

AN ASSESSMENT OF

AN ASSESSMENT OF THE OPERATIONS OF THE VILLAGE COURTS

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Introduction

Purpose of this document

The purpose of this document is to report the findings of an assessment of the village courts system, including the impact of the transfer of responsibility for the courts to provincial government and make recommendations to address identified and prioritised needs. In particular, it articulates options for the *Community Courts Advisory Unit*[14] (CCAU) and provincial agencies associated with the operation and administration of the courts.

The assessment was facilitated by the *Attorney General's Department Institutional Strengthening Project (AGDISP) Village Courts Long Term Adviser (VCLTA)* and counterparts over a two year period (2000 – 2001). This work included numerous site visits to provinces[15] and consultation with village courts officials[16], officers[17], *National Judicial Staff Services (NJSS)* staff, provincial administrators, senior members of the *Royal Papua New Guinea Constabulary (RPNGC)*, *NGO's* and other interested stakeholders.

While this report only includes recommendations for change “that can be feasibly implemented by the GoPNG agencies concerned”[18], because of the presence of *AGDISP* it is assumed that continued support will be provided through the *VCLTA*. A more in depth analysis and design will be completed in accordance with Output 4.1.

Background

Village courts operate throughout the country and provide an accessible and economical local level judicial system for the people of Papua New Guinea. The village courts system is enshrined in legislation and supported by national, provincial and local level governments. It has a centralised policy making body, the *CCAU* within the *Department of Justice and Attorney General (DJ&AG)*

Transfer of responsibility

History

The *Organic Law on Provincial and Local-level Governments 1995* transferred responsibility for all aspects of village courts, with the exception of jurisdiction[20], to provincial government. It was proposed that the transfer be progressed through a three stage program[21] but despite this proposal, complete responsibility was reassigned in one movement in July 1995. This created a number of difficulties.

The major problems with the transfer were caused through lack of effective communication between the national and provincial governments. In any event, misunderstandings occurred over roles, responsibilities and funding, which unfortunately, in some cases, remain a problem today.

Thus, the period 1995 to 2000 was one of uncertainty during which provincial administrations lacked the direction and resources necessary to effectively manage their village courts and as a consequence support for the system fell to very low levels. The provinces were unsure of the level of funding allocated to village courts by the national government and as a result many officials went without payment of allowances for a number of years. Skilled staff previously employed and located in the provinces by *DJ&AG* in a support capacity for the village courts system were made redundant. In many cases they were not immediately replaced by provincial government after the devolution of responsibility. The number of village court inspectors / coordinators employed by the provinces today is about half that as there were under the *DJ&AG*. Many of the staff who were employed by provincial administrations to supervise the village courts were untrained for their role.

Despite this confusion, the transfer of functions has now, for the most part, been successfully completed. Some misunderstanding over roles and responsibilities still exist, particularly in relation appointment of magistrates and establishment of courts, among the respective bodies. In addition, a number of provinces have developed different approaches to administration leading to inconsistencies and recent legislative amendments to the penalty sections of the *Village Courts Act* have added to the confusion.

At the time of transfer staff levels of the *Village Courts Secretariat* were reduced from over eighty (80) to seven (7). This reflected the change in function from a large administrative body to a smaller strategic and regulatory organisation responsible for jurisdiction, policy and training standards. This dramatic change in position required management and staff to reconsider job descriptions, which included a re-design of roles and responsibilities. Given the current low level of resourcing within the *DJ&AG*, the *CCAU* is today an effective unit.

Current situation

Despite the early difficulties experienced, research indicates most provinces are now making efforts to effectively manage their village courts. Again, in most cases since the transfer of power, provincial governments have accepted their responsibilities and have a greater understanding of the requirements of the system. However, in a number of provinces, courts are operating with limited assistance from government and in some situations support is non-existent.

A number of provinces are yet to create or fill the vacant positions necessary to effectively manage the system. Provincial officers often lack the necessary knowledge and administrative skills. There has been a decline in emphasis on supervision, training and inspections and when coupled to funding restrictions, a reduction in the overall standard of administration has resulted. The decline in training and supervision increases the risk of courts exceeding their jurisdiction.

Given the current low level of support, the village courts system delivers outstanding service to the community. “While the village court system is a local level judicial system it is, nevertheless, a system of some magnitude. There are currently more than eleven hundred courts exercising jurisdiction across eighty percent of Papua New Guinea (See Table 1.). More than thirteen thousand officials serve the courts and deal with over 500,000 cases annually[22].” Perhaps the primary reason for the enduring success of the system is its acceptance by the people it serves.

Province	Population	No of VC's	No of VC Officials	No VC officers
Western	152,067	17	165	4
Gulf	105,050	29	280	1
Central	183,153	63	860	2
NCDC	252,469	20	246	3
Oro	132,714	15	185	2
Milne Bay	209,054	35	440	2
West Sepic	185,790	20	239	1
East Sepic	341,583	101	717	1
Madang	362,805	57	498	2
Morobe	536,917	85	1021	1
Eastern Highlands	429,480	87	1050	2
Simbu	258,776	112	1282	2
Western Highlands	439,085	99	1123	2
Enga	289,299	87	1400	3
Southern Highlands	544,352	111	1438	1
Manus	43,589	38	293	1
W/New Britain	184,838	40	480	6
E/New Britain	220,035	42	482	4
New Ireland	118,148	36	394	1

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Bougainville	141,161	56	513	2
TOTAL	5,130,365	1150	13,106	43

Table 1. Provincial Village Courts & Officials[23]

The village courts system has a number of strengths that form a solid foundation on which future improvements can be made. These strengths, as described in the *Village Courts Policy 2001* and reproduced here, include:

- ❑ **Adaptability.** Village courts are local courts in the true sense, constituted by local people for local people. Thus, they have the capacity to adapt to the needs of the community they serve.
- ❑ **Endurance.** Many village courts are still operating despite limited government support.
- ❑ **Accessibility.** Village Courts are local, relatively cost free and open to all members of the community. Matters can be heard without delay. People do not have to wait long periods of time for hearings. Hearings are conducted within the local community. This usually means people are not required to travel great distances or indeed leave their village.
- ❑ **Custom.** The use of custom to resolve disputes. In the village court, customary law has precedence over all other law except the Constitution. The people accept and respect customary law as a means to settle disputes.
- ❑ **Language.** There is no language barrier. As a rule all those in a dispute speak a common language.
- ❑ **Non-adversarial.** The courts are not restricted by the rules of evidence. The court can seek evidence from any source that it considers useful. Mediation is the preferred mode of resolving disputes.
- ❑ **Personnel.** There is respect for the tribunal. The magistrates are selected from the local community on the basis of their knowledge of custom, respect and fairness. There are many effective village court officers in provinces. Village court officials have a community interest in the success of their court.
- ❑ **Support.** All levels of government support the courts.

While the village court system is poor in financial terms it is rich in human resources. The abiding endorsement it receives from all levels of society provides a strong platform on which to improve

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its functionality. It provides a community service where the formal court system cannot and does not reach. Court officials are committed and enthusiastic and have demonstrated the capacity to respond quickly to training and guidance. It could be said, the village courts system is very much alive but in need of a sustaining tonic.

Financial situation

The current level of financial support provided is inadequate to meet the needs of the system. Research has revealed most provinces have insufficient funding available for training, supervision/inspections and general administration. For example, some provinces are able to provide only one village courts officer to manage up to one hundred village courts, often located in very inaccessible locations.

Provincial officers often work without sufficient resources to carry out their roles effectively. Their inability to provide supervision and guidance to court officials results in various problems in the running of the courts. In particular, injustice through errors of law and jurisdictional excesses are more likely to occur where appropriate supervision is lacking. Most operate without office equipment and transport capabilities. There are insufficient funds available for them to conduct training for officials. It is self evident that even a highly trained officer will not be effective if he/she does not have access to transport to inspect village courts.

All provinces with the exception of Central Province[24], are now paying their officials' allowances providing a much needed boost to morale[25]. Advice from provincial administrators indicates the level of allowances paid to officials has been increased from that paid under the national government scheme. The increased payment was made in recognition of the high value attached to the role of magistrate, clerk and peace officer by the provincial governments.

In many cases due to a lack the funding there is inability to purchase the necessary stationary to draft enforceable orders, keep records or prepare and issue summonses to attend court[26]. Officials, in particular the peace officers, require the uniform of office to identify them. Uniforms are viewed as an integral part of the system but unfortunately are not being issued in almost all provinces. It would seem a relatively small injection of funds per village court would rectify this problem. It is clear that finance will be an issue for possible consideration in development of the Project Design in Component 4.

Development pressures

The village courts system continues to grow. New courts in both rural and urban locations are being established to meet community demand[27]. The urban drift of people from all ethnic

backgrounds to the larger towns and cities resulting in the establishment of multi ethnic village courts is a continuing trend.

While exact figures are not available due to some provinces establishing courts without reference to the *DJ&AG* and the lack of empirical data at national and provincial level, *CCAU* estimate that fifty new courts were established in the past year[28]. The growing demand is indeed a reflection of the popularity of these courts among the community. This popularity emanates from the people's respect and confidence in the process.

But new courts add to demands for more resources on an already stressed system. Officials need to be selected, appointed, trained and importantly, paid. There are other financial pressures as discussed above. Village court areas must be drawn up and proclaimed in the National Gazette. Provincial officers are then required to support and supervise them.

Law and order climate

Much has been written of the general law and order situation in Papua New Guinea and there is little this report can add on that issue.

Village courts adopt a philosophy of restorative justice in their approach to resolving conflict within the community. This manner of justice delivery reflects the principles articulated in the *National Law and Justice Policy and Plan of Action 2000-2005* concerning restorative justice.

There are a number of initiatives under consideration and indeed operation to address the law and order climate within PNG. One that is relevant to the work of the village courts is the *DJ&AG* Justice Centre Project which received GoPNG funding in 2000 and again in 2001 to meet implementation costs. Broadly the aim of the project is to provide a focus to merge law and justice activities regardless of the distinction between national / provincial / local-level governments, church organisations, other NGO's and communities to provide more coordinated delivery of justice services at the local level. There may be opportunities to include communication and development of initiatives with village courts.

A number of people within the justice system generally, hold the belief the village courts play a major role in maintaining law and order and "peace and harmony within the community". A common view is that the courts prevent minor conflicts developing into greater issues and the possible commission of criminal acts.

Village courts seek to restore peace and harmony within their community through:

- ❑ Swift resolution of disputes, preventing them from escalating into major problems
- ❑ The use of mediation as the first step in dealing with conflict within the community
- ❑ Dealing with a huge volume of cases (500,000 per year) that would otherwise overwhelm the formal court system[29]
- ❑ Local people dealing with local problems.

Court management

National / provincial/ local-level management

The confusion that existed immediately after the transfer of responsibility under the Organic Law in 1995 has been largely resolved. With the exception of a couple of issues[30] the role and responsibility of each level of government is now understood by each level of government.

The National Government is responsible for the jurisdiction[31] of village courts. It is also responsible through the *CCAU* for matters relating to policy, training and performance standards[32]. With concurrence of the provinces concerned it also currently approves appointment of some magistrates.

The responsibility for administration, operation and financial support for village courts now rests almost entirely with provincial government. Each province is responsible for the selection and endorsement of officials, employment and payment of allowances, training programs[33] and maintenance of performance standards (through supervision and inspection of the courts).

There is no legislative power provided to local-level governments to establish village courts. However, provincial governments delegate certain administrative responsibilities to local governments and allocate funds accordingly. Local-level governments provide financial support to village courts for consumables, uniforms and transport. The community through local-level government nominates village court officials for appointment.

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To operate effectively and efficiently the structure of the village courts system requires high levels of communication and cooperation between the three levels of government. Unfortunately in the past, this has not always been the case.

The *CCAU* has developed and implemented structured and targeted programs and has set uniform standards and benchmarks in:

- ❑ education and training;
 - ❑ supervision, inspections and reporting, and
 - ❑ management and administration.
-
- **Recommendation 1. : *That the CCAU develop and maintain improved levels of communication with their provincial counterparts. This may include an inaugural biennial conference facilitated by CCAU and including all provincial village courts officers. It is recommended that the feasibility of AGDISP convening such a conference be explored in Year 3 for possible implementation in Year 4.***

Training

Training is a major issue for the village courts system. The lack of knowledge and understanding of the role and jurisdiction of the village court has resulted in incorrect practices and abuse of power by those charged with operating them. The *CCAU* has recognised the urgent need to address this problem through a uniform national training program for both village courts officials and officers. Prior to the current development of training programs by the *CCAU* and *AGDISP* no formal training existed for those associated with the village courts. It is believed that less than fifty percent of current village court officials have received any form of training^[34] and many provincial village courts officers appointed after the reforms of 1996 were not experienced in the area and do not have the skills to effectively carry out their roles.

Village Courts Course

The *CCAU* and *AGDISP* have produced a national training program for village court officials – the *Village Courts Course*^[35]. The program is a product of extensive consultation with village courts officials, officers and other stakeholders and training specialists. The training has been trialed in urban, rural and mixed ethnic areas and will be available in early 2002. It includes instruction on mediation skills, training in village court procedures, jurisdictional issues, criminal

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instruction on mediation skills, training in village court procedures, jurisdictional issues, criminal and civil matters and the roles and responsibilities of village courts officers. It is designed for delivery at local community/village level with a minimum of technical resources.

Village Courts Officers Course

During the development of the *Village Courts Course* it became apparent that the enormity of training some 13,000 officials is beyond the capacity of the CCAU. A realistic and cost effective solution was needed. The development and implementation of a 'train the trainer' concept has proved to be a breakthrough strategy. In essence, the strategy provides training for provincial village courts officers to enable them to deliver the *Village Courts Course*. To be known as the *Village Court Officers Course*^[36], it is proposed that it be delivered to provincial village courts officers by CCAU staff. The program would include an introduction to the *Village Courts Course*, presentation skills, supervision and inspections of village courts, jurisdiction, appeals and reviews and general administration of village courts.

In anticipation it will be approved, planning is currently underway for CCAU to conduct the *Village Courts Officers Course* in the four regions^[37] during 2002 as part of AGDISP activities. It is also planned that the CCAU will follow up this training by supporting provincial officers with facilitation and management of the course when this responsibility is ultimately devolved to the provincial administrations. The amount of support provided by CCAU will be subject to available resources but it is anticipated that some initial support will be provided.

The DJ & AG plans to consult with the *National Training Council (NTC)* to establish the feasibility of establishing accreditation for these courses.

Summary

Perhaps the most significant outcome associated with the development of training programs for the village courts system has been the overwhelming support from provincial administrations, provincial village court officers and most importantly by the people running the courts, the officials. Without exception, every province visited by the VCLTA and CCAU staff lobbied to host the pilot *Village Courts Course*. Support by provincial administrations was further demonstrated by the provision of funding for their staff to attend presentation skills and mediation courses conducted by AGDISP and by their further requests for training of officials. A strong demand for training of officials and officers clearly exists at provincial level.

- **Recommendation 2. : *The CCAU support provincial administrations in facilitating and conducting training for village court officials through the Village Courts Course.***

- **Recommendation 3. : *The CCAU conduct training for provincial village courts officers through the Village Courts Officers Course (subject to approval).***

Compliance with jurisdiction

The *Village Courts Act 1989* limits the power of court to hear certain matters.[38] While more empirical data is required[39], cursory examination of village court records and order books reveals that many courts exceed their jurisdiction. It is difficult to report the extent to which this occurs as there is no system in place that measures the degree of the problem. However, analysis of randomly selected village courts suggest that with the exception of occasional well publicised cases, the impact on parties involved through village courts exceeding their jurisdiction may not be as serious as initial reports indicated. But nevertheless, efforts should continue to reduce its frequency.

There are a variety of reasons why village courts exceed their jurisdiction including:

- Pressure to resolve disputes without delay in order to prevent further conflict in the community. This is a major factor, particularly in the Highlands Region. Village courts are more accessible than the formal courts.
- Lack of awareness of jurisdictional limits by magistrates. Given the level of training conducted in the past and current levels of supervision, that many excesses are caused through ignorance rather than blatant abuse of power.
- The cost and delays involved with having matters dealt with in the higher jurisdictions. There is evidence that parties use the village court over other courts in order to achieve speedy and relatively cost free resolution of disputes.
- Respect for custom and the courts over the formal court system. Customary solutions to conflict are sought through village courts when cases should be more properly brought before the formal court system.
- The “overlap” of jurisdiction. Many matters are lawfully heard and settled before the court as

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claims for compensation for offences that are outside its criminal jurisdiction. For example, a village court cannot hear a criminal charge of rape but it can hear a claim for compensation arising from such an offence.

- Exceeding the financial jurisdictional limit. This is occurring because the original limitation set in 1989 has reduced in value due to the inflationary effect.

- Lack of general community awareness of the jurisdictional limits. The community does not possess adequate knowledge to question jurisdiction.

Appeals

The *Village Courts Act 1989* provides aggrieved parties with an ability to appeal to the District Court. While it would appear that many, if not most users of the court system are aware of their right to appeal, they nevertheless, do not exercise it as they otherwise might. This right should be publicised as part of any public education program.

- **Recommendation 4. :** *The CCAU support and encourage provision of training on jurisdictional issues to all village courts officials and officers.*

- **Recommendation 5. :** *That provincial officers be trained by the CCAU to enable them to supervise village courts more effectively.*

- **Recommendation 6. :** *The CCAU and provincial governments conduct a sustained public awareness program on the jurisdiction of the village court.*

- **Recommendation 7. :** *That a review of legislation relating to financial jurisdiction be undertaken with a view to bringing it in line with contemporary values. This may include a request by CCAU to the Minister for the matter to be referred to the Law Reform Commission^[40].*

- **Recommendation 8. : *That the CCAU in conjunction with AGDISP develop and maintain a database that monitors levels of compliance with jurisdiction by village courts.***

Legislation

A number of difficulties exist with the legislation relating to the establishment and operation of village courts. These difficulties include ambiguity in the appointment of magistrates, the creation and proclamation of village courts, the failure of some provincial governments to enact their own *Village Courts Act*[\[41\]](#) and a need to review and update the national *Village Courts Act* and *Regulations*.

Appointment of magistrates

The legislation in relation to appointment of magistrates is unclear. In the debate that preceded the introduction of the *Village Courts Act 1974* the legislators were concerned that only suitably qualified people became village court magistrates. The type of person considered suitable for the role was a member of the community in which the court was situated and who was respected for his/her fairness and knowledge of local custom[\[42\]](#). It was the intention of the legislators that councilors and others who had political obligations not be placed in magisterial positions. The selection process should reflect that intention[\[43\]](#).

Since the provincial reforms, many magistrates have been appointed at provincial level and frequently without reference to the *DJ & AG*[\[44\]](#). Therefore, in many cases the validity of appointments is questionable. Reports of nepotism and political interference in appointments and revocation of appointments are not infrequent. In light of this experience it is arguable that in order to maintain independence of appointment that this power reside at a national level through the *DJ & AG*.

It would appear the intention of the *Organic Law* was to give power only to provinces to appoint officials however, both national and some provincial legislation include this power. Conversely, some provincial legislation appears to empower the national Minister for Justice to appoint magistrates. The ambiguity of the legislation has created uncertainty with some provinces appointing magistrates through the national minister and others through their own executive council.

General review

There has never been a review of the legislation relating to the operation of the village courts. Some legislation is out of date and requires amendment. The *Village Courts Policy 2001* calls for

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SOME LEGISLATION IS OUT OF DATE AND REQUIRES AMENDMENT. THE *Village Courts Policy 2001* CALLS FOR LEGISLATIVE REFORM TO BE PURSUED TO PROVIDE CLARIFICATION AND AUTHORITY OF JURISDICTION, ROLES AND RESPONSIBILITIES AND THE ESTABLISHMENT OF A LEGISLATIVE REVIEW COMMITTEE TO REVIEW THE RELEVANT SECTIONS OF THE:

- ❑ *Organic Law*
 - ❑ *National Village Courts Act 1989*
 - ❑ *National Village Court Regulations*
 - ❑ *Provincial Village Courts Acts*
- **Recommendation 9. : *That the CCAU establish a legislation review committee to consider appropriate amendments the legislation relating to the village courts.***

Conclusion

Research has demonstrated that, generally speaking, the village court system is functioning effectively given the current economic climate. Courts are sitting regularly and providing a service to the community.

The recommendations in this paper seek to identify those areas where national and provincial governments can, with limited assistance through *AGDISP*, do something that is feasible in the short to medium term.

The assessment of the village courts system has identified opportunities for improvement. A number of these opportunities cannot be developed and implemented without appropriate funding. The fact is that the *DJ&AG* is currently suffering budget cuts which of course, impacts on the ability of the *CCAU* to deliver any more than the basic support.

Despite the enthusiasm and support of the *CCAU*, provincial, local-level governments and the community, it is unlikely the recommendations will be fully implemented without continued support of *AGDISP* in the short term. The project design, as part of Component 4, will incorporate these recommendations and, subject to AusAID support, they can be progressed into tangible possibilities through that process.

Recommendations

- **Recommendation 1.** : *That the CCAU develop and maintain improved levels of communication with their provincial counterparts. This may include an inaugural biennial conference facilitated by CCAU and including all provincial village courts officers. It is recommended that the feasibility of AGDISP convening such a conference be explored in Year 3 for possible implementation in Year 4.*
- **Recommendation 2.** : *The CCAU support provincial administrations in facilitating and conducting training for village court officials through the Village Courts Course.*
- **Recommendation 3.** : *The CCAU conduct training for provincial village courts officers through the Village Courts Officers Course (subject to approval).*
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- **Recommendation 8.** : *That the CCAU in conjunction with AGDISP develop and maintain a database that monitors levels of compliance with jurisdiction by village courts.*

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- **Recommendation 9. : *That the UCAU establish a legislation review committee to consider appropriate amendments the legislation relating to the village courts.***