

# **Rescue Mission for Village Courts**

## **Mediation on Non payment of Allowances to Village Courts**

**Patrick Howley**

### **Abstract**

The Village Court in Papua New Guinea was the result of a choice made by the PNG House of Assembly in 1973 when they rejected the western court process of dealing with conflicts in the village and chose an alternative traditional process, custom. Since then, Village courts have continued in spite of opposition, neglect and deprivation of officers stipends over the years but have endured because they provide a form of justice that suits the needs of the people. In 1994 the National Law and Justice Sector Plan (LSJP) included initiatives to support the functioning of the Eastern Highlands Provincial Village Courts but the Village court officials refused to cooperate until their stipends were all paid up. A mediation, using the traditional Melanesian way, was arranged to deal with the conflict. This paper provides background to the conflict and the process of mediation used.

### **Introduction**

The Papua New Guinea House of Assembly in the early seventies set its face against the ad hoc laws of kiaps, patrol officers and the official processes of western courts on the grounds that they had destroyed the best of Melanesian ways and culture. The Assembly passed legislation to set up village courts to return to custom and give power to the people. The Assembly wrote into the Constitution Schedules 2.3 and 2.4 which oblige the National and Supreme courts to develop underlying law (custom).

Australian jurists opposed village courts vigorously as dangerous, repugnant, unworkable and an opportunity for all kinds of corrupt dealings. On the part of the villagers the understanding of custom was still strong but for many years it had been forbidden and there was confusion about how it should be applied. Because of these two factors, the first attempts at custom in village courts were more court than custom. Since then over the years Village courts have developed into a popular solution to village conflicts, in spite of (or perhaps because of) neglect, lack of training and lack of supervision (LJSP 2001).

In 1995 Village courts were handed over to the provincial governments. There was a lack of understanding between Province and Nation and no memorandum of understanding. Since 1996 the payment of stipends to Village magistrates had become quite irregular; the Magistrates have however continued to conduct cases but have not handed in fines or completed paperwork.

The National Law and Justice Sector Plan (LSJP), an AusAID Project, included support of Eastern Highlands Provincial Village Court functioning in its initiatives. However the magistrates refused to cooperate until the EHP Government agreed to deal with the outstanding stipends owing over the past seven years. It was feared that taking the matter to court would leave many people dissatisfied and a residue of bad blood. Instead the matter was handled by mediation - a traditional Melanesian process. The Divine Word University team of Patrick Howley and Marina Moeder was asked to mediate.

### **Background to the conflict**

The first village courts were established under the Village Courts Act 1973 to return 'power to the people' by bringing back custom law. Since then the village courts have extended across most of the country and now occupy a vital position in Papua New Guinea's legal system. Unfortunately the Magistrates manual for the first courts was strongly directed towards Court (not custom) first because Australian jurists had strong suspicions of custom as dangerous and unworkable and secondly there was the fact that no one had clarified the difference between customs as a set of laws and custom as a process for administering the laws.

Custom was born out of the need to maintain the social contract in small communities. It was a survival mechanism to secure the village and the relationships between its members. Customs are the set of rules and laws that people lived by. Custom is the process for implementing and imposing these many customs. Custom is the process used by Melanesians to bring justice to their villages, in line with community values and attitudes. Just as the court in western countries is a process of dealing with crime, so custom is the process in Melanesia. Jurists coming from a Western model wanted uniformity in the treatment of crime in its various forms. Melanesians looked for uniformity in the process that preserves the security of the community (Howley 2005).

Australian jurists were as a body opposed to custom. Typical of the Australian attitude was J. R Mattes, Principal ESOPA Sydney: "I know of no indigenous system that is just. Queen's Justice is paramount. Justice must be impartial. It is important also that the native should be impressed with the fact that the foundation of justice is somewhat above the government; it is the Queen's justice administered by the Queen's courts" (Brown 1969). A hundred years of patrol officers, kiaps and the denigration of Melanesian justice by the colonial powers had left its mark (Puposil 1984). Before the arrival of the colonial government in Papua New Guinea,

The big man had a role in disputes as a key intervenor. The nature of his status and society also defined his role in dispute settlement. Generally speaking he was a mediator who exhorted the parties to come to an agreed solution or suggested solutions. It is only in the most serious cases, which appeared to affect the harmony and order of the whole community that the big man had an adjutory role. These cases included stealing, serious sexual offences, killing. Finally the

focus of dispute settlement was getting into the group of the problem as opposed to dealing with the symptomatic behaviour (Paliwala 1982, p.19).

Many village elders still had the racial and attitudinal memory of custom but few remembered the actual process. Nonetheless, courts went ahead and operated with the structure of a district court but with an instruction to use custom.

In the 1990s a team set up under AusAID was called to rewrite the Village Courts Manual. In referring to the original manuals they reported:

The courts work well despite the training provided. The training currently provided does not prepare Village Court officials for the job they are called upon to do. In fact aspects of the trainings as they are now conducted actually impair the ability of Village Court officials to do their job. A Village Court Training Trainer's Manual concerned itself with instructing trainers in how to run sessions (in a very Western group-dynamics style), but without demonstrating a sense of the real problems of village court magistrates (LJSP Village courts system 2004, p 17)

#### **Village court set up**

Village court magistrates are appointed from the local community by the Village Courts Secretariat after consultation with the people of the community and are paid a small stipend for their work. Prescribed offences set out in the Village Court regulations include spreading false rumours, fighting, taking property, damaging property, drunkenness, sorcery, disturbing the peace and failing to observe customary obligations. For an offence, the court may, under the 1989 act, impose a fine of up to K200 or order community work for up to six months. Failing to pay the fine or perform the community work is an offence under the act which may attract a jail term of up to six months. The village court also has 'preventative jurisdiction', designed especially to deal with cases of physical violence and tribal fighting. The court has a primary responsibility to ensure 'peace and harmony' and the 'just and amicable settlement of disputes'.

The village court is not bound by any law (other than of the Constitution, the Village Courts act or customs 'repugnant to the general principles of humanity') The court is not bound by the rules of evidence that must proceed in accordance with the principles of natural justice. The limit is that custom must not be recognised or enforced where injustice would result, or public interest would be disadvantaged (LJSP Village courts 2001, p.5).

Village Court magistrates receive little training. In theory the village magistrates are already familiar with the custom which they are expected to interpret but sometimes they have little knowledge of the dispute or the real

issues and often cannot see a conflict of interest in their decisions. Political custom is a highly flexible component and unfortunately in a male dominated society where people are not aware of their rights, magistrates tend to apply custom more severely against women juveniles (Young 1992, p.32; LSJP Village courts 2001).

### **Custom and village courts**

Peacekeeping rather than administration of justice is the aim. Conflict management takes place in formal meetings for the purpose of dispute settlement. These do not depend upon precedents or principles for their operation. They take into account personalities and situations rather than assuming that everyone is equal before the law. These basic procedures for conflict management are similar throughout Papua New Guinea (Scaglion 1983).

The Village Court system has tended to imitate the formal judicial system with which it shares the ultimate sanction of imprisonment. The resultant conflict over the nature of village courts, their process and mandate hinders their efficiency, and provides grounds for a negative view of the courts which are held by many administrators (Young 1992).

The Western legal models have generally been popular and quite successful in the Highlands. They provide flexibility and at the same time provide authority, effective coercive power, presumed neutrality, clarity of process and a supposed detachment from human weakness and emotion. The Village Court system is able to achieve greater impartiality in its proceedings and judgments. It has succeeded in bringing before it big men and imposing compensation and fines (Young 1992 p.31).

In the Highlands, traditional forms of dispute resolution (custom) have continued through mediation, compensation, and compromise at the village level. Here custom is generally well handled (Young 1992, p.31) but large compensation payments for killing are generally in the hands of power brokers. Power broking may be custom; however, most power brokers are more interested in building their own status, by extracting blood-money and demonstrating their ability to control large numbers of followers than in justice or custom. In this exercise the money is not used to compensate the victim's family but it is dissipated among the organizers. Even worse, the exercise is only a temporary settlement rather than a genuine long-lasting reconciliation.

Among coastal people there is still dissatisfaction with any courts which impose a win-lose solution. Generally, coastal people understand custom as a win-win solution with reconciliation. Gifts of traditional wealth were an acceptable part of the process but money compensation was not. More recently in some places the highland custom of money compensation has become more widespread.

### **Higher courts and village courts**

National Court Judge, Justice Salamo Injia at the Judicial Conference in Madang June 2003 told his audience,

The Constitution defines the national judicial system as consisting of the Supreme Court, the National court and other courts established by acts of Parliament. Any misconception that there are two court systems operating, instead of one, has arisen over the years because of the practice of the courts. The higher courts have moved themselves from the understanding of the common man. They are less accessible to the majority of the people because of their more formal and technical procedures. Meanwhile the village courts dispense justice to some 85 percent of the population who reside in the rural settings; they have become the 'small persons' courts and have gone ahead to deal with all matters civil and criminal. Even if the customary rules are often repugnant, most people understand and appreciate them, which is more than the formal process applied by the higher courts (*National Newspaper Editorial*).

The village court allows disputes to be dealt with at the lowest possible level. This places the maintenance of law and order more directly on the people themselves. They provide face-to-face justice without the hindrance of lawyers, immediate action and decision-making so lacking in the national courts.

### **Evolution of the village courts**

Acceptance by the people is essential for the success and effectiveness of the village court. The most successful magistrates are those who are able to move freely between the two systems of law, using the coercive power of court or mediation process of custom or both when necessary (Young 1992). Over the years a great vacuum has appeared in judicial process. The National courts, obliged as they are to follow the slow and cumbersome processes of law handed down to the State at independence, have been quite unable to deal with the mass of civil and criminal cases which are their responsibility. The village courts, on the other hand, have primary responsibility to ensure 'peace and harmony' and the 'just and amicable settlement of disputes'. By default and the demand of the people, the village courts have begun to occupy the vacuum. Particularly in the highlands they now deal with rape, murder, grievous bodily harm, arson, destruction of property (coffee gardens) and tribal fighting.

### **Frustrations of magistrates**

Magistrates are extraordinarily generous with their time, services and custom knowledge. They spend two or three days a week in court, carry enormously responsibilities and risk their lives in carrying out their duties. Traditional peacemakers in all Melanesian communities assure the magistrate a position of respect. The Government cannot afford to pay him what he is worth at the same level as other magistrates or public servants; however an allocation of K32 per

month (which has not changed in the last thirty years) is slim payment. Village court officials do not make an issue of this.

However the lack of adequate government support and recognition is a major complaint. For the past seven years village courts have had little or no supervision, moderation or in-service training. Their position of respect in the community has been eroded by the lack of the promised monthly pay, lack of support from the government and their inability to enforce their decision on fines and community work. Also they feel threatened by the rise of rival peacekeeping bodies that intrude into their sphere of authority.

In the workplace there is the danger of payback against individuals or clans who claim prejudicial treatment. They are called on to enter tribal fighting areas to mediate in situations where high-powered weapons are now common and in Eastern Highlands three magistrates have been murdered in the line of duty. Against these hazards they have no insurance, compensation or danger money.

### **Success of the village court**

Village courts are unique to Papua New Guinea and are an example of success to the world, in spite of the imperfections that have crept in through lack of maintenance and care.

Village courts are popular and effective because they are:

- Accessible - low cost to both state and , immediate -no long waiting in remand.
- Custom directed - reconciliation, mediation and restorative justice
- Free of hostile, confusing incomprehensible legal language
- Non-adversarial. – no lawyers are allowed in the village court
- Satisfying to the needs of the people that they serve (LJSP Village Courts 2001 p.5).

While the village court system is poor in financial terms, it is rich in human resources. It provides a community service where the formal court system cannot and does not reach. The village courts system is very much alive but in need of a sustaining tonic. (Jessup 1991 p.77)

### **Transfer of village courts to from National to Provincial government**

During the 1990's there was discussion on the place of village courts and their official standing. Penni Keris, Director of village courts, noting that certain deficiencies have developed asked the question:

How can largely illiterate and village magistrates be required to observe the Constitution? In the light of their current practical experience this is an unacceptable burden. The practical consequences

are obvious. Village court magistrates will continue to hand down decisions contrary to the spirit of the Constitution (Jessup p77)

In 1995, Organic Law Sect 42 (1) (i) and 47 transferred responsibility (with the exception of jurisdiction) to provincial governments. The transfer was badly bungled. Neither Provincial nor national Governments knew what was expected of them or, more important still, there seemed to be no agreement on who was to pay for stipends, supervision and maintenance of courts. In many areas, courts were left to their own devices and as a consequence, processes and procedures evolved without sufficient planning and resources. Administration, management and operations were not supported by sufficient legislation, training, education, knowledge, resources and other support services to ensure the system operated to its full potential in terms of efficiency and effectiveness.

### **Current status**

Despite these early difficulties, most provincial governments are now willing to accept their responsibilities and have a greater understanding of the requirements of the system. However, the legacy of years of neglect remains.

A number of provinces are yet to create or fill the vacant positions necessary to effectively manage the system. Provincial officers often lack the necessary knowledge and administrative skills. At best, only half of the village court officials have received training resulting in incorrect practices and instances of abuse of power. Some of the legislation governing the operation of the courts is ambiguous, if not contradictory, and there has been a serious decline in the emphasis on operational support in particular, supervision and inspection. In a number of provinces, courts are operating with limited assistance from government and in some situations support is non-existent (LJSP Concept Paper 2003 p 10).

### **Village courts and Eastern Highlands Provincial Government**

After 1995 when the village courts were handed over to the Provincial Government there was a long period of confusion and neglect. The allowance paid to Village Court Officials (VCO) under the National Government, was small but at least it was paid regularly. Under the Provincial Government there was confusion. Between 1997 and 2004 some funds were received from the National Government and some allowances were paid. Sometimes all received the allowance for a couple of months. Sometimes it was paid to several districts only for a couple of months and sometimes none at all.

Even though they received no allowances, most Village Court Officials continued their work, except in tribal fighting zones. During this time only a few VCO continued to hand in the court fines owed to the Eastern Highlands Provincial Government (EHPG) and none kept records of any kind.

On 16th November 1998 *Acunufa and Associates*, on behalf of the Eastern Highlands Village Court Officials, brought a court case against the Eastern Highlands Provincial Government for non-payment of allowances. The judge sent it back for further preparation. It was amended on 29th April 1999. However the judge sent the case back again for more definite figures and information. (Justice Elenessa Batani – interview with the author) *Acunufa and Associates*, requested a levee of twenty kina (K20) from all court officers to continue work. The VKO were unwilling to pay out and the case has not lapsed but has not been pressed.

After the failure of the court case some decided to take direct action and a group of VKO protested outside the provincial government offices. Some took up stones and smashed windows in the provincial government offices. The governor paid some further allowances but docked their money to pay for the broken windows.

In all provinces of Papua New Guinea, village court neglect and frustration had become a running sore and demanded attention. The National Law and Justice Sector Plan (LSJP)<sup>1</sup> included initiatives to support the functioning of the EH Provincial Village Courts. However VKO were unwilling to cooperate until the matter of past allowances had been settled. They were angry at the neglect and the shabby way that they had been treated and figures like K2m were being bandied about. The Provincial Government team were unhappy. EHPG did have figures of what had been received from the National Government and were able to calculate roughly how much had been collected in court fees. They believed that the VKO had paid themselves and that they were owed nothing but in the face of the anger and hurt they were at a disadvantage.

Rather than a court case that would leave dissatisfied people and a good deal of bad blood to aggravate future relations, the Province Secretary for Law and Justice proposed to settle the matter by mediation. The Divine Word University team, Pat Howley and Marina Moeder, was selected to mediate.

### **Eastern Highlands Province village court sStructure**

The Eastern Highlands Province is, for convenience, divided into eight districts for the work of village courts. They are: Obura-Wonenara, Kainantu, Okapa, Henganofi, Ungai-Bena, Goroka, Daulo and Lufa. In total there are 801 village court officials.

**Table 1: Official rates of pay**

Chairman	K32.70 per month
Deputy Chairman	K29.06 per month
Magistrate	K26.64 per month
Peace Officer and Clerk	K24.43 per month

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<sup>1</sup> Law And Justice Sector Plan (LSJP) is a section of the AusAID program conducted by ACIL.

To carry out their mission the EHPG has set up a village courts team:

Charles K. Goto	Team Leader
Gitene Pupuneso	A/Director corporate services and extended national functions
Ben Beiyao	Coordinator village courts
Ipaie Maniha	District Administrator Daulo
Ralph Siove	Advisor Lands
Douglas Carton	Executive Officer EHP Law and Justice Sector

### **Mediation conducted to settle outstanding allowances due to village court officials in Eastern Highlands Province**

#### ***Awareness session***

The DWU team carried out awareness on June 21. Participants were the Government team and 24 VK Officials- three from each of the eight districts. The purpose of the meeting was:

- To break the ice and get to know the participants,
- To inform all participants of the process of mediation
- To help both sides to understand negotiation.
- To ask participants to consider alternatives to their needs
- To understanding the ground rules governing behaviour during mediation<sup>2</sup>

#### ***Mediation***

Following the awareness session, a week-long mediation was set for 18 to 22 July. The purpose of the mediation was to settle outstanding allowances due to village court officials in the Eastern Highlands Province and was carried out July 18 to 22, 2005.

#### ***Mediators:***

Br. Pat Howley, BA, MEd Lecturer, Divine Word University  
 Marina Moeder, Dip. Comm. Arts, DWI, Mediator.  
 Recorder, Henry Yamo, BEd Communication Arts student  
 Eastern Highlands Provincial Government team

#### ***Observers***

Jarry Anuk	Adviser Consultant to Land Justice Sector Program
Peni Keris	Director of Village courts
Tony Cameron	Law and Justice Sector Program

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<sup>2</sup> Ground rules, the rules that govern the meeting are posted on butcher paper for all to see. Without ground rules a mediator will probably have difficulties maintaining control when a tense occasion arises. They are there for quick reference and are readily accepted. Most important ground rules are, Participants agree to stay with the mediation till a solution has been found, avoid violence in words and actions. Fouls in fighting to be avoided are: Name calling, Hurting and blaming, Threats and threats of violence, Use of strong language, Lies and excuses, Not listening to the other person and Payback.

**Table 2: Village court representatives**

<b>Obura Wonenara</b>	<b>Kainantu</b>	<b>Okapa</b>	<b>Henganofi</b>
Benny Peter Gibson Sinake Koa Hauila Wesley Gaharu	Jerry Koa Ron Unamba Albert Muyao	Tupo Ifina Jim Kendo Luka Koilonimo	Tau Naifa James Luyfamo Hom Yafave

<b>Ungai Bena</b>	<b>Goroka</b>	<b>Daulo</b>	<b>Lufa</b>
Peter Omane Geno Saite Mipomofa Bila	Rubia Nunuve Manasah Walo Dora Kekemo	Rodney Nime Tagai Merimba Siwi Muruk	Absolom Numu Martim Otogomo Roman Leve

*The first step in mediation is to meet with the two parties separately.*

- Hear the story of each side so that it will not intrude in the meeting later.
- Separate the needs from the wants.
- Revise the ground rules.
- Find out what each side is prepared to negotiate.

#### **Meeting with the Eastern Highlands Provincial Government Team**

All information coming into the meeting was provided in note form in *tok pisin* on butcher paper and blue-tacked on the front wall. The room was kept open so all information was available at all times during the week.

#### *Points made by the EHPG team*

- At one stage (about 1996) the EHP Governor for political reasons raised the allowance paid to the VKOs (K70 for Chairman and down from there). This rate is not sustainable. It has not been paid since 1976 but VKO feel they are justified in asking for it. It may be possible to have more funds budgeted next year and raise the allowance rate but no promises can be made.
- The correct number of officials is 976. This has grown to 1332. This must be pruned back to the correct number.
- The EHPG team have not been able to find any agreement, MOU or legal information about the handover of Village courts from National Government to Provincial government. They believe that it just happened on word of mouth.<sup>3</sup>
- A total of K33, 107 in payments have been made to seven district treasuries for VKO allowances between 1998 and 2003.

<sup>3</sup> 1995 Organic Law Sect 42 (1) (i) and 47 transferred responsibility (with the exception of jurisdiction) to provincial governments. (It seems that there was no MO as to the details of Supervision training or payment)

- VKO have continued work in the years since the hand over in 1995 but have not been handing in the Court fines. Calculations (shown below) estimate that during the years 1998 to 2004 The amount of fines collected is a minimum of K1, 178,675.

***Wants and needs of the EHP Government team are:***

- Fair and affordable payment of unpaid allowances (to VKO).
- For calculating unpaid allowances the EHPG team will operate from
  - the records that they have (During the seven years some allowances were paid.)
  - records of funds budgeted
  - audit report
- Active working Village Courts to return peace to EHP
- All fines collected by VKO must be paid to Government.
- Removal of illegal charges made by VKO for forms and appearance money.
- All records to be kept accurately.
- Sanctions to be used against VKO who fail to return fines or keep books. Deductions should be made if fines collected are not forthcoming.
- Retire all officials who are too old, incompetent or corrupt. (Probably about 60%)
- Improved administration.
- Inspection of Village courts.
- Agreement that this gathering will supersede the demand before the National court.
- In view of the large number of expected replacements the team spoke of qualifications for new VKO.
- They noted that LJSP policy is to increase the number of women in the village courts.
- Signed agreement to work by the national rate.
- Finish the meeting with a signed and supported agreement.

***The alternatives if mediation fails:***

- Try again next year?
- Take it back to court?
- Leave it in the hands of the VKO and allow privatisation?

**Meeting with the Village Court Officials**

- The EHPG must pay our allowances.
- Some years ago (1996) VKO were paid more than double the present rate. But since then most VKO have not been paid.
- VKO have continued to hold court two days a week.
- Sometime for serious matters overtime and extra time has been offered.
- Some VKO have died without payment

- The number of VKO on the list has grown because people who have resigned have to be replaced. They are recommended by the community and put on to the list by EHPG but the others have not been removed.
- When the village courts were first set up we were dealing with small things – Stealing of less than K100, bad language, fighting, drunkenness. All offences that were more important had to go to the village court. Today VKO handle murder, rape, wilful destruction of property, grievous bodily harm and tribal fighting because the district courts and national courts do not or cannot deal with them.
- On 18/12/2000 eleven (11) reps were dismissed. Some VKO stoned the Prov. Govt. windows. Peti Lafanama gave K21,000 out of which a deduction was made from each VKO as for compensation for the broken windows.
- VKO from Daulo and Goroka brought the EHPG to court twice without result
- For the last seven or eight years we have had no supervision, no training, no uniforms
- VKO have lost the respect of the people because the EHPG does not respect them.
- There are police courts, mediation courts and other courts confusing the whole law and justice situation.
- EHPG has not seen the changes taking place in the field because they are not looking after the courts.
- Security for magistrates.

Three magistrates have been killed in the course of duty: in Lufa one speared to death, in Kainantu and in Bena two were chopped to death.

***We need***

- Back pay from 1997 to be paid.
- Pay for retired VKO.
- Pay for VKO families of those who have died.
- Workers compensation for VKO killed in the course of duty.
- Rise in pay from the present amount (since courts were founded there has been no rise in pay)
- Pay by the fortnight not the month.<sup>4</sup>
- Communication and awareness in the villages about the work of the VKO
- Administration matters
- Court houses
  - Uniforms
  - Training
  - Certificates of identification
  - Court forms

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<sup>4</sup> This would bring them into line with the business section and provide one extra pay per year.

### Preparation for bargaining process

Calculations of allowances owing to village court officials as taken from the EHP Government records:

**Table 3: Calculation of allowances owed from government records**

Year	Annual budget	No. of months not paid
1996		
1997	K500,000	3 months
1998	K 49, 000	3 months
1999	K400,000	
2000	K25 000 +Nat G. K333,107	9 months
2001	K100,000	9 months
2002	K62,000	9 months
2003	K80,000	9 months
2004	Nil	12 months
2005	K100,000 + Nat G. K365.000	
		54 months owing

#### *VKO estimate of number of months owing*

VKO left the room to discuss their number of outstanding months of pay. They did not have access to the figures in table 3 so they requested the assistance of Mr. Ben Beiyao Coordinator Village Courts on the grounds that having access to the Government records and being a sympathetic person he could provide advice.

This was refused by the leader of the government team on the grounds that they felt it inappropriate for a government office to assist the VKO in any way. The result was that the VKO made a series of guesstimates made on memory. The figures were obtained by asking representatives from each district to remember the payments made.

**Table 4. Guesstimates of allowances by village court officers**

Year	Annual budget	No. of months not paid
1996	No figures available to VKO	9 months outstanding
1997	No figures available to VKO	12 months outstanding
1998	No figures available to VKO	12 months outstanding
1999	No figures available to VKO	9 months outstanding
2000	No figures available to VKO	9 months outstanding
2001	No figures available to VKO	12 months outstanding

2002	No figures available to VKO	12 months outstanding
2003	No figures available to VKO	12 Months outstanding
2004	No figures available to VKO	12 months outstanding
2005		All paid to date.

### Negotiation process

The position of the EHPG team was presented by Mr Charles Goto. He admitted that the village courts had been neglected by the government since 1995. He apologised on behalf of the Provincial government and explained that there was confusion on who was responsible for payment and maintenance. However, he pointed out that he had a mandate from the EHPG to obtain a fair and affordable payment of allowances not paid for the previous years from 1997 but he was not prepared to discuss any of the matters on the VKO needs and wants list because the responsible body for these matters was still unclear. He was unwilling to present the figure that they (EHPG) were offering until he saw the request of the VKO.

VKO refused to accept that the fines had been a part payment, and working from their own figures presented a round figure of K2 million.

EHPG then presented their own offer:

- The offer was for K800,000 and not negotiable.
- To be paid in instalments over 18 months beginning September 2005
- Payment would also be made to retired VKO and the families of VKO who have died.

This agreement was dependent on the understanding that in future VKO would pay all fines to the government and drop all court charges and any other responsibilities they might have against the Provincial government.

VKO did not accept the offer of K800, 000 and questioned the figures given by the EHPG team on the grounds that much of this money could have been spent on administration or syphoned off on to other activities by the Governor. They insisted that the figure of 72 months of non-payment was a fair and affordable figure. The spokesperson for the VKO insisted that the only reliable figure was the receipts signed by VKO in the government office.

The call for signed receipts was an impossible request, as such a process would have taken months, possibly a year even if all the papers were available. It was probably a blocking tactic because the VKO had a number of complaints, which the Government team were refusing to consider. Much of the VKO dissatisfaction was centred round the administrative incompetence, inefficient delivery mechanisms and lack of attention to the needs of VKO over the past seven years.

Eventually the spokesman for the VKO accepted the figures presented by the government team (and angrily left the discussion). He was obviously upset that the EHPG had blocked off any area for negotiation by stating that their mandate was the payment of 'a fair and affordable allowance' only and they were not allowed to negotiate on any other matters.

The mediator read the body language rather than the agreement and continued the discussion on payment to no avail. To ease the tension the mediator sent the two teams off to study what had happened to the court fines.

#### **What has happened to the Court fines?**

Both parties met separately. At this stage the situation was very tense and so the matter of the amount offered was left for the time being while the two parties met separately to consider what had happened to the fines.

#### **VKO statement**

- Some court fines were paid to LLG from 1975 to 2001.
- Much of the fine money was used on administration needs because none was forthcoming from the EHPG.
- Many fines are entered into the book but 'the offender runs away to some other place and does not pay'.
- Instead of putting fines, many VKO now give community work orders.
- Transport to Goroka, to joint sittings, other travel.
- Feeding and housing prisoners.
- Photocopying forms not available from VKO office (forms 2-8, summonses, warrants)
- Payment to house owners for accommodation, rent during court cases or rainy days.
- Credit to VKO who have no money.
- Warrant payment for village<sup>5</sup>.

What has happened to the court fines (as calculated by EHPG)?

**Table 5: Estimated court fines**

Article	Estimate by EHPG	Revised estimate in consensus
Number of active village courts	87	80
Number of cases per week in each court	3-6	5
Weeks per year of active court proceedings	46	40
Average of fines ordered per sitting	K50	K 50
This would provide for one year		K600,300

<sup>5</sup> Nothing in the Highlands is free. If it is raining and the court needs a canvas they have to pay. Holding court inside a operson's house – they pay.

But VKO are not able to collect all fines Working figure – one third of the fines are collected in each year	K200,100
Collection of VKO fines for the 7 years should be	K1,400,700

The VKO studied the original list (above Table 5) as shown under estimate by EHPG and revised it to the section revised estimate in consensus. They were satisfied with this figure.

### **Mediation continued**

At this stage there seemed to be an impasse. The EHPG position was that VKO are owed 54 months x K25,000 while VKO position is that VKO are owed 70 months x K25,000. The VKO ignored the statement by the EHPG (refusal to discuss anything but allowances) and continued with their list of complaints, which needed to be heard before they could accept the Government offer:

- Allowances should be increased. They have not been changed for 25 years while all the other government people have had rises in pay.
- VKO are being considered as casual labour.
- Our job is very risky. Three of our people have been murdered while at work.

The mediator asked village court officers what they wanted in order to accept the deal offered by EHP government.

### ***Intervention by Peni Keris***

Mr Keris explained Papua New Guinea Justice Advisory Group, an AusAID project, has a mandate to bring back the village courts to their original working condition. Eastern Highlands Province is not the only province with this problem but is the pilot for making a settlement and going ahead. There are 20 other provinces and 13,676 other V Courts in the country that have the same problem as the EHP.

Keris is aware of the neglect that had taken place over the past 8 years. He had heard their statement that they had lost the respect of their people. It is a common complaint and they will rectify it throughout the country. He pointed out that Papua New Guinea's village court system is unique and it is the best system ever devised for a developing country.

While much of the world is still experimenting with restorative justice and alternative dispute resolution, PNG has an established traditional legal system that has the principles of restorative (rather than punitive) justice at its core. Indeed, the primary aim of the village court system is to bring disputing parties together and settle matters in a manner that restores 'peace and harmony' (Concept Paper).

He said that by law the Village courts are obliged to pay a just settlement. This is what we are trying to do now. The Village Courts Office in Port Moresby will provide Uniforms, Medallions, ID cards, and Training as a part of their administration responsibility. For this the Village courts secretariat has been allowed a budget K13 million with which to meet the needs of the Village court officials in the 20 provinces. The Provincial Government recognises their problems and will help them.

### **Decision**

On this basis the VKO team accepted the offer of K800,000 along with further requests for settlement by the EHP government team.<sup>6</sup>

### **Draft Agreement**

**AGREEMENT BETWEEN EASTERN HIGHLANDS PROVINCIAL  
GOVERNMENT  
AND VILLAGE COURT OFFICIALS (EHP)  
22 JULY 2005**

**A.** The Eastern Highlands Provincial Government Village Court Mediation Team agrees to recommend to the Provincial Executive Council of Eastern Highlands Province that the Eastern Highlands Provincial Government:

Pay the amount of K800,000 to EHP VC Officials to settle provincial responsibility for all outstanding allowances (1997 – 2004).

Pay the amount agreed within 18 months of the date of signing an agreement between the EHPG and official representatives of EHP VC Officials.

Pay the first instalment in 2005 to those officials who have died, resigned, become ill, etc.

Conduct an investigation into the allocation and distribution of any and all VC allowance payments made by the National and Provincial Governments between 1997 and 2004.

Co-operate with the implementation of the National Village Court Secretariat program to improve VC in EHP.

**B.** The Village Courts of EHP represented by their officials agree to:

Immediately deposit all fines that are currently held by any and all VC Officials to the EHPG system as per instructions.

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<sup>6</sup> Peni Keris also had a private meeting with the VKO at which he may have been more explicit in what was being offered.

Deposit all future fines on a timely and accurate basis to the EHPG system as per instructions.

Co-operate with the EHP Village Court office and the National Village Court Secretariat with the implementation of the National Village Court program to improve Village Courts in EHP.

Withdraw the court case currently pending before the National Court and the Daulo District Village Courts.

To absolve EHPG from further responsibility for any and all past allowance payments to Village Court Officials.

### C. Understanding

That the EHPG will require a partner to assist with full payment of the amount stated in this agreement.

That the instalment payments made by EHPG are conditional upon the accurate and timely deposits of all fines collected by Village Court Officials.

That an MOU be undertaken between the EHPG and the National Village Court Secretariat to clarify further responsibility and reimbursement of any and all Village Court past allowance payments made to EHP VC Officials for the period 1997 – 2004.

### Signatories

For EHPG Charles Goto Team leader and Gitene Pupuneso

For EHPVKO Rodney Nime and Tau Naifa

### Comments

Due to the demands of insurance companies, much of the mediation in the western world has lost much of its win-win character. Both parties bring in their lawyers and set out to win at any cost. Melanesian mediation is a process in which both parties cooperate to find a solution. There were parts of the mediation which looked more Western than Melanesian.

The EHP team could have taken a more win-win cooperative line if they had accepted the request of the VKO team and allowed Ben Beiyao to assist them.

VKO felt disadvantaged by the fact that they had no access to the information available to the Provincial government.

The EHP Government team presented a bottom line and refused to consider administrative matters or future reform. (It was beyond their control.) This left very little for the two teams to bargain on because for the VKO no agreement was possible without administrative reform.

### Lessons to be learned for future mediation.

- The situation at Kainantu Lodge was quite suitable for the exercise.
- At awareness the VKO team should be told that this is a national exercise to bring back the quality of the Village courts and is supported by the Village Courts and AusAID. The package aims to bring back authority and respect and includes training, badges of office and uniforms. The first step is to settle a fair and affordable payment of allowances and an agreement between the PG and VKO
- The awareness was essential to the future running of the meeting.
- One week was enough for the mediation.
- It is important that both sides see the exercise as a cooperative win-win agreement not a competition to win.
- The VKO should have the opportunity to select a team of three people who will be spokespersons.
- Paper work available to Provincial team should be available also to the VKO. The Provincial Government Village Court officer should be instructed to explain this to the VKO spokespersons so that there is no resentment at special information being suddenly presented.
- Mediation in the western world is often driven by insurance companies anxious to save their dollars. It becomes a win-lose process where both sides refuse to share any information which may be of a benefit to the other party bring in their own lawyers to protect their legal position. Such behaviour in mediation such as this could be counterproductive.

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