# Overcoming Operational Constraints in Papua New Guinea's Remote Rural Village Courts: A Case Study Legal Innovation: Part 3

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This *In Brief* considers the role that village courts in Papua New Guinea (PNG) are imagined to play in local-level dispute resolution versus the role they are actually able to play under current resourcing conditions. My discussion is based on recent fieldwork on the southern mainland of Milne Bay Province in PNG, known as the Suau Coast. During the heyday of PNG's colonial era, when most administrative, commercial and mission travel was by sea, this region enjoyed good connections to Port Moresby and to the then district headquarters at Samarai. Now that the provincial capital is located much further away in Alotau, and most travel in PNG is via road or air, the Suau Coast finds itself far more isolated than in the past. This has very specific implications for access to justice by means of the village courts. Although this case study provides an illustration of the challenges faced by one rural population in PNG, it is to be anticipated that similar challenges are present in other poorly connected parts of the country.

Under the terms of the *Village Courts Act 1989*, an odd number of magistrates — with a minimum of three — are required for a full village court sitting. Each division of the village court system on the Suau Coast has at most five magistrates, spread along some 20 km of coastline. There are no roads between villages, so all coastal travel is by sea. Magistrates, other village court officials such as clerks and peace officers, and disputing parties must be brought together by boat for a court sitting. The provincial government has provided dinghies and outboard motors for the purpose, but does not provide fuel. The village court magistrates I interviewed explained that the onus is upon disputants to provide the fuel to muster the personnel for a court sitting — a prohibitive constraint for rural Papua New Guineans with limited income options and no nearby fuel depot. People from these communities are expected to traverse up to 100 km of coastline to Alotau in order to purchase sufficient fuel to return to their villages, and then send the Law and Justice Sector dinghies out to collect the village court officials for a sitting.

Needless to say this does not happen very often, and village court sittings for this division occur, at most, three or four times a year. Disputes, however, arise constantly, and must be dealt with. The residents of these coastal communities have therefore adapted to the infrequent availability of their court system by combining it with improvised forms of dispute management. The latter might include some combination of actual village court officials with other local worthies such as church leaders or local level government councillors. This type of strategy, which has been described elsewhere as 'co-option' of the village courts (Evans et al. 2010:27), may in some instances simply be a pragmatic and creative solution to the problem of the courts' limited capacity to function as they were originally envisaged.

This has in turn led to a certain permeability of the 'court' concept itself in the legal consciousness of rural people, and indeed for the village court officials themselves. In interviews, the officials I spoke to would discuss court sittings and ad hoc mediations (or 'straightenings' in the local vernacular) more or less in the same breath. For these officials, there remains a troubling awareness that they are overseeing the management of disputes in a form that is sometimes visible to the legal system and sometimes not (Goddard 1998). Moreover, legal constraints on the jurisdiction of the village courts means that officials must choose either to disregard certain limitations placed on the way the courts can operate, or operate in a way that may not be satisfactory for the disputants whose conflicts they are endeavouring to manage.

An obvious example is cases involving sorcery claims. A court sitting in June this year heard a sorcery case in which the outcome was

a compensation order of K2,500 and two large pigs. While extremely modest by the standards of some parts of PNG, the cash component of the compensation exceeds the K1,000 limit on such orders imposed by the *Village Courts Act 1989*. When I asked one of the magistrates involved in that hearing about the compensation amount, he said simply that K1,000 would not have been regarded as adequate. K1,000 compensation orders in this part of Milne Bay are more likely to be found in sexual assault cases; a sorcery case, which will invariably follow one or more deaths in a particular lineage group, is considered far more serious.

Serious disputes also have a tendency to recur, particularly when there is ongoing conflict between families, and this normally occurs over land. Because the jurisdiction of village courts disallows them from hearing cases to do with landownership, both disputants and magistrates find other ways to handle such cases — normally by means of informal mediation, always couched in the language of land use rather than its ownership (Demian 2004). So while some aspects of a dispute settlement will have the imprimatur of the state, others will not, and the settlement may or may not be, strictly speaking, legal. These days, village court magistrates will aim in an informal mediation for a new type of outcome, referred to by the English phrase 'peace and reconciliation'. This phrase has also gained currency with the churches in PNG, so that the roles of the courts and the church in maintaining harmonious community relationships are perceived as complementary and overlapping. Some remote rural people in PNG may therefore work with an understanding that 'the law' emanates as much from God as it does from the state, particularly as they can see little evidence that the Papua New Guinean state has any interest in maintaining a local-level justice system.

The state's absence of interest is gauged not only by the half-hearted support provided for the transportation of village court officials, but in their training and remuneration. Since village courts were introduced to the Suau Coast in 1990, I was told, there have been only three training workshops for magistrates, the most recent one in 2012. This means that any magistrates appointed since then, notably the region's three new female magistrates, have received no training at all. Furthermore, the magistrates' allowance of K24 per month had not been paid for eight months at the time I left the field in September 2014. Even if they had been paid, one magistrate noted dryly, what can be purchased for K24? 'Some biscuits at the trade store!'

The underinvestment in village courts in remote places such as the Suau Coast has led to a decreasing role for the courts in resolving disputes in these areas. The most obvious solution to this scenario is to resource the courts appropriately. More frequent training for magistrates, especially those who have been newly appointed, would also go some way toward providing the support some magistrates say they have not received. Finally, the structure and jurisdiction of the courts merits re-examining in light of the flexible approaches of some communities to dealing with serious disputes and the limited availability of magistrates themselves.

## Author Notes

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