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The Challenges of Village Courts and Operation Mekim Save among the Enga of Papua New Guinea Today: A View from the Inside

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Introduction

The justice system of Papua New Guinea (PNG) is one of legal pluralism. It is composed of formal and customary court systems, with the former forged from western laws imposed by colonial powers and the latter from traditional dispute management based on *kastom* (custom). Its history is complex (Goddard 2009; Gordon and Meggitt 1985; Larcom 2015; Narokobi 1977). Formal law was transported from British and Australian legal systems having formal courts, written laws, strict rules of evidence, police and prisons. Serious offences are considered crimes against the state. Punishments for crimes in the form of prison sentences and fines are imposed by the district and national courts on the premise that these will act as deterrents.

Customary law is based on the values and practices that indigenous Papua New Guineans used to settle disputes and maintain harmony long before first contact with Europeans. These informal customary institutions secured a place in the PNG state legal system during the period of decolonisation, prior to independence. They were positioned as underlying law at the bottom of the legal hierarchy (Kamongmenan 2018). Transgressions are considered as wrongdoings against communities that must be rectified according to local customs. The reasons for the establishment of customary law included the desire to return power to the people through drawing on community structure, to eliminate the injustices imposed by an imported law system that was foreign to local cultures, and to accommodate the great variation in norms, values, practices and sense of justice between the 800 or more linguistic groups in PNG (Dinnen 2003; Gordon and Meggitt 1985; Goddard 2009; Larcom 2015; Lea and Curtin 2011; Narokobi 1977; Scaglion 1983; Strathern 1972). Moreover, the logistics and costs of establishing formal courts that could serve the remote rural areas of PNG would have been formidable. The Underlying Law Act was passed in the year 2000 to stipulate the source of underlying law in customary practices, formulate rules and provide for its development (Kamongmenan 2018). The systems of formal and customary law were not, and still are not, well articulated.

In 1974, the Village Court Act of 1973 came into practice to serve parochial judicial needs by harnessing the skills and knowledge of leaders and mobilising the force of public opinion in village courts for disputes and minor wrongdoings, such as theft, customary marriage, property damage and unpaid personal debts. Serious crimes like rape, murder and arson that fall within the Criminal Code were outside the jurisdiction of village courts; limits were placed on amounts of compensation ordered and fines imposed by village courts. Village courts were to apply local 'custom' to settle disputes and achieve 'substantial justice' — justice that satisfies communities (Goddard 2009; Gordon and Meggitt 1985). Custom was imprecisely defined and kept flexible in order to prioritise community harmony.

Customary law was distinguished from the formal law applied in district and national courts by placing emphasis on process instead of a set of rules (Gordon and Meggitt 1985; Narokobi 1977; Scaglion 1983). Processes to restore relations and achieve harmony involved the following: mediation to reach consensus, popular participation, acceptance of a wide variety of evidence, and the consideration of the history and relationships between parties. Such restorative justice is an inclusive participatory approach (Dinnen 2003) in which stakeholders engaged in a conflict have the opportunity to tell their stories and express their

opinions in an atmosphere of respectful listening (Braithwaite 2003). The outcome of the mediation is usually compensation rather than punishment; further exchanges often occur at or around the payment of compensation to renew ties (Gordon and Meggitt 1985:196; Narokobi 1977:67–68). Village courts together with Operation Mekim Save (OMS), the division established in Enga in 1982 for handling inter-clan conflicts and tribal fighting, are widely used and very successful. It is probably fair to say that village courts and OMS hold the reins of peace in Enga Province today.

Questions and our goals

The imprecision and flexibility of custom and processes followed by village courts have been able to accommodate the great diversity of cultures in PNG as well as economic and social change in the 1970s and 1980s. Among the Enga, magistrates have been respected community leaders who acquired customary knowledge in men's houses, in Sangai and Sandalu bachelors' ceremonies and through attending marriage ceremonies, *tee* (*moka*) exchanges and many other events. The same was true for the members of the communities that they served. Until the last two to three decades, parents still arranged marriages and paid bride wealth to initiate lifelong ties between the families. Male children generally inherited land from their fathers or uncles; children belonged to their father's clan, though inheritance practices varied within the Enga. Land was distributed between families within a sub-clan according to need. Sanctions were strong against those who did not keep trouble off their land. Wars were fought with bows, arrows and spears and were contained by rules; elder tribal leaders steered war and restored peace.

From the late 1980s, fundamental change started occurring with the adoption and spread of new technology. Mobile phones and the constant circulation of people on Public Motor Vehicles are transforming traditional patterns of communication. Interactions between people of different ages, sexes and positions on the hierarchy of status and respect are being restructured accordingly. Large amounts of cash flow into Enga with the boom in the economy from the Porgera gold mine and other developments. The ability to conceal money in bank accounts and access it through automatic teller machines facilitates its use for individual interests: 'Money is life,' as the saying goes. Downloads from the internet onto smartphones introduce a wide variety of new images and information, as do new ideas imported from other provinces. These include the good, the bad and the ugly, including pornography and sorcery (*sanguma*).

Of course, the thread of custom still runs between the past and the present as younger generations absorb some traditional principles and practices. However, these are blended with concepts from Christianity, formal education and values from the global capitalist economy. The result is that even within single communities, ideas held about custom vary considerably. Given these conditions, what are the challenges for village courts today?

There is no one more qualified to answer the above question than the village court magistrates who hear complaints day in and day out. In 2008, Nitze Pupu, Polly Wiessner, Akii Tumu and Larsen Kyalae began working regularly with village courts in central Enga and Operation Mekim Save. Nitze Pupu observed cases in OMS Wabag, taking pages of notes for every case and Larsen Kyalae did the same for Takawasa and Par village courts in the Ambum Valley.[1] These efforts yielded observations of over 1000 village court and OMS cases held between 2008 and 2016.

Initially, our goal was to gain some understanding of the devastating tribal fighting that accelerated after the introduction of firearms to Enga warfare around 1990. As warfare began to decline around 2010 (Wiessner and Pupu 2012), our focus turned to the central issues handled in village courts and the challenges of applying custom in a rapidly changing world. We also concentrated on distilling the major principles, practices and values of customary law to design cultural education programs for Enga's schools.

In 2015 and 2016, we conducted two-day seminars where we first asked the magistrates to list the challenges they face today in order of priority and make recommendations for change in the system to help them overcome these problems. They were also asked to give examples of the issues that can arise as older magistrates — with a deep knowledge of custom and process — retire and are replaced by younger untrained and experienced ones. In 2015 a similar seminar was conducted with younger male and female magistrates to get their perspectives. The latter is a work in progress. The material presented here is largely from the seminars with older magistrates, though some

opinions of younger ones will be mentioned briefly at the end of this paper. The goal of this paper is to present an insider's view regarding the challenges faced by those who work day after day on the ground with the sky above and the mud below, trying to maintain justice, peace and harmony by adapting custom to a changing world.

Village courts and legal pluralism in Enga

Enga has roughly 500,000 residents. Approximately 85 per cent are Enga, 8 per cent Ipili and the remaining 7 per cent Hewa, Huli, Duna, Nete, Katinga, Mandi, Wapi and Lembena (Wiessner 2016). All groups have village courts administered by the Enga Provincial Government with access to OMS courts in their respective districts. There are currently 153 village courts in Enga and 10 OMS courts. Village court cases within linguistic groups are conducted in their own languages and those between different groups in Melanesian Pidgin. Beliefs and customs differ substantially between the Enga and other linguistic groups in the province; there is also cultural variation between Enga's nine dialect groups. Most of the material presented here comes from Enga speakers.

Much has been written about legal pluralism in PNG. In the conclusion to his book *Legal Dissonance*, Larcom (2015:157–58) recommends that customary law should be the default for sanctioning wrongdoings, regardless of the gravity of the wrong. Customary law would be backed by referral to state sanctions for wrongs when preferable or more appropriate. This is more or less the *de facto* situation in Enga today where people have four options to settle disputes: *wari* courts, village courts, Operation Mekim Save and formal courts. *Wari* (worry) courts fall outside the state's legal system. One or two village court magistrates or other local leaders are paid equal, small sums of money to hear the dispute and mediate a settlement. Of 100 cases noted in Par and Takawasa *wari* courts between 2011 and 2012, the most common complaints involved theft within a clan, defamation, property damage, domestic violence and adultery accusations. If the complaints are serious and the disagreement persists, they are brought to village courts, OMS or district courts.

In the customary law system people can take complaints to village courts or OMS. Village courts stay within their jurisdiction (Table 1) and are effective in solving a range of disputes and minor crimes. More serious complaints that the disputants do not want to take to formal courts are brought to OMS. OMS was established in 1982 by the provincial government with a grant of K10,000 to replace the Lutheran Church–sponsored program *Yanda daa* ('no to fighting') (Young 2004:171). Its mandate was to prevent or settle tribal fights after the previous pre-independence efforts of the Intergroup Fighting Act of 1977 and the subsequent state of emergency failed (Gordon and Meggitt 1985). In the 1980s, OMS combined judicial arbitration with punitive police action that frequently exacerbated conflicts; in the 1990s, magistrates turned to less forceful means: preventive orders and mediation or arbitration.

For tribal fighting, a panel of five or more experienced OMS magistrates hears the case, usually several times, until the warring parties agree on a settlement regarding the sum that both parties must pay. They then issue a settlement order. For serious crimes outside of tribal fighting, OMS magistrates inform both parties that the wrongdoing is beyond their jurisdiction and should be taken to formal courts. If the parties refuse, an OMS panel from the district hears the case, mediates and negotiates until both parties reach an agreement. During mediation, frustration and anger are vented; tempers gradually cool to the point where reconciliation is possible. Compensation agreements are recorded. The actual payment of compensation is voluntary; OMS neither follows up to ensure whether the agreements are upheld nor do they enforce them. The number of cases brought back to OMS for non-compliance is very small (Table 1), indicating that both parties are willing to uphold their agreements. Sometimes more compensation than that agreed upon is given to please the aggrieved party and strengthen social relations.

The fourth option in Enga is the formal justice system, which has district courts in all districts and a national court in the provincial capital of Wabag. A wide range of cases are brought to district courts and successfully settled. However, OMS is often preferred over district or national courts to resolve serious wrongs for several reasons (Table 2). All cases of tribal fighting are brought to OMS for mediation and compensation agreements to restore peace; OMS is the only branch of the justice system that deals with tribal fighting. Outside of tribal fighting, people bring serious cases to OMS because they desire compensation negotiated in a public forum to repair and strengthen

Table 1. Complaints brought to village courts (VC) and Operation Mekim Save (OMS) in 2014–16

Complaint	VC	%	OMS	%
Adjudicated				
Land issues	33	19	29	15
Marriage/adultery/domestic violence/divorce	75	44	39	20
Theft, personal property, debt	36	22	18	9
Assault with injury	16	9	20	10
Defamation	7	4	3	3
Non-compliance with court or compensation			4	2
Traditional obligations (funerary, childcare)			6	3
Compensation agreement between parties negotiated in public forum				
Tribal fights			24	12
Murder			22	11
Rape/child molestation	4	2	3	2
AIDS accusations			5	2
Arson			1	1
Sanguma (sorcery)			4	2
Traffic accidents			12	6
Miscellaneous			5	2
Total	**171**	**100**	**195**	**100**

This table includes data from Takawasa, Par and Sari village courts and Wabag OMS for cases observed and noted by Nitze Pupu, Larsen Kyalae or Pesone Munini but does not include all cases brought to courts during this period.

The cases of rape/child molestation brought to village courts turned out to be unfounded, else they would have been referred to OMS or the district court.

social ties between groups. Through OMS arbitration, offenders and their kin are given a chance to accept liability, pay compensation, restore their reputations and heal communities. Many complaints are also brought to OMS because the strict rules of evidence in formal courts cannot be met given that witnesses are often afraid to testify in formal courts and few police personnel are trained or have the resources and cooperation from communities to collect sufficient evidence. Lawyers are expensive. Finally, some people who are dissatisfied with village and district court decisions refer their cases to OMS. The category 'other' includes cases of domestic violence or divorce where women feel that they are not receiving due respect for their complaints in their local village courts.

Today, some clans are willing to turn heinous or repeat offenders over to the police to take them out of circulation and put an immediate stop to the violence. If the district court orders a jail sentence, compensation might also be mediated through OMS to satisfy communities that justice has been served. The former constitutes punishment and the latter healing, and thus, the two approaches in the plural justice system are sometimes combined.

Frequency of Disputes in Enga

Table 1 presents the frequency of complaints brought to three village courts in the Wabag and Ambum districts and to Wabag OMS in 2014–16. Land and marriage cases were frequently brought to both village courts and OMS. They were extremely important for Enga society because inheritance of land builds and perpetuates communities, and marriages forge social and economic ties outside the clan, weaving the fabric of Enga society. When asked about cases other than land and marriage in terms of difficulty, magistrates mentioned tribal fighting with guns, wanton brutal murders and mutilation of corpses, sorcery accusations, HIV/AIDS accusations, traffic accidents and bribery. Alcohol and drug use and election-related conflicts were mentioned as factors that exacerbate tension.

The small number of cases regarding disrupting court or lack of compliance with court-negotiated compensation settlements indicates that magistrates and their decisions are respected and upheld. Although fines up to K1000 and recommendations for prison sentences of up to six months can be ordered by village courts, there were only a very few cases of offenders being fined for disruption of court or aggressing the magistrates. In no cases were sentences recommended. Below we will take a look at the complaints one by one.

Land

Much has been written on land issues in PNG and in Enga (Allen and Giddings 1982; Allen and Monson 2014; Filer 2006; Goddard 2009; Gordon and Meggitt 1985; Injia 2011; Lea and Curtin 2011; Scaglion 1983; Weiner and Glaskin 2007; Zorn 1992). In 1952, the Native Land Titles Commission was established to systematically determine land boundaries, record land ownership and convert communal land to individual titles. This never came to be because villagers preferred traditional methods of handling land matters, due to the long waits and the bribery of interpreters (Allen and Giddings 1982; Gordon and Meggitt 1985). The Land Disputes Settlement Act of 1975 attempted to return the settlement of land disputes to the people themselves. State-sanctioned land mediators were appointed who were supposed to have a detailed knowledge of traditional land tenure systems. There were several routes through which a land dispute could be brought before a land mediator, for instance, via registration of a complaint at the District Office. If mediation was unsuccessful, the dispute was forwarded to the local land court that was supposed to arbitrate, emphasising mediation, compromise and community consensus, even though the courts often took adversarial and adjudicative approaches. Land courts were suspended in the early 1980s in Enga because of the murder of land court magistrates in the Lai Valley (Allen and Giddings 1982).

Today, land disputes are threatening the fabric of Enga society because the population is growing rapidly and individualism is on the rise. Families with large land holdings and few children are no longer as willing to give land to close relatives who are short of land; some seek to reclaim parcels of land given or loaned away many years ago. Most disputes are not between clans but between brothers, cousins and other close relatives within clans or sub-clans. Unless decisions acceptable to community are reached, such disputes will decrease cohesion of social units that worked together in the past.

In 2012, a decision at the national level stipulated that land issues should be returned to village courts, because elders who know the history of land tenure and land settlements should be accepted by communities in public court hearings. This was a timely decision

Table 2. Reasons given for bringing cases to Operation Mekim Save in 2010–11 and 2015–16

Reason	2010–11		2015–16	
	N	%	N	%
Transgressions/wrongs threatening tribal war	34	19	16	10
Settlement from former war	19	11	9	6
Compensation desired for injury or loss	36	20	30	19
Broader community support and forum desired	8	5	8	5
Preserve inter-group ties	5	3	13	8
Many parties involved	8	4	7	5
No strict rules of evidence nor lawyers required	8	5	19	12
Not satisfied with *wari,* court or VC	24	13	25	16
Not satisfied with police, DC or NC	8	5	5	4
Urban resident	8	4	9	6
Reason unclear	20	11	14	9
Total	178	100	155	100

These reasons were recorded by Nitze Pupu in the Wabag OMS.

The decrease in tribal fighting cases between 2011–12 and 2015–16 from 30 to 16 per cent is a result of the decline in tribal fighting in Enga Province.

made before these elders pass away. Village courts were immediately informed of the new ruling. The magistrates in the OMS 2105 and 2016 seminars recommended that land should not be formally registered with title at this point in time, for fear of reigniting the vicious wars of the last decades. However, they suggested that a simple system be set up to record settlements that are acceptable to both parties and sanctioned by community when they are made.

For land disputes to be successfully settled, there are two areas for which some rules or guidelines are warranted: the redistribution of land between families within the sub-clan or clan and the sale of land. Many are reclaiming land on which others have been allowed to settle, even if they no longer reside in Enga. Most land settlements have either: (1) put a freeze on disputed plots of land (largely OMS), or (2) returned the land to the 'original owner' that was given or loaned to the defendant at an earlier date with minimal compensation for improvements.

> Many of us senior magistrates had training to hear land disputes. According to custom, a man settled in the village of his father and was given land by his father or close relatives in his sub-clan. Another might settle in the village of his mother. In both cases if this man had settled on a plot of land he was given and made improvements, for example, a house, gardens or a business, we were trained to leave him and issue an order to protect his rights to his land. It is not fair and just to order such a person to leave his land. In the past such a man was left to remain on his land. Today young magistrates, who have not been trained, make decisions contrary to the opinion supported by our training. An outsider comes, perhaps from a city, and claims he was the original owner. The young magistrates, who have not been trained, issue an order in favour of the person who claims to be the original owner. I think such decisions are immature and lack foresight. Such decisions enable disputes to continue endlessly. To release frustration, the parties resort to violence. (Wabatau Nakau, Chairman of Pilikambi OMS, 2016)

> Some young magistrates decided to give a restraining order to someone already living on land for a considerable amount of time. Improvements had been made. I told them restraining orders can be obtained only if the disputed land was just beginning to be developed by either of the parties or was still bush. It would be irrational to obtain a restraining order against someone who occupied the land and was totally dependent on that plot for daily living. (Poko Lilya, Chairman of Ambum OMS, 2016)

All the magistrates in the seminars felt that the amount of compensation permitted for village courts orders, K1000, is insufficient to justly resolve some land disputes. For example, families need far more than K1000 to cover the expenses of vacating the land that they reside on, moving and starting anew. The amounts awarded for vacating land and for improvements need to be revised.

A second critical problem is the sale of land. In the past when land was plentiful, parcels were owned by individual families and passed on according to needs within the sub-clan or the clan, usually to close relatives. The clan owned the land in the sense that the entire clan defended clan land, which could not be transferred to outsiders unless they became clan members through marriage or maternal ties. Today, what needs to be clarified is the question of whether individuals have the right to sell land to outsiders without the community's agreement when they have no official title. If rules are not established for the sale of land, clan holdings might become greatly reduced and some members might end up landless. Sale of land is creating confusion:

> There is a recent case which is still pending. A landowner sold a plot of land for K200. The first buyer had been living there for some time when the landowner sold the same land to another for K500. The parties in this case are the first and second buyers. When the issue of who should be declared the rightful owner was brought to OMS, the older and younger magistrates had differing views. Those of us who had gone through training to hear such disputes felt that the first buyer should be the right person to be allowed to occupy the land for the sake of justice. Younger magistrates had opposing views and felt that second buyer who paid more should be allowed to occupy the land. The case has been in a stalemate for almost three months. (Katato Lilyo, Chairman of Wapenamanda OMS, 2015)

Marriage

Of all the social change that has occurred in Enga over the past three decades, perhaps the greatest has been in marriage practices. Formerly, young men attended *sangai* or *sandalu* bachelors' ceremonies until they were considered mature. Courtship parties were held, and parents arranged marriages with spouses in other clans, preferably with the approval of the young man and woman. Bride wealth was exchanged to create lifelong ties between the two families and their respective clans (Meggitt 1965a; Wiessner 2016). In most cases, male children inherited land from their fathers, unless the family joined the mother's or wife's clan. Depending on the number of children born and the marital situation, all or part of the bride wealth was returned upon divorce.

Marriage problems abound today. They are the number one source of disputes brought to village courts, leaving many children to grow up in broken homes and exposed to domestic violence. In our studies, they make up 44 per cent of village court cases and 20 per cent of OMS cases (Table 1). These cases include adultery on the part of men and women (incidences being about equal), unpaid bride wealth, second wives, domestic violence, informal sexual unions, divorce, desertion and failure to support the family. Here are the opinions of two magistrates regarding domestic issues:

> In the past women were respected as mothers and keepers of the house. For the most part, a woman was treated as a labourer whose task was to promote the status and prestige of her husband. Today the national constitution and other international charters enforce and recognise the rights of women. Women are beginning to enjoy liberties and rights that they did not have in the past. However, some women are also troublesome in a family. Girls are no longer subject to parental approval and control. They enjoy too much freedom. They seduce and entice married men. In the past it was usually a man who courted girl and even took a second wife. Today girls may feel free to entice married men with the use of mobile phones. The same is true for men. Such attitudes were not kept in the past. (Maso Moses Pyate, Laiagam, Village Court Officer, 2015)

> In relation to marriage, families of a couple exchanged food before marriage and made frequent visits to each other. Marriage was finalised by killing pigs. Everyone in the communities of the couple accepted them as a married couple and treated them accordingly. Today both the educated and uneducated engage in premarital sex. This is something that was strictly forbidden in the past. The effect of such unions is that no one really recognises them as marriages. Therefore, a man or a woman who is not properly married is subject to enticement by another person outside of their informal union. The end result is that today marriages are unstable. In dissolving marriage, we have the jurisdiction to order K1000 and not go beyond that. In many cases the complainant is not satisfied with the K1000. Marriage must be defined in some way. What constitutes a marriage? Does sexual union alone constitute a marriage or must there be something more to it than just a sexual union? Magistrates should be directed by a definition of marriage and the amount paid in bride wealth registered in terms of pigs and money to provide a basis to make equitable decisions in the event of divorce. (Wambato, Chairman of Pilikambi OMS, 2015)

The OMS magistrates identified three kinds of marriages brought to village courts: (1) customary marriage with the payment of bride wealth; (2) 'money marriage' in which the girl is attracted to a sexual union by money; and (3) sexual union at first encounter. In addition, there are, of course, church and statutory (state) marriages where complaints justifying divorce are usually brought to churches or district courts. Studies carried out by Wiessner in 2008 of 476 marriages in the Wabag area indicated that bride wealth was paid in only 40 per cent of marriages between 1988 and 2008, although in many cases it was promised to be paid in the future (Wiessner 2012). The rest were unions that began when a couple started living together. In contrast, bride wealth was paid to seal some 95 per cent of marriages in the 1960s in the Wabag area (Meggitt 1965a).

Divorce rates in the greater Wabag area increased from 7 per cent in the 1960s (Meggitt 1965a) to approximately 25 per cent in the 2000s; they are still rising. Many disputes are difficult to resolve when

customary bride wealth exchanges, the church or the state does not formalise marriage. How should divorce be settled when there is no bride wealth to be repaid? Who has the rights to the children in such marriages? How should compensation be distributed for severe injury or loss of life: to partners or parents? If a man who is engaged in an informal marriage has an affair with another woman, is it adultery? Older and younger magistrates have different views on these matters, which further complicate settlements.

The OMS magistrates felt that customary marriages should be registered in village courts and that a basic minimum amount of bride wealth affordable to most men should be set to define the union. This would also make men responsible for child support, as today many mothers are left alone to care for their children. Male children would still inherit from their fathers, but if the fathers are unidentified or absent, male children should inherit land from their mothers, a ruling that is now common practice.

Adultery accusations are many and initiated by women and by men with equal frequency. Men who have money attract many lovers including schoolgirls. Some young women marry older men with money and use that money to attract young lovers. Adultery is judged by double standards. If a woman has an extramarital affair, it is considered adultery, whereas if a man does the same, he can claim that he is marrying a second wife. Though both law and tradition require that a man must seek permission from his first wife to marry a second wife, it rarely happens. The magistrates suggested that procedures be put in place such that a woman must consent to a polygamous marriage in the presence of witnesses. Thereafter, she must be compensated accordingly, or, if she does not consent, granted a divorce. Most of the magistrates felt that polygamy should be discouraged, except when the first wife is barren.

Rates of domestic violence are brutally high, and penalties permitted for domestic violence are far too low to allow abused women to take refuge, set up their own households and recover from bodily injury. Thirty-five out of the 75 (47%) marital cases in village courts mentioned in Table 1 involved severe domestic violence. This can be attributed in part to the breakdown of marriage and bride wealth payments. The primary reason for paying bride wealth was to forge lifelong relations between the two families; if a woman left her husband because of severe domestic violence, the bride wealth was not returned. Today, some young magistrates are awarding more than the permitted K1000 for adultery or domestic violence; for example, K1000 and five pigs to deter such behaviours. It is high time to raise the compensation allowed for certain offences such as adultery, severe domestic violence and child sexual abuse if villagers are unwilling to bring them to district or national courts. The K1000 limit was established in the 1970s when K1000 was a large sum of money, unlike today.

Women's voices, an issue of concern (Garap 2000; Goddard 2004), were heard in the village courts studied. The data from Par and Takawasa village courts from 2008 and 2014–15 indicate that now women are using village courts to seek justice with the same frequency as men. For example, in 2008, women lodged 40 out of 109 complaints (37%) in the two courts, while men lodged 69 (63%). In 2014–15, after the appointment of female magistrates, women lodged 84 (49%) out of 171 complainants, while men lodged 87 (51%). This might be attributable in part to the recruitment of female magistrates — a development that most magistrates thought should be the rule for all village courts (and indeed is the case for most). There is little evidence in our study of discrimination against women; if anything, men who are abusive or sexually promiscuous are regarded with scorn.

Tribal fighting and indiscriminate murders

Traditional warfare fought with bows, arrows and spears was in the hands of community leaders. Upon insult, injury or infringement, clan meetings including all male members were held and decisions made as to whether to go to war or demand compensation. Many wars were short, lasting only a few days to a couple weeks until peace was negotiated, and compensation paid. Of course, fighting in some wars was more destructive (Meggitt 1977). Wars were rule-bound and steered by clan leaders (Wiessner 2010; Wiessner and Tumu 1998): one could not kill on the land of another, mercenaries were not hired, women and children fled to other clans and were not targets of violence, corpses were not mutilated and refugees could not be killed in clans of refuge. After 1990 with the adoption of guns into warfare, most traditional rules governing war were corroded when gangs of young men with high-powered weapons and mercenaries took control.

Since approximately 2010, there has been a decline in warfare that is attributable to several factors: war

weariness on the part of the general public and a realisation of its futility, the skill of OMS magistrates who can be informed immediately about trouble spots via mobile phones, and the efforts of churches (Wiessner and Pupu 2012). Police have played a greater role in stopping tribal fights in the last few years, particularly around towns. Today, many conflicts that break out are solved within days, however, serious wars still occur, largely in three contexts: The first is in remote areas where services are poor. The second is in the context of national politics; for example, the recent election-related wars in Kandep left over 100 dead and infrastructure destroyed; the 2017 post-election war outside of Wabag shut down the provincial government for four to six weeks, causing deaths and destruction. The third is 'guerrilla warfare' fought by mercenaries and eager young warriors who locate enemy with mobile phones and conduct surgical strikes to fight out their own vendettas. Of the 24 cases related to tribal fighting presented in Table 1, 12 were compensation settlements for wars that had taken place in the last two decades, six were conflicts that were settled in a matter of days, and the remaining five, wars for which peace negotiations are in progress.

Given the breakdown of traditional rules governing warfare, OMS has made some decisions to discourage mercenaries by considering them to be individually responsible for compensating the families and clans of the men whom they kill, rather than making those who hire them liable. OMS also refuses to give orders to compensate allies to reduce outside participation in wars.

With a decline in tribal fighting, wanton murders appear to be increasing. Payback killings are taking place on the land of others, in places of refuge, on public land and in cities.

> Unlike in the past, tribal fighting has taken on new dimensions. Instead of using traditional weapons, warriors are in possession of high-powered firearms. Mercenaries are now hired to go and fight for them. The indiscriminate killing and destruction of property under their reign is shocking. The number of deaths has increased. Sometimes deaths would include women and children. The police come to us for help and we write out preventive orders to put the situation under control. In spite of the court orders, communities keep on fighting. Such wars can even take months to stop.
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> Instead of fighting within the limits of clan land, hired men with their support convoys go and attack their enemies in villages where they have fled as refugees. This was forbidden by war rules in the past. For example, when the fighting was on between the Sakatewan sub-clans at Sopas, hired men came down all the way down to Majop and shot their enemy. Innocent people were wounded, and a girl died instantly. In the past, when an enemy was killed, his body was left alone be taken away for burial by his clansmen. Today his head, hands and legs are cut off. His face is disfigured. His corpse is taken away and burned into ashes inside his house. Such things are against the principles of humanity governed by the war rules of the past. (Leo Lemalu, Chairman of Wabag OMS, 2015)

With mobile phones there is nowhere to hide. For example, in October 2016, a man from the upper Ambum was chopped to death in Wabag at the spot where OMS cases are currently held. The news spread via mobile phones and within hours the unsuspecting murderer's brother was brutally murdered in Lae as payback. Such actions cause anxiety in the entire Enga population.

After extensive discussion about what might be done to discourage such wilful and indiscriminate murders, the magistrates agreed that the only serious deterrent would be to encourage people to turn the murderers over to the police if imprisonment and compensation can be combined. Many murders are brought to OMS because most Enga reject the concept of murder or rape as crimes against the state punishable by imprisonment only. They are, in fact, crimes against the family; public forums and compensation are desired to make up for the losses and to heal relations. Moreover, many prisoners escape from jail and, thus, jail does not necessarily take offenders out of circulation. Nonetheless, people are increasingly willing to turn over some dangerous repeated offenders to the police because the current gruesome, wanton murders are a form of terrorism.

Even though settling tribal fights is no easy task, older magistrates have acquired great competence from traditional knowledge and experience. Younger magistrates who lack knowledge of traditional forms

of communication and custom have exacerbated some conflicts.

> Here at the Wabag OMS I have actually seen two typical cases of young magistrates making court decisions that had a negative impact. I will not mention their names. I was not in the panel presiding over the case but saw the first incident with my own eyes. There were two clans involved in a conflict. The group of complainants was heading this way towards the town chanting '*Saa ipii, saa ipii*',[2] as the group was in a cheerful, boisterous mood. The group of defendants heard the chanting group and suspected it was meant to offend them. They blocked the road and attacked the chanting group. Many were seriously injured.
>
> Similar chants are recited when a group is in good spirits. For example, '*Saa supaa Saa supaa*' is recited during a compensation ceremony. The reciting in and of itself was not intended to offend and did not harm anyone. However, the panel of young magistrates decided that the complainant group intended to offend and ruled against them accordingly. I wondered on what grounds they decided that.
>
> It was revealed that they decided on the grounds that the complainant group was chanting '*Saa ipii*'. After the decision was made, the unsatisfied mob from the complainant group chased the Chairman of the panel, throwing rocks and pieces of debris at him. It was most undignified and embarrassing to OMS. The Law and Order Advisor heard of the event and called some of us to his office and to give an account. The magistrates on the panel were present. I said they deserved the response. They made a bad decision. There was no evidence to justify the attack on the chanting group. These magistrates did not know the custom. It was not targeted at the defendant group. It was not in any way provocative. (Anton Yongapen, Wabag OMS, 2016)

Older magistrates recommended that new magistrates be trained in traditional conventions of communication including chanting, songs and symbolic language used in Enga public forums. They must be advised to consult elders when uncertain instead of making their own interpretations, and realise that not all speech can be taken at face value.

In addition to communication, many customs are poorly understood by young magistrates, leading to decisions that can escalate conflicts. One example is the convention of a clan being responsible for keeping trouble off of its land, an important tradition that enlisted all clan members to be observant. If blood is spilled on clan land, then the clan is responsible for paying compensation to cleanse their land. However, with changing circumstances, magistrates must evaluate if the clan could have been responsible, as in the following case, when a warring party with firearms enters a clan's land unexpectedly in pursuit of enemy. Under these circumstances, there is little that the clan can do to prevent a murder. Therefore, the clan should not be held liable as it was in the decision of younger magistrates for the following case.

> According to custom, it is said if a clan was a custodian of a bridge over a river and a traveller slipped because the bridge was in poor condition, fell into the river and drowned, the clan would be held responsible for failing to maintain the bridge for the public. If a person was murdered on another clan's soil, the presumption was that the victim was murdered through secret conspiracy with kin. Unless the presumption was rebutted beyond any shadow of doubt, the clan (together with the murderers) was deemed to be liable.
>
> In this case from the Laiagam area the two clans were involved in an armed conflict. One clan advanced in its attack and pursued its enemies in to the village of another community. The victim was killed in this village. The fighting stopped, and the matter was brought up with OMS. The complainant clan argued that its clansman was killed in the village of the defendant, and therefore the defendant clan was liable for the death of the victim according to custom. The defendant clan in presenting its case argued that the victim was the target of his enemies who were in hot pursuit armed with guns. There was no time for anyone in their clan to conspire with his enemies during this hot pursuit to kill the victim. The panel deliberating on the matter failed to consider this point made by the speaker of the defendant clan.
>
> The verdict was handed down in favour of the complainant. The defendant clan was not satisfied with the court order. They said there was no reason to for them to pay compensation.

> Therefore, they had to start a war with the complainant clan to have a good reason to honour the court order and pay compensation. So angered were they by the decision that they did just that. The defendant clan attacked the village of the complainant clan and destroyed gardens and burned down houses. This violence was the result of bad decision and misunderstanding of custom. There was no evidence to prove the defendant clan at one time plotted to kill the victim. There was no time to conspire over the murder of the victim. His enemies were on his heels pursuing him with firearms. Nobody in the village where he was shot and killed was part of the plot. (Anton Yongapen, Wabag OMS, 2016)

Although the lack of clan responsibility is clear in the above case, if there is no proof of any specific person's direct involvement, then the question arises whether the clan should be held responsible for troubles that occur on their land. The traditional law of clan responsibility is an important one because clan members discourage their clan brothers from causing problems, prevent outsiders from causing trouble on their land and encourage clan members to keep up their facilities. Many eyes and ears were called on to prevent trouble.

> According to custom if a man was killed on another clan's soil, the clan was required to clean its soil from the spill of blood with compensation. Today younger magistrates argue that this should not be required, if there is no evidence to prove a person from that clan was the actual offender. This is an extreme view overriding the customary rule. It has now become an issue between the old trained and the young untrained magistrates. If a person drowned from a faulty bridge, it was deemed that the custodian clan should be liable for death of the person because it failed to maintain the bridge. The young magistrates on the panel argue there was no proof any particular person was directly involved with his or her drowning and therefore the clan should not be liable. This is an issue we face in village courts. (Paul Punaso, Pilikambi OMS, 2016)

Magistrates sought guidelines for decisions regarding this customary rule, though it is also a case where understanding context is crucial.

A third issue with some young magistrates for inter-clan conflicts is their failure to engage in the respectful listening to the positions of both sides and to recognise that in any conflict both parties have some responsibility for the trouble.

> At Kandep there was an exercise by the government of distributing rice bags to each family in the villages. Leaders and others of some standing in the communities had a meeting as to how to go about with the distribution. A young man wanted to participate in the distribution and was desperate to find out if his name was included on the list. Someone by the door pushed him out, and as a result he received a broken rib. The boy did not attack the offender but went his village and shot the offender's younger brother. A friend who came to the younger brother's aid was also killed.
>
> A war broke out between the clans of the victims and the offender. The matter was brought under control and brought to the OMS at Kandep. Before hearing the case, some young magistrates argued the older magistrates should be excluded from the panel that was about to hear the case. I was deliberately excluded from the panel. The matter was heard and a decision handed down. Later the relatives and sympathisers of the victim shot another in revenge. Then the war broke out again between the clans of the victims and the offender. It probably resulted from a court order made after failing to consider the circumstances surrounding the situation that led to the armed conflict. It was highly probable some magistrates in the panel were bribed or had vested interests. In view of such instances like this one there is a need to train the young magistrates to think and deliberate without bias and favouritism. (Yakine Katapae, Chairman of Kandep OMS, 2016)

Sorcery (sanguma)[3]

Traditionally Enga had few sorcery beliefs, unlike most cultures in PNG, although Enga knew some sorcery beliefs of neighbours in fringe areas (Meggitt 1965b). Enga held beliefs about *yama*, harm that could result from jealousy over food sharing. *Yama* could be countered by magic spells or by ritual specialists who identified the jealous person by divination and magically summoned him or her to the house where the suspect was given food to alleviate jealous feelings (Wiessner 2016). Everybody could transmit *yama*; no

punishment was inflicted for doing so because *yama* was unintentional and there was no sound evidence concerning who was responsible.

Sanguma beliefs are new and said to come from other parts of the country or via the internet. Often, but not always, women are believed to acquire them accidently while procuring magic to prevent their husbands from being unfaithful. *Sanguma* accusations frequently occur when wealthy men with several wives die suddenly in middle age from lifestyle diseases such as obesity, diabetes and heart conditions.

> *Sanguma* is widely believed to be imported from outside of the province, brought in to the province by a co-wife, a young girl or a wife to repel a husband from seeking other women. The people and we in the village courts are perplexed and confused as to how it affects a victim. It is believed the *sanguma*, usually a woman, is accused of eating human hearts. I had heard of two cases where two women of the Komban tribe were killed for practising '*sanguma*'. The victim's relatives brought the matter to OMS and OMS heard the case. OMS asked the defendants to provide evidence to prove that the accused women ate the man's heart. In both of these cases there was no hard evidence to prove the two accused women, who became victims, ate his heart. It was only a story of such and such a thing happened, the man died and therefore she must have eaten the victim's heart. OMS asked the defendants to bring their eyewitnesses to testify as to whether the two women in fact ate his heart. No witness turned up in court. OMS ordered K20,000 and 80 pigs to be paid to the victim's relatives. Nobody has actually seen a *sanguma*. Whether it is a tangible object or a belief nobody can be sure. Some of us believe the phenomenon is true but OMS is not able to prove the alleged wrongdoings. (Leo Lemalu, Chairman of Wabag OMS, 2015)

Sanguma accusations are extremely difficult for village courts to handle because such accusations lack evidence and can incite great injustices: ostracism, torture or murder of the accused. The OMS magistrates, like most Enga, feared that *sanguma* might be a real force but do not treat it with leniency in court cases because of a lack of evidence. For mild accusations, compensation for defamation of character is ordered; torture and/or killing of accused *sanguma* persons is regarded as severe bodily injury, attempted murder or wilful murder. There is some evidence that heavy compensation payments negotiated by OMS might have an impact if the woman survives and can bring the case to court.

> This is a story of a woman who was brutally tortured to the point of death. A man was travelling on a road drinking coca-cola. He arrived at a point where a woman was beside the road. She asked the man for the drink. He told her he had finished the drink. He went home where he began to feel sick. Some of his relatives and tribesmen came to see him in his sick bed. He told them what happened on the road and suspected it was the woman who stood curiously and begged for the drink. It was her doing. The man died and all his mourners believed it was the fault of the woman. Four men took the woman and began to ask her what she did to the victim. Being overwhelmed by fear, sorrow and grief they took her with hands and feet bound by ropes. They used an iron rod, a bush knife and piece of a broken motor vehicle spring to torture her. The woman was rushed to hospital in an ambulance. I saw for myself when she was rushed into an ambulance. She recovered and returned home. Then she summoned the four men who tortured her to OMS. The grounds for instituting the action was that the men had no evidence to prove that she ate his heart. They could have at least taken her to the police to find out what exactly had happened. They had no right to inflict bodily injuries upon her.
>
> OMS took the matter and heard the case. Medical evidence was furnished in court and there was evidence of the brutal torture. OMS heard the case and handed down the negotiated settlement. The settlement was for each defendant to pay 60 pigs and K1000 to the clan of the tortured victim and for the defendant clan to pay 70 pigs and K2000 to the relatives and clansmen of the deceased man. There was a big crowd when the verdict was handed down. OMS made it clear that every citizen had the right to protection of

the law. The police were not involved in the case. This incident happened in the year 2013. People in the neighbouring communities heard of the court order and are now feeling the impact of it.

The second incident took place at Yapum where the Catholic Mission is, in 2015. The woman accused of *sanguma* is of the Kamani tribe and the man alleged to have been the victim of *sanguma* was of the Tupi and Poteani clans. They tortured the woman. These clans had informed us that they would do the compensation anyhow without a court case. The reason was that they knew already what would be the outcome of the OMS decision. There is no relevant custom to apply in such cases. Nonetheless OMS has done what was best to bring peace and order into the communities affected. We need to have some training in this regard instead of leaving decisions to the whims of young magistrates. So far there has been no complaint of *sanguma* since the court order. More of such incidents may have occurred, but if so, they have not been brought to OMS to be heard as of yet except for the two mentioned. (Yakine Katapae, Kandep OMS, 2016).

There are a few noteworthy points in the first deplorable case above, which occurred in a remote area. First, the woman who was tortured in the incident was brave enough to summon the four men to OMS, indicating trust in customary courts. It is a matter of concern that the police were not involved; authorities must have been aware of the atrocity since an ambulance took the woman to the health centre. Having no precedent for such cases, OMS told the parties that it did not have jurisdiction over *sanguma* cases and mediated a settlement between the clans involving 60 pigs and K1000 from each of the four men. They also mediated the settlement for the defendant clan to compensate the death of the man who was believed to have died from sorcery. This was one of the harshest settlements negotiated by OMS and appears to have had some effect on reducing torture of *sanguma* suspects in the area. The second incident in 2015 indicates the depth of beliefs in *sanguma* on the part of some clan members, even though such beliefs have only recently come to the Enga. When emotions of fear and hysteria were in command, people were willing to go ahead and torture the accused at any cost in order to protect their community.

The repeal of the Sorcery Act of 1971 in 2013 had little impact on the Enga because it was rarely, if ever, applied, owing to the former lack of *sanguma* beliefs and cases. Enga magistrates became aware of how seriously recent *sanguma* atrocities are being taken by the PNG government when a conference on *sanguma* was held in the Enga Take Anda, Wabag, in 2017 and again in 2018 when Governor Ipatas announced in a speech at the beginning of the 2018 legal year that *sanguma* will no longer be tolerated. No precise directives were given about how to handle the cases, however.

Now, more than ever, OMS magistrates are in need of a special panel to which they can refer *sanguma* cases when people will not take them to formal courts. Decisions for victims are difficult ones. Many people incite *sanguma* hysteria so it can be difficult to provide evidence against the ringleaders. Arrest and imprisonment of fellow clan members can mean that the victim will never be able to go home and live comfortably again (Gibbs 2015); much of the meaning of life will be lost. A pluralist approach will be necessary, such as the one proposed by Forsyth (2015) that views the state criminal justice system including police as one of a number of systems to confront *sanguma.* Others include the efforts of churches to counter *sanguma* fears, reawaken Christian values and reintegrate the accused into community as they have in some cases in Enga (Gibbs 2015). Mediation for compensation payments negotiated by customary courts will be necessary to rebuild community relations through restorative justice. The efforts of educational institutions will be critical to make students aware that *sanguma* is not a part of Enga tradition, that such outmoded beliefs will hamper attainment of goals in the modern world, and that misuse of mobile phones and social media can spread dangerous rumours.

HIV/AIDS accusations

HIV/AIDS accusations are few but challenging for village courts or OMS because of lack of evidence. Most of the cases involve claims like: 'He said, she said…'. When there is no evidence, that is, when neither party has medical certificates, AIDS accusations are dismissed as defamation of character. When there is evidence of adultery, they are handled as adultery. Even when medical certificates are produced, it is difficult to know who infected whom, or whether the certificates were forged. Moreover, few OMS magistrates

understand HIV/AIDS transmission and testing and hence find it hard to interpret medical results; individuals cannot be forced to go for testing. As with sorcery, the magistrates recommended that a specialised team of OMS magistrates be trained to hear HIV/AIDS accusations.

Motor vehicle accidents

Motor vehicle accidents are not new to Enga but are more frequent with the increasing number of vehicles on the road. Relatives of victims in car crashes ask for large compensation payments, irrespective of whether the accident was the driver's fault, following the tradition that the one responsible for injury or death must compensate. In the future, vehicle owners and drivers will not have enough pigs and money to compensate victims of vehicle accidents; communities will no longer be willing to help. When cases are brought to OMS, the complainant(s) are told that motor vehicle accidents are outside the court's jurisdiction. If they want to pursue the case, they are asked to first determine whether the parties involved have contacted the insurance company and, if so, what is the status of the claim.

Questions continually arise regarding whether the insurance company alone should compensate the victim(s). However, if the vehicle was not registered, third party insured and/or the driver was recklessly drunk, what should happen then? Guidelines need to be set regarding: (1) whether the victims of vehicle accidents must be content with insurance payments; (2) whether they can collect compensation as well as insurance payments because of negligence on the owner and driver's part; and (3) what should happen if the vehicle is uninsured. When insurance payments are made, village courts could mediate complaints about inequitable distribution of funds received.

Favouritism, bias and bribery

In our work with village courts and OMS since 2005, magistrates and communities have not raised bribery as a concern until very recently, most likely because magistrates valued their reputations in their communities. The 2016 seminar was the first time that most of the magistrates were concerned, as bribery has become a common practice in PNG. Here is one example:

> The government paid the landowners about K100,000 for the establishment of some project. Two brothers fought over the payment of the money. The matter was brought to the village court. Four young magistrates were appointed to the village court in addition to three experienced ones. When the matter was on for hearing, I and other two older magistrates were of the view the money should be divided in half. However, the young magistrates were in favour of one of the brothers and decided he should get K60,000. Three of us older magistrates dissented, but the majority vote of the four younger magistrates ruled.
>
> The brother who received less appealed against the decision in the District Court. The DC magistrate asked what was the decision of the OMS. I said all three were in favour of the K50,000 for each of the brothers and four decided that one brother should get K60,000. The DC magistrate repealed the village court decision on the basis that the two sons, being of the same biological father, should divide the money in half. It was apparent the younger magistrates were bribed. Young magistrates who appeared questionable in character made this decision (Robert Nabato of Pilikambi OMS, 2016).

Many other cases may not involve clear bribery but simply lack of awareness on the part of magistrates regarding the impact of friendship, bias, or perhaps hopes for assistance from the favoured party in the future. OMS magistrates felt that young magistrates must be trained to reject any form of influence:

> Many of the older magistrates have gone through training by officials. We are reluctant to get anything from the parties or their supporters, for example money or even coca-cola. Justice must not only be done but be seen to be done. Bias and favouritism should not be allowed. As chairman that is what I believe. However, the younger magistrates are tempted to receive offers before hearing a case. The instances mentioned by Anton Yongapen could have been also instances where bribery was involved. If this attitude is not discouraged or even prevented, it will certainly affect village courts in a serious way. Really there is no limit to how much OMS may award in

terms of compensation. The younger magistrates therefore are vulnerable to the accepting bribes. The trend is becoming acute. For this reason, they require instruction, if the integrity of village courts is to be protected and maintained (Leo Lemalu, Chairman of Wabag OMS, 2015).

The magistrates said that sometimes bribery can be detected if the concerned magistrate is found to be at odds with the majority decision. If a magistrate disagrees for no good reason, he or she should be warned. If he or she is found to repeat the behaviour, the magistrate could be fined, jailed or lose his or her position. Of course, communities are watchful for bribery and can report incidents to officials for further investigation.

Salaries of village court magistrates have been raised in recent years but still fall below minimum wages for rural wage labourers. Salary levels are based on the assumption that magistrates only work two days a week; however, many actively settle disputes day in and day out. They are often required to travel some distances to reach trouble spots on time or to hear cases. Travel is at their own expense; hence their current salary is often consumed by travel costs. The magistrates attending the seminars requested the pay of a rural wage labourer, so that they could afford to continue their important work.

Summary and discussion

Citizens of PNG with a wide variety of cultural traditions and varying degrees of integration into the global economy choose different paths to justice; some use formal law courts, others use customary village courts and still others the recently introduced alternate dispute resolution (ADR). Even within village courts there is considerable variation in the style of court proceedings and how wrongdoings are dealt with (Goddard 2009). For example, in Goddard's study in Port Moresby, small fines were common and cases seemingly short compared to the two- to three-hour-long cases of Enga communities. Pari village court integrated Christian morality into its identity and decisions (Goddard 2009:122–23). Among the Enga, even though most magistrates were devout Christians, Christian morality was not frequently mentioned as justification for court decisions, though the recent emphasis on women's rights, gender equality and 'inhumanity' of certain actions was cited.

Most Enga choose village courts for disputes and wrongs that fall within their realm of jurisdiction and OMS for more serious problems between clans. Some cases are brought to district courts, but not the majority. ADR is increasingly being used for conflicts in business and religious institutions with considerable success (Kandakasi 2014). Without the efforts of OMS to provide mediated public forums to vent anger and work out agreements to settle tribal war and severe wrongdoings, there would be higher levels of violence among the Enga.

The magistrates were keenly aware of the importance of flexibility in village courts and felt that customary law should not be codified. Nonetheless, they felt that some points need to be defined and guidelines set given recent change. The first pertains to land rights and inheritance, land use and sale of land in the face of a rapidly growing population. Land disputes are most common between neighbours within clans and can cause rifts in communities. How should families be compensated if they were given use rights for a piece of land over a number of years, developed the land, and then were asked to vacate the land by the original owner? Should compensation be geared to length of occupation and developments? Should there be a time limit defining when the original owner can still reclaim land, for example, only if the land was given in the owner's lifetime? Do individuals have the right to sell land to buyers outside the clan without the consent of community if they have no formal title to land? How can sale of land can be conducted and recorded when individuals hold no title?

The second area in need of guidelines is marriage. A definition of marriage is needed to settle disputes about responsibilities towards family, identify adultery, negotiate divorce, and establish rights of wives in the case of polygamy. All these problems are at the root of the epidemic of domestic violence. Today, cases which have no precedents in custom and no concrete evidence or proof on which to make decisions arise: HIV/AIDS and sorcery accusations. Specially trained panels are needed to adjudicate such cases when villagers are unwilling to bring them to formal courts. These problems need to be addressed on several levels — the state and police, churches, customary courts and in schools — if there is to be peace and harmony in communities. Vehicle accidents causing damages also warrant guidelines as they lead to claims that have no roots in custom.

The maximum limit for compensation was raised as another issue which merits attention. The limit set for village courts in the 1970s, K1000, has not been changed despite inflation and increasing participation in the cash economy. For cases falling within the jurisdiction of village courts such as adultery, domestic violence and child abuse this limit is far too low. The same applies to compensation for land loaned, developed by the resident, and later reclaimed by the original owner. With higher limits, village courts can adjust the size of compensation orders according to the financial capacities of the parties involved.

All magistrates in the seminars expressed a need for training — a series of courses for new magistrates or a refresher course for the experienced. A key question which arose was: 'What should be the content of training?' Six points emerged from discussions with both young and old, male and female magistrates. The first was training in village court rules and procedures as stipulated in the Village Court Handbook. The second was instruction on the relation of customary courts to the formal court system. The third was training in the basic principles and values of customary law — a point of greater concern for younger magistrates whose cultural knowledge is more likely to be contested by the public. The fourth was education in the complex symbolic speech used in public gatherings. Although the mastery of such speech unfolds over a lifetime, with training younger magistrates would become aware of what they might not know and when to ask elders rather than taking statements at face value. The fifth was process — learning how some major disputes were settled in the past, perhaps in mock court sessions with emphasis on respectfully hearing the statements of both sides. The sixth was training to consider what constitutes undue influences in the village courts and the consequences of showing favouritism and accepting bribes. Highly respected magistrates in each district or sub-district could do all of the above trainings except for the first.

Another point, which came up in the seminars, a particular concern of young magistrates, was the fact that the general population must be familiar with the principles and values of customary law in these rapidly changing times. This is more problematic for young magistrates than older ones who themselves may not be clear about many points of custom. If the younger generation is not educated about custom, village courts could become 'market courts' based on bargaining with few guiding principles. In anticipation of this problem, the Enga Provincial Government approved a motion in 2014 that cultural education will be integrated into the curriculum of all Enga schools from K6–12. Polly Wiessner and colleagues prepared two books for the program. One is a reference book on Enga culture that includes the principles and values of custom evoked in village courts (Wiessner 2016), and the other a teachers' guide with assignments, which will send students out to explore aspects of their own culture (Wiessner et al. 2016). In exploring their culture, they will be asked to consider which customs and values are essential anchors for Enga society and which ones are outmoded and must be left behind, for example, certain attitudes towards women. The program was launched in 2016.

Concluding thoughts

Returning to the original question: how do village courts maintain justice in the face of changing customs and values? Hours of discussion and observation indicate that it is the process, rather than the rules, that makes customary courts succeed: respectful listening to both sides and to community; acceptance of liability; compensation as a means of making up for a wrong geared to financial capacities of the parties involved; re-establishing reputation; and allowing disputants to let go of their dispute and move forward. As Anton Yongapen of Wabag OMS put it:

> We have no law books. We must just use our heads and our hearts to apply custom to bring about justice. Justice must not only be done but be seen to be done by community, else our goal of peace and harmony will not be achieved.

However, to continue the success of customary courts, some definitions and guidelines must be set and limits on compensation ordered by village courts reconsidered. All magistrates need training concerning their position in the PNG legal system and young magistrates in the processes of mediation and the fundamental principles of Enga custom and discourse.

Most magistrates also felt that village courts and OMS should not only settle disputes and maintain peace, but also be forums for human development and

cultural transmission. During court cases, important traditional principles of Enga society should be pulled forward into the future. Communities together with village court magistrates should best work out how to address the problems introduced by rapidly changing times within the framework of the most valued Enga principles and traditions.

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Endnotes

1. Notes were taken for all the cases that occurred on observation days with no bias based on the type of dispute.
2. *Saa ipii, saa ipii* and *Saa supaa Saa supaa* are chants in the Enga language with no specific meaning, sung when people are in high spirits used to notify neighbouring clans that a compensation process is taking place.
3. Sorcery beliefs vary greatly throughout PNG. Here the term *sanguma* will be used for the recent beliefs that have entered Enga from other parts of the country.
4. There were some discussions in OMS in 2016 regarding medical autopsies to see whether the victim's heart had indeed been removed in order to provide evidence for *sanguma*. This indicates how literally imported-out of-context beliefs can be taken.

References

Allen, B. and R. Giddings 1982. Land Disputes and Violence in Enga. In B. Carrad, D. Lea and K. Talyaga (eds). *Enga: Foundations for Development*. Vol. 3. Armidale: University of New England, Department of Geography, 179–97.

Allen, M. and R. Monson 2014. Land Conflict in Papua New Guinea: The Role of Land Mediation. *Security Challenges* 10(2):1–14.

Braithwaite, J. 2003. The Fundamentals of Restorative Justice. In S. Dinnen (ed.). *A Kind of Mending: Restorative Justice in the Pacific Islands*. Canberra: Pandanus Books, 35–44.

Dinnen, S. 2003. Restorative Justice in the Pacific Islands: An Introduction. In Dinnen (ed.). *A Kind of Mending: Restorative Justice in the Pacific Islands*. Canberra: Pandanus Books, 1–34.

Filer, C. 2006. Custom, Law and Ideology in Papua New Guinea. *The Asia Pacific Journal of Anthropology* 7(1):65–84.

Forsyth, Miranda. 2015. A Pluralist Response to Sorcery in Colonial Papua New Guinea. In M. Forsyth and R. Eves (eds). *Talking It Through: Responses to Sorcery and Witchcraft Beliefs and Practices in Melanesia*. Canberra: ANU Press, 213–40.

Garap, S. 2000. Struggles of Women and Girls–Simbu Province, Papua New Guinea. In S. Dinnen and A. Ley (eds). *Reflections on Violence in Melanesia*. Canberra: Hawkins Press/Asian Pacific Press, 159–71.

Gibbs, F.P. 2015. Practical Church Interventions on Sorcery and Witchcraft Violence in the Papua New Guinea Highlands. In M. Forsyth and R. Eves (eds). *Talking It Through: Responses to Sorcery and Witchcraft Beliefs and Practices in Melanesia*. Canberra: ANU Press, 309–28.

Goddard, M., 2004. Women in Papua New Guinea's Village Courts. *SSGM Discussion Paper* 2004/3. Canberra: State, Society and Governance in Melanesia, ANU.

Goddard, M. 2009. *Substantial Justice: An Anthropology of Village Courts in Papua New Guinea*. New York: Berghahn Books.

Gordon, R.J. and M.J. Meggitt 1985. *Law and Order in the New Guinea Highlands: Encounters with Enga*. Hanover: University Press of New England.

Injia, S. 2011. The Underlying Law Act 2000. *Lawasia Journal* 2011:Article 1.

Kandakasi, A. 2014. ADR/Mediation as Nation Building. Paper presented at National Mediation Conference, Sydney, Australia, 10–13 September 2012.

Kamongmenan, M.H. 2018. Status of Customary Law within Papua New Guinea's Legal System. Owlcation.com.

Larcom, S. 2015. *Legal Dissonance: The Interaction of Law and Customary Law in Papua New Guinea*. New York: Berghahn Books.

Lea, D.A.M. and T. Curtin 2011. *Land Law and Economic Development in Papua New Guinea*. Newcastle upon Tyne, England: Cambridge Scholars Publishing.

Meggitt, M.J. 1965a. *The Lineage System of the Mae-Enga of New Guinea*. New York: Barnes & Noble.

Meggitt, M.J. 1965b. The Mae Enga of the Western Highlands. In P. Lawrence and M.J. Meggitt (eds). *Gods, Ghosts, and Men in Melanesia: Some Religions of Australian New Guinea and the New Hebrides*. Oxford: Oxford University Press, 105–31.

Meggitt, M.J. 1977. *Blood is Their Argument: Warfare among the Mae Enga Tribesmen of the New Guinea Highlands*. Palo Alto: McGraw-Hill.

Narokobi, B. 1977. Adoption of Western Law in Papua New Guinea. *Melanesian Law Journal* 5(1):52–69.

Scaglion, R. 1983. *Customary Law in Papua New Guinea: A Melanesian View*. Law Reform Commission of Papua New Guinea Monograph no. 2. Port Moresby: Law Reform Commission of Papua New Guinea.

Strathern, M. 1972. *Official and Unofficial Courts*. New Guinea Research Bulletin no. 47. Port Moresby: New Guinea Research Unit.

Weiner, J.F. and K. Glaskin (eds) 2007. *Customary Land Tenure and Registration in Australia and Papua New Guinea: Anthropological Perspectives*. Asia–Pacific Environment Monograph 3. Canberra: ANU Press.

Wiessner, P. 2012. Alienating the Inalienable: Marriage and Money in a Big Man Society. In L. Dousset and S. Tcherkézoff (eds). *The Scope of Anthropology: Maurice Godelier's Work in Context*. New York: Berghahn Books, 67–86.

Wiessner, P., with A. Tumu and N. Pupu 2016. *Enga Culture and Community: Wisdom from the Past*. Port Moresby: Birdwing.

Wiessner, P. and A. Tumu. 1998. *Historical Vines: Enga Networks of Exchange, Ritual and Warfare*. Washington, DC: Smithsonian Institution Press.

Wiessner, P. 2010. Youths, Elders and the Wages of War in Enga Province, Papua New Guinea. *SSGM Discussion Paper* 2010/3. Canberra: State, Society and Governance in Melanesia, ANU.

Wiessner, P. and N. Pupu 2012. Toward Peace: Foreign Arms and Indigenous Institutions in a Papua New Guinea Society. *Science* 337(6102):1651–54.

Wiessner, P., R. Minape and L. Maso Malala 2016. *A Teacher's Guide for the Enga Cultural Education Pilot Programme*. Port Moresby: Birdwing.

Young. D.W. 2004. *'Our Land is Green and Black': Conflict Resolution in Enga*. Point no. 28. Goroka: The Melanesian Institute.

Zorn, J.G. 1992. Graun Bilong Mipela: Local Land Courts and the Changing Customary Law of Papua New Guinea. *Pacific Studies* 15(2):1–38.

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