

Human Rights program in Village Court services

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Taking human rights issues to the village level for community based governance attention is both unique and unprecedented in rural development work. It is a challenge and therefore requires a lot more discussions and input by Law and Justice Agencies, Civil Society Organizations, and the general public.



UNICEF / GoPNG / NLJSP in partnership are developing a Human Rights Based Approach to Programming through its operational plan to incorporate human rights into village courts training and service delivery.

The challenge would also be how HRBAP is *implemented* within Village Courts Services at the Policy and Management level, to provincial government level and finally, Village Courts and community levels taking actions. This agency has been male dominated from the policy and management level through to village courts in rural communities and urban settlements in nearly all of their functions – women and children being users of the courts rather than agents of service delivery.

The training contents for Village Courts must be linked to mainstream gender and empowering education initiatives encompassing women's rights, children's rights, juvenile justice instruments, HIV/AIDS, governance and active citizenship education.

Key issues identified and included in the operational plan are:

1. Formal Courts such as the District Courts are irrelevant to the people in the villages and the urban settlements. People are managing their own conflicts. They need to be trained and empowered to manage peace and security issues within their own communities. *Village Court is also a formal court; How can other actors such as the 'leader courts' and Peace and Good Order Communities be supported?*
2. Village Courts takes active interest and ensures the rights of women and children to a fair hearing and justice is sought, even referring matters to the Police, Juvenile Justice Officers, and the higher Courts. This will be done through training, Institutional support, and Legal reform. *At present the institutional support needs to be reviewed to include how Village Courts can be supported to be able to initiate proactive approach among the various agencies through the referral system.* The Village Courts need support if human rights issues are to be promoted at all.

3. Promote Effective Governance

Governance has to do with protecting and promoting justice.

Village Courts primary function looks at customs and customary practices to resolve a conflict in their community.

Governance education is very important because since we gained Independence in 1975, all the institutions of the state, government institutions as well as private institutions were Australian. These were imposed on a Melanesian state. It has never been Melanesian, but was quasi- Australian system operating in a sovereign state called Papua New Guinea.

The National Constitution whose laws are more powerful than any other laws need to be made known to rural communities and the village courts. The Melanesian spirit is also portrayed in the National Constitution.

Education for good governance and active citizenship is a necessity in order to increase women's participation in decision- making, and to address law and justice issues at the community level.

4. Promote gender equality

It is important to understand gender issues in order to promote gender equality and human rights. Although many people doing a gender analysis focus on how men and women differ and what separates them, it is also important to understand how women's and men's lives and relations are interwoven - both their personal relations and their economic relationships. For community justice system the link between village courts that have all male magistrates, bride price and domestic violence has to be recognized and meaningfully addressed when pushing Human Rights principles.

It is also very important that all Program and Agency Advisors, Managers, and staff understand the issues and the appropriate response of Both GoPNG, GoA and UNICEF with regard to gender and human rights based approach to program planning and development. ***Gender sensitization must be mandatory for all program implementers, and managers and a careful diagnostic analysis must be made before planning appropriate interventions.***

5. Research and Advocacy

Village Courts secretariat is currently working on three activities from the months of April – June 05:

- Research and develop specific training materials.
- Research and develop quota system for women's participation as magistrates and court officials in Village Courts, including becoming Training Officers in the Village Courts Division and Secretariat.
- Develop policy and criteria for more women to be recruited in Village Courts services and implement these policies by 2006.

Some food for thought

One of the important aspects the National Law and Justice Sector Program proposed was that all Law & Justice Sectors work at achieving improved linkages between the formal law and justice sector, and the community and Non-Government Organizations. The importance of partnership between all stakeholders was also pushed through the Medium Term Development goals of the PNG government.

In my view the above statement has been achieved in the functions of the Law and Justice Working Committee. Is it working among agencies between themselves and in partnership with the NGO community and Community Based Organizations, even Village Courts?

Village Courts Secretariat is interested in developing case studies for use while training and working with Village Courts officials to improve governance and community justice in the rural and urban communities. One such area Village Courts Secretariat has to research into is finding out outcomes of cases that were referred to higher courts and use these as case studies during training sessions for court officials.

Secondly, *Toward Restorative Justice* was the theme of the National Law and Justice Policy of which the National Law and Justice Sector Program was developed. As a community development person working in the areas of gender justice, governance and peace education with rural people, I do not seem to see the correlations of the *theme* with the actual implementation of the program.

Justice Ambeng Kandakasi of the PNG Supreme Court suggested at the Pacific Judiciary Conference in Madang in June 2003, that Papua New Guinea needs to create its own law and justice system by “blending customs and traditions into respective systems of justice” to suit Papua New Guinea and Melanesian way of life (Post Courier, 26 June 2003).

A recent article in The National April 4, 2005 stated, a visiting US Court of Appeals Judge Clifford Wallace stated PNG’s traditional forms of solving problems can be further developed into an essential judicial system to allow people easy access to the courts, and that the western judiciary system is not the only way to solve problems.

Judge Clifford Wallace said the system of problem solving and decision-making used in villages should be developed gradually taking into account customary values that can be further developed to make a difference.

In a number of articles by Dr. Sinclair Dinnen on law and order situations in Papua New Guinea he points out that a recurring theme in discussions of law and order in PNG was the tension, sometimes conflict, that exists between the formal and informal justice systems. He suggests that if long term and sustainable solutions were to be developed, it was necessary to find a way to diminish the gap between the two systems, and that the solutions must help to strengthen the rule of law and respect for human rights

Village Courts is a necessary institution that has to be supported to be *pro-active* in attending to mediation and ‘courts’, and importantly, to ensure court cases that have been referred by them to the next authority such as the Welfare services, Police, Health Care Centers, and District Courts are followed through. The Human rights program, together with other law and justice agencies have to work with community leaders and key stakeholders to facilitate setting up mechanisms which provides a strong base to support referral systems within each village courts in the focal provinces, aiming at promoting similar approaches to all village courts in the country.

In my view, the National Law and Justice Sector Program has deviated from the original intention of the National Law and Justice Policy: *Toward Restorative Justice*. So much of its funding and technical support is geared towards supporting a western module of governance system, spend so much time and money on huge government machineries that cost a lot of money to fix it’s broken-down systems. After the systems are ‘fixed’ these machineries wait again for money to operate. Instead, all law and justice sectors should be working in *real partnership* and at workable approaches with social and formal structures in rural communities. People must be empowered to address problems with solutions they have come up with using local knowledge, skills, and resources available to them.

As I have always said, “There are no quick fix solutions to the many socio-economic and political problems of Papua New Guinea. After all, we are a nation of many languages, diverse culture and traditional values. Even within each province, some practices are quite different, coupled with the many socio-economic problems faced by many communities in Papua New Guinea”.

Programs and projects should be developed to work with the solutions and practices that the people themselves have come up with – and not with the so-called ‘practical solutions’ developed in Port Moresby, or outside of Papua New Guinea.

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