

The unrealised potential of local institutions in Papua New Guinea: adopting a bottom-up approach to governance, rule of law, and peace and development

Commonwealth Journal of Local Governance

Issue 29: October 2024

<http://epress.lib.uts.edu.au/journals/index.php/cjlg>

Shahar Shalom Yadin

Kingku Village of Peace

Jiwaka Province

Papua New Guinea

Email: shaharshalom10@gmail.com



Kyline Koroka

Port Moresby

Papua New Guinea

Email: kkoroka124@gmail.com



Julienne Amal Kaman

Ambam Ltd

Jiwaka Province

Papua New Guinea

Email: jmkaman@gmail.com



Abstract

According to the principles of the bottom-up approach to peace and development, true and sustainable development and social harmony can only emerge by individuals taking constructive actions towards peaceful individual and communal governance – something which each individual and each community must realise within themselves and on their own terms. Well-functioning local-level institutions can support this process. In the Papua New Guinean context, however, too little attention has been given to the most fundamental local institutions – the local-level government and the village court – which for the vast majority of people constitute the first point of contact with any formal political and legal system. This paper firstly reviews the operation, institutional framework and potential cooperation of these two local institutions, with a particular emphasis on those institutional aspects by which bottom-up development can take place and be strengthened and enhanced, leading ideally to empowered communities and increasing peace and prosperity. Secondly, it shows that the potential of both the local-level government and the village court is currently greatly unrealised. Finally, the paper aims to inspire, promote and demonstrate ways in which this potential can be realised, using two case studies and a discussion. It is believed that knowledge, awareness and realisation of such potential will promote

DOI: <https://doi.org/10.5130/cjlg.vi29.8718>

Article History: Received 17/07/23; Accepted 25/04/24; Published 09/10/24

Citation: Commonwealth Journal of Local Governance 2024, 29: 21-40, <https://doi.org/10.5130/cjlg.vi29.8718>

© 2024 Shahar Shalom Yadin, Kyline Koroka and Julienne Amal Kaman. This is an Open Access article distributed under the terms of the Creative Commons Attribution 4.0 Unported (CC BY 4.0) License (<https://creativecommons.org/licenses/by/4.0/>), allowing third parties to copy and redistribute the material in any medium or format and to remix, transform, and build upon the material for any purpose, even commercially, provided the original work is properly cited and states its license.

a greater sense of individual, communal and social governance, and commitment to the rule of law, emerging from the bottom up and fostering social harmony.

Keywords: Papua New Guinea, peace and development, bottom-up approach, rule of law, governance, local-level government, village court

Introduction

A quarter of a century ago Dr Julienne Kaman, a Papua New Guinean developmental expert and one of the authors of this paper, strongly called for an alternative development model for Papua New Guinea, one which is derived “*from the grassroots and the ordinary citizens*” and which encompasses capacity building, peace education, indigenous knowledge, moral and ethical development, community awareness, sustainable environmental practices, and people empowerment (Kaman 1999, p. 51). This alternative development approach was envisaged as also including the strengthening of individual, communal and social governance and the rule of law. In her conclusion, Kaman stated that “[*t*]rue development can only happen when Papua New Guineans join hands in solidarity to rebuild their country at their own pace and in a way that is suited to their own cultural context” (p. 53).

Reflecting on the 25 years that have passed, it appears that Kaman’s recommendations (and prediction) are even more pertinent today. Papua New Guinean society has remained primarily rural, traditional and community-based, with most people living a simple life based on subsistence farming and with a strong sense of connection and belonging to their extended family, clan and tribe and to their traditional land (Anderson 2015). Most communities, however, face immense and increasing challenges associated with modernisation, Westernisation, Christianisation, exposure to foreign content and values, and the introduction of unhealthy food products (sugar, bread, white rice etc.) and addictive substances (alcohol and drugs). As a result, the role of traditional community ways of life, traditional systems of governance and traditional value systems is diminishing at a rapid pace (May 1997; Strouboulis et al. 2022). At the same time, the ‘top-down’ approach to development, which underlies traditional ‘Western’ systems of government, has generally had very limited success in Papua New Guinea, benefiting only a very small minority while leaving the vast majority at the periphery of development, without adequate access to basic services such as education, health, justice, economic opportunities and improved living conditions (food, water, housing and electricity) (United Nations Development Programme 2014; Reilly et al. 2015; Duncan and Banga 2018; Bizhan and Gorea 2022; Strouboulis et al. 2022).

The erosion of traditional leadership and values, coupled with the limitations and failures of state institutions, leaves a *governance vacuum* that, this paper argues, can only be filled by individuals and communities taking greater responsibility for their own lives, as part of a *bottom-up approach*, in which the people actively participate in the planning, development and management of their own affairs. This is something which each individual and each community must realise and undertake within themselves and on their own terms. The current system of formal local institutions – comprising primarily the local-

level government, the village court and the land courts – may provide a good avenue through which this could take place. It should be added that this bottom-up approach is fully compatible with and is called for by Papua New Guinea's constitutional five National Goals and their Directive Principles: in particular National Goal one ('Integral human development'), National Goal two ('Equality and participation') and National Goal five ('Papua New Guinean ways') (Constitution of the Independent State of Papua New Guinea 1975 ('the Constitution'), Preamble).

Aims and methodology

The aims of this paper are fairly simple. Firstly, it provides an overview of the operation, institutional framework and potential cooperation of the local-level government and the village court, with a particular emphasis on those institutional aspects by which bottom-up development can take place and be strengthened and enhanced, leading ideally to empowered communities and increasing peace and prosperity.¹ Secondly, the paper shows that the potential of the local-level government and the village court is currently greatly unrealised. Finally, the paper aims to inspire, promote and demonstrate ways in which this potential can be realised, using two case studies and a discussion.

In order to achieve these aims, a variety of methodologies has been used. The first aim (overview of institutional framework and operation), which is the most straightforward, is achieved through doctrinal legal analysis of key legislation and review of relevant literature, reports and newspaper articles. The second aim (highlighting the unrealised potential of the local-level government and the village court) is much harder to achieve, due to the lack of adequate literature, studies and data on the actual functioning of Papua New Guinean local institutions. Nonetheless, this research still aspires to achieve this aim, using a combination of: (1) review of the limited (and sometimes outdated) literature and studies available; (2) the personal experiences of the authors in their capacities as peace and development educators (Yadin and Kaman), developmental expert (Kaman) and legal researchers and practitioners (Yadin and Koroka); (3) the personal experiences of the first author (Yadin) during his volunteered work with Voice for Change, a local NGO based in Jiwaka Province (February to June 2023); and (4) informal interviews with members of nine local-level governments (seven from Jiwaka Province and two from Western Highlands Province), conducted by the first author in the course of this work. The third aim (demonstrating ways to realise the potential of the local-level government and the village court) is also hard to achieve, again due to the very few relevant case studies available. Nevertheless, two case studies are presented showing situations in which, as part of a bottom-up approach to peace

¹ The land courts (namely the local land court and the provincial land court), which are the only courts authorised to deal with questions of ownership of customary land, constitute a third important body within the system of formal local institutions. Discussion about and analysis of the more specific role and function of the land courts, however, is beyond the scope of this paper and is left for another occasion.

and development, the local-level government system was used to resolve social issues and to promote stability, peace and the rule of law.

The paper is structured as follows. The first main section provides an overview of the institutional framework and operation of the local-level government system, with sub-sections focusing on the ward development committee, the law-making and executive powers of local-level government, and relatively new statutory provisions related to gender equity. The next section provides an overview of the institutional framework and operation of the village court, with sub-sections focusing on its dispute resolution powers (civil jurisdiction), criminal jurisdiction, preventative jurisdiction and statutory provisions related to gender equity. This is followed by an overview of the relationship and potential cooperation between the local-level government and the village court. The next part presents the two case studies, one related to the settling of boundaries of customary land and the other related to addressing sorcery-accusations-related violence (SARV). The final part provides a discussion, followed by a conclusion.

The local-level government

The local-level government represents the most fundamental form of governmental and administrative devolution, or decentralisation, within the three-tier political system of Papua New Guinea.² The other two tiers are the national government and the provincial government of each of the 22 provinces of the country. Each province is divided into a number of districts (ranging from one to ten districts per province), with each district having its own administrative unit – the *district development authority*. As of 2011, the latest reliable data available (numbers have varied slightly since), Papua New Guinea had 362 local-level governments (an average of about four per district), made up of 6,112 wards, ie an average of about 17 wards per local-level government. Each ward covered a population of about 1,200 (Papua New Guinea National Statistics Office 2011).³

The wards are most often coterminous with traditional village boundaries, with the members of each ward electing their own local-level government representative – the *councillor*. The local-level government thus provides a community-based representative democratic system, by which community members can contribute to and participate in the management of many of their affairs. Importantly, this ideally provides an essential link between traditional community leadership and the formal political and administrative systems of the state; although experiences indicate that, for multiple reasons beyond the

² For the enabling legislation, see in general: Organic Law on Provincial Governments and Local-level Governments 1998 (OLPGLLG); Local-level Governments Administration Act 1997 (as amended) (LLGAA); Local-level Government Head Tax (Enabling) Act 2003; District Development Authority Act 2014; and Intergovernmental Relations (Functions and Funding) Act 2009.

³ This data source, although probably outdated, is the most detailed and reliable the authors could locate. A more recent but less comprehensive governmental source provides a list of 340 local-level governments (Department of National Planning and Monitoring 2023, pp. 204–364).

scope of this paper,⁴ the local-level government system may also be perceived or be used as an alternative or competitor to traditional leadership, which may contribute to traditional leadership's weakening (May 1997; Ambang 2008).

The local-level government is designed to facilitate government-funded projects for better service delivery and the development of the community, by identifying needs, planning, securing funds, and implementing projects. It can also play an important role in the administration and management of the internal affairs of its respective communities. Additionally, the local-level government can serve as a channel through which national and provincial policies can be implemented at the community level.

It is unfortunate that, over time, the local-level government system has been mismanaged and neglected, to the point that many local-level governments are almost completely dysfunctional (Duncan and Banga 2018; Mako 2023). One of the major reasons for this is likely lack of proper funding, though this rather specific problem is probably part of much larger systemic issues and forces at play associated with, among other things, general institutional decline in Papua New Guinea (Reilly et al. 2015; Strouboulis et al. 2022). Another factor is the local-level government's dependence on the district development authority, headed by the district's member of parliament, whose functions include the determination and control of budget allocation priorities for the local-level governments, and the approval of a local-level government's budget and making recommendations concerning it (District Development Authority Act 2014). Several commentators argue that this dependence has become a recipe for corruption and is now the main impediment to local-level government budgeting and effectiveness (Barcson 2015; Duncan and Banga 2018; Guande 2020; Laveil 2021).

This unsatisfactory situation, coupled with the decline of good traditional leadership and values, leaves for most people a governance vacuum, which the provincial and certainly the national government are unable to fill, as they and most of the services they provide fail to reach most people (Strouboulis et al. 2022; Mako 2023). In this situation the local-level government remains, generally, the only formal institution at the community level which can potentially fill that vacuum and provide a sense of community governance.

It should be stressed, however, that the local-level government should never be seen as a competitor or an alternative to traditional leadership (though in reality it may clash with it). The two have quite different functions and responsibilities and ideally should work hand in hand and support each other (May 1997). One way in which this could work would be by each ward forming a 'village executive council', constituted by the various clan leaders, who then elect one of their representatives to the local-level government (Ambang 2008, p. 25). Exploring this and other such models is beyond the scope of

⁴ The interested reader is referred to Ambang (2008), at pages 18–20, which provides a good discussion of this point.

this paper, which focuses on the local-level government and its potential, but is recommended as a topic for further study.

The ward, the ward development committee, and the councillor

The ward constitutes the most fundamental political unit under the government system. Each ward has a representative in its local-level government, called its *councillor*, with each local-level government usually covering 15–25 such wards. According to the principles of the bottom-up approach, when it comes to community development and social change through government action, it is at ward level that efforts should be focused, as this is the level from which stable and sustainable change is likely to emerge.

Each ward should have its own *ward development committee*, constituted by the councillor (chairperson) and up to five associate members – of whom at least two should be women – who are elected or appointed in a manner determined by the ward’s residents (Local-level Governments Administration Act 1997 (LLGAA), sections 26–28). The ward development committee’s main functions are to:

1. determine the needs of the ward in relation to services, programmes and infrastructure;
2. be the principal community advisory unit to the local-level government, and prepare a five-year development plan for the ward for submission to the local-level government;
3. facilitate the planning, coordination and implementation of services, programmes and infrastructure by the local-level government for the ward’s area; and
4. consult and work with other ward development committees in relation to common services, programmes and infrastructure (sections 11(b), 34, 35).

The ward development committee with its councillor can thus play a very important role in community governance and development, as well as in dealing with various social and other issues affecting the community (as discussed below). Furthermore, there are various useful and freely available tools for community-led development that can be adopted by ward development committees: for example a training handbook, a ward profile form and a project proposal form (Gard et al. 2020; PNG Community Development Worker National Standard [no date]).

Unfortunately most councillors, in some areas of the country at least, are completely unaware of the statutory framework providing for the ward development committee and its important functions (local-level government members’ interviews 2023). In most instances, the ward development committee therefore lies dormant, waiting to be activated for some purpose and good.

Law-making powers

The Organic Law on Provincial Governments and Local-level Governments (OLPGLLG) provides a list of 31 topics with respect to which the local-level government, acting through its legislative arm, can make laws (section 44(1)).⁵ These laws ('local-level laws') must be consistent with the Constitution, constitutional human rights and Acts of Parliament. Two of these topics are directly related to governance and the rule of law, namely (1) dispute settlement and (2) maintaining peace, good order and law through consultation, mediation, arbitration and community forums. Other topics include: provision of water supply; provision of electricity; care of the local environment; community sport and recreation; cultural and industrial shows; local tourist facilities and services; housing; domestic animals; flora and fauna; human settlements; traditional barter system; control on consumption and use of alcohol, betel nuts, and betel-nut-related products or any other marketable items; hygiene and sanitation; the protection of traditional sacred sites; and community day work or service programmes.⁶ These laws can also prescribe the imposition of fines for their breach (section 44(1)(ab)).

Given this vast legislative power, it is quite surprising that local-level laws are very seldom made, with many or even most councillors unaware of the existence of such extensive powers (local-level government members' interviews 2023). In fact, the authors of this paper are only aware of one such law: the Kokoda Track Trek Permit Law 2005, made by the Kokoda Rural and Koiari Rural local-level governments, which requires all intended trekkers to obtain a trekking permit from the Kokoda Track Authority prior to trekking the Kokoda Trail (Kokoda Track Authority 2012).

The contrast between the vast legislative powers of the local-level government and their lack of use highlights the unrealised potential of local-level governments and the need for more serious consideration and application of the bottom-up approach.

The executive arm

In addition to its legislative arm, the local-level government also has an executive arm whose functions are:

1. to implement the laws and policies made or adopted by the local-level government;
2. to implement the laws and policies of the national government and the provincial government which apply to the local-level government area; and

⁵ For the procedures for passing these laws and the formalities involved, see OLPGLLG sections 140, 141 and LLGAA sections 56(2)(b), 59.

⁶ The other topics in the list of 31 are: labour and employment (but not industrial relations); labour or community industries; self-help and *tokples* (local language) schools, but not their curriculum; cemeteries; improvement of villages, towns, cities and communities; town, city, village and community planning; cottage industries; bride and groom wealth; general licensing; census and village or community records; local trading (not mobile); village communities; local aid posts and clinics; and traditional and customary copyrights.

3. such other functions as are allocated to it by any other law (OLPGLLG, section 36; LLGAA, section 15).

It seems therefore that, subject to the principles provided by the general law, the local-level government, acting through its executive arm, may create and implement any policy it deems fit and beneficial to its jurisdictional area and to its residents. It also seems that the executive arm carries an obligation to implement those laws and policies of the provincial government and the national government which apply to its area. Furthermore, the executive arm may, in general, itself determine the manner in which its powers, functions, duties and responsibilities are exercised (LLGAA, section 16).

Gender equity

Some aspects of the legislative framework of the local-level government aim at creating greater gender equity. Firstly, regardless of the number of women elected as ward representatives (councillors), the provincial council of women must nominate one woman for an urban local-level government, and two for a rural one, as a representative or representatives of the interests of women and women's organisations in that local-level government area; and the local-level government is then mandatorily required to appoint these women representatives as its local-level-government members (OLPGLLG, section 29(1)(c)(iii), (d); LLGAA, section 6). The women representatives are to have full voting power, are to be counted towards the quorum during meetings of the local-level government (OLPGLLG, section 29(2)), and are eligible to be appointed as its deputy head (although restricted from being appointed as its head) (LLGAA, sections 12(2), 13(3)). The extent to which these legislative provisions are implemented, however, requires further investigation.

Secondly, as mentioned above, at least two women must be included within the five associate members of each ward development committee. Unfortunately, however, in many cases most councillors are completely unaware of the statutory framework and the idea of the ward development committee remains completely unimplemented, or implemented only in part (local-level government members' interviews 2023).

The village court

For most people in Papua New Guinea, the village court is the first (and very likely only) point of contact with a formal system of justice and law (Australian Aid 2016). It is a community-based court that is easily and freely accessible to everyone and is quite informal in its procedure. Its purpose is to ensure peace and harmony in the community, primarily through the settlement of disputes through mediation and with regard to the particular customs and usages of the community concerned (Village Courts Act 1989 as amended (VCA), in particular sections 2A, 2B, 52, 57, 58, 59). There are about 1,500 village courts nationwide (about 16 per district), each having four to five village court magistrates,

three to four village peace officers, and one clerk – totalling about 13,000 officials nationwide (Department of Justice & Attorney General [no date]).⁷

The village court provides an important forum where disputes can be brought, claims and complaints can be heard, and decisions sanctioned by the community can be made. It constitutes an important justice mechanism, in places that other courts (i.e. district court and national court) and even the police are often unable to properly reach (Evans et al. 2010). Village courts deal with thousands of cases each week, including serious criminal matters (e.g. murder, rape etc.), which are brought to them due to the ‘legalistic’ (district, national and supreme) courts’ inability to deal with these cases. Its accessibility, community legitimacy and informality enable most people to have at least some sense of the availability of a judicial process to settle disputes, and to experience the existence of the rule of law (Goddard 2009). For this reason, it was observed nearly 20 years ago by Howley that, “[w]ithout the village courts the law and justice situation in PNG would have descended into anarchy” (2006, p. 94).

Despite their indispensable role, however, most village courts suffer from a wide variety of issues: lack of funding or delayed payments of salaries, lack of facilities, administrative issues, gender bias and favouritism, limited enforcement power, and magistrates’ lack of proper training and awareness of (or adherence to) their jurisdictional limits (Evans et al. 2010; Finkeo 2022; *National* 2022). It is therefore important to ensure that in the future the village court and its officials enjoy much better administrative and institutional support from the state, the province and law and justice authorities (i.e. the police and the district court). It is equally important that village magistrates are clear about, and faithful to, their powers and duties, their jurisdiction and its limits, and their accountability to the laws of Papua New Guinea and to justice. Finally, the general public must also be aware of the particular powers of the village court, the law and rules it applies, and its place within the wider system of justice and law: for example its general obligation to adhere to constitutional human rights (VCA, section 2B(2)(c)) and the rights of women (sections 2A(d), 57(2)(b)) and children (sections 2B(1)(f), 40A(2), 57(2)(b)). Only then will the village court truly fulfil its function and will society at the village and community level enjoy the benefits associated with an orderly, accessible and functioning justice system and the rule of law (Evans et al. 2010).

It will be appreciated from the discussion below that the powers of the village court are quite vast and extend over most aspects of life and most disputes that may arise in the community. Its key jurisdictional areas – dispute resolution (civil jurisdiction), criminal jurisdiction and preventative jurisdiction – are described in the following sub-sections.

⁷ According to the Department of Justice & Attorney General, allowances for c. 13,000 village court officials and 6,000 land mediators cost about K70 million (USD18 million) annually (*National* 2022), which is about 25% of the total 2023 judiciary services budget (Appropriation (Judiciary Services 2023) Act 2022). Most village court officials, however, are in reality underpaid or in many cases not paid at all.

Dispute resolution (civil jurisdiction)

The village court has jurisdiction in relation to any dispute where: (1) the dispute arose within its area; (2) the subject matter of the dispute is within its area; (3) all of the parties to the dispute are normally resident within its area; or (4) some of the parties to the dispute are normally resident within its area and the others consent to the jurisdiction (VCA, section 36(a)). In the context of the VCA, a ‘dispute’ generally includes *“any case where a person complains of, and is genuinely aggrieved by, the actions or likely actions of another person”* (section 1).

Besides these general powers, more specific dispute resolution powers extend to the use and occupation of land subject to customary interests (‘customary land’); however, questions of customary *ownership* of land can only be determined by the local land court and the provincial land court (VCA, sections 43, 48; Land Disputes Settlement Act 1975). The village court can also make an order as to the custody or guardianship of a child born to parents married under customary law or who is illegitimate (VCA, section 47), an order about the status of persons married under customary law (section 48A), and an order for compensation or damages in relation to a dispute involving the driving of a motor vehicle or the operation of a small craft (section 48B).

It should be added that, as the VCA notes, *“[t]he primary function of a Village Court is to ensure peace and harmony in the area for which it is established by mediating in, and endeavouring to obtain just and amicable settlements of disputes”* (section 52). Furthermore, in all matters before it relating to a dispute, prior to exercising its civil powers the court must first attempt to reach a settlement by mediation (sections 53–54). If mediation fails, the court can order a party to a dispute to pay compensation, or repay a debt, of an amount, in cash or in value, of up to K2,000 (USD515) (section 45). This figure is quite significant, constituting 20% of the 2024 estimated GDP per capita of Papua New Guinea, which stands on USD2,530 (International Monetary Fund [no date]). Cases of bride price, custody of children and death are an exception to this rule, and in these cases the court may award such amount in compensation or damages as it deems just (section 46). In addition to the payment of compensation, the court can order a party to perform specified work for the benefit of an injured or aggrieved party, for a period not exceeding eight hours a day, for six days a week and for a total of 12 weeks (section 44).

Criminal jurisdiction

The criminal jurisdiction of the village court extends over certain offences listed in the VCA or the Village Courts Regulation 1974, or created by a law of the local-level government or the provincial government (VCA, section 41). Perhaps the most important of these offences is breach of the peace: for example a fight or violence to the person or to property, or a threat thereof, and other breaches of the peace (section 29). Other more specific offences are given in the Regulation. Examples are: taking the property of another without consent; striking another person; using insulting, threatening or offensive

words or conduct; intentional damage to trees, plants or crops belonging to another; making a false statement concerning another person that offends or upsets him or her; spreading false reports that are liable to cause alarm, fear or discontent in the village community; conduct that disturbs the peace, quiet and good order of the village, or of a resident of the village; failure to perform customary duties or to meet customary obligations after having been informed of them by a village magistrate; failure to comply with the direction of a village magistrate with regard to hygiene or cleanliness within a village court area; and sorcery-related offences (Village Courts Regulation 1974, section 3).

A charge of an offence may be brought before the village court by a village peace officer, a police officer or any other person (VCA, section 83). Prior to exercising its criminal jurisdiction, the court must first attempt to reach a settlement by mediation (sections 52–54). If mediation or settlement fails and, after a fair trial, the defendant is found guilty, the court can order the offender to pay a fine of up to K300 (USD77, 3% of current GDP per capita), or K200 in the case of a child, or alternatively to perform community work for a period of up to eight hours a day, for six days a week and for six months (section 42).

Preventative jurisdiction

Where it appears to a village magistrate that a dispute, or a threatened dispute, may cause a breach of the peace, the village court may order the parties to appear before it, with a view to having the dispute dealt with according to law. While the hearing is pending, the court can also order the parties to refrain from taking any action that might aggravate the dispute or cause a breach of the peace (VCA, section 51(1)). A breach of these preventative orders is an offence with which a person can be charged and brought before a village court or a district court. It carries a penalty of up to K1,000 (USD258, 10% of current GDP per capita), or imprisonment for a term of up to six months, or both (section 51(2)). The Act explicitly states that this includes breaches of preventative orders in cases of domestic violence, tribal fighting and all other cases of violence (section 51(7)).

Gender equity

The 2014 amendment to the VCA introduced significant provisions designed to ensure greater safeguarding and protection of women's interests and rights, as well as greater women's representation in the court. Firstly, one of the introduced declared objects of the Act is to "*improve access for women to Village Courts and to eliminate discrimination against women in Village Court proceedings*" (section 2A(d)). Secondly, 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...*" (section 57(2)(b)). Finally, 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*" (sections 16, 17(2A)).

How these provisions are implemented in practice requires further investigation. It appears that in many cases they are either unimplemented, or implemented only in part. For example, during his practice as a legal aid officer, the first author (Yadin) learnt first-hand about a village court in North Wagi District, Jiwaka Province, where following the 2014 amendment a woman magistrate was initially appointed, but her appointment was subsequently suspended in 2019; and since then all seven village magistrates have been men, contrary to the legal requirement to have at least one woman magistrate.

Relationship and potential cooperation between the local-level government and the village court

The statutory provisions envision and set up the framework for a degree of cooperation between the local-level government and the village court.

Firstly, when appointing a village magistrate, the director of the village court secretariat must consult with any local-level government located within the jurisdictional area of the court to which the magistrate is appointed (VCA, section 16). Additionally, the local-level government 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 (section 20).

Secondly, the local-level government has the power to make laws declaring what is to be taken as the custom relating to any matter, and such a declaration is binding on the village court (section 57(3)). This power is very significant and can greatly affect the operation of the court, given that the village court is required, in mandatory terms ('shall'), to apply any relevant custom in all matters before it (subject of course to certain requirements such as, for example, consistency with the constitutional human rights and, in the case of a woman or a child, the decision being in their best interest: section 57(1)). Since, as mentioned, local-level laws are very seldomly made, the potential of local-level laws to regulate custom, as well as the tension this might create with traditional or customary authorities, is yet to be tested and realised.

Thirdly, the criminal jurisdiction of the village court also includes local-level laws that prescribe offences within the competence of the village court (section 41(b)). Importantly, the local-level government may appoint and authorise an officer to bring before the village court charges of offences against local-level laws (a '*prosecutor*') (section 83(c)). As in the case of the regulation of custom, the potential of local-level laws to prescribe certain offences, and the various implications this may have, are yet to be tested and realised.

Finally, the statutory reforms and provisions dealing with gender equity in both local-level governments and village courts create a space for, promote and even require women to be represented and active in these institutions. Through this, women's interests and rights can better be catered for. Another important factor is the potential for changes in public perceptions about women, their role in society

and their capabilities, which can be brought about by women serving in important positions in local institutions and having such power and influence. As indicated in this paper, however, in many cases these statutory provisions are either completely unimplemented, or implemented only in part.

Case studies

The paper now turns to present two case studies that demonstrate how, as part of a bottom-up approach to peace and development, the local-level government system has been or could be used to address social issues of great concern and to promote stability, peace and the rule of law.

Settling customary land boundaries

A good example of the flexible powers and potential of the executive arms of the local-level government is found in a 2018 project initiated by the district administration of Mul-Baiyer-Lumusa District, Western Highlands Province, to map the geographical boundaries of all the wards within the district (Thomas et al. 2019). The administration took a participative approach in which the councillors of the three affected local-level governments (Mul, Baiyer and Lumusa), representing 120 wards, carried out the mapping in consultation with the local community and reached agreement through conversation and consensus. The data obtained during the mapping process with regard to each ward's geographical boundaries and number of residents enabled more effective planning, service delivery and development outcomes (Thomas et al. 2019; Thomas 2023).

In addition, the project had other important positive outcomes. The shift from a top-down approach to planning to a participative, collaborative and consensus-building approach helped to build relationships between government officials and ward representatives and members, as well as between neighbouring wards. This was an important outcome given low levels of trust and confidence in government, and the fact that tribal conflicts had taken place in the area. According to one observer, the project created a space in which people felt that they were participating in and contributing to something of value for themselves and their community, as well as feeling acknowledged and validated by the political leadership (Thomas 2023). Among the lessons learnt were that focusing on a shared challenge can help communities put aside differences; that valuing local leadership and knowledge builds positive relationships between government and communities; and that when leaders at the district and the political levels use a participative approach to problem solving, the people are more easily incentivised and can solve problems that otherwise seem unsolvable (Thomas et al. 2019).

Addressing sorcery-accusations-related violence (SARV)

The findings from this case study are based on the first author's work during a forum on Sorcery Accusations and Related Violence organised by Voice for Change (a Jiwaka-based NGO), with the participation of the members of nine local-level governments (seven from Jiwaka Province and two from Western Highlands Province). The findings show the potential of local-level government in

addressing a social issue that has been detrimental to the lives of many people in Jiwaka Province and other areas of the country (Forsyth et al. 2021).

During the forum, the author facilitated a half-day session with the members of one of the local-level governments (together with other stakeholders and leaders from that particular community), with the purpose of developing an action plan to address the issue of SARV in their communities. The author (a lawyer) started by informing the councillors of the legislative framework that requires the local-level government to have a five-year development plan and an annual plan (LLGAA, section 38(1)(e), (f)), and the existence and structure of the ward development committee and its important functions – for example its mandate to prepare a development plan for the ward (section 11(b)). All of this was new to almost all participants.

The councillors then prepared their own local-level government plan, titled ‘Action Plan for Resolving Sorcery Accusations and Related Violence in Our Communities’, which focuses on three areas: (1) education, awareness and advocacy (including children’s education and awareness programmes); (2) cooperation with working partners (e.g. village magistrates, churches, the governmental family and sexual violence units (FSVUs), and young community leaders); and (3) correction and response (including preparing and disseminating an emergency contact list and establishing an emergency response unit). Alongside this, the councillors also developed a second plan, titled ‘Ward Plan for Preventing & Resolving Sorcery-Accusations-Related Violence’, to be adopted and applied by each ward development committee, which focuses on raising awareness, particularly through education about the various laws relating to sorcery, sorcery accusations and SARV.

It remains to be seen what concrete actions will be taken as a result of the forum and the action plans developed by the councillors. One thing, however, is certain: all participants were intrigued to learn about certain aspects of the legislative framework and provisions relevant for their work that were new to them: e.g. the five-year development plans and the ward development committee; the laws relating to sorcery, sorcery accusations and SARV; the criminal jurisdiction of the village court and the relevant village court offences; and the recent criminalisation of *glasman* and *glasmeri*-related practices.⁸ They obtained clarity about the relevant legal and institutional framework and hence became empowered and motivated to address and ideally resolve this social issue. This serves to demonstrate the need, value and importance of education and awareness.

⁸ See the Criminal Code Div VII.4, inserted in May 2022 by the Criminal Code Amendment Act 2022 (No. 14 of 2022). In the context of this legislation, *glasman* or *glasmeri* means “a man or woman who holds themselves out as or purports to be a seer, or diviner of truth with the ability to identify sorcery activities, implements of sorcery and/or persons who may have committed acts of sorcery” (s 520A).

Discussion

This paper recommends a bottom-up approach to peace and development and, accordingly, calls for greater awareness, utilisation and funding of local institutions in Papua New Guinea. The bottom-up approach is about building proactive communities that are resilient in the face of poverty, injustices, inequalities, conflicts and violence, abuses of power by government and even natural calamities (Kaman 1998). It enables problems to be solved at grassroots level, by the people most closely concerned. This reduces the role of the ‘middleman’ within the public service delivery supply chain coming from the national and provincial governments, which significantly decreases corruption opportunities. The bottom-up approach empowers people, provides them with the opportunity to take responsibility for their lives and promotes peace, social harmony, prosperity, sustainability and nation-building. This in turn creates greater pressure for institutional accountability (Reilly et al. 2015) and greater “*demand-side pressures for better governance in service delivery... [t]he so-called ‘second generation’ approach to devolved service delivery*” (Duncan and Banga 2018, p. 505).

It must be understood that, according to the bottom-up approach, responsibility for the working of all institutions lies, first and foremost, within the people themselves, rather than with some ‘higher’ institutional authority.⁹ Good governance, peace and the rule of law start within the individual: by a person learning how to govern himself or herself peacefully within his or her own life, and in relationship with others (Zhuang et al. 2016). This then enables the conditions for the success of systems of government; whether these are traditional systems of government, the introduced governmental system with its institutions, or any other system of government (Islam 2022).

The institutional aspects of the local-level government and the village court discussed in this paper provide useful and in many cases unexplored but potentially fruitful avenues by which bottom-up development can take place and be strengthened and enhanced, leading ideally to empowered communities and increasing peace and prosperity. Some aspects of this have been demonstrated by the two case studies presented.

Furthermore it seems that, working together, the local-level government (which has both an executive arm and a legislative arm) and the village court (a ‘judiciary’) constitute a local system of government which, in some limited senses, resembles the system of the three arms of government at the national level, including some separation of powers and check-and-balance mechanisms. This of course is an imperfect resemblance, and perhaps much improvement can be made; however, this paper argues that it does provide a fairly good and comprehensive institutional governmental framework at the local level.

⁹ In support of this idea, among other things the Preamble of Papua New Guinea’s Constitution asserts that “*all power belongs to the people – acting through their duly elected representatives...* ”.

Another important area that requires further attention and investigation is the relationship between traditional leadership and the formal institutional leadership (i.e. the local-level government). Ideally, the two must somehow be harmonised, in order to provide the most effective form of communal governance and order.

Currently, however, it appears that the local-level governmental system is overwhelmingly dysfunctional (for a number of reasons, some of which are highlighted earlier in this paper). On the other hand, it is highly likely that a well-functioning local-level government, as envisioned by the institutional and statutory framework, would have significant and positive influence within its area, providing the residents with a sense of local governance and contributing meaningfully towards their general wellbeing, through carrying out various social and welfare activities as well as developmental projects. Reaching this position would require both top-down institutional support (e.g. channelling of funds from the national government, the provincial government and the district development authority) and, equally importantly, bottom-up initiatives. The two case studies presented above highlight the importance and potential contribution of NGOs and other non-state actors, as well as the value of providing general education and knowledge for councillors and communities, which empowers them to take action and launch initiatives.

The village court, it seems, at least on a basic level is generally functioning (though the level of functionality may vary from area to area) and provides some legal recourse for individuals who have suffered wrongs – meaning they have at least some experience of the rule of law at community level. Compared with the local-level government, it appears also that the village court enjoys a somewhat higher level of attention and support.¹⁰ Much more, however, can and should be done in order to increase its effectiveness and boost its very important operation. The three key areas identified in this paper are: (1) greater administrative and institutional support from the state, the province, and law and justice authorities; (2) education, empowerment and monitoring of village court officials; and (3) education of the general public with regard to the value and jurisdictional rules and limits of the court. There is some evidence that small actions can make a big difference, as reflected in newspaper articles that report various positive developments and success stories, such as: a local MP equipping village court officials with mobile phones, bicycles and uniforms, thus enabling more efficient functioning (Cohlee 2022); a workshop provided by the Department of Justice and Attorney-General for 18 village court provincial liaison officers, who were inducted to help implement village court services to better address lawlessness at the community level (Oraka and Yanei 2023); boosting the village court in Morobe

¹⁰ For example, a simple search in the online directory of *The National* (one of the two major newspapers in Papua New Guinea) of the term ‘village court’ resulted in 19 articles published during the years 2022–2023, many of which deal with positive developments and success stories. A similar search of the term ‘local-level government’ resulted in only one article published during this period (both searches conducted on 14 April 2024).

Province by building courthouses (Cohlee 2023); and the training by an NGO of village court officials (*National* 2023).

All in all, however, much work is still required to better comprehend the system of local institutions in its totality, appreciate its potentials and limitations, understand its relation to traditional leadership and to the other governmental systems (ie the provincial government and the national government) and, most importantly, to optimise its value with respect to the social, ecological, environmental, economic, educational and developmental needs of the country and its people. There is also a great need for more empirical research about the functioning (or dis-functioning) of the various aspects of the local-level government and the village court. The bottom-up approach advocated in this paper would help to attract focus and mobilise resources and funding for appropriate research, aimed at realising the potential of this local-level system of government.

Conclusion

The principles of a bottom-up approach to peace and development suggest that true and sustainable development and social harmony in Papua New Guinea can only emerge by individuals taking constructive actions towards peaceful individual and communal governance – something that each individual and each community must realise within themselves and on their own terms. Local institutions, particularly the local-level government and the village court, provide a good framework for enhancing governance, the rule of law, and peace and development, and have the power to bring about very positive, desirable and needed change. How exactly this could or should happen is something that remains to be discovered, step by step, through the actions and initiatives of the people who desire to see such a change happening (Andrews et al. 2017; Boulton et al. 2015). This paper’s findings suggest that one of the greatest impediments to such positive change is a lack of awareness and knowledge about the laws, framework, powers, duties and potentials of these institutions. If this can be overcome, the potential benefit is very great. Knowledge, awareness and realisation of such potential will promote a greater sense of individual, communal and social governance and the rule of law, emerging from the bottom up and facilitating growth towards social harmony, peace and prosperity.

Declaration of conflicting interest

The authors declared no potential conflicts of interest with respect to the research, authorship and/or publication of this article.

Funding

The authors received no financial support for the research, authorship or publication of this article.

References

- Ambang, T. (2008) The implications of not involving indigenous leadership in the local level government structure in Papua New Guinea. *Contemporary PNG Studies: DWU Research Journal*, 8, 15–28. Available at: https://www.dwu.ac.pg/en/images/All_Attachements/Research_Journals/vol_08/2008-V8-2_Ambang_Implications_of_Not_Involving_Indigenous_Leadership_in_the_LLGs.pdf [Accessed: 19 April 2023].
- Anderson, T. (2015) ‘Papua New Guinean ways’: hybrid livelihoods and human development. *Waigani Seminar 2015*. Port Moresby. Available at: https://www.researchgate.net/publication/281181428_%27Papua_New_Guinean_Ways%27_hybrid_livelihoods_and_human_development
- Andrews, M., Pritchett, L. and Woolcock, M. (2017) *Building state capability: evidence, analysis, action*. Oxford: Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780198747482.001.0001>
- Australian Aid. (2016) *Evaluation of village court officials’ training*. Available at: <https://www.dfat.gov.au/about-us/publications/Pages/png-evaluation-village-court-officials-training-march-2016>
- Barcson, B.S. (2015) Challenges to implementing of development plans at local-level government in Papua New Guinea. *Commonwealth Journal of Local Governance*, (16/17), 150–167. <https://doi.org/10.5130/cjlg.v0i0.4492>
- Bizhan, N. and Gorea, E.G. (2022) A weak state and strong microsocieties in Papua New Guinea. In: Bizhan, N. (ed.) *State fragility: case studies and comparisons*. London: Routledge, pp. 221–246. <https://doi.org/10.4324/9781003297697-7>
- Boulton, J.G., Allen, P.M. and Bowman, C. (2015) *Embracing complexity: strategic perspectives for an age of turbulence*. Oxford: Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199565252.001.0001>
- Cohlee, J. (2022) New bicycles for village court officials. *The National* 28 April. Available at: <https://www.thenational.com.pg/new-bicycles-for-village-court-officials/> [Accessed: 14 April 2024].
- Cohlee, J. (2023) Morobe village courts get a boost. *The National* 1 September. Available at: <https://www.thenational.com.pg/morobe-village-courts-get-a-boost/> [Accessed: 14 April 2024].
- Department of Justice & Attorney General. [No date] *Village courts*. Available at: <https://news.slos.gov.pg/village-courts-land-mediation/> [Accessed: 10 September 2023].
- Department of National Planning and Monitoring. (2023) *Medium-term development plan IV: 2023–2027*. Waigani, National Capital District: Department of National Planning and Monitoring.
- Duncan, R. and Banga, C. (2018) Solutions to poor service delivery in Papua New Guinea. *Asia & the Pacific Policy Studies*, 5 (3), 495–507. <https://doi.org/10.1002/app5.260>
- Evans, D., Goddard, M. and Paterson, D. (2010) The hybrid courts of Melanesia: a comparative analysis of village courts of Papua New Guinea, island courts of Vanuatu and local courts of Solomon Islands. *Justice & Development Working Paper Series*, 13. Washington, DC: The World Bank.
- Finkeo, M. (2022) Village court officials need more training. *Post Courier* 10 August. Available at: <https://www.postcourier.com.pg/village-court-officials-need-more-training/> [Accessed: 5 December 2023].
- Forsyth, M., Losoncz, I., Gibbs, P., Hukula, F. and Kipongi, W. (2021) *Sorcery accusation-related violence in PNG. Part 7: The harm of SARV*. Department of Pacific Affairs, The Australian National University. Available at: <http://hdl.handle.net/1885/228694>
- Gard, C., Atigini, B., Kapal, D., Iha, C. and Pius, P. (2020) New tools for community-led development in PNG. *Devpolicy Blog* 1 October. Available at: <https://devpolicy.org/new-tools-for-community-led-development-in-png-20201001/> [Accessed: 4 December 2023].
- Goddard, M. (2009) *Substantial justice: an anthropology of village courts in Papua New Guinea*. New York: Berghan Books.
- Guande, F. (2020) Better monitoring needed to transform slush funds into development funds in PNG. *Devpolicy Blog* 22 September. Available at: <https://devpolicy.org/better-monitoring-needed-to-transform-slush-funds-into-development-funds-in-png-20200922/> [Accessed: 2 December 2023].

- Howley, P.F. (2006) Custom and court: fulfilling the courts' duty to develop underlying law. *Development Bulletin*, 70, 92–95. Available at: <https://crawford.anu.edu.au/rmap/devnet/devnet/db-70.pdf>
- Independent State of Papua New Guinea. (1974) *Criminal Code Act 1974*. Available at: http://www.paclii.org/pg/legis/consol_act/cca1974115/
- Independent State of Papua New Guinea. (1974) *Village Courts Regulation 1974*. Available at: http://www.paclii.org/pg/legis/consol_act/vcr1974263/
- Independent State of Papua New Guinea. (1975) *Constitution of the Independent State of Papua New Guinea 1975*. Available at: http://www.paclii.org/pg/legis/consol_act/cotisopng534/
- Independent State of Papua New Guinea. (1989) *Village Courts Act 1989*. Available at: http://www.paclii.org/pg/legis/consol_act/vca1989172
- Independent State of Papua New Guinea. (1997) *Local-level Governments Administration Act 1997*. Available at: http://www.paclii.org/pg/legis/consol_act/lga1997403/
- Independent State of Papua New Guinea. (1998) *Organic Law on Provincial Governments and Local-level Governments 1998*. Available at: http://www.paclii.org/pg/legis/consol_act/olopgalg2014616/
- Independent State of Papua New Guinea. (2003) *Local-level Government Head Tax (Enabling) Act 2003*. Available at: http://www.paclii.org/pg/legis/consol_act/lgha2003345
- Independent State of Papua New Guinea. (2009) *Intergovernmental Relations (Functions and Funding) Act 2009*. Available at: http://www.paclii.org/pg/legis/num_act/irafa2009516
- Independent State of Papua New Guinea. (2014) *District Development Authority Act 2014*. Available at: http://www.paclii.org/pg/legis/num_act/ddaa2014363
- Independent State of Papua New Guinea. (2014) *Village Courts (Amendment) Act 2014* (Act No. 7 of 2014). Available at: http://www.paclii.org/pg/legis/num_act/vca2014n7o2014319/
- Independent State of Papua New Guinea. (2022) *Criminal Code (Amendment) Act 2022* (Act No. 14 of 2022). Available at: <https://www.parliament.gov.pg/index.php/bills-and-legislation/view/criminal-code-amendment-act-2022>
- International Monetary Fund. [no date] *Papua New Guinea datasets*. Available at: <https://www.imf.org/external/datamapper/profile/PNG> [Accessed: 27 May 2024].
- Islam, J. (2022) Peace and governance. In: Farazmand, A. (ed.) *Global encyclopedia of public administration, public policy, and governance*. 2nd ed. Swizerland: Springer, pp. 9211–9218. https://doi.org/10.1007/978-3-030-66252-3_1973
- Kaman, J.M. (1998) *A search for peace and justice in Papua New Guinea: can the study of peace make a difference?* PhD Thesis, University of New England. Available at: <https://hdl.handle.net/1959.11/10915> [Accessed: 22 May 2023].
- Kaman, J. (1999) No development without peace: rethinking development in Papua New Guinea: a conceptual framework. *Development Bulletin*, 50, 51–55. Canberra: Development Studies Network, Research School of Social Sciences, Australian National University. Available at: <https://crawford.anu.edu.au/rmap/devnet/devnet/db-50.pdf> [Accessed: 7 July 2023].
- Kokoda Track Authority. (2012) *Commercial operations license conditions 2012*. Available at: <https://www.kokodatrackauthority.org/PicsHotel/KokodaTrack/Brochure/2012LicenceConditions.pdf> [Accessed: 5 January 2021].
- Laveil, M. (2021) PNG's MP funding: volatile and unaccountable. *Devpolicy Blog* 8 July. Available at: <https://devpolicy.org/pngs-mp-funding-20210708/> [Accessed: 2 December 2023].
- Local-level Government Members' Interviews. (2023) *Interviewed by Shahar Shalom Yadin*, 11–13 April.
- Mako, A.A. (2023) PNG's rural decay: a personal perspective (Part 3). *Devpolicy Blog* 17 January. Available at: <https://devpolicy.org/pngs-rural-decay-a-personal-perspective-part-3-20230117/> [Accessed: 2 December 2023].
- May, R.J. (1997) (Re?)discovering chiefs: traditional authority and the restructuring of local-level government in Papua New Guinea. *Regime changes and regime maintenance in Asia and the Pacific*, discussion paper no. 18. Canberra: Department of Political and Social Change, Research School of Pacific and Asian Studies, Australian National University.

- National*. (2022) Dept needs K20mil to pay 19,000 village court officials. 7 September. Available at: <https://www.thenational.com.pg/dept-needs-k20mil-to-pay-19000-village-court-officials/> [Accessed: 9 November 2023].
- National*. (2023) Village court magistrates take part in training. 17 November. Available at: <https://www.thenational.com.pg/village-court-magistrates-take-part-in-training/> [Accessed: 14 April 2024].
- Oraka, M. and Yanei, M. (2023) Village court services improved. *The National* 14 July. Available at: <https://www.thenational.com.pg/village-court-services-improved/> [Accessed: 14 April 2024].
- Papua New Guinea National Statistics Office. (2011) *Papua New Guinea – subnational population statistics*. Available at: <https://data.humdata.org/dataset/cod-ps-png> [Accessed: 15 April 2023].
- PNG Community Development Worker National Standard. [No date] *Other resources – for working with wards, communities, CBOs, SMEs & families*. Available at: <https://pngcdwstandard.com/resources-for-use-by-cdws-working-with-wards-communities-groups-and-smes/> [Accessed: 4 December 2023].
- Reilly, B., Brown, M. and Flower, S. (2015) *Political governance and service delivery in Papua New Guinea: a strategic review of current and alternative governance systems*. Discussion paper no. 143. National Research Institute of Papua New Guinea. Boroko, NCD: National Research Institute.
- Strouboulis, A., Yayboke, E., Rice, B. and Nzuki, C. (2022) *Addressing fragility in Papua New Guinea*. Center for Strategic and International Studies. Available at: <https://www.csis.org/analysis/addressing-fragility-papua-new-guinea>
- Thomas, B., Keith, B.D., Treppe, D., Lusby, S. and Cox, J. (2019) *Participatory ward mapping in Mul Baiyer Lumusa District: a positive outlier in PNG development planning*. Melbourne: La Trobe University.
- Thomas, B. (2023) *Interviewed by Shahar Shalom Yadin*, 1 June.
- United Nations Development Programme. (2014) *2014 National human development report: Papua New Guinea*. Port Moresby: United Nations Development Programme.
- Zhuang, E., Reso, M. and Davis, J.J.J. (2016) A system dynamics approach to modelling individual peace towards the creation of a social peace propagation model. *Scientific GOD Journal*, 7 (5), 289–315. Available at: <https://scigod.com/index.php/sgj/article/view/479> [Accessed: 16 June 2018].