



Legal Research Guide: Māori Customary Law

July 2013

LL File No. 2013-009216
LRA-D-PUB-002486

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LEGAL RESEARCH GUIDE:

MĀORI CUSTOMARY LAW

I. Introduction

Since the 1970s, Māori culture and language have experienced a major renaissance in New Zealand, and claims relating to past grievances, self-determination, self-governance, and land and resource rights have also received increased and ongoing attention in the context of the relationship between Māori and the New Zealand government. Underlying many of these issues is the fact that the Māori people have distinct systems, customs, and beliefs regarding their relationship to the land and other resources, as well as to each other. The extent to which these customs are recognized and applied within the New Zealand legal system vary depending on the subject matter, and there are complex historical, legal, constitutional, and political circumstances that impact this situation.

This guide is intended to be a starting point for research on Māori customary law and its interaction with the common and statute law of New Zealand. Much has been written on this and related subjects over the years, and the resources contained in this guide are by no means exhaustive. We have focused on the most recent secondary materials, although publications from the past two decades (or more) are included. In addition to setting out general resources, materials on some of the subject areas to which customary law may be relevant are included: land law, natural resources law, family law, and criminal justice. Many of the resources are available in the collections of the Law Library of Congress, and the articles and papers referenced are also available online or accessible through subscription databases such as HeinOnline.

Various entities have previously compiled bibliographies of materials related to Māori customary law. For example, the University of Waikato Library lists books and papers on different areas on its website: *Māori Customary Law – A Bibliography*, THE UNIVERSITY OF WAIKATO: THE LIBRARY. The Bodleian Libraries at the University of Oxford also provide guidance and links to resources on Māori law and Māori land: *New Zealand Law: Indigenous Law*, OXFORD LIBGUIDES. Several of the items on these websites are also included in the lists of materials contained in this guide.

II. Māori Customary Law and the New Zealand Legal System

Prior to European settlement, the individual Māori tribes of New Zealand had well-established governance arrangements, social structures, and systems of accepted norms and customs, generally referred to as *tikanga Māori*. This included rules relating to trade and land rights, family relationships, protection of the environment, and conflict resolution. According to a prominent Māori professor, “[tikanga Maori is the Maori equivalent of English law.” She further explains that

[i]t derives from the very detailed knowledge gained from residing in a particular geographic area for many hundreds of years, developing relationships with other neighbouring communities as well as those further afield, and learning from practical experience what works and what does not. Not surprisingly, this body of law is very different from English law in how it is established, mainly because it cannot be reduced to writing and thereby set in concrete by legislation.

In 1840, when around five hundred Māori chiefs from different parts of the country signed the Treaty of Waitangi with the British Crown (the monarch), Māori remained the main population group in New Zealand, numbering about 125,000 compared to about 2,000 European settlers. The chiefs were motivated to sign the Treaty due to various factors, including wanting to trade with Europeans, concerns about lawlessness amongst the settlers, and issues that were arising due to the lack of controls on sales of Māori land. They agreed that the British should establish a colonial government in order to help to regulate the actions of settlers.

Most of the chiefs signed the Māori version of the Treaty. The differences between the English and Māori versions have generated considerable debate over the years. In particular, the first article in the English version purported to cede “sovereignty” over the land to the Crown, while the Māori version used the term *kawanatanga*, or governorship, in the same article. The more equivalent Māori word for sovereignty is considered to be *rangatiratanga*, or chieftainship. This term was in fact used in the Māori version of the second article, which guaranteed Māori *tinō rangatiratanga* over their lands, villages, and treasured possessions (*taonga*). In the English version this article gave chiefs “full, exclusive, and undisturbed possession” of their lands, forests, fisheries and other properties. This article also provided that the Crown had an exclusive right to purchase Māori land.

It has therefore been stated that the chiefs did not object to the establishment of a colonial system of government and the import of English laws as a result of the Treaty, but also understood that tikanga Māori would be respected and remain within their control. Although there were early attempts to take account of Māori customs in legislation and other actions, laws that incorporated tikanga were later repealed and the settler government’s assimilationist policies were progressed during the late nineteenth century and into the twentieth century. During this time, various aspects of the Treaty were breached by the government, and it was even regarded to be a legal “nullity” for a period of time by the courts.

Anger over the breaches of the Treaty, particularly in relation to Māori land rights, led to a strengthening protest movement and increased public awareness in the 1970s and 1980s. A number of significant legal developments occurred during this time and today the Treaty, which is now widely accepted to be a founding constitutional document, has a broad influence on the development of legislation and other government actions. Developments included the establishment of the Waitangi Tribunal in 1975 to consider historic claims by Māori against the Crown, and the beginning of references in various pieces of legislation to the “principles” of the Treaty. This latter approach allows the courts to consider the application of Treaty principles in any case related to the relevant legislation, which can therefore give rise to discussions about the interpretation and application of tikanga Māori. The former Chief Judge of the Māori Land Court has stated that the Treaty of Waitangi in itself is authority for the idea that New Zealand law has “its source in two streams”—English law and tikanga Māori. A number of statutes also now specifically refer to tikanga Māori and associated concepts, including in relation to land and other resources.

In addition to claims relating to obligations in the Treaty and those that arise through statutory references, Māori customary law may be recognized within the New Zealand common law system through the doctrine of aboriginal rights and the associated doctrine of aboriginal title. Under the doctrine of aboriginal rights, customary laws or practices of a continuous nature may be granted the force of law by the courts and any associated rights enforced if they have not been extinguished by statute. This approach has been applied by the New Zealand courts, which have held that “customs and practices which include

spiritual elements are cognisable in a Court of law provided they are properly established, usually by evidence.”

III. General Resources

This section lists examples of resources from the past two decades that provide information on Māori customary law and discuss the approaches and challenges that have emerged with regard to its treatment within the New Zealand legal system.

A. Books and Reports

In 2001, the New Zealand Law Commission published a major study paper on Māori customary law. This resulted from a research project that was conducted over several years following its initiation in 1994 by the Honourable Justice Durie, then Chief Judge of the Māori Land Court. The study paper is available online: Law Commission, Māori Custom and Values in New Zealand Law (NZLC SP9, 2001), http://www.lawcom.govt.nz/sites/default/files/publications/2001/03/Publication_112_288_SP9.pdf.

There are also a range of books that describe Māori customary law, including its place within the laws and policies of the New Zealand government. Many of these materials are not found in the law classification for New Zealand, but rather in the collections on New Zealand history, government and society, and the Māori people:

CLEVE BARLOW, *TIKANGA WHAKAARO: KEY CONCEPTS IN MĀORI CULTURE* (1991), LC Call No. DU423.A1 B33 1991, <http://lccn.loc.gov/91195051>.

ALEX FRAME, GREY AND IWIKAU: *A JOURNEY INTO CUSTOM* (2002), LC Call No. DU423.S63 F73 2002, <http://lccn.loc.gov/2002483425>.

HIRINI MOKO MEAD, *TIKANGA MĀORI: LIVING BY MĀORI VALUES* (2003), LC Call No. DU423.S63 M45 2003, <http://lccn.loc.gov/2004353162>.

ANI MIKAERE, *THE BALANCE DESTROYED: THE CONSEQUENCES FOR MĀORI WOMEN OF THE COLONISATION OF TIKANGA MĀORI* (2003), LC Call No. DU423.W65 M55 2003, <http://lccn.loc.gov/2004381691>.

PETER CLEAVE, *PAPERS TO CONFERENCE: A NEW COLLECTION OF OLD WORK* (2007), LC Call No. DU423.I58 C54 2007, <http://lccn.loc.gov/2008353173>.

W.J. PHILLIPPS & JOHN HURIA, *MĀORI LIFE AND CUSTOM* (2008), LC Call No. DU423 .P5 2008, <http://lccn.loc.gov/2008425372>.

There have also been a number of books written about the Treaty of Waitangi and its place in New Zealand's Constitution and legal system. The following are some of the most recent publications on this topic:

MATTHEW S. R. PALMER, *THE TREATY OF WAITANGI IN NEW ZEALAND'S LAW AND CONSTITUTION* (2008), LC Call No. KUQ2565 .P35 2008, <http://lccn.loc.gov/2008531692>.

CLAUDIA ORANGE, *THE TREATY OF WAITANGI* (rev ed. 2011). The Library of Congress currently holds the original edition of this book: (1987), LC Call No. DU420 .O74 1987, <http://lccn.loc.gov/89106131>.

‘ALWAYS SPEAKING’: *THE TREATY OF WAITANGI AND PUBLIC POLICY* (Veronica M.H. Tawahi & Katarina Gray-Sharp eds., 2011), LC Call No. DU420.12 .A59 2011, <http://lccn.loc.gov/2012358590>.

DAVID V. WILLIAMS, *A SIMPLE NULLITY?: THE WI PARATA CASE IN NEW ZEALAND LAW AND HISTORY* (2011), LC Call No. KUQ354 .W55 2011, <http://lccn.loc.gov/2011431121>.

TREATY OF WAITANGI SETTLEMENTS (Nicola R. Wheen & Janine Hayward eds., 2012), LC Call No. KUQ2562 .T74 2012, <http://lccn.loc.gov/2013376262>.

B. Articles and Papers

Academic articles and papers provide more specific details on the treatment of Māori customary law within the New Zealand legal system. The *Yearbook of New Zealand Jurisprudence* in particular has published a large number of articles related to Māori customary law.

In 2005, the *Yearbook* published a special issue of writings by Māori lawyers and legal academics that included several papers on tikanga Māori. The relevant volume is [available online](#). Papers include the following:

- Ani Mikaere, *Cultural Invasion Continued: The Ongoing Colonisation of Tikanga Māori*, 8(2) Y.B. N.Z. Juris. 134 (2005).
- Linda Te Aho, *Corporate Governance: Balancing Tikanga Māori with Commercial Objectives*, 8(2) Y.B. N.Z. Juris. 300 (2005).
- Jacinta Ruru, *Legislative Provision for Tino Rangatiratanga: A National Park Case Study*, 8(2) Y.B. N.Z. Juris. 316 (2005).

In 2007, the *Yearbook* published a further special issue on Māori laws and values, the Treaty of Waitangi, and human rights. The issue is [available online](#). Part I includes several papers on tikanga Māori and particularly its place in the New Zealand legal system:

- Linda Te Aho, *Tikanga Māori, Historical Context and the Interface with Pakeha Law in Aotearoa/New Zealand*, 10 Y.B. N.Z. JURIS. 10 (2007).
- Judge Stephanie Milroy, *Nga Tikanga Māori and the Courts*, 10 Y.B. N.Z. JURIS. 15 (2007).
- Ani Mikaere, *Tikanga as the First Law of Aotearoa*, 10 Y.B. N.Z. JURIS. 24 (2007).
- Moana Jackson, *It's Quite Simple Really*, 10 Y.B. N.Z. JURIS. 32 (2007).

Two volumes of the *Yearbook* in 2010–11 were dedicated to the publication of a series of papers from a 2007 symposium on custom and the state sponsored by the Te Mātāhauariki Research Institute of the University of Waikato School of Law. The publication includes fifteen papers by legal academics, lawyers, and judges: TŪHONOHONO: CUSTOM AND STATE, 13 & 4 Y.B. N.Z. JURIS. (2010 & 2011), http://www.waikato.ac.nz/law/research/centre_for_nz_jurisprudence/volume-13-and-14,-2010.

Various other occasional papers and working papers of the Te Mātāhauariki Research Institute are available for download on the Institute's website: TE MATAPUNENGA: A COMPENDIUM OF REFERENCES TO CONCEPTS OF MĀORI CUSTOMARY LAW (Te Mātāhauariki Research Institute Occasional Paper Series No. 8, 2003), <http://lianz.waikato.ac.nz/PAPERS/Occasional%20Papers/TMOP-8.pdf>. This paper has now led to a book, which is to be published in September 2013: RICHARD BENTON ET AL., TE MĀTĀPUNENGA: A COMPENDIUM OF REFERENCES TO THE CONCEPTS AND INSTITUTIONS OF MĀORI CUSTOMARY LAW (Victoria University Press, forthcoming 2013), for information see <http://vup.victoria.ac.nz/te-m-t-punenga>.

Individual articles on Māori customary law have also been published in various New Zealand law journals, including the following:

Chief Judge E.T. Durie, *Custom Law: Address to the New Zealand Society for Legal and Social Philosophy*, 24 VICTORIA U. WELLINGTON L. REV. 325 (1994) (available in HeinOnline).

E.T. Durie, *Will the Settlers Settle? Cultural Conciliation and the Law*, 8 OTAGO L. REV. 449 (1996), available at <http://www.nzlii.org/nz/journals/OtaLawRw/1996/1.html>.

Paul McHugh, *Sovereignty this Century – Maori and the Common Law Constitution*, 31 VICTORIA U. WELLINGTON L. REV. 187 (2000), available at <http://www.nzlii.org/nz/journals/VUWLawRw/2000/16.html>.

Mamari Stephens, *Māori Law and Hart: A Brief Analysis*, 32 VICTORIA U. WELLINGTON L. REV. 853 (2001), available at <http://www.nzlii.org/cgi-bin/sinodisp/nz/journals/VUWLawRw/2001/44.html>.

Mason Durie, *Universal Provision, Indigeneity and the Treaty of Waitangi*, 33 VICTORIA U. WELLINGTON L. REV. 591 (2002), <http://www.victoria.ac.nz/law/research/publications/vuwlr/prev-issues/pdf/vol-33-2002/issues-3-4/durie.pdf>.

Mason Durie, *Māori-Specific Provisions in Legislation* (Paper for Australian Law Reform Agencies Conference, Apr. 2004), <http://www.massey.ac.nz/massey/fms/Te%20Mata%20Te%20Tau/Publications%20-%20Mason/M%20Durie%20Māori%20specific%20provisions%20in%20legislation.pdf>.

Alex Frame & Paul Meredith, *Performance and Māori Customary Legal Process*, 114(2) J. POLYNESIAN SOC'Y 135 (2005), http://www.jps.auckland.ac.nz/docs/Volume114/jps_v114_no2_2005/2%20Performance%20and%20Maori%20customary.pdf.

P.G. McHugh, *New Dawn to Cold Light: Courts and Common Law Aboriginal Rights*, 2005 N.Z. L. REV. 485 (2005) (available in HeinOnline).

David V. Williams, *Indigenous Customary Rights and the Constitution of Aotearoa New Zealand*, 14 WAIKATO L. REV. 120 (2006), available at <http://www.nzlii.org/cgi-bin/sinodisp/nz/journals/WkoLawRw/2006/7.htm>.

Fiona Wright, *Law, Religion and Tikanga Maori*, 5 N.Z. J. PUBLIC & INT'L L. 261 (2007) (available in HeinOnline).

Geoffrey Palmer, *The Treaty of Waitangi – Where to from Here?*, 11 OTAGO L. REV. 381 (2007), available at <http://www.nzlii.org/cgi-bin/sinodisp/nz/journals/OtaLawRw/2007/4.html>.

John Dawson, *The Resistance of the New Zealand Legal System to Recognition of Māori Customary Law*, 12(1) J. SOUTH PACIFIC L. 56 (2008), available at <http://paclii.austlii.edu.au/journals/FJSPL/vol12no1/pdf/dawson.pdf>.

P.G. McHugh, *Treaty Principles: Constitutional Relations Insider a Conservative Jurisprudence*, 39 VICTORIA U. WELLINGTON L. REV. 39 (2008–2009), <http://www.victoria.ac.nz/law/research/publications/vuwlr/prev-issues/pdf/vol-39-2008/issue-1/treaty-mchugh.pdf>.

Robert Joseph, *Re-Creating Legal Space for the First Law of Aotearoa-New Zealand*, 17 WAIKATO L. REV. 74 (2009), available at <http://www.nzlii.org/cgi-bin/sinodisp/nz/journals/WkoLawRw/2009/5.html>.

Kerensa Johnston, *The Treaty of Waitangi and Maori Custom Law*, 2009 N.Z. L. REV. 549 (2009) (available in HeinOnline).

Arnu Turvey, *Te Ao Māori in a “Sympathetic” Legal Regime: The Use of Māori Concepts in Legislation*, 40 VICTORIA U. WELLINGTON L. REV. 531 (2009–2010), <http://www.victoria.ac.nz/law/research/publications/vuwlr/prev-issues/pdf/vol-40-2009/issue-2/teaomaori-turvey.pdf>.

Catherine Iorns Magallanes, *The Use of Tangata Whenua and Mana Whenua in New Zealand Legislation: Attempts at Cultural Recognition*, 42 VICTORIA U. WELLINGTON L. REV. 259 (2011), <http://www.victoria.ac.nz/law/research/publications/vuwlr/prev-issues/pdf/vol-42-2011/issue-2/10-Iorns.pdf>.

Robert Joseph, *Frozen Rights? The Right to Develop Maori Treaty and Aboriginal Rights*, 19(2) WAIKATO L. REV. 117 (2011), http://www.waikato.ac.nz/law/research/waikato_law_review/volume-19-issue-2,-2011.

Laura Lincoln, *Takamore v Clarke [2011] NZCA 587: The Most Significant Legal Development Affecting Māori*, MĀORI L. REV. (Feb. 2013), <http://Māorilawreview.co.nz/2013/02/sir-edward-taihakurei-durie-student-essay-competition-2012-takamore-v-clarke-2011-nzca-587-the-most-significant-legal-development-affecting-Māori/>.

IV. Land Law

Currently, about five percent of the land in New Zealand is Māori land. The Māori Land Court, which was established by the Te Ture Whenua Māori Act 1993 (The Māori Land Act), has the authority to hear cases relating to the ownership, administration, and transfer of ownership of Māori land. Tikanga Māori and related concepts are referred to multiple times in the legislation. The legislation is currently under review, with a government report published in 2013 putting forward changes aimed at improving the likelihood of utilization of Māori land.

For the purposes of the statute, all land in New Zealand has one of six statuses: Māori customary land, Māori freehold land, general land owned by Māori, general land, Crown land, and Crown land

reserved for Māori. Most Māori land comes under the category of Māori freehold land and generally has multiple owners. However, the Māori Land Court may also determine and declare “land that is held by Māori in accordance with tikanga Māori” to be “Māori customary land,” and has exclusive jurisdiction to investigate title to such land and determine the relative interests of the owners of the land. In these cases, every title to and interest in the land must be determined according to tikanga Māori. In determining other matters relating to Māori land, the Court may also be required to consider issues relating to inheritance and family relationships to which tikanga Māori is relevant. The Court’s records in fact contain “invaluable customary information including whakapapa or genealogy.”

Where a matter of tikanga Māori is referred to the Court, the Chief Judge of the Court may appoint additional members with knowledge and experience of tikanga Māori to determine the case. The law also provides for the referral of questions of tikanga Māori raised in the High Court to the Māori Appellate Court.

In addition to this legislation, tikanga Māori is relevant in land-related (and other) claims before the Waitangi Tribunal, as well as in relation to native title claims before the courts. This latter area has been particularly prominent in recent years due to court cases, political debate, and legislation regarding Māori rights to areas of the foreshore (intertidal zone) and seabed. Although it is also clearly related to customary land rights, resources on this issue are provided in the section below on natural resources law.

A. Books and Reports

RICHARD BOAST, *MĀORI LAND LAW* (2d ed. 2004). The Law Library of Congress currently holds the first (1999) edition of this publication: LC Call No. KUQ2562 .M36 1999, <http://lccn.loc.gov/00340952>.

RICHARD BOAST, *BUYING THE LAND, SELLING THE LAND: GOVERNMENTS AND MAORI LAND IN THE NORTH ISLAND 1865-1921* (2008), LC Call No. HD1120.5.Z8 N673 2008, <http://lccn.loc.gov/2008396482>.

Tanira Kingi, *Maori Land Ownership and Land Management in New Zealand*, in 2 AUSAID, *MAKING LAND WORK* 129–50 (2008), http://www.ausaid.gov.au/Publications/Documents/MLW_VolumeTwo_CaseStudy_7.pdf

TOM BENNION ET AL., *NEW ZEALAND LAND LAW* (2009), LC Call No. KUQ658 .N49 2009, <http://lccn.loc.gov/2010362566>.

RAUPATU: *THE CONFISCATION OF MAORI LAND* (Richard Boast & Richard S. Hill eds., 2009), LC Call No. KUQ2562 .R38 2009, <http://lccn.loc.gov/2010413019>.

P.G. MCHUGH, *ABORIGINAL TITLE: THE MODERN JURISPRUDENCE OF TRIBAL LAND RIGHTS* (2011), LC Call No. K738 .M39 2011, <http://lccn.loc.gov/2011933691>.

Waitangi Tribunal reports, which include detailed information on historical events and customary rights of tribes in different parts of the country, may be downloaded from the Tribunal’s website.

B. Articles and Papers

The *Māori Law Review*, a monthly review of law affecting Māori, publishes articles on a range of subjects, including the Treaty of Waitangi, customary rights, and customary law. The most recent volume can be accessed online. Volumes from 1993 to the present are available in the collection of the Law Library of Congress: LC Call No. K12 .A6, <http://lccn.loc.gov/sn95032769>.

A number of articles in New Zealand law journals, as well as in some United States publications, have discussed various legal aspects of Māori land and land claims, including the following:

Ani Mikaere & Stephanie Milroy, *Treaty of Waitangi and Māori Land Law*, 2001 N.Z. LAW REV. 379 (2001) (available in HeinOnline).

Jacinta Ruru & Anna Crosbie, *The Key to Unlocking Landlocked Maori Land: The Extension of the Maori Land Court's Jurisdiction*, 10 CANTERBURY L. REV. 318 (2004), available at <http://www.nzlii.org/cgi-bin/sinodisp/nz/journals/CanterLawRw/2004/13.html>.

John William Tate, *Tamihana Korokai and Native Title: Healing the Imperial Breach*, 13 WAIKATO L. REV. 108 (2005), http://www.waikato.ac.nz/law/research/waikato_law_review/volume_13_2005.

P.G. McHugh, *Aboriginal Title in New Zealand: A Retrospect and Prospect*, 2 N.Z. J. PUB. & INT'L L. 139 (2004) (available in HeinOnline).

R.P. Boast, *Sir John Salmond and Māori Land Tenure*, 38 VICTORIA U. WELLINGTON L. REV. 831 (2007), <http://www.victoria.ac.nz/law/research/publications/vuwlr/prev-issues/pdf/vol-38-2007/issue-4/salmond-maori-boast.pdf>.

Naomi Johnstone, *The Intertwining of Two Streams: Tikanga, Te Ture Whenua Māori Act 1993 and Tainui*, 1 N.Z. L. STUDENTS J. 331 (2007), available at <http://www.nzlii.org/cgi-bin/sinodisp/nz/journals/NZLawStuJl/2007/11.html>.

Joshua Hitchcock, *Financing Māori Land Development: The Difficulties Faced by Owners of Māori Land in Accessing Finance for Development and a Framework for the Solution*, 14 AUCKLAND U. L. REV. 217 (2008), available at <http://joshuahitchcock.files.wordpress.com/2010/09/financing-maori-land-development.pdf>.

Sarah M. Stevenson, *Indigenous Land Rights and the Declaration on the Right of Indigenous Peoples: Implications for Māori Land Claims in New Zealand*, 32 FORDHAM INT'L L.J. 298 (2008–2009), <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2194&context=ilj>.

Daniel Pannett, *The Māori Land Court: A Preference for Deference?*, 2 N.Z. L STUDENTS J. 191 (2009), available at <http://www.nzlii.org/cgi-bin/sinodisp/nz/journals/NZLawStuJl/2009/10.html>.

Bruce Kercher, *Informal Land Titles: Snowden v Baker (1844)*, 41 VICTORIA U. WELLINGTON L. REV. 605 (2010), <http://www.victoria.ac.nz/law/research/publications/vuwlr/prev-issues/pdf/vol-41-2010/issue-3/kercher.pdf>.

Jacinta Ruru, *Finding Support for a Changed Property Discourse for Aotearoa New Zealand in the United Nations Declaration on the Rights of Indigenous Peoples*, 15 LEWIS & CLARK L. REV. 951 (2011), <https://law.lclark.edu/live/files/10654-lcb154art3rurupdf>.

V. Natural Resources Law

The Resource Management Act 1991 is New Zealand's major piece of environmental legislation. This law, as well as others relating to the protection and management of natural resources and the environment, makes specific reference to the Treaty of Waitangi. Section 8 requires all persons exercising functions under the Act to take into account the principles of the Treaty and, under section 7, such persons must also "have particular regard" to *kaitiakitanga*. Section 2 of the legislation defines this term as "the exercise of guardianship by the tangata whenua ["people of the land," a term used for Māori] of an area in accordance with tikanga Māori in relation to natural and physical resources; and includes the ethic of stewardship." Various other Māori terms and customary law concepts are also referred to in the legislation, as well as in other natural resources legislation such as the Fisheries Act 1996.

As noted above, customary rights relating to the foreshore and seabed have been a major area of debate in recent years. Legislation enacted in 2004 that placed such land in Crown ownership and provided for customary usage claims has since been repealed and replaced by the Marine and Coastal Area (Takutai Moana) Act 2011. Under this law, Māori have the right to participate in conservation processes in marine and coastal areas and can seek recognition of customary rights and customary title in these areas through the courts.

A. Books and Reports

WHENUA: MANAGING OUR RESOURCES (Merata Kawharu ed., 2002), LC Call No. HC663.5 .W48 2002, <http://lccn.loc.gov/2003386453>.

LOCAL GOVERNMENT AND THE TREATY OF WAITANGI (Janine Hayward ed., 2003), LC Call No. DU423.G6 L63 2003, <http://lccn.loc.gov/2003273094>.

PARLIAMENTARY LIBRARY, THE FORESHORE AND SEABED – MĀORI CUSTOMARY RIGHTS AND SOME LEGAL ISSUES (Dec. 12, 2003), <http://www.parliament.nz/NR/rdonlyres/417E0005-14D7-4BA0-89BC-21DB7B235782/522/0312Foreshore1.pdf>.

WAITANGI TRIBUNAL, REPORT ON THE CROWN'S FORESHORE AND SEABED POLICY (2004), LC Call No. KUQ2556 .N45 2004, <http://lccn.loc.gov/2004445722>.

HILARY ANNE & MAUI JOHN MITCHELL, FORESHORE AND SEABED ISSUES: A TE TAU IHU PERSPECTIVE ON ASSERTIONS AND DENIALS OF RANGATIRATANGA (2006), LC Call No. DU423.P63 M57 2006, <http://lccn.loc.gov/2007408021>.

MĀORI PROPERTY RIGHTS AND THE FORESHORE AND SEABED: THE LAST FRONTIER (Claire Charters & Andrew Erueti eds., 2007), LC Call No. KUQ2556 .M36 2007, <http://lccn.loc.gov/2007702381>.

PETER CLEAVE, TAKUTAI: THE FORESHORE AND SEABED (2010), LC Call No. KUQ2556 .C58 2010, <http://lccn.loc.gov/2010399468>.

ENVIRONMENTAL AND RESOURCE MANAGEMENT LAW (Derek Nolan ed., 2011), LC Call No. KUQ1507 .E58 2011, <http://lccn.loc.gov/2011505568>.

RICHARD BOAST & ROBERT MAKGILL, MARINE AND COASTAL AREA ACT: DEMYSTIFYING THE HYPE (2011), LC Call No. KUQ2556 .B634 2011, <http://lccn.loc.gov/2012379311>. See also Robert A. Makgill, *Feeling Left Out at Sea? Navigating No Ownership, Customary Rights and Resource Management* (Aug. 22, 2011), http://academia.edu/849207/Feeling_Left_out_at_Sea_Navigating_No_Ownership_Customary_Rights_and_Resource_Management.

SIMON REEVES, ENVIRONMENTAL LAW IN NEW ZEALAND (2011), LC Call No. KUQ1507 .R44 2011, <http://lccn.loc.gov/2011293102>.

CAROLINE MILLER, IMPLEMENTING SUSTAINABILITY: THE NEW ZEALAND EXPERIENCE (2011), LC Call No. KUQ1509 .M55 2011, <http://lccn.loc.gov/2010024670>.

PETER CLEAVE, ENVIRONMENT AOTEAROA: A COLLECTION OF ESSAYS (2011), LC Call No. TD171.5.N45 C54 2011, <http://lccn.loc.gov/2012379342>.

B. Articles and Papers

As can be seen in the following list of articles, the legal debate about Māori rights regarding the ownership and management of the foreshore and seabed led to a large number of articles being published in both New Zealand and international journals in the mid-2000s. This followed a 2003 Court of Appeal decision in the *Ngati Apa* case and subsequent passage of the Foreshore and Seabed Act 2004. In addition, there has been ongoing discussion about Māori rights in relation to various resources, including national parks, geothermal resources, petroleum, fisheries, forests, and water.

R.P. Boast, *Geothermal Resources in New Zealand: A Legal History*, 6(1) CANTERBURY L. REV. 1 (1995), available at <http://www.nzlii.org/cgi-bin/sinodisp/nz/journals/CanterLawRw/1995/1.html>.

Tama Potaka, *A Treaty Agendum for Local Government*, 29(1) VICTORIA U. WELLINGTON L. REV. 111 (1999), available at <http://www.nzlii.org/cgi-bin/sinodisp/nz/journals/VUWLawRw/1999/13.html>.

Stephanie Milroy, *The Māori Fishing Settlement and the Loss of Rangitiratanga*, 8 WAIKATO L. REV. 63 (2000), http://www.waikato.ac.nz/law/research/waikato_law_review/volume_8_2000.

Jacinta Ruru, *Indigenous Peoples' Ownership and Management of Mountains: The Aotearoa/New Zealand Experience*, 3 INDIGENOUS L.J. 111 (2004) (available in HeinOnline).

Roger Perkins, *Maori Participation in the Management of Petroleum*, 7 Y.B. N.Z. JURIS. 80 (2004), http://www.waikato.ac.nz/law/research/centre_for_nz_jurisprudence/volume_7_2004 (several other articles in this volume also relate to Māori claims to petroleum).

Christian N. Siewers Jr., *Balancing a Colonial Past with a Multicultural Future: Maori Customary Title in the Foreshore and Seabed after Ngati Apa*, 30 N.C. J. INT'L L. & Com. Reg. 253 (2004–2005), <http://www.law.unc.edu/journals/ncilj/issues/volume30/number-1-fall-2004/balancing-a-colonial-past-with-a-multicultural-future-maori-customary-title-in-the-foreshore-and-seabed-after-ngati-apa/>.

Geoffrey W.G. Leane, *Fighting Them on the Beaches: The Struggle for Native Title Recognition in New Zealand*, 8 NEWCASTLE L. REV. 65 (2004–2005), available at <http://worldlii.austlii.edu.au/au/journals/NewcLawRw/2004/5.pdf>.

David Round, *Here Be Dragons?*, 11 OTAGO L. REV. 31 (2005), available at <http://www.nzlii.org/cgi-bin/sinodisp/nz/journals/OtaLawRw/2005/3.html>.

Lee Godden & Shaunnagh Dorsett, *Interpreting Customary Rights Orders Under the Foreshore and Seabed Act: The New Jurisdiction of the Māori Land Court*, 36 VICTORIA U. WELLINGTON L. REV. 229 (2005), <http://www.victoria.ac.nz/law/research/publications/vuwlr/prev-issues/pdf/vol-36-2005/issue-2/dorsett-godden.pdf>.

Claire Charters & Andrew Erueti, *Report from the Inside: The CERD Committee's Review of the Foreshore and Seabed Act 2004*, 36 VICTORIA U. WELLINGTON L. REV. 257 (2005), available at <http://www.nzlii.org/cgi-bin/sinodisp/nz/journals/VUWLawRw/2005/12.html>.

Jessica Kerr, *No-Take Marine Reserves and the Treaty of Waitangi: A Critical Analysis*, 1 N.Z. LAW STUDENTS J. 57 (2006), available at <http://www.nzlii.org/cgi-bin/sinodisp/nz/journals/NZLawStuJl/2006/6.html>.

Jacinta Ruru, *What Could Have Been? The Common Law Doctrine of Native Title in Land under Salt Water in Australia and Aotearoa/New Zealand*, 32 MONASH U. L. REV. 116 (2006), available at <http://worldlii.austlii.edu.au/au/journals/MonashULawRw/2006/6.pdf>.

Linda Te Aho, *Contemporary Issues in Māori Law and Society: Crown Forests, Climate Change, and Consultation – Towards More Meaningful Relationships*, 15 WAIKATO L. REV. 138 (2007), available at <http://www.nzlii.org/nz/journals/WkoLawRw/2007/16.html>.

Jane Catherine Kitson & Henrik Moller, *Looking After Your Ground: Resource Management Practice by Rakiura Maori Titi Harvesters*, 142(1) PAPERS AND PROCEEDINGS OF THE ROYAL SOCIETY OF TASMANIA 161 (2008), available at http://eprints.utas.edu.au/13322/1/2008_Kitson_resource_management.pdf.

Jacinta Ruru, *A Maori Right to Own and Manage National Parks?*, 12(1) J. S. PAC. L. 105 (2008), available at <http://www.pacii.org/journals/fJSPL/vol12no1/pdf/ruru.pdf>.

Linda Te Aho, *Contemporary Issues in Māori Law and Society: The Tangled Web of Treaty Settlements, Emissions Trading, Central North Island Forests, and the Waikato River*, 16 WAIKATO L. REV. 229 (2008), available at <http://www.nzlii.org/cgi-bin/sinodisp/nz/journals/WkoLawRw/2008/11.html>.

Jemima Jamieson, *The Role of Indigenous Communities in the Pursuit of Sustainability*, 14 N.Z. J. ENVTL. L. 161 (2010) (available in Hein Online).

Valmaine Toki, *Adopting a Māori Property Rights Approach to Fisheries*, 14 N.Z. J. ENVTL. L. 197 (2010) (available in Hein Online).

Nin Tomas, *Māori Land Law: The Coastal Marine (Takutai Moana) Act 2011*, 2011 N.Z. L. REV. 381 (2011) (available in HeinOnline).

Jacinta Ruru, *Indigenous Restitution in Settling Water Claims: The Developing Cultural and Commercial Redress Opportunities in Aotearoa, New Zealand*, 22 PAC. RIM L. & POL'Y J. 311 (2013), [HTTP://DIGITAL.LAW.WASHINGTON.EDU/DSPACE-LAW/BITSTREAM/HANDLE/1773.1/1234/22PRLPJ311.PDF](http://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/1234/22PRLPJ311.pdf).

VI. Family Law

Apart from in the context of the Te Ture Whenua Māori Act 1993, New Zealand statutes do not generally specifically recognize or apply tikanga Māori, or refer to the Treaty of Waitangi, in the context of the formal rules that apply to family relationships. The Adoption Act 1955 in fact expressly provides that, other than those that took place before 1910, “no adoption in accordance with Maori custom shall be of any force or effect, whether in respect of intestate succession to Maori land or otherwise.” Therefore, while the practice of *whāngai* (customary or informal adoptions) still takes place, the resulting relationships are not legally recognized.

However, matters that may reflect customs can be seen to be relevant under the Care of Children Act 2004, which provides that the court, in determining child custody and guardianship matters, must take into account that “relationships between the child and members of his or her family, family group, whānau [family, including extended family], hapu [subtribe], or iwi [tribe] should be preserved and strengthened, and those members should be encouraged to participate in the child’s care, development, and upbringing,” among other matters. In addition, the persons eligible to apply for a parenting (i.e., custody) order in relation to a child include “any other person who is a member of the child’s family, whānau, or other culturally recognised family.” The court can also hear any relevant information on a child’s cultural background in making determinations.

A. Books and Reports

The New Zealand Law Commission conducted a major inquiry into the adoption laws of New Zealand and published its full report in September 2000. A chapter of this report discussed cultural adoption practices, particularly whāngai. The Commission did not recommend specific legal recognition of this practice, but rather favored “a more general approach which specifically incorporates Māori values in legislation to be applied according to the tikanga supporting each circumstance.” NEW ZEALAND LAW COMMISSION, ADOPTION AND ITS ALTERNATIVES: A DIFFERENT APPROACH AND A NEW FRAMEWORK 86 (NZLC R65, 2000), http://www.lawcom.govt.nz/sites/default/files/publications/2000/09/Publication_72_144_R65.pdf. An earlier preliminary paper also considered matters relating to recognizing Māori customs: NEW ZEALAND LAW COMMISSION, ADOPTION: OPTIONS FOR REFORM (NZLC PP38, 1999), http://www.lawcom.govt.nz/sites/default/files/publications/1999/10/Publication_72_143_P38.pdf.

In 2003, the Law Commission also considered Māori values in the context of dispute resolution in a report on the Family Court: NEW ZEALAND LAW COMMISSION, DISPUTE RESOLUTION IN THE FAMILY COURT (NZLC R82, 2003), http://www.lawcom.govt.nz/sites/default/files/publications/2003/03/Publication_87_208_R82.pdf. Then, in 2005, the Law Commission’s report on legal parenthood referred to relevant Māori customary law and practice: NEW ZEALAND LAW COMMISSION, NEW ISSUES IN LEGAL PARENTHOOD (NZLC R88, 2005), http://www.lawcom.govt.nz/sites/default/files/publications/2005/04/Publication_91_315_R88.pdf.

In 2002, the Ministry of Justice published a research report that it had commissioned to provide information on Māori perspectives on guardianship, particularly in relation to custody and access: DI PITAMA, GEORGE RIRINUI, & ANI MIKAERE, GUARDIANSHIP, CUSTODY AND ACCESS: MAORI PERSPECTIVES AND EXPERIENCES (Ministry of Justice, Aug. 2002), <http://www.justice.govt.nz/publications/publications-archived/2002/guardianship-custody-and-access-maori-perspectives-and-experiences-august-2002>.

The National Health Committee published a paper on Māori caregiving practices in 2008: ADELAIDE COLLINS & GREG WILLSON, MĀORI AND INFORMAL CAREGIVING (National Health Committee, March 2008), <https://nhc.health.govt.nz/system/files/documents/publications/maori-informal-caregiving-apr08.pdf>.

B. Articles and Papers

Pat Hohepa & David V. Williams, *The Taking into Account of Te Ao Maori in Relation to Reform of the Law of Succession* (New Zealand Law Commission Working Paper, 1996), available at <http://www.nzlii.org/cgi-bin/sinodisp/nz/other/lawreform/NZLCMP/1996/6.html>.

Marie Dyhrberg, *Intercountry Adoptions Pacific Rim Adoptions: The Impact of European Law on Customary Adoption Practices in Aotearoa* (Paper for International Bar Association Conference, Mexico, 2001), <http://www.mariedyhrberg.co.nz/showfile.php?downloadid=417>.

Jacinta Ruru, *Indigenous Peoples and Family Law: Issues in Aotearoa/New Zealand*, 19 INT'L J.L. POL'Y & FAM. 327 (2005), <http://lawfam.oxfordjournals.org/content/19/3/327.full.pdf>.

Karyn Okeroa McRae & Linda Waimarie Nikora, *Whangai: Remembering, Understanding and Experiencing* (MAI Review, Intern Research Report 7, 2006), <http://www.review.mai.ac.nz/index.php/MR/article/viewFile/16/16>.

Catherine Moody, *Adoption Law in New Zealand: The Rights and Wellbeing of the Child*, 1 N.Z. L. STUDENTS J. 287 (2008), available at <http://www.nzlii.org/cgi-bin/sinodisp/nz/journals/NZLawStuJl/2008/7.html>.

Erica Newman, *History of Transracial Adoption: A New Zealand Perspective*, 37 AM. INDIAN Q. (2013), http://muse.jhu.edu/journals/american_indian_quarterly/v037/37.1-2.newman.html (excerpt only).

VII. Criminal Justice

Māori continue to be overrepresented in the criminal justice system in New Zealand, both as victims and offenders. As part of the approaches that have been developed to reduce offending (and reoffending), Māori concepts relating to justice have received greater attention by policymakers and others involved in the justice system in the past twenty years. This is reflected in aspects of the Sentencing Act 2002, which allows an offender to request that the court hear from witnesses on his or her personal, “family, whanau, community, and cultural background,” and on any processes involving these groups that have been used, or are available, to resolve issues relating to the offense. It also requires the court to take into account any outcomes of restorative justice processes that have occurred, including any measures taken by the offender or his or her whanau to compensate or apologize to the victim or “otherwise make good the harm that has occurred.”

Tikanga Māori is also integrated into various rehabilitation programs that operate within New Zealand prisons, including in special focus units targeted at Māori offenders.

In the youth justice area, restorative justice approaches may be used as part of “Family Group Conferences,” which were introduced in the Children, Young Persons, and Their Families Act 1989 and allow for extended family involvement in meetings involving the offender, any victims, and other relevant parties. In 2008, special youth courts (Rangatahi Courts or Ngā Kooti Rangatahi) targeted at Māori offenders were established in different parts of the country. These courts operate within the existing legal framework but use tikanga Māori and allow for offenders to have their Family Group Conference plans monitored in a *marae* (traditional meeting house).

Although restorative justice is not a concept that is unique to Māori, the related approaches and philosophies can be seen to align with Māori values such as reconciliation and reciprocity. New Zealand has been identified as a “world leader in incorporating restorative justice into the conventional criminal justice paradigm.”

A. Books and Reports

An early call for better integration of Māori values into the criminal justice system is presented in the following 1987 report: MOANA JACKSON, MAORI AND THE CRIMINAL JUSTICE SYSTEM: A NEW PERSPECTIVE, HE WHAIPAANGA HOU (Department of Justice, Feb. 1987), <https://www.ncjrs.gov/pdffiles1/Digitization/108675NCJRS.pdf>. <http://lccn.loc.gov/87171141>.

In 2001, the New Zealand Ministry of Justice published a report on a study on Māori perspectives on justice, which was “intended as an introductory guide by way of a resource document to assist in background understanding for the formulation of policy advice and development within the justice sector.” The report is available online: MINISTRY OF JUSTICE, HE HINATORE KI TE AO MĀORI: A GLIMPSE INTO THE MĀORI WORLD (2001), <http://www.justice.govt.nz/publications/publications-archived/2001/he-hinatore-ki-te-ao-Māori-a-glimpse-into-the-Māori-world>.

The New Zealand Law Commission has written some reports relating to the criminal justice system that involve the examination of issues and approaches with regard to Māori offending and perspectives, including: NEW ZEALAND LAW COMMISSION, JUSTICE: THE EXPERIENCES OF MĀORI WOMEN (NZLC R53, 1999), http://www.lawcom.govt.nz/sites/default/files/publications/1999/04/Publication_52_123_R53.pdf.

Evaluations of restorative justice programs, including those targeted at Māori offenders are also available online. Most recently, the Ministry of Justice published a report on the implementation of the Rangatahi Courts: KAIPUKE, EVALUATION OF THE EARLY OUTCOMES OF NGĀ KOOTI RANGATAHI (Ministry of Justice, Dec. 2012), <http://www.justice.govt.nz/publications/global-publications/r/rangatahi-court-evaluation-of-the-early-outcomes-of-te-kooti-rangatahi/publication>.

Books about criminal justice and dispute resolution in New Zealand that also discuss Māori concepts of justice as well as outcomes within the system include the following:

CHARLOTTE WILLIAMS, *THE TOO-HARD BASKET: MAORI AND CRIMINAL JUSTICE SINCE 1980* (2001), LC Call No. DU423.C8 W55 2001, <http://lccn.loc.gov/2001535913>.

ALLAN MACRAE & HOWARD ZEHR, *THE LITTLE BOOK OF FAMILY GROUP CONFERENCES: NEW ZEALAND STYLE* (2004), LC Call No. HV9230.4.A5 M23 2004, <http://lccn.loc.gov/2003027514>.

Khylee Quince, *Māori and the Criminal Justice System in New Zealand*, in *THE NEW ZEALAND CRIMINAL JUSTICE SYSTEM* ch. 12 (J. Tolmie & W. Brookbanks eds., 2007), <http://www.law.auckland.ac.nz/webdav/site/law/shared/about/centres%20and%20associations/te-tai-haruru/documents/Māori%20chapter.pdf>.

Khylee Quince, *Māori Disputes and Their Resolution*, in *DISPUTE RESOLUTION IN NEW ZEALAND* ch. 8 (P. Spiller ed., 2007), available at <http://www.law.auckland.ac.nz/webdav/site/law/shared/about/centres%20and%20associations/te-tai-haruru/documents/mdr2006.pdf>.

Reports by nongovernment entities involved in criminal justice advocacy and service delivery also highlight Māori perspectives and the recognition of these as part of the justice system:

HELEN BOWEN ET AL., *RECENT DEVELOPMENTS WITHIN RESTORATIVE JUSTICE IN AOTEAROA/NEW ZEALAND* (Mar. 2011), <http://www.restorativejustice.org.nz/cms/LinkClick.aspx?fileticket=cAxpG%2B1zDbE%3D&tabid=73>.

JUSTSPEAK, *MĀORI AND THE CRIMINAL JUSTICE SYSTEM: A YOUTH PERSPECTIVE* (Position Paper, Mar. 2012), <http://www.rethinking.org.nz/assets/JustSpeak/JustSpeak%20-%20Māori%20and%20the%20Criminal%20Justice%20System%20-%20A%20Youth%20Perspective.pdf>.

B. Articles and Papers

Juan Tauri & Allison Morris, *Re-forming Justice: The Potential of Maori Processes*, 30(2) *AUST. & N.Z. J. CRIMINOLOGY* 149 (1997), <http://anj.sagepub.com/content/30/2/149.short> (abstract only).

Hannah Goodyer, *Rethinking Justice in New Zealand: A Critical Assessment of Restorative Justice*, 9 *CANTERBURY L. REV.* 179 (2003), available at <http://www.nzlii.org/cgi-bin/sinodisp/nz/journals/CanterLawRw/2003/6.html>.

Donald J. Schmid, *Restorative Justice: A New Paradigm for Criminal Justice Policy*, 34(1) *VICTORIA U. WELLINGTON L. REV.* 91 (2003), available at <http://www.nzlii.org/cgi-bin/sinodisp/nz/journals/VUWLawRw/2003/4.html>.

Valmaine Toki, *Will Therapeutic Jurisprudence Provide a Path Forward for Maori?*, 13 *WAIKATO L. REV.* 169 (2005), available at <http://www.nzlii.org/cgi-bin/sinodisp/nz/journals/WkoLawRw/2005/12.html>.

Catriona MacLennan, *MacLennan Report: A Tikanga Maori Justice System – An Alternative Worth Exploring*, 112 *N.Z. LAW.* (May 15, 2009), <http://www.nzlawyermagazine.co.nz/Archives/Issue112/112N6/tabid/1743/Default.aspx>.

Valmaine Toki, *Domestic Violence and Women: Can a Therapeutic Jurisprudence Approach Assist?*, 78 REV. JUR. U.P.R. 78 (2009), available at <http://www.law.arizona.edu/depts/uprintj/pdf/toki.pdf>.

Joanna Hess, *Addressing the Overrepresentation of the Maori in New Zealand's Criminal Justice System at the Sentencing Stage: How Australia can Provide a Model for Change*, 20(1) PAC. RIM L. & POL'Y J. 179 (2011), available at <http://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/487/20pacrimlpoly179.pdf>.

Gregory Burt, *What About the Wāhine? Can an Alternative Sentencing Practice Reduce the Rate that Māori Women Fill Our Prisons? An Argument for the Implementation of Indigenous Sentencing Courts in New Zealand*, 19(1) WAIKATO L. REV. 206 (2011), http://www.waikato.ac.nz/_data/assets/pdf_file/0003/102819/Waikato-Law-Review-Vol-19-Issue-1-2011.pdf.

Matiu Dickson, *The Rangatahi Court*, 19(2) WAIKATO L. REV. 86 (2011), http://www.waikato.ac.nz/law/research/waikato_law_review/volume-19-issue-2,-2011.

Sam McMullan, *Māori Self-Determination and the Pakeha Criminal Justice Process: The Missing Link*, 10 INDIGENOUS L.J. 73 (2011) (available in HeinOnline).

Stephanie Vieille, *Māori Customary Law: A Relational Approach to Justice*, 3(1) INT'L INDIGENOUS POL'Y J. (2012), <http://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=1067&context=iipi>.

Max Harris, *More on Mason: Cultural Factors in Sentencing*, MAORI L. REV. (Feb. 2013), <http://Māorilawreview.co.nz/2013/02/more-on-mason-cultural-factors-in-sentencing/>.

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