CUSTOMARY LAW AND LEGAL PLURALITY IN PAPUA NEW GUINEA: THE CHALLENGES OF TEACHING AND LEARNING CUSTOMARY LAW

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ABSTRACT

This article evaluates some of the inherent challenges of teaching and learning the Customary Law course at the University of Papua New Guinea, where it is an integral part of the LLB program, to see how it can be better taught and learned.

I draw on my experience as a student and a tutor of the course (2018-2021); a review of the pertinent literature; an analysis of the University's administrative framework in which the course is taught; and an evaluation of the examination results for the course between 2018 to 2021.

The challenges mainly arise from the competencies of the students due to the timing of the course in the program; the inherent difficulty in grasping the subject due to the nature of this branch of the law itself and its interrelationship with other areas of the law; and the difficulty in perceiving the subject outside the prism of the positivist formal legal system. A tension is also present between studying the subject from a regulatory perspective and the need to study its practices in social context. These considerations are exacerbated by the ongoing constitutional rhetoric placing eminence and thereby a sense of urgency on the creation of an Indigenous jurisprudence. The article concludes with two recommendations: (1) the course should be taught in the final year of the program; and (2) an anthropology course on Papua New Guinea societies be made compulsory under the program.

I INTRODUCTION

This article considers the challenges of teaching and learning Papua New Guinea (PNG) customary law at the University of Papua New Guinea (UPNG) School of Law under its undergraduate Bachelor of Laws (LLB) program.[1] The relevant course is titled 'Customary Law' and this phrase will be used in this article to refer to PNG customary laws. This phrase is, however, potentially misleading because the course is not about the study of the customary laws of the traditional societies *per se* but instead is more about the study of what the formal laws of the state (ie PNG) say about or provide for (ie regulate) the customary law and how the courts have applied (these state laws in recognising) customary law.

The challenges in teaching this course mainly arise from the competencies of the students due to the timing of the course in the program; the inherent difficulty in learning (and teaching) the subject due to the pervasive nature of this branch of the law and its interrelationship with other areas of the law; and the difficulty in perceiving it outside the prism of the positivist formal legal system. A tension also exists between studying customary law from within this regulatory framework and the need to study its phenomena in their social contexts. Which of these course objectives should be given prominence? These issues are exacerbated by the ongoing constitutional rhetoric which promotes development of an Indigenous jurisprudence.

To evaluate the rate of success and failure among the students, the research draws on my experience as an Indigenous practising lawyer and an early career researcher in PNG; a review of the pertinent literature; an evaluation of the examination returns or results for the course over four years from 2018 to 2021, when I was the tutor for the course and designed the course blueprint for the online Moodle platform.

II PNG CUSTOMARY LAW CURRICULUM

The LLB program offered at the UPNG School of Law is a four-year undergraduate program and is based upon that used in Australian law schools as has been the case since establishment of the faculty.[2] Some students come straight to study law from secondary schools while others have prior degrees in other fields of study. Considering a 120 admissions quota for school-leavers and the high interest in the program, students seeking admission directly from Grade 12 must score a perfect grade point average (GPA) of 4.0 (which is essentially scoring all 'A' at secondary level). The non-school-leavers have a separate quota and may be considered at lower GPAs if they have other degrees or diplomas. These, compounded with other factors like

[1] This article has been developed from presentations of a paper at the UPNG-SHSS Weekly John Waukon-Otto Necktie Seminar Series on 17 May 2023 and at the ALAA Conference 2023 at the University of Canterbury, Christchurch, New Zealand on 7 July 2023. The questions and comments and suggestions raised during these presentations were incorporated accordingly.

[2] See generally, Bruce L Utley, 'Developing Legal Education in a Developing Country: A Case Study of Papua New Guinea' (1981) 31(1/2) *Journal of Legal Education* 183.

age, gender, income, home province, work experience and so forth gives the widest possible range of students in any given year.

The attainment of an LLB degree qualification is the minimum requirement for entry into the legal profession in PNG. However, graduates must complete a 9-month intensive training at the PNG Legal Training Institute before they can become eligible for admission to the bar. Law graduates of universities other than UPNG must sit, inter alia, a customary law exam before they can apply for admission.[3]

In order to qualify to graduate and attain a LLB qualification, a law student must complete over the course of a minimum of four years 36 courses, comprising of 21 compulsory law courses, 9 optional law courses, 3 enrichment and 3 broadening courses, and must score an aggregate minimum GPA of 2.00.[4] Apart from the coursework, an intending graduate must write a Major Research Paper of up to 10,000 words in the fourth (ie, final) year of the program. Customary Law is one of these 21 compulsory law courses under the program and is scheduled to be taken in the second semester of the first year of the program. Hence, by the time a typical (school-leaver) law student is scheduled to take Customary Law, their competency only consists of the 3 law courses taken in the first semester (ie, Introduction to Law, Constitutional Law and Contracts Law 1) and Grade 12 level education (Secondary Level Education in PNG). Students with prior degrees and relevant work experience are an obvious exception to this predicament. At the University a semester consists of 13 weeks of teaching and learning. There is a mid-semester consolidation week in Week 7 (for break and 'catch-up'). The Examination Weeks run from Week 14 onwards and may last up to three weeks. The mid-semester or end-of-the-year break starts as soon as the exams are over. Face to face lectures can however be disrupted by public holidays, law and order issues in the city generally and University-sanctioned events, such as the PNG Update Conference, Sports Days and Independence Celebrations. For Customary Law, the teaching and learning sessions are fixed as follows: there are three lectures and four tutorials a week;[5] and students are required to attend all lectures but only one tutorial session at their convenience. Tutorials usually commence in Week 2 following the lectures. That is how the course is usually taught in that 13-weeks space in the second semester.

The course is on the Moodle TEL platform but only as supplementary and for online interactions and discussions. All assessments were run offline during the four years under consideration. This is because according to a survey carried out by the school in 2017 a great number of the students over 40% did not have a personal laptop and share laptops with others. Not having the money to pay for internet access off-campus was also the other problem.

[3] An applicant for admission to practice law in PNG who has not passed customary law, land law and constitutional law at UPNG must pass an examination each for these courses before they can become eligible to apply for admission. See *Lawyers Act 1986* (PNG) s 25(5) and Lawyers (Examination) Regulation 1992 (PNG) r 2.

[4] 'School of Law Programs & Courses', *University of Papua New Guinea* (Web Page) <https://www.upng.ac.pg/index.php/programs-courses/undergraduate-programs/bachelor-of-laws>.

[5] Tutorials are mini seminars where students interact with the tutor and with each other. Activities include discussing answers to tutorial questions, briefing, and analysing cases, and group discussions.

In terms of the content of the course, it focuses mainly on the legislative provisions on custom and their legal implications rather than focus more on the actual customary norms or rules of the people of PNG in their various traditional societies and therefore akin to administrative law.

However, the latter is considered albeit briefly under Topic 1 (as per the course overview) entitled 'sociology of law'. There the dichotomy between western societies and traditional PNG societies is considered[6] and in which discussions about the existence of customary law is viewed not as 'logical entities' but 'rather embedded in a matrix of social relationships which alone gave them meaning'.[7] Thus the importance of studying the social context of these customary laws. Law generally is a social construct and customary law cannot be studied devoid of the traditional society in which it is found. And given the multitude of traditional societies in PNG the attempt falls short of comprehensive. As it is, no serious anthropological inquiry into the traditional societies and their social order is undertaken in the course even though this may be arguably the best way to study it, as argued by Epstein,[8] considering the revolutionary significance placed on this area of law in legal reform and its pervasiveness in the legal system.

The legislative provisions under the regime not only recognize but facilitate the application of customary law without any modification. But customary law or custom is applicable only in so far as it meets the tests prescribed by these pieces of legislation.[9] These tests have been grounds for dismissing the application of custom in many cases since 1975 which also constitute a sizable part of the course content spanned across topics and generally referred to as cases on the application of customary law. And these cases have been mooted at the highest level in the Supreme Court and in the absence of a textbook looking at these cases from the point of view of custom, the students find themselves faced with the huge task of reading all these reports for themselves and to identify the customary law issues out of other issues, for instance 'court procedure' that naturally pervade such reports. Except of course when these cases are discussed during lectures or tutorials.

Most of these landmark cases were decided before 2000, when Parliament passed the *Underlying Law Act 2000* (PNG) ('*Underlying Law Act*'), and so the application of custom under that regime is yet to be extensively analysed by the Supreme Court. Study of the *Underlying Law Act* at present is, then, principally academic and hypothetical.

[6] See P Lawrence, 'The State v. Stateless Societies' in BJ Brown (ed), *Fashion of Law in New Guinea* (Butterworths, 1969) 15-37.
[7] AL Epstein, 'Procedure in the Study of Customary Law' (1970) 1 *Melanesian Law Journal* 51, 52.
[8] Ibid.
[9] See Schedule 2.1 of the *Constitution* sch 2.1; *Underlying Law Act* s 4(2); and *Customs Recognition Act 1963 (Chapter 19)* (PNG) s 3.

There is one other test provided for not by legislation but developed by the Supreme Court. This proposition is that, for a custom to be applied as part of the underlying law it must be practised in all or most of the traditional societies in PNG.[10]

III WHY IS CUSTOMARY LAW IMPORTANT FOR THE PROGRAM?

As early as 1972, a group of international legal academics found that law schools in developing countries lacked a well-developed Indigenous body of legal literature.[11] Customary law is crucial to the study of law in PNG not only because of the importance placed on it by the drafters of the *Constitution of the Independent State of Papua New Guinea* ('*Constitution*') but quite apart from it to highlight the legal plurality within the legal system and to encourage early on, the development of an Indigenous body of legal literature. Such was the premise upon which the course was introduced in 1972. Nevertheless, it is important at the undergraduate study for students to know competently the technical legal skills and major areas of substantive law and the jurisprudence behind them for them to become the agent of change in the creation and shaping of the Indigenous jurisprudence.

Secondly, its study is important because of the emphasis placed on it by the constitutional provisions as the establishing laws of this legal system and pursuant to the national agenda of self-rule and self-actualization following the 'end' of the colonial hegemony.

On a broader perspective, universities around the world have, especially in Australia and New Zealand, now made it compulsory for Indigenous knowledge and practices to be taught across the myriad of university disciplines as reported by Michael Christie and Christine Asmar:

> Around the world, particularly in North America, southern Africa, Australia and New Zealand, universities are working to integrate traditional knowers, their knowledge practices and perspectives into the academy. Several Australian universities now specify that all their graduates should, for example, 'respect Indigenous knowledge, cultures and values'….; while in New Zealand, universities are formally committed to the contribution of Māori knowledge to scholarship across disciplines….This work has resulted in significant changes to university teaching and learning – strikingly illustrated by the fact that the medical deans of Australia and New Zealand have now established a national joint framework for the inclusion of Indigenous health into core medical curricula….[12]

Therefore, it follows that to keep up with modern trend it is imperative to study this course as well. In any case, the course is already a compulsory course under the LLB program and therefore any reinforcing justification is merely reassuring and after the fact.

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[10] See *Tatut v Cassimus* [1978] PGLawRp 543; [1978] PNGLR 295 (4 August 1978); and *Somare, Re* [1981] PGLawRp 589; [1981] PNGLR 265 (3 August 1981).
[11] See Utley (n 2).
[12] See M Christie and C Asmar, 'Indigenous Knowers and Knowledge in University Teaching' in L Hunt and D Chalmers (eds), *University Teaching in Focus: A Learning-Centred Approach* (Acer Press and Routledge, 2012) 214, 214.

IV THE LEGAL NATURE OF CUSTOMARY LAW UNDER THE LLB PROGRAM

The word 'custom' in the *Constitution* refers to the customs and usages of the native Papua New Guineans. These traditional norms regulate social conduct among the natives as well as anyone living and or interacting with them. And these norms cover all areas of life. This aspect of the subject constitutes a relatively small part of the syllabus for the course – it is mostly focused on the formal legal statutory regime regulating the application of these customs in PNG. The following discussions are snapshots of the said legal framework hereunder characterised under two headings – namely, the one under the *Constitution*, on the one hand; and the one under Acts of Parliament on the other hand. They are not exhaustive.

V THE CONSTITUTIONAL REGIME

Under the *Constitution* sch 1.2, 'custom' 'means 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 the custom or usage has existed from time immemorial'. A comprehensive analysis and interpretation of this definition is yet to be undertaken by the National and Supreme Courts. A liberal construction of the definition indicates that custom is fluid and susceptible to change and not stagnant.

The word 'custom' is used interchangeably with 'customary law' to denote the meaning as defined under sch 1.2 and used in this article. Hence the customary law of PNG can be loosely defined as the customs and usages of the Indigenous peoples of PNG applicable not only to resolve disputes but to maintain social order by creating duties and obligations more analogous to the Jewish 'Mitzvah' than the liberal ideals of rights.[13]

Hundreds of different customary laws or norms exist in different tribal societies throughout PNG, which is often styled 'a land of a thousand tribes', each with its own unique customs. However, some similarities exist between tribes found in a particular region in one of the country's four regions (the Highlands, Southern, Momase and New Guinea Islands). The Autonomous Region of Bougainville, which is in the New Guinea Islands region and had in 2019 voted in a referendum to secede from PNG, also has its own distinct customs. Generally, the Highlands, Southern and Momase regions are predominantly patrilineal societies whereas the New Guinea Islands societies are matrilineal. The importance of kinship is common to all regions.

PNG societies were ordered in accordance with custom for over 50,000 years before the apparatus of a modern state was established.[14] While customary norms continue to regulate contemporary PNG society outside of the legal system, their recognition and application in the

[13] For a discussion of Mitzvah, see Robert M Cover, 'Obligation: A Jewish Jurisprudence of the Social Order' (1987) 5(1) *Journal of Law and Religion* 65.
[14] See JE Safra, 'Papua New Guinea' in *The New Encyclopedia Britannica* (Chicago, 2007) vol 9, 130-31. This is remarkable simply because it is ancient and pre-historic dating earlier than many civilisations of the world.

formal legal system is provided for and advocated for by the *Constitution*. Custom is cited on many occasions in the *Constitution* for different purposes, but the aggregate effect is that this constitutional legal regime cements its recognition and application and therefore the creation of this legal plurality in the domestic legal system of the PNG nation state in an empirical sense. In the Preamble, worthy customs and traditional knowledge of the people are acknowledged, followed by the fifth *National Goals & Directive Principles* directing all political and socio-economic activities to be reconstructed in the Papua New Guinean ways. As to what constitutes this phrase Papua New Guinean ways is beyond the scope of this article. Under section 45 'Freedom of conscience, thought and religion' includes freedom to practise the customs of the people of Papua New Guinea. The *Constitution* s 53 titled 'Protection from unjust deprivation of property' allows taking of possession of acquisition of property that is in accordance with custom (ie, deprivation that would otherwise be unlawful) (s 53(5)(d)). Under s 53(5)(e), unoccupied and uncultivated customary land falls within the scope of protection intended under s 53(1). Pursuant to s 67(2), to be eligible for (citizenship) by naturalization, a person must inter alia 'have a respect for the customs and cultures of the country'. Furthermore, for purposes of citizenship adoption under custom would count in determining eligibility of citizenship (s 78(2)).

Regarding the 'integrity of candidates' for election to Parliament under the *Constitution* s 130(3)(a), their hospitality to electors pursuant to custom does not count as electoral expenses for purposes of computation of their election expenditure under the *Organic Law on the Integrity of Political Parties and Candidates 2003* (PNG) which limits contributions to political parties from citizens.

The *Constitution* s 172 provides for the establishment of other courts by an Act of Parliament within the National Judicial System in addition to the Supreme and National Court. Subsection (2) provides that the '[c]ourts established under Subsection (1) may include courts intended to deal with matters primarily by reference to custom or in accordance with customary procedures, or both'. One such court is the Village Court established under the *Village Courts Act 1975* (PNG). In 1988, Jean Zorn investigated whether village courts continued to apply Customary Law to resolve cases in the light of overwhelming criticism at the time that village courts had adopted a more formalistic and legalistic approach. She found that the criticism was not fully founded since village courts continued to apply both custom and formal legal rules in resolving cases.[15]

The *Constitution* s 9 enumerates the laws of PNG to include, inter alia, the 'underlying law' which is to be formulated by the National Court from applying, inter alia, principles of Customary Law. The significance of this process, as envisioned by the framers of the *Constitution*, cannot be stressed enough as provided under the *Constitution* sch 2 tasking principally the National Judicial System and the Constitutional Law Reform Commission to ensure a coherent development of the underlying law. What is then the underlying law? David

[15] See generally, Jean G Zorn, 'Customary Law in the Papua New Guinea Village Courts' (1990) 2(2) *The Contemporary Pacific* 279.

Gonol suggested that three motivations persuaded the creation of this law: namely 'English Common law', nationalism and the idea of Indigenous jurisprudence.[16] He then proceeds to accept as definition of the underlying law as an Indigenous common law akin to the common law of England.[17] As an Indigenous common law the underlying law is also inextricably linked with the fundamental principles of natural justice pursuant to the *Constitution* ss 59 and 60. Considering the *Constitution* sch 2, it follows that the underlying law is the Indigenous common law of PNG developed (the better word is 'formulated') by the National and Supreme Courts in any matter before them where there appears to be no rule of law that is applicable. Despite all these, there is not a course on the underlying law under the LLB program and that may be subject matter for discussion some other time. Presently, underlying law is taught under Customary Law under the program.

VI ACTS OF PARLIAMENT AND CUSTOMARY LAW

Following from the constitutional regime, most of the legislation dealing with substantive areas of law such as 'land law', 'family law' and 'criminal law' consider application of custom under their respective statutory regimes. A different category of legislation also deals with customary law and in fact they were enacted exclusively for this purpose. The *Underlying Law Act* and the *Customs Recognition Act 1963* (PNG) and the *Village Courts Act 1975* (PNG) fall into this latter category. Collectively these two categories of legislation provide the statutory framework within which PNG's customary laws may be invoked to regulate social order of contemporary PNG society in the 21st century in addition to the other set of laws of the state unaffected by this regime.

What then is the scope of each of these categories? The former is relatively more general in nature in that the default position in those legislation is that the formal laws of the state apply save in limited and specified instances when customary law may be invoked. For instance, under the *Land Act 1996* (PNG) the regime only provides for when customary law may apply and does not say anything positively about the content of the customary laws applicable. So, for example, once land is designated customary land, the implication under the *Land Act 1996* (PNG) is that its ownership, transfer and succession depends on customary land tenure.[18] The latter category is somewhat more focused on customary law (in question) but imposes requirements for the customary law or custom to pass before it can be recognised or taken into account in a given case (before the courts). They may be regarded as the regulatory framework within which custom is received and applied as part of the laws of the state. For instance, the *Customs Recognition Act* provides for: the manner of proving custom (s 2); recognition of custom, unless doing so would cause injustice; be contrary to public interest; and or adversely affect the interest of a child (s 3); application of custom in criminal and civil cases (ss 4 and 5);

[16] David Gonol, *The Underlying Law of Papua New Guinea: An Inquiry into adoption and application of customary law* (UPNG Press & Bookshop, 2016) 2.
[17] Ibid 10.
[18] On land tenure in PNG, see JF Weiner and K Glaskin, 'Customary Land Tenure and Registration in Papua New Guinea and Australia: Anthropological Perspectives' in JF Weiner and K Glaskin (eds), *Customary Land Tenure & Registration in Australia and Papua New Guinea: Anthropological Perspectives* (ANU Press, 2007) vol 3, 1.

and dealing with conflict of customs (s 7). What must happen when two or more systems of customs applicable? This question is also dealt with under *Underlying Law Act* s 17.

In so far as criminal law is concerned, except for the exception to the offence of bigamy under s 360, there is nothing in the *Criminal Code Act 1974* (PNG) providing for the application of customary law. So, when Sir Silas Atopare visited Buckingham Palace as the Governor General of PNG with his second wife, the Palace formally accepted her so long as it was in line with his Excellency's customary law.[19] As observed by Utley in the *1990 Law Conference on "The Supreme Court in the Eighties", Commemorating Sir Buri Kidu's 10 years in Office* after acknowledging criticism levelled against the criminal justice system wanting to make it more user friendly to ordinary Papua New Guineans observed:

> Despite these criticisms and proposals, no recognition was given to customary norms and processes in the *Criminal Code Act* which replaced the separate PNG criminal codes with a single PNG Criminal Code. Although the new Code repealed some offences, added some new ones, and altered some procedural and evidentiary rules, the structure remained that of the Queensland Criminal Code.[20]

Even though custom is not directly applicable under the Code, it can be considered to ascertain relevant facts regarding status of persons at custom; their relationship to one another;[21] and their state of mind for purposes of ascertaining magnitude of provocation.[22] In these cases, the customs in question were handled by the courts as a question of fact without taking judicial notice of these customary laws.

In the context of the family, state laws on adoption and marriage are more thoroughly informed by customary law. For instance, the state law under the *Marriage Act 1963* (PNG) s 3 recognises customary marriages as valid and effective for all purposes. Similarly, the state law under *Adoption of Children Act 1968* (PNG) ss 53 and 54 recognises and allows customary adoption of children. In terms of customary marriage, the obligation under customary law to pay 'bride price' has been highlighted by a record amount at K1 million (AUD430,000) being paid in a 2023 ceremony in Manus Province.[23]

Under the *Wills, Probate and Administration Act 1966* (PNG) ss 35D and 35E, the estate of a person who dies intestate is distributed according to 'his' customary law. The use of the word 'person' and 'his' custom implies the provision may apply to non-natives who have been assimilated into the traditional society concerned.

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[19] See Summasy Singin, during the Inaugural Constitutional Day Lectures on 15 August 2023 at LLT, SOL Building, UPNG, Port Moresby, PNG.
[20] See BL Utley, 'Custom and Introduced Criminal Justice' in R W James and I Fraser (eds), *Legal Issues in a Developing Society* (University of Papua New Guinea, 1992) 128, 129.
[21] *S v Misim Kais* [1978] PNGLR 241.
[22] *S v Marawa Kanio* [1979] PNGLR 319.
[23] 'Manus Issues', *Facebook* (Web Page) <https://www.facebook.com/groups/754126754686589/posts/5817221688377045>.

Legal pluralism is flourishing in PNG, as it is elsewhere in the world.[24] In Australia, after the High Court of Australia's landmark decision in *Mabo v Queensland (No 2)*,[25] the ruling in *Love v Commonwealth of Australia; Thoms v Commonwealth of Australia*[26] has reignited the debate.[27] Perhaps the common denominator between the Australian and PNG legal systems is that they do not recognise Indigenous law per se or in other words their courts do not take judicial notice of Indigenous laws but they recognise rights under these laws as facts giving rise to claims such as rights to land as found by the court in *Mabo*.[28] However, the PNG Law Reform Commission is currently working on recording the customary laws of PNG to be recognised by the formal state law or legal system.[29] Moreover, the recognition of customary law in PNG is provided for by legislation and the case authorities are evidence and relatively ancillary in the safeguarding of the recognition of Indigenous laws. In any case, Australia is a settler state whereas PNG is not which qualifies the comparison to that extent.

VII CHALLENGES AND RECOMMENDATIONS

During the years under consideration, a high percentage of students failed Customary Law in Year 1. Anecdotal evidence suggests that they did not fully understand the scope and analytics of the course when they studied it in their first year and that it only became clearer as they progressed further in their four-year degree program and they studied the other substantive areas of law, such as Criminal Law and Land Law.

As alluded to above, this is somewhat unsurprising given their competency level as a first-year law student. In addition to this competency issue, the medium of instruction is English which is their second language which also requires effort especially given the fact that legal literature is naturally pervaded with technical legal vocabulary. Furthermore, some of these struggles early on in their law study generally may be attributable to the shortcomings of the Department of Education's OBE curriculum reform for secondary education in PNG.[30] The study of law 'does take some getting used to' and therefore to approach a course entailing law reform ideals at this early stage is not only futile but counter-productive in terms of achieving its intended aim.

[24] On the origins of legal pluralism, see Sally Engle Merry, 'Legal Pluralism' (1988) 22(5) *Law & Society Review* 869.
[25] [1992] HCA 23; (1992) 175 CLR 1.
[26] [2020] HCA 3.
[27] See Kirsty Gover, 'Aboriginality and Alienage: Legal Pluralism at the Australian Border' (Video, 15 September 2022) <https://www.youtube.com/watch?v=NXeKNzhREjU>.
[28] Cf the reception of *tikanga* Māori (roughly, Māori customary law) by the New Zealand Supreme Court in *Takamore v Clarke* [2012] NZSC 116; *Ellis v R* [2022] NZSC 115.
[29] *Underlying Law: Research and Monitoring Strategy & Action Plan 2021 to 2031* (Constitutional Law Reform Commission, 2020) 6.
[30] See James Olio Agigo, 'Curriculum and Learning in Papua New Guinea Schools: A Study on the Curriculum Reform Implementation Project 2000 to 2006: Special Publication No 57' *The National Research Institute* (Report, 2010) <https://pngnri.org/images/Publications/057_Agigo_2010.pdf>.

The employment of the lower segment of the 'Blooms Taxonomy'[31] did not help as well because the students were required to know, say for example, 'Criminal Law', without having yet taken the course before they could appreciate for instance, the courts' stance as regards the application of custom or customary law in that branch of the law of the state. This is true for all the other branches of law as well. This is predicated on the fact that even though it would have been useful to study the course by focusing on its social context; the reality is that course is studied mainly in terms of what the formal laws of the state have to say about customary law.

Indigenous legal reconstruction also requires an in-depth understanding of the mainstream legal theories which is also not among the competencies of the first-year student including most first year students enrolling from prior degrees or taking up studying from the industry. If anything, these students (coming from the industry) may be less open to accept new legal theories considering their experience in a very positivist legal practice. Legal plurality also demands a certain level of thinking outside the box from the state's formal legal system and for the development of Indigenous legal thought which, as already stated, requires sound knowledge on jurisprudence.

It follows from this analysis that Customary Law should be taught in the final year of study when students are best prepared to study this area of the law, which is of paramount importance in the Indigenous-liberal-democratic reconstruction of PNG. Only then will the student as an agent of change attain a clearer picture of the law in relation to Indigenous jurisprudence, self-actualization and or national identity. Furthermore, students of customary law should ideally take an elective enrichment course on Anthropology from the School of Humanities and Social Sciences to complement their studies.

[31] Cf Marcella LaFever, 'Switching from Bloom to the Medicine Wheel: creating learning outcomes that support Indigenous ways of knowing in post-secondary education' (2016) 27(5) *Intercultural Education* 409.