Chapter 19.
*Customs Recognition Act* **1963.**

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# INDEPENDENT STATE OF PAPUA NEW GUINEA.

Chapter 19.

## *Customs Recognition Act* **1963.**

### ARRANGEMENT OF SECTIONS.

**INDEPENDENT STATE OF PAPUA NEW GUINEA.**



AN ACT

entitled

*Customs Recognition Act* 1963,

Being an Act relating to the determination and recognition of custom.

## 1.   INTERPRETATION.

In this Act, unless the contrary intention appears **"court"** includes any court or person acting judicially in, or for purposes of or connected with, the country.

## 2.   PROOF OF CUSTOM.

(1) Subject to this section, questions of the existence and nature of custom in relation to a matter, and its application in or relevance to any particular circumstances, shall be ascertained as though they were matters of fact.

(2) In considering a question referred to in Subsection (1), a court–

(*a*)   is not bound to observe strict legal procedure or apply technical rules of evidence; and

(*b*)   shall–

    (i)   admit and consider such relevant evidence as is available (including hearsay evidence and expressions of opinion); and

    (ii)   otherwise inform itself as it thinks proper.

(3) For the purposes of the decision on a question referred to in Subsection (1) a court may–

(*a*)   refer to books, treatises, reports or other works of reference, or statements by Local-level Government Councils or committees of Local-level Government Councils (whether published or not); and

(*b*)   accept any matter or thing stated in such works as evidence on the question; and

(*c*)    of its own motion, call such evidence or require the opinions of such persons as it thinks fit,

but this subsection does not limit in any way the discretion of the court in obtaining evidence or informing itself on the question.

(4) Notwithstanding Subsection (1), where an appeal is made from a decision of a court, the court that hears the appeal may consider *de novo* a question referred to in that subsection that arises in the appeal.

## 3.    RECOGNITION OF CUSTOM.

(1) Subject to this Act, custom shall be recognized 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

(*b*)    in a case affecting the welfare of a child under the age of 16 years, its recognition or enforcement would not, in the opinion of the court, be in the best interests of the child.

(2) Nothing in Subsection (1) of itself empowers a Local-level Government Council to make a subordinate enactment affecting custom, but this subsection does not limit in any way the powers of a Local-level Government Council conferred by any other law.

## 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

(*b*)    deciding the reasonableness or otherwise of an act, default or omission by a person; or

(*c*)    deciding the reasonableness or otherwise of an excuse; or

(*d*)    deciding, in accordance with any other law whether to proceed to the conviction of a guilty party; or

(*e*)    determining the penalty (if any) to be imposed on a guilty party,

or where the court thinks that by not taking the custom into account injustice will or may be done to a person.

## 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 connection with customary land or–

(i)     any thing in or on customary land; or

(ii)    the produce of, customary land,

including rights of hunting or gathering; or

(*b*)    the ownership by custom of rights in, over or in connection with the sea or a reef, or in or on the bed of the sea or of a river or lake, including rights of fishing; or

(*c*)    the ownership by custom of water, or of rights in, over or to water; or

(*d*)    the devolution of customary land or of rights in, over or in connection with customary land, whether–

(i)     on the death or on the birth of a person; or

(ii)    on the happening of a certain event; or

(*e*)    trespass by animals; or

(*f*)    marriage, divorce or the right to the custody or guardianship of infants, in a case arising out of or in connection with a marriage entered into in accordance with custom; or

(*g*)    a transaction that–

(i)     the parties intended should be; or

(ii)    justice requires should be,

regulated wholly or partly by custom and not by law; or

(*h*)    the reasonableness or otherwise of an act, default or omission by a person; or

(*i*)    the existence of a state of mind of a person,

or where the court thinks that by not taking the custom into account injustice will or may be done to a person.

## 6.     GUARDIANSHIP, ETC.

Notwithstanding anything in any other law, custom shall be taken into account in deciding questions relating to guardianship and custody of infants and adoption.

## 7.     CONFLICT OF CUSTOM.

(1) Subject to this section, and to any other law, where–

(*a*)    in a matter before a court a question arises as to which of two or more systems of custom should prevail; and

(*b*)    the court is not satisfied on the evidence before it as to that question,

the court shall consider all the circumstances and may adopt the system that it is satisfied the justice of the case requires.

(2) Where a court is not satisfied as to which of two or more systems of custom apply, or should under Subsection (1) be applied, to or in relation to a matter, the court may apply, with the necessary modifications and as nearly as may be, the ordinary rules of the underlying law.

(3) Notwithstanding Subsection (1) or (2), the principles set out in those subsections may be varied or departed from by a court in any particular case to such extent as the justice of the case requires.

Office of Legislative Counsel, PNG