

CONTENTS

1	BACKGROUND	3
1.1	INTRODUCTION	3
1.2	PURPOSE OF THIS DOCUMENT.....	3
1.3	HISTORICAL PERSPECTIVE.....	4
2	CURRENT SITUATION	5
2.1	CURRENT ASSESSMENT.....	5
2.2	CURRENT GOVERNMENT ROLES	6
2.2.1	<i>National Government</i>	6
2.2.2	<i>Provincial Government</i>	6
2.2.3	<i>Local-level Government</i>	6
2.3	STRENGTHS.....	6
2.4	OPPORTUNITIES FOR IMPROVEMENT	7
3	CORE GUIDING PRINCIPLES.....	8
3.1	POLICY DEVELOPMENT	8
4	POLICY AND LEGISLATIVE DIRECTION.....	8
4.1	INTRODUCTION	8
4.2	POLICY SCOPE	9
4.2.1	<i>Mediation over Arbitration</i>	9
4.2.2	<i>Use of Custom</i>	9
4.2.3	<i>Restorative Justice</i>	9
4.2.4	<i>Rules of Natural Justice</i>	9
4.2.5	<i>Human Rights</i>	9
4.2.6	<i>Performance standards</i>	10
4.2.7	<i>Accessibility</i>	10
4.2.8	<i>Partnership, Consultation and Cooperation</i>	10
4.3	APPOINTMENT OF MAGISTRATES	11
4.3.1	<i>Intention of legislators</i>	11
4.3.2	<i>Conflict of legislation</i>	11
4.3.3	<i>Proposed amendments</i>	11
5	PEOPLE AND INFRASTRUCTURE.....	12
5.1	INTRODUCTION	12
5.2	JURISDICTION.....	12
5.3	ADMINISTRATION OF VILLAGE COURTS.....	12
5.4	TRAINING.....	13
5.5	WOMEN AND THE VILLAGE COURT.....	13
5.6	INFORMATION MANAGEMENT.....	13
5.7	PHYSICAL FACILITIES	13

ANNEXURES

1. Acknowledgements
2. Historical perspective of village courts
3. Court hierarchical chart
4. Policy development team members

1 BACKGROUND

1.1 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"¹.

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 body² 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 governed³. 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 functions⁴ 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.

1.2 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,

¹ *Village Courts Act 1989*, S 52.

² The *Community Courts Advisory Unit at the Department of Justice and Attorney General*.

³ The *Organic Law on Provincial Governments and Local-level Governments*.

⁴ 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.

1.3 *Historical perspective*

Prior to the proclamation of the *Village Courts Act* in 1973, village courts existed in varying forms throughout Papua New Guinea.⁵ The courts were presided over by men⁶ 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*⁷ of the *DJ & AG*. At the time of the changes there were eighty-eight positions in this unit⁸. These officers were based at both head

⁵ For a more comprehensive history of the debate that preceded the introduction of the *Village Courts Act 1973* see Annexure 2.

⁶ The first woman magistrate was appointed in 1987.

⁷ Now known as the *Community Courts Advisory Unit*.

⁸ There are currently six positions in the *CCA*.

office (Waigani) and in each province⁹. The management and policy group provided a coordination and support 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.

2 CURRENT SITUATION

2.1 *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 annually¹⁰.

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.

⁹ East New Britain and Morobe were managed at provincial level from 1986 and 1989 respectively.

¹⁰ The average caseload for each village court is 480 cases per year. Keris, P., (nd), PNG – Village Courts, p.12.

2.2 Current Government Roles

2.2.1 National Government

The National Government is responsible for the jurisdiction¹¹ of village courts¹². The Community Courts Advisory Unit (CCAU) is responsible for matters relating to policy, training¹³ and setting performance standards. It also currently, approves appointment of officials for a number of provinces.

2.2.2 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).

2.2.3 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.

2.3 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.

¹¹ Includes powers and limitations

¹² *Organic Law S 42(1)(i) & (47)*

¹³ *Handbook on the Roles & Responsibilities of Different Levels of Government on the Reforms* Vol. 1, Table D

- ❑ 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.

2.4 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 level¹⁴.
- ❑ 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.

¹⁴ Reinforces the intention of *Organic Law on Provincial Governments and Local-level Governments* S74.

3 CORE GUIDING PRINCIPLES

3.1 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*¹⁵.
- ❑ 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*.
- ❑ 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.

4 POLICY and LEGISLATIVE DIRECTION

4.1 Introduction

The *DJ & AG* is committed to the development and support of village courts¹⁶. 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:

¹⁵ Section 52. Ensure peace and harmony within the community through mediation.

¹⁶ See *DJ & AG Corporate Plan 2000*

4.2 Policy scope

4.2.1 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.¹⁷ 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.

4.2.2 Use of Custom

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.

4.2.3 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.

4.2.4 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.

4.2.5 Human Rights

4.2.5.1 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 apply¹⁸. The court has an obligation to protect children from physical and sexual abuse.

4.2.5.2 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 law¹⁹. The *CCAU*

¹⁷ *Village Courts Act S53*

¹⁸ *Customs Recognition Act 1963, S3 and Village Courts Act S57(1)*.

¹⁹ *The Constitution, National Goals and Directive Principles s. 2(5) and Fundamental Rights s. 37(1)*

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.

4.2.6 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.

4.2.7 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.

4.2.8 Partnership, Consultation and Cooperation

4.2.8.1 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.

4.2.8.2 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.

4.2.8.3 Justice Sector Organisations

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

4.2.8.4 National Judicial System

DJ & AG is committed to improving communication between village courts and the *NJS*. Village courts are outside the formal national court structure²⁰. 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.²¹

4.3 Appointment of Magistrates

4.3.1 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 custom²². 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.

4.3.2 Conflict of legislation

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*²³. Reports of nepotism and political interference in appointments and revocation of appointments are not infrequent.

4.3.3 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.

4.3.3.1 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:

²⁰ See Annexure 3 for court hierarchal chart.

²¹ Refer to the Village Courts Manual for more detail.

²² Bergin, T.R., (1974), *Development of Village Courts – Papua New Guinea*, p.3 & p.14.

²³ The *Department of Justice and Attorney General* still approve and gazette appointments where requested by provincial governments.

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

5 PEOPLE and INFRASTRUCTURE

5.1 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

5.2 Jurisdiction

The *Village Courts Act 1989* limits power of court to hear certain matters.²⁴ Jurisdictional limits will be reviewed as part of the legislative review program. While more empirical data is required, there is evidence that some courts exceed their jurisdiction, particularly in criminal matters²⁵. 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 court²⁶.

5.3 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

²⁴ *Village Courts Act* sections 36-48

²⁵ 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.

²⁶ *Village Courts Act* section 15

- ❑ Payment of officials' allowances
- ❑ Distribution of court fines
- ❑ Operational support

5.4 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 training²⁷. 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.

5.5 Women and the Village Court

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.

5.6 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.

5.7 Physical facilities

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

²⁷ 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.