

Research and Rhetoric on Women in Papua New Guinea's Village Courts

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ABSTRACT

This paper addresses a recent and popular rhetoric in academic literature that women are discriminated against, often in the name of 'custom', in the male-dominated village courts of Papua New Guinea. The rhetoric is interrogated with reference to academic research findings and reports since the early days of the legislatively introduced village court system, and to data from the author's own research in recent years. On the basis of these two sources, it is argued that the evidence does not support the rhetoric, and further that the latter does less than justice to grassroots women in Papua New Guinea by portraying them as relatively passive victims of village courts. On the contrary, fieldwork research findings indicate that women are confident and reasonably successful disputants and that village courts are a community-level resource which is becoming increasingly useful for grassroots women with limited avenues for seeking justice and recompense.

INTRODUCTION

Claims have been made recently in academic literature that women are disadvantaged, or mistreated, in Papua New Guinea's village courts. These claims have the common theme that village courts are male-dominated institutions, and that, particularly in 'the highlands', the courts apply 'custom' or 'customary law' which discriminates against women. Overall, the rhetoric that women are mistreated in village courts has become powerful enough to be accepted as unquestionable fact beyond the research community. Indeed, when I mention my own research interest in village courts to people who have an educated acquaintance with Papua New Guinea (PNG) nowadays, their response as likely as not includes an assertion that the courts discriminate against women, and a consequent degree of incredulity if I do not immediately concur.

My purpose in this article is simply to interrogate these claims, partly through a review of research-based and other literature and partly with reference to my own research. Contrary to the negative view of village courts, which adds them to a catalogue of women's oppression in PNG, I suggest that available research findings indicate that the courts are an important resource for aggrieved grassroots women with limited avenues for seeking justice and recompense. I should emphasise here that beyond discussing women's treatment in village courts, this article is not intended to be a contribution to the literature on the broader issue of violence and violent crimes against women in PNG. I begin with a short account of the political and rhetorical climate in which the village court system was established. I then review the, mostly academic, commentaries on the village courts in relation to women in the historical order of their publication from the 1970s to the 1990s. A short comment on the analytic perspectives represented in that literature is followed by examples of the more recent negative commentaries. I subsequently present some findings of my own, and a brief conclusion.

THE ESTABLISHMENT OF THE VILLAGE COURT SYSTEM

Village courts in PNG were established through legislation, the Village Courts Act 1973, at the end of the colonial era and have come to occupy a position between formal courts and customary dispute-settling procedures. Overall, the intentions of the legislative planners were that the courts should concentrate on mediation and the pursuit of peace and harmony in the settlement of low-level intra-community disputes. The legislation also directed that village courts should apply custom 'as determined in accordance with...the Native Customs (Recognition) Act of 1963' (Village Court Act 1973).¹ In the rhetorical climate of the time politicians represented village courts and customary law as portending a revival of custom, making customary law a 'real part of the national law' (Kaputin 1975:12).² To this end village court magistrates, untrained in law, were to be selected by the local community on the criteria of their adjudicatory integrity and good knowledge of local customs (Village Court Secretariat 1975:1). A longstanding colonial attitude that an antagonistic relationship existed between European law and 'native custom'³ had contributed to the defence of 'custom' becoming part of an anti-colonial polemic among indigenous intellectuals and politicians at the time of their introduction (Chalmers 1978a:266ff, PNG House of Assembly 1972:1163–8).

The combination of pro-custom rhetoric and arguments that power should be returned to local communities, that the formal justice system of the late colonial period was not accessible to villagers (Curtis and Greenwell 1971, Iramu 1975, Lynch 1965:32, Oram 1975) and that something should be done to improve rural 'law and order' (Curtis and Greenwell 1971, Chalmers 1978b:71–72) overrode concerns — mostly among Europeans — about the possibility of corruption in village courts (Bayne 1975b:41, Oram 1975:67–68, M.Strathern 1975). At the same time, the commentaries of legal specialists implied some expectations that, rather than revive customary law, village courts would fulfil a more pragmatic function of gathering existing unofficial dispute settlement procedures into the centralised legal system (see, for example, Bayne 1975a:33). In practice, while promoted by politicians as 'customary', the village courts were, and are, constrained by a strict set of rules about what kinds of cases they could hear, and what kinds of penalties they could impose. In village courts I have observed during the past decade or so, while magistrates sometimes make verbal references to 'custom' they mostly apply common sense and 'the law' in their adjudications (see, for example, Goddard 1996, and *cf* Scaglione 1990, Zorn 1990).

Despite overwhelming support among Melanesian parliamentarians and progressive legal advisers for the establishment of village courts, fears remained among conservative jurists and other Europeans that village courts would be legally or otherwise corrupt and that village court officials' ignorance of the law would result in the application of anachronistic customs. Consequently when village courts began to be proclaimed in 1975 after a trial period, critics of the scheme were anxious to observe their practice. Among the first village courts proclaimed were some in the Mendi district of the Southern Highlands,⁴ which were almost immediately visited by concerned European observers.

CONFLICTING REPRESENTATIONS

The first published mention of allegedly discriminatory practices in village courts was made by Oram in 1979, with reference to some unpublished notes by a white official who visited Mendi village courts in 1975 (Martin 1975). Oram describes the incident thus:

A village court in the Southern Highlands convicted a woman who had infringed a resurrected or invented customary ban against smoking by women. Local white officials were worried that village courts in such a conservative area might discriminate unjustly against women and strangers to the area and appealed as a test case. The district supervising magistrate granted the appeal on grounds of the vil-

lage court's lack of jurisdiction, but he upheld the right of the village court to interpret local custom against the view of the reserve magistrate. The officials were also concerned lest village magistrates would use their appointments as a power base. (Oram 1979:73)

No attempt seems to have been made to investigate, to any analytically significant degree, the cultural background or circumstances of the case or the village court's decision. It needs to be noted that village court magistrates in these first courts had no handbooks to guide them in the negotiation of legislative demands that they apply both the law and custom. Neither had they been properly informed about the limits of their jurisdiction. The Village Court Handbook, issued to village courts of its time, was not published until 1976, a year after this incident.

The treatment of women was one aspect of a subsequent critique of the village court system by Paliwala (1982), which typified a point of view emanating from dependency theory, seeing Western legal systems as agents of control in non-Western societies and therefore systematically oppressive of the ruled people. According to this view — sometimes called 'legal centralism' (Galanter 1981, Griffiths 1986, Scaglione 1990) — while legislation such as PNG's Village Courts Act might appear to reinforce customary law, the courts actually impose an alien system, and depart significantly in practice from pre-existing forms of dispute settlement (Paliwala 1982:192–201). Village courts are thus seen as agents of the state applying both custom and law oppressively to the political economic ends of a dominant class. Paliwala saw village courts as applying oppressive customs more strictly than had previously been the case, in the interests of social control over women as the most important source of rural labour power (1982:221–222). Paliwala's article was based on research from 1975 to 1978, and contained references to the incidents at Mendi mentioned by Oram. Interestingly, he revealed that the white officials involved were told by the Department of Justice and the Department of District Administration to stop interfering with the new village courts (1982:204).

In the mid 1980s differing views of the treatment of women in village courts were emerging. Mitchell, a law lecturer at the University of PNG, brought a conventional legal perspective to the matter, pointing out the contradiction between the notion of women's equality found in the PNG Constitution and its promotion of the Melanesian family at the same time, which reinforced customary attitudes to women's role and treatment in marriage (Mitchell 1985:88). She believed directives that village courts apply custom were bound to result in discrimination against women, whom she believed were customarily subordinated in marriage (1985:88). Mitchell conducted some comparative research in the North Solomons and the Southern Highlands and attempted to achieve a balanced view of what she understood to be customary law and the way it was applied in the village courts. She noted that village court magistrates were predominantly male and regarded this as a disadvantage for women. She also described women as inexperienced and lacking skills in public speaking, to their detriment in court (1985:88). Noticeably Mitchell avoided simply categorizing village courts as misogynist, blaming instead what she saw as the discriminatory customs which she believed village courts inevitably apply under the directives of the Village Courts Act, and the contradictions in the Constitution (1985:89). From Mitchell's legalist perspective, which regarded custom as a conservative force impeding women's equality, education to change the views held by both men and women was essential (1985:89).

A contrasting view was offered by Westermarck, who published an article in the same year as Mitchell, using statistics developed out of anthropological fieldwork in the Agarabi area of the Kainantu District in the Eastern Highlands from 1977 to 1978. He offered case studies demonstrating the role of the village courts in managing disputes, importantly indicating the wider context in which individual disputes occur (1985:114–117), and commented:

The most frequently contested family issues in the courts are marital problems and assaults....those who complain most frequently about both of these matters are

women...If the problem has become serious enough for complainants to come to court, however, they usually come to request a divorce. While treating such requests as worthy of discussion, magistrates are reluctant to give approval....Magistrates typically lectured the disputants about their responsibilities to each other and the importance of marriage, warned them about separating without court approval, and then sent them back to their community to attempt conciliation. (Westermarck 1985:112)

Westermarck contextualised the village court's reluctance to give divorces in local issues of the time: '....one consequence of the court's strong stand against divorce and violence may be to help ameliorate the social and economic pressures causing conflict and family instability among the Agarabi.' (Westermarck 1985:118). He did not mention that village courts are not authorised to grant divorces: a matter to which I will return later. Significantly, though, he noted 'Magistrates hearing cases of marital violence have been severe with male defendants' (1985:114), and reviewing the high number of women using village courts, he commented 'That women should be such frequent users of the court, when in other public contexts they tend to refrain from asserting themselves, suggests that they view the court as an effective method for responding to their conflicts' (1985:114).

In the same year again, an article by Scaglione and Whittingham used statistical analysis from all parts of the country to look at women's use of village courts, finding that women used village courts more than any other forum (ranging from village moots to higher formal courts) to settle grievances (Scaglione and Whittingham 1985:132). A series of short reports provided by Papua New Guineans in 1986 on marriage and violence in their own areas had occasional references to village courts in highland provinces suggesting that village courts did occasionally facilitate divorces,⁵ and the very brief examples implied evenhanded decisions toward the male and female disputants (Warus 1986:61, Tua 1986:67-68, Asea 1986:80, Kakaboi 1986:89), incidentally mentioning cases of village courts finding in favour of women disputants against men (Wain 1986:45, Tua 1986:72).

In a 1990 publication, based on a ten-year retrospective analysis of Balupwine village court in the East Sepik Province, using statistics gathered by himself, Scaglione wrote:

Clearly, Abelam women are now making good use of the Village Court in pursuing their grievances. In 1977, they were the plaintiffs in only about 22 per cent of disputes resulting in Court Orders. It was clear from the context of many of these disputes that males were bringing cases on behalf of their female relatives. By 1987, however, it appears that women have taken matters into their own hands: they were the complainants in 53 per cent of all Orders. It thus seems that Abelam women are now able to remove their grievances from the male-dominated forum of village politics and still have them heard by a body that recognizes local custom. (Scaglione 1990:29)

He added an explicit criticism of Paliwala's view:

The increasing tendency of women to bring their grievances to a Village Court is perhaps doubly significant in that it nicely illustrates the dangers of an uncritical acceptance of the legal centralism philosophy.... Legal centralist studies commonly see women as an oppressed minority, and Village Courts, the agents of the state as necessarily oppressing them. For example.....Paliwala (1982) argues that Village Courts attempt to control women by making divorce more difficult, and by enforcing restrictive customs more strictly.....These sorts of practices are certainly not characteristic of all Village Courts. Since all cases recorded by the Balupwine court involve some settlement in favour of the plaintiff, the results reported here suggest that women in this area are winning more cases than men. (Scaglione 1990:30)

SENSATIONAL PUBLICITY

In 1989 newspaper publicity was given to an incident in which a woman was freed from Baisu Gaol in the Western Highlands by a national court judge after being imprisoned for non-payment of compensation ordered by a village court (see, for example, *Post-Courier* 1989). The woman was portrayed as a victim of village courts, and the judge ruled that the village court had been in breach of the Constitution. No publicity was given to the subsequent finding of the supreme court that the Constitution had not, in fact, been breached by the village court (see Jessep 1991). In 1991 other imprisonments of a similar kind, of up to four months, received widespread publicity, when Chief Justice Sir Buri Kidu said the village courts had misused their powers and done grave injustice to the women (see, for example, *Post Courier* 1991a, 1991b, *Times* 1991a, 1991b 1991c, cf *Post Courier* 1992).

Similar newspaper coverage was given to the 'Judges Report' of 1990, a judicial assessment of the legal system in PNG, in which it was reported that 'During 1990 more than 50 complaints were made to the National Court in Mt Hagen of women being unfairly and harshly treated by village courts and sent to jail for matters which were essentially marital problems' (Independent State of PNG 1990:7). The national court found errors of jurisdiction, or in the application of the Village Courts Act, or breaches of (the legal concept of) natural justice in 44 cases (1990:7). No comparative figures for males were given. The report claimed the errors to be evidence of conflicts between custom and the rights guaranteed under the Constitution, and the judges clearly regarded what they understood as custom to be archaic and oppressive, generalising to a polemic that 'The human rights guaranteed under the constitution are a dead letter for the women in many areas of the Highlands and there is no attempt being made by men and specially by men in positions of power and influence and with modern education to attempt to come to terms with this.' (1990:8). The Judges Report applied the same basic perspective on the relationship between custom and human rights as Mitchell had half a decade previously, albeit with a more condemnatory attitude toward village courts and males.

A discussion by a legal scholar of some of the 1989 and 1991 gaolings (Jessep 1991), while providing no cultural context to the cases involved, critiqued the village court decisions in terms of the Village Court Act and the Constitution. It made the point that the alleged mistreatment of women in the cited cases contrasted with reports from other parts of the country, and suggested a remedy in fundamentally legal terms: better legal training and more attention to the constitutional dimension of family law at the village court level (1991:75-77). We cannot, of course, now anthropologically examine these 1991 cases satisfactorily, and thus we are unable to investigate the 'customary' actions which the judges considered to be in conflict with constitutional rights. Neither can we sensibly judge whether or not the women were being discriminated against 'customarily' in being ordered to pay compensation or fines in the first instance. Nevertheless the National Court decisions, based on an investigation of the cases, were a clear indication that women had been victims of injustice in these instances, at the hands of village courts, although perhaps with a degree of complicity from district courts, for imprisonment orders written by village courts have no force or effect unless endorsed by a district court magistrate (the latter may refuse to endorse the order if he or she has reason to believe the village court has acted without jurisdiction or has exceeded its powers, and under such conditions may review a case).⁶ Thus, although the district court magistrate is not required to review the evidence or conduct of individual cases if the village court appears to have acted within its jurisdiction and powers, district courts share some legal responsibility for gaolings. Doherty, a national court judge in active service at the time, commented of village court imprisonment orders being countersigned by district court magistrates "It was apparent many were signed automatically" (Doherty 1992:11).

During a visit to the highlands in 1992 as part of a review of the village court system I talked to village court magistrates in the Enga, Western Highlands and Eastern Highlands

Provinces,⁷ and took the opportunity to investigate the writing of imprisonment orders for what appeared to be unusually long periods after the women failed to pay the compensation ordered of them. I found that the 'harsh' imprisonment of the women in 1991 resulted from the careful application by the village court magistrates of the rules in their village court handbooks, for fear of not applying 'the law'⁸ correctly. The magistrates were using the only version of the handbook available, produced in 1976, and archaic in terms of social and judicial changes which had taken place since that time. The handbook, prepared by a European at the end of the colonial era, made no allowances for the fact that the rigour in the rules of law might penalise women more than men, for example in respect of orders to pay fines when women had less access than men to substantial amounts of cash. The relevant part of the handbook, in English, instructed magistrates that in the event of non-payment of a fine or compensation, a person could be gaoled for 'up to' one week for every K10 owed, with a bracketed clause mentioning that the court could order less than one week for each K10 if it chose. The highland magistrates, who were relatively unschooled and had poor literacy, used a Tokpisin version of the book, which also attempted to advise readers that the rate of one week per K10 was an optional maximum. The book had exemplary, filled-out, order forms for magistrates to look at as a guide, which the magistrates found clearer and more helpful than the complicated textual instructions. The examples were made out for the full gaol term, thus losing the intention that it was an optional maximum. Mindful of criticism of their lack of legal rigour, magistrates were following the law to the (Tokpisin) letter.

Their strict application of 'the law' in their sentencing decisions indicated the paradox engendered for village court magistrates by the original plan that they should be recruited from the communities they served, and chosen by the community partly on the understanding that they were *not* technically qualified jurists but had an organic knowledge of the community's customs. In practice they found that the disputes they dealt with were actually categorised into a reduced range of the same offences that technically qualified magistrates dealt with in local courts of the time and in district courts. Most of the interventions into, or over-ruling of, village court decisions have been concerned with matters of law as interpreted by legal specialists and with reference to rights guaranteed by the Constitution in which case 'customary' (see below) procedures are sometimes seen as infringements of such rights. Further, in various investigations and reviews of the workings of the village court system since its inception, when magistrates have been consulted their own assessments of their work and competency have focused overwhelmingly on their lack of expertise in law. An investigation in 1992 of village court magistrates' self-perception revealed that they saw themselves as part of a legal system rather than being an essentially customary institution (Goddard 1992:90–91).

Specific reports of unfair or excessive imprisonment of women by the village courts disappeared from the media after the 1991 publicity. In fact Judge Doherty reported that a breakdown of figures for a total of 41 women gaoled in Baisu (Western Highlands Province) in August 1992 showed 35 were from national court convictions, 5 from district court convictions, and only 1 from a village court conviction (Doherty 1992:5–6). While commenting that this was a 'contrast' to the 1991 situation at Baisu (1992:6) Doherty was nevertheless of the opinion that women, youth and the less educated members of society seemed to fare worse in the lower courts (local courts — now phased out — and village courts) than in the higher courts (1992:1). She went on to give a set of conclusions — which she qualified as being personal and unresearched — about village courts which were similar to those of Mitchell, citing the Judges Report of 1990 and the imprisonment cases which had received publicity in 1989 and 1991 (Doherty 1992:4–13). Like Mitchell, and Jessep (1991), Doherty contextualised the shortcomings of village courts in a lack of proper training and knowledge of the law. She noted training workshops conducted in 1992 which revealed that the village court magistrates 'were unaware of people's rights to speak etc, they had been misled (or maybe misheard or misunderstood) that they should enforce their

orders with imprisonment' (Doherty 1992:14–15) — and concluded also that they did not realise they were subject to the Constitution (Doherty 1992:4).

PERSPECTIVAL INFLUENCES

In the literature reviewed thus far we can see three broad perspectives on the relationship between women and village courts. One is the legal centralism represented by Paliwala. A second perspective could simply be called legalism. It implies the superiority of Western forms of jurisprudence over others, and takes a critical view of the village courts' alleged application of what legalists understand to be 'custom' and 'customary law'. The particular notion of custom subscribed to by legalists is reflected in the definition taken from Section 4 of the colonial Native Customs (Recognition) Act of 1963 and embedded in PNG's Constitution at Independence, that 'custom' means 'the custom or usage of the aboriginal inhabitants of the country...regardless of whether or not that custom or usage has obtained from time immemorial.'

Colonial juridical ideas about custom in PNG were informed by a social evolutionist attitude to non-Western societies, and conceived custom from the beginning as a body of 'traditional' beliefs and practices of equivocal legal and moral validity. Indeed, a legal doctrine applied to custom in PNG was that 'traditional' customs could be tolerated unless repugnant to the 'principles of humanity' (a less-than-precise concept in itself). Conditioned by this colonial legal tradition, even the relatively liberal view of Mitchell regards custom as an untrustworthy guarantor of justice, particularly for women, and thus education in human rights as defined according to a Western paradigm and expertise in Western-style jurisprudence are seen as a desirable social developmental strategy. From this perspective custom, and therefore the village courts who apply it, are necessarily detrimental to the status of women.

A third perspective reflects legal pluralism, represented above by Scaglione, Whittingham and Westermarck. It is informed by anthropological fieldwork which seeks to explore the social and cultural context of village court operations in considerably more detail than legalism allows for. Anthropologists have become increasingly critical of the popular and legal tendency to speak of custom and customary laws in terms implying that they could be codified and consequently enumerated like a list of rules. They argue that the conventional notion of customary law was generated in the course of colonialism and that the idea that in countries like PNG there is 'law' on the one hand and 'custom' on the other is a dualistic legacy of colonial rule. Indeed, as Demian notes, for anthropologists nowadays 'it almost goes without saying that customary law did not exist until the introduction of a sphere of political activity from which it had to be differentiated' (Demian 2003:100). From this perspective both custom and the concept of customary law are analytically problematic.⁹ Legal pluralism not only recognises the existence of multiple systems of social ordering in any society, but sees them as fluid and interactive, and is consequently wary of attempts to categorise and conceptually systematise them. Merry comments, for example, 'It is clearly difficult to define and circumscribe these forms of ordering. Where do we stop speaking of law and find ourselves simply describing social life?' (Merry 1988:878).

Not surprisingly, anthropological approaches to village courts withhold judgments of the kind legalists make, on the ground that we need to investigate the social and cultural dynamics of the local communities in which village courts operate in order to understand the background to the disputes they hear and to their responses and decisions. Indeed, a finding of contemporary anthropological studies of village courts has been that each court reflects the sociality of the particular local community it serves, and applies a complex integration of introduced law and a variety of local conventions in its dispute management procedures (*cf* Brison 1992, Demian 2003, Goddard 2000, 2002, Scaglione 1979, 1981, 1990, Westermarck 1986, Young 1992, Zorn 1990). Thus it is impossible to generalise about the attitudes, biases or prejudices of village courts as a whole, or their application of 'custom' or 'customary law'.

RECENT CRITICISM

Comparing the foregoing accounts, a disinterested reader would arguably be wary of judging whether or not women are mistreated in village courts compared to men. There are contrarities, for example, between the findings of Mitchell and those of Scaglione, Whittingham and Westermarck, and others, published within a few years of each other. And we can see that the gaoling of women by village courts in 1991, while undeniably unjust, involved factors which make it difficult to assess exactly how that injustice was generated. However, a body of writing has developed in which the village courts are positioned as oppressive of women, using the aforementioned literature selectively. A degree of selectivity is predictable when writers with no direct research experience of village courts review the legalist and legal pluralistic evidence on the basis of their own disciplinary interests. For example, in a problem-oriented and even-handed discussion in 1993 of the social control of women in PNG, Banks mentioned the research of Scaglione, Whittingham and Westermarck but relied heavily on Mitchell and Paliwala on the topic of women and village courts, and ultimately, in terms of her wider topic, favoured their negative comments on the outcomes for women over the more positive comments of the former (Banks 1993:32–37).

More recent publications, though, are disturbingly less cognisant of the variance in relative literature. For example, Macintyre (1998), discussing the inequality of women, makes the following general statements:

Women are often unaware of their rights, and because of their lack of rights according to customary law, they rarely initiate legal action or avail themselves of the services of the law. Papua New Guinean men on the other hand have become enthusiastic litigants and there is ample evidence of their desire to legitimate the subjugation of women by extending customary law into other areas. (Macintyre 1998:218)

She does not justify or qualify her generalisation about women's legal passivity (in the face of literature to the contrary, including a statement in the volume in which her comments appear¹⁰). She goes on to give some 'illustrations':

In 1975 a survey of village courts in the Mendi subdistrict reported several instances where women were clearly discriminated against in ways that contravened the national law demanding that men and women be treated equally. A woman had been fined K40 for smoking in a Mendi street on the grounds that this was forbidden by customary law. A village court magistrate explained this harsh penalty by appealing to the rising rate of adultery and divorce that coincided with the introduced habit of smoking (Martin 1975:6). In another case a magistrate in Tulum Village Court¹¹ believed that the court should enforce customary restrictions on women by punishing those who did not go into menstrual seclusion. Both of these examples reveal that reactionary and discriminatory ideologies can be (and are) legally maintained in the face of overarching legislation for equality. (Macintyre 1998:218)

The 1975 incidents are the only illustrations Macintyre offers of the oppression of women by village courts. None of the other more recent literature is mentioned. Even if we consider this vintage example seriously, anthropologically the cigarette case begs for more detail, and Macintyre's categorization of the menstruation case as evidence of 'reactionary and discriminatory ideology' seems unusually reductionist in the light of many ethnographic examinations of the cultural context of such taboos which indicate that their enforcement reflects more than simply male oppression of women.¹²

More recently O'Collins (2000), has claimed that: 'Often Village Court officials have

stressed harsh penalties, rather than mediation or conflict resolution and reference to custom and tradition can produce some curious results' (O'Collins 2000:6). She continues:

I witnessed one such problem in 1976, when visiting Pangia in the Southern Highlands. Local village court magistrates had jailed several women who had been found smoking 'store-bought' cigarettes. The rationale was that this was *prima facie* evidence of adultery, as husbands would not have given their wives such cigarettes. Although the supervising magistrate overturned the decision and the women were released, other observers (Paliwala 1982 and Fitzpatrick 1982) noted continuing criticisms of a lack of evenhandedness, and bias against women. (O'Collins 2000:6)

No village courts were proclaimed in the Pangia region until 1978.¹³ Perhaps O'Collins has misremembered the date of her visit, or perhaps the place. On the other hand, the cases she describes are very similar to those witnessed in 1975 in Mendi and revisited by Oram, Paliwala and Macintyre, and could be a recycling of the same incident (except that the women are now claimed to have been gaoled, not fined). Again there is no mention of any later literature on women in village courts.

An influential publication in the same year as O'Collins' was Garap's account of the struggles of women and girls in Simbu Province, which contained a section about women and village courts (Garap 2000:162–168). Garap had been associated with Judge Doherty (see above) in the 1990s, and the first part of her discussion of village courts is a series of criticisms reminiscent of Doherty's unresearched conclusions of 1992, but unqualified and more polemical. This is followed by a list of complaints which the author reports were made by Simbu women to a visiting judge in 1993, and an unreferenced reproduction of part of the 'Judges Report' of 1990 (see above). Some brief cases exemplifying the sufferings of women are then listed, with a note sourcing them to unpublished documents from a conference in 1995. Of the nine cases only two mention the village courts at all. One relates a woman's experience of a violent marriage, which she unsuccessfully attempted to have dissolved by a village court. The other tells of a woman's unsuccessful attempt to have a village court punish her husband's polygamy (Garap 2000:167).

Village courts are not authorised to dissolve properly constituted marriages. They can hear disputes about brideprice, custody of children and matters relating to so-called domestic problems, but they have no power to actually grant divorces. While this may be frustrating to a suffering wife and cause resentment toward the court, it is not ground for a condemnation of the court itself as misogynist. Similarly, in respect of the other case mentioned by Garap, not only is polygyny a 'custom' in the area, it is perfectly legal in Papua New Guinea. Again, whether observers approve or not, the village court cannot act against polygyny *per se*. In either of these cases, had the village courts acceded to the women's requests, they would have been guilty of exceeding their jurisdiction.¹⁴ Heartfelt though Garap's criticisms may be, there is not enough research evidence in her discussion to support her polemical criticisms of village courts' treatment of women.¹⁵

Nevertheless, the article is becoming a touchstone for other writers discussing women's inequality. In an epilogue to the volume in which it appears, Garap's dim view of village courts is understandably contrasted to my benign comparison of the operative styles of three village courts in the same volume (Goddard 2000:241–253) by Jolly (2000:319–320). In a later publication Jolly recounts Garap's claims in a discussion of gender and justice, but with no comparison with or contrast to any other discussions of village courts (Jolly 2003:272). Ongoing citations suggest that Garap's account is displacing all others as a citation for authors making passing references to women and village courts (see, for example, Dinnen 2001:109, Lipset 2004:66, Parker 2002),¹⁶ and, as I noted in my introduction, I have found through personal interactions that the rhetoric that women are mistreated in village courts has become powerful enough to be taken as fact by interested people beyond the research community.

SOME RECENT RESEARCH FINDINGS

The development of an unqualified view that village courts mistreat women has given me some concern, as I have been engaged in research on village courts since the early 1990s and until the negative literature exemplified above began to emerge I had not noticed any significant mistreatment of women, compared to men. I had been to various parts of the country, including the highlands, talking to village court officials and disputants and watching cases whenever I could. I had read all the earlier literature and considered that the more thoroughly researched material and my own observations in three village courts which I had monitored suggested that we could not conclude that in recent years women had been treated more unfairly than men overall in village courts.

Reading and hearing the new wave of criticism of women's mistreatment in village courts I worried that I might have missed evidence in my own research, so I reviewed my research data, from which I will now produce some findings of my own. The three village courts I am particularly familiar with are in the National Capital District, and I have followed their fortunes, and those of disputants who have appeared before them, for twelve years at time of writing. I spent several months in 1994 and 1999 monitoring all three of them on every sitting day I could attend, equipped with a tape recorder and notebook, and I have transcripts of several hundred cases from those two periods. This intensive fieldwork is the basis of what I will present here. It is a limited sample, considering there are about 1100 village courts in PNG, and it is therefore nationally unrepresentative, but I suggest the research is at least reliable. I am drawing only on cases which I witnessed from beginning to end, whether the outcome was a firm decision in favour of one of the disputing parties, a referral of the case to another court, a withdrawal of the dispute, or some other conclusion.

Erima Village Court

The first findings are from Erima village court, which serves mostly settlement communities in the north-eastern suburbs of Port Moresby. The settlements in this part of the city are inhabited by people from all over the country, but the majority of the settlement population could be classified as 'highlanders'. Also, most of the village court magistrates in the past twelve years have been highlanders. Individual magistrates have come and gone over the years. When I first encountered them they were all male. In respect of statements sometimes made about the lack of women village court officials nationally, I should point out that no reliable assessment can be made of the number or percentage of women village court magistrates, simply because the governance of the system (including record-keeping and the collection of statistical data) has been in disarray for so long.

Broad statements that there are no women village court magistrates in any given region¹⁷ cannot be trusted unless they are based on research involving the visiting of every village court in that region, since for the last decade and a half at least, no centralised data on currently elected magistrates have been efficiently maintained.¹⁸ In the area that is generally used as the basis of claims of misogynist practices, the highlands (an imprecise category roughly encapsulating part or all of the Southern Highlands, Enga, Western Highlands, Simbu, and Eastern Highlands provinces as well as the higher-altitude fringes of several coastal provinces), no-one has pursued exhaustive empirical surveys of the gender of magistrates in any of the constituent provinces. It is nevertheless probably true to say that there are very few women magistrates, especially in highland village courts.

Women frequently serve as village court clerks. The majority of court clerks in the East New Britain and Milne Bay provinces, for example, are women.¹⁹ Two of three village courts I have monitored in the National Capital District have had women court clerks most of the time since 1992. The other practical office in the village courts is that of peace officer. Each village court has several, and they act as messengers for the magistrates, serving summonses and delivering court orders, ensuring that disputants attend court, standing or

sitting between disputants to prevent physical assaults by one party on another, and acting as peace wardens in the community. Women frequently serve in this capacity, though peace officers throughout PNG as a whole are overwhelmingly male.

Since 1997 there have been two female magistrates at Erima village court, both of them from the western highlands, and both could be described as ‘strong’ women. For example, in 1999, when Erima village court magistrates were electing a new chairperson from among themselves, a woman was nominated by a fellow (male) magistrate. She declined the nomination with a short speech in Tokpisin, which I will give in translation here:

Thank you for nominating me, but no. If I become chairman, some of you men [magistrates] will behave like small boys. You will want to be chairman, and you will try to destabilize me. This will be bad for the village court. I have no patience for this kind of behaviour. I prefer to remain just a magistrate. If you men want to fight [i.e. try to take over the chair], fight among yourselves. That’s all, thank you.

For this she received admiring comments and applause from her male colleagues and a watching (male and female) crowd.

Most of the settlements served by Erima village court are densely populated and volatile, as people compete for jobs, space and plots of land. The number of disputes is very high, compared to other village court areas around the capital, and the magistrates spend a great deal of time in mediation work. This is the hidden work of village courts. It mostly goes unrecorded and is hard for a researcher to quantify. The data I will present here are taken from ‘full court’ hearings, formally constituted in a public place with five to seven magistrates on the ‘bench’, peace officers in attendance, and a court clerk keeping records. Disputants attend by summons, the plaintiff having filed a complaint which is read out in court.

A total of 185 cases witnessed by myself from beginning to end during two four month periods, in 1994 and 1999,²⁰ is represented in Table 1, in which the sex of plaintiffs and defendants is distinguished and decisions classified according to whether they favour the plaintiff or defendant, or favour neither.

Table 1: Dispute outcomes by sex of plaintiffs and respondents in 185 cases monitored at Erima Village Court, 1994 & 1999

Disputant sex/No Pl'tiff	No Resp'nt	No of disputes	Decision in favour of Pl'tiff	Decision in favour of Resp'nt	O t h e r outcome#
1 M	1 M	36	17	2	17
1 M	1 F	24	11	2	11
1 M	2< F/M	19	11	0	8
1 F	1 M	60	43	0	17
1 F	1 F	17	10	0	7
1 F	2< F/M	19	16	0	3
2< M	2< F/M	1	0	0	1
2< F	1 M	2	2	0	0
2< F	1 F	1	0	0	1
2< F&M	1 M	4	4	0	0
2< F&M	1 F	2	1	0	1
Total		185	115	4	66

M = Male, F = Female, F/M = Female or Male, 2< = Two or more.

“Other outcomes” can include transfer of dispute to another court, settlement which favours neither disputant, mediation or other factor resulting in withdrawal of complaint, etc.

It can be noted that the number of complaints brought to the full court by women overall exceeded the number brought by men (99 to 80), and that the women received far more

decisions in their favour than men (69 to 49). This at least indicates that women are relatively successful users of the village court, compared to men. Few decisions were made in favour of respondents. It should further be noted that the majority of the cases brought by women singly were against a male respondent (60), and that in such cases recorded there was never a decision in favour of the male respondent (43 — more than two thirds — in favour of women, 17 other outcomes). This compares positively with cases brought by males singly against a woman. In the 24 cases in this category the male plaintiffs received 11 decisions in their favour (less than half), two in favour of the woman respondent, and 11 other outcomes).

Of the 60 cases brought by women singly against men I noted that 33 were marital problems. Most of the marriages represented in cases brought to the court were neither fully constituted 'customary' marriages nor 'Western' types of marriage. They were of a kind I will call 'de facto' for convenience, and are a common type of partnership between migrants. In these the man gives a small payment in lieu of a full brideprice. The woman's clan is not substantially present, and importantly her father is not in town. This small payment (sometimes as little as K200) either goes to a male who might be a clan (or more distant) relative of the woman and thus represents her kin group in town for the purposes of the union, or it is sometimes given to the woman herself. Beyond this token 'brideprice', the complex preliminary and ongoing reciprocations which would occur between members of the two linked clan groups in a customary marriage are simply not possible. Sometimes small gifting occurs between the man and a relative or two of the woman who may happen to be in town, but sometimes there is no consolidation of the relations between the kin-groups of the de facto couple at all. Thus the de facto marriage lacks the encompassing and complex socio-economic relationships²¹ which would militate in fact (regardless of legislative influences) against village courts' abilities to dissolve properly constituted customary marriages.

Of the 33 marital disputes brought by women, eight included complaints that no brideprice had been paid. In these cases the court asked the woman if she wanted to stay with the man, and some women said they would so long as he paid the brideprice. All cases included charges of neglect, manifest sometimes in non-provision of living expenses, sometimes in lengthy absences, sometimes in adulterous behaviour, sometimes all three. If physical violence by the husband was mentioned by the woman, it was introduced into her evidence additionally and after the other complaints. None of the marital cases was instigated specifically on the ground of physical violence, although some of the non-marital cases brought by women involved complaints of assault by men other than their husbands, and by other women, as well as complaints of insults, malicious gossip, debts, theft and damage to property.

In the 33 marital disputes, in 24 cases the court ordered the man to pay compensation (up to K1000) to the woman, as well as a court fine (up to K50). In 10 cases they declared a de facto marriage 'finished', usually ordering the return of all or a large part of the nominal brideprice to the man if he had paid one, but sometimes ordering compensation to be paid by the man to the woman. The magistrates told me that they would not be able to declare these marriages over if they were properly constituted customary marriages. Overall the data suggest that women are not disadvantaged in Erima Village Court, compared to men.

Konedobu Village Court

The second court I monitored in the same period was Konedobu village court. This serves a small group of long-established settlements near downtown Port Moresby, and an overall population much smaller than that served by Erima court. The downtown settlements are inhabited overwhelmingly by people from the Eastern Gulf region. They are close-knit, with extensive kinship ties through long intermarriage among themselves and with the local, Motu-Koita, people of the Port Moresby area, and they are very peaceful compared to the volatile

settlements in the north-eastern suburbs. Disputes here are mostly about insults, or imagined insults, friction within extended families, and threats or accusations of sorcery. The majority are resolved or managed through mediation. Very few disputes come to full court and even these are often resolved through formal mediation or arbitration rather than adjudication.

The chairing magistrate's position in Konedobu village court has been occupied by women most of the time since 1991. The current chairperson, Molly Vani, was originally the court clerk, and then was asked to be a magistrate. Molly was also involved in local church fellowship work and had a reputation for honesty and integrity. By the late 1990s the constant non-payment of court officials' allowances by National Capital District authorities had created a climate of distrust among the village court magistrates who suspected each other of stealing the collective remunerations. There was also a significant degree of friction among the magistrates as several coveted the unstable chairing position, which had been shifting back and forth between a woman in poor health and an elderly man who was becoming feeble. Molly had expressed no ambition to be the chairperson, but in a climate of distrust and bickering among the magistrates attention focused on her unblemished reputation and she was appointed to the position.

Molly was from the Hula area, some 100 kilometres south-east of Port Moresby. The Hula share some cultural characteristics with the Motu of the Port Moresby area and the peoples of the Eastern Gulf area who dominate the population served by Konedobu village court. One of the shared characteristics between the three groups is an understanding that women do not publicly give advice on, or express judgments on, juridical matters. Molly reconciled her adjudicatory office with this customary understanding with ease. She was a skilled mediator, and devoted most of her time to non-adjudicatory work. In formal sittings, where adjudication was necessary, Molly participated in the questioning of disputants and witnesses and the discussions among the three to five magistrates who sat on each case. But she always formally invited one of her male co-magistrates to announce the court's judgment, thus negating the apparent contradiction between her adjudicatory work and community attitudes toward women *vis-à-vis* adjudication.

As can be seen from Table 2, the full-court case load is very small compared to Erima, but the court spends a long time on each case, reflecting its more mediatory style in full court hearings. As with the Erima cases, the Konedobu cases represented here were witnessed from beginning to completion during two four month periods.

Table 2: Dispute outcomes by sex of plaintiffs and respondents in 36 cases monitored at Konedobu Village Court, 1994 & 1999.

Disputant sex/ Pl'tiff	No Resp't	No of disputes	Decision in favour of Pl'tiff	Decision in favour of Resp't	O t h e r outcome
1 M	1 M	5	2	0	3
1 M	1 F	3	3	0	0
1 M	2< F/M	5	5	0	0
1 F	1 M	9	7	0	2
1 F	1 F	6	1	0	5
1 F	2< F/M	4	2	0	2
2< F&M	2<F&M	4	3	0	1
Total		36	23	0	13

M=Male, F=Female, F/M= Male or Female, 2<=Two or more

The sample is small, so not a great deal can be made from the superficial observation that more women bring complaints to full court than men (19 to 13). It can be noted again that complaints brought by women singly against a male were the most frequent type, and further that no decisions were made in favour of defendants.

Of the nine complaints brought by women against a man, five could be classified as marital. Three of these were accusations of neglect, resulting in admonitions and preventive orders issued to two husbands, and an order to the third to pay compensation. The fourth marital complaint was about a failure to pay brideprice, which the court ordered the husband to pay forthwith. The fifth was a claim of serious insult, which the man was warned not to repeat, on penalty of a fine. Of the three complaints by men singly against women, only one was marital, a claim of desertion against a second wife. The court ordered the woman to pay compensation. Despite the small sample available here, I suggest there is evidence that women are not disadvantaged in Konedobu village court, compared to men.

Pari Village Court

Pari is a Motu-Koita fishing village on the edge of Port Moresby. The Motu-Koita are the traditional inhabitants of the land which Port Moresby now occupies, and Pari is a relatively insular village attempting to maintain a traditional identity in the face of the growing city (Goddard 2003). Christianity was introduced into the village in the 1870s, and Christian church activities are a major part of its social life, which is ordered through kin relations. The majority of disputes in this relatively peaceful village are intra-family problems and are dealt with by church committees. There is also a strong emphasis placed on mediation-styles of dispute management, so only a few disputes come to a full court hearing. Women in Pari involve themselves deeply in 'church fellowship' activities, through which they can not only pursue the wellbeing of the village as a whole, but also achieve social status. There are no female village court magistrates in Pari village. Having appropriated Christianity into its identity as a 'traditional' village, Pari pursues non-punitive approaches to dispute settlement so far as it can. The village court employs a strategy of reintegrative shaming of, and moral lectures to, offenders, imposing only nominal fines when it is obliged to. Individual disputes are dealt with at length, at a slow pace, with great attention to details. Table 3 gives information on disputants' sex and outcomes for 50 cases monitored from beginning to completion.

Table 3: Dispute outcomes by sex of plaintiffs and respondents in 50 cases monitored at Pari Village Court, 1994 & 1999.

Disputant sex/No Pl'tiff	Resp't	No of disputes	Decision in favour of Pl'tiff	Decision in favour of Resp't	O t h e r outcome
1 M	1 M	5	3	0	2
1 M	1 F	3	2	0	1
1 M	2< F/M	3	2	0	1
1 F	1 M	5	2	0	3
1 F	1 F	1	1	0	0
1 F	2< F/M	2	2	0	0
2< F/M	1 M	20	19	0	1
2< F/M	2<M	9	9	0	0
2< F&M	2<F/M	2	2	0	0
Total		50	42	0	8

M=Male, F=Female, F/M=Male or Female, 2<=Two or more

Complaints from single plaintiffs are few in Pari. Table 3 indicates that male single plaintiffs brought a total of eleven complaints to full court, and women eight. Of the single male complaints three were against women, none was marital. One was an accusation of abuse, settled with a public apology, one was a compensation claim for garden damage, which the court ordered the woman to pay. The third was a dispute between a mother and

son, which was adjourned and subsequently settled out of court. Of the female complaints five were against a male, and three were marital. Of the latter, one involved a charge of neglect and an issue of child custody and was referred to the district court. One involved the non-payment of a brideprice and an accusation of assault. This was adjourned pending witness testimony, but the disputants did not subsequently attend the court and the dispute was later withdrawn. In the third case an elderly woman complained that her husband had hit her on the head during an argument. Evidence revealed that he had done this in an effort to make her relinquish her grip on his testicles. The couple were lectured by the court on the need for mature behaviour, and the affair was settled with a handshake.

The main disruptive problem in Pari is weekend drunkenness by young men. Inebriated, they are noisy, smash bottles, and losing their Christian politeness with their inhibitions they swear loudly and make obscene comments to passing women. Complaints from the community at large, including outraged women, against young men are reflected in Table 3, with 20 complaints against single males and 9 against groups of males. These are usually dealt with by detailed description of the (now sober) men's behaviour in the public court and demands by the magistrates that they provide an exegesis of their obscene language toward women. At the end of this shaming ordeal (which can be lengthy), they are usually given a nominal fine and ritually shake hands with the aggrieved women and everyone else present — a reintegrative process. I think these brief details indicate that women are not discriminated against in Pari village court.

The findings from Erima, Konedobu and Pari village courts resonate with those of Scaglione, Whittingham and Westermarck that women are confident and successful users of observed village courts. I am not prepared to generalise from this to the country as a whole, much more research is needed, of course. What can be seen from the examples from courts in the National Capital District is that the profile of disputes in each community is different, and that the practice of each village court needs to be contextualised in the sociality of the community it serves. To reinforce this last observation, with the caution that things are not always what they seem on casual observation, I will return to Erima village court, to give a little detail on one case I observed.

A man brought his young wife to court claiming that she had committed adultery. He said he was certain she was seeing a man, whom I will call 'George', in another suburb. The wife denied this. After some questioning which provided no enlightenment, the village court decided it needed more evidence. It adjourned the case for a week for George to be found, and brought to court as a witness. By the following week George had not been found. After a further adjournment, with no sign of George, continued denial by the wife, and no other evidence or witnesses to the alleged adultery, the village court dismissed the case, which may appear at first sight to be a favourable decision for the wife.

Village court magistrates are elected from the community they serve, and often know more about the background to the disputes they hear than what emerges in court. I learned from the Erima magistrates that the marriage in this case was of the *de facto* type described earlier, secured by a nominal brideprice. The husband was known to be a violent man. The wife had never complained about his violence, and unless she or her kin brought a complaint against him the court could not take action. The magistrates were hoping that the wife or George would admit to adultery. George really existed, and they knew who he was. Desperate attempts had been made to locate him and persuade him to come to court, without success. After two adjournments, the court could no longer prevaricate and had to let the case slip away. Had the adultery been admitted, the magistrates' plan was to declare the marriage finished, order the wife (or her kin) to repay the small brideprice, and issue a preventive order against the ex-husband to keep away from the ex-wife, passing a copy of this to the village court serving the area where George was known to live, to ensure the wife would be safe. She could then have married George, reportedly a better prospect than the current husband.

Most of the cases contributing to the statistics I have presented here have a background at least as complex as this, suggesting that an understanding of social context is vital to an appreciation of the workings and decisions of any village court, and possibly more useful in understanding their treatment of disputes than conventional notions of 'custom' or 'customary law' (cf Goddard 1996, Zorn 1991). Of course, village courts are no less capable than any other kind of court, formal or informal, 'higher' or 'lower' of making bad or unjust decisions (see, eg, Goddard 2002:10–11). Further, as the predominantly kin-ordered sociality of Melanesians continues to compel them, as Lawrence famously said, to be more concerned with keeping the sky up (Lawrence 1970:46) than adhering to the Western legal maxim *fiat justitia, ruat coelum*, the fate of individuals in a village court (both male and female) is sometimes determined more by the need for harmony and good order in the community at large than by principles of either Western or 'customary' law (see Goddard 1996, 2002, 2003). Judgments about the attitudes or biases of village courts in respect of individual disputants, whatever their gender, should be made with great caution.

The perceived shortcomings of village courts, mostly measured by their critics against legal criteria and the Constitution, are best analysed, I think, in terms of the contradiction historically engendered by the planned role of the village courts, which I briefly discussed early in this article. Village court magistrates were to be untrained in law, unencumbered by the presence of lawyers in court, and to be guided by a chimerical set of rules colonially defined as 'custom'.²² At the same time, however, they were expected to deliver justice to individual disputants, according to principles articulated by the introduced legal system, and to adhere to the Constitution, of which they and the disputants they dealt with had little knowledge. As I have already said, most of the time magistrates village courts attempt to make commonsense decisions toward dispute outcomes which are in line with general community sentiments about what is right or wrong, and take into consideration the local social context of particular disputes (Goddard 1996). In this respect much of their procedure and decision-making (regardless of the gender of disputants or degree of severity of the dispute) is vulnerable to criticism from a strictly legal perspective.²³ Village court magistrates, in my experience, are acutely aware of this, as reflected in their repeated requests for 'training' in 'the law', and for more liaison with district courts and the police.

CONCLUSION

The recent literature criticising village courts for their treatment of women is difficult to classify in terms of the three perspectives outlined earlier. The condemnatory literature does not contextualise village courts in the political economy of colonialism, as the legal centralists did. It makes no concessions to legal pluralism, or to the cultural relativism or critique of notions of customary law which inform that perspective. It echoes some of the sentiments of the most conservative forms of legalism in its condemnation of the allegedly customary aspects of village court practice, yet shows no concern for jurisdictional matters or legal rigour in relation to that practice. It appears to be driven in fact by an *a priori* position that the male-dominated courts necessarily impose indigenous patriarchal forms of social control. If this is intended to be a contribution to a feminist perspective, it is cause for concern, and not only because its vulnerability to criticism (on the ground of inadequate research) works against its legitimacy. It arguably does less than justice to grassroots women in Papua New Guinea by portraying them as relatively passive victims of village courts, against evidence (not including my own above, which has not previously been available) that they are confident and reasonably successful disputants. Further, these attacks on the village courts vilify a community-level resource which appears on the same evidence to be increasingly useful for women.

My basic concern here, though, is not with whether the goals of feminist research are being adequately served, which I do not consider myself particularly qualified to judge, but

with a lack of rigour, particularly when relatively well-researched literature on women and disputing, women and village courts, and notions of custom and customary law is available. It is to be hoped that further rigorous research, rather than polemic and recycled anecdotes, will better inform our understanding of the relationship between village courts and women. Meanwhile, on the basis of the relatively reliable evidence I have cited I remain unconvinced that women are not generally confident and reasonably successful users of the village courts.

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NOTES

1. The Village Courts Act 1973 was cosmetically amended with the Village Courts (Amendment) Act 1986, and replaced by the Village Courts Act 1989, without significant substantive changes. The Native Customs (Recognition) Act 1963 was retitled the Customs Recognition Act after Independence.
2. There was also an expressed desire among Melanesian politicians that 'European technicalities' be kept out of village courts (Oscar Tammur, MHA, quoted in Chalmers 1978a:267), and that there be no interference from welfare officers and kiaps (Paul Langro, MHA, quoted in Chalmers 1978a:267).
3. See, for example, Derham 1960:35–36, Desailly and Iramu 1972:3–4, Fenbury 1978:124–125, Gordon and Meggitt 1985:192, Hasluck 1976:187–189, Murray 1926, Nelson 1976:28, Rowley 1965:78.
4. Twelve village courts at Mendi were proclaimed February 20, 1975. Gazette No. 010.
5. It is difficult to ascertain from these brief descriptions whether the village courts were exceeding their jurisdiction, or simply dealing with disputes in a way that facilitated a divorce without actually ordering or granting it.
6. Village Court Act 1973 s37(1), (3), (4), 1989 s68(1), (3), (4).
7. The national review, involving four academics from the University of Papua New Guinea, was for the Attorney General's Dept and the Village Court Secretariat. In the highlands we visited village courts in the areas of Wabag (Enga Province), Mt Hagen (Western Highlands), Goroka and Kainantu (Eastern Highlands) and talked to Provincial officials, village court officials and village court users.
8. In Tokpisin 'lo' is an ambiguous term whose glosses extend to 'rules' and received edicts — including religious teachings — which are not strictly speaking 'law' in the conventional English sense. It is fair to say that village court handbooks are treated as rule-books by many village court officials.
9. See, for example, Demian 2003, Goddard 1996, Jolly 1992, Keesing 1989, Keesing and Tonkinson 1982, Scaglione 1985, Turner 1997, Zorn 1990, 1992.
10. 'An apparent increase in the number of wives taking action against their abusive husbands through District and Village Courts is almost certainly a result of women's greater awareness of their options, rather than an indicator of an increase in wife-beating.' (Bradley 1998:362). See also Brown 1995:184, Brown Glick 1987:21, Pflanz-Cook 1993, Scaglione 1990:29–30, Scaglione and Whittingham 1985:132, Westermarck 1985:114.
11. One of the same group of courts in the Mendi district.
12. For example Barth 1975:162–171, 234–238, Brown and Buchbinder 1976, Herdt 1982, Kyakas and Weissner 1992:82–91, Lutkehaus 1995, Meggitt 1964, 1965, Poole 1981, Schieffelin 1977:46–72, Sexton 1995, Stephen 1995:48–49.
13. Seven village courts were proclaimed in Pangia on August 19, 1978.
14. This is a complex issue: while reluctant to exceed their jurisdiction in respect of issues such as divorce attempts (see note 21), village courts do sometimes exceed their jurisdiction in other matters — indeed this is

suggested by the women's complaints to the judge in 1993 reported by Garap (2000:164–5). In early days this was due to ignorance of the law. More recently it has been due to pressure from local communities who lack confidence in district or national courts, or lack access to alternative courts (in rural areas particularly), or sometimes have an insular concern to keep their 'law and order' affairs from wider scrutiny. Village court magistrates in rural areas with whom I have discussed this (for example in Enga and the Western and Eastern Highlands Provinces) admit to *ultra vires* hearings on crimes including, in the extreme, murder, but say they would avoid the practice if they could. In the same areas magistrates particularly complain about a lack of support from district courts and police, which may contribute to their capitulation to pressure to deal with matters well outside their jurisdiction. Urban village court magistrates are less vulnerable to pressure to conduct *ultra vires* hearings.

15. Simbu Province has 8 districts and a total of 79 village courts. It is not clear which, or how many, of these Garap is referring to in her criticism. At time of writing Garap has joined the Village Court Secretariat as a women's rights and gender specialist.
16. I have omitted many other sources with completely unqualified statements about village courts' discrimination against women, such as human rights organizations which publish unreferenced general commentaries on Third World Countries, and similar other summaries of crime, corruption and law and order issues in Papua New Guinea. It is not clear how much field research, if any, has informed these kinds of reports.
17. This is the substance of occasional claims by political advocates for women's rights. See, for a recent example, the rhetoric of the president of the Western Highlands Council of Women, Paula Mek (Kumugl 2001) and cf Garap 2000:163, Mitchell 1985:88.
18. At time of writing staff in the Department of Justice and Attorney General are compiling a new database using all available information, past and present. While this currently contains many errors, due to previous record-keeping inefficiency, it shows promise of remedying the very-deteriorated record.
19. Noted in visits 1992 and 2004, and pers. comm. (1992) J. Takuna, Village Court Secretariat Regional Liaison Officer, New Guinea Islands Region; (2004) N. Mark, Principal Advisor, Milne Bay Provincial Liaison Office; K. Piniau, Acting East New Britain Provincial Village Court Officer.
20. This is not the total number of cases witnessed at Erima during either period or at other times, which is considerably more than 185. I have omitted those full-court cases for which, for some reason or other, I do not have complete records, and, of course, no mediations are included here.
21. The wider communal socioeconomic engagement in customary marriage is the major factor taken into account by village courts when approached by individuals seeking 'divorce', and would arguably militate against a divorce being granted by a community level court with knowledge of the social context of the marriage, even if such courts were legally empowered to grant divorces. On the complexities of customary marriage traditionally and in changing times, see, for example, Jorgensen 1993, Kelly 1977:168–264, Kyakas and Weissner 1992:153–165, Meggitt 1964, Pflanz-Cook 1993, Zimmer-Tamakoshi 1993.
22. Ironically, in the spite of publicity following the gaoling of women in 1991 (see above), village courts were accused not only of applying inappropriate 'custom', but also of neglecting 'custom' (see, for example, Post-Courier 1992).
23. For a sympathetic example of this, see Scaglione's (1985:36) account of a village court dispute involving himself.

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