

Safety, Security, and Accessible Justice
Participatory Approaches to Law and Justice
Reform in Papua New Guinea



ROSITA MACDONALD



EAST-WEST CENTER

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Safety, Security, and Accessible Justice

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Executive Summary

Safety, Security, and Accessible Justice argues that the current approach to addressing crime and lawlessness in Papua New Guinea (PNG) impedes development across all areas of the country's society and economy, and fails to address the underlying problems of crime and violence that have stalled economic and social development. The paper further contends that institutional reform targeted toward improving administrative and organizational functions in the formal legal realms—the judiciary, prisons, and other law and justice agencies—as well in programs such as the Enhanced Cooperation Program (ECP), needs to be implemented simultaneously with participatory-based approaches at the community level. These reforms need to focus on expanding social, economic, and political opportunity for the broader PNG community, including traditionally marginalized groups such as women and children. They should also enable a greater proportion of the population to participate directly in strengthening the processes of justice in accordance with both PNG norms and values and fundamental human rights.

In an attempt to clearly delineate the causes of these ongoing challenges to reform, this paper analyzes the findings of development practitioners and the academic fraternities of PNG and Australia, in conjunction with the general principles of effective technical assistance asserted by the major multilateral aid and development organizations. These findings have clear implications for law and justice reform in PNG. There is an urgent need for law and justice policy in PNG to shift from the official rhetoric supporting traditional and community-led approaches to law and justice to a greater commitment from the PNG and Australian leadership to redirect some of the resources available to the government sector (courts, prisons, civil service) to underutilized community organizations. Specifically, this paper recommends enhancing funding and support for restorative justice approaches, the village court system, and other community organizations, and renewing debate on the appropriate role and scope of the PNG central government. With the recent election of a new government in Australia, there has already been a shift in the dynamics of the Australia-PNG

relationship. Enhanced prospects for change, along the lines of the policy recommendations contained herein, also seem more possible under the new Australian leadership.

Safety, Security, and Accessible Justice

Participatory Approaches to Law and Justice Reform in Papua New Guinea

Introduction

Australia is among the dominant political, economic, and military powers in the South Pacific and continues to exert significant influence across the region—particularly in Papua New Guinea (PNG). Australia is also the former colonial administrator of PNG, and close, though often fraught, relations between the two countries have persisted since PNG gained independence in 1975.

Like people of other formerly colonized nations Papua New Guineans have complex attitudes toward their former administrator, particularly as Australia continues to exercise considerable influence over the internal affairs of PNG. Australia is both the largest aid donor in PNG, and the most important stakeholder in the development of Papua New Guinea's governance and economy. In addition, the geographic proximity, historical relationship, close economic relations, and similarity of formal legal systems between the two nations place Australia in a unique position to assist Papua New Guinea in addressing its severe development challenges in the areas of law and order, justice, economic management, public sector reform, border control, and national security and safety.

Crime and lawlessness obstruct the implementation of successful and sustainable development policies in Papua New Guinea in many ways. These include reducing the chance of attracting new business to the region; inhibiting the delivery of fundamental civil services, such as community safety and dispute resolution; restricting the population's access to schooling and markets; and impinging upon human rights. The ongoing deterioration of the law and justice sector has been identified by the Australian Agency for International Development (AusAID), the Australian government's aid branch, and the PNG government as a major impediment to the development process across all sectors of PNG society. For the purpose of this paper, the law and justice

sector refers to both formal law and justice agencies and civil society groups which assist the formal agencies.

The reasons for this deterioration are manifold. Paramount is country ownership, defined as sufficient political support within a country for the implementation of a developmental strategy for which external partners provide assistance. Country ownership has been recognized by the World Bank, United Nations Development Programme (UNDP), U.S. Agency for International Development (USAID), AusAID, and others as being essential for effective aid and technical assistance (AusAID 2004, World Bank 2005, USAID 2006).

Recurring challenges to achieving successful and sustainable outcomes in the law and justice sector include a lack of ownership and engagement on the part of the recipient government, donor dependence, and unrealistic time frames. Morgan (2002) argues that technical assistance—the transfer of knowledge and resources from donor organizations and countries to recipient developing countries—does not achieve sustainable results largely due to its supply-side approach to implementing change and weak focus on the specific needs and cultural context of the recipient nation. Of further signifi-

Country ownership has been recognized as being essential for effective aid and technical assistance

importance is an underinvestment in performance monitoring and evaluation of legal and judicial reform initiatives, which has crippled the efforts of donor organizations to learn from the experi-

ence of their predecessors (Armytage 2006). The World Bank and UNDP have acknowledged the pervasiveness of these trends in development assistance and have highlighted the necessity of building the capacity of the counterpart society through both government and civil society. They have stressed the importance of both government and civil sectors assuming responsibility for and coordinating the structural changes necessary for economic and social development. In spite of this recognition, the difficulty of “reforming reform” in conjunction with unrealistic time frames has meant that, to date, such concerns have remained largely relegated to rhetoric within PNG’s law and justice sector.

The most recent and significant initiative in this partnership, in terms of aid resources at AU\$800 million, is the Enhanced Cooperation Program (ECP) which was conceptualized and agreed to by both governments in December 2003. The program was designed to help address PNG’s most pressing development challenges, particularly increasing crime rates, violence, and lawlessness. The ECP involved the placement of 154 Australian Federal Police (AFP) officers in critical roles within the Royal PNG Constabulary (RPNGC) and the placement of approximately 60 other Australian nationals in key positions

within the PNG government. By the end of 2005 the ECP was to have deployed a total of 210 Australian police to work with PNG's police force and 64 officials to work in frontline and advisory positions in other key PNG agencies. However, in May 2005 the PNG Supreme Court ruled that the key provisions of the ECP were invalid under the PNG Constitution, and undermined the authority of PNG's police commissioner, public prosecutor, and the rights of PNG citizens. Australian police were immediately withdrawn following the ruling, though some Australians remained in advisory roles (DFAT 2006). This decision has become known as the Wenge ruling.

The Wenge ruling has led to more than two years of political stalemate as the ECP continues to undergo a protracted joint-government review (*The National* 2007). The decision has also renewed pressure on the PNG-Australian law and justice partnership, and has, according to some members of the Australian press, contributed to PNG's recent relegation from the position of Australia's main aid recipient. Despite these delays, the current impasse has provided a valuable opportunity for renewed public debate in both PNG and Australia, and a vigorous reanalysis of the fundamental causes and solutions to the complex issues of crime and lawlessness in PNG, some of which are explored in this paper.

The primary objective of Australian law and justice reform initiatives in PNG to date, including the ECP, has been to strengthen the rule of law (ROL) in PNG. The weakness of this approach is that it fails to recognize that the existing formal legal institutions and policies that underpin the rule of law are incapable of meeting the needs of the Papua New Guinean population. These failings are increasingly being recognized and commented on by the PNG policy community. Specifically, the current approach directly weakens national ownership of the development process, is not coordinated with wider development initiatives, and does not devote the necessary funds to institution building or to building coalitions of community support and involvement. Instead, it is funding a program that once completed is likely to withdraw funds and technical assistance without appropriate structures to fill the gap. Community-based organizations and approaches need to be further utilized as key components of PNG law and justice reform strategy in order to redress the devastating effects of ongoing violence and crime on the PNG population.

Existing formal legal institutions and policies that underpin the rule of law are incapable of meeting the needs of the Papua New Guinean population

The Enhanced Cooperation Program

The ECP was the most ambitious and costly initiative in the PNG-Australian law and justice partnership to date and is worthy of closer examination within a review of the strengths and weaknesses of PNG law and justice reform policy. Despite its magnitude it has also been one of the shortest-lived initiatives in the country, at least in its original undiluted form. The core component of the ECP was the dual-pronged placement of Australian police forces and bureaucrats under Australian jurisdiction into key operational positions in PNG's security and governance structures. The program increased Australia's aid assistance to PNG—already one of the largest bilateral programs in the world—to half a billion dollars a year.

Australia's aid in PNG, though essential, is often resented for the heavy Australian government involvement that generally accompanies it. Canberra's increasing prominence in the Pacific has been criticized by both Papua New Guinean and Australian stakeholders as reflective of Australia's increasingly

Australia's aid in PNG is often resented for the heavy Australian government involvement that generally accompanies it

interventionist policymaking in the region (AusAID 2003). In contrast to most other areas of funding in the Australian aid budget, funding and resources have continued to increase significantly across Australia's law and jus-

tice aid portfolio.¹ Despite the failure of previous response-driven approaches (involving significant funding to policing and correctional services) to achieve genuine improvements in the incidence of violent crime, the ECP continued Australia's long-term trend of deploying Australian police to the Pacific region.

Papua New Guinea's worsening crime and lawlessness and Australia's increasing interest in the security of its neighbor have been significant factors in determining this security focus. These problems have been further exacerbated by the growing corruption of the civil service as was brought to light in the PNG government's own public review, the 2004 Kimisopa Report of the Royal Papua New Guinea Constabulary (Institute of National Affairs 2004). Increases in crime, as well as evidence of police complicity and expanding corruption in the higher levels of the public service have also been highlighted in the more recent political commentaries of those working inside the system, both in Papua New Guinea and Australia (Morauta 2005; Scott 2005, 28).

¹ The 2007 budget, however, reallocated Australian aid priorities so that Indonesia is now the largest recipient of Australian aid, with PNG the second.

Regardless of the motivations, Australian law and justice initiatives in PNG demonstrate a marked shift from the underlying aim of poverty reduction as the primary goal of Australian aid initiatives, toward the international “securitization of aid”² that has emerged post–September 11 in response to widespread public concern about international terrorism (Hough 2004, Fry 2004, Patience 2005). Ben Scott, of the Australian Department of Foreign Affairs and Trade, and Greg Fry, of the Australian National University, argue, with much merit, that this threat is more imagined than real, and risks obscuring the real and pressing internal challenges Papua New Guinea faces (Scott 2005, 12–14; Fry 2004). This increasingly interventionist approach has been commented on by critics in both countries who argued that the ECP, like other Australian-led interventions in the region such as the Regional Assistance Mission to Solomon Islands, impinged on the sovereignty of PNG and signaled a new neo-colonial attitude toward the Pacific (Shibuya 2004). This paradigm shift, or at least the perception of it, has been commented on by both the national and international media as a shift at the highest level of Australian policymaking.

Although the original terms of the ECP involved a considerable period of negotiation, the policy was strongly supported by the PNG Parliament. The exception to this was Luther Wenge, governor of Morobe Province, who, immediately following the achievement of parliamentary support for the ECP, sought a Supreme Court ruling against the constitutionality of the program. The resulting May 2005 ruling, which became known as the Wenge ruling, found that the legal immunity awarded to Australian officials and police officers working in PNG was unconstitutional. Australian police were quickly moved from their frontline positions, the majority were sent home, and a much smaller cadre was left behind to fill backroom positions—thus fundamentally changing the crux of the ECP strategy.

The Wenge ruling found that legal immunity for Australian officials and police officers working in PNG was unconstitutional

The implementation phase of the ECP was complicated throughout by a lack of commitment from the PNG leadership. From its outset the policy received mixed responses from the PNG elite and members of the government, including Prime Minister Michael Somare, whose changing views on the topic have been well documented in the PNG *Post Courier*. The tenuous strength of

² Hough (2004), Fry (2004), and Patience (2005) among others have referred to the “securitization of aid” phenomenon that has shifted development priorities away from existing programs towards issues of internal and external security.

PNG government support for the policy has been highlighted on several occasions. A notable example was the April 2005 “shoegate” incident in which Somare was asked to remove his shoes for a security clearance in Brisbane airport. He took offense and threatened to suspend the ECP. This incident was one example of the fragility of PNG leadership support, despite vocal assertions to the contrary (White 2005). It was also indicative of the state of broader Australian-PNG relations and reflected the long-term sensitivity of the PNG leadership to Australian involvement in the internal affairs of the country and perceived Australian condescension.

More recently, a 2006 scandal involving Julian Moti—an Australian citizen, lawyer, professor, and now former Solomon Islands’ attorney general—caused serious conflict between the Australian and PNG governments, as well as the Solomon Islands and Vanuatu governments. Moti was charged by Australia in September 2006 with child sex charges for a rape he allegedly committed in Vanuatu in 1997. Moti, who was in PNG at the time the charges were filed, was flown secretly from Port Moresby aboard a PNG Defense Force aircraft to Solomon Islands where he was detained. He was later released and given the post of attorney general in July 2007. A PNG Defense Force inquiry reported that Prime Minister Somare had allowed and endorsed the escape of Moti from PNG, a report the prime minister has attempted to suppress. The incident created a diplomatic crisis in the Pacific as the Australian government sharply attacked the justice systems of PNG, Solomon Islands, and Vanuatu for their handling of the incident. Australia also cancelled the annual Australia-PNG Ministerial Forum and criticized the PNG government for allowing Moti’s escape.

The ECP also received varying levels of criticism from Australian and Papua New Guinean diplomats, civil servants, and academics. In a forum hosted by the Australian Strategic Policy Institute the ECP was described as “a

The ECP received criticism from Australian and PNG diplomats, civil servants, and academics

quick fix response to the deterioration of institutions that underpin statehood” and as lacking the “intention to meet the deeper challenges of political and administrative reform” (Australian Strategic

Policy Institute 2005). Another significant concern raised by the Papua New Guinean participants was that the ECP was being used as a “substitute for local political will.” A critique of the ECP by Former Prime Minister Sir Mekere Morauta, now a member of Parliament for Moresby North-West, provides insight into a commonly held Papua New Guinean perception of the ECP as something “that has been forced on us” and being the result of Papua New Guineans “not being able to say ‘no’ when more assistance was offered”

(Morauta 2005, 1). These criticisms, published in the *Pacific Economic Bulletin*, highlight an important issue: The program overlooked the creation of policies designed to strengthen institutions or build coalitions of community support and involvement. This posed serious problems for the sustainability of law and justice reforms beyond the short-term time frame of the program and the large resource support provided by the Australian government.

There were, however, several attempts to reinvigorate the partnership premise of the ECP into a workable model. These efforts had varying levels of success. For example, though Australian prosecutors have been barred from appearing in court following the Wenge ruling, they continue to partner with the Office of the Public Prosecutor in a less public role and to support public prosecution initiatives (Office of the Public Prosecutor 2005). Conversely, the January 2006 Australian government proposal that an Australian fill the vacant PNG solicitor general position, met with fierce condemnation from some of PNG's most influential political figures. In recognition of the outrage the proposal generated the most recent plan to reinstate the ECP was significantly modified. The new plan modestly proposed to place 10 Australian Federal Police in advisory roles within the PNG constabulary and has been referred to by the Australian media as "a slashed and revised program" that is significantly less ambitious than its predecessor (*The Age* 2006). While this development appears unlikely to tackle the root causes of crime and lawlessness in PNG, it demonstrates a promising acceptance by the Australian government to take a more advisory role within PNG policymaking.

Constraints to Law and Justice in Papua New Guinea

Papua New Guinea's historical background and long-term law and justice challenges pose severe constraints to reform in PNG. The challenge of functioning under an imported, post-colonial governance and political system that is structurally weak, poorly established, and recognized by many development experts and scholars as culturally inappropriate is significant (Patience 2005, Dinnen 2004, Scott 2005). In addition, the nation has several distinctive geographical attributes and agricultural constraints that hinder development policy.³ These challenges include the dispersion of the population across exceptionally rugged terrain, the isolation of communities from one another, an absence of transport

³ See Diamond's (1999) compelling argument on the geographical and environmental factors that have influenced Papua New Guinea's development.

and communications infrastructure in many areas, and low-yield, labor-intensive native crops that keep much of the population engaged in subsistence agriculture. The linguistic diversity across Papua New Guinea has further implications for law and justice, in terms of dispersing written versions of codified law, ensuring legal representation at the national level, and negotiating outcomes satisfactory to all parties in interdistrict conflict. With regard to economic development, the country is largely isolated from mainstream global economic activity (AusAID 2003).

Historical Perspective

The mounting difficulties of Papua New Guinea's top-down approach to strengthening the law and justice sector are in many regards a remnant of the rapid state-building process undergone by the PNG state. Since acquiring PNG under a League of Nations Mandate following World War I, and fighting to repel the Japanese from the islands in World War II, Australia's attitude toward

Since achieving independence in 1975 PNG has remained unusually and narrowly reliant on Australia

PNG has shifted considerably. During the 1960s Australia came under considerable international pressure from the United Nation's Trusteeship Council to grant independence to PNG quickly—

despite the absence of the necessary political institutions or of a PNG intellectual cadre prepared for leadership in a hybrid Western system of government. This pressure, together with growing internal and regional challenges (most notably the separatist movements in Bougainville), resurgent tribal fighting in the Highlands, and ongoing volatility at the Indonesian border provided further logistical as well as diplomatic reasons for Australia to extricate itself from its role as the colonial administrator.

During the 1970s Australian security policy shifted from the strategy of "Forward Defense," in which Australia committed to supporting the United States in maintaining control of the Pacific region in response to the perceived threat of encroaching communism and Australia's particular fears of Chinese expansionism. It turned, instead, to the less interventionist policy of defending Australia only in the event of a conventional attack on Australian soil (Tewes et al. 2004). Views on Australia's geographical isolation, previously thought of as a security liability, shifted to the stance that isolation would make Australia difficult to attack. This reduced sense of regional vulnerability appreciably reduced the significance of PNG to Australian policy.

PNG achieved self-government in 1973 and independence in 1975, completing the transition from an Australian territory to an independent state in a relatively short period of time. The new nation state was developed from a society comprised of hundreds of semiautonomous tribal and linguistic groups (Okole 2003). Consequently, when PNG became independent, it was the assessment of many of its own citizens, as well as many Australian observers, that the nation was underprepared for the task of governing its disparate populations. As observed by PNG scholars Henry Okole and David Kavanamur (2003), the “compressed state formation process” that Papua New Guinea undertook following UN pressure on Australia to fast-track preparation for PNG’s independence further intensified the traumatic process of merging traditions and local cultures with the Australian institutional framework. Further, since achieving independence Papua New Guinea has remained unusually and narrowly reliant on the former colonial power for security, trade, budget support, and technical assistance. Since the mid-1980s, factors contributing to the

Politicization of the public sector and cultivation of tit-for-tat citizen-representative relationships are defining features of PNG democracy

degradation of the law and justice sector include declines in the level of government service delivery, increased urban and rural lawlessness, poor state economic management, and conflicts at both the national and regional levels, including the extended Bougainville conflict and corresponding deteriorating relations with the Solomon Islands. Each of these factors has significantly exacerbated the stress on the country’s social and economic fabric.

Papua New Guinea currently operates under a unitary system of government, meaning that, in theory, the central government has ultimate power and authority to rule. State or provincial governments are the second-tier of government and are subordinate to the central government. During the state-formation process of the 1970s it was deemed that such a system would empower Port Moresby to exercise substantial control over the disparate regions, which was viewed necessary in light of the threat of secessionist and political movements in the lead-up to independence. A strong central government was also considered vital to build the state infrastructure necessary to meet the population’s needs and demand their loyalty.

The need to cultivate nationalism and redirect loyalty from local communities and kinship groups to the state has remained an ongoing challenge. The politicization of the public sector and cultivation of tit-for-tat citizen-representative relationships are defining features of PNG democracy and political representation. Aid dependency is obviously a significant component; however, more significant are the political processes implemented by the burgeoning state. In

particular, these include the practice of requiring regionally based development proposals, and even individual business proposals, to pass through local representatives in the national parliament. These systems have developed into established customs of reciprocal exchange, with parliamentarians routinely exchanging government benefits (permits, resources, and access) for electoral votes (Okole 2003). The inefficiency of the central government in reallocating funds and other resources is to the great detriment of both the police and court systems, particularly at the local level where wages are low and often unpaid for up to a year (JAG 2004).

Okole, chief of Cabinet of the Secretariat of the African, Caribbean and Pacific Group of States (2003), argues that the provincial government systems established in PNG shortly after independence have largely failed to provide more than a “token demonstration of ‘participative’ democracy.” He is optimistic, however, that with substantial provincial institutionalization and reform a federalized system may eventually become a more viable and effective system of governance for PNG.

Long-Term Law and Justice Challenges

The most commonly cited causes of PNG’s high levels of urban crime and rural violent conflict are exceptionally high levels of unemployment and poverty, the breakdown of traditional village-based authority structures (notably in urban settlements), an increasingly institutionalized culture of corruption throughout

To the dismay of PNG leadership, the UNDP recently reevaluated PNG as a ‘least developed state’

the government and business sectors (Reilly and Phillpot 2002, Morauta 2005), and strong apathy in the government toward this worsening situation (AusAID 2003). Port Moresby is home

to many violent youth gangs, known by the deceptively innocuous name *raskols*. Bank robberies with machine guns and car hold-ups by gangs wielding machetes are frequent, as is violent gang rape. Considering the paucity of economic and employment opportunities in Port Moresby (unemployment is estimated at 60–90 percent of the population) and that 50 percent of the nation’s population is under 24 (AusAID 2001–2002), the dominance of violent youth gangs throughout the capital is disturbing, though not surprising. There is evidence that the police force is responsible for some of this violence. The 2005 Human Rights Watch report documented the RPNGC as being widely involved in rape, pedophilia, and graft, either directly or indirectly, and frequently using techniques associated with torture to extract confessions

(Fickling 2004). The complexity of these challenges has been recognized by the international community, as is evident in the World Bank's ranking of PNG as a "low income country under stress." Much to the dismay of the PNG leadership, the UNDP's most recent assessment of the country's institutions resulted in the reevaluation of PNG as a "least developed state" (UNDP 2006).

Australian-initiated policy in the PNG law and justice sector has been based on an ROL strengthening approach which prioritizes reforms in government agencies such as the court and prison systems, and de-emphasizes broad-based community participation in either the formulation or implementation of law and justice policy. AusAID does provide support for community-based initiatives but spends only a fraction of the budget that it allocates to the government sector. AusAID has been directly aiding the RPNGC for more than 16 years; from 1998 through 2005, AusAID's total contribution to the police was around AU\$120 million (US\$89.6 million). Throughout this period, training has been a significant element of Australia's assistance to the police, costing Australian taxpayers approximately AU\$4 million (US\$3 million) from 2000 to 2005. By the admission of AusAID's own officials, training appears to have had virtually no positive effect on police violence or discipline (HRW 2005).

Institutionally speaking, PNG has been handed the tremendous challenge of creating a relevant and culturally appropriate system of government from an imported system of law and administration. The common law of Papua New Guinea consists of English common law as it stood on the official date of independence, September 16, 1975, and the decisions of PNG's own courts thereafter. The courts are directed to take note of the customs of traditional communities, with a view to determining which customs are common to the whole country and thus may be declared part of the underlying law. In practice, this has proved difficult and has been largely neglected, with most statutes being adopted directly from overseas jurisdictions, primarily Australia. Several prominent Australian and PNG scholars have attributed this amalgamation of local and imported legal structures as a primary cause of PNG's ongoing problems in the law and justice sector. Political scientist Allan Patience, of the University of Papua New Guinea, has described a large proportion of PNG's problems as being "legacies from colonial times," though "others are well and truly home grown" (Patience 2005). The major problem with this acknowledgement is that it does not easily solve the problem, even theoretically.

PNG has been handed the tremendous challenge of creating a relevant and culturally appropriate system of government

Understandably, donor organizations and development experts are loathe to point the finger for PNG's multiple dysfunctions at the entire institutional framework under which the government (and the donor organizations) operate.

One result of the prioritization of the formal government sector has been the neglect of powerful community-based resources to combat crime and promote public order. Another related result has been the continued erosion of PNG's national "ownership" of the development process: It has been widely argued that the ECP and related law and justice policies have entrenched post-colonial dependency, an anathema in development terms. The ECP was not only developed in isolation from PNG's other law and justice reform programs, but was also developed without adequate consultation with the other Australian agencies and major nongovernmental organizations (NGOs) operating in PNG. Further, the program was designed without due consideration for national PNG priorities as clearly defined in the government of PNG's law and justice sector strategy, further weakening prospects for lasting change and sustainable outcomes.

The lack of measurable positive outcomes of the ECP, as with other Australian directed law and justice policies in PNG, was also a result of the program's inability to adequately address pervasive corruption. The severity and entrenchment of this issue was startlingly highlighted in the government's public review, the 2004 Kimisopa Report. It found that "the effectiveness of the [Royal PNG] Constabulary is in a state of serious decline, and [that] the pace

There is growing evidence of police complicity, crime, and increased corruption in the higher levels of the public service

of deterioration is accelerating" (Institute of National Affairs 2004, 49). Studies conducted since this landmark review have highlighted the influence of the *wantok* system, which demands loyalty to one's clan or family group over all other

obligations and a culture of "paybacks" in which police fear retaliation for reporting on a colleague (HRW 2005). More recently, the corruption and ineffectiveness of PNG's public sector has been observed by Papua New Guinean politicians and Australian public servants. They have noted growing evidence of police complicity, crime, and increased corruption in the higher levels of the public service, as reflected in yearly downgrades on the Transparency International corruption index (Patience 2006; Morauta 2005; Scott 2005, 28).

Consequently, the approach to reform in PNG defies much of the recent thinking regarding how to implement better technical assistance and achieve better development outcomes. The standard prescriptions of the major donors—World Bank, International Monetary Fund, and others—have proven

largely ineffective. These unsuccessful approaches have focused on the liberalization of trade and investment regimes and the strengthening of fiscal discipline to achieve economic and social development. PNG has implemented three structural adjustment programs as part of loan agreements with the World Bank and International Monetary Fund in 1990, 1994, and 1999. These reforms have achieved limited success in trade policy and the financial sector but have proved largely ineffective in stimulating economic growth. This failure has been attributed to the weakness of PNG's fragile and ineffective governance institutions, the distrust of the population toward its leaders and law enforcers, and uncoordinated state and local-level institutions (JAG 2004). These poor relationships and the weakness of linkages between the formal and informal legal sectors inhibit the implementation of policy across the nation, according to Sinclair Dinnen (1997), senior fellow of the State Society and Governance in Melanesia Project, within the Research School of Pacific and Asian Studies at the Australian National University. As well, he says, they reduce the potential of technical assistance to positively impact the standard of living for ordinary citizens as crime has continued to increase and public respect for the ROL and the state institutions that administer it diminishes.

These law and justice issues have been acknowledged and to some extent addressed in the *National Law and Justice Policy and Plan of Action* (GoPNG 2000). The policy reflects the PNG government's commitment to improving the efficiency of the deterrence sector; sector-wide coordination; and crime prevention and restorative justice. Each of these pillars reiterates the government's commitment to strengthening the formal law and justice agencies in conjunction with support for community-led initiatives and partnership with community stakeholders (GoPNG 2007). This commitment was reflected in the creation of the Community Justice Liaison Unit (CJLU) in 2004. Since its inception, this law and justice unit has facilitated community consultations and workshops with law and justice agencies and civil society organizations to explore partnership options for restorative justice initiatives (CJLU 2005). The CJLU has also been responsible for instigating community-law and justice sector partnerships and for identifying and addressing crucial gaps in law and justice service delivery. These projects have included offering paralegal skills training for NGO and community organization staff, facilitating the creation of an NGO umbrella body in Bougainville to create links between the Bougainville Autonomous Government, and raising the community's consciousness about its ownership and responsibilities in the law and justice sector (CJLU 2005).

Why Is Law and Justice Reform Failing?

The Rule-of-Law Approach

The rule-of-law (ROL) approach to development centers on law reform and government institutions. The first major weakness of PNG law and justice initiatives—the majority of which are ROL based—is the prioritization, at the expense of all else, of reforms targeted at law and justice agencies and legislation. Most ROL reforms focus on courts and police systems based on the assumption that it is these formal institutions that most directly contribute to the population's compliance with the law. The validity of this approach is questionable. Legal development specialist Stephen Golub (2003) has observed that ROL institutions are being strengthened in areas that are not compatible with maximizing development outcomes. He states that legal reforms have failed to maximize development goals by using a “top down state-centred approach” that concentrates on law reforms and formal government institutions to build “business friendly legal systems that presumably spur poverty alleviation,” while overlooking the legal needs of the disadvantaged (Golub 2003, 3). He criticizes the traditional ROL approach with failing to recognize or utilize the potential of informal community institutions to implement sustainable development outcomes.

The village court system, which is discussed in detail below, is one such example of the tendency for community-based initiatives to be enthusiastically supported in the official literature and legislation, while in practice continuing to receive minimal funding and training support from either the PNG central government or AusAID (AGDISP 2003). In contrast, initiatives targeted at the

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formal agencies of the state, such as the Ombudsman Commission Institutional Strengthening Project, have received the bulk of funding. This project has demonstrated some success in increasing productivity, reducing the delay in hearing

cases, and increasing the number of cases referred to the Corruption Tribunal (AusAID 2004, 25). However the benefits of these reforms have been continually undermined through the lack of complementary preventative approaches in community forums. The inadequacy of this ROL approach is highlighted by the theoretical framework of criminal justice system management outlined by Don Weatherburn, director of the New South Wales Bureau of Crime Statistics and Research in Sydney, in his critique of Australian policy (Weatherburn, 1993). There has emerged in the legal literature strong evidence that increased policing does not, alone, reduce crime rates. While there remains

strong support in Australia in the popular media and conservative think tanks for the “more police, less crime” approach there is strong evidence that increased policing in isolation from broader sector-wide reforms does not result in a lower incidence of serious crime (Worrall 2002). While the “more police, less crime” paradigm has been strongly argued against by many criminal justice practitioners and scholars (see, for example, Loftin and McDowall 1998, 10–26), the current law and justice policy in Australia reflects the inability of the government to learn from and incorporate the international experience into Australian development policy.

The weakness of using an ROL approach in Papua New Guinea is that any progress made is routinely undone and undermined when attempted in a national context in which corruption is endemic through all levels of the public sector (Golub 2003). Policies that strengthen the ROL have been found by the World Bank to be “inappropriate” in the context of a country rife with corruption (World Bank 2003). More than merely “inappropriate,” strengthening authority structures in governments with low management capacity has been found to lead to high levels of human rights abuse, graft, and bribery (World Bank 2003). Civilian surveys conducted in PNG have found that the police are overwhelmingly perceived as corrupt, unpredictable enforcers of a grossly unjust system. This reality is recognized in the aforementioned Kimisopa Report, which found increasingly high levels of police complicity and involvement in criminal activity. These findings were also confirmed in the first community crime survey published by the PNG National Research Institute in 2005. The 2005 Human Rights Watch report on the RPNGC provides further deeply disturbing examples of abuses in police authority including high levels of sexual assault, violence against women, and pedophilia. Policies aimed at strengthening the authority of the police without first addressing systemic abuses of power have the potential to increase antagonism between police and civilians and further undermine respect for authority and the rule of law, thus directly contributing to an increase in the incidence of crime (Law and Justice Sector Working Group 2000). The result is that millions of dollars are wasted through the application of an inappropriate, authority-based policy instrument. This formal sector intervention in PNG is strategically unsound as is increasingly being recognized by prominent Australian Pacific Islands scholars, such as Hugh White, Allan Patience, and Sinclair Dinnen, who argue that a more thorough investigation of viable alternatives and a wider process of consultation is necessary (White 2006, Patience 2005, Dinnen 2004). Several of these alternatives are discussed below.

Policies that strengthen the ROL have been found to be ‘inappropriate’ in a country rife with corruption

National Ownership

The second major weakness of PNG law and justice reform, including the ECP, has been its failure to promote PNG participation and ownership of the development process. As recognized by many of the major international donors and development experts, national involvement and ownership of the development process is a fundamental and necessary tenet of sustainable change (Lopes and Theisohn 2003, Davis 2000). The popularity of ownership theory in development circles has grown from the emerging realization that the development projects of the past have largely failed to achieve long-term sustainable development, and have often collapsed shortly after donors and development agencies withdraw from projects. The ownership approach advocates using the existing resources of a country. This involves utilizing

National involvement and ownership of the development process is a fundamental and necessary tenet of sustainable change

institutions as well as the nation's human capital to strengthen the capacity of developing countries to take charge of their own development in a way that is consistent with cultural norms and coherent with the aspirations of the

national population (Lopes and Theisohn 2003). Importantly, the experience of development agencies has proven that "strings attached" or conditional aid-funded projects cannot be sustained without national support. This requires adequate understanding and endorsement for the policy from the broader community. As recognized by the World Bank (2006), development assistance is most effective when it is driven from demands originating within the country.

In 2004 the government of Papua New Guinea commissioned a committee, made up mostly of civilians, which reviewed various aspects of policing including police operations, human resources and welfare issues, governance, and discipline and logistics. The committee produced the Police Administrative Review Report of 2004, widely known as the Kimisopa Report, after former Police Minister Bire Kimisopa who led the commission. The report highlighted the widespread nature of corruption and abuses of power prominent throughout the RPNGC and identified poor terms and conditions of employment as a major contributor to low standards and performance of police (Independent State of Papua New Guinea 2007). The report also made practical and realistic recommendations to enhance discipline and accountability within the force,⁴ few of which have been implemented. Full implementation of the Kimisopa Report recommendations will require a significant political and resource commitment by the PNG leadership (HRW 2006). Australian support for the Kimisopa recommendations would not only strengthen effective law and justice

policy, it would generate significant bilateral goodwill in recognition of Australia's support for PNG-driven law and justice priorities.

The failure of past development projects to gather community support and involvement and engender a sense of responsibility for the development process, has been cited as one of the primary causes of the failure of these projects to create lasting improvements in aid-dependent countries. Failure to achieve community support for projects implemented in aid recipient countries has repeatedly been documented as leading to the misappropriation of funds, foot-dragging, obstruction, delayed approvals, and lack of commitment (Fowler 2000).

These responses have been documented throughout the PNG public sector, from senior management to lower level public servants (JAG 2005). As noted by former Prime Minister Sir Mekere Morauta, a lack of commitment to reform in the PNG leadership is one of the country's biggest hurdles in solving its complex problems (Morauta 2005, 1). As a result, Papua New Guineans have often been criticized in development evaluations as having a "lack of will." However, as argued by Armytage (2005), the incentives for national players to "own" a donor-imposed process are extremely weak. Despite the rhetoric of both AusAID and the NGOs involved in PNG, the extent to which Papua New Guineans are encouraged to take control of the development process is limited and the Australian government remains the most powerful stakeholder in the region. Consequently, development initiatives are often not sustained beyond the period of foreign involvement, resources are wasted, and few improvements in the standard of living are filtered down to local populations. Still, events such as the May 2005 Wenge Ruling, which revoked Australian legal autonomy and effectively shut down the ECP, provide a positive indication that the PNG leadership and government institutions are asserting their right to exercise sovereignty over their own development process.

The incentives for national players to 'own' a donor-imposed process are extremely weak

Program Coordination

The third weakness of the ECP is that it is uncoordinated with wider law and justice initiatives and was developed to operate as a largely autonomous entity

⁴ Among the *Kimisopa Report's* recommendations were: creation of a new special police ombudsman position; review of the exceptionally low police pay and allowances; requirement that police wear proper uniforms and name tags; and implementation of leadership and financial management training across the law and justice sector.

rather than as part of an integrated criminal justice system (JAG 2005). AusAID broader policy aims to foster a coordinated sector-wide approach working in the Australian-identified priority areas of policing, village courts, and prisons. Australian assistance to policing in PNG has supported training, systems improvement, and operations in specific areas including the fraud squad, investigations, and logistics. Attention has also been directed toward activities to improve the performance of legal and judicial systems, as well as to increase community understanding and trust in the role of the Ombudsman Commission.

The need for improved coordination in planning and implementation in these and other law and justice initiatives has been recognized by both AusAID and the PNG Justice Advisory Group (JAG 2004, 2005). Promising proposals have been made to address the issue of uncoordinated divisions within the legal sector. It has been proposed, for example, that a National Coordination Authority, made up of the chief executives of the law and justice agencies, related government departments, and other members, be charged with monitoring and reviewing sector-wide policy, budgeting, and coordination of law and justice research and data (CHRI 2005). As yet, these strategies have not received sufficient resources nor have they generated sufficient political interest to enable their transformation into a definitive plan of action.

This focus on reform programs targeted to individual law and justice agencies rather than the law and justice sector as a whole reduces the capacity of other agencies to achieve their own objectives (Weatherburn 1993). Enhancing the capacity of the police (through additional Australian forces, for example) without simultaneous capacity building across the law and justice sector leads to more arrests and generates an even greater strain on other law and justice agencies that have received a fraction of the funding available to the police initiative (Public Sector Review Management Unit 2002).

Making Law and Justice Reform More Effective

As discussed, the formal sector-focused policies of previous law and justice reforms in Papua New Guinea have repeatedly demonstrated their inability to implement sustainable improvements in the law and justice sector. This is equally true for the multiple interlinked sectors that rely on safety, security, and accessible justice to carry out their own functions. The largest international donors⁵ operating in PNG agree that technical assistance will not deliver long-term improvements in strengthening governance or community capacity building without the ownership of the wider community in the development process

(OECD-DAC 2005). This point is fundamental to all development assistance and has been recognized by most major donor organizations as vital to development sustainability. While this may be recognized in the rhetoric surrounding aid and development in PNG, it has not yet been adequately implemented.⁶

There are several examples of community-led restorative justice initiatives that have led to significant improvements in access to justice for certain PNG communities. However, as highlighted by Dinnen, these informal rural practices are “often invisible to the planners and officials based in the central government offices in Port Moresby or in provincial headquarters, though they provide a rich reservoir of experience and innovation with much to offer the current reform process” (CHRI 2005). Examples of these locally led initiatives include mass gang surrenders and gang retreats where criminals have the opportunity to meet with state officials, businesses, and political leaders to discuss their grievances and the incentives required to help them abandon crime. Initiatives such as these have in their local contexts significantly reduced the burden on the police force as well as the frequency of police-gang brutality (CHRI 2005).

Several community-led restorative justice initiatives have led to significant improvements in access to justice for certain PNG communities

The Community Development Scheme (CDS) is one successful grassroots example. It is an AusAID-funded civil society strengthening project that provides small grants and technical assistance to build the capacity of grassroots communities across PNG. CDS has achieved some notable successes, including the creation of rural health and educational facilities; admittedly, though, this is still limited to specific areas and projects (AusAID 2005). While these informal practices have demonstrated the ability of communities to drive change according to their own needs and priorities there remains an urgent need for targeted and well-informed bottom-up community development programs to address the worsening problems of squatter settlements, high unemployment rates, widespread violence against women, the HIV/AIDS pandemic, and improved family and child care—and their correlation with the increasing crime rate (Patience 2005).

⁵ These include the United Kingdom Department for International Development, European Commission, OECD-Development Assistance Committee, UNDP, and the World Bank.

⁶ The AusAID literature and website contain repeated reference to the importance of country ownership of development initiatives; for example, “experience shows that conditions without country ownership will fail” (AusAID 2003).

Participatory approaches have several significant advantages: They are cost-effective (with appropriate project design and implementation) and widely perceived as effective in achieving sustainable outcomes. As described by Robert Chambers (1998, xiii) of the Institute of Development Studies at the University of Sussex, participatory approaches focus on donors facilitating development processes, transferring knowledge and skills to their local counterparts, and trusting the capabilities of local people. There are promising examples of this approach being used by donors and NGOs in Papua New Guinea. Ultimately, the participatory approach is not just about changing institutional

Ultimately, the participatory approach is also about changing attitudes within donor organizations, governments, and communities

structures to facilitate community involvement throughout the reform process; it is also about changing attitudes within donor organizations, governments, and communities. To an extent, this is already occurring with

AusAID promoting cooperation and partnership between the Australian and PNG governments and with support being provided for sector-wide coordination. However, the benefits of this approach are severely constrained by the absence of linkages between the government and the wider population.

Projects such as the CDS and the Incentive Fund (an Australian-funded program to support new business on a competitive tendering basis) operate independently from the PNG government. These projects support local communities to expand their opportunities and enhance their standard of living, but receive no government funding or logistical support. As a result the successes and failures of these endeavors remain localized and fail to provide an example from which other communities can learn.

Legal Empowerment

Grassroots involvement is particularly vital in situations where the government is unable to provide normal state functions of security and other basic services and is perceived by segments of society to be illegitimate and corrupt, as is the case with Papua New Guinea and with other low-income countries under stress (World Bank 2004). This is not to say that measures to strengthen the capacity of the formal or government sector are unimportant or unable to yield results. These measures are essential. However, it is necessary to redirect some of the resources from the formal sector toward the informal sector in order to widen opportunities for ordinary Papua New Guineans to participate in the creation of their own development initiatives and culturally appropriate crime prevention and response strategies. This approach has been termed “legal empowerment” (Carothers 2003, Golub 2003).

Legal empowerment is an ideological shift away from formal state-centric, retributive justice strategies that consolidate power in state authorities, who may have little or no interaction with small communities themselves (Carothers 2003). In this sense, legal empowerment is the law and justice version of community ownership. The advantages of empowerment and restorative approaches to law and justice include reduced administrative costs, reduced case burden on the court and prison systems, and significantly improved community support for legal programs and rehabilitation processes as more power is vested within communities. These approaches allow a much higher degree of flexibility in responses to crime. They also focus on achieving outcomes that are acceptable to the parties involved and responsive to community input. Further, these methods are customary and already used and approved of in many PNG communities. While by no means a fit-all solution, they are highly sustainable and resource-efficient methods worthy of renewed examination.

Legal empowerment is an ideological shift away from formal state-centric, retributive justice strategies

The appropriateness of these methods has already been recognized in PNG's policy literature. The PNG *National Law and Justice Policy and Plan of Action* is based on a commitment to these traditional approaches. The policy highlights the importance of placing restorative and community-based law and justice programs at the center of all future law and justice reform (GoPNG 2000). However, as far as actual government support and funding are involved, these methods remain primarily "policy on paper." AusAID is also increasingly advocating a shift in the focus of service delivery from national to provincial and district levels, which is generating a more significant role for local governments and councils (AusAID 2002). These methods have been praised in assessments by the government of PNG as a valid solution to reducing the burden on the overwhelmed and underachieving formal legal system. For instance, these methods redress that most Papua New Guineans incarcerated in the state prison system are convicted for relatively minor crimes such as theft, and have been found to leave jail as "more hardened criminals than when they went in" (AusAID 2002). The serious malfunctions of this system make a strong argument for greater use of community-based justice programs.

There are multiple ways that communities can be empowered to take control of and shape their own capacity building and development. Within PNG's law and justice sector, there are three mutually interlinked approaches being advocated by development practitioners and PNG government officials: restorative justice, the village court system, and redefining the role of government.

Restorative Justice

The restorative justice approach transfers the power held by individuals in formal legal systems back to communities and the people affected by crime. While in its broadest sense it is about protecting the rights of all citizens, particularly the poor and powerless, in the PNG context restorative justice is particularly focused on returning to traditional structures of dispute resolution that place the community in the central role of law and justice management (Golub 2003). These approaches incorporate the traditional authority of local councils and involve wide consultation with all members of the community, particularly victims and their families, to negotiate an outcome satisfactory to all members. In contrast to state-centered formal systems that use the threat of

Restorative justice approaches often utilize shaming as the primary deterrent to future crime

incarceration, restorative approaches often utilize shaming as the primary deterrent to future crime. The rationale is that offenders who remain within their own communities are made aware of the

full consequences of their actions and receive the condemnation of their clan rather than being removed to a distant jail away from the effects of their actions. These offenders are less likely to recommit and more likely to demonstrate genuine remorse. The focus of these approaches is on reintegrating offenders after a certain period of shaming is completed. The offenders are accepted back into their own communities much more quickly than in formal systems.

The concept of strengthening community-based regulatory structures in PNG is not a new one. It was clearly documented in the *Clifford Report* of 1984 (Clifford et al. 1984). The report was written in response to the poor performance of criminal justice agencies and it recommended the wider use of community and voluntary organizations, churches, village officials, and village courts. While the recommendations of the *Clifford Report* have been cited as overly simplistic and inaccurately diagnosing a dissonance between the state and local-level institutions (Dinnen 1997, 9), the concept of more fully utilizing communities in law and justice strategy merits further attention. Building on the concepts articulated in the *Clifford Report*, this paper argues communities should not only be involved in the implementation of law and justice strategies, but also in their formulation. This requires a broad process of consultation.

The PNG *National Law and Justice Policy and Plan of Action* adopted the concept of restorative justice as a philosophical foundation for the long-term future of the law and justice sector. The policy also “proposes a gradual and deliberate shift away from past approaches that have been primarily retributive and adversarial in character” (AGDISP 2003). However, the implementation of this philosophy has in reality been severely constrained by the systemic bias

of development projects toward the formal sector (Armytage 2005). To date, it appears that community organizations pursuing their own law and justice strategies have received no direct assistance⁷ from the PNG government or any Australian government aid (Armytage 2005). The introduction of the CJLU discussed above is beginning to redress this but continues to operate on a very small scale.

Village Courts

The village court system in Papua New Guinea has been described as the “most significant institutional innovation in the law and justice sector since independence” (Dinnen 2002, 9). The Village Courts Act of 1973 states that village court magistrates, untrained in the law and chosen on the criteria of their adjudicatory integrity and good knowledge of local customs, be empowered across the country to resolve minor disputes (Goddard 2004). Since their formal recognition in the PNG constitution, there has been a significant policy shift and strategic reorientation toward community initiatives in matters of law and justice (JAG 2005). Village courts fulfill the important function of providing a culturally appropriate medium for dispute resolution and settling local grievances in a manner that is extremely flexible to the situations involved and that meets the needs and expectations of the local community, delivering a law and justice system that is “truly Papua New Guinean” (AGDISP 2003). They also have the potential to significantly contribute to improved law and justice strategies, reduced crime, and wider development outcomes.

Village courts provide a culturally appropriate medium for dispute resolution and settling local grievances

Despite this proclaimed flexibility there is a “basic paradox in...the village courts system” between its role as an “essentially customary institution” and its role as the local branch of the larger legal system (Goddard 2004). The village courts were originally intended to fulfill the function of a flexible and informal system of mediation with the primary purpose of ensuring “peace and harmony.” This goal has to a degree been mitigated by its articulation and formalization in the Village Courts Act of 1973. The benefit of the codification of customary law in village courts is that individual crimes are not dealt with in an unpredictable and ad hoc manner as is common in traditional justice structures.

⁷ AusAID supports various community capacity-building projects by directing Australian aid through NGOs such as Oxfam, World Vision, and UNICEF. The projects of these and other NGOs have not been directly involved in local law and justice initiatives, but may have an indirect effect in supporting community self-initiative in the law and justice area.

Each member of the community can know the rules and act accordingly, the incidence of unwitting breaches of the law is lessened, and the chances of misinterpretation by outsiders are reduced.

Codification and formalization of the village court system inevitably reduce the ability of the system to evolve and be responsive to the changing needs of the population. This rigidity undermines the ability of village courts to use negotiation, compromise, and reconciliation—strategies that have proven to be highly effective in community settings. Formalization of village-level courts has been documented in nations across the Pacific (Law Commission of New Zealand⁸ 2006). Consequently, the village court system, which was designed to provide dispute resolution based on local custom, has formalized through securing its role in national legislation. The scope of village court responses to local disputes is governed by codified laws that clearly define the jurisdiction of the village magistrates, the limits of their authority, and the range of penalties they could impose (Goddard 1992, 84). The village courts have thus come to be viewed as “a point of articulation of two apparently antithetical systems” (Goddard 1992, 83–84).

The application of customary law is further complicated by the diverse cultures and customs that exist among Papua New Guinean communities where one court hearing may be required to incorporate a “multiplicity of conflicting

Weaknesses of the village court system are exacerbated by reduced funding and support from the central government

customs.” The challenge of incorporating conflicting customs is not adequately addressed in the PNG Underlying Law, the common law of PNG. The Underlying Law is comprised of the country’s constitution, a commitment to

PNG customary law as variously interpreted in different communities, and the common law of England as it stood in 1975 when PNG became independent. The Underlying Law directs the court to apply the particular customary law mutually agreed upon by both parties, where, if one law is not agreed upon by both parties, it is for the court to choose the customary law most appropriate to the subject matter (Law Commission of New Zealand 2006). The potential for grievances against the court in such a system is unavoidably high.

The weaknesses of the village court system are exacerbated by reduced funding and support from the central government (AGDISP 2003, JAG 2004). Magistrates consulted during periodic reviews commonly expressed concern about their lack of expertise in the law, demonstrating widespread confusion

⁸ New Zealand is the fifth largest aid donor in PNG following Australia, Japan, the European Community (EC), and the Asian Development Fund (AsDF) (OECD 2006).

about the function of these courts and whether they should be rigidly applying the law (Goddard 2004). Village court magistrates frequently do not receive pay or the required official uniforms, which has contributed to decreased commitment and a loss of authority within their communities. This has also reduced their ability to effectively mediate and resolve disputes. In addition, studies conducted across Papua New Guinea have found that village officials are significantly hampered in their ability to carry out their required functions by a lack of training (AGDISP 2003). This lack of clarity within the PNG community and among magistrates themselves warrants deeper exploration than is possible within the scope of this paper (see Goddard 2000, 2004).

Redressing these weaknesses through government or donor funding and training support has the potential to enhance the capacity of the village court system to make a significant contribution to improving crime and justice in PNG. Research conducted by the PNG Justice Advisory Group indicated that a strong and functioning village court system has considerable potential to enhance the accessibility of justice and improve general respect for the rule of law (JAG 2004). The restorative methods used in village courts have also been found to significantly reduce the incidence of crimes being recommitted and they have increased the success rate of rehabilitating former criminals back into their communities. They provide a cost-effective and low-administration crime management method that reduces the burden on the formal law and justice system. It also improves community and regional cohesion by providing a legitimate outlet for local grievances (JAG 2004). Transferring even a small percentage of the existing aid in funding and training support, from the formal law and justice sector to the village court system, could enable the village court system to fulfill its significant latent potential (Dinnen 2005).

The PNG government has repeatedly demonstrated its inability to inspire the trust and confidence of its citizens

Redefining the Role of Government

The PNG government has repeatedly demonstrated its inability to inspire the trust and confidence of its citizens and to provide them with basic and essential services. The initial success of decentralization policies implemented in other developing countries (as discussed in Chambers 1998) shows the significant potential of scaling down the central government as a tool to promote wider political participation. The appropriateness of scaling down or decentralizing government power in PNG is discussed by Scott (2005, 81–100) as a potential solution to PNG's well-documented weak governance structures which emphasize that the form this decentralization should take must be

decided through a process of broad community consultation across the nation. Scott (2005, 94) also argues that a process of “de facto decentralization” is naturally occurring as the state weakens, and cites the example of the Ok Tedi Mine’s assumption of provincial government responsibilities in the west of the country.

Grassroots organizations have played an important role in conflict resolution and the provision of basic necessary services across the Pacific in times of national instability. Community groups have assumed key service delivery roles during times of upheaval in communities across the Pacific as occurred in:

Women’s groups have proved to be a vital force in conflict resolution and management within PNG communities

the Bougainville conflict (1988–98), the “tensions” in Solomon Islands (1998–2003), the multiple coups in Fiji, ongoing secessionist movement in Papua, and the occupation and liberation of East Timor (1975–99). These conflicts provide

strong examples of community groups stepping in to fill the gap when government services have broken down and international NGOs have withdrawn (Hakena et al. 2006). Community groups have also proven to be adaptive and responsive to the changing needs of the community in ways in which formalized institutions cannot compete. Women’s groups in particular have proved to be a vital force in conflict resolution and management within PNG communities (Sirivi and Havini 2004, Hakena et al. 2006).

The Leitana Nehan women’s organization is one best-practice example of the capacity of grassroots organizations to identify local law and justice priorities and successfully implement strategies for reform with the assistance of donor funds. Its 1999 project, Strengthening Communities for Peace (SCP), aimed to “strengthen the ability of women, communities, community leaders, and Leitana Nehan trainers to address violence in Bougainville in general and violence against women in particular” (Jenkins 2006). Through consultation with the Bougainville population, Leitana Nehan assessed that alcohol abuse was the primary cause of violence, rape, and personal conflict within local villages. The group developed a three-pronged approach to reducing the abuse of alcohol and associated violence. This strategy consisted of sanctions agreed on by the local population for the home brewing of alcohol, trauma counseling by trained local counselors, and an education campaign promoting women’s rights and important local roles. The combined effects of the SCP program were documented from within the community and the foreign agencies working alongside it to have made a significant contribution to conflict transformation in Bougainville. While the projects were locally directed and administered, the funding support of AusAID and management support of the International

Women's Development Agency (IWDA) provided funds and administrative support which enabled a village-based organization to identify and implement a culturally and community specific program (Jenkins 2006). Perhaps most importantly, it enabled these women to garner support from local leadership and the broader Bougainville population to an extent that has not been possible with initiatives designed and implemented by external donors.

The shift to a greater role for local government and community organizations is slowly occurring, but the examples are limited. Research on the necessary fiscal restructuring to support this transition was undertaken by the PNG National Economic and Fiscal Commission (NEFC 2004). The NEFC designed a grants system that involves vertical transfers to ensure that provinces have sufficient funding to meet basic service delivery costs. It is intended that the arrangement will improve the capacity of village courts by streamlining the training of officials and the prompt payment of their salaries (NEFC 2004). Outsourcing these service delivery roles to community groups also merits further consideration.

Toward a Safer and More Just Society

Papua New Guinea is struggling with a weak law and justice sector that impedes a broader array of important development initiatives. The continuing degradation of safety, security, and accessible justice reflects policies that are unable to prevent the breakdown of formal and informal institutions that support law and justice. The ROL strengthening approach of the ECP and previous Australian law and justice initiatives do not appear to be appropriate for PNG at the current time. This Australian-imposed approach undermines national ownership, is uncoordinated with other development initiatives, and is unevenly funded across the sector. Further, the weak state of PNG government institutions impedes the successful implementation of ROL policies. As a consequence, initiatives implemented to strengthen PNG regulatory bodies, such as policing and the court system, have often failed to fortify the delivery of fair and accessible justice.

Community-based initiatives have been successfully used to reinstate respect for the rule of law and the institutions that protect it

To the extent that the PNG law and justice sector is unable to fulfill its basic function of providing safety, security, and accessible justice for its population, or to effectively deter and penalize crime, PNG will remain unable to provide a safe and secure environment conducive to economic and social

development. However, community-based law and justice strategies have demonstrated some success in the environments in which they have been implemented. Though still in their early stages, such initiatives provide some promising indications that law and justice policies designed within communities are responsive to local needs. These initiatives have been successfully used to reinstate respect for the ROL and the institutions that protect it. In turn, this success in community-based law and justice has improved the ability of other government agencies and community organizations to function efficiently and equitably. Their success has also promoted greater community ownership of the development process across the board. The initial success of these strategies warrants further investigation for supporting community-based approaches on a regional or national scale.

The PNG *National Law and Justice Policy and Plan of Action* iterates the government's support for participatory community-based approaches, initiatives to build national ownership, and legal empowerment to foster a law and justice sector that is more responsive to the input of local communities.

Australia and PNG now have the challenge of providing a law and justice system that meets the needs of the PNG majority, not merely the political elite

Restorative justice has been identified by the PNG government as an area for renewed focus and support. This includes strengthening community-based regulatory structures and the involvement of local communities in the formulation, as

well as implementation, of law and justice strategies. The village court system, in particular, has the potential to improve the accessibility of justice for often isolated, rural communities. The effectiveness of these courts to contribute to safety, security, and accessible justice is at present undermined, however, by inadequate funding and support from the PNG and Australian governments.

The complex nature of the intertwined histories of Australia and PNG, including their joint development initiatives, has led to repeated conflicts and temporary impasses in the reform process. The technical assistance provided by Australia to PNG's law and justice sector has not functioned as effectively as both parties would like. Reform within the sector will likely be more effective with the commitment of both governments to ensuring the direct participation of the PNG population in the process of justice. It should also be acknowledged that Australian national interests and foreign affairs agenda are influential and unavoidable components of the aid program. Politics and the development process are inextricably linked. Despite the dissonance that emerges between PNG and Australian national priorities, there continue to be successful examples of partnership between the two governments in PNG's law and justice sector. Prime Minister Kevin Rudd's March 2008 visit to Port Moresby, his artic-

ulation of the Labor Government's revised policy framework, and his stated commitment to closer relations between the two governments, bode well for the future.

Australia's role in PNG's development process has evolved at the demand of vocal segments of the PNG population and the rulings of PNG courts. Australia has and will continue to play an important and essential role in PNG as the provider of significant financial assistance and as a source of political and technical consultation. Australia and PNG now have the challenge of brokering new relationships that are acceptable to both parties and providing a system of law and justice that meets the needs of the PNG majority and not merely the political elite.

Addressing all these challenges will be a long-term endeavor, requiring an enduring commitment from both nations—a commitment to which both governments have pledged support. Australian and PNG government support for coordinated and simultaneous formal sector and informal approaches to law and justice, and increased prioritization of community-led initiatives such as restorative justice, and a greater role for the village court system and community organizations, provide considerable cause for optimism.

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Rosita MacDonald has conducted extensive research on Australia's relationship with Papua New Guinea as a researcher for the Center for Judicial Studies, the Sydney-based organization contracted to lead the Australian government's AusAID Justice Advisory Group to Papua New Guinea. MacDonald continued her interest in Pacific Islands development issues at the Lowy Institute of International Policy in Sydney. There, she assisted a diplomatic fellow from the Australian Department of Foreign Affairs and Trade with the writing and editing of a publication on Australian foreign policy in PNG and the challenges to strengthening democracy and statehood.

At the East-West Center, MacDonald coordinated civic education programs for high school students in Thailand and Cambodia, and helped students and educators from across the Asia-Pacific region develop and implement global education programs that broaden cultural perspectives and build relationships between Southeast Asia and the United States. Currently, MacDonald is a junior associate in Asian Affairs in The Asia Foundation's Governance, Law and Civil Society unit.

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ABOUT THIS ISSUE

Rosita MacDonald examines the challenges facing the law and justice reform partnership between Australia and its former colony Papua New Guinea (PNG). Serious safety and security issues confront PNG, with the incidence of violent crime increasing and the capacity of the law enforcement, court, and prison systems to deal with offenders deteriorating.

MacDonald acknowledges the challenge of implementing institutional reforms appropriate to the PNG cultural and political context, and highlights the fact that measurable and sustainable reforms within the law and justice sector have failed to occur despite a substantial investment of resources from both governments. Law and justice policy in PNG should shift, she says, from the official rhetoric supporting traditional and community-led approaches to a greater investment by the PNG and Australian leadership to restorative justice approaches, the village court system, and under-utilized community organizations.

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