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Chapter 1 : Law of Papua New Guinea - Wikipedia

The Constitution of Papua New Guinea is both a document in legal theory -- stating the goals and basic premises of the society -- and a set of laws: the fundamental laws of the nation. It is a 'home grown' political and legal roadmap for the nation's development, underpinned by ideas of national self-respect, democracy and equality.

Government is by parliamentary democracy, with a unicameral National Parliament of members increased from before the general election. Elections are held every five years, with universal adult suffrage. After a general election parliament elects a Prime Minister who heads the national government. Parliament can only hold votes of no confidence in the Prime Minister when more than 18 months has elapsed since an election and there are at least 12 months before a new election is due. Politics The political life of Papua New Guinea is one of diversity and is characterised by a tradition of fluid coalitions. A large number of candidates more than 2, in contest the seats at general elections, and the consequent low number of votes required to win seats means there is a high turnover of MPs. Allegiances are fragile and MPs often change parties more than once during the life of a parliament. Prime Ministers have tended not to serve out a full term between elections, though they have often returned to power later. The general election that commenced in mid-June was chaotic and violent, with the loss of at least 25 lives, and had to be extended for four weeks beyond the scheduled two-week voting period. Even then six Southern Highlands constituencies could not be declared because of missing ballot boxes. Following the parliamentary elections held in June–July, in which NA won 27 seats and independents 21, Somare secured the agreement of a further 59 MPs to join his coalition, and in mid-August was duly re-elected Prime Minister by parliament. In the same month Sir Michael Somare stepped aside in order to face a Leadership Tribunal hearing on allegations of financial mismanagement, and his newly appointed deputy, Samuel Abal, became acting Prime Minister. Following a two-week suspension from office by the Tribunal in April, Somare began a long period of medical treatment in Singapore. In January there was a further move to enforce the Supreme Court ruling by some members of the Defence Force loyal to Somare. This was quickly halted by the majority of the Force. In May the Supreme Court made a further unsuccessful attempt to reinstate Somare. The rest of the seats were shared among some 20 other parties, including the Triumph Heritage Empowerment party 12 seats and NA seven. Some 60 per cent of members of the last parliament were not returned to office. Turnout was 77 per cent. In its final report the observer group said that:

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History History Melanesian people inhabited the area from or BCE, living in groups isolated by dense forest. In consequence, no larger social order developed, and even today, more than languages are spoken. Spanish and Portuguese sailors sighted the land in the early 16th century. There was some limited exploration in the 19th century, and a few settlements made. In , Germany annexed the northern parts and Britain proclaimed a protectorate over the southern parts which were formally annexed by Britain in and became British New Guinea. In the Japanese army occupied parts of New Guinea and Papua; the Australian military administered the rest. The Act also set up a legislative council, under an administrator, with 28 members, of whom three were elected, nine appointed and 16 official. There had to be at least three Papua New Guineans among the appointed members. Under the Papua and New Guinea Act of , the council became a house of assembly, with 64 members, ten of them nominated official members. Consequently, at its opening in June , the Assembly had a majority of elected Papua New Guineans. In the Select Committee recommended that the Territory prepare for self- government. Elections were held in April The House had elected members, with an additional three appointed and four official members, and Michael Somare became Chief Minister of a coalition government. Self-government was granted at the end of and in the spring of Australia gave up certain remaining powers over defence and foreign affairs. The elections brought in another coalition government, headed by Paias Wingti. Somare resigned as leader of the Pangu Pati in May and a month later his successor, Sir Rabbie Namaliu, became Prime Minister, after Wingti had lost a vote of no confidence in the House. Paias Wingti was returned at the elections of In early the government dispatched foreign mercenaries to Bougainville. Chan dismissed the defence force chief, but the army refused to recognise his successor and Chan himself resigned in March The cabinet appointed a caretaker government headed by the Minister for Mining and Petroleum, John Giheno. In the elections held in June , 16 ministers including Chan lost their seats and Bill Skate, the Governor of Port Moresby, was elected Prime Minister by parliament after a month of negotiations. Beset by corruption scandals and an acute financial crisis, by mid Skate found his political support, which had at best been fragile, dwindling rapidly. In June he could no longer count on a majority in parliament, he resigned as Prime Minister in July shortly before parliament started its new session, and Sir Mekere Morauta emerged as his successor. Initially, the revolt was focused on the environmental damage caused by the mine and the lack of royalties being paid to the Bougainvilleans. By some secessionist leaders were becoming dissatisfied with the hard-line stance of the BRA. At a meeting with the Prime Minister in November , after which the Mirigina Charter was established, they agreed to the setting up of a transitional administration for the North Solomons Province the Bougainville Transitional Government , which would have a council of chiefs nominating members of the provincial assembly. This administration was established in early , with Theodore Miriung as its Premier and talks on increased autonomy continued. In October Premier Miriung was assassinated. The government, however, had decided on a military solution and in early it contracted a group of foreign mercenaries to impose a permanent resolution of the Bougainville crisis. In October , following talks in Christchurch, New Zealand, a truce was signed between the new government and many of the Bougainville separatists, though not the BRA led by Francis Ona. After further negotiations, in January a permanent peace and amnesty were agreed with all the secessionists, taking effect after an official signing ceremony at the end of April , and ending a nine-year conflict which had claimed the lives of some 20, people. A process of negotiation on greater autonomy was initiated: The Bougainville Peace Agreement was signed in Arawa in August , providing for special autonomous status for Bougainville, with a gradual draw-down of substantial self- government powers from the Papua New Guinea Government, and the promise

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of a referendum on independence to be held between and James Tanis was elected President of Bougainville in a by-election held in December , following the death of President Kabui in June that year.

Chapter 3 : Papua New Guinea Primary Materials

The law of Papua New Guinea consists of the Constitution, ordinary statutes enacted by Parliament or adopted at Independence from overseas (together with their pendant regulations) and judge-made law.

Constitution of the Independent State of Papua New Guinea The Constitution is "autochthonous" a constitutional term of art also used in Malaysia and meaning, literally, "aboriginal," indicating that legal continuity with the former metropolitan power was severed and the Constitution enacted by a constitutional convention of the newly independent state "as in the USA after the American Revolution" rather than by an imperial parliament as in the case of the Constitutions of Canada and Australia. It is "entrenched," meaning that its provisions overbear any ordinary statutory enactments which the courts find to be inconsistent with it, in accordance with the constitutional authority of *Marbury v. Madison*, the case which established the principle in the USA, the first modern state to have an entrenched constitution. In the event, PNG chose to retain the monarchy and there have been no serious moves to alter that arrangement. In practice, the governor-general, chosen by free vote of sitting members of parliament, functions as a de facto non-executive president [citation needed]. The "customary law" portion of the "underlying law" was contemplated by the original framers of the Constitution as deriving from the regional customs of the country in the same way as the common law of England that law which was "common" to the whole country had done prior to, deemed to be "time immemorial" in English law. In practice the courts have found great difficulty in applying traditional custom in a modern legal system and the development of the customary law according to indigenous Melanesian conceptions of justice and equity has been less thorough than may have been anticipated in . In the National Parliament enacted the Underlying Law Act [1] which purports to mandate greater attention by the courts to custom and the development of customary law as an important component of the underlying law. Thus far the statute appears not to have effected such a result. Statutes [edit] Statute law is very largely adopted from overseas jurisdictions. Courts [edit] The judicial system consists of village magistrates courts, which remain the only court remaining the administrative responsibility of the executive branch, district courts in urban centres presided over by stipendiary magistrates, the National Court which is the superior trial court and the Supreme Court which is functionally an appellate division of the National Court: The Supreme Court is the final court of appeal: The Supreme Court also has jurisdiction under the Constitution to give advisory opinions, called "references," on the constitutionality of legislation. In addition to its function as a trial court, the National Court also functions as a court of disputed returns hearing "Electoral Petitions" by unsuccessful candidates for Parliament; Leadership Tribunals hearing cases of alleged misconduct in office referred by the Ombudsman Commission consist of one National Court judge and two District Court magistrates. The Supreme Court has a special responsibility for developing the "underlying law," i. The responsibility has been given additional express warrant in the Underlying Law Act, which purports to mandate greater attention by the courts to custom and the development of customary law as an important component of the underlying law. In practice the courts have found great difficulty in applying the vastly differing custom of the many traditional societies of the country in a modern legal system and the development of the customary law according to indigenous Melanesian conceptions of justice and equity has been less thorough than may have been anticipated in ; the Underlying Law Act does not yet appear to have had significant effect. Advocacy follows the conventions of the English common law world and is adversarial rather than inquisitorial ; German law was wholly displaced by Anglo-Australian law in the former German New Guinea after when Australia seized the Territory and there are no traces of it in modern Papua New Guinea. Victims of crime can choose to have their cases heard in the national courts but this means transporting all those involved to the nearest town. Additionally, national courts hand down sentences that do not generally compensate the victim directly. Melanesian custom tends to see crime as an offence against the victim and their family and community, more than an offence against the law. The affected family require

compensation in the form of money or goods. In remote areas, Village Courts are the primary source of formal justice. The Village Courts grew from colonial systems, and were most recently redefined through the Village Courts Act of 1975. Five types of officials can be appointed through the provincial governments, with senior officers requiring gazetting at the national level through the Village Courts and Land Mediation Secretariat. In remote regions in which few people have paid employment it might seem that large fines would be unlikely to be paid. The system is usually extremely effective; many people will work in town at some stage in their life and then have savings. Fines are levied against the transgressor and family, who then join together to pay the fine. The Committee Man is paid a fee for his time, generally by the person bringing the case. In a remote environment with no police to back up and enforce his decision, the Committee Man needs considerable wisdom and diplomacy to make his verdict stick. Good Committee Men are impressive individuals and valuable sources of information about their local communities. An early crisis in relations between the executive and judiciary[edit] The independence of the judiciary has been a particular problem in developing countries, though it was early confirmed in Papua New Guinea. In PNG as in Australia, the principle is in fact somewhat artificially defined simply to mean that the judiciary is independent from executive interference, as established by the English Bill of Rights, 1689; however, the principle does not extend, as was established in Australia during the early years of the Australian federation, to preventing the courts from rendering advisory opinions to the executive; nor are there any implications with respect to the quasi-judicial function of administrative tribunals, also an issue at one time in Australia see Separation of powers in Australia. The principle was quickly tested in Papua New Guinea. In 1975, four years after Independence, the then-Minister of Justice, Mrs Nahau Rooney, wrote a widely circulated letter critical of what she perceived as a lack of sensitivity by the then entirely expatriate-personnel Supreme Court to a "growing national consciousness": The then-Chief Justice, Sir William Prentice, called a special sitting of the full bench to condemn the minister for what the court characterised as interference with judicial independence. Mrs Rooney responded by stating that she had "no confidence in the Chief Justice and other Judges. The Prime Minister released her on licence after she had served one day of her sentence and four judges including the Chief Justice promptly resigned, a fifth having previously resigned over a related matter. The vacancies were, after a period of some uncertainty, filled by the first national justices, the new Chief Justice Buri Kidu, Mr Justice Mari Kapi who eventually succeeded Kidu CJ, and Acting Justice Bernard Narokobi, together with expatriate justices who had had long experience in Papua New Guinea as trial lawyers or magistrates. Three considerable ironies emerged in the long term from the Rooney Affair: And 3 Since the Rooney Affair members of the Executive have been notably timorous in articulating criticism of the Bench, notwithstanding extensive overseas jurisprudence permitting comment on the courts in countries with similar constitutional arrangements whose constitutions include near-identical guarantees of rights and freedoms to those contained in the Constitution of Papua New Guinea. In the independence of the judiciary was briefly challenged when Sir Arnold Amet, the immediately retired Chief Justice of Papua New Guinea, who was in the process of inaugurating a post-judicial political career, launched a series of articles in the Malaysian-owned newspaper The National in which he politically challenged the deliberations of the court over which he had formerly presided with respect to a capital case which was then sub judice. The newspaper was smartly reminded by the court that such challenge was likely to result in severe sanctions, and Sir Arnold withdrew.

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Chapter 4 : Papua New Guinea : Constitution and politics | The Commonwealth

[(The Annotated Constitution of Papua New Guinea)] [Author: Brian Brunton] [Nov] Hardcover - November 4, Be the first to review this item See all 4 formats and editions Hide other formats and editions.

British annexation of southeast New Guinea in Archaeological evidence indicates that humans first arrived in Papua New Guinea around 42, to 45, years ago. They were descendants of migrants out of Africa, in one of the early waves of human migration. This has been correlated with the introduction of pottery, pigs, and certain fishing techniques. In the 18th century, traders brought the sweet potato to New Guinea, where it was adopted and became part of the staples. Portuguese traders had obtained it from South America and introduced it to the Moluccas. Sweet potato largely supplanted the previous staple, taro, and resulted in a significant increase in population in the highlands. Although by the late 20th century headhunting and cannibalism had been practically eradicated, in the past they were practised in many parts of the country as part of rituals related to warfare and taking in enemy spirits or powers. Traders from Southeast Asia had visited New Guinea beginning 5, years ago to collect bird-of-paradise plumes. The word papua is derived from an old local term of uncertain origin. In , he noted the resemblance of the people to those he had earlier seen along the Guinea coast of Africa. The name is one of several toponyms sharing similar etymologies, ultimately meaning "land of the blacks" or similar meanings, in reference to the dark skin of the inhabitants. New Guinea from to Germany and Britain controlled the eastern half of New Guinea. In the nineteenth century, Germany ruled the northern half of the country for some decades, beginning in , as a colony named German New Guinea. In after the outbreak of World War I, Australian forces landed and captured German New Guinea in a small military campaign and occupied it throughout the war. After the war, in which Germany and the Central Powers were defeated, the League of Nations authorised Australia to administer this area as a League of Nations mandate territory. The southern half of the country had been colonised in by the United Kingdom as British New Guinea. With the Papua Act, the UK transferred this territory to the newly formed Commonwealth of Australia, which took on its administration. In contrast to establishing an Australian mandate in former German New Guinea, the League of Nations determined that Papua was an External Territory of the Australian Commonwealth; as a matter of law it remained a British possession. The difference in legal status meant that until, Papua and New Guinea had entirely separate administrations, both controlled by Australia. Approximately, Japanese, Australian, and US servicemen died. This was later referred to as "Papua New Guinea". The natives of Papua appealed to the United Nations for oversight and independence. The nation established independence from Australia on 16 September, becoming a Commonwealth realm, continuing to share Queen Elizabeth II as its head of state. It maintains close ties with Australia, which continues to be its largest aid donor. A renewed uprising on Bougainville started in and claimed 20, lives until it was resolved in The native peoples felt they were bearing the adverse environmental effects of the mining, which poisoned the land, water and air, without gaining a fair share of the profits. The autonomous Bougainville elected Joseph Kabui as president in, who served until his death in He was succeeded by his deputy John Tabinaman as acting president while an election to fill the unexpired term was organised. James Tanis won that election in December and served until the inauguration of John Momis, the winner of the elections. As part of the current peace settlement, a referendum on independence is planned to be held in Bougainville sometime before mid Preparations were underway in Chinese merchants became established in the islands before European exploration. Anti-Chinese rioting involving tens of thousands of people broke out in May The initial spark was a fight between ethnic Chinese and Papua New Guinean workers at a nickel factory under construction by a Chinese company. Native resentment against Chinese ownership of numerous small businesses and their commercial monopoly in the islands led to the rioting. The Chinese have long been merchants in Papua New Guinea. Various nations from Oceania, Australia, the Philippines and Timor-Leste immediately sent aid to the country. Queen Elizabeth II is its sovereign and head of state. The constitutional convention, which prepared

the draft constitution, and Australia, the outgoing metropolitan power, had thought that Papua New Guinea would not remain a monarchy. The founders, however, considered that imperial honours had a cachet. Papua New Guinea and the Solomon Islands are unusual among Commonwealth realms in that governors-general are elected by the legislature, rather than chosen by the executive branch. The Prime Minister heads the cabinet, which consists of 31 MPs from the ruling coalition, which make up the government. Candidates for members of parliament are voted upon when the prime minister asks the governor-general to call a national election, a maximum of five years after the previous national election. In the early years of independence, the instability of the party system led to frequent votes of no confidence in parliament, with resulting changes of the government, but with referral to the electorate, through national elections only occurring every five years. In recent years, successive governments have passed legislation preventing such votes sooner than 18 months after a national election and within 12 months of the next election. In December, the first two of three readings were passed to prevent votes of no confidence occurring within the first 30 months. This restriction on votes of no confidence has arguably resulted in greater stability, although perhaps at a cost of reducing the accountability of the executive branch of government. Elections in PNG attract numerous candidates. The general election was the first to be conducted using LPV. Please update this article to reflect recent events or newly available information. The stand-off between parliament and the supreme court continued until the July national elections, with legislation passed effectively removing the chief justice and subjecting the supreme court members to greater control by the legislature, as well as a series of other laws passed, for example limiting the age for a prime minister. The confrontation reached a peak, with the Deputy Prime Minister entering the supreme court during a hearing, escorted by some police, ostensibly to arrest the Chief Justice. There was strong pressure among some MPs to defer the national elections for a further six months to one year, although their powers to do that were highly questionable. The parliament-elect prime minister and other cooler-headed MPs carried the votes for the writs for the new election to be issued, slightly late, but for the election itself to occur on time, thereby avoiding a continuation of the constitutional crisis. The crisis was tense at times, but largely restricted to the political and legal fraternity, plus some police factions. The public and public service including most police and military stood back. It was a period when, with increased telecommunication access and use of social media notably Facebook and mobile phones, the public and students played some part in helping maintain restraint and demanding the leadership to adhere to constitutional processes. They insisted on having the elections so that the people could say who should be their legitimate representatives for the next five years. Under an amendment, the leader of the party winning the largest number of seats in the election is invited by the governor-general to form the government, if he can muster the necessary majority in parliament. The process of forming such a coalition in PNG, where parties do not have much ideology, involves considerable horsetrading right up until the last moment.

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Chapter 5 : Papua New Guinea - Wikipedia

The annotated constitution of Papua New Guinea: the constitution of the independent state of Papua New Guinea (as altered to 1st January) with extracts from the report of the Constitutional Planning Committee, extracts from leading judgments, case annotations, notes, tables and index/.

Motions of no confidence. Normal term of office. The National Executive Council. The Secretary to the National Executive Council. Grant of pardon, etc. Advisory Committee on the Power of Mercy. Validity of executive acts. The National Justice Administration. The National Judicial System. Independence of the National Judicial System. Exercise of the judicial power. Establishment of the Supreme Court. Composition of the Supreme Court. Jurisdiction of the Supreme Court. Establishment of the National Court. Composition of the National Court. Jurisdiction of the National Court. Appointment of other Judges. Establishment of other courts. Establishment of the Magisterial Service. Functions of the Public Prosecutor and the Public Solicitor. Removal from office of Chief Justice. Removal from office of other Judges, etc. Establishment of the Commission. Lack of procedural provision. Provincial Governments and Local-level Governments system. Grant of Provincial Government and Local-level Government. Inconsistency and justiciability of provincial laws and local-level laws. Suspension of Provincial Governments and Local-level Governments. Re-establishment of Provincial Governments and Local-level Governments. Gradations of Provincial Governments and Local-level Governments. National Economic and Fiscal Commission. Local and village governments. Reports on Provincial Governments and Local-level Governments. Establishment of the State Services. Functions of the Commission. Independence of the Commission. Appointments to certain offices. Control of the Police Force. Functions of the Police Force. Control of the Defence Force. Functions of the Defence Force. Application of general law. Call-out in aid to the civil power. Definition of "disciplined force". Protection of members of disciplined forces. Revenue and expenditure without prior approval. Establishment of the office of Auditor-General. Functions of the Auditor-General. Establishment of the Committee. Functions of the Committee. The Salaries and Remuneration Commission. Purposes of the Commission. Reports by the Commission. Other provisions relating to constitutional office-holders and constitutional institutions. General provision for constitutional office-holders. Special provision for constitutional institutions. Provision of facilities, etc.

Chapter 6 : Papua New Guinea: Constitution of the Independent State of Papua New Guinea

The Constitution of Papua New Guinea is both a document in legal theory -- stating the goals and basic premises of the society -- and a set of laws: the fundamental laws of the nation.

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Chapter 9 : Constitution of the Independent State of Papua New Guinea - National Parliament of Papua New Guinea

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