

Village Courts Manual
TABLE OF CONTENTS

	Page
About this Manual	1
Introduction	2
Establishment and Suspension of Village Courts	3
People who work in Village Courts	4
Village Court Magistrates	4
Qualifications of Village Court Magistrates	5
Chairman and Deputy Chairman	6
Appointment of Magistrates	7
Fairness	8
Misconduct of Magistrates	9
Village Court Peace Officers	10
Community Involvement of Peace Officers	12
Peace Officer Record Book	12
Village Court Clerks	13
Community Courts Advisory Unit	15
Village Court Procedures	18
An Overview of the process	18
Mediation	20
Full Court	21
Full Court procedure	23

Summons	24
Community Involvement	25
Witnesses	25
Evidence	26
No lawyers	26
Women and the Village Court	27
Children and the Village Court	28
Joint Sittings	28
Groups	30
Supervision and Inspection of Village Courts	32
Jurisdiction of Village Courts	33
Is it a Civil or Criminal Case?	33
Prescribed Offences	34
Bringing a charge before the Village Court	36
What Village Courts Must Not Do	38
Court Orders	40
Compensation	41
Community Work	41
Preventive Order	41
Payment of Fines	42
Other Orders	42
Land Orders	42
Custody Orders	44

When people disobey the Village Court	45
Execution of Village Court Orders	46
The Village Court cannot jail people	47
Dealing with trouble makers	47
Appeals and Reviews	48
Why Appeals are made	49
Time for appeal	49
Procedure	49
Review	50
Appeal and Review Orders	50
What happens to Village Court Order before the Appeal	51
Other things to think about	51
Other Courts	52
The District Courts	52
Land Courts	52
National Court	53
The Supreme Court	53
Court Forms and Records	54
Form One (Motu) and Form Two (Tok Pisin) – Settlement Order	55
Form Three (Motu) and Form Four (Tok Pisin) – Preventive Order	56
Form Five (Motu) and Form Six (Tok Pisin) – Court Order	58
Peace Officers Record Book	59
Customary Law	60

What is it?	60
Custom	60
Changing customs	61
Above all, unity	61
Problems with customs	62
Custom and the Constitution	63
The Constitution	64
Directive Principles of the Constitution	64
Rights and Freedoms	65
Basic Obligations	66
Natural Justice	67
Attachment 1	Village Court Forms 1 to 6
Attachment 2	Village Courts Act
Attachment 3	Village Courts Regulations
Attachment 4	Village Court Summons
Attachment 5	Village Court Warrant of Execution
Attachment 6	Village Court Warrant of Arrest
Attachment 7	Village Court Community Work Order
Attachment 8	Village Court Community Work Record
Attachment 9	Village Court Oath of Office
Attachment 10	Village Court Judicial Declaration
Attachment 11	Notice of Appeal and Review
Attachment 12	Village Court Inspection Report

About this Manual

The objectives of this Manual are to serve as:

- reference material for Village Court officials and officers
- an introduction to the Village Courts system for newly appointed officials, those who want to serve as Magistrates, Clerks or Peace Officers and other interested individuals
- training material for use by Village Courts officers when conducting training for Village Courts officials

Organisation of the Manual

This manual addresses the practical issues involved in the running of a Village Court. It aims to guide Village Court officials through their duties and provide quick answers to questions of procedure that arise during court hearings. The areas that are discussed in this book include:

- Establishment and suspension of Village Courts
- Roles and responsibilities of village court officials
- Role of the Community Courts Advisory Unit
- Jurisdiction of Village Courts
- How the Courts work
- Village Court Orders
- Appeals and Reviews of Village Court decisions
- Village Court Forms and their use
- The application of custom in Village Courts

Availability of the Manual

This manual is provided free of charge to Village Courts officials on their appointment, Village Court officers and those who wish to have access to information about the Village Courts system.

It can be obtained by contacting the Community Courts Advisory Unit at:

**The Director
Community Courts Advisory Unit
Department of Justice and Attorney General
PO Box 591
Waigani NCD**

or a Provincial Village Courts Coordinator.

Preface to the Second Edition

At the time of production of the first edition of the Village Courts Manual it was believed that proclamation of certain amendments to the Village Courts Act were imminent and the manual was written accordingly. Some three years later the proposed changes to the penalty sections of the Act have not yet become law and, according to current information, not likely to be certified and gazetted in the foreseeable future. This has resulted in some aspects of the original manual being misleading. This second edition corrects those inaccuracies.

The main thrust of the changes relate to the power of village courts to directly fine defendants and for those who fail to pay their fines or disobey court orders to be imprisoned through the District Court. The powers and procedure to be followed are explained in this edition. A copy of the Order for Imprisonment and instructions on its use are also included.

Production of the second edition has been timed to coincide with the launch of the Community Courts Advisory Unit's national training program for village courts officials. Training programs have been developed and produced and provincial village courts officers have attended courses designed to provide them with the training skills necessary to teach the Village Courts Course for magistrates, clerks and peace officers. The Village Courts Manual is an integral part of this training program as well as a reference for officials.

Some two thousand copies of the Village Courts Manual have been printed in English, Tok Pisin and Motu and distributed to village court officials and officers throughout the country. This second edition will reach another two thousand during 2003.

Peni Keris
Director
Community Courts Advisory Unit
January 2003.

Introduction

Papua New Guinea's Village Court system is unique. While much of the world is still experimenting with restorative justice and alternative dispute resolution, this country has a well established legal system that has restorative justice at its core. The primary aim of the Village Court is to maintain harmony within the community through mediation.

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 *Community Courts Advisory Unit* at the *Department of Justice and Attorney General*, that supports and guides the operation of village courts. In excess of twelve thousand officials at over eleven hundred different locations around the country are involved in the work of the Village Court. No other country has a comparable system of community justice.

The role of village courts has evolved in the twenty five years since their creation. The founding principle of the village courts system was its role in maintaining harmony within a community through the use of custom to mediate disputes. Unfortunately this function has, to a degree, been relegated to a lower priority by virtue of the work load imposed on the courts. Difficulty accessing the District Courts and the perceived delay in hearing matters at that level has resulted in many people turning to the village courts to resolve matters that rightly ought to be heard in a superior jurisdiction. In many areas this has resulted in disputes going straight to arbitration rather than the mediation.

Changes to the *Organic Law* in 1995 transferred many of the responsibilities for Village Courts to the provincial governments, allowing them to create their own Village Courts Act. Not all provinces have their own Act yet. Where provinces have created their own Provincial Village Courts Acts, it deals with all aspects of village court operation except jurisdiction, which remain a national responsibility. Having a National Village Courts Act and a Provincial Village Courts Act may seem confusing. This manual will explain the differences between the two Acts. Despite these changes the basic manner in which the courts operate remains the same.

One of the greatest strengths of the village courts system, is its adaptability to the needs of the community. Individual courts have developed procedures and approaches to their duties that suit the population it serves. In some areas the courts are more formal and have the appearance of higher courts. In others, procedures are far more informal. Whatever the approach, village courts provide an invaluable service to the community in which they are established.

Establishment and Suspension of Village Courts

A Village Court can be established in any community area where there is an established need. It is up to the local leaders to request the National or Provincial Government to establish a Village Court. They should first talk with the District Administrator, the Local Council or Provincial Village Court Official who should then send their request to the Provincial Government. Depending on the provincial legislation, establishment of Village Court areas may then be a national or provincial responsibility.

(National Village Courts Act, Section 4)

The Provincial and National Governments also have the power to suspend a Village Court or abolish a Village Court. A Village Court can be suspended if it is not functioning properly such as when there is a tribal fight, records are not being kept correctly or there is misuse of funds. When the problem is fixed the court can be re-instated.

(Village Courts Act, Section 5)

A Village Court that is suspended cannot do any work until the suspension ends. During a suspension, court officials will not be paid.

A court that is abolished is finished and cannot do any work again. If a court is suspended or abolished, its work goes to a District Court. Any papers and records belonging to a Village Court that is suspended or abolished must go to a District Court.

(Village Courts Act, Section 6)

Once a Village Court is established the Provincial Government is responsible for the training of officials and payment of allowances.

- **A National or Provincial Government can establish a Village Court**
- **A National or Provincial Government can suspend or abolish a Village Court if it is not operating correctly**
- **During suspension a Village Court cannot do any work and the officials do not get paid**

People who work in Village Courts

The Village Court Act says that there are three kinds of officials in the Village Court: Magistrates, Clerks and Peace Officers. The **Magistrates** are responsible for mediation and have the power to hear cases and settle disputes. **Peace Officers** help to enforce the orders of the court and the laws of the Village Court area. **Clerks** fill out the forms and advise the Magistrates on the rules of the Village Court Act.

Village Court Magistrates

Village Court Magistrates:

- **Counsel people informally**
- **Conduct mediations**
- **Hear cases in the full court**
- **Attend appeals and reviews of Village Court cases in the District Court**
- **Must be have the respect of the people and know custom**

The first and most important role of the village Magistrate is to maintain harmony in the community through mediation. This can be done by helping people work out their problems. This includes:

- **Counseling people informally.**
People often come to ask Magistrates for help or advice. This happens in the garden, at home, in the market. Magistrates should be available for this kind of work because many problems can be solved in this way before they become serious. For more information on mediation see page 20.
- **Conducting mediation.**
When there is a problem between people that cannot be solved informally, Magistrates can conduct a formal mediation. In a formal

mediation the Magistrate assists people to agree on a settlement. This settlement is recorded on a Settlement Order (Form 1 or 2).

- **Hearing cases in a full court.**

If a problem cannot be settled in mediation, or if the problem is that someone broke a law or rule, then the case will probably go to a full court. A full court involves at least three Magistrates and has the power to make orders for people to do certain things. For example it can make an order to pay compensation, or in relation to custody or pay a fine or for someone to do community work. If the person before the court does not pay the fine he or she can be imprisoned but only after endorsement by a District Court Magistrate.

Each Village Court Area has at least three Magistrates. When there is a full court sitting there must be 3, 5, 7 or 9 Magistrates present (Village Courts Act, Section 7). In some villages where it is customary for only one chief or bigman to make decisions, the Village Court might be given power to have only one Magistrate at a full court (Village Courts Act, Section 8).

Qualifications of Village Court Magistrates

Village Magistrates may be the older leaders in the village who have had little or no schooling or they may be younger, more educated people. This is of little importance. The main qualifications for Magistrates are a detailed knowledge of the people and customs of the area and being a respected and fair person.

If a Magistrate does not have a detailed knowledge of custom it will be difficult for him or her to make decisions based on custom. At the very least a Magistrate should know who to ask about custom. This is particularly in areas where there are communities of mixed ethnic backgrounds. (See joint sittings page 29)

A person who chooses to become a Magistrate has a big personal responsibility. A Village Court Magistrate must be a good example of the laws and custom he or she is supposed to uphold. A Magistrate cannot go around drunk, cannot steal, fight or flirt with women. When Magistrates do not live up to their positions in the community, people may not come to them or the court and problems that could have been avoided arise in the village. If a Magistrate gets tired of being a good example, he or she can resign and let someone else have a turn. (See revocation of appointments page 10)

A Magistrate must also be able to listen carefully. They must listen to people more carefully than anyone else in the village.

In some cultures it is customary to bring small gifts such as food when coming to see an important person or a relative. Magistrates must be very careful that these gifts are not seen as bribery. Certainly, money should not be accepted as a gift under these circumstances.

Also important is that a Magistrate must be willing to volunteer time to helping people. The amount of money given to Magistrates every month is very small and certainly should not be considered wages. Many Magistrates work two or three hours every day of the week on Village Court business. This work is worth much more than the K30 that Magistrates are paid every month. The monthly payment is really more like a gift or honorarium from the provincial government.

Chairman and Deputy Chairman

Village Court Chairmen:

- **Are elected by the officials of the Village Court and formally appointed by the National or Provincial Government**
- **Call a sitting of the court and preside over the court**
- **Supervises the work of the court**
- **Sees that the court is conducted fairly**
- **Is replaced by the Deputy Chairman if he / she is not available**

Every Village Court has a Chairman and Deputy Chairman. They are elected by the court officials in their Village Court area. The appointment of Chairman and Deputy Chairman will be confirmed by the National Minister for Justice or the Provincial Executive (depending on whether provision is made for appointment of Chairmen in the Provincial Village Courts Act).

(Village Courts Act, Section 18)

The job of the Chairman is to call a sitting of the Village Court and make sure that everybody is present. The Chairman will preside over a court if he / she is sitting. If the Deputy Chairman is sitting, but not the Chairman, he / she will preside. The Chairman is also responsible for the safekeeping of the records. The records of the Court should be kept in a safe place where they cannot be stolen or ruined by the weather.

The chairman's most important job is to see the rules of the court

are applied during a sitting. He must make sure for example that everyone has had a chance to speak, that the Magistrates are being fair-minded, and that the Magistrates consider each decision carefully. The Chairman must also make sure that Magistrates are present during the hearing of all the case if they are to take part in the decision making process.

If the chairman cannot come to a sitting, he can appoint a deputy chairman to perform his duties. If neither the chairman nor the deputy chairman can make it, the magistrates can appoint another magistrate to perform the duty of chairman.

Appointment of Magistrates

Village Court Magistrates:

- **Should be chosen by the people of the area**
- **Are officially appointed by the National Minister for Justice**
- **Are appointed for an indefinite period**
- **Can be suspended or dismissed by the National Minister for Justice for misconduct or incapacity**
- **Cannot be suspended or dismissed by a Local Council**
- **Can be women**

Village Court Magistrates should be chosen by the people of the area. Someone who becomes a Magistrate should know about the custom of the village. And if there are things the Magistrate does not know about custom they should know who to ask.

Sometimes Magistrates are nominated by a local government council, sometimes they are directly elected by the people. Once the people choose their Magistrate, the National Minister for Justice must approve the appointment before the person can be

**(Village
Courts Act,
Sections 16,
17 & 34)**

an official member of the court. After the appointment is announced in the National Gazette magistrates can be take the oath of office and be sworn in. Magistrates can be issued with badges and certificates, but this is not essential and Magistrates can act in an official capacity without these things.

Village Court Magistrates are appointed for an indefinite period. However, the National Minister for Justice can at any time revoke or suspend the appointment of a Village Court Magistrate for reasons of failing to attend to duty, misconduct or incapacity.

**(Village
Courts Act,
Sections 20
& 21)**

The local council which recommended the Magistrate cannot revoke or suspend a Magistrate. This is to protect the Magistrates from being influenced by the local council members in their decisions. The local council cannot tell Village Court Magistrates how to do their job.

Village Court Magistrates may be appointed for more than one court area if there is a need. There can be a total of between three and ten Village Magistrates for each court area established. However, only an odd number of magistrates can hear a case. (Village Courts Act, Section 17)

Most Magistrates in Village Courts in Papua New Guinea are men. This causes problems especially when hearing cases involving women. Women can be appointed as Magistrates in Village Courts and should be encouraged to do so. Some people might say that appointing a woman is against custom. The true customs of most tribes in Papua New Guinea made sure that women are always consulted before big decisions were made. Each court area should have at least one woman Magistrate.

Fairness

- **Village Court Magistrates must be fair in their decisions**
- **Magistrates cannot hear a case if they have an interest in the outcome**
- **Magistrates must understand the rules of natural justice**

One of the most important things a Magistrate has to do is to be fair. Village Court Magistrates must be fair when they make a decision about a dispute. If the Magistrates make a decision that is not fair, the parties to the dispute might

suffer. The village people will not want to let the Village Court decide their disputes if they think the Magistrates might not be fair.

There are some basic rules that Village Court Magistrates should think about to help make sure that the Village Court is fair. Sometimes these are called rules of natural justice.

- A person must understand what he or she is accused of doing.
- A person must be able to defend himself or herself. This includes being allowed to correct or contradict what others say about him or her.
- A person must be allowed to ask questions in court.
- Both sides must be present when a case is heard.
- A magistrate cannot hear a case if he or she has any interest in the outcome.
- The court must be fair in hearing disputes and making decisions.
- Everybody should be able to see the court is acting fairly.

In practice this means that the Magistrates should not make a decision until they have listened carefully to both parties in a dispute. Each side should have a chance to say everything they want to say. And each side should have a chance to listen to the other side. And if there is a need to hear from a witness, both sides should be allowed to comment on what the witness said.

Another important rule about fairness is that a Magistrate should not favour one side. A Magistrate cannot participate in a full court if the case involves a member of his family or if he will benefit directly from the case. If a case involves an enemy of a Magistrate, the Magistrate should not hear the case. In reality this can be difficult because in many cases Magistrates will be related to one or both parties in a dispute. Perhaps this can be overcome by ensuring that Magistrates with connections to both parties sit on the case or Magistrates from another court area can be asked to come and hear the case.

If the Magistrate will get money or if the Magistrate will be helped in any way if one side receives compensation, then it is not fair. This is called a conflict of interest. If a Magistrate has a conflict of interest then someone else should take his or her place when a decision is made about that particular dispute. There is no shame for a Magistrate to decide not to hear a case when people think he or she cannot be fair. Magistrates who are fair in their decisions will help the community to be a happier place.

Misconduct of Magistrates

A Village Court Magistrate could be suspended for misconduct, including any of the of the following:

- Misuse of Village Court funds
- Misuse of compensation payments

- If they have been charged with an offence before another court, such as stealing, assault, adultery, etc.
- If they are accused of accepting bribery or something else that is dishonest.

Some kinds of misconduct by a Village Court Magistrate, such as taking money from the court, can also result in the Magistrate being charged with a serious criminal offence in District or National Court.

Magistrates are suspended by the National Minister for Justice on the recommendation of provincial authorities.

Village Court Peace Officers

- **Peace Officers are selected by the village people**
- **The appointment is endorsed by the Provincial Government**
- **Peace Officers support the work of the Village Court**
- **Peace Officers have the power to arrest people and give people orders in certain circumstances**
- **Peace Officers must not exceed their powers**
- **Peace officers ensure that Village Court orders are completed**

The job of the Peace Officers is to support the work of the Village Courts. They assist the Court in enforcing its decisions and wear the uniform of the Village Court. Peace Officers look after the Village Court when it is in session and if necessary prevent people from interrupting proceedings. They will also supervise people doing community work, serve summonses and generally look after Law and Order in the Village.

(Village Courts Act, Section 28)

A Peace Officer is selected by the village people and the nomination endorsed by the Local Level Government before being appointed by the Provincial Administrator. A Peace Officer can be suspended for failing to attend to his or her duty or misconduct.

(Village Courts Act, Section 26)

(Section 32)

The Peace Officers take their orders from the Village Court Magistrates. But they can also make an order to stop a fight, tell people to come to court and arrest people on their own initiative.

(Sections 29 & 30)

When a Peace Officer sees a fight or thinks a fight may start, he can order any person stop making trouble. This order can be made without first going to a Magistrate. Anybody who disobeys this kind of order can be taken to the Village Court. It is an offence to disobey a Peace Officer making this kind of order. Such a person can be arrested.

Village Court Peace Officers can arrest someone who they believe has broken a rule of the Village Court Act or if instructed to by a Magistrate. If the person being arrested resists, the Peace Officer should get help from another Peace Officer or the police. (Village Court Act, Section 30)

If a person is arrested in such a case they must be taken to the Village Court as soon as possible, but not later than 24 hours. (Village Courts Act, Section 30). A person in custody of the Village Court must be either supplied with, or allowed to provide himself / herself with reasonable shelter and food. (Village Courts Act, Section 107)

In many cases the national police rely upon Village Court Peace Officers to make arrests in serious cases. A Village Court Peace Officer may help the national police if there is someone in the village who is accused of committing a serious criminal offence. (Village Courts Act, Section 31)

Village Court Peace Officers can only arrest people in the area of their Village Court. They cannot go to another Village Court area and arrest people. In such a case they should seek out the Village Court Officials from the area and work with them.

A Village Court Peace Officer does not have any special powers to arrest someone who they think has committed a serious crime. But any member of the public, including a village Peace Officer, can make a citizens arrest if they believe that a serious crime such as murder, rape or break and enter has been committed or is being committed. (Arrest Act, Section 5).

There are limits to the powers given to Peace Officers and these must not be exceeded. Peace Officers must be very careful in the exercise of their duties. If a person is arrested by a Peace Officer when there is no authority to do so, the

officer may have to appear before a District or National Court for unlawful imprisonment. A Peace Officer does not have the power to hear cases or hand down penalties.

Peace Officers may be asked by a Magistrate to serve a summons. This is a document which tells people to come to court at a certain time. When Peace Officers serve a summons they should be sure that it gets to the right person. Handing it to the person is best. When a summons is handed to a person it is important that the Peace Officer explain to the person what it is and what it means. (Village Courts Act, Section 29)

Community Involvement of Peace Officers

It is important to remember the title of this person: Peace Officer. The job of the Peace Officer is to help maintain the peace and this may prove difficult from time to time. It may involve dealing with angry or violent people and situations where emotions are running high.

The Peace Officer should not be a bully. If the Peace Officer has to stop a drunkard from fighting he could ask the drunkard's relatives and friends to help him. If he has to deliver a summons he could talk with the family and explain what it is all about so that the family can bring the person to court. If someone has to be arrested, then the Peace Officer again could involve the family and friends of the person who is being arrested.

Some Peace Officers have difficulty getting people to comply with court orders. This may be because the Village Court Magistrates are not consulting enough and the village people don't understand why a person is being summoned or arrested. It may also be because the Peace Officer tries to do it all himself like a policeman. The Peace Officer should be a good talker and negotiator and try to get people behind him.

Peace Officer Record Book

Many Village Courts in Papua New Guinea ask their Peace Officers to keep their own record of what happens in the court. The Peace Offices should keep track of when people came to see them about a complaint, when they see someone or do something illegal, when they summon people to come to court, etc.

This record book should be kept by the Peace Officer and not the Village Court Clerk. It is very helpful for Magistrates to consult this book if there is some question about when a crime was committed or when a summons was served. It is also a good second record for the Village Courts Inspector to check against the records of the Clerk.

A Peace Officer might have to purchase a note book to use as a record book if the Provincial Village Court Officer does not provide one.

Village Court Clerks

- **Village Court Clerks are selected by the village people**
- **The appointment is endorsed by the Provincial Government**
- **The principle duty of the Clerk is to record the proceeding and results of the Village Court**
- **Village Court Clerks must have a good knowledge of the Village Court Act and Village Court Forms**

The basic duty of the Village Court Clerk is to record the decisions and orders of the Village Courts and look after all the books (summons forms, Village Court Order Forms, Community Worker records, attendance book, receipt book). The clerks also do most of the writing for the Village Court in these books. They also look after any material evidence that is submitted to court. The Clerk is also an informal adviser to Magistrates about the rules and procedures that should be followed by the court.

The Village Court Clerk is selected by the village people and appointed by the Provincial Administrator after advice from the Local Level Government. (Village Courts Act, Section 22) A Deputy Clerk may also be appointed. The appointment may be revoked for failure to carry out duties, incapacity or misconduct. (Village Courts Act, Section 27).

Clerks should listen carefully during a case and make a note of who speaks in court. Clerks must be very careful in recording decisions and orders of the Village Court. They should record them while the case is going on or immediately after the case. Village Court Clerks or Village Court Magistrates should **certify** that the record is correct. Literate Magistrates will take the Clerk's job whenever he is away for some reason or otherwise unavailable. (Village Courts Act, Section 84)

Certify – make sure it is correct and then sign.

It is very important that the Clerks know all the different forms and which ones to fill out for which cases. (These forms are explained on pages 56 to 60). The clerk must also issue a receipt for any money received by the court. It is also important that the Clerks read and know the Village Court Act. The Clerks should

Village Courts Manual

be able to give advice to the Magistrates about the Village Court Act and the powers of the Village Court during a full court sitting.

Village Court Clerks often look after filling in complaint forms for people who want to bring a dispute to the Village Court. A Clerk must treat everyone fairly and must never discourage anyone from taking a case to court.

The Village Court Clerk must write the complaint on the form the way it was told to him or her. A Clerk cannot change a complaint on his or her own. Also important is that the Clerk must never talk or gossip in the community about the complaints that have been made.

Some Village Courts do not have Clerks to help the Magistrates. If there is no Clerk, the Magistrates must keep the records and do the job of the Clerk.

The Community Courts Advisory Unit

- **The role of the Community Courts Advisory Unit is to ensure the Village Courts system operates effectively**
- **The Community Courts Advisory Unit is responsible for policy, training and the maintenance of standards in Village Courts**
- **The Community Courts Advisory Unit provides assistance and advice to people working in the Village Courts system**
- **Inspection of Village Courts is conducted by Provincial Village Courts officers**

The Community Courts Advisory Unit, known previously as the Village Court Secretariat, is established under the National *Village Court Act*. Its job is to make sure that all the Village Courts in Papua New Guinea are running the way they should through cooperating with Provincial and Local Level Governments. (National Village Courts Act, Section 3) The Advisory Unit helps establish Village Courts and appoint magistrates where no Provincial Village Courts Act exists. It also provides training, develops policy and provides assistance and advice to people involved in the Village Courts system. The role of inspection of Village Courts is now carried out by Provincial Village Courts officers although an inspection can be ordered by the Director of the Community Courts Advisory Unit. (Village Courts Act, Section 11)

The Community Courts Advisory Unit is part of the Department of Justice and Attorney General in the National Government and is made up of a number of people. The main people you might have to deal with are the following:-

The Director

This person is in charge of the Community Courts Advisory Unit. His job is to make sure that:

- the Village Courts system run smoothly,
- effective policies governing the operation and practices of Village Courts are developed,
- the police and district courts work together with the Village Courts.

Deputy Director

This person is second in charge of the Community Courts Advisory Unit. His job is to make sure that:

- the Officers of the Community Courts Advisory Unit do their job,
- radio and newspapers get information about Village Courts,
- everyone gets the training and advice they need.

Officer In Charge – Jurisdiction and Legislation

This person is in charge of the following:

- promoting policy development at National and Provincial level,
- helping the Deputy Director to make plans and make budgets,
- making sure Village Court officials do not exceed their powers.

Officer In Charge – Training

This person is in charge of the following:

- training Village Court officials throughout Papua New Guinea,
- training Village Court officers in the provinces,
- preparing training materials.

Officer In Charge – Customary Law Compiler

This person is in charge of the following:

- carrying out reviews into customary law and recommending changes to the Village Courts Acts,
- ensuring appropriate customary laws are applied in the Village Courts,
- ensuring Village Courts are adequately advised on the application of customary law.

Officer In Charge – Provincial Liaison

This person is in charge of the following

- regular contact with provincial governments on matters affecting Village Courts
- assisting provincial governments with training and inspections
- providing advice to provincial governments on the operation of village courts

Provincial Village Courts Officers

Provincial Village Courts Coordinators / Advisers

The job of Provincial Village Court officers is to:

- make sure all the Village Courts in the province get regular training and have the forms they need,
- organise inspections of all the Village Courts and Land Courts in the Province,
- make sure records of the work of all the Village Courts are kept.

Provincial Village Court Inspectors

The job of the Village Court inspector is to:

- advise Village Court Officials on any problems they have with their courts,

Village Courts Manual

- check records of court work and collection of money,
- deal with complaints by the community about a particular Village Court,
- review work orders and their implementation,
- review appointments of Village Court officials.

Village Court Procedures

- **A Village Court can sit anywhere at anytime**
- **A Village Court MUST attempt mediation before going to a full court sitting**
- **An offence is a wrong against the law**
- **A dispute is a wrong against a person**

A Village Court can sit at any time or any place that is best for the parties and the Magistrates. (Village Courts Act, Section 9) A Village Court does not need a special building or desks or chairs to do a good job. If the Magistrates, Clerks and Peace Officers take a responsible approach then their Village Court will work well even if it does not have a building or desk or chairs.

Each court will develop its own way of dealing with the problems that are brought to it. But there are certain basic things that all courts must do. All courts must try mediation before going to full court. All courts must follow certain rules in making summonses, issuing orders and filling out forms. Most importantly, the courts must always be fair in their dealings.

An Overview of the Process

If a person comes to a Magistrate and makes a complaint, the Magistrate must decide whether it is a dispute or an offence.

Offence: Offences are set out in the Village Courts Regulations. A copy of these offences is included in this Manual. If a person commits an offence the court can give punishment.

Dispute: A dispute is an argument or disagreement. If the Court finds that somebody has done the wrong thing to somebody else, it can order that person to pay compensation in the form of money or other things or do work for that person.

An **offence** is a wrong against the law. A **dispute** is a wrong against a person.

If the complaint is an **offence**, the following action is taken:

- A summons is sent to the other parties involved
- The parties to appear before the Village Court
- A decision is made as to which Magistrates are to sit on the Court
- A decision is made as to who is to preside as the Chairman of the Court
- The Court hearing is conducted, witnesses heard and a decision made.
- If it is decided the person has committed an offence, he or she can be cautioned and discharged or placed on a Community Work Order or fined and if he or she fails to pay a fine, be imprisoned through the District Court.
- If there have been injuries suffered or losses incurred as a result of the criminal offence, compensation can be ordered.

If the complaint is a **dispute**, the following action is taken:

- Informal mediation
- If unsuccessful, formal mediation takes place
- If informal or formal mediation is successful, a Settlement Order is filled out and signed by the parties.
- If mediation is unsuccessful, summons are sent to the parties
- A decision is made as to which Magistrates are to sit on the Court
- A decision is made as to who is to preside as the Chairman of the Court
- The Court hearing is conducted, witnesses heard and a decision made
- If the Court decides that someone has to do something as a result of the hearing, usually paying some form of compensation, a Court Order is made.

Mediation

- **Mediation is a very important part of the Village Court Magistrates role**
- **A Village Court MUST attempt mediation before going to a full court sitting**
- **All parties involved in the mediation must be given the opportunity to be heard**
- **Mediation is a skill that takes time and effort to learn**

The Village Courts Act says the most important job of a Village Court is to help people reach a fair and friendly settlement of a dispute. This is called **mediation**. Mediation is ALWAYS the first part of Village Court work. A Village Court Magistrate MUST talk to people to help them think about their dispute and help them decide how to settle it BEFORE the matter can go to a court hearing. (Village Courts Act, Section 53)

A successful mediation can heal the hurt feelings in a dispute and prevent it from flaring up later. Also, by taking part in the negotiation, the two parties may learn skills that will help them avoid getting in more disputes in the future.

One or more magistrates can conduct a mediation. Other people, like respected elders, can be involved. Whatever it takes to get the two parties in dispute to come to an agreement. However, the parties must not be forced into an agreement they don't want.

When a magistrate is trying to mediate a dispute, it is sometimes a good idea to give the parties a chance to talk by themselves. A magistrate can decide to adjourn a mediation to give the parties a chance to talk. The magistrate must know his or her role in a mediation and show an interest in the parties and the dispute. He or she must be willing to mediate and have the matter settled.

The steps in the mediation process are:

- Allow each side to tell their story
- Establish the true needs of each party

- Develop possible solutions to the problem
- Select a solution or solutions and reach general agreement
- Decide on the detail of the agreement
- Write down the agreement on a Settlement Form (1 or 2)

Being a successful mediator is not easy. It is a skill that takes time and effort to learn. The Community Courts Advisory Unit includes mediation skills training in its training package for Village Courts officials.

If the dispute involves a customary matter the magistrate may want to adjourn the mediation and refer the matter to an elder who is respected by both parties.

If the parties agree on a way to settle a dispute, the Magistrate or the Clerk must write it down on a Settlement Order (Form 2). When the agreement is written down, somebody should read it to the parties to make sure it is correct. If the parties agree that what has been written is correct, then it is like an order of the court. If either party does not do what they agreed to do, they are breaching the order. This can be a serious matter. (Section 54 National Act)

If the parties cannot agree how to settle their dispute the matter will have to go to the full court.

Full Court

- **A Full Court is called when mediation has failed or someone has broken a law of the Village Court Area**
- **There must always be an odd number of Magistrates sitting and a minimum of three in a Full Court**
- **The Clerk and Peace Officers should be in attendance**
- **Generally, the court should not hear a matter in the absence of one of the parties**
- **Everyone involved should be given the opportunity to speak**

A Full Court is called when a mediation of a dispute between two people has failed or when someone has broken the law or rules of the Village Court Area. It is called to deal with problems inside one Village Court area. A court can sit at any time or any place (Village Courts Act, Section 9) If the dispute involves someone from another Village Court area then a joint sitting is required (Village Courts Act, Section 56) See page 28.

Each Village Court has at least three Magistrates. When there is a full court sitting there must be at least three Magistrates who work together. If there are more than three, it must be an odd number that is, 5, 7, or 9. (Village Courts Act, Section 7) In some villages where it is customary for only one chief or bigman to make decisions the Village Court must be given power by the Community Courts Advisory Unit in Waigani to have only one Magistrate decide a dispute. (Village Courts Act, Section 8)

A full court sitting is called by the Chairman of the Village Court area. The Peace Officers must notify all the people concerned with the case. If a person does not know about the court hearing, they cannot be held responsible for not showing up. The time of the sitting should be convenient for all parties.

A Clerk should be in attendance to record the decision. It is important that one of the Magistrates look at how the Clerk recorded the decision to make sure that it is correct and certify it as a true and accurate record of the decision. If there is no Clerk, one of the Magistrates should record the decision and keep it in a safe place.

One or more Peace Officers should also be present to make sure the Magistrate can deal with the dispute without being disturbed or in case the Magistrates need to ask them questions.

Everyone in the full court session has a right to say what they want to say. Everyone can ask questions of anyone else. Magistrates should make sure that everyone has a turn to speak without being interrupted.

Anyone who is charged with an offence in a Village Court must be told about the charge. They must know exactly what behaviour it is that resulted in the charge. They must be allowed to come to Village Court to talk. They must be given a chance to ask questions. They must be allowed to ask anyone else who knows about the dispute to come to Court and talk. If they wish, they may be represented by someone other than a lawyer. (Village Courts Act, Section 80)

A Village Court should not proceed to hear a case in the absence of one of the parties. There are two exceptions to this rule:

- Where the person is represented by someone else or
- Where the person usually lives in the Village Court area and the court is satisfied he/she is deliberately staying away from the court and it is not possible to hold a joint sitting.

If the court hears a matter in the absence of a party it has no power to make an order against that person except for criminal offences against the Village Courts Act and Local Level Government rules. (Village Courts Act, Section 79)

Full Court Procedure

While Village Courts should be conducted according to local custom the following guidelines for conducting a hearing may be helpful to court officials.

Before commencing a full court hearing it is still important to remember that the primary role of the Village Court is the maintenance of harmony in the community through mediation. At all stages the parties to a dispute should be encouraged to settle matter through mediation. This applies even if summons have been issued or the hearing of the case commenced.

If mediation has failed and the matter is proceeding to full court hearing the general guidelines are:

- Step 1. The complainant or his/her representative opens his/her case and gives his/her side of the story, telling the court what the defendant is accused of. The magistrates should ask questions to clarify any points they are not clear on.
- Step 2. The defendant or his/her representative makes a reply to the accusations and tells his/her version of the story to the court, explaining why he/she is blameless. The Magistrates can ask questions to clarify any unclear areas. They can also make statements to the parties to help them understand any issues in the case they have identified.
- Step 3. The complainant calls his/her witnesses. The defendant must be allowed to ask the witnesses questions if he/she chooses. The Magistrates may also ask questions if they wish.
- Step 4. The defendant calls his/her witnesses. The complainant must be allowed to ask the witnesses questions if he/she desires. The court may also ask questions of the witnesses.
- Step 5. The Magistrates ask both parties if they have anything further to say and listen to any submissions made by the complainant or defendant.
- Step 6. The Magistrates consider their decision. This verdict is reached by majority vote. A decision is made on punishment or compensation and becomes an Order of the particular Village Court.

- Step 7. The Order is then made on a Form 5 or 6 by the clerk and read out to the court. The court should ensure that both parties understand the decision and both should sign the Order if possible.

Summons

- **A summons is a way of telling people to come to court**
- **A summons may be written on paper or it may be by word of mouth**
- **A person who disobeys a summons commits an offence**
- **The Village Court may order a Peace Officer to arrest someone who refuses to come to court**

When a person is needed in court they can be summoned by a Magistrate. A Summons is a way of telling a person to come to court. It can be a paper that tells a person what time and what day to be at court or the person can simply be told when to come to court by a Peace Officer. A Summons should be given to a person before the day of the court.

(Village Courts Act, Section 81)

Sometimes a person is called to court and does not show up. This is an offence unless they have good reasons for not coming. A Magistrate must ask them to explain why they did not come. A Magistrate may also consider issuing another summons. If they have no good reason and they still refuse to come then a Magistrate may consider laying a charge of failing to answer a summons against them. (Village Court Regulations) If they have no good reason for coming the first or second time they are summoned but finally do come, then it is probably better to just get on with the case. You might want to impose a small penalty such as a community work order for the delay they have caused – perhaps repairs to the court house or cleaning the court area.

(Section 81)

If you impose a penalty for not obeying a summons, you still have to hear the original case. You are imposing a community work order for not obeying the summons not for their part in the case.

(Section 81)

It may be possible to send the Peace Officers out to bring a person to court by force. This is difficult if the person lives far away, or you don't have enough Peace Officers. In such cases you might want to consider getting the person's family involved to help locate him and encourage him to come to court.

Community Involvement

The purpose of the Village Court is to promote peace and harmony in the village. This will not happen if people do not trust or understand the court. It is a very good idea to invite community members to hearings of the court. There is nothing wrong with a Magistrate asking advice of community members to find out what kind of settlement will be acceptable to everyone. Remember the purpose of the Village Court is rarely to decide what is right or wrong but to promote peace and harmony in the community.

Many courts have trouble with the enforcement of decisions. Often a decision is made, an order made, and people ignore it. This would not happen as much if the whole community knew about the case and supported the decision of the court. Another reason this happens is that courts do not properly consider what order is fair in the first place. Remember, the purpose of the Village Court is not simply to impose penalties and punish people but to create unity in the community.

Witnesses

There is often a need to bring in other people to explain how things happened. These people are called witnesses. Village Courts can call witnesses to tell their story to the Magistrates. Both parties in a dispute have a right to question the witness. This is part of the rules of natural justice (see page 66).

**(Village
Courts Act,
Section 81)**

If someone is called to be a witness at a Village Court and does not come, that person is disobeying a court order and can be arrested and brought to Court. If such a person does not have a reasonable excuse for not obeying the summons, the court can impose a penalty such as a community work order.

**(Village
Courts Act,
Section 81)**

Evidence

- **Technical rules of evidence do not apply in Village Courts**
- **Magistrates must apply custom when hearing cases**
- **Matters must be decided according to the principles of natural justice**

The technical rules of evidence that apply in other courts do not apply in the Village Court. (Village Court Act, Section 59) Village Courts are bound by the Village Courts Act and the Constitution. They are not bound by any other law except where the Act specifically mentions the Village Court. (National Village Courts Act, Section 58)

Magistrates must apply custom when hearing cases (Section 57) but the Constitution says custom that infringes personal freedoms or is offensive to human dignity cannot be applied. This means, for example, that a woman cannot be given as compensation in a dispute. (See pages 60 - 62) In matters involving custody of children custom must not be applied if the result will not in the best interests of the child.

Matters must be decided in a fair manner and in a way that is consistent with the principles of natural justice (see page 66). A person charged with an offence before the Village Court is presumed to be innocent until proven guilty. (Village Courts Act, Section 58)

No lawyers

Everyone who has a dispute in the Village Court can bring someone to the court to help them. Maybe a person who has a dispute does not like to talk. Maybe the person with the dispute cannot think of some important questions to ask. Maybe a woman feels that she is outnumbered by men in the court and wants someone to speak for her. These people can have someone help them by talking and asking questions. The person that they bring to the Village Court can be anybody who wants to help them but the person cannot be a lawyer. Lawyers are not allowed to appear in Village Courts. (Village Courts Act, Section 80)

Women and the Village Court

- **Women must be treated fairly by the Village Court**
- **Women have the same rights as men**
- **If a woman does not feel comfortable about speaking in the court a respected woman may be asked to speak for her**
- **Women should be encouraged to become Magistrates**
- **Wife beating is to be treated as assault by the Village Court**

Women often have a different point of view about events than men. It might not be fair for a woman to face a court made up of all men. She might feel afraid or ashamed. Many women claim that the men Magistrates in Village Courts don't listen to their point of view. In order to make sure that you are being fair, you might want to make it a rule of your court that whenever a woman is before the court you will have a respected woman in the court to help her explain herself.

This is a very important issue. Too many Village Courts are unfair to women. They give women large penalties for small offences like talking back to the husband, or not having the food cooked on time. Maybe the court only listens to the husband's accusations of adultery and does not listen to the woman's side of the story. When Village Courts make decisions that are unfair to women some important politicians and judges in Papua New Guinea stand up and say that the Village Court system should be abolished.

Village Courts should use their powers to protect women (and children) from domestic violence. Officials should use their mediation skills as well as their official powers, such as preventive orders and criminal charges, to ensure women in the community are not subjected to abuse.

Wife beating is not uncommon in many areas. In the past some customs accepted this practice, this is no longer the case. The Constitution and Customs Recognition Act provide that custom should not be recognized or enforced where it results in injustice and the Village Court should not recognize any customary right of a man to beat his wife. Wife beating is an assault and should be treated as such by the court.

Village Magistrates must be fair to women. This is a basic law set down in the Constitution of Papua New Guinea. It is the new custom of all people in Papua New Guinea that women have the same rights as men. No one can argue with this. If a Village Court is unfair to a woman the Magistrates can be dismissed and new ones who are more fair will be appointed. Women should also be encouraged to become Magistrates.

Children and the Village Court

Village Courts are often required to hear matters involving children. The Village Court can hear criminal cases against children when the offence is committed in the court area. When dealing with disputes involving children such as a custody matter, custom cannot be applied if the result will not be the best interests of the child. (See Evidence page 27 & Custody page 44)

Children under the age of 18 years can appear before the Village Court in the same manner as an adult. In practice, any order for compensation is usually paid by the family of the child. In the case of an application for imprisonment against a child being referred to a District Court magistrate for endorsement, the magistrate shall refer the matter to the Children's Court. (National Village Courts Act, Sections 69 & 70)

The court should always remember that children have a right to be heard in any matter that will affect them. The court also has a responsibility to ensure that children are protected from physical and sexual abuse. This includes situations where punishment of a child goes beyond reasonable discipline. If Magistrates feel they do not have the skills or training to deal with such matters they should refer the matter to Welfare Services at the Department of Home Affairs.

Joint Sittings

Usually a Village Court hears cases where the parties to the dispute come from the same village or Village Court area. However, sometimes the parties to a dispute will come from more than one Village Court area. For example, where there is a prescribed offence like fighting involving people from more than one court area. When this happens, it may not be fair to have Magistrates from only one Village Court decide the case. It might be better to have a joint sitting. A joint sitting happens when Magistrates from more than one court get together to hear a case. (Village Courts Act, Section 56)

A joint sitting of village courts can happen when the chairmen of more than one court agree that it should happen. If there are no chairmen then other Village Court Magistrates can agree to have a joint sitting. A decision to have a joint sitting of village courts can also be made by the Provincial Supervising

Magistrate (who is a District Court Magistrate) or by a Peace and Good Order Committee.

When village courts have a joint sitting, there must be at least two Magistrates from each of the village court areas concerned with the dispute. There must also be another Magistrate from a village which is not involved in the dispute. This Magistrate is called a visiting Magistrate. Together, the visiting Magistrate and the Magistrates from the villages concerned will have a joint sitting of the court.

If the parties agree on a way to settle a dispute, the Magistrate or the Clerk must write it down on a Settlement Order (Form 2). When the agreement is written down, somebody should read it to the parties to make sure it is correct. If the parties agree that what has been written is correct, they should sign or acknowledge it as such. The Settlement Order is then like an order of the court. If either party does not do what they agreed to do, they are breaching the order. This can be a serious matter. (Village Courts Regulations)

A joint sitting of village courts has the same power to make orders that an ordinary Village Court has. It also has the same responsibilities that other village courts have to make sure that the hearing is conducted fairly. A joint sitting of the Village Court can take place at any location that the Magistrates agree upon. The location should be convenient for everyone and, if possible, should be a place where people from both villages can walk to easily. (National Act Section 56)

- **Where parties to a dispute come from different areas a joint sitting can be held**
- **In a joint sitting Magistrates from more than one area hear the case**
- **A joint sitting occurs when the Chairmen of the different areas agree**
- **In a joint sitting there must be at least two Magistrates from each of the villages involved in the dispute and another from a village not involved in the dispute**
- **A joint sitting has the same powers as any Village Court**

Groups

- **A Village Court may declare a clan or other group as a *group* for the purposes of the Village Courts Act**
- **The court can nominate one or more people to represent the group at court**
- **A Village Court can make a Preventative or Compensation Order against a group**
- **Any person who does not obey a Preventative Order against a group can be charged by the Village Court**
- **Where a Compensation Order is made against a group each member of the group is responsible for paying the compensation**
- **A group cannot be charged with offence but each member of the group can**

An extended family or clan or any group with a common interest can be declared a *group* by a Village Court. The court can nominate one or more people as representative of the group at a Village Court hearing, usually a leader of the group. (National Village Courts Act, Section 98) A Village Court can make an order for or against a group as if the group was a person.

In the case of a dispute between two groups a Village Court can make an Preventative Order. The order should be written down as soon as possible and should tell the groups they must:

- come to court at a certain time and place to try and settle the dispute, or
- stop fighting, or
- not do anything that will cause fighting or further dispute, or
- not make or carry offensive weapons in certain places, or

- not spread rumours or fears about the dispute, or
- not do any other thing that might aggravate the dispute if the court tells it not to do.

Any person who does not obey a Preventative Order commits an offence and can be charged in the Village Court. (National Village Courts Act, Section 51) As with all disputes before the Village Court, mediation must be the first step taken by the Magistrates in dealing with the matter.

A Village Court can make a compensation order for or against a group as if the group was a person. This means if a group does something wrong to another person or another group, the group can be brought before the court. The court may order that the group pay compensation to that person or other group.

The effect of the order is that each member of the group is responsible for paying the compensation. When the court makes an order for compensation against a group it will use Form 5 or Form 6 and may show the names of each member of the group and the amount they have to pay. (Village Courts Act, Sections 99 & 100)

Compensation against groups in the case of bride price, death or custody matters, is unlimited. In other matters the maximum the group can be ordered to pay is K1000. The court can also order the group to work as compensation. (Village Courts Act, Section 45, 46 & 47)

A group cannot be charged with an offence at a Village Court. If a group commits an offence each member of that group must be charged individually. If an order is made against a group and the group disobeys the order, each member of the group can be brought before the court for failing to obey that order.

Supervision and Inspection of Village Courts

- **Regular inspections of Village Courts are conducted to ensure the courts are carrying out their duties correctly and not exceeding their jurisdiction**
- **Further inspections may be ordered by the Minister, Director, Community Courts Advisory Unit or a Provincial Village Courts officer**
- **An Inspector will look at records, help officials run the court, conduct training and report to the provincial authorities or the Community Courts Advisory Unit**

To assist Village Court officials carry out their duties and to ensure that the court does not exceed its jurisdiction, inspections of Village Courts are carried from time to time. Inspections are conducted by Village Courts Inspectors or staff from the Community Courts Advisory Unit and may be on a regular basis or special inspections may be ordered by the Minister, the Director of the Community Courts Advisory Unit or the Provincial Village Courts officer. (National Village Courts Act, Sections 10 & 11)

During an inspection the Inspector will

- look at the Village Court and its records
- make inquiries with villagers and officials as to how the court is functioning
- make Village Court officials aware of any mistakes they are making
- provide training to ensure the mistakes are not repeated
- ensure that Village Court officials are aware of any new rules relating to Village Courts
- prepare a report to the Provincial Village Courts officer and where required to the Community Courts Advisory Unit. (National Village Courts Act, Section 12)

Jurisdiction of Village Courts

- **Jurisdiction means the extent and power of a court**
- **Jurisdiction can refer to the geographical area of the court, or**
- **It can refer to the power of a court to carry out certain functions**

Jurisdiction is a word that means the extent of the power or authority of a court. It can mean the geographical area in which the court has power and it can also mean the authority of a Village Court to carry out certain functions. Every Court also has limits to its jurisdiction. The National *Village Court Act* spells out the jurisdiction of the Village Courts. Village Courts have the power to hear matters in the area for which it was established in relation to:

- criminal matters as set out in the Village Court Regulations (a copy of these offences is reproduced below)
- a dispute that arose in its area
- a dispute where the subject matter of the dispute is within its area
- a dispute where all the parties to a dispute usually live in its area
- a dispute where some of the parties involved in a dispute usually live in the area and the others agree to have the case heard in the court.

Is it a Civil or Criminal Case?

- **Village Courts deal with two categories of offences – civil and criminal**
- **A civil case involves a dispute of some kind**
- **A criminal case involves committing an offence**

The law usually divides problems into two categories: civil cases or criminal cases. A civil case involves a problem between two people such as a debt or a dispute over bride price. A criminal case involves the breaking of a law.

In a civil case (dispute) one party may want compensation, a custody order or a decision over land use. The first step in a civil case is for a Magistrate to talk with the arguing parties and try to help them work things out. This **MUST** be done before any matter is heard in the full court. The job of the Magistrate here is to help two parties work out their differences and avoid going to full court.

A Village Court can order a party to a dispute to perform work for the aggrieved party but the court cannot impose a penalty in a civil case. Any order to work must be for no more than 8 hours in one day and no more than six days in a week and for no longer than 12 weeks.

In a criminal case (offence) a person has broken the law of the village, maybe by stealing, fighting, drinking, or some such thing. This case must be decided by a full court. This is because it would be unfair for one Magistrate to decide on the guilt or innocence of a person. People can be penalised if they commit an offence. They can be placed on a community work order or fined up to K200. If they fail to pay the fine, the District Court may send them to jail. (Village Courts Act, Sections 61 to 68)

There are cases that can be both civil and criminal. A person can cause damage to someone else's property while breaking the law. Such a person could be ordered to pay compensation and penalised by the court. But it is important to remember that the punishment should match the crime. If a person is paying compensation, then a heavy penalty might not be fair.

Prescribed Offences

The Village Court has the power to punish someone who commits any of the following offences which are found in the Village Court Regulations. Where Local and Provincial Government legislation provide for it, Village Courts can also hear offences against Provincial Acts and Local Government Rules.

**(Section 41
National Act)**

- (a) stealing something worth less than K100.00; or
- (b) striking another person without reasonable cause; or
- (c) using insulting, offensive or threatening words; or
- (f) intentional damage to trees, plants or crops belonging to another person; or
- (h) intentional damage to any other property belonging to another person; or

- (i) making a false statement concerning another person that offends or upsets him; or
- (j) spreading false reports that are liable to cause alarm fear or discontent in the Village Community; or
- (k) conduct that disturbs the peace, quiet and good order of the Village or of a resident of the Village; or
- (l) drunkenness in the Village Court area; or
- (m) carrying weapon so as to cause alarm to others in the Village Court area; or
- (n) failure to perform customary duties to meet customary obligations after having been informed of them by a Village Magistrate; or
- (o) failure to comply with the direction of a Village Magistrate with regard to hygiene or cleanliness within a Village Court area; or
- (p) sorcery, including:
 - practicing or pretending to practice sorcery; or
 - threatening any person with sorcery practiced by another; or
 - procuring or attempting to procure a person to practice or pretend to practice, or to assist in, sorcery; or
 - the possession of implements or charms used in practicing sorcery; or
 - paying or offering to pay a person to perform acts of sorcery.
- (q) failure to comply with the Court Order to appear or to produce evidence before a Village Court; or
- (r) failure to comply with the terms of the Agreement in the Settlement Order; or
- (s) causing trouble to the Village Court or trying to stop a Village Court Magistrate or Peace Officer or Clerk from doing his job; or
- (t) not performing work which has been ordered by the Village Court and not having a reasonable excuse;

or

- (u) not obeying an order of a Village Peace Officer to stop fighting; or
- (v) not obeying the order of a Village Court about custody of children, or use of land; or
- (w) not obeying the order of a Village Court to attend to court.

Bringing a charge before the Village Court

- **Anyone can bring a charge before a Village Court**
- **A Village Court cannot hear a case against a person that has been heard and determined by another court**
- **A Village Court can hear a claim for compensation where a criminal charge has been heard in a another court**
- **Where a Village Court starts to hear a case and it becomes apparent that the matter should be dealt with in another court, the Village Court should refer the matter to that other court**

A charge for an offence can be brought before a Village Court by:

- a Village Court Peace Officer
- a member of the Police Force
- an authorized officer of Local level Government where the charge is against an LLG rule
- an authorized person where the offence is against a Provincial Government Act, or
- by any other person. (Village Court Act, Section 83)

This means that anyone can bring a charge in the Village Court, but of course the court must decide if it has the jurisdiction to hear the matter before proceeding.

If a person has appeared before a Village Court or another court he / she cannot be tried again for the same offence in a Village Court. This includes where the person has been either convicted or acquitted. However, where a person has been charged with a criminal offence and appeared in another court, the Village Court may hear a claim for compensation if a claim for compensation was not heard in the other court. For example, if someone has appeared in the District Court charged with the criminal offence of assault, a claim for compensation may be heard in a Village Court if compensation was not considered at the District Court. (Village Courts Act, Section 96)

Where a case has started in a Village Court, proceedings may commence in another Village Court or other court in relation to the same matter, but cannot be concluded before the first case is finished.

Where a case has started in a court other than a Village Court, no proceedings can be taken in a Village Court until the first case is completed in the other court. This includes the time limit for appeals and the hearing of any appeals.

In the case of a person being charged with an indictable offence such as murder, rape or armed robbery in the District or National Court, the fact that the person has appeared in a Village Court does not prevent proceedings in the other courts going ahead. (Village Courts Act, Section 96)

If a Village Court has commenced to hear a matter and it appears to the court that the matter could be more appropriately dealt with in another court, the Village Court can refer the matter to that court. This means that if a Village Court starts to hear a stealing charge and in hearing the evidence the court becomes aware that the value of the thing stolen was K1000, which is beyond its jurisdiction, it must refer the matter to the District Court. The same would apply to an assault charge where it becomes apparent during the hearing of the case that the injury suffered was severe. In this case the court would also refer the matter to the District Court. One way of doing this would be to report the matter to the police. In a civil case the complainant could be advised to go the District Court and get a summons issued. (Village Courts Act, Section 97)

What Village Courts Must Not Do

The power of the Village Court has limits. There are some things a Village Court Magistrate must not do. The Village Court Act tells us what powers the Village Court has.

National Village Courts Act

Some things which a Village Court must not do.

- 1) A Village Court must not decide a dispute about the ownership of land. It can only decide about the use of customary land. **(Section 43)**
- 2) A Village Court must not decide a dispute that comes from driving a motor vehicle. If someone drives a car, utility, PMV or truck and hits a person or animal or property the Village Court must not hear the dispute about the accident. Other courts have the power to decide this kind of dispute. **(Section 48)**
- 3) A Village Court must not decide a dispute from another village. The people must be from the village or the dispute must be about something in the village. (Sometimes a joint sitting can be held to decide disputes that involve two villages – see page 28). **(Section 36)**
- 4) A Village Court must not decide a criminal offence unless it is within the jurisdiction of the Village Court. (The offences that can be heard by a Village Court are listed on page 35 of this manual). Some offences that a Village Court cannot decide are murder, rape, using guns, using drugs or illegally selling alcohol. However, a Village Court can hear a claim for compensation arising from such an offence. **(Section 41)**
- 5) A Village Court cannot order compensation over K1,000 except in disputes about bride price, custody of children or death. In those cases a Village Court can order compensation over K1,000 but in all cases compensation must be fair and just. **(Section 46)**
- 6) If a Village Court orders someone to work as compensation it cannot be more than 8 hours a day, six days a week for 12 weeks. This is the maximum allowable. Usually a person would be ordered to work less than this. **(Section 44)**
- 7) If a Village Court orders someone to community work for a criminal offence then it cannot be more than 8 **(Section 1.(2))**

hours in a day, six days a week for 6 months. This is the maximum. In most cases the work would be less than the maximum.

- 8) A Village Court cannot make people who have a dispute pay money to the court to help them end a dispute. People can use the Village Court for free.
- 9) Village Court Magistrates cannot spend the money that the court collects or give it away.
- 10) The Village court cannot imprison someone directly. The only penalty the court can impose is a community work order or a fine. It is only after the person has failed to pay the fine can he/she be sentenced to imprisonment. Before the person can be imprisoned the warrant must be endorsed by a District Court Magistrate.

Court Orders

- **Village Court Magistrates have the power to make orders that people must obey**
- **A court can order compensation in the form of money or other things or work**
- **A court can order someone who has committed an offence to do community work**
- **A court can order someone to stop doing something**
- **A court can make other orders to help it carry out its work**
- **A court can only make orders about the use of land, not ownership of the land**
- **A court can make orders relating to the custody of children**
- **A village court cannot jail some one directly**

After a full court or mediation, the magistrates who heard the case may find that a person who was before them committed an offence or should pay compensation. The court will then make an order. There are many kinds of orders that a Village Court can make. An order might be to do community work. It might be an order that a person stop doing something. It can be an order for compensation. The compensation can be in money or something else that is valuable. A court order might be for someone to return something to the rightful owner. An order might be about bride price or custody of children. The following sections give details about some of the orders a Village Court can make.

Compensation

The compensation might be money. The compensation might be something else like vegetables, pigs or fish. The value of compensation can be up to K1000. The amount of compensation is something that the Magistrates must decide is fair. If the dispute is about bride price or custody of children or death, the compensation can be more than K1000 as long as the Magistrates think it is fair to both sides of the dispute. (See page 8)

**(Village
Courts Act,
Sections 45
& 46)**

A Village Court has the power to end a dispute by ordering one party to work for another party. The Magistrates must also decide what jobs must be done by the party, who must work and how long the work will last. These things must be written down and explained clearly to the parties.

(Section 44)

Community Work

If a Village Court finds that someone has committed an offence, it can order is that person do work for the community. This might mean helping to build a court house, a church, a school, a clinic etc. It might be to repair a public building or cut grass in a public area. If the Magistrates decide to make this kind of order they must be very clear about what jobs the person must do and when he/she should do it. It is always better if the Magistrates order someone to do a specific job instead of work for a specific amount of time. The Magistrates cannot order someone to work for more than 8 hours a day, 6 days a week for 6 months. Usually, a person would be ordered to work for less than this. The amount of time a person is ordered to work should match the crime, it must be fair. How the work order is carried out is up to the court. If the person fails to satisfactorily complete the work order the court can impose a fine. If the fine is not paid the court may impose a term of imprisonment in default but this penalty must first be endorsed by a magistrate of the District Court.

(Section 42)

Preventive Order

A Village Court has the power to stop trouble in the village. Sometimes parties to a dispute might want to fight or cause damage to somebody's property or cause other people to fight. When a village Magistrate hears about this kind of trouble in the village he has the power to make an order to try to stop the trouble. The order can tell people not fight, not to spread rumours

**(Sections
49, 50, 51)**

about the dispute, not to make weapons or carry weapons in certain places or importantly, to prevent domestic violence. The order to stop trouble might also tell people other things they must not do. An order to stop trouble in the village must be written and **served** on the people with the dispute and other people who are affected by the order. If the people are illiterate, they should be told what the order says.

**Serve – to
give court
order**

Sometimes trouble can start very quickly and there is not time to talk to the parties before making an order. An order to stop trouble can be made without a full court hearing. The Village Court has this special power but must also tell the people with the dispute to come to court to talk about their dispute. Then the Magistrate, after hearing the full story, can make other orders to solve the problems arising from the trouble.

Fines

After the Magistrates decide that a person has committed an offence against the Act or the rules of the community they can impose a fine. Village Courts can impose a fine up to K200 for each offence. **(Section 42)**

The offences against the Act are listed on pages 35 to 37.

Other Orders

Section 40 of the Village Court Act gives Magistrates power to make other orders to help them do their work. Maybe the Magistrates want to see something or talk to someone to help them settle a dispute. They can order the person to come or order someone to bring the thing to court. When the village Court uses this power to make orders, it must be very careful that the order is fair and that it is necessary or convenient to make the order. The power must not be used as a convenience for the court but only in furtherance of the court's duties.

Land Orders

Village courts cannot deal with disputes about state land. **(Section 43)** These disputes must go to the District or National Courts. They cannot deal with disputes about **ownership** of customary land. A dispute about the ownership of customary land should go to the District Land Court. However, the village Court does have the power to make orders about the **use** of customary land.

When parties have a dispute about who can use land, they can bring the dispute to a Village Court. The dispute might be

about who can cross land, who can use land for gardens, or who can use land for hunting. Sometimes it is difficult to tell whether a dispute is about who can use the land or whether it is about who owns the land.

Sometimes people with a dispute about the ownership of customary land have difficulty getting a National or District Court to make an order to end the dispute. Sometimes people are forced to wait too long to go the National or District Court. The Village Court can help people who have this problem by allowing them to come the Village Court. The dispute might really be about the use of customary land, not ownership. If the parties can put their dispute into these terms, then the Village Court can mediate or go to full court and the parties may not have to go to National or District Court.

Custody Orders

Sometimes a dispute is about what happens when the parents of a child separate. If mediation does not work and the parties cannot agree then the court has to decide. If there are children, the court must sometimes decide who the children will live with. These kind of orders are called Custody Orders. The Village Court has power to hear a custody case if the parents of a child were married by custom or the child is illegitimate.

(Section 47)

When Village Court Magistrates have to decide about the custody of children they should think carefully about what is best for the children. They should also think about custom in the village. This is harder to do when the parents come from different areas. Custom must not be enforced in a case affecting the welfare of a child under 16 years of age where its enforcement would not be in the best interests of the child.

**(Customs
Recognition Act
Section 3)**

Custody orders are an open kind of order that a Village Court can change if the child's circumstances change. Sometimes the person who has been ordered to have custody may become a bad influence. Sometimes a child might become unhappy after a custody order is made. Then it might be best for the child if a new custody order is made.

There are number of things the court should consider when deciding who should get custody of a child. These include:

- The wishes of the child
- The ability of parent to provide financial support to the child, eg the ability to provide food, housing or pay school fees
- The ability of the parent to meet the emotional needs of the child, ie to provide love and attention
- The relationship between the parents
- The environment in which the child will live
- The extended family situation

When people disobey the Village Court

- **People who disobey a Village Court order can be fined or placed on a community work order**
- **A person who fails to satisfactorily complete a work order or pay a fine can be jailed through the District Court**
- **A person who disobeys a court order and fined or placed on a work order must still carry out the original court order**
- **If a person fails to pay compensation the District Court may allow the Village Court to sell that persons goods to pay the compensation**
- **The Village Court does not have the power to jail people directly, all warrants of commitment must be signed by a District Court Magistrate**
- **A person who interferes with a Village Court hearing or Village Court officials carrying out their duties commits an offence**

When someone is ordered by a Village Court to do community work or certain other things or pay compensation, sometimes they do not do it. The Village Court needs a way to enforce the order it has made. The Village Court Act tells us that people who do not obey orders of the Village Court or fail to pay compensation when ordered or obstruct the court in its duties, are guilty of an offence and can be fined or placed on a community work order for up to 6 months or sentenced to imprisonment (Sections 72 to 76). If they fail to pay the fine they can be jailed through the District Court. This must only be done if the person being ordered has had a chance to explain why he or she has not obeyed the court and should only be used after the person has been warned. (Village Courts Act, Sections 61 to 68).

It is important to know that when a person commits the offence of disobeying a Village Court order and is punished by the court imposing a penalty, the original order must also still be obeyed. It is only when a person has a reasonable

excuse that he or she does not have to obey the original order. An example is when someone, without a reasonable excuse does not pay compensation that is ordered. If they are placed on a community work order or are fined or sent to jail for not obeying the order, they still have to obey the order when they finish paying the fine or get out of jail.

Execution of Village Court Orders

When a person does not pay compensation and does not have a reasonable excuse, the Village Court Magistrates might decide to enforce the order to pay compensation by ordering the person's property be taken instead of sending the person to jail. The Village Court Act calls this an Order of Execution. When the Magistrates decide to make an Order of Execution they must make sure the order is written on the correct forms – a Warrant of Execution Upon an Order for the Payment of Money. When the forms are filled in, they must be given to a District Court Magistrate. If the District Court Magistrate agrees that the Village Court acted properly, he will sign the form. Then the Village Court Magistrates can take the person's property as compensation. When the Village Court Magistrates decide to do this they have to be very careful because there are special rules about orders of execution. These rules are found in the District Court Act (Sections 167 to 177).

The District Court Act explains that some property cannot be taken from a person and his family. A person's clothes and tools cannot be taken to pay compensation (Section 174.2 of District Court Act). Other property can be taken. Maybe someone who did not pay compensation has a car or a boat. Maybe the person has a stereo or T.V. Maybe the person has pigs. These things can be taken when the Village Court makes an order of execution and it is endorsed by a District Court Magistrate.

The District Court Magistrate signs the order. The order should say who does the work of taking the property. The property should be sold at an auction to the highest bidder.

Before a Village Peace Officer takes property, he should be sure who it belongs to. When he takes property from someone, the property must be treated carefully. The rules in the District Court Act say that the property must be sold. There must be plenty of notice (five days at least) to all the people before the property is sold. This is so that everyone has a chance to bid for the property.

When the property is sold the money that is paid must be written down. The money is used to pay the compensation. If there is any money left over, it must be paid back to the person who owned the property. The Village Court Magistrates must not keep any of the money. The Village Peace Officers and the Clerk must not keep any of the money.

An order of execution can only be used when someone does not pay compensation. The order must be signed by a District Court Magistrate before it can be used.

The Village Court cannot jail people directly

The Village Court does not have the power to directly jail someone. The only way a person who is before the Village Court can be jailed is when he or she fails to pay a fine imposed by the court or obstructs the court or fails to obey a court order.

(Village Courts Act, Sections 61 to 72)

Failing to pay the fine is an offence against the Village Courts Act. The person is then brought before the court and if he or she cannot offer a reasonable excuse for not paying the fine the court can impose a term of imprisonment not exceeding one week for each K10 of unpaid fine. A warrant of commitment must be signed by a District Court Magistrate before the person can be imprisoned.

Dealing with troublemakers

The Village Court Act also gives power to village courts to deal with people who cause trouble during a Village Court hearing. If a person gets angry and yells at the Magistrates and will not stop or threatens the Magistrate, the Village Court has the power to impose a term of imprisonment not exceeding one month.

(Village Courts Act, Section 62)

Any person who interferes with a Village Court official or someone helping an official doing his or her Village Court duties, can be punished by imprisonment not exceeding one month.

(Village Courts Act, Section 60)

Sometimes there may be a better way to deal with people who cause this kind of trouble. They could be ordered to make a public apology or leave the court area.

Appeals and Reviews

- **If a person does not agree with a Village Court decision they have the right to appeal to the District Court**
- **Village Court Magistrates should inform people of this right if they disagree with their decisions**
- **Appeals should be made within three months of the decision and will not be allowed after twelve months**
- **During an appeal hearing the District Court Magistrate will invite two Village Court Magistrates to sit with him / her and advise on custom**
- **A District Court Magistrate has the power to review Village Court decisions even if there is no appeal**
- **A District Court Magistrate hearing an appeal or review will either confirm or quash the decision, or refer the matter back to the Village Court and provide advice to the Magistrates on how to correctly hear the case.**
- **On appeal the District Court Magistrate may suspend the order being appealed**

Why Appeals are made.

When a Village Court has made an order someone might think the Village Court made a mistake. Maybe someone thinks it was a bad order because the Village Court was not fair or because the Village Court did not have the power to make the order. People who have this problem should not come back to the Village Court to try to change the order. Instead, someone who has this problem should appeal the order. Village Court Magistrates should inform people who come before the court they have the right to appeal and explain to them how they go about it. An appeal happens when another court looks at the order of a Village Court and decides if it should be changed. District Court Magistrates have the power to do this.

(Village Courts Act, Sections 85-95)

The National Government appoints a District Court Magistrate in each province as the Provincial Supervising Magistrate. It is the job of this magistrate to ensure that Village Courts officials act correctly and do not exceed their jurisdiction. This is done through inspections of Village Courts and their books, reviews and the hearing of appeals.

(Village Courts Act, Section 15)

Time for appeal

Someone who wants to appeal an order of the Village Court should do it quickly. The Village Court Act says that someone who wants to appeal an order of the Village Court should try to do it within three months after the order is made. A District Court Magistrate might let a person appeal after three months but no one can appeal an order of the Village Court after 12 months.

(Section 86)

Procedure

Most of the responsibility for appeals belongs to the District Court where the appeal is made. The Magistrate will set the date for hearing and make sure that the appeal is conducted fairly. The District Court Magistrate will invite two Village Court Magistrates who made the order that is being appealed to listen to the appeal with the District Court Magistrate who is hearing it. The job of the Village Court Magistrates is to advise about customary law and give advice to the District Court Magistrate about other things. The District Court Magistrate may not know about what custom was important in the original decision. The Village Court Magistrates who help with the appeal do not decide the case or make the order. That is a job

(Section 89)

for the District Court Magistrate.

A Village Court Magistrate who is appointed to help with an appeal does not have to look after summoning witnesses to appear at the appeal. If witnesses are needed, then it is up to the District Court Magistrate to summon them to court. A Village Court Magistrate could assist by suggesting who might be an important witness at the appeal.

Review

Sometimes, even if nobody appeals an order of the Village Court, a District Court Magistrate might think it needs to be reviewed. A review is like an appeal except it is started by a District Court Magistrate and not by a party who is unhappy with the Village Court Order. The Village Court Magistrates who are asked to help with a review have the same jobs they have in an appeal. The Provincial Supervising Magistrate has the power to further review the case.

(Section 87)

(Section 94)

Appeal and Review Orders

When an appeal or review is heard by a Local or District Court, one of three things can happen:

- 1) If the District Court Magistrate who hears an appeal or conducts a review thinks that the Village Court acted properly and was fair then he will **confirm** the order that is being appealed. This means that the order that the Village Court made will not be changed.
- 2) If the Magistrate who hears the appeal thinks that the Village Court did not act properly he will quash it. This means that the Village Court order has no more power and does not need to be obeyed.
- 3) The District Court Magistrate may think that it is better for the Village Court to hear the matter again and make another decision. An order for the Village Court to hear the matter again can be made. The District Court Magistrate might to give some directions or guidelines to the Village Court Magistrates to help them correct the order. When this kind of order is made at an appeal, the Village Court should have another full court hearing and pay special attention to the directions which the District Court Magistrate has given.

(Section 92)

Confirm – agree that the order is correct.

The District Court Magistrate who hears an appeal or conducts a review will not confirm a Village Court Order if he thinks that the Village Court made an order that it did not have the power (jurisdiction) to make. Also, if the Village Court made an order unfairly then the order will not be confirmed. A Village Court order might be unfair because a party did not have a chance to talk or ask questions or was not allowed to have someone represent him. If one of the Village Court Magistrates who made the order had something to gain from the order (a conflict of interest) then when the appeal is heard, the order will not be confirmed.

What happens to Village Court Orders before the appeal

Village Court Orders take effect when they are made or at any later time that the Village Court Magistrates decide. If the order is appealed, it is up to the District Court Magistrate to decide whether or not to suspend the Village Court Order until the appeal is heard. If the Village Court makes an order for the payment of compensation or for the performance of work and the order is appealed, the District Court Magistrate might suspend the order until the appeal is heard. Then the work will not have to be done and the compensation does not have to be paid until after the appeal. If the appeal is successful and the Village Court order is not confirmed, the compensation may never have to be paid or the work may never have to be done. **(Section 88)**

Other things to think about

Village Court Magistrates should not feel badly when someone starts an appeal. Magistrates and judges in every court in Papua New Guinea except the Supreme Court sometimes have their judgments and orders appealed. Someone who starts an appeal has a legal right to do so and should not be criticised. Even if Village Court Magistrates are always careful and make their decisions as fairly as they can, their decisions will still sometimes be appealed.

If a District Court Magistrate thinks the order of a Village Court is unfair or unjust and quashes it, remember that the Magistrate is doing his best to be fair. Village Court Magistrates should not take it personally when a decision they have made is quashed. However, it might help the Village Court Magistrates to make better orders in the future if they look at the reasons that were given in the appeal when the Village court order was quashed.

If a party is not happy with a Village Court order it is best for the Village Court Magistrates not to argue with them or keep explaining the reasons for the decision. It is better if the unhappy party is told that they have right to appeal the decision to a District Court Magistrate within three months of the Village Court decision.

Other Courts

The Village Courts of Papua New Guinea are part of a family of courts which, together, make up the justice system of Papua New Guinea. There are also the District Courts, Land Courts, the National Court and the Supreme Court.

Each court has its own special work to do. The work of the Village Courts is to have people take responsibility for their own problems. Village Courts are based on custom and each court is allowed to say what its own customs are. Papua New Guinea is one of the few countries in the world to have courts based on customs.

The work of District Courts, the National Court and the Supreme Court is to apply the written law of Papua New Guinea. The Supreme Court also interprets what the Constitution means and how it applies to certain situations.

The District Courts

The District Courts are courts which deal mainly with the written law. These courts deal with civil law (which is primarily concerned with compensation and resolving disputes between individuals) and criminal law (which is concerned with punishing people who are charged with breaking the law). The Magistrates who work in District Courts undergo special training and are part of the Magisterial service.

Decisions made in District Courts are usually made by one Magistrate sitting alone. There are District Courts in most major towns in PNG. There is at least one in every province. Like all courts in Papua New Guinea, decisions made by District Courts can be appealed by parties who are unhappy with the Court's decision. Appeals from decisions of District Courts are heard in the National Court.

Land Courts

District Land Courts hear disputes about customary land. The judges who decide cases in these courts are District Court Magistrates. The Land Courts are similar to the Village Courts in a number of ways. One way in which they are similar is the Land Courts should try to ensure that they only hear cases where mediation cannot work. Another similarity is that the Land Courts must consider what custom is important to each dispute. The Land Courts must apply relevant custom in making decisions. A difference between the Land Courts and the Village Courts is that the Land Courts can decide who owns customary land. The Village Courts cannot decide about ownership of customary land but they can decide about the use of customary land. Sometimes Land Courts take a long time to hear a case about the ownership of customary land. When this happens,

the Village Court can often prevent trouble by making an order about the use of customary land.

National Court

The National Court is a court that is created by the Constitution, not by Parliament. Its headquarters are in Waigani but the judges of the National Court travel to the provinces where the National Court hears cases from time to time. The National court now has permanent judges in a number of provinces in addition to Waigani. When the National Court hears a case, it is heard by one judge sitting alone.

The Constitution gives wide powers to the National court to hear many types of cases and to make orders that other courts cannot make. Usually, lawyers help parties who take cases to the National Court. The National Court usually deals with cases which do not involve customary law.

Decisions of the National Court can be appealed to the Supreme Court.

The Supreme Court

The Supreme Court, like the National Court is created by the Constitution, not by Parliament. The Supreme Court is the most powerful court in the country. A decision of the Supreme Court cannot be appealed. It is final. The Judges of the Supreme Court are also judges of the National court. When the Supreme Court hears a case, it is heard by three judges and, when the case is very important there may be more than three judges who hear it.

The Supreme court does not ordinarily hear trials where witnesses are called to give evidence. Instead, it only hears appeals from other courts or other special cases called references and judicial reviews.

Sometimes a criminal case can be heard in more than one court. For instance, if someone injures a person from another clan, customary law may say that compensation should be paid by one clan to another. This could lead to a joint sitting of the Village Courts in the area.

The same incident could lead to criminal charges being laid District Court against the person who injured the victim. The case could go to trial in the District or National Court. In a case like this, the village court is permitted to hear a case for compensation between clans. However, a Village Court should not try to punish the person for an offence if that person is being punished by another court.

It is important that people who work in the Village Courts know that they have the same duty to act fairly as other magistrates and judges in Papua New Guinea. This is especially important to remember because the Village Courts deal with as many disputes as the disputes in all the other courts in Papua New Guinea put together.

Court Forms and Records

There are a number of forms that village courts should use to keep track of what happens in their court area. These forms are usually supplied by the Village Court Coordinator in each province but often there are no forms around. This should not stop a Court from functioning. A Village Court can make its own temporary forms from school note books or blank paper or whatever is available. Sometimes a photocopy of a form can be made by an inspector for use by the Village Court until new forms are supplied. Copies of Court Forms are part of this manual and can be photocopied if necessary.

It is important that the records be kept in a safe place. These records will be important if a decision is appealed or if an argument arises later about what exactly the court decided. If the records are damaged, lost or stolen then a some people might be able to avoid doing what the court has ordered them to do. It is an offence to damage, alter or incorrectly make entries in Village Court records. (Village Court Act, Section 110)

When filling out the forms the Clerk must write the full name of the person concerned. That is, if the person has three names, then the Clerk must write the three names on the form.

When making out Orders of the Village Court, the clerk must include the date by which the order must be completed. If the Magistrates do not set a date, the Clerk must inform the Magistrates so they set a one. The date by which the order is to be carried out should be recorded in the court record and on that date the Clerk should check to see if the Order has been completed. If it has not been completed the Clerk should tell the Magistrates.

There are three forms in use in the Village Courts:

- | | |
|---------------|----------------------------|
| Forms 1 and 2 | The Settlement Order |
| Forms 3 and 4 | The Preventive Order |
| Forms 5 and 6 | The Court Order |
| Forms 7 and 8 | The Order for Imprisonment |

Copies of these forms and a Summons form are included at the back of this manual.

Form One (Motu) and Form Two (Tok Pisin) – Settlement Order

This form is a record of what two parties agree to in a mediation. This form should be filled in after every successful mediation. It should be read to both parties before the Magistrate signs it.

If a person does not do what they promised to do in the mediation this form will be necessary to bring them to a full court to explain themselves.

Reg. Sec. 4

PAPUA NEW GUINEA

Village Courts Act 1973, as amended to date

SETTLEMENT ORDER

No 16 4 5 1

Oda Bilong Stretim Hevi

VILLAGE MAGISTRATES ----- Of -----
Viles Majistret ----- Bilong -----

CLERK -----
Kuskus -----

COMPLAINT OF ----- OF -----
Wari bilong (NAME, Nem) (VILLAGE, Ples)

AGAINST
wantaim

DEFENDANT ----- OF -----
Man igat Kot (Name, Nem) Bilong (Village, Ples)

STATEMENT OF COMPLAINT-----
Wari em olesm -----

DATE OF HEARING-----PLACE OF HEARING-----
Dei bilong kot Ples biling harim kot

DISPUTE SETTLED ON MEDIATION BETWEEN PARTIES
Ol stretim wari long mdiesen

SETTLEMENT IN FOLLOWING TERMS AGREED ON IN PRESENCE OF-----
Ol pasim tingting long ai bilong MAGISTRATE
(Name)

DATE-----
Dei -----

VILLAGE MAGISTRATE/
VILLAGE COURT CLERK/
DEPUTY VILLAGE COURT CLERK/
Majistret/Kuskus/Nambatu Kuskus

Form Three (Motu) and Form Four (Tok Pisin) – Preventive Order

This form is a temporary order to stop trouble. It is made before the case comes to court. It can be filled out by one Magistrate when someone is fighting or preparing to fight, spreading rumours or doing anything to disturb the peace of the village. This is the form that is used to halt domestic violence. When the case goes to mediation or full court, the preventive order is replaced by another order.

Form 4

INDEPENDENT STATE OF PAPUA NEW GUINEA
Village Court Act, 1989

NO.53701

PREVENTIVE ORDER

Oda Bilong Pasim Trabel I Lalk Kirap

VILLAGE MAGISTRATE _____ OF _____
Viles Mejistret

DATE OF ORDER _____
Dei bilong

ON WHOM MADE _____ OF _____
I go long: (NAME, NEM) (BILONG) (VILLAGES, PLES)

I, _____ (VILLAGE MAGISTRATE, Viles Majistret)
(ME)

BELIEVING THAT A DISPUTE OR A THREATENED DISPUTE MAY CAUSE A BREACH OF THE PEACE
Tingting olsem klostu bai trabe i kirap bagarapim gutpeta sindaun long ples.

I DO ORDER THAT _____ OF _____
Mi odaim olsem (Name,Nem) (bilong) (Village, ples)

I, (Mi)

(2)AND THAT YOU MUST APPEAR BEFORE THE VILLAGE COURT AT _____
Na yu mas kamap long Viles Kot long (place, ples)

AT _____ DATE _____
long dei

VILLAGE COURT MAGISTRATE OR CLERK (Signature)
Viles Majistret 0 Kuskus (raitim nem)

NOTE: IF YOU DISOBEY THIS ORDER YOU MAY BE FINED K1,000 OR IMPRISONED FOR SIX MONTHS.

Sapos yu sakim dispela oda, yu inap long baim kot long K1,000 o kalabus sikis mun.

Form Five (Motu) and Form Six (Tok Pisin) – Court Order

This is the order that a Court makes after a full court. It should clearly explain the decision of the court. It must list the exact amount of compensation a person must pay and when they have to pay it. In the case of the community work or some customary order, it must clearly state the nature of the work and when it should be done.

Form 6

INDEPENDENT STATE OF PAPUA NEW GUINEA
Village Court Act, 1939

NO.45051

ORDER

VILLAGE COURT

(Viles Kot)

VILLAGE MAGISTRATE, Viles Majistret

OF

(bilong) _____ VILLAGE

CLERK,

Kuskus _____ (NAME,
Nem)

COMPLAINT

OF _____ OF _____ VILLAGE
Wari bilong _____ bilong _____ ples

AGAINST

OF _____

VILLAGE

(DEPANDANT, Man I gat Kot) _____ bilong _____ ples

STATEMENT OF

COMPLAINT _____

Ward em l

olsem

DATE OF HEARING _____ PLACE OF HEARING _____

Dei bilong kot _____ Ples bilong kot _____

DEFENDANT PRESENT _____ PRESENT BY _____

Man igat kot

WITNESS EXAMINED _____

Glasim witnis

ORDER, Oda _____

JUSTIFY THAT THIS RECORD IS CORRECT _____

Strongim olsem rekot istret

MAGISTRATE/CLERK/Mejistret / Kuskus

Form Seven (Motu) and Form Eight (Tok Pisin) – Order for Imprisonment

This is the order that a Court makes to imprison a defendant. The order has no effect until it has been endorsed by a District Court Magistrate. If the order is being made because the defendant has defaulted on payment of a fine he or she must be given the opportunity to satisfactorily explain his or her reasons for failing to pay the fine. It may be necessary to allow the person further time to pay.

Form 8

INDEPENDENT STATE OF PAPUA NEW GUINEA
Village Court Act, 1939

NO.45051

ORDER FOR IMPRISONMENT

ON THE _____ (DATE) _____ (NAME)
Tude (de) (Nem)

OF _____ VILLAGE, WAS SENTENCED TO
Bilong Ples, em I kisim kalabus inap long

_____ IMPRISONMENT FOR FAILING TO OBEY THE COURTS
(Period of imprisonment) long wanem em I bin sakim oda bilong kot
(Haumas kalabus)

*SETTLEMENT *PREVENTIVE ORDER
*Bilong stretim trabel *Bilong passim trabel I laik kamap Oda

CASE NUMBER _____
Namba bilong kot bilong pastaim

WHICH WAS _____

Oda bilong kot bilong pastaim em I olsem

MADE ON _____ DATE BY _____ VILLAGE COURT
De bilong kot bilong pastaim long Viles kot

VILLAGE MAGISTRATE (Viles Masistret)
VILLAGE COURT CLERK (Kuskus)

ENDORSED UNDER SECTION 68 (FOR DISTRICT COURT USE ONLY)
(Dispela hap bilong District Kot tasol)

THE ABOVE ORDER FOR IMPRISONMENT WAS ENDORSED BY ME ON THE _____

DAY OF _____ 20 _____
DISTRICT COURT MAGISTRATE

A WARRANT OF COMMITMENT WAS ISSUED BY ME ON THIS DATE. THE SENTENCE IS TO RUN FROM

_____ *THE DATE THE DEFENDANT WAS TAKEN INTO CUSTODY
* THE DATE OF ARREST OF THE DEFENDANT

*Cross out whichever is not applicable

Peace Officers Record Book

A Peace Officer should keep a record of every complaint and every disturbance they hear about. This is a good way to remember when a person first came to the Court or when a person was served with a summons. There are no official Peace Officer Record Books. Each court should make their own.

Customary Law

What is it?

The Village Court is based on customary law. Customary law is the rules that your community has for getting married, settling disputes, making decisions, and other such things. Customary law is not written down anywhere, it is merely the way people are accustomed to doing things or solving disputes.

The customary law of one people can be different from the customary law of another people. For example, one group may require three separate payments in a bride price, another may require only one. One group may have initiation ceremonies for young men and young women, another may not.

What this means is that there can be no single customary law for all the people of Papua New Guinea. Each group of people in Papua New Guinea has their own customary law and can run their village courts according to their own traditions.

But sometimes it is hard to say clearly what our customary laws are. Some people in the community may say one thing is customary while other people say something else is the true custom. This is a difficult problem for the Village Court Magistrate. The Magistrate will not find his customary law written down in this book or any other book. It is up to him or her to decide what is the true customary law and how it should be applied.

If a Magistrate is not sure about the proper custom in a case, he or she should seek advice from a respected elder who knows about custom.

Customary law is based on the traditions and customs taught you by your parents and grandparents. So the best authorities on customary law are often our old people or clan leaders. They have been around along time and have seen how things were done before. They also have the wisdom which comes with age. And the most basic tradition of all villages in Papua New Guinea is respect of the old people in the village.

Custom

In Village Courts, custom is more important than any law in Papua New Guinea except the Constitution. So even if custom appears to go against another law it is still more important in a Village Court.

(Village Courts Act, Section 57)

You need people who know the custom of your place. You cannot guess at what the custom is. It is very important you don't just make up custom according to your own prejudices. If you are not sure about the custom you can do

a number of things:-

- You may have to adjourn the court to go talk with an elder to make sure that you are using the correct custom.
- You could also invite the elder as a witness in the case.
- You could send the complainants to mediation with a respected elder

Changing customs

But things are changing and sometimes the old customs can no longer maintain the unity and peace in the community. It is no good to make a decision based on what your ancestors did if this is going to cause a fight or make people really upset.

Our world has changed from that of our ancestors and some people believe in different things. Sometime it is wise for the Magistrates to consult with other leaders in the community such as pastors, priests, or school teachers. This not a sign of weakness but of strength. A Magistrate who can listen to others shows that he is confident in himself and wise.

So customary law is based both on the past on what people believe in today. Custom is something that is alive and believed in. This is why many elders think that it is not a good idea to write down customs. Once a custom is written down, it becomes a piece of history, something for the museum. Also, when something is written down people tend to think that they don't have to remember it any more. To keep custom alive we have to keep it relevant to modern life and keep it in people's minds.

Above all, unity

People should remember when a disagreement about customary law comes up that the purpose of customary law has always been to solve problems and create unity in the community again.

Unlike western criminal law, customary law does not seek to punish individuals as much as it tries to repair the damage caused by a crime. The view of custom is that everyone share in the crime together and all must try to work out the problem. People must try to heal the community and solve the problem.

Case Study

An older woman in a small village in Milne Bay cut open the head of a younger woman with an axe. After the young woman recovered from her wound she took the older woman to the Village Court. After hearing both sides of the case the Court decided to order the husband of the younger woman to give the older woman a pig.

The reason was that the husband of the younger woman had been married to the older woman and had two children with her. He left her one day to live with the younger woman. The older woman tried to make it on her own but when the younger woman teased her and called her names, she got mad and hit her.

The cause of the problem was really the irresponsible behaviour of the man. He left his wife with nothing and went to live with another woman and he did not stop the new wife from teasing the older woman.

So the Court ordered the man to pay compensation to the older woman because he behaved irresponsibly. It is customary in this village that men must provide for the mothers of their children.

Problems with custom

Some of our traditions have been changed for the worse in modern times. Some bride price payments are an example. Traditional bride price was usually a mutual exchange of goods to bind families together. The family of the woman gave something to the family of the husband something and the family of the husband gave something to the family of the woman. It was a way of strengthening the relationship between the families. But in modern times many bride prices have become competitive, with villages competing with each other to see how much they can get for their women. The problem with this is that it is so expensive to get married that people must go into debt for a long time. In some Papuan villages bride prices are over K70,000. It also tends to go only one way these days. The family of the husband pays the family of the wife. This gives the impression that the man is buying the woman, which was not the case before. This gives rise to many problems when a woman is beaten or wants to leave her husband.

It has been said that according to some customs women are less than men. For instance, women sometimes were beaten, could not talk out, or were considered dirty, and men were given the best food. Under the constitution these practices are no longer acceptable.

Custom and the Constitution

Whenever customs or customary laws conflict with the Constitution of Papua New Guinea, the constitution is more important. It is the mother law of PNG.

The Constitution

The Constitution is the main law of Papua New Guinea. All other laws come from the Constitution. The laws in the Constitution are more powerful than any other laws in PNG. All of the people living in PNG must obey the Constitution. Policemen, politicians, Supreme Court Judges, Magistrates, even the government itself must obey the Constitution. All courts in Papua New Guinea, including Village Courts, must obey the Constitution.

The Constitution was written in 1975. A Constitution Planning Committee was established to develop the basic laws of Papua New Guinea. It went to all parts of the country asking people about what should be written down. When the Committee was finished, and the Constitution was approved, it was proclaimed at our Independence on September 16, 1975.

Because the Constitution is the supreme law of our country, it cannot be changed as easily as other laws. If we wanted to change it, we would need two thirds of the members of Parliament to approve of any changes. Parliament then would have to tell everyone what was going to change. They would have wait at least two months to hear any objections and then vote on it again. The Constitution does not often get changed.

Directive Principles of the Constitution

The Constitution begins with a *preamble* which contains the goals and directive principles by which we must all live. Everybody, all individuals, all organizations, government bodies must taken these principles into account in everything they do. The five National Goals and Directive principles are:-

1) **Integral Human Development**

This means that every person should try to free themselves from whatever makes them not free; things like poor food, bad health, fear, being unfairly controlled by others. Every man and woman should have the chance to develop and grow and have a good relationship with other people.

Village courts can ensure that people are not oppressed or dominated by others. This is especially true for women and children in communities. Wife beating is a form of oppression. Parents who deliberately prevent their children from being educated are oppressing their children.

2) **Equality and Participation**

This means that money and services should be distributed fairly to all citizens, men and women alike. It means that every individuals should share in the political, economic, social and cultural development of the

country and share in the good things that development brings. This means that women have an equal right to share in all things.

3) **Sovereignty and Self Reliance**

This means that other countries cannot tell our country what to do how to develop. We should rely on our own skills and resources for economic development.

4)

Preservation of the Environment and Natural Resources

This means that Papua New Guinea's nature resources and environment must be protected and used wisely for our benefit and our grandchildren's benefit. We should ensure that the environment including things like birds, animals, fish, plants and trees are here for future generations to use and enjoy.

5)

Preservation of PNG ways

This means that we should try to understand and value our traditional culture. We should respect the wisdom of our ancestors but still live in the modern world. We do not have to deny ourselves lamps, kerosene, vehicles, radios and such things. We can have these things and still live according to the values of our ancestors.

These principles cannot be questioned in any court of law. (s. 25.1 of the Constitution) And it is the duty of all government bodies to make these things come about. (s.25.2)

Rights and Freedoms

Another part of the Constitution sets down the fundamental rights and freedoms of all individuals in Papua New Guinea. These rights and freedoms apply to people of all races, tribes, religions, political beliefs. Nobody, not the government, not the police, not any religious leader, not any court, can deny anybody of these fundamental rights and freedoms.

There are four basic rights of an individual: (s.32-37).

- the right to freedom;
- the right to life;
- the right to freedom from inhuman treatment; and
- the right to protection from the law.

Some other rights are given to the people in the Constitution. In a special circumstance like a national emergency, the government can take one of these rights away by passing special laws. Because of this they are called qualified rights. Only Parliament can take away these rights. A court cannot do it. The police cannot do it and the defense force cannot do it.

The qualified rights are (ss.42-49).

liberty of the person;
freedom from arbitrary search or entry;
freedom of conscience, thought and religion;
freedom of expression;
freedom of assembly and association;
freedom of employment; and
the right to privacy.

There are other rights that only citizens of Papua New Guinea have: (ss. 50-55)

right to vote and stand for public office;
the right to freedom of information;
right to freedom of movement;
protection from unjust deprivation of property;
equality of all citizens;
right to take part in political activities.

Basic Obligations

At the same time as we enjoy all these rights and freedoms, we have certain obligations. We must obey certain rules if we are to get these rights and freedoms.

- respect the Constitution;
- actively participate in the development of the national community as a whole;
- participate fully in the Government of the Nation;
- protect Papua New Guinea and to safeguard the national wealth, resources and environment;
- work in socially useful employment;
- respect the rights and freedoms of others;
- contribute to the revenues required for the development of the nation;
- in the case of parents, to support, assist and educate their children (whether born in or out of wedlock);
- in the case of children, to respect their parents; and
- to use profits from economic activities in the advancement of the country and the people.

Natural Justice

The last part of the Constitution that we will cover here is the part that deals with Natural Justice. It is a very important principle, especially for village courts. The principles of Natural Justice are the rules that underlie all laws in the country.

The Principles of Natural Justice have grown up slowly with the justice system. They are not stated in any specific legislation. They are more like the spirit in which the justice system operates. Natural justice means simply that any person charged with committing an offence is entitled to a fair trial by a competent court. Natural justice also means that a person is presumed to be innocent until found guilty. This implies that a person must be given a good chance to defend himself and the court must listen carefully to both sides of the case.

Village courts must observe the principles of Natural Justice in civil cases as well as criminal matters.

The practice of natural justice can be summed up as follows:

- **A person must understand what he or she is accused of doing.**
- **A person must be allowed to defend himself or herself. This includes being allowed to correct or contradict what other people say about him or her.**
- **A person must be allowed to ask questions in court.**
- **Both sides must be present when a case is heard.**
- **A Magistrate cannot hear a case if he has any interest in the outcome.**
- **The court must be fair in hearing disputes and making decisions.**
- **Everybody should be able to see that the Court is acting fairly.**

If you think about the things that a Village Court must do to do a proper job, you will see that using the rules of natural justice are an important part of a Village Court's job.