






Enhancing Governance, Rule of Law, Peace and Development in Papua New Guinea through Local Institutions: The (Unrealised) Potential of the Local-Level Government and the Village Court

By: Shahr Shalom Yadin, Kylene Koroka & Julienne Kaman



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For correspondence, contact shaharshalom10@gmail.com.



Introduction





Motivation





- The “top-down” approach to development in Papua New Guinea has generally failed.
 - The breakdown of traditional values and leadership, alongside the failures of governmental institutions, leads to **governance vacuum at the local level** and the lack of existence and experience of the *rule of law*.
 - Overall question: **How to restore a sense of communal governance and the rule of law that could support sustainable peace and prosperity?**
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Background and Approach



- Working under the **Peace & Development** paradigm.
 - Embracing a **bottom-up approach to development**:
 1. True and sustainable development and social harmony can only emerge from the “**bottom-up**,” by individuals taking **constructive actions** towards **peaceful individual and communal governance**.
 2. This can support **building peaceful and resilient communities** and, ideally, lead to **true and sustainable development**—one that is coupled with increasing social peace, harmony and prosperity.
 3. Each individual and each community must realise this within themselves and in their own terms.
 4. This approach aligns to the vision of the founding father and mothers and the National Goals and Directive Principles.
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Key Questions

- What are the **existing mechanisms within local institutions** that could provide an avenue to restore or re-built a sense of communal governance, the rule of law and a peaceful social environment?
 - What are the strengths and weaknesses of these existing mechanisms?
 - What are some of the impediments for their success and how could their full potential be realised?
 - What particular mechanisms can support greater women's protection and representation and participation in communal governance?
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Methodology

- A discussion paper.
 - Desk review of secondary published data and materials (not much material exists).
 - Using legal doctrinal methods to assess the legal framework of relevant institutions and their mechanisms.
 - A small portion of data obtained by main researcher Shahar Shalom Yadin during his volunteer work with Voice for Change (Jiwaka-based NGO), in the form of interviews, examples from legal aid cases, and working with LLG councilors.
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Secondary Materials and Legislation

- Secondary materials
 - Ambang, T. (2008) “The implications of not involving indigenous leadership in the local level government structure in Papua New Guinea”
 - Barcson, B.S. (2015) “Challenges to implementing of development plans at local-level government in Papua New Guinea”
 - Kaman, J.M. (1998) *A Search for Peace and Justice in Papua New Guinea: Can the Study of Peace Make a Difference?*
- Key legislation (as amended)
 - *Organic Law on Provincial Governments and Local-level Governments* (OGPGLLG)
 - *Local-level Governments Administration Act 1997*
 - *Village Courts Act 1989* and *Village Courts Regulation 1974*



The Research



- We focused on existing roles and mechanisms within the **Local-level Government** and the **Village court**, namely:
 1. The Ward, the Ward Development Committee, and the Councillor
 2. The Village Court as right forum to resolve most disputes
 3. The lawmaking powers of the LLG
 4. The executive arm of the LLG
 5. The relation between the LLG and the VC
 6. Gender equity within the LLG and VC
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The Research: Discussion of Local Institutions and their Potential



The Local-Level Government






- The highest form of governmental and administrative devolution, or decentralisation.
 - A community-based representative democratic system.
 - Facilitates governmentally funded projects.
 - Plays a role in the management of communal affairs.
 - Potentially, creates a sense of communal governance in places where governments and their agencies hardly reach.
 - The LLG system is currently neglected (little or no funding), with most LLGs practically dysfunctional.
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The Village Court



- Designed to ensure peace and harmony in the community, primarily through settlement of disputes through mediation and with regard to the community's particular customs and usages.
 - Easily and freely accessible to everyone and quite informal in its procedure.
 - First (and more likely only) point of contact with a formal justice and law system for most people. Hence, provides the availability of a judicial process to settle disputes, and the experience and existence of the rule of law, in places where other courts (i.e. District Court and National Court) and even the Police are unable to properly reach.
 - To fulfil its role, the following conditions must be met:
 1. Better administrative and institutional support (State).
 2. Greater awareness and education of Village Magistrates.
 3. Awareness and education of the general public.
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The Ward, the Ward Development Committee, and the Councillor

- About 15-25 Wards per LLG.
 - The Ward Development Committee (WDC): Councillor (chairperson) and 5 associate members (of whom at least 2 women), elected or appointed by residents.
 - WDC's functions:
 - Determine the needs of the ward in relation to services, programmes and infrastructure.
 - Principal community advisory unit to the LLG.
 - Prepare a 5-year development plan for the ward for submission to the LLG.
 - Facilitate the planning, co-ordination and implementation of services, programmes and infrastructure by the LLG for the ward's area.
 - Consult and work with other WDCs in relation to common services, programmes and infrastructure.
 - Many Councillors are unaware of even the existence of the WDC.
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The Jurisdiction of the Village Court

- Vast powers extending over most potential disputes within the community.
- 3 type of jurisdictions:
 1. Civil jurisdiction: power to hear and resolve most disputes.
 2. Criminal jurisdiction: power over certain offences defined by law.
 3. Preventative jurisdiction: power to issue preventative orders to prevent breach of the peace.

See the paper (<https://osf.io/h8pfg>) for a concise summary of civil powers, compensation that can be granted, type of offences and their penalties, etc.

- Has the potential to foster a sense of the rule of law.
- Much of its potential is unrealised due to:
 1. Lack of proper administrative support from national and provincial governments.
 2. Magistrates often unaware of or neglect their duties.
 3. General public unaware of the exact scope (and limitations) of its powers.

Lawmaking Powers of the LLG

- The *Organic Law on Provincial Governments and Local-level Governments* (“OLPGLLG”) provides a list of 31 subject matters with respect to which the LLG, acting through its **legislative arm**, can make laws (**local-level laws**).

Examples of such areas: dispute settlement; maintaining peace, good order and law through consultation, mediation, arbitration and community forums; provision of water supply and electricity; local tourist facilities and services; housing; control on consumption and use of alcohol and betel-nut; hygiene and sanitation; the protection of traditional sacred sites; and, community day work or service programmes.

- Local-level laws are hardly being made (do you know of any?).


Example: The *Kokoda Track Trek Permit Law 2005*, made by the Kokoda Rural and Koiari Rural local-level governments, which requires all persons to obtain a trekking permit from the Kokoda Track Authority prior to trekking the Kokoda Trail.




Executive Arm of the LLG



- The LLG has an executive arm with the following functions:
 1. Implement the laws and policies made or adopted by the LLG.
 2. Implement the laws and policies of the National Government and the Provincial Government which apply to the LLG area.
 3. May create and implement any policy it deems fits and beneficial to the area with respect to which it is established and its residents.
- In most cases, the LLG's executive arm hardly uses its powers (are you aware of any examples?).






Example: A 2018 project initiated by the district administration of Mul Baiyer Lumusa District, WHP, to map all the wards. The administration took a participative approach in which the Councillors of the three LLGs (Mul, Baiyer and Lumusa), representing 120 wards, carried out the mapping in consultation with the local community and reaching agreement through conversation and consensus. The mapping helped to support more effective planning, service delivery and development outcomes, as well as resolve land-related tensions and disputes.








The Relation between the LLG and the VC



- The statutory framework envisions some cooperation between the LLG and the VC.
 1. When appointing a Village Magistrate, the Director of the Village Court Secretariat must consult with the LLG in whose area the Court is situated.
 2. The LLG can recommend to the Minister responsible for justice matters to revoke the appointment of a Village Magistrate, for example for failure to attend to duty, or for misconduct.
 3. LLG can make laws declaring what is to be taken as the custom relating to any matter, which is binding on the Village Court.
 4. Local-level laws (made by LLG) can create offences that can be dealt with by the Village Court.
 5. LLG may appoint and authorise an officer to bring charges of these offences before the Village Court (a “prosecutor”).
 - This creates a governmental system with 3 arms (legislative, executive and judiciary) at the local level, with some separation of powers and checks and balances mechanisms.
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Example: Addressing Social Issues (SARV)

- Example from a forum on Sorcery Accusations and Related Violence organised by Voice for Change (a Jiwaka-based NGO), with the participation of the members of 9 LLGs (7 from Jiwaka and 2 from Western Highlands).
 - Councillors prepared their own LLG's "Action Plan for Resolving Sorcery Accusations and Related Violence in Our Communities."
 - Councillors also developed a "Ward Plan for Preventing & Resolving Sorcery Accusations-Related Violence," to be adopted and applied by each Ward Development Committee. This action plan focuses on raising awareness, particularly through education about the various laws relating to sorcery, sorcery accusations and SARV.
 - To what extent will these plans be implemented without proper funding?
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LLG, VC & Gender Equity



- Gender equity in the LLG:
 1. The Provincial Council of Women nominates one woman for an urban LLG, and two for a rural LLG, to represent the interests of women in that area.
 2. The 5 associate members of the Ward Development Committee must have at least 2 women.
 - The 2014 amendment to the *Village Courts Act 1989* introduced provisions designed to ensure a greater safeguard and protection of women's interests and rights, as well as women's representation in the Court.
 1. While the Village Court is mandatorily required to apply the relevant custom in all cases before it, the amendment provides that "custom is not to be followed in a case involving a woman ... if it is not in the best interest of the woman...".
 2. The legislative framework (as amended) requires that, "[a]s far as practicable, at least one woman must be appointed ... as a Village Magistrate for each Village Court."
 - Currently most WDC's are dysfunctional and some VCs has only male magistrates.
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Conclusions





Examples of Questions for Future Research







- What are some of the underlying reasons for the effectiveness or ineffectiveness of WDCs?
 - How should the State best support local institutions?
 - How to increase women's active participation in WDCs, LLGs and VCs?
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Conclusion



- This paper highlights the potential of the institutional framework at the local level to provide a sense of communal governance and the rule of law.
 - This could lead to peace and development emerging from the bottom-up, and to building up resilient communities.
 - This potential is currently greatly unrealised.
 - There is a strong need for knowledge, awareness and realisation of the potential of local institutions, and to understand the benefits of a bottom-up approach to development.
 - We hope that this paper contributes to this process.
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All the best!

