

***Attorney General's Department Institutional
Strengthening Project (AGDISP)***

**CONCEPT PAPER FOR
FUTURE ASSISTANCE TO
VILLAGE COURTS**

***Output 2.3.2
June 2003***

Managed by ACIL Australia Pty
Ltd

ACIL
International Development Consultants
and Project Managers

Funded by the Australian
Government



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CONCEPT PAPER

FOR FUTURE ASSISTANCE TO VILLAGE COURTS

Output 2.3.2

PURPOSE

The purpose of this document is to outline the scope and direction of proposed further assistance to the village courts system of Papua New Guinea. It identifies strategic areas within the system for support and provides the rationale and description of the outputs to be delivered through the various components. The report anticipates that assistance to the village courts will form part of the PNG Law and Justice Sector Program.

The proposed design builds on the first document produced as part of this Output, *Report on the policy and institutional framework for improved service delivery by village courts*¹ and draws on the analysis and recommendations made in other documents produced as part of the design process and associated Attorney General's Department Institutional Strengthening Project (AGDISP) activities, *Assessment of the Operations of the Village Courts* (Annexure B), *Village Courts Policy 2001* (Annexure C). These documents should be referred to for a more comprehensive analysis of the village courts system.

INTRODUCTION

The *National Law and Justice Policy and Plan of Action*² advocates the adoption of “... restorative justice as a core rationale for the long term future of the law and justice sector. This is the rationale or philosophy that links the work of all the law and justice sector agencies and other relevant groups in the community concerned with the promotion of peace and good order.” The policy also “... proposes a gradual and deliberate shift away from past approaches that have been primarily retributive and adversarial in character.” This new approach is reflected in the village courts today and indeed, the village courts deliver a system of law and justice that is “truly Papua New Guinean” as the policy acknowledges.

Although the village court system is a local level judicial system it is, nevertheless, a system of some magnitude. There are currently eleven hundred courts exercising jurisdiction across eighty percent of Papua New Guinea. Twelve thousand officials serve the courts and deal with over 500,000 cases annually³.

While Village Courts have contributed significantly to law and order and peaceful communities, they have nevertheless through a lack of resources, management, planning and support, laboured under great constraints for many years. The enthusiasm, confidence and dedication to the courts by communities and those working within the system however, remain its greatest strength.

¹ Historic Output 4.1.(i)

² *The National Law and Justice Policy and Plan of Action*, December 1999, p.9, The Law and Justice Sector Working Group.

³ The average caseload for each village court is 480 cases per year. Keris, P., (nd), PNG – Village Courts, p.12.

BACKGROUND

The formal village court system came into existence in 1974 with the proclamation of the *Village Courts Act*. At the time of inception, responsibility for village courts rested entirely with the national government through the Community Courts Advisory Unit (CCAU) at the Department of Justice and Attorney General (DJ&AG). In 1995 changes to the *Organic Law*⁴ transferred responsibility (with the exception of jurisdiction) to provincial governments.

Unfortunately, after the transfer of responsibility, village courts in many areas were left to their own devices and as a consequence, processes and procedures evolved without sufficient planning and resources. Administration, management and operations were not supported by sufficient legislation, training, education, knowledge, resources and other support services to ensure the system operated to its full potential in terms of efficiency and effectiveness.

Current Status

Despite these early difficulties, research indicates most provinces are now making efforts to effectively manage their village courts. In most cases, provincial governments have accepted their responsibilities and have a greater understanding of the requirements of the system. However, the legacy of years of neglect remains.

A number of provinces are yet to create or fill the vacant positions necessary to effectively manage the system. Provincial officers often lack the necessary knowledge and administrative skills. At best, only half of the village court officials have received training⁵ resulting in incorrect practices and instances of abuse of power, some of the legislation governing the operation of the courts is ambiguous, if not contradictory, and there has been a serious decline in the emphasis on operational support in particular, supervision and inspection. In a number of provinces, courts are operating with limited assistance from government and in some situations support is non-existent.

AGDISP / CCAU Initiatives

AGDISP, through the Village Courts Component has over the past three years delivered real and tangible benefits that have now established a platform for future direction and improvement. By providing support to the CCAU, new policy, planning, procedural / training handbooks and training programs have been developed and delivered. Importantly, opportunities for improvement through, legislative, procedural, training, communication and system reform, have also been identified.

The Challenge

The CCAU with the support of AGDISP have now stimulated improvement and confidence in village courts through the development and introduction of a number of initiatives, in particular, training. With a strategic and coordinated approach by those involved in administration and operation of the courts, together with targeted and resourced assistance, the village courts are positioned to realise greater potential within the communities they serve.

This view is supported in the *Law and Justice Sector Review*. The report acknowledges the need to strengthen the village courts system⁶ and recommends fast tracking the provision of training,

⁴ The *Organic Law on Provincial Governments and Local-level Governments* 1995 Ss42(1)(i) & 47.

⁵ Some estimates are as low as ten percent. There were only eight training sessions conducted by the CCAU in the period 1994-2000. Didimas, B., (August 2000) *Difficulties Facing Village Courts In Papua New Guinea*, pp.1-2 & Keris, P., (nd), *PNG-Village Courts*, p.4 & p.8.

⁶ *The Law and Justice Sector Review*, February 2001, p.13, Papua New Guinea Australia Development Cooperation Program.

resources, and funding for communications and travel to ensure effective supervision, support and development at the district and provincial level.

GOAL

To improve delivery of services to the community through the village courts system.

OBJECTIVES

The capacity of the village courts system is to be strengthened by consolidation and strengthening of gains made within the CCAU and:

- Implementation and support for nationwide training programs for village courts officers and officials
- Review and appropriate amendment of relevant legislation
- Strengthening of provincial administrations' operating systems and procedures
- Facilitation of greater levels of communication and cooperation with other relevant agencies.
- Provision of facilities and equipment where appropriate

Scope

It will be important to keep the project scope within manageable limits thereby reducing the risks to success. Achievable goals and practical support will enhance the prospect of sustaining the system into the future.

Provincial administrations need assistance to enable them to adequately meet their responsibilities to maintain the Village Courts system in accordance with the governing legislation and to effectively implement some or all of the *Village Courts Policy 2001*. The CCAU needs ongoing assistance to ensure it continues to meet its responsibilities at the national level. The importance of across sector cooperation, in particular with the courts and Constabulary, is acknowledged.

The CCAU is seeking to effect improvements across all activities within the village court system. This means that the project's principal focus should be targeted at the national, provincial and village level in both management and operational areas, which support and drive the system.

Supporting systems, organisational and governance arrangements, information flow, staff competencies, physical infrastructure, relevant legislation and management and training policies should all be considered and where necessary redesigned. The general focus of the project would be to ensure logistical support associated with conducting the courts is strengthened.

Approach

Specific features of the approach include:

- Considering all aspects of performance – process, people, systems, policy, legislative support and physical infrastructure
- Adopting a targeted perspective – involving analysis and treatment of systemic and local issues specific to provinces within each of the four regions
- Targeting improvement in overall performance guided by a common vision of the future
- Involving consultation – adopting an open, communicative and consultative approach
- Working together with counterparts to ensure acceptance and ownership

- Facilitating and guiding activities
- Timely reporting against Outputs and Activities
- Linking activities to rest of sector
- Phased approach

Phased Approach

The project would be progressed in three integrated (and in some specific elements, overlapping) stages over a five year period:

Stage 1 – ASSESSMENT/ANALYSIS - Assessment of AGDISP Year 4 progress, develop and gain approval for project design, appoint delivery mechanisms to ensure continuity from AGDISP to Village Courts project, establish project sites, preparation of Annual Plan, site visits; continuation of training program, establish procurement process for village courts resources, policy and legislative review including the development of generic provincial legislation, review the ‘as is’ situation and establish baseline data at each of the targeted sites including infrastructure assessment, recording and information systems, business processes, human resources, physical facilities and policy and legislation.

Stage 2 – IMPLEMENTATION - Implementing new operational systems and institutional strengthening (targeted courts/provinces), implementation of new legislation, continuation of training program, implement procurement of village courts resources, new communication systems, expansion of recording and information systems and support for the biennial Village Courts conference.

Stage 3 – REVIEW/REINFORCE - Reinforce the change, review conference, continue training program, review new operational systems and measure success against baseline data.

While no firm conclusions have been reached in terms of staffing levels, it is considered that three advisers and three locally employed staff would be necessary to achieve the goal of the assistance within the given time frame. One adviser would have an oversight/directional role.

Key Directions

Both key Outputs and Outcomes could be achieved by:

- Building upon and using DJ&AG’s vision and mission as a driver to achieve project goals
- Building upon the achievements and knowledge gained during the first three years of the Community Justice Component of AGDISP
- Sourcing all relevant and current material including the *Organic Law*, the *National Law and Justice Policy*, the *Village Courts Act 1989*, the *Village Courts Policy 2001*, the *Assessment of the Village Courts*, and the *Report on the policy and institutional framework for improved service delivery by village courts*.
- Actively seeking to reinforce communication and coordination with other relevant areas in the DJ&AG, including Community Based Corrections and the law and justice sector generally
- Developing and building synergies with the Community Justice Centre Project
- Stimulating new practical, locally based modes of management and operation
- Embracing all parties involved including the community and encouraging collective commitment

- Seeking improvement and establishing a continuous improvement attitude

COMPONENT OVERVIEW

There have been a number of opportunities for improvement identified, which are beyond the ability of the Department of Justice and Attorney General (DJ&AG) and provincial governments to resolve without assistance. This report proposes a framework for further support which considers opportunities to deliver specific change and improvement with AusAID backing. Importantly, the framework builds on the success thus far, by targeting specific change and improvement.

To improve the service delivery of the courts there needs to be an increase in the overall capacity of the system. To deliver this outcome three major bases for improvement have been identified and structured as the following components:

1. **Training and Education**
2. **Legislative Review and Reform**
3. **Operational Systems and Support**

Component Summary

Component	Outputs
1. Training and Education	1. Village court training for relevant national and provincial agencies and village courts officials 2. Community awareness programs
2. Legislative Review and Reform	1. National legislation reviewed and drafting instructions prepared 2. Provincial legislation reviewed and drafting instructions prepared
3. Operational Systems and Support	1. Improved capacity of national and provincial administrations to effectively and efficiently operate village courts 2. Appropriate facilities and equipment provided

Component Description

The following discussion of each component comprises:

- A brief description of the objective behind the component
- Characteristics
- The nature of the supporting evidence

1. Training and Education

Outputs

- 1.1 Village court training for relevant national and provincial agencies and village courts officials
- 1.2 Community awareness programs

Objectives

To develop and broaden the officials' and officers' knowledge and skills base (roles and responsibilities, with particular emphasis on jurisdiction, fairness, ethical standards, human /

women's / children's / victim's rights, customer service, including records management, communication, consultation, supervision, inspection and accountability.)

To facilitate and deliver further rollout of the *Village Courts Course* (for village courts magistrates, clerks and peace officers) and the *Village Courts Officers Course* (for provincial village courts inspectors and coordinators).

To facilitate an improved understanding and acceptance by District Court magistrates of their responsibilities⁷ to provide:

- Supervisory guidance to Village Court magistrates
- An appellate jurisdiction for those people aggrieved by the Village Court magistrate's decisions

Part of this objective is to build stronger and more effective cross sectoral relationships, in particular, between the District Court and the Village Court aimed at increasing awareness of each other's roles. Stronger communication methods and links need to be found and installed.

To facilitate community awareness and education programs. Ensure community awareness of the service, jurisdiction and rights, including access to the courts and rights of appeal.

Characteristics

The component expands on the current training program and seeks to achieve greater penetration across the system by reaching greater numbers of officers and officials throughout the country. Experience, so far, indicates that the development and delivery of training is time consuming. The current size and capacity of the CCAU is also a limiting factor.

The national training program includes separate but uniform training courses for officers and officials. The *Village Courts Officers Course* is delivered by CCAU staff and is designed to equip provincial officers with the skills necessary to train court officials through delivery of the *Village Courts Course*. CCAU staff will continue to assist / facilitate with the program and, where necessary, receive further training themselves. There will be regular, on-going, evaluation of the training.

The *Village Courts Course* has been designed for delivery at local community / village level where there are limited technical resources.

The development and facilitation of biennial conferences (as recommended in *An Assessment of the Operations of the Village Courts*) will provide the foundation for greater communication, including information cross sharing between the various courts administrators. Part of the opportunity seeks to develop community awareness and education programs delivered through formal and informal local delivery points.

Supporting evidence

The neglect in providing training and education over a number years has been clearly evident. While both officers and officials demonstrate high levels of enthusiasm, the reality is many lack the knowledge and skills to effectively perform their duties. Recent research clearly identifies this opportunity as the number one priority. Provincial officers and court officials alike have received

⁷ These 'responsibilities' are set out in the *Village Courts Act 1989*

the courses conducted during the pilot program with great commitment and enthusiasm. Support for this training by provincial administrations has been overwhelming⁸. Early feedback indicates a measure of success, however, it will be important to monitor success through identified performance measures applied to village courts operations.

The *National Law and Justice Policy*⁹ recognizes the need to address training of village court officials as a matter of priority. Training and skills development is critical to issues of justice and fairness and continual improvement. Success in this area will deliver more transparency, accountability and therefore increase confidence in the system by all stakeholders.

Research indicates the community is supportive but nevertheless, criticisms of the courts system are, at times, forthcoming. While there is evidence that justifies this criticism, much of it could be allayed through greater understanding of the system and personal rights. With increased participation by District Court magistrates in a supervisory role it is more likely such criticisms will reduce as people gain confidence in the review process.

2. Legislative Review and Reform

Outputs

2.1 National legislation reviewed and drafting instructions prepared

2.2 Provincial legislation reviewed and drafting instructions prepared

Objectives

To review all current legislation (including aspects of the *Organic Law* that affect the village courts, national *Village Courts Act 1989*, the *Village Courts Regulations*, provincial *Village Courts Acts*) impacting on the Village Courts jurisdiction, management and operation and so identify areas in need of clarification and amendment including the ambiguity of appointment of officials and other inconsistencies such as jurisdictional limits and make appropriate recommendations.

To consider further any new legislation which may be necessary, in particular, model legislation for provinces which are yet to produce their own Village Courts Acts.

Characteristics

The need for adequate legislative support has become apparent. This opportunity seeks to update the relevant legislation to reflect contemporary needs and develop new legislation where necessary. A review of both national and provincial legislation will provide the opportunity to make recommendations for amendment, which will reconfirm jurisdiction, roles and responsibilities (including magisterial appointments) and importantly, provide power for the courts to operate.

The difficulty in passing new legislation and gaining acceptance by those charged with its administration is acknowledged. Community consultation including provincial administrations, village courts officers and officials, DJ&AG and the community at large will form part of the review process thereby increasing the likelihood that any legislative amendment will be embraced by those involved in the operation and administration of the courts.

⁸ See "An Assessment of the Operations of the Village Courts", p.11

⁹ *The National Law and Justice Policy and Plan of Action*, December 1999, pp. 51,52 & 55, The Law and Justice Sector Working Group.

Supporting evidence

The *Organic Law* confers power to the provinces to enact legislation to administer Village Courts in all areas except jurisdiction. Research has indicated many provinces are yet to legislate and they require assistance to do so.

Further, it would appear the intention of the *Organic Law* was to give power only to the provinces to appoint officials however, both national and some provincial legislation include this power. Some provincial legislation appears to empower the national Minister for Justice to appoint magistrates. The ambiguity of the legislation has created uncertainty with some provinces appointing magistrates through the national minister and others through their own executive council. Since the provincial reforms, many magistrates have been appointed at provincial level and frequently without reference to the *DJ & AG*¹⁰. Reports of nepotism and political interference in appointments and revocation of appointments are not infrequent.

Suffice to say, there is a level of confusion and uncertainty on matters involving appointment of magistrates. In light of this experience it is arguable that independence of appointment be maintained by assigning power of appointment at a national level through the *DJ & AG*.

There has never been a review of legislation (both national and provincial) governing the operation and administration of the village courts. Some legislation is out of date (in particular that relating to monetary limits to jurisdiction), contradictory or incomplete and requires review and amendment. The *Village Courts Policy 2001* calls for legislative reform to be pursued to provide clarification and authority of jurisdiction, roles and responsibilities.

3. Operational Systems and Support

Outputs

3.1 Improved capacity of national and provincial administrations to effectively and efficiently operate village courts

3.2 Appropriate facilities and equipment provided

Objectives

To strengthen provincial administrations' operating systems and procedures to enable improved management of the courts.

To provide targeted management training as appropriate to needs and location.

To improve information management and record keeping at the national, provincial and village court level.

To increase resourcing where appropriate at provincial level.

Characteristics

The *Village Courts Policy 2001* clarifies the roles and responsibilities of the CCAU and provincial administrations for the management of the courts. Broadly speaking, the CCAU has responsibility for jurisdiction, national training standards and policy while the responsibility for administration, operation and financial support rests with the provincial governments.

¹⁰ The *DJ&AG* still approve and gazette appointments where requested by provincial governments.

This opportunity seeks to build on progress made within CCAU by assisting the provincial administrations, where necessary, to develop new management systems and strengthen those already in existence. There needs to be emphasis given to building stronger relationships and communication networks between CCAU, provincial and local-level administrations, the District Court and the village courts themselves.

The ability to maintain suitable records needs to be addressed to ensure the courts and the administration are able to maintain such records and provide information exchange. Record keeping system/s need be simple and paper based. There is evidence that some administrations and courts are managing reasonably well in this area while others are clearly struggling. The plan would be to bolster those courts and administrations that are good examples and use these as possible bench marks for others. An important part of this work would be the establishment of basic baseline data. This would provide an indicator of current performance but importantly, allow measurement of further improvement.

Lack of, or limited resources such as office equipment and transport, limits the impact of provincial officers and exacerbates problems within the courts through an inability to properly supervise their operation. Targeted provision of appropriate resources at provincial and village courts level will afford officers and officials the means to carry out their roles more effectively.

Supporting evidence

While there are some examples of effective operational management including record keeping by the courts themselves, many, nevertheless, require assistance in this area¹¹. Unfortunately, the majority of courts fail to meet their operational and management potential. Assistance is needed. Currently, there is a lack of effective record keeping and communication between provincial administrations, the District Court and the CCAU. Improvement will provide accountability and increased data flow. This will allow for greater and more accurate information to be passed throughout the system and provide potential for further future improvement.

Limited communication between stakeholders at all levels is inhibiting development of a cooperative approach to management of the village courts system. Likewise, a lack of resources at the operational level is hindering efficient management and supervision of the courts. The *Law and Justice Sector Review*¹² recognises these opportunities for improvement and proposes provision of funding for resources and communication in possible future projects.

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

¹¹ The model courts convene consistent hearings and notify people accordingly. They also keep a "Court Register" which is maintained and made available for inspection.

¹² *Law and Justice Sector Review*, February 2001, p.39, Papua New Guinea Australia Development Cooperation Program.

In many cases due to a lack the funding there is inability to purchase the necessary stationary to draft enforceable orders, keep records or prepare and issue summonses to attend court¹³. Officials, in particular the peace officers, require the uniform of office to identify them. Uniforms are viewed as an integral part of the system but unfortunately are not being issued in almost all provinces. It would seem a relatively small injection of funds per village court would rectify this problem.

See Annexure A for Logframe.

CONSTRAINTS

In addition to the accepted constraints of operating in the PNG environment such as severe budgetary restraints and lack of basic necessities the following constraints have been identified:

- Activities are time consuming and open to delaying factors
- Difficulties associated with identification of targeted sites
- Some of the targeted administrations may lose the will to fully and consistently participate throughout the project
- Expectations of stakeholders may be beyond the capacity of the project to deliver
- Structural change may move the CCAU from the DJ&AG
- Enactment of national and provincial legislation may be delayed
- Provincial funding constraints may limit their capacity to fully train and supervise their courts

RISKS

The usual risks associated with introducing new systems and processes and new work practices apply in the design and successful implementation of this project. Risk minimization strategies need to be established together with thorough inquiry, consultation and consideration at every stage of project design. This approach will increase the likelihood of successful management of these threats to success. Specific identified risks include:

- Over ambition in the size and scope of project outputs
- Project design insufficiently flexible to address local environment or emerging situations
- Lack of sponsorship at all levels of participant governments
- Lack of leadership from senior levels
- Lack of staff participation
- Lack of contributions, both intellectual and physical, from necessary personnel
- Introducing unplanned legislation which may impact adversely on resourcing

SUSTAINABILITY

Despite significant lack of funding, confusion regarding responsibilities between levels of government and general neglect, the Village Courts system is, nevertheless, still functioning and providing many communities with their only ready access to justice. The abiding endorsement the courts receive from all levels of society provides a strong platform from which to improve its functionality. Court officials and officers are committed and enthusiastic and have demonstrated the capacity to respond quickly to training and guidance. Timely and targeted assistance at appropriate levels can transform this potential into tangible and sustainable improvements.

It will be important to build on the current level of enthusiasm and support from the provincial administrations, the CCAU and local communities. Without over ambitious outputs and with

¹³ In 2000 AGDISP printed and distributed 10,800 court order books. This support was on a “one off” basis.

continuing high levels of counterpart participation, the outcomes described in paragraph seven are achievable and would enhance the continued restoration of 'Peace and Harmony' within the community.

EXPECTED OUTCOMES & BENEFITS

- Village Courts would operate consistent with *National Law & Justice Policy, Village Courts Policy 2001* the *Organic Law* and other national and provincial legislation. The majority of Village Courts would operate consistently and fairly within their jurisdictional limits
- CCAU staff would be competent and confident to perform their national role
- Provincial officers and officials would be well trained and competent to perform their role
- Human rights of all persons (particularly women and children) appearing before a Village Court are improved and protected
- A greater community awareness of, and access to, the Village Courts system
- An increase in the level and quality of communication between stakeholders, in particular between the CCAU, the District Court and provincial administrations
- National and provincial legislation would be introduced and amended appropriately to meet the requirements of the village courts system
- The national training program will be established and imbedded in the activities of provincial village court administrations
- Standards of performance will be maintained through a program of consistent supervision, reporting and ongoing training

CONCLUSION

Despite significant lack of funding, confusion regarding responsibilities between levels of government and general neglect, the Village Courts system is, nevertheless, still functioning and providing many communities with their only ready access to justice. The abiding endorsement the courts receive from all levels of society provides a strong platform from which to improve its functionality. Court officials and officers are committed and enthusiastic and have demonstrated the capacity to respond quickly to training and guidance. Timely and targeted assistance at appropriate levels can transform this potential into tangible and sustainable improvements.

It will be important to build on the current level of enthusiasm and support from the provincial administrations, the CCAU and local communities. Without over ambitious outputs and with continuing high levels of counterpart participation, the outcomes described above are achievable and would enhance the continued restoration of 'Peace and Harmony' within the community.

Annexure A

Description	Key Indicators	Means of verification	Assumptions / Risks
<p>COMPONENT 1 Training and Education</p> <p>Purpose: To improve the knowledge base of those responsible for the operation and administration of the village courts and facilitate greater understanding of the village court system among the community.</p>	<p>That appropriate education programs for those involved in the operation of the village courts system and the community in general are implemented and supported.</p>	<p>Positive feedback from those who operate the village courts and the users of the courts confirms improved service delivery.</p>	<p>That support for the programs is forthcoming from the relevant agencies.</p>
<p>Output 1.1 Village court training for relevant national and provincial agencies and village courts officials</p>	<p>Village court training programs implemented at national and provincial level.</p>	<p>Greater compliance with legislation and procedures by the village courts.</p>	<p>Support for training is forthcoming from national and provincial governments.</p>
<p>Output 1.2 Community awareness programs</p>	<p>Community awareness programs implemented at national, provincial and local levels.</p>	<p>Improved levels of understanding of the village courts system by the community.</p>	<p>Sufficient commitment is forthcoming from relevant agencies, particularly those in the media.</p>
<p>COMPONENT 2 Legislative Review and Reform</p> <p>Purpose: To ensure that legislation governing the operation of the village court system is appropriate and unambiguous.</p>	<p>Clear and unambiguous draft legislation governing the operation and administration of the village court system is prepared for submission at a national and provincial level.</p>	<p>Appropriate new or amended draft legislation is prepared.</p>	<p>Support from the relevant minister / chairman/woman is forthcoming and sufficient priority is given to the legislation to allow it to be passed in a timely fashion.</p>

Output 2.1 National legislation reviewed and drafting instructions prepared.	New or revised draft legislation that supports more effective management of the village courts system.	Draft legislation submitted to national parliament.	National government support is secured for the review and drafting of legislation as a matter of priority.
Output 2.2 Provincial legislation reviewed and drafting instructions prepared.	New or revised draft legislation that supports more effective management of the village courts system.	Draft legislation submitted to provincial legislatures..	Provincial government support is secured for the review and drafting of legislation as a matter of priority.
COMPONENT 3 Operational Systems and Support Purpose: To improve the management of the village courts system through skills development and enhanced systems and procedures and provision of appropriate resources.	That national and provincial agencies effectively and efficiently manage the village courts system in a cooperative manner.	Feedback from senior management at national and provincial level and evaluation of systems and procedures.	That support from the relevant agencies in particular, provincial administrations, is forthcoming.
Output 3.1 Improved capacity of national and provincial administrations to effectively and efficiently operate village courts.	Improved systems and procedures established. Improved levels of management skills displayed by national and provincial staff. Improved information management and record keeping at national and provincial levels.	Improved performance of village courts officers and officials measured against baseline data.	Cooperation of provincial administrations is forthcoming.
Output 3.2 Appropriate facilities and equipment provided.	Provincial courts offices and village courts are adequately resourced and equipped to an approved schedule.	Certification of receipt by a senior member of provincial administration.	Logistical services are capable of supporting procurement of necessary office equipment and other resources.

Annexure B

***Output 3 - Activity 3.8
December 2001
Attorney General's Department Institutional
Strengthening Project (AGDISP)***

**AN ASSESSMENT OF
THE OPERATIONS
OF THE VILLAGE COURTS**

***Output 3 - Activity 3.8
December 2001***

Managed by ACIL Australia Pty Ltd



Funded by the Australian Government



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Introduction

Purpose of this document

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

The assessment was facilitated by the *Attorney General's Department Institutional Strengthening Project (AGDISP) Village Courts Long Term Adviser (VCLTA)* and counterparts over a two year period (2000 – 2001). This work included numerous site visits to provinces¹⁵ and consultation with village courts officials¹⁶, officers¹⁷, *National Judicial Staff Services (NJSS)* staff, provincial administrators, senior members of the *Royal Papua New Guinea Constabulary (RPNGC)*, *NGO's* and other interested stakeholders.

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

Background

Village courts operate throughout the country and provide an accessible and economical local level judicial system for the people of Papua New Guinea. The village courts system is enshrined in legislation and supported by national, provincial and local level governments. It has a centralised policy making body, the *CCAU* within the *Department of Justice and Attorney General (DJ&AG)* that supports and guides operations while the responsibility for administration, operation and financial support now rest with provincial government.

Since the formal creation of the village courts system through the *Village Courts Act 1973* a number of changes have occurred that influence their manner of operation but none more so than changes to the *Organic Law* in 1995¹⁹. Under those reforms responsibility for many areas of government were transferred from national to provincial government,

¹⁴ Previously known as the Village Courts Secretariat.

¹⁵ Provinces visited included Eastern Highlands, Milne Bay, Central, Morobe, Madang, East Sepic, East New Britain, West New Britain, New Ireland, Western and NCD. CCAU staff believe this sample is a representative cross section of the total system.

¹⁶ Village court *officials* are those who actually operate the courts ie., the magistrates, clerks and peace officers.

¹⁷ Village court *officers* are the provincial staff who supervise and administer the village courts ie., the village court inspectors and coordinators.

¹⁸ See Activity 3.8 AGDISP Scope of Services.

¹⁹ The *Organic Law on Provincial and Local-level Governments 1995* Sections 42(1)(i) and 47 transferred responsibility for village courts (with the exception of jurisdiction) to provincial government.

including a majority share of the responsibility relating to the operation and administration of village courts.

There were difficulties associated with the transfer of responsibility. In many cases the inability to cope with the transfer led to mismanagement at both the executive and operational level and a further decline of an already struggling system. Specifically, the lack of strategic direction, sound management practice, training and resources continue to reduce the effectiveness of the courts.

Major issues have resulted from weak management strategies, which include instances of magistrates exceeding their jurisdiction. Legislative and budget reform are non-existent. There is a declining knowledge base through all levels of the courts operations.

Over the past two years the *CCAU* and *AGDISP* have developed and introduced a number of initiatives to stimulate improvement. These initiatives included training programs which have been warmly embraced by provincial and local level government administrations and renewed commitment to the village court system at provincial level. *Village Courts Policy 2001*, will provide future strategic direction and the production of the *Village Court Manual* will provide assistance to assist the officials.

A number of provinces, in particular Morobe and East New Britain, have been active in support of their courts. However, unfortunately, most provinces have been limited by available funds and been unable to initiate and develop support programs, despite the willingness of village courts officers concerned.

Having regard to the current state of the village court system and level of enthusiasm displayed by the agencies involved, it is timely to review its operations and target areas for reform. A strategic and coordinated approach by those involved in the administration is necessary to ensure the village courts system reaches its full potential.

Transfer of responsibility

History

The *Organic Law on Provincial and Local-level Governments 1995* transferred responsibility for all aspects of village courts, with the exception of jurisdiction²⁰, to provincial government. It was proposed that the transfer be progressed through a three stage program²¹ but despite this proposal, complete responsibility was reassigned in one movement in July 1995. This created a number of difficulties.

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

²⁰ Responsibility for jurisdiction was retained by the National Government.

²¹ In 1995 the CCAU prepared a structured, three stage plan for transfer of responsibility – 1. Administrative control, 2. Legislative control & 3. Financial control. However, the proposal was rejected.

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

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

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

Current situation

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

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

Given the current low level of support, the village courts system delivers outstanding service to the community. “While the village court system is a local level judicial system

it is, nevertheless, a system of some magnitude. There are currently more than eleven hundred courts exercising jurisdiction across eighty percent of Papua New Guinea (See Table 1.). More than thirteen thousand officials serve the courts and deal with over 500,000 cases annually²².” Perhaps the primary reason for the enduring success of the system is its acceptance by the people it serves.

Province	Population	No of VC's	No of VC Officials	No VC officers
Western	152,067	17	165	4
Gulf	105,050	29	280	1
Central	183,153	63	860	2
NCDC	252,469	20	246	3
Oro	132,714	15	185	2
Milne Bay	209,054	35	440	2
West Sepic	185,790	20	239	1
East Sepic	341,583	101	717	1
Madang	362,805	57	498	2
Morobe	536,917	85	1021	1
Eastern Highlands	429,480	87	1050	2
Simbu	258,776	112	1282	2
Western Highlands	439,085	99	1123	2
Enga	289,299	87	1400	3
Southern Highlands	544,352	111	1438	1
Manus	43,589	38	293	1
W/New Britain	184,838	40	480	6
E/New Britain	220,035	42	482	4
New Ireland	118,148	36	394	1
Bougainville	141,161	56	513	2
TOTAL	5,130,365	1150	13,106	43

Table 1. Provincial Village Courts & Officials²³

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

- Adaptability. Village courts are local courts in the true sense, constituted by local people for local people. Thus, they have the capacity to adapt to the needs of the community they serve.
- Endurance. Many village courts are still operating despite limited government support.

²² See *Village Courts Policy 2001*.

²³ Based on Census 2000 and latest available figures held at CCAU.

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

While the village court system is poor in financial terms it is rich in human resources. The abiding endorsement it receives from all levels of society provides a strong platform on which to improve its functionality. It provides a community service where the formal court system cannot and does not reach. Court officials are committed and enthusiastic and have demonstrated the capacity to respond quickly to training and guidance. It could be said, the village courts system is very much alive but in need of a sustaining tonic.

Financial situation

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

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

All provinces with the exception of Central Province²⁴, are now paying their officials' allowances providing a much needed boost to morale²⁵. Advice from provincial administrators indicates the level of allowances paid to officials has been increased from that paid under the national government scheme. The increased payment was made in recognition of the high value attached to the role of magistrate, clerk and peace officer by the provincial governments.

In many cases due to a lack the funding there is inability to purchase the necessary stationary to draft enforceable orders, keep records or prepare and issue summonses to attend court²⁶. Officials, in particular the peace officers, require the uniform of office to identify them. Uniforms are viewed as an integral part of the system but unfortunately are not being issued in almost all provinces. It would seem a relatively small injection of funds per village court would rectify this problem. It is clear that finance will be an issue for possible consideration in development of the Project Design in Component 4.

Development pressures

The village courts system continues to grow. New courts in both rural and urban locations are being established to meet community demand²⁷. The urban drift of people from all ethnic backgrounds to the larger towns and cities resulting in the establishment of multi ethnic village courts is a continuing trend.

While exact figures are not available due to some provinces establishing courts without reference to the *DJ&AG* and the lack of empirical data at national and provincial level, *CCAU* estimate that fifty new courts were established in the past year²⁸. The growing demand is indeed a reflection of the popularity of these courts among the community. This popularity emanates from the people's respect and confidence in the process.

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

Law and order climate

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

²⁴ Unlike most other provinces, Central Province receives no outside funding ie., it relies totally on national government grants. This is reflected in the level of support it provides to the village courts system.

²⁵ In 2000 the national government made K5 million available meet unpaid allowances due to officials for 1995/6. Not all provinces were able to take advantage of the offer of funds. This was probably due to the inability of administrations to prepare timely submissions.

²⁶ In 2000 AGDISP printed and distributed 10,800 court order books. This support was on a "one off" basis.

²⁷ Criteria for establishing a new court include population, geographical dimensions and the level of crime in the area.

²⁸ Includes re-establishment of village courts on mainland Bougainville.

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

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

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

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

- ❑ Swift resolution of disputes, preventing them from escalating into major problems
- ❑ The use of mediation as the first step in dealing with conflict within the community
- ❑ Dealing with a huge volume of cases (500,000 per year) that would otherwise overwhelm the formal court system²⁹
- ❑ Local people dealing with local problems.

Court management

National / provincial/ local-level management

The confusion that existed immediately after the transfer of responsibility under the Organic Law in 1995 has been largely resolved. With the exception of a couple of issues³⁰ the role and responsibility of each level of government is now understood by each level of government.

The National Government is responsible for the jurisdiction³¹ of village courts. It is also responsible through the *CCAU* for matters relating to policy, training and performance

²⁹ The average caseload for each village court is 480 cases per year. Keris, P., (nd), PNG – Village Courts, p.12.

³⁰ Whether the power to appoint magistrates and proclaim village court areas rests with national or provincial government is unclear. The legislation relating to these issues requires review.

³¹ Includes powers and limitations though legislative reform.

standards³². With concurrence of the provinces concerned it also currently approves appointment of some magistrates.

The responsibility for administration, operation and financial support for village courts now rests almost entirely with provincial government. Each province is responsible for the selection and endorsement of officials, employment and payment of allowances, training programs³³ and maintenance of performance standards (through supervision and inspection of the courts).

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

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

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

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

Training

Training is a major issue for the village courts system. The lack of knowledge and understanding of the role and jurisdiction of the village court has resulted in incorrect practices and abuse of power by those charged with operating them. The *CCAU* has recognised the urgent need to address this problem through a uniform national training program for both village courts officials and officers. Prior to the current development of training programs by the *CCAU* and *AGDISP* no formal training existed for those associated with the village courts. It is believed that less than fifty percent of current

³² *Handbook on the Roles & Responsibilities of Different Levels of Government on the Reforms* Vol. 1, Table D

³³ Training programs developed by the *CCAU*.

village court officials have received any form of training³⁴ and many provincial village courts officers appointed after the reforms of 1996 were not experienced in the area and do not have the skills to effectively carry out their roles.

Village Courts Course

The *CCAU* and *AGDISP* have produced a national training program for village court officials – the *Village Courts Course*³⁵. The program is a product of extensive consultation with village courts officials, officers and other stakeholders and training specialists. The training has been trialed in urban, rural and mixed ethnic areas and will be available in early 2002. It includes instruction on mediation skills, training in village court procedures, jurisdictional issues, criminal and civil matters and the roles and responsibilities of village courts officers. It is designed for delivery at local community/village level with a minimum of technical resources.

Village Courts Officers Course

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

In anticipation it will be approved, planning is currently underway for *CCAU* to conduct the *Village Courts Officers Course* in the four regions³⁷ during 2002 as part of *AGDISP* activities. It is also planned that the *CCAU* will follow up this training by supporting provincial officers with facilitation and management of the course when this responsibility is ultimately devolved to the provincial administrations. The amount of support provided by *CCAU* will be subject to available resources but it is anticipated that some initial support will be provided.

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

³⁴ Some estimates are as low as ten percent. There were only eight training sessions conducted by the Community Courts Advisory Unit in the period 1994 - 2000. Didimas, B., (Aug 2000) *Difficulties Facing Village Courts in Papua New Guinea*, pp. 1-2 & Keris, P., (nd), *PNG – Village Courts*, p.4 & p.8.

³⁵ A course for those who actually operate the village courts ie. the magistrates, clerks and peace officers.

³⁶ A course for provincial staff who administer and supervise the village courts ie. the provincial village courts inspectors and coordinators. Proposed in *AGDISP Annual Plan 2002*.

³⁷ Highlands, Momasse, Islands and Southern Regions.

Summary

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

- **Recommendation 2. : *The CCAU support provincial administrations in facilitating and conducting training for village court officials through the Village Courts Course.***
- **Recommendation 3. : *The CCAU conduct training for provincial village courts officers through the Village Courts Officers Course (subject to approval).***

Compliance with jurisdiction

The *Village Courts Act 1989* limits the power of court to hear certain matters.³⁸ While more empirical data is required³⁹, cursory examination of village court records and order books reveals that many courts exceed their jurisdiction. It is difficult to report the extent to which this occurs as there is no system in place that measures the degree of the problem. However, analysis of randomly selected village courts suggest that with the exception of occasional well publicised cases, the impact on parties involved through village courts exceeding their jurisdiction may not be as serious as initial reports indicated. But nevertheless, efforts should continue to reduce its frequency.

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

- Pressure to resolve disputes without delay in order to prevent further conflict in the community. This is a major factor, particularly in the Highlands Region. Village courts are more accessible than the formal courts.
- Lack of awareness of jurisdictional limits by magistrates. Given the level of training conducted in the past and current levels of supervision, that many excesses are caused through ignorance rather than blatant abuse of power.
- The cost and delays involved with having matters dealt with in the higher jurisdictions. There is evidence that parties use the village court over other courts in order to achieve speedy and relatively cost free resolution of disputes.

³⁸ *Village Courts Act* sections 36-48

³⁹ The *AGDISP Annual Plan 2002* proposes the collection and analysis of baseline data and future monitoring of the level of compliance with jurisdiction.

- Respect for custom and the courts over the formal court system. Customary solutions to conflict are sought through village courts when cases should be more properly brought before the formal court system.
- The “overlap” of jurisdiction. Many matters are lawfully heard and settled before the court as claims for compensation for offences that are outside its criminal jurisdiction. For example, a village court cannot hear a criminal charge of rape but it can hear a claim for compensation arising from such an offence.
- Exceeding the financial jurisdictional limit. This is occurring because the original limitation set in 1989 has reduced in value due to the inflationary effect.
- Lack of general community awareness of the jurisdictional limits. The community does not possess adequate knowledge to question jurisdiction.

Appeals

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

- **Recommendation 4. :** *The CCAU support and encourage provision of training on jurisdictional issues to all village courts officials and officers.*
- **Recommendation 5. :** *That provincial officers be trained by the CCAU to enable them to supervise village courts more effectively.*
- **Recommendation 6. :** *The CCAU and provincial governments conduct a sustained public awareness program on the jurisdiction of the village court.*
- **Recommendation 7. :** *That a review of legislation relating to financial jurisdiction be undertaken with a view to bringing it in line with contemporary values. This may include a request by CCAU to the Minister for the matter to be referred to the Law Reform Commission⁴⁰.*
- **Recommendation 8. :** *That the CCAU in conjunction with AGDISP develop and maintain a database that monitors levels of compliance with jurisdiction by village courts.*

Legislation

A number of difficulties exist with the legislation relating to the establishment and operation of village courts. These difficulties include ambiguity in the appointment of

⁴⁰ The Law Reform Commission sits within the ambit of the DJ&AG.

magistrates, the creation and proclamation of village courts, the failure of some provincial governments to enact their own *Village Courts Act*⁴¹ and a need to review and update the national *Village Courts Act* and *Regulations*.

Appointment of magistrates

The legislation in relation to appointment of magistrates is unclear. In the debate that preceded the introduction of the *Village Courts Act 1974* the legislators were concerned that only suitably qualified people became village court magistrates. The type of person considered suitable for the role was a member of the community in which the court was situated and who was respected for his/her fairness and knowledge of local custom⁴². It was the intention of the legislators that councilors and others who had political obligations not be placed in magisterial positions. The selection process should reflect that intention⁴³.

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

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

General review

There has never been a review of the legislation relating to the operation of the village courts. Some legislation is out of date and requires amendment. The *Village Courts Policy 2001* calls for legislative reform to be pursued to provide clarification and authority of jurisdiction, roles and responsibilities and the establishment of a legislative review committee to review the relevant sections of the:

- ❑ *Organic Law*
- ❑ *National Village Courts Act 1989*
- ❑ *National Village Court Regulations*
- ❑ *Provincial Village Courts Acts*

⁴¹ Provincial governments require independent legislation in order to fully assume responsibility for village courts.

⁴² Bergin, T.R., (1974), *Development of Village Courts – Papua New Guinea*, p.3 & p.14.

⁴³ There are examples of appointment where this intention has not always been reflected.

⁴⁴ The *Department of Justice and Attorney General* still approve and gazette appointments where requested by provincial governments.

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

Conclusion

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

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

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

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

Recommendations

- **Recommendation 1. : *That the CCAU develop and maintain improved levels of communication with their provincial counterparts. This may include an inaugural biennial conference facilitated by CCAU and including all provincial village courts officers. It is recommended that the feasibility of AGDISP convening such a conference be explored in Year 3 for possible implementation in Year 4.***
- **Recommendation 2. : *The CCAU support provincial administrations in facilitating and conducting training for village court officials through the Village Courts Course.***
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**VILLAGE COURTS
POLICY 2001**

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BACKGROUND

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, PNG has an established traditional legal system that has the principles of restorative (rather than punitive) justice at its core. Indeed, the primary aim of the village court system is to bring disputing parties together and settle matters in a manner that restores "peace and harmony"⁴⁶.

Village courts operate throughout the country and provide an accessible and economical local level judicial system for the people of Papua New Guinea. The village courts system is enshrined in legislation and supported by national, provincial and local level governments. It has a centralised policy making body⁴⁷ that supports and guides operations.

The environment in which village courts function is dynamic and a number of changes have occurred that influence their manner of operation. Nineteen ninety-five heralded significant changes to the manner in which Papua New Guinea is governed⁴⁸. In essence, the changes provided a move from a centralised to a decentralised system of government. Under the reforms responsibility for many areas of government was transferred to provincial and local level government including much of the responsibility relating to the operation and administration of village courts.

The transfer of functions⁴⁹ to provincial administrations has, for the most part, been successfully completed. However, some confusion over roles and responsibilities exists among the respective bodies. In addition, a number of provinces have developed different approaches to the administration of village courts, and recent legislative amendments to the penalty sections of the *Village Courts Act* have added to the confusion.

Purpose of this document

The purpose of this document is to articulate the strategic direction for the village courts system to ensure its aims can be reached and maintained. It also seeks to provide greater understanding of the structural adjustment and resources necessary to strengthen the system.

The strategic direction will seek to:

- Clarify the roles and responsibilities of each level of government,

⁴⁶ *Village Courts Act 1989*, S 52.

⁴⁷ The *Community Courts Advisory Unit at the Department of Justice and Attorney General*.

⁴⁸ The *Organic Law on Provincial Governments and Local-level Governments*.

⁴⁹ Previously carried out by the *Community Courts Advisory Unit*.

- Provide guidance to those entrusted with the administration of justice through the village courts system, and
- Clarify jurisdictional limitations.

Historical perspective

Prior to the proclamation of the *Village Courts Act* in 1973, village courts existed in varying forms throughout Papua New Guinea.⁵⁰ The courts were presided over by men⁵¹ of status within the community and settled disputes by applying customary law. Although not officially sanctioned, there was extensive use of the courts. Such was the level of support for these courts and the need to provide an acceptable means of dispute resolution at village level, the administration of the day ultimately legislated to recognise and formalise their existence.

The *Village Courts Act 1973* provided for the establishment of village courts throughout the country, administering customary law at village level. The Act (within certain guidelines) sets out the purpose and guiding principles of village courts at section 52 as “***the primary function of a Village Court is to ensure peace and harmony in the area for which it is established by mediating in, and endeavouring to obtain a just and amicable settlements of disputes***” and again in section 57 “***...in all matters before it a Village Court shall apply any relevant custom...***” The *Village Courts Act 1989* reinforced the village court system and extended the jurisdiction and powers of the court.

The Act delegated the following responsibilities to the *Department of Justice and Attorney General (DJ & AG)*:

- Jurisdiction
- Proclamation of Village Court areas
- Appointment and revocation of appointment of officials
- Payment of Village Court officials
- Provision of operating expenses
- Monitoring of standards of performance of Village Courts
- Inspection and supervision of Village Courts
- Employment of Village Court officers
- Training of Village Court officials & officers

Prior to the introduction of the *Organic Law*, the Act was administered by the *Village Courts Secretariat*⁵² of the *DJ & AG*. At the time of the changes there were eighty-eight positions in this unit⁵³. These officers were based at both head office (Waigani) and in each province⁵⁴. The management and policy group provided a coordination and support

⁵⁰ For a more comprehensive history of the debate that preceded the introduction of the *Village Courts Act 1973* see Annexure 2.

⁵¹ The first woman magistrate was appointed in 1987.

⁵² Now known as the *Community Courts Advisory Unit*.

⁵³ There are currently six positions in the *CCA*.

⁵⁴ East New Britain and Morobe were managed at provincial level from 1986 and 1989 respectively.

role for activities in the field. The provincial officers maintained standards through a program of supervision and inspections of village courts and the provision of training for officials at all levels.

CURRENT SITUATION

Current Assessment

While the village court system is a local level judicial system it is, nevertheless, a system of some magnitude. There are currently eleven hundred courts exercising jurisdiction across eighty percent of Papua New Guinea. Twelve thousand officials serve the courts and deal with over 500,000 cases annually⁵⁵.

Unfortunately, the courts are struggling to meet their objectives. This has largely been brought about by the impact of an increased workload and lack of strategic direction and in some cases, a departure from the original purpose of the court.

In most cases, since the transfer of power, provincial governments have accepted their responsibilities and have a greater understanding of the requirements of the system. However, in a number of provinces, courts are operating with limited assistance from government and in some cases support is non-existent.

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

The failure of some provincial governments to legislate has created uncertainty, particularly in the appointment of village court magistrates. Unfortunately, since the reforms, many magistrates have been appointed at provincial level and frequently without reference to the *DJ & AG*. In many cases the validity of appointments is questionable.

A strategic and coordinated approach by those involved in the administration is necessary to ensure the village courts system reaches its full potential.

⁵⁵ The average caseload for each village court is 480 cases per year. Keris, P., (nd), PNG – Village Courts, p.12.

Current Government Roles

National Government

The National Government is responsible for the jurisdiction⁵⁶ of village courts⁵⁷. The Community Courts Advisory Unit (CCAU) is responsible for matters relating to policy, training⁵⁸ and setting performance standards. It also currently, approves appointment of officials for a number of provinces.

Provincial Government

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

Local-level Government

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

The community through local-level government nominates village court officials for appointment.

Strengths

The current strengths of the village court system provide a strong foundation on which improvements can be made. These strengths include:

- ❑ Adaptability. Village courts are local courts in the true sense, constituted by local people for local people. Thus, they have the capacity to adapt to the needs of the community they serve.
- ❑ Endurance. Many village courts are still operating despite limited government support.
- ❑ Accessibility. Village Courts are local, cost free and open to all members of the community. Matters can be heard without delay. People do not have to wait long periods of time for hearings. Hearings are conducted within the local community. This usually means people are not required to travel great distances or indeed leave their village.
- ❑ Custom. The use of custom to resolve disputes. In the village court, customary law has precedence over all other law except the Constitution. The people accept and respect customary law as a means to settle disputes.

⁵⁶ Includes powers and limitations

⁵⁷ *Organic Law S 42(1)(i) & (47)*

⁵⁸ *Handbook on the Roles & Responsibilities of Different Levels of Government on the Reforms* Vol. 1, Table D

- ❑ Language. There is no language barrier. As a rule all those in a dispute speak a common language.
- ❑ Non-adversarial. The courts are not restricted by the rules of evidence. The court can seek evidence from any source that it considers useful. Mediation is the preferred mode of resolving disputes.
- ❑ Personnel. There is respect for the tribunal. The magistrates are selected from the local community on the basis of their knowledge of custom, respect and fairness. There are many effective village court officers in provinces. Village court officials have a community interest in the success of their court.
- ❑ Support. All levels of government support the courts.

Opportunities for improvement

While there are strengths there are also opportunities to improve the standard and consistency of the courts by ensuring:

- ❑ The ambiguity of appointment of magistrates is eliminated. The appointment process must be, and be seen to be free of political interference and appoint only magistrates and officials that meet established selection criteria.
- ❑ Clarity and appropriate demarcation of responsibility between each of the three levels of government.
- ❑ The three tiers of government clearly understand and accept their roles and responsibilities.
- ❑ Address the needs of the various provincial administrations.
- ❑ Liaison and communication between the various administrations of government is maintained at the highest level⁵⁹.
- ❑ Development and implementation of a national training program.
- ❑ Standards are maintained through a program of inspections, reporting and on-the-job training.
- ❑ Individual courts are supported through the provision of resources and infrastructure.
- ❑ Provincial governments enact legislation to support the village court system.
- ❑ National legislation is amended appropriately.
- ❑ Law and order issues are addressed through early and local level intervention to disputes.

CORE GUIDING PRINCIPLES

Policy Development

In development of this policy, the following guiding principles were applied:

- ❑ The aim of the Village Courts, as defined by the *Village Courts Act 1989*⁶⁰.
- ❑ Adopts and reinforces the definition of ‘restorative justice’, as articulated in the *National Law and Justice Policy and Plan of Action 2000-2005*.
- ❑ Adopts and advances the *DJ & AG Corporate Plan*.

⁵⁹ Reinforces the intention of *Organic Law on Provincial Governments and Local-level Governments* S74.

⁶⁰ Section 52. Ensure peace and harmony within the community through mediation.

- ❑ To embody the need for the court to reflect local community values.
- ❑ To be consistent with the *Constitution* and the *Village Courts Act 1989*.
- ❑ Promote and foster the development of a consistent national structure for the village court system that complements the National Justice System (NJS).

This policy aims to:

- ❑ Provide an overarching rationale to give guidance to those administering the village court system at all levels of government.
- ❑ To clarify issues of governance, (jurisdiction, powers, appointment, responsibility, accountability), and operation (management, roles and functions).
- ❑ Provide direction and focus to enable the further development and support of the village court system.
- ❑ Define the roles and responsibilities of all levels of government in administering the village courts system.
- ❑ Ensure the underlying principles of the system are reinforced and not compromised.
- ❑ Identify and target priority areas for reform.

POLICY and LEGISLATIVE DIRECTION

Introduction

The *DJ & AG* is committed to the development and support of village courts⁶¹. The Department will support and assist the courts in providing an equitable and accessible system of justice to all members of the community. The following eight areas provide the scope of the policy:

Policy scope

Mediation over Arbitration

The primary function of the village courts system is the maintenance of “peace and harmony” within the community. The village courts are statutorily required to attempt resolution through mediation rather than arbitration.⁶² The *DJ & AG* will promote the use of mediation rather than arbitration in accordance with the *Village Courts Act 1989*. While mediation works best in an informal setting, courts will be, nevertheless, encouraged to reflect the local community’s values and expectations in the conduct of proceedings. Communication and training strategies will be developed to reinforce this concept. Public education will be undertaken to communicate the role and manner of court operation including principles of mediation.

Use of Custom

⁶¹ See *DJ & AG Corporate Plan 2000*

⁶² *Village Courts Act S53*

Matters before the village court will be resolved through the application of customary law appropriate to the community. Strategies will reflect the need to reinforce the use of custom over all other law except the *Constitution*. Village courts will work in cooperation with other community level dispute resolution processes.

Restorative Justice

Village courts are founded on principles of restorative justice. In seeking to maintain harmony within the community, the courts will apply these principles in the consideration of all matters before them.

Rules of Natural Justice

Village courts will demonstrate impartiality and fairness in all their dealings. They will treat people equally. All those who appear before the courts should be made aware of any accusations against them and given the right to be heard.

Human Rights

Children's rights

Village courts regularly hear matters that involve children. The best interests of a child is the paramount consideration and therefore, where custom is in conflict it shall not apply⁶³. The court has an obligation to protect children from physical and sexual abuse.

Women's rights

The Constitution provides that women will have equal opportunity to benefit in the development of the country and equal protection by the law⁶⁴. The *CCAU* will work cooperatively with village courts to ensure that women have ease of access to the village court, given equal status and are treated fairly by the court. Training programs will be structured to reinforce the right of women to have access to the village court, be afforded equal status and treated fairly.

Village courts will support and reflect changing attitudes to domestic violence. Instances of domestic violence will be treated as assault.

Performance standards

The *DJ&AG* is committed to supporting village courts in the pursuit of improved performance. This will be achieved by setting uniform standards and benchmarks in:

- education and training;
- supervision, inspections and reporting, and
- management and administration.

This will be achieved through the implementation of structured and targeted programs. Cooperation between the three levels of government will be required.

⁶³ *Customs Recognition Act 1963*, S3 and *Village Courts Act* S57(1).

⁶⁴ The *Constitution*, National Goals and Directive Principles s. 2(5) and Fundamental Rights s. 37(1)

Accessibility

The opportunity to resolve disputes through the village courts system will be available to all members of the community. The *DJ & AG* will cooperate with provincial and local governments to ensure village courts are available to all Papua New Guineans including those who reside in remote and urban areas. Strategies to ensure the courts operate effectively throughout the country will be pursued.

Partnership, Consultation and Cooperation**Community**

Village courts belong to the community and their involvement and support is essential to the effective operation of the courts. The courts will conduct themselves with dignity and display respect for the community they represent. Wherever possible they will cooperate with the local Police, District and Welfare Services and it is expected that this cooperation will be reciprocated.

Provincial and Local-level Governments

The *DJ & AG* will cooperate with, and provide appropriate support to, provincial and local-level governments to ensure the effective and efficient operation of village courts.

Justice Sector Organisations

The *DJ & AG* will work cooperatively with other government and non-government organisations to enhance the village courts system.

National Judicial System

DJ & AG is committed to improving communication between village courts and the *NJS*. Village courts are outside the formal national court structure⁶⁵. However, it will pursue policies of cooperation with these courts. Support will be given to the District Courts through the review and appeal process. Records will be provided as necessary.⁶⁶

Appointment of Magistrates**Intention of legislators**

In the debate that preceded the introduction of the *Village Courts Act 1973* the legislators were concerned that only suitably qualified people became village court magistrates. The type of person considered suitable for the role was a member of the community in which the court was situated and who was respected for his/her fairness and knowledge of local custom⁶⁷. It was the intention of the legislators that councilors and others who had political obligations not be placed in magisterial positions. The selection process should reflect that intention.

Conflict of legislation

⁶⁵ See Annexure 3 for court hierarchal chart.

⁶⁶ Refer to the Village Courts Manual for more detail.

⁶⁷ Bergin, T.R., (1974), *Development of Village Courts – Papua New Guinea*, p.3 & p.14.

It would appear the intention of the *Organic Law* was to give power only to provinces to appoint officials however, both national and some provincial legislation include this power. Conversely, some provincial legislation appears to empower the national Minister for Justice to appoint magistrates. The ambiguity of the legislation has created uncertainty with some provinces appointing magistrates through the national minister and others through their own executive council. Since the provincial reforms, many magistrates have been appointed at provincial level and frequently without reference to the *DJ & AG*⁶⁸. Reports of nepotism and political interference in appointments and revocation of appointments are not infrequent.

Proposed amendments

In light of this experience it is arguable that independence of appointment be maintained by assigning power of appointment at a national level through the *DJ & AG*. Appropriate amendments removing all ambiguity to national and provincial legislation will be considered.

Legislative requirements

Legislative reform will be pursued to provide clarification and authority of jurisdiction, roles and responsibilities. A legislative review committee will be established to review the relevant sections of the:

- ❑ *Organic Law*
- ❑ *National Village Courts Act 1989*
- ❑ *National Village Court Regulations*
- ❑ *Provincial Village Courts Acts*

PEOPLE and INFRASTRUCTURE

Introduction

The impact on the people and the organisations, which comprise the village court system, needs to be assessed according to:

- ❑ General changes
- ❑ Legislative reform
- ❑ Overall impact of new initiatives
- ❑ Specific impacts on each of the key roles within the system
- ❑ Training needs

Jurisdiction

The *Village Courts Act 1989* limits power of court to hear certain matters.⁶⁹ Jurisdictional limits will be reviewed as part of the legislative review program. While more empirical

⁶⁸ The *Department of Justice and Attorney General* still approve and gazette appointments where requested by provincial governments.

⁶⁹ *Village Courts Act* sections 36-48

data is required, there is evidence that some courts exceed their jurisdiction, particularly in criminal matters⁷⁰. There are a variety of reasons for this, including pressure to address disputes without delay in order to prevent further conflict in the community. Lack of awareness and disregard for jurisdictional limits are also contributing factors. Training programs will address these issues.

The *DJ & AG* will address this issue through active support and education of provincial and district officers. District Court Magistrates can assist in their role as Supervising Magistrates of the village court⁷¹.

Administration of Village Courts

The administration and support of village courts is currently allocated across all levels of government. Each level needs to cooperate and collaboratively work together to ensure conflict and confusion over responsibilities is eliminated. Specifically strategies need to be developed to address the issues of:

- ❑ Funding
- ❑ Staffing considerations at each level of government
- ❑ Payment of officials' allowances
- ❑ Distribution of court fines
- ❑ Operational support

Training

There is a recognised urgent need for a uniform national training program. It is believed that less than fifty percent of current village court officials have received any form of training⁷². A lack of knowledge and understanding of the role and jurisdiction of the village court results in incorrect practices and abuse of power.

The *DJ & AG* will develop and coordinate a uniform training program nationwide. This program will address mediation skills as well as village court procedures and be designed for delivery at local community/village level. The *DJ & AG* will train trainers and maintain training standards through inspections. Provincial officers will conduct the training of village court officials.

The *DJ & AG* will consult with the *National Training Council (NTC)* to identify the possibility of establishing accreditation for courses.

Women and the Village Court

⁷⁰ There is a body of evidence that indicates people are choosing village courts instead of the District Courts even though the latter is the appropriate court.

⁷¹ *Village Courts Act* section 15

⁷² Some estimates are as low as ten percent. There have been only eight training sessions conducted by the Community Courts Advisory Unit in the past six years. Didimas, B., (Aug 2000) *Difficulties Facing Village Courts in Papua New Guinea*, pp. 1-2 & Keris, P., (nd), *PNG – Village Courts*, p.4 & p.8.

At present women are under-represented among village court officials, in particular there is a need for an increase in the number of women magistrates. The DJ & AG will set a preliminary target of at least one woman magistrate for each village court by 2005.

Information Management

There is a requirement for information systems to provide capabilities for the collection, storage, sorting, viewing and disseminating of key case information. The DJ & AG will pursue the development of appropriate systems to fulfill this need. Information systems will be centred on key information areas. Through appropriate analysis and design, systems will be pursued that include case management practice. These systems will include for example, party details, type of hearing, use of customary law and hearing details. DJ & AG will consult with and provide advice to provincial governments in the coordination, collection and collation of requisite base line statistics.

Physical facilities

The responsibility for the provision of basic infrastructure items rests with provincial government. The DJ & AG will support and advise appropriately.

Annexure 1: Acknowledgements

In preparing this policy document the Community Courts Advisory Unit has consulted widely with village court officials, provincial level village court officers, officers from the Department of Provincial and Local Government Affairs, National Judicial Staff Services, Department of Treasury and Finance, The Royal Papua New Guinea Constabulary and other interested stakeholders. Past policies and recommendations, in addition to current programs of national and provincial administrations have been studied and taken into account.

While many people were consulted informally, the following table lists the persons who participated in formal consultations and formal workshops:

Name	Organisation
His Honour Judge Salika	National Court
His Honour Judge Mogish	National Court
Ms Regina Sagu	District Court
Mr John Gesling	District Court
Mr Cronox Manek	Office of the Public Prosecutor
Mr Sao Gabi	Department of Justice and Attorney General
Mr Fred Tomo	Department of Justice and Attorney General
Mr Pex Bua	Department of Justice and Attorney General
Mr Kepas Paon	Department of Justice and Attorney General
Mr Steven Nakandio	Department of Justice and Attorney General
Sir Ronald To Vue	
Mr Tos Barnett	MPF Commission of Inquiry
Mr Graeme Tuck	Dept. of Provincial & Local Government
Mr Kaminiel Warkia	PNG Urban Secretariat
Mr Fred Hera	Western Provincial Administration
Mr Dick Dikori	Morobe Provincial Administration
Mr Dandley Puapena	East New Britain Provincial Administration
Mr Elly Temu	Baruni Village Court
Mr Dairias Dorke	NCDC
Mr David Jeffries	Legal Capacity Building Project
Ms Rosemary Oxer	AGD Institutional Strengthening Project
Mr John Dinsdale	AGD Institutional Strengthening Project
Mr David Evans	AGD Institutional Strengthening Project

Annexure 2: Historical perspective of village courts

Prior to the proclamation of the *Village Courts Act* in 1974, village courts existed in varying forms throughout Papua New Guinea. The courts were presided over by men of status within the community and settled disputes by customary law. Although not officially sanctioned, the use of these courts was widespread. Such was the level of support for these courts and the need to provide an acceptable means of dispute resolution at village level, the Administration of the day ultimately legislated to formalise their existence (Bergin 1974 p.12). However, this did not happen without considerable deliberation on the issue.

Analysis of the debate that preceded the introduction of the *Village Courts Act* provides an insight into the motivation for the legislation and the underlying philosophy of the Village Courts system.

Bergin (1974, p.1) observed there was support for a legally constituted judicial system operating at village level for fifty years prior to the introduction of the Village Court Act. Many academics, administrators, politicians and villagers spoke in favour of a court "...presided over by village elders administering mainly a customary code of law...". The concept was rejected by the Administration on the basis that it was contrary to the policy of establishing one court system for all people. There were also concerns that the manner of resolving matters by custom was not appropriate to the needs of the country as it developed, particularly in the economic field, and that customary law did not always embrace the principles associated with a fair trial. Finally, it could not be foreseen how judicial control could be exercised over such a court system.

The Secretary of the Department of the Administrator, Mr D.M. Fenbury in a paper presented at a conference on *The Rule of Law in an Emerging Society* convened by the International Commission of Jurists, held at Port Moresby in September 1965, noted the implications of failing to establish a system of community courts. Fenbury observed that two different systems of administering law had developed in parallel. The Territory Courts were "kot bilong gavman" (government courts) and the unofficial village tribunals were "kot bilong mipela" (our courts). He also noted that the village courts were "...acceptable to the people." and the "...community had for many years been operating a widespread, completely unsupervised, and technically illicit legal system which had no contact with the Territory legal system."

In 1965 the Local Courts Act was proclaimed and ordinances that controlled courts for indigenous Papua New Guineans were abolished, as were the offices of village constable, luluai and tultul. The aim of the new legislation was to provide access to a legal system for people living at village level, however this was slow to materialise. The failure of Local Courts to penetrate to village level in many areas was reported in the *Curtis/Greenwell Report* in 1971. This committee was charged, in part, with investigating a proposal to establish a system of village courts. During the course of their inquiry they found that not only had the Local Court system failed to reach many village areas, where it had the villagers felt the system was alien and only to be resorted to when customary

processes had failed. In order to fill this vacuum, the report urged the Government to reconsider its opposition to the establishment of an official village courts system. The report claimed, “The present legal system has failed to provide an adequate means of dispute settlement at village level. Informal and unofficial methods have continued...” and “The demand for Village Justices is both widespread and insistent.”

In the report, concern was expressed about local government councils and councillors expanding influence into the area of village courts. The committee felt that, “An extension of the power of councils in the judicial field would, we think, be unfortunate. Indeed, we think it probable that the continued development of unofficial and uncontrolled courts as at present is more likely to be harmful to national unity than the setting up of a system of village justices appointed and linked by central government.” (para. 76) Curtis and Greenwell recommended the linking of Village Courts to the Central Government through the Local Courts. Under such an arrangement the Local Courts would play supervisory and appellate roles for the Village Courts.

The report concluded by strongly recommending the Government initiate a further inquiry to specifically address the issue of establishment of a village court system. Curtis and Greenwell specified that any inquiry should embrace number of basic principles for village courts including:

- ❑ The appointment and tenure of village court magistrates must be made by the Central Government.
- ❑ The village courts must be subject to supervision by a superior court.

As a result of this recommendation the Government appointed *Mr F. Iramu* and *Mr R.N. Desailly* to head an inquiry into the need for village courts and village constables. Their report published in May 1972 found, “...there has been almost complete unanimity as to the basic need for village courts, and as to the need to have such courts as free as possible from interference in their approach to the settlement of disputes at the village level.” The report recommended fundamental changes to the policy that opposed the establishment of village courts and urged the earliest possible action be taken to provide of a system of village level jurisdiction. Iramu and Desailly also made detailed proposals in relation to the jurisdiction of the courts and the appointment of village court officials.

Consequent to the *Iramu / Desailly Report*, the Secretary for Law, *Mr W. Kearney* presented a White Paper entitled *Proposed establishment of a system of Village Courts* to the House of Assembly on 21 September 1972 (Hansard p.716). The paper highlighted the need to fill the “...law enforcement vacuum at the village level.” and the wide support for a system of tribunals administering customary law within established procedural guidelines.

A number of fundamental principles were emphasized in the paper, including those first identified by Curtis and Greenwell. These principles were the appointment of officials to village courts must be made by Central Government or a statutory legal body, and those

appointed must be subject to control by a superior judicial body. The issue of jurisdiction was discussed in some detail. The paper suggested that the power of village courts to punish should be very limited, "...there would be no general power to imprison or fine although the court could be empowered to order work in the nature of recompense or of general benefit to the community in lieu of payment." Officials were to be instructed on the extent of their powers and the procedural requirements of village courts.

A report into tribal fighting the Highlands (1973) also supported the introduction of a system of "Village Courts" assisted by "Village Law Officers" who would be charged with dispensing justice based on custom. The committee convened for this inquiry made detailed recommendations relating to the jurisdiction of these courts and the powers of the court officers. It was felt that to be effective the courts should have the power to fine, imprison in default (subject to Local Court ratification) and issue community work and other orders. Village Law Officers needed to be given sufficient powers, including the power of arrest, to be effective in their roles. The nature of offences and complaints the committee recommended village courts be empowered to hear is very similar to those now incorporated in the Village Court Act.

The Village Courts Bill was introduced by the Minister for Justice Mr (later Sir) John Kaputin on 28 September 1973. Debate in the House of Assembly that followed revealed unanimous support for the legislation that was passed into law on 26 November 1973. The *Village Courts Act* was proclaimed and came into effect on 7 March 1974.

The *Village Courts Act* provided for the establishment of village courts throughout the country, administering customary law at village level. The Act clearly set out the purpose of village courts system at sections 52 and 57. The primary function of a village court is to maintain harmony within the community that it is established through mediation and application of customary law. The Act incorporated the principles established during the lengthy debate that preceded its introduction including those relating to jurisdiction, powers and appointment of officials.

Annexure 4: Team Members

The following table lists the project team members who worked on the development of this policy document:

Name	Role
Mr John Takuna	Team Leader
Mr Kimson Kimeto	Team Member
Mr Bruce Didimas	Team Member
Mr Robert Kandege	Team Member
Ms Perpetua Hau	Team Member
Mr Ken Skews	Adviser