



# **Codification and Creation of customary laws in the South Pacific and beyond.**

## **Custom Codification under CLRC : Kote Custom Codification**

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# Outline of presentation

- CLRC's mandate under PNG Constitution
- Partnership of CLRC and Judiciary in the codification process
- CLRC's codification template
- Laws governing use and application of customs in court proceedings
- Setting of the subject custom
- The process of codification
- Aspects of the custom to be codified
- Benefits of codification
- Challenges of the codification process
- Conclusion

# CLRC's Mandate

- Section 21 (2) of the Constitution establishes CLRC and mandates it to carry out certain responsibilities
  - (1) Review the Constitution
  - (2) Review other laws; and
  - (3) Monitor the development of the underlying law (local jurisprudence)
- Codification process is part of the 3<sup>rd</sup> mandate of the Commission (S.12(2)(d)CLRCA)

# Partnership

- Codification process is a massive task, cannot be achieved by any one agency
- CLRC and NJS entered into an agreement in 2016 to begin the process
  - Judiciary is targeting the 22 provinces – (Manus) - Provincial Custom
  - CLRC is embarking on the specific customs
    - (a) Kowai and Kaimanga Custom of Siassi
    - (b) Wasu and Henganofi will follow suit

# Template of codification process

- CLRC has developed a template for the process, which will be used for all codification exercises
- Two (2) dimension of this template are:
  - (a) Recording
  - (b) Codification
- Engagement of 3<sup>rd</sup> Year UPNG Law School is the new inclusion

# Laws

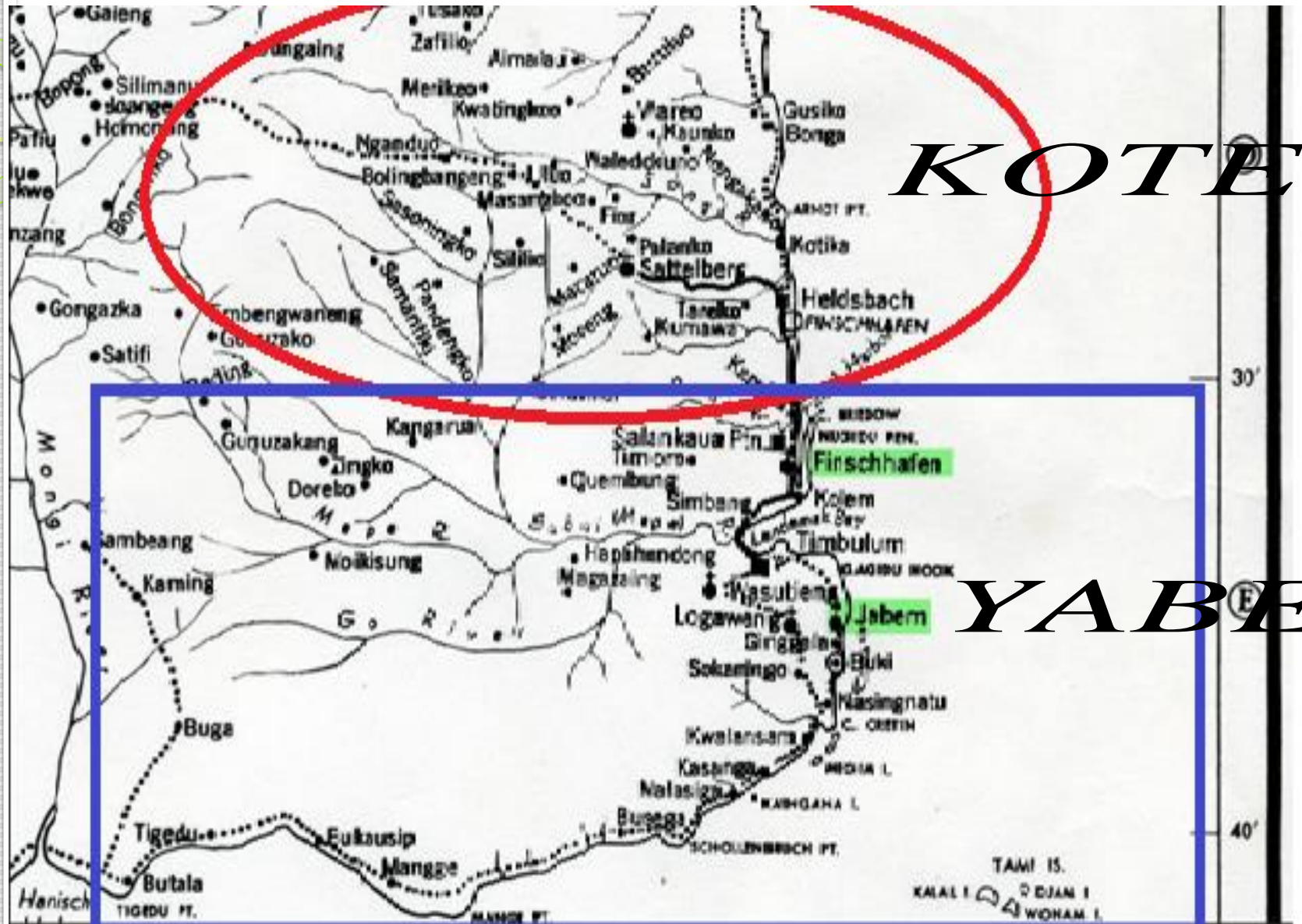
- Constitution – Schedule 2.1, Recognition etc. of custom, preamble declaration
- Custom Recognition Act – S. 3 Recognition of the underlying laws
- Village Court Act –S.57 Application of customs in deciding outcome of cases
- Case Laws
  - *Miriam Wilingal [1997] PNGLR 119*
  - *State v Kepao and ors (2008) N4147*
  - *State v Dabo and Gele [2006] PGNC 97 etc.*

# Location of Kote Custom in PNG





# Location of Kote on the Finschhafen Map





# Setting of the subject custom

- Kote actually is the name of one of Morobe's big languages. People are also call Kote.
- Had the first outside contact by Europeans in 1884
- Live at the edge of Huon Peninsula where the first human settlement in PNG about 40,000 years ago is believed to be
- Amalgamation of around five (5) similar cultures unified through Lutheran Mission in the late 1800 and 1900
- Current changes within the custom coupling with outside influences is posing serious threats to Kote Custom and therefore codification is necessary

# The processes

What processes will be used?

- 1) Clan Interview – Meet separately with women and youth within their clans during consultation
- 2) Expert interviews- Selected village and clan elders, experts in Kote Customs will be interviewed to on specific customs
- 3) Compilation of consultation data will be completed and final paper will be presented to the Kote Custom experts for further comments before it is finalised

## Aspects of the custom to be codified

Following aspect of the custom will be codified

- 1) Succession
- 2) Marriage
- 3) Gardening and harvest
- 4) Hunting and fishing
- 5) Festival and Celebrations
- 6) Sorcery practices
- 7) Dispute settlement
- 8) Wars and payback killings

## Benefits of the codification

- A written document for future generations
- Valuable Customs will be preserved from disappearing
- Judiciary/Judges will easily invoke customs in deciding civil and criminal cases involving parties from the area



## Likely challenges of the codification

- People's reluctance towards codification of some sacred customs
- People's misunderstanding of the codification process
- Geographical constraints, likely to hinder participation of remote communities
- Lack of political will for further support



## Conclusion

- CLRC's is targeting specific customs in PNG, certainly Kote custom will be the next project
- If partnership with CLRC increase, there will be an increase in custom codification project
- Kote custom is rich and one of the biggest in the Morobe Province but it's disappearing fast and may completely be wiped out in the next 50 years if it is not preserved.

# THANK YOU

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