



Between Sovereignty and Inclusion: Recognition of Customary Law in Constitutional Systems under International Supervision

Jamhari Sugara¹, Muhammad Arya Wijaya², Alan Robert White³

Doctor of Law Studies Program, Postgraduate Program - Jayabaya University, Indonesia^{1,2}

Rajamangala University Of Technology Krungthep, Thailand³

*Email Correspondence: jojosugara.jayabaya@gmail.com, lawofficemuhammadaryawijaya@gmail.com,
Alan.w@mail.rmuth.ac.th

Abstract

The recognition of customary law in constitutional systems creates normative and institutional tensions between state sovereignty and international oversight. Through a comparative study of five jurisdictions—Canada, Bolivia, South Africa, Indonesia, and New Zealand—this research explores how modern constitutions integrate customary law systems while maintaining compliance with global human rights standards and constitutional principles. Findings reveal diverse approaches, ranging from symbolic to substantive recognition, influenced by domestic political configurations and varying levels of international intervention. Using a theoretical framework of inclusive constitutionalism and interlegalism, this study argues that the coexistence of state law and customary law is not only possible but also crucial for democratic legitimacy and legal pluralism. This study contributes to the global development of constitutionalism through a conceptual framework that reconciles plural legal systems within a sovereign yet responsive constitutional design.

Keywords: Customary Law; Constitutional Pluralism; Indigenous Peoples' Rights; State Sovereignty; International Human Rights Law; Interlegalism

INTRODUCTION

In various multiethnic and multicultural countries, recognition of the existence of customary law is increasingly becoming a major focus in the formation of inclusive legal systems (Antonsich & Petrillo, 2019; Erie, 2023; Menkel-Meadow, 2018; Tanjung, 2023). According to the 2023 report by the International Work Group for Indigenous Affairs (IWGIA), there are over 476 million individuals from indigenous communities spread across more than 90 countries, the majority of whom have not received adequate legal recognition within their national constitutional systems. In Indonesia, based on data from the Indigenous Territory Registration Agency (BRWA) as of 2024, only around 20% of indigenous territories have been legally recognized by the state, despite more than 2,500 indigenous communities having registered their claims (Iriyani et al., 2024; Jemarut et al., 2025; Rumpia, 2024). This figure highlights a significant disparity between the social-legal existence of indigenous communities and their formal recognition within the national legal system.

This phenomenon reflects the tension between the principle of state sovereignty and the demand for the inclusion of customary law in the modern constitutional system (Chimni, 2018; Franklin, 2017; Shrinkhal, 2021; Walker, 2020). On the one hand, the state has an interest in maintaining the integrity and supremacy of the constitution as a manifestation of sovereignty. On the

other hand, the international community, through instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention No. 169, continues to urge states to recognize the legal identity of indigenous communities within the framework of human rights. This tension becomes even more complex when the recognition of customary law is deemed to conflict with universal principles such as non-discrimination, gender equality, and access to formal justice.

The urgency of this research lies in the need to formulate a constitutional approach that can bridge the gap between respect for customary law and compliance with international legal standards. In the context of legal globalization and increasing interdependence among nations, international oversight of national constitutional practices has become inevitable. This raises a dilemma: to what extent can a constitutional system accommodate legal pluralism without losing its universal characteristics? This question is important because constitutions are often formed as a single social contract that does not always accommodate the diversity of local value systems.

However, previous studies tend to be normative and partial. Many studies only discuss the recognition of customary law within the internal territorial boundaries of the state, without considering how pressure and supervision from international institutions can influence domestic constitutional policy (Chimni, 2022; Duchacek, 2019; Hidayat et al., 2018; Mendez, 2017; Popa Tache & Săraru, 2024). Others focus on only one side of this relationship, such as studies on legal pluralism, without exploring the simultaneous relationship between the recognition of customary law and international legal politics. In other words, there is a gap in the literature that comprehensively discusses the dynamic interaction between the recognition of customary law, the principle of constitutional sovereignty, and the influence of international oversight.

Based on this background, this study aims to analyze how modern constitutional systems can integrate customary law without neglecting international commitments to human rights. This study also seeks to evaluate the extent to which international pressure through global norms impacts the constitutional construction of states in recognizing customary law. Thus, the main contribution of this study lies in providing a conceptual and comparative framework for understanding the relationship between sovereignty and inclusion in contemporary constitutional practice.

RESEARCH OBJECTIVES

The growing recognition of customary legal systems within the framework of modern constitutions has given rise to a new discourse on how contemporary states can reconcile legal pluralism with their commitment to international legal standards. In this context, this study aims to critically examine the dynamic relationship between constitutional sovereignty and the inclusion of customary law under the influence of international oversight mechanisms.

In general, this study aims to analyze how the constitutional systems of modern countries accommodate the existence and authority of customary law without neglecting the principle of constitutional supremacy. More specifically, this study seeks to explore the extent to which constitutional structures and principles—such as legal certainty, equality before the law, and the independence of the judiciary—can coexist with community-based legal traditions and local values.

This study also aims to evaluate the normative and institutional impact of international legal instruments and institutions—such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), ILO Convention No. 169, and recommendations from the UN Human Rights Council—on constitutional practices at the national level. Through this analysis, it is hoped that it will be possible to identify whether international oversight functions as a catalyst for inclusive constitutionalism or, on the contrary, poses a challenge to state sovereignty.

Using a comparative law approach, this study seeks to evaluate several jurisdictions that have adopted different models of customary law recognition, in order to draw constitutional lessons that can be applied in designing a legal framework capable of balancing state authority with the legal participation of indigenous communities. In this regard, this study seeks to develop a conceptual framework that can serve as a reference for policymakers and constitutional drafters in designing inclusive constitutional mechanisms that are consistent with global legal commitments.

Ultimately, this study is expected to contribute significantly to the academic discourse on constitutional pluralism by highlighting the theoretical and practical implications of recognizing customary law in an increasingly transnationally interconnected legal order. Additionally, this study aims to address the existing gap in the literature, which has largely overlooked the influence of international law in the study of customary law recognition at the national constitutional level.

RESEARCH METHODOLOGY

This study uses a normative legal approach combined with comparative constitutional law methods (Sanguiliano, 2015; Tushnet, 2017). This approach was chosen because it allows for analysis of legal norms, both national and international, that regulate the legal recognition of customary law in the context of modern constitutional systems. Additionally, this approach is relevant for exploring the relationship between the principles of state sovereignty and external pressures in the form of international human rights standards.

The objects of study in this research include five countries with backgrounds of legal pluralism and different models of customary law recognition, namely: Canada, Bolivia, South Africa, Indonesia, and New Zealand. The selection of these countries is based on three main criteria: (1) recognition of customary law in the constitution or national legislation; (2) involvement or pressure from international institutions in the recognition process; and (3) relevant precedents or judicial decisions explaining the relationship between customary law, the constitution, and international law.

Data collection was conducted through library research involving primary and secondary legal sources. Primary sources included the national constitution, legislation related to indigenous peoples, constitutional court decisions, and international documents such as UNDRIP, ILO Convention No. 169, and annual reports from the UN Human Rights Council. Secondary sources include academic journal articles, NGO reports, academic literature, and relevant previous studies. All data was collected through legal and academic databases such as HeinOnline, JSTOR, Scopus, and the official websites of each country's government.

Data analysis was conducted qualitatively using content analysis and comparative reasoning techniques. Content analysis was used to identify legal patterns emerging from constitutional provisions and jurisprudence related to the recognition of customary law. Meanwhile, comparative reasoning was used to compare and assess differences and similarities in constitutional approaches

among countries in integrating customary law into their national legal systems under the influence of international norms.

To ensure the validity and reliability of the analysis results, this study applies a source triangulation strategy, which involves cross-checking data from various documents and different jurisdictions. Additionally, the repetition of legal logic and the consistency of arguments are used as benchmarks to ensure that interpretations of the data are not subjective or speculative. Therefore, the methodology used in this study not only enables a deep understanding of the phenomenon being studied but also allows for replication by other researchers with a different regional focus or jurisdictional context.

With this methodological design, the study is expected to provide a comprehensive and academically accountable analysis in answering questions regarding the extent to which customary law recognition can be integrated into the national constitutional system within the framework of an increasingly developing international legal relationship.

RESULT

Patterns of Recognition of Customary Law in the National Constitutional System

This comparative study reveals fundamental diversity in constitutional approaches to the recognition of customary law in various jurisdictions (Holzinger et al., 2019; Kingsbury, 2017; Palermo & Kössler, 2017). Key findings indicate that such recognition is not homogeneous but rather forms a continuum, ranging from symbolic models to those that provide substantive and legal recognition. These differing approaches reflect the complexity of interactions between the state, indigenous communities, colonial legacies, and contemporary demands for justice.

At the progressive end of the spectrum, Canada and New Zealand display relatively advanced models of recognition. In Canada, explicit constitutional recognition through Section 35 of the Constitution Act, 1982—which recognizes and affirms the rights of existing Indigenous peoples—has become a strong legal foundation (Iacovino, 2010; Macklem, 2018). More importantly, this textual recognition has been given real substance and significant legal force through innovative Supreme Court jurisprudence. Landmark decisions such as *Delgamuukw v. British Columbia* (which recognized Aboriginal title to traditional lands) and *Tsilhqot'in Nation v. British Columbia* (which first explicitly declared the existence of Aboriginal title in a specific territory) have established that Aboriginal rights can supersede state authority in certain contexts, such as resource management and consultation (Morse, 2017; Porter & Quig, 2024).

Meanwhile, New Zealand bases its recognition on the Treaty of Waitangi (1840). Although this agreement itself does not have legally binding status in the hierarchy of modern legislation, it has acquired very strong normative weight and functions as a *de facto* constitutional reference (Hudson & Russell, 2009; Parsonson, 2017; Siekiera, 2023; Williams, 2017). As a result, the principles of the Treaty (particularly partnership, participation, and protection) are key considerations that cannot be ignored in policy-making and litigation involving Māori rights, demonstrating the deep influence of customary law on the formal legal system (Came et al., 2024; O'Sullivan, 2021; O'Sullivan et al., 2021; Quigg & Russell, 2025).

In contrast, Bolivia represents the most constitutionally radical model, adopting a pluriconstitutional approach. The 2009 Bolivian Constitution explicitly and unequivocally recognizes

indigenous customary law systems (sistemas jurídicos indígenas originarios campesinos) as equal and co-existent parts of the plural national legal system (Doyle, 2021; Hammond, 2011). Articles 190 and 191 specifically mandate that indigenous communities have their own jurisdiction over their territories, members, and certain cases, including full authority in dispute resolution. However, behind this transformative constitutional ambition, implementation on the ground faces significant challenges.

Overlapping jurisdictions between indigenous customary courts (jurisdicción indígena originaria campesina) and ordinary state courts are often a source of conflict (Barrera, 2016; Pabón et al., 2022; Supe Guashco & Jaramillo León, 2024). More crucially, there is significant resistance, particularly from state judicial institutions and actors who adhere to positivistic views of law, to the full application of customary law. This resistance often crystallizes around sensitive issues such as women's rights and the principle of equality before the law (igualdad ante la ley), creating tension between the recognition of legal pluralism and the enforcement of universal human rights, and highlighting the gap between constitutional promises and socio-legal reality.

Unlike the substantive model of Canada/New Zealand and the pluriconstitutional model of Bolivia, South Africa and Indonesia illustrate a pattern of conditional recognition. In this model, the existence and application of customary law are explicitly made subordinate to and must not conflict with certain constitutional principles, particularly the principles of non-discrimination and human rights.

The post-apartheid Constitution of South Africa (1996) recognizes customary law as a legitimate legal system through Articles 211 and 212 (Ngubane, 2019; Nhlapo, 2017; Oomen, 1999). However, this recognition is explicitly limited by the absolute condition that customary law must be "subject to" the provisions of the Bill of Rights (Chapter 2 of the Constitution). The implications of this limitation are dramatically illustrated in the landmark decision of the Constitutional Court in the case of *Bhe v. Magistrate, Khayelitsha*. In that decision, the Court held that customary inheritance rules that discriminate against women are unconstitutional because they violate the equality and human dignity clauses and must therefore be reviewed.

In Indonesia, constitutional recognition of "customary law communities and their traditional rights" is contained in Article 18B paragraph (2) of the 1945 Constitution (Aprido & Fatimah, 2023; Maswatu et al., 2025; Yulianti et al., 2021). However, the effectiveness of this recognition is highly dependent on two cumulative conditions: first, the existence of the customary law community must first be recognized through local regulations (perda) or other local legal instruments (administrative recognition); and second, their traditional rights must not conflict with the "principles of the Unitary State of the Republic of Indonesia." This administrative requirement often poses a significant procedural obstacle, while the requirement of consistency with the principles of the Unitary State of the Republic of Indonesia can be interpreted broadly, potentially limiting the scope of customary law.

Overall, these comparative findings confirm that there is no single universal model or optimal approach to constitutional recognition of customary law. Each country develops its own unique configuration of recognition, which is the result of complex negotiations between domestic political-legal dynamics (such as colonial history, governance structures, the strength of indigenous peoples' movements, and the development of jurisprudence), global pressures (such as international

human rights norms and decolonization movements), and visions of the relationship between the state and indigenous peoples.

The spectrum ranging from symbolic to substantive recognition not only illustrates the level of constitutional commitment, but also reflects the ongoing struggle to reconcile deep-rooted legal pluralism with the demands of a cohesive modern state that upholds equality. Conditional recognition patterns, such as those in South Africa and Indonesia, while potentially protecting individual rights, can also perpetuate hierarchies that place state law as the supreme norm, thereby limiting the true autonomy of customary law.

The Role and Limits of International Oversight

International institutions and instruments play a complex and often ambivalent role in advancing the recognition and protection of customary law at the national level. On the one hand, there is constructive and normative influence. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries have established an increasingly influential global normative framework (Cousins, 2022; Wright, 2023).

These key instruments not only affirm the collective rights of indigenous peoples, including their rights to land, territory, and resources, their right to self-determination, and their right to practice and develop their own legal systems, but also provide a moral and political foundation for advocacy at the domestic level. This normative influence often acts as a catalyst for constitutional and legal change, particularly in countries undergoing political transition or actively seeking to improve historical relations with their indigenous peoples.

A concrete example of this constructive influence is clearly evident in the case of Bolivia. The process of drafting the transformative 2009 Constitution was explicitly and substantially inspired by the principles of UNDRIP, particularly its emphasis on self-determination and recognition of customary legal systems as equal (plurinationalism). Similarly, in Canada, despite having a strong domestic constitutional framework (Section 35), the principle of Free, Prior, and Informed Consent (FPIC) derived from UNDRIP and ILO Convention 169 has been operationally adopted by the federal government.

The FPIC principle is now a critical requirement in consultation and consent processes for large development projects (such as oil pipelines or mining) that impact indigenous territories, giving Indigenous Peoples significant leverage. New Zealand also demonstrates resonance, where the principles of the Treaty of Waitangi are increasingly interpreted in line with UNDRIP norms by courts and dispute resolution commissions, strengthening the legal position of Māori.

However, this international influence is not linear, deterministic, or legally binding in its application. Instead, it faces significant structural constraints and political resistance. The main obstacles lie in the principle of state sovereignty and the soft law nature of most of the relevant international instruments. The UNDRIP, although now supported by the majority of UN member states (including Indonesia in 2017), is not a legally binding treaty.

ILO Convention 169, although binding on ratifying countries, has only 24 parties (as of July 2024), and its monitoring mechanisms (such as ILO expert committees) rely on country reporting and

are persuasive rather than coercive. As a result, the level of internalization and implementation of these norms varies greatly and is highly dependent on the political will of domestic governments and the strength of local indigenous peoples' movements.

The case of Indonesia clearly illustrates the limits of this international influence. Although Indonesia has ratified several core human rights instruments (such as the International Covenant on Civil and Political Rights – ICCPR) and officially supports the UNDRIP, substantive implementation of customary law recognition, particularly in relation to land rights and natural resources (ulayat), faces strong resistance (Fahmi, 2024; Fahmi & Armia, 2022). This resistance is rooted in perceptions among bureaucrats and political elites that full recognition of customary jurisdiction and ulayat rights poses a potential threat to the territorial integrity of the unitary state, state control over strategic natural resources, and the authority of the central government.

The principle of state sovereignty is often used as a shield to limit the application of international norms, such as FPIC, which are seen as hindering infrastructure development and resource exploitation. As a result, ratification of international instruments is often not followed by adequate domestic legal harmonization or meaningful policy changes, revealing a wide gap between international commitments and national realities.

Furthermore, indigenous peoples themselves are becoming increasingly adept at utilizing the international arena as a strategy to counter domestic obstacles. They actively report violations to special UN mechanisms such as the Special Rapporteur on the Rights of Indigenous Peoples and the Universal Periodic Review (UPR), as well as human rights treaty bodies such as the Committee on Economic, Social, and Cultural Rights (CESCR) and the Committee on the Elimination of Racial Discrimination (CERD). Pressure from these international bodies, while unable to enforce compliance, can create a negative reputation (naming and shaming) and provide additional legitimacy and ammunition for indigenous peoples' advocacy efforts domestically, influencing public discourse and occasionally prompting government responses.

Based on the above dynamics, it can be concluded that the role of international oversight has fundamental inherent limitations. First, the ultimate authority to recognize and regulate customary law remains within the domain of state sovereignty (*domaine réservé*). International instruments serve primarily as sources of norms, moral pressure, and advocacy forums, not as substitutes for domestic constitutional and legislative authority. Second, its effectiveness is highly conditioned by the domestic political-legal context, including the relative power of the actors involved (state vs. indigenous peoples), the existence of domestic legal mechanisms to enforce rights, and the political will of those in power. Third, there is often tension between the demands of universal human rights (especially individual rights and gender equality) promoted by the international regime and the claims of particularism and legal autonomy put forward by indigenous communities.

Therefore, the recognition of customary law that is sustainable and meaningful ultimately requires careful negotiation and reconciliation at the domestic level, which, although informed and encouraged by international norms, must find its expression and legitimacy within the constitutional and legal framework of each country, without neglecting agreed international obligations but with sensitivity to local complexities and sovereignty constraints.

DISCUSSION

The comparative empirical findings in the previous subsection—which reveal a spectrum of constitutional recognition ranging from symbolic to substantive and the limited dynamics of international influence—require a robust theoretical framework to unravel their complexity. Two complementary theoretical lenses, Inclusive Constitutionalism (Tully, 2007) and Interlegality (Santos, 2002), offer highly relevant analytical tools to not only describe but also critically evaluate the patterns of customary law recognition found and their implications for social justice and legitimate governance (Branco & Izzo, 2017; Meyers, 2010).

First, the concept of Inclusive Constitutionalism articulated by James Tully (1995, 2007) provides a profound philosophical-political response to the challenges of pluralism in modern states (Singh, 2014). Tully argues that traditional constitutionalism, which is often built on the myth of legal uniformity and unity (legal monism), is inherently exclusionary toward other forms of legal authority and knowledge, such as customary law, which have their own historical and normative legitimacy. As an alternative, inclusive constitutionalism calls for a radical transformation in constitutional relations.

This is not merely about "accommodating" indigenous peoples within existing structures, but rather about restructuring constitutional processes themselves to ensure meaningful participation and equal deliberation for indigenous communities in determining the basic rules (*grundnorm*) that govern their collective life. In essence, the constitution must be an "ongoing forum," not a static document, where recognition of customary law is not a unilateral grant from the state, but rather the result of negotiation and mutual recognition that is dialogical and continuous. In the context of empirical findings, the Canadian model (with an emphasis on consultation and reconciliation) and the Bolivian model (with its plurinational aspirations) can be seen as efforts—albeit imperfect—toward this ideal, while the conditional recognition model in South Africa and Indonesia more closely reflects the logic of assimilation or controlled incorporation criticized by Tully.

Second, the concept of Interlegality developed by Boaventura de Sousa Santos (1987, 2002) offers a rich sociological understanding of the reality of legal pluralism that intersects within the same social space (Bertelsen, 2009; Zumbansen, 2021). Santos rejects the simplistic view of legal pluralism as merely the coexistence of separate legal systems. Instead, he emphasizes that modern law is a complex space where various legal orders—state, customary, religious, transnational—continuously interact, overlap, conflict, and dynamically shape one another (mutually constitutive). Interlegality, therefore, is the normal condition of contemporary law, not an exception.

In this interlegal space, customary law and state law are not understood as completely autonomous and isolated entities, but rather as systems that are interconnected in a network of often asymmetrical relationships. This concept helps explain phenomena such as jurisdictional overlap in Bolivia, the tension between the Bill of Rights and customary law in South Africa, or how the principles of the Treaty of Waitangi and the UNDRIP influence the interpretation of domestic law in New Zealand and Canada. Santos also reminds us that these interactions are not neutral; they occur within a field of power where states often maintain hegemonic positions, risking the reduction of customary law to "folklore" or its co-optation in a merely decorative form that loses its autonomous substance (decorative incorporation).

The convergence between these two theoretical lenses lies in their emphasis on dialogue and relational recognition. Both Tully and Santos reject "top-down" or monolithic solutions. They advocate for institutional and procedural designs that explicitly facilitate equal encounters between different legal orders.

Mechanisms such as meaningful consultation and consent processes (FPIC), courts or joint tribunals to resolve jurisdictional conflicts, recognition of customary authority in clearly defined domains, and procedures for interpretative dialogue between customary and constitutional norms (e.g., how the principle of non-discrimination interacts with collective customary traditions) are crucial.

Countries that have made relative progress in effectively and legitimately integrating customary law—such as Canada and New Zealand to a certain extent—are generally those that have developed, often through long struggles and innovative jurisprudence, such dialogic mechanisms. These mechanisms act as "bridging institutions" between legal systems, enabling exchange, mutual learning, and adaptation, while reducing the risk of unilateral domination or symbolic co-optation. Conversely, in countries like Indonesia, where recognition is highly dependent on ambiguous local administrative policies and compliance with the NKRI, without strong structural dialogue mechanisms, or in Bolivia, where inter-jurisdictional dialogue is often tense, interactions tend to be confrontational or result in legal uncertainty that harms indigenous communities.

However, the application of this theoretical framework also faces serious practical and normative challenges. First, the tension between claims of customary law autonomy (as an expression of self-determination) and the universal imperative of human rights (especially individual rights and gender equality) requires careful navigation through dialogue, not through the unilateral subjugation of one system to another. Second, the deep asymmetry of power between the state and indigenous communities can render "dialogue" a mere formality if it is not supported by a real balance of political power and adequate resources for indigenous communities. Third, the technical complexity and costs of establishing and maintaining effective dialogic institutions can be significant barriers.

Therefore, while Inclusive Constitutionalism and Interlegalism provide a valuable normative and descriptive roadmap towards a more just and meaningful recognition of customary law, its implementation remains a difficult political process, requiring sustained commitment, political will, innovative institutional design, and recognition that the ultimate goal is not assimilation or domination, but rather respectful coexistence within a truly inclusive and dynamic constitutional framework. Empirical findings from various countries reinforce the thesis that relative success depends heavily on the capacity and willingness to build and maintain authentic and equal spaces for interlegal dialogue.

Scientific Novelty and Research Contribution

This study offers novelty in two main aspects: first, in its conceptual approach to the recognition of customary law in national constitutional systems under international influence; and second, in its comparative analytical framework that brings together internal state dynamics with global legal norms. Unlike previous studies that tend to limit themselves to normative analysis of the recognition of customary law within a specific jurisdiction, this research maps the complexity of the relationship

between the principle of constitutional sovereignty and global pressures simultaneously and holistically.

Conceptually, the novelty lies in the integration of inclusive constitutionalism and interlegalism as analytical tools for understanding how customary law systems can be not only symbolically recognized but also functionally integrated into the architecture of modern state law. This research rejects the traditional dichotomy between state law and customary law, and demonstrates that the relationship between the two is interdependent and can be managed deliberately within an adaptive constitutional framework.

In addition, this study expands the scope of research on legal pluralism by introducing a new variable, namely the dimension of international oversight. In this regard, this study offers an interdisciplinary perspective that combines constitutional law, international law, and human rights theory. Such an approach is still rare in constitutional law literature, which often focuses on domestic dynamics without considering systemic external influences.

In terms of practical contributions, the findings of this study provide a framework that can be used by constitutional drafters, policymakers, and international institutions in formulating models of customary law recognition that are inclusive yet consistent with the principles of international law. This research also encourages the establishment of a dialogue forum between indigenous communities, states, and international organizations as an effort to build a non-hegemonic and more participatory legal framework.

Furthermore, by comparing practices in five countries, this study presents a typology of customary law recognition models that can be used as a benchmark for other countries that are reforming their constitutional systems. This is a strategic contribution to the development of global constitutionalism, particularly in the context of developing countries that are still struggling to balance national development, respect for indigenous communities, and compliance with international norms.

Thus, this study not only enriches the theoretical framework of constitutional law and legal pluralism studies, but also presents real implications for legal reform, institutional design, and the strengthening of indigenous peoples' rights within the framework of an increasingly complex and integrated global legal order.

CONCLUSION

The recognition of customary law in the constitutional system of modern states presents complex and multi-layered challenges, especially when confronted with the principles of sovereignty and international oversight. The findings of this study indicate that the recognition of customary law cannot be understood merely as symbolic accommodation in constitutional texts, but rather as a constitutional process that requires a deliberative, participatory, and open framework for dialogue between various legal systems.

A comparative study of five countries shows that there is no single ideal model, but there are common patterns that can be learned. Countries that have successfully integrated customary law substantively are those that have been able to establish a constitutional dialogue between state authorities and indigenous communities, while maintaining coherence with international legal commitments, particularly in terms of human rights protection.

On the other hand, international institutions have proven to be significant in promoting the recognition of customary law, but their influence remains limited to the normative and moral levels. The success of customary law integration remains determined by the courage and constitutional capacity of the state to open legal space for equal and non-subordinate legal plurality.

REFERENCES

- Antonsich, M., & Petrillo, E. R. (2019). Ethno-cultural diversity and the limits of the inclusive nation. *Identities*, 26(6). <https://doi.org/10.1080/1070289X.2018.1494968>
- Aprido, R., & Fatimah, F. (2023). The resolution of customary community land rights issues based on government regulation no. 18 of 2021 and its relevance to the constitution in indonesia. *Jurnal EDUCATIO: Jurnal Pendidikan Indonesia*, 9(2). <https://doi.org/10.29210/1202323279>
- Barrera, A. (2016). Turning Legal Pluralism into State- Sanctioned Law: Assessing the Implications of the New Constitutions and Laws in Bolivia and Ecuador. In *New Constitutionalism in Latin America: Promises and Practices*. <https://doi.org/10.4324/9781315597904-29>
- Bertelsen, B. E. (2009). Multiple sovereignties and summary justice in Mozambique: A critique of some legal anthropological terms. *Social Analysis*, 53(3). <https://doi.org/10.3167/sa.2009.530307>
- Branco, P., & Izzo, V. N. (2017). Intersections in Law, Culture and the Humanities*. *Revista Crítica de Ciências Sociais*, 112. <https://doi.org/10.4000/rccs.6574>
- Came, H., O'Sullivan, D., Kidd, J., & McCreanor, T. (2024). Critical Tiriti Analysis: A prospective policy making tool from Aotearoa New Zealand. *Ethnicities*, 24(6). <https://doi.org/10.1177/14687968231171651>
- Chimni, B. S. (2018). Customary international law: A third world perspective. In *American Journal of International Law* (Vol. 112, Issue 1). <https://doi.org/10.1017/ajil.2018.12>
- Chimni, B. S. (2022). The international law of jurisdiction: A TWAIL perspective. *Leiden Journal of International Law*, 35(1). <https://doi.org/10.1017/S0922156521000534>
- Cousins, L. (2022). United Nations Declaration on the Rights of Indigenous Peoples. In *Encyclopedia of Human Services and Diversity*. <https://doi.org/10.4135/9781483346663.n566>
- Doyle, M. (2021). The Case of Piruani: Contested Justice, Legal Pluralism, and Indigeneity in Highland Bolivia. *Political and Legal Anthropology Review*, 44(1). <https://doi.org/10.1111/plar.12424>
- Duchacek, I. D. (2019). The territorial dimension of politics within, among, and across nations. In *The Territorial Dimension of Politics: Within, among, and across Nations*. <https://doi.org/10.4324/9780429315244>
- Erie, M. S. (2023). Legal Systems Inside Out: American Legal Exceptionalism And China's Dream Of Legal Cosmopolitanism. *University of Pennsylvania Journal of International Law*, 44(3).

- Fahmi, C. (2024). The application of international cultural rights in protecting Indigenous peoples' land property in Indonesia. *AlterNative*, 20(1). <https://doi.org/10.1177/11771801241235261>
- Fahmi, C., & Armia, M. S. (2022). Protecting Indigenous Collective Land Property in Indonesia under International Human Rights Norms. *Journal of Southeast Asian Human Rights*, 6(1). <https://doi.org/10.19184/jseahr.v6i1.30242>
- Franklin, J. H. (2017). Sovereignty and the mixed constitution: Bodin and his critics. In *Jean Bodin*. <https://doi.org/10.4324/9781315092331-2>
- Hammond, J. L. (2011). Indigenous community justice in the Bolivian constitution of 2009. *Human Rights Quarterly*, 33(3). <https://doi.org/10.1353/hrq.2011.0030>
- Hidayat, H., Yogaswara, H., Herawati, T., Blazey, P., Wyatt, S., & Howitt, R. (2018). Forests, law and customary rights in Indonesia: Implications of a decision of the Indonesian Constitutional Court in 2012. *Asia Pacific Viewpoint*, 59(3). <https://doi.org/10.1111/apv.12207>
- Holzinger, K., Haer, R., Bayer, A., Behr, D. M., & Neupert-Wentz, C. (2019). The Constitutionalization of Indigenous Group Rights, Traditional Political Institutions, and Customary Law. *Comparative Political Studies*, 52(12). <https://doi.org/10.1177/0010414018774347>
- Hudson, M. L., & Russell, K. (2009). The Treaty of Waitangi and research ethics in Aotearoa. *Journal of Bioethical Inquiry*, 6(1). <https://doi.org/10.1007/s11673-008-9127-0>
- Iacovino, R. (2010). Partial asymmetry and federal construction: Accommodating diversity in the Canadian constitution. In *Asymmetric Autonomy and the Settlement of Ethnic Conflicts*. <https://doi.org/10.9783/9780812205756.75>
- Iriyani, S., Arman, M., Nugroho, B., Buchori, D., & Setiajiati, F. (2024). Indigenous Custodianship and Timber Legality Assurance System: Challenges and Opportunities for Customary Forest Management in Indonesia. *Jurnal Sylva Lestari*, 12(3), 929–947. <https://doi.org/10.23960/jsl.v12i3.948>
- Jemarut, W., Dwi Ratna Kamala Sari Lukman, Ni Nyoman Ernita Ratnadewi, & Ni Wayan Sridiani. (2025). Analysis of the Implementation of the Legalization of Customary Law Communities (MHA) in North Lombok Regency. *JUSTISI*, 11(1), 218–229. <https://doi.org/10.33506/js.v11i1.3817>
- Kingsbury, B. (2017). Reconciling Five Competing Conceptual Structures Of Indigenous Peoples' Claims In International And Comparative Law. In *Indigenous Rights*. <https://doi.org/10.4324/9781315252391-7>
- Macklem, P. (2018). 5. The Constitutional Identity of Indigenous Peoples in Canada: Status Groups or Federal Actors? In *Forms of Pluralism and Democratic Constitutionalism*. <https://doi.org/10.7312/arar18702-007>

- Maswatu, I., Santosa, T. A., Ghoni, A., Dewi, M. N. K., Taqiyuddin Kadir, & Hartawati, A. (2025). Legal Protection of Indigenous Land Rights: A Study of Customary Law Integration in National Legal. *RIGGS: Journal of Artificial Intelligence and Digital Business*, 4(3), 1789–1794. <https://doi.org/10.31004/riggs.v4i3.2223>
- Mendez, M. (2017). Constitutional review of treaties: Lessons for comparative constitutional design and practice. *International Journal of Constitutional Law*, 15(1). <https://doi.org/10.1093/icon/mox004>
- Menkel-Meadow, C. (2018). The trouble with the adversary system in a postmodern, multicultural world. In *Mediation: Theory, Policy and Practice*. <https://doi.org/10.4324/9781315204826-25>
- Meyers, J. B. (2010). Rethinking ‘Constitutional Design’ and the Integration/Accommodation Dichotomy. *The Modern Law Review*, 73(4). <https://doi.org/10.1111/j.1468-2230.2010.00813.x>
- Morse, B. W. (2017). Tsilhqot’in Nation v. British Columbia: Is It a Game Changer in Canadian Aboriginal Title Law and Crown-Indigenous Relations? *Lakehead Law Journal*, 2(2).
- Ngubane, S. (2019). Critical Investigation of Challenges in the Recognition of Customary Law in the Democratic South Africa. *International Journal of Law and Society*, 2(3). <https://doi.org/10.11648/j.ijls.20190203.11>
- Nhlapo, T. (2017). Customary law in post-apartheid South Africa: Constitutional confrontations in culture, gender and ‘living law.’ *South African Journal on Human Rights*, 33(1). <https://doi.org/10.1080/02587203.2017.1303900>
- Oomen, B. (1999). Group rights in post-apartheid South Africa: The case of the traditional leaders. *Journal of Legal Pluralism and Unofficial Law*, 31(44). <https://doi.org/10.1080/07329113.1999.10756538>
- O’Sullivan, D. (2021). Treaties and re-setting the colonial relationship: Lessons for Australia from the Treaty of Waitangi. *Ethnicities*, 21(6). <https://doi.org/10.1177/1468796821999863>
- O’Sullivan, D., Came, H., McCreanor, T., & Kidd, J. (2021). A critical review of the Cabinet Circular on Te Tiriti o Waitangi and the Treaty of Waitangi advice to ministers. *Ethnicities*, 21(6). <https://doi.org/10.1177/14687968211047902>
- Pabón, M. V. C., Kennemore, A., & Canela, E. L. (2022). Negotiating Legal Pluralism and Indigenous Development: Lessons from Bolivia. In *The Routledge Handbook of Indigenous Development* (1st Edition). Routledge.
- Palermo, F., & Kössler, K. (2017). Comparative federalism: Constitutional arrangements and case law. In *Comparative Federalism: Constitutional Arrangements and Case Law*. <https://doi.org/10.5040/9781509901524>

- Parsonson, A. (2017). The fate of Maori land rights in early colonial New Zealand: The limits of the Treaty of Waitangi and the doctrine of Aboriginal title. In *Law, history, colonialism*. <https://doi.org/10.7765/msi/9781526119704.12>
- Popa Tache, C. E., & Săraru, C. S. (2024). Evaluating today's multi-dependencies in digital transformation, corporate governance and public international law triad. *Cogent Social Sciences*, 10(1). <https://doi.org/10.1080/23311886.2024.2370945>
- Porter, J., & Quig, P. (2024). Aboriginal Title After Tsilhqot'in: What We Know, What We Think We Know, and What We Still Need to Know More About. *Les Cahiers de Droit*, 64(4). <https://doi.org/10.7202/1109766ar>
- Quigg, R., & Russell, E. (2025). Indigenous rights and managed public land: a critical treaty analysis of parks and reserves in New Zealand. *Local Environment*, 1–18. <https://doi.org/10.1080/13549839.2025.2543308>
- Rumpia, J. R. (2024). *Marginalisation of Adat Communities: Intersectionality of Land Grabbing, Human Rights, Climate Adaptation, and Human Mobility in Indonesia* (pp. 221–239). https://doi.org/10.1007/978-981-97-3234-0_13
- Sanguiliano, A. R. (2015). Comparative Matters: The Renaissance of Comparative Constitutional Law, by Ran Hirschl. *Osgoode Hall Law Journal*, 52(2). <https://doi.org/10.60082/2817-5069.2830>
- Shrinkhal, R. (2021). "Indigenous sovereignty" and right to self-determination in international law: a critical appraisal. *AlterNative*, 17(1). <https://doi.org/10.1177/1177180121994681>
- Siekiera, J. (2023). Law and economics of the New Zealand Constitution: Western values catalog in Aotearoa. In *21st Century as the Pacific Century: Culture and Security of Oceania States in Great Power Competition*. <https://doi.org/10.31338/uw.9788323563136.pp.38-49>
- Singh, J. (2014). Freedom and democracy in an imperial context: Dialogues with James Tully. In *Freedom and Democracy in an Imperial Context: Dialogues with James Tully*. <https://doi.org/10.4324/9780203491461>
- Supé Guashco, J. D., & Jaramillo León, A. A. (2024). Conflicts of competence of the indigenous jurisdiction vis-à-vis the ordinary jurisdiction. *Centro Sur*, 8(1). <https://doi.org/10.37955/cs.v8i1.336>
- Tanjung, M. A. (2023). Legal Pluralism and Indigenous Justice Systems: An Anthropological Analysis. *Jurnal Ar Ro'is Mandalika (Armada)*, 3(2). <https://doi.org/10.59613/armada.v3i2.2838>
- Tushnet, M. (2017). Advanced Introduction to Comparative Constitutional Law. In *Advanced Introduction to Comparative Constitutional Law*. <https://doi.org/10.4337/9781781007327>
- Walker, N. (2020). The sovereignty surplus. In *International Journal of Constitutional Law* (Vol. 18, Issue 2). <https://doi.org/10.1093/ICON/MOAA051>

- Williams, D. V. (2017). Myths and history: The treaty of Waitangi as “The Magna Charta of New Zealand.” In *Magna Carta and New Zealand: History, Politics and Law in Aotearoa*. https://doi.org/10.1007/978-3-319-58439-3_3
- Wright, S. (2023). United Nations, United Nations Declaration on the Rights of Indigenous Peoples . In *Our Ice Is Vanishing / Sikuvut Nunguliquq*. <https://doi.org/10.1515/9780773596108-015>
- Yuliartini, N. P. R., Mangku, D. G. S., & Adnyani, N. K. S. (2021). Recognition Of Society Rights In Tradition Specially In Tourism Regulation Based On Article 18b Paragraph (2) Of The 1945 Constitution Of The Republic Indonesia. *Journal Equity of Law and Governance*, 1(1). <https://doi.org/10.55637/elg.1.1.3242.25-36>
- Zumbansen, P. (2021). The oxford handbook of transnational law. In *The Oxford Handbook of Transnational Law*. <https://doi.org/10.1093/oxfordhb/9780197547410.001.0001>