

RULES OF CIVIL PRACTICE AND PROCEDURE IN  
THE NATIONAL COURT OF PAPUA NEW GUINEA

A Short History

BY

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After German New Guinea was mandated to the United Kingdom to be administered by Australia, the Rules of the Supreme Court of Queensland were adopted to govern matters of civil practice and procedure in the Territory. Section 19(4) of the **Judiciary Ordinance 1921-1938 (1)** provided that unless and until Rules of Court were made in relation to any particular matter, the Rules of Court of the Supreme Court of Queensland on the matter in issue which were in force in Queensland on the 5th December 1932, were to regulate the practice and procedure of the Supreme Court.

The Rules of the Supreme Court of Queensland which were adopted are set out in Volume 1 of the **Laws of the Territory of New Guinea, 1921-1945 (Annotated)**. The Index of the rules is set out in volume V of the same set of laws. Several "rules" and "rules of court" in force in Queensland on 5th December 1932 were not printed in the Annotated Reprint, because they were considered to be either inapplicable to the circumstances of the Territory or inconsistent with legislation of the Territory. No doubt with the passage of time and new legislation, the same can be said today in respect of some of the rules which are printed in volume 1 of the Annotated Reprint.(2)

Section 19(1) of the **Judiciary Ordinance 1921-1938** conferred a power on the Chief Judge of the Supreme Court to make Rules of Court, from time to time, for the conduct of the business of the Court for the Court for regulating all matters of practice and procedure therein. Pursuant to this section, the Chief Judge made several Rules of Court amending the Supreme Court Rules (Queensland, Adopted). These rules were incorporated into the Supreme Court Rules (Queensland, Adopted), printed in volume 1 of the **Laws of the Territory of New Guinea 1921-1945**.

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1. **Laws of the Territory of New Guinea 1921-1945 (Annotated)**. Volume 1 at p.607.
  2. For example, consider the effect of Part VII of the **Evidence Act 1975 (Act No.78 of 1975)** on the Rules of Court.

There were several Rules of Court which regulated the civil practice and procedure of the Central Court, afterwards the Supreme Court, in Papua.(3) These Rules were made under the Courts and Laws Adopting Ordinance of 1888.(4) Although this Ordinance was repealed by the Supreme Court Ordinance 1949,(5) which established a single Supreme Court for the Territory of Papua and New Guinea, nevertheless the several Rules of Court made under the Courts and Laws Adopting Ordinance of 1888 still continued in force. Section 8(1)(a) of the Supreme Court Ordinance 1949 provided inter alia that, subject to rules of Court made under that Ordinance, the practice and procedure of the Supreme Court of the Territory of Papua and New Guinea in matters arising in Papua shall be the practice and procedure provided by law in relation to matters of that kind in the former Supreme Court of Papua. Section 8(2) expressly saved the pre-existing Rules of Court in force in the Territory of Papua for matters originating in Papua. The same can be said in respect of the Territory of New Guinea. Except for two sections, the Judiciary Ordinance 1921-1938 was repealed by the Supreme Court Ordinance 1949. However the Rules of the Supreme Court of Queensland as adopted and amended were continued in force by section 8 of the latter Ordinance.

In 1957 the Rules of Court relating to civil matters in the Territory of Papua New Guinea were partially accommodated to those in New Guinea.(6) The Costs Rules of that year repealed "All Rules relating to costs in the civil jurisdiction of the Court of the Territory of Papua..." and applied the New Guinea rules relating to costs to Papua. Finally, by the Rules of Court 1960,(7) the rules of civil practice and procedure of both Territories were assimilated. It was therein provided that "the Queensland Rules" i.e. the Rules of the Supreme Court (Queensland, Adopted) in their application to the Territory of New Guinea, as amended, shall apply both to Papua and to New Guinea in relation to all civil proceedings. The rules of civil practice and procedure were the same for both Territories from then onwards.

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3. For a list of these rules see page 114 of the **Alphabetical Tables of Ordinances and Statutory Instruments with References and Appendices**, from 1945 to 1st April 1973; Government Printer.
  4. **Laws of the Territory of Papua 1888-1945 (Annotated)** Volume 1 at p.571.
  5. **Laws of the Territory of Papua and New Guinea 1949-61 (Annotated)**, Volume 1 at p.571.
  6. See Government Gazette No.20 of 1957; 15th April 1957.
  7. See Government Gazette No.51 of 1960; 17th November 1960.

Since 1960 there have been several Rules of Court relating to civil practice and procedure which have been made by Judges of the Supreme Court. Some of them are rather specialised rules e.g. the Matrimonial Causes Rules, 1965, (8) Supreme Court Appeals (Land Titles Commission) Rules 1968 (9) and the Conveyancing Costs Rules. (10) Others have been more general. These general rules are the Rules of Court of 1971. The Rules of Court of 1973 and the Rules of Court of 1974. (11).

On the achievement of Independence on 16th September 1975, two sets of legal provisions affecting Rules of Court came into force. Sections 184 and 185 of the Constitution deal with Rules of Court and lack of procedural provisions. The National Court Act 1975 (12) provides that all Rules of Court in relation to the Supreme Court (other than the Full Court of the Supreme Court) which were in force immediately before the repeal of the Supreme Court Ordinance 1949 and the Papua and New Guinea Ordinance 1949, (13) and which were made or continued in force by those statutes, are adopted as Rules of the National Court. Section 16 of the National Court Act 1975 also provides for the continuance of the practice and procedure of the pre-independence Supreme Court. It can also be argued that Sch. 2.2 of the Constitution has some effect on the rules of civil procedure.

The only post-independence Rules of Court created by Judges of the National Court have been the Costs Rules 1978. (14) However, new rules are in the process of being drawn up and should come into effect in 1983. Those rules will be comprehensive and are expected to replace the present set of rules.

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8. Laws of the Territory of Papua and New Guinea 1965 (Annotated) at p.521.
  9. See Government Gazette No.41 of 1968; 26th July 1968.
  10. Statutory Instrument No.57 of 1973.
  11. Statutory Instruments Nos.38 of 1971, 1 of 1973 and 1 of 1974.
  12. Act No. 98 of 1975.
  13. Laws of the Territory of Papua and New Guinea 1949-51 (Annotated) Volume 1 Part A at p. 52.
  14. Statutory Instrument No. 35 of 1978.