity (Jessep, 1998) keeping ones which are habitually obeyed throughout the communities, then getting the superior courts to declare and apply them so that they become judicially developed rules of what PNG calls “underlying law”.⁹

⁸ Madaha Resena and Others v The State (1991). PNGLR 174.

⁹ State v Kule (1999). PNGLR 404.

Proof of the Fact of Custom

In a comprehensive study of national constitutions from 185 countries, Katrina Cuskelly found 112 countries have provisions relevant to recognition of customary law (Cuskelly, 2011). Forms of recognition include definition of the customary law; establishment of procedures for proof of customary law; recognition of customary law as forming part of the national law; recognition of traditional authorities and traditional practices for their establishment and or election. Recognition of customary law is frequently qualified by provisions limiting its applicability where it conflicts with the constitution¹⁰, national law¹¹ and regulations¹², human rights¹³, in particular women's rights¹⁴, public order and morals¹⁵, fundamental rights of persons or where repugnant to natural justice.

Customs assumed a predominant position during the middle ages in Europe where the need for a theory of customary law and the establishment of rules for its identification became more pressing. According to Ibbetson, the Digest of Julian and the Code of Constantine, the most influential of Roman law texts provided the key elements upon which European medieval jurisprudence crafted its theories of customary law (Ibbetson, 2007). These were:

1. Long standing-ness of its practice,
2. Flowing from the tacit agreement of the people,
3. Unwritten,
4. It may or may not prevail over a contrary *lex*,
5. It must not be contrary to reason, ratio (Ibbetson, 2007).

In Ibbetson's view, Bartholus placed greater emphasis on the consent of those subject to the law than on the period for which it had been in force following Bassianus in fixing the period for crystallizing custom at 10 years (Ibbetson, 2007). It was considered of much importance by Bartholus who felt two witnesses should give evidence in writing. However, where a custom was so notorious that the judges would have been aware of it such evidence would not be required (Ibbetson, 2007). Under the English common law, continuity is a key requirement for enforceability of custom as any interruption may be taken as a cessation of the custom (Ibbetson, 2007). According to Blackstone, an interruption of the possession only, for 10 or 20 years, will not destroy the custom (Blackstone, 1759, Vol. 1, p. 67). However if continuity is broken by coercion or other such pressure, this may not serve to void the custom as law (Callies, 2005).

United Nations Declaration on the Rights of Indigenous Peoples

Article 3 recognises their right of self-determination confirming what other commentators had already surmised, that indigenous peoples' right of self-determination had already become a principle of customary international law (Anaya, 2004, p. 112). Although not legally binding of itself the Declaration's long period of gestation, the numerous statements of states regarding their understanding of indigenous peoples' rights, and

¹⁰ Constitution of Malawi 1994, Section 200; Uganda 1995, Art 2(2); Constitution of Bolivia 2009.

¹¹ Constitution of Namibia 1990, Art 66; Solomon Islands 1978, Schedule 3 Section 3(1) & (2); Columbia 1991, Article 246.

¹² Constitution of Rwanda 2003, Article 201.

¹³ Ibid.

¹⁴ Constitution of Ethiopia 1994, Article 35(4) which provides that customs and practices that oppress or cause harm to women are prohibited and Malawi 1994, Section 24(2) which provides that legislation shall be passed to eliminate customs and practices against women.

¹⁵ Constitution of Ethiopia (1994) and Constitution of Malawi (1994).

the almost global acceptance of its provisions mean that it is widely seen as reflecting the status of customary international law (Stamatopoulou, 2007). It has already been relied upon by international treaty bodies (Tobin, 2011), as well as by national courts and regional human rights organizations.

Self-determination is relevant for international customary norms of indigenous land rights and cultural integrity. The existence of such customary international norms suggests the existence of complementary customary international law norms recognising the rights of indigenous peoples to their customary laws and institutions. It requires the states to recognize and respect indigenous peoples' customary laws in order to secure their human rights.

Customs to Acquire the Force of Law

Customary law has been described as a body of rules, customs, or traditions, considered binding upon them by the people or community to whom they refer (Elias, 1962). It is recognized in the national laws and jurisprudence. The rights of the people should be governed by their legal regimes and the obligation of the state is to respect and recognize the laws and institutions and the ancestral rights by upholding the rights. There is increasing recognition of customs and a growing need to develop it is a priority of the GovPNG. Despite its importance, customary law of indigenous peoples remained, until recently, largely unexplored except by social anthropologists (Stavenhagen, 2003).

The primary rule of decision in all questions that arise in most indigenous communities relating to the matters specified shall be custom where a custom exists and that enacted laws shall only be applied where no such custom or customary rule prevails. This does not presume that custom is to govern the parties to the exclusion of the ordinary law, but it prescribes that it shall govern them in certain matters in the first instance, except in certain cases where the custom contended for is so general that it may not be presumed to exist. The person who asserts a custom contrary to some precept of his personal law is prima facie bound to prove that custom and the regulation of this burden depend on a rule of procedure or evidence only in order to ascertain whether the special custom does or does not exist (Hamnett, 1975). The rule of decision remains the same, and its operation is merely suspended until the ascertainment of a fact, for example, the existence of a custom (Hamnett, 1975).

If a custom is proved, it must be applied to the exclusion of the personal law; it is the second limb of the rule that must then receive effect. And for the custom to be valid it must not be contrary to justice, equity, and good governance. A custom may be declared to be invalid, and then it must be against equity, justice, and good governance or it must be immoral or opposed to public policy.

In PNG the Supreme Court has original jurisdiction in the enforcement of human rights and has already set a precedent for doing so. In the case of *Miriam Wilingal*, an 18-year-old girl was given against her will to another tribe as part of compensation payment, together with pigs and money in settlement of a tribal dispute.¹⁶ Upon reading of her predicament in the newspaper, the human rights non-governmental agency, Individual and Community Rights Advocacy Forum (ICRAF) made an application to the Supreme Court under Section 57 of the Constitution to enforce her rights, seeking a declaration that the customs and actions were inconsistent with the Constitution and repugnant to the general principles of humanity and thus unlawful (The National Newspaper, 2007). The Supreme Court decided in favour of ICRAF's application and granted the claimant her freedom.

¹⁶ Case of *Miriam Wilingal* (1996) vol. OS 289. PNG National Court & Supreme Court.

The significance of custom as the basis of customary law lies in the fact that the traditions established through social practice and usage become the essence and driving force of customary law (Minei, Kaipu, & Minei, 2020). The National Parliament of PNG has argued that any system for the protection of their traditional knowledge must be based on their customary laws.

The term customary law in PNG derives its form from the legal norms of customs of the people:

It arises from the growth of repetitive acts of the people in their communities and the recognition of the repeated acts as they happen again and again whenever the occasion presents itself and such acts become common practice in the communities. (Jessep, 1998, p.1)

People accept and use the common practices as customary rules and precedents.

While the diversity of the peoples' customs vitiates any attempt at harmonization, there is growing recognition that customary legal systems are developing, largely oral in nature, and tending to promote a return to community harmony rather than retribution. I note in a Provincial Cultural Show that provincial leaders promoted that same notion in these words,

We must look after our tradition, our customs. Our past used customs to make peace and bring happiness. We must work together to elevate the status of customs, develop it and make it form part of the legal system. Let's embrace it.

The primary sources of custom are the stories, songs, and ceremonies of the indigenous or local communities. In PNG the customary law of the indigenous people has reached a stage where it can no longer be said to be merely stored up in the unexpressed consciousness of the people. The words of a provincial leader in Manus express the same aspiration when she said, "Our past must be seen to become part of our law today. It depends on the government to make them become part of the existing law, they can be enforced and receive its validity on the constitution".

In the past issues of indigenous peoples' human rights and responsibilities of states to respect and recognize their legal regimes would have been confined to the national jurisdiction in which the indigenous peoples reside. It would have had little relevance for foreign states and little if any impact on proceedings in a foreign jurisdiction (Tobin, 2011). That is no longer the case.

Indigenous peoples' rights over their land, resources, cultural expressions, wherever they are found, require respect and recognition of their customary laws.¹⁷ Indigenous peoples' lives and cultures are intrinsically and spiritually connected to their traditional land, waters, and natural resources, and indigenous peoples' way of utilizing the land reveals much of their customary law. PNG peoples are no exception in this regard.

The people's way of life is intrinsically connected to their traditional land, giving rise to customary rules constituting the most important element of the peoples' traditional legal system. One could almost say that land and water use is the peoples' law. This article will not describe some of the distinct customs, traditions, and customary laws of the PNG people related to use of land and natural resources. Nowadays foreigners in PNG respected the peoples' legal system and how the laws of the different cultures co-existed.

¹⁷ There are estimated eight million people in PNG and the majority are indigenous peoples with around 800 different languages and 2,000 cultures. In most areas of PNG particularly where indigenous peoples reside their customary laws and practices are given direct or indirect recognition which may range from formal constitutional recognition to tolerance of customary practices that on the face of it run counter to national law. In some pockets of the population in PNG, people are living outside the reach of national law; customs are the only law they know.

Obligations requiring consultation in good faith, free prior informed consent, and/or participation by Indigenous peoples in decision-making processes, have the ability to bring customary law of indigenous peoples into courtrooms far beyond the national jurisdiction of the countries in which they reside (Tobin, 2011).

Cultures Exhibit Important Commonalities

Each culture is centrally concerned with solving problems, though, of course, not of the same kind or in the same way (Schuck, 2000, p. 49). Each culture is also highly professionalized; in order to join and succeed, its members must acquire an arcane knowledge, practice special techniques and skills, and subscribe to a distinctive set of norms, a world view common to the group. Each culture seeks to enhance the group's social power, its command of resources and values. "The best way possible to understand the local peoples' culture is to go through the elders in the community who can talk you through their beliefs, opinion and norms".

And each culture is supported by and indispensable to the modern state's effectiveness.

The international law, jurisprudence of international human rights bodies, state practice, and *opinio juris*, as well as national law and jurisprudence of state courts, demonstrate the important role customary law plays at the international stage and national legal governance, and in particular its fundamental role in securing indigenous peoples' rights.

Concluding Remarks

Customary law may prove the preferred, if not the only, system of law to which the indigenous populace can turn in their search for justice. Securing the national recognition of the peoples' rights to their customary laws has been a lengthy process in PNG. However, after Independence in 1975, there has been a slow increase in the development of customs and customary law of PNG; these have significantly raised the profile of the peoples' human rights at the community and national level. At national level advances have come through a mixture of policy development, court decisions and an increased number of complaints based on customs going before the Village Courts, District Courts, the National and the Supreme Courts.

Custom had the force of law because all laws rested on the *tacitus consensus* of the people; this must apply to unwritten law as well. Customs are long lasting as they are approved by agreement of those who use to them. The people are themselves arbiters of customs. To date customs, dominate the legal landscape of PNG; it is the unwritten law of all the indigenous inhabitants although it is not superior to the written national state law.

References

- Aleck, J., & Rannels, J. (2011). *Custom at the crossroads*. New Delhi: Sterling Publishers Private Limited. In: Jessep Owen. Custom Family Law & Human Rights in Papua New Guinea (2002) ALRCRefJ16; (2002) 80 Australian Law Reform Commission Reform Journal 26 (pp 26-30 & 72).
- Anaya, J. (2004). *Indigenous peoples in international law* (2nd ed.). New York: Oxford University Press (pp 15-379).
- Bergh, G. C. J. J. (1995). The concept of folk law in historical context: A brief outline. In A. D. Rentlen and A. Dundes (Eds.), *Folk law: Essays in the theory and practice of Lex Non Scripta: Volume 1* (pp. 5-31). University of Wisconsin Press.
- Blackstone, W. (1759). *Commentaries on the laws of England*. 4 vols. Oxford: Clarendon Press (original printing).
- Callies, D. (2005). How custom becomes law in England. In P. Orebeck, F. Bosselman, J. Bjarup, D. Callies, M. Chanock, and H. Petersen (Eds.), *The role of customary law in sustainable development* (pp. 158-223). Cambridge: Cambridge University Press.
- Corrin Care, J. (2000). The status of customary law in Fiji Islands after the Constitutional Amendment Act 1997. *Journal of South Pacific Law*, 4. Retrieved from <http://www.paclii.org/journals/fJSPL/vol04/1.shtml>
- Cuskelly, K. (2011). *Customs and constitutions: State recognition of customary law around the world*. Bangkok, Thailand: IUCN. ISBN:978-2-8317-1429-5

- Elias, T. O. (1962). *British colonial law: Comparative study of the interaction between English and local laws in British dependencies*. London: Stevens.
- Hamnett, I. (1975). *Chieftainship and legitimacy*. London: Routledge & Kegan Paul.
- Ibbetson, D. (2007). Custom in medieval law. In A. Perreau-Saussine and J. Murphy (Eds.), *The nature of customary law: Legal, historical and philosophical perspectives* (pp. 151-175). Cambridge: Cambridge University Press. doi:10.1017/CBO9780511493744.008
- Jessep, O. (1998). The elusive role of custom in the underlying law of Papua New Guinea (1981). *MLJ*, 26(1), 1-24.
- Minei, A. P., Kaipu, S. O., & Minei, J. M. (2020). Culture within informed consent: Papua New Guinea perspective. *Journal of Health Science*, 8, 33-51, doi:10.17265/2328-7136/2020.02.001
- Murphy, J. B. (2007). Habit and conventions at the foundations of custom. In *The nature of customary: Law legal, historical and philosophical perspectives* (pp. 53-78). Cambridge: Cambridge University Press. doi:https://doi.org/10.1017/CBO9780511493744.004
- Murphy, J. B. (2014). *The philosophy of customary law*. Oxford: Oxford Scholarship.
- National Statistical Office. (2010). Household income and expenditure survey 2009-2010. Port Moresby, Government of Papua New Guinea. Retrieved from <https://www.nso.gov.pg/index.php/projects/household-income-expenditure-survey> (accessed on 11 September 2018)
- Schiller, A. A. (1994). Custom in classical Roman law. In A. D. Rentlen and A. Dundes (Eds.), *Falk law: Essays in the theory and practice of Lex Non Scripta: Volume I* (pp. 33-47). University of Wisconsin Press.
- Schuck, P. H. (2000). *The limits of law. Essays on democratic governance*. Boulder: Westview Press.
- Stavenhagen, R. (2003). *Report of the special rapporteur on the situation of human rights and fundamental freedoms of indigenous people. Engaging the UN special rapporteur on indigenous people: Opportunities and challenges*. Baguio City, Philippines: TEBTEBBA Foundation.
- Stamatopoulou, E. (2007). *Cultural rights in international law: Article 27 of the universal declaration of human rights and beyond*. Leiden: Martinus Nijhoff.
- The National Newspaper. (11 December 2007). Girl sold in death compensation. PNG.
- Tobin, B. M. (2011). Why customary law matters: The role of customary law in the protection of indigenous peoples' human rights (Ph.D. thesis, National University of Ireland, 2011).
- World Bank. (2018). Data bank—World development indicators. Retrieved from <http://databank.worldbank.org/data/reports.aspx?source=2&country=PNG> (accessed on 12 July 2018)