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# Land and Conflict in Papua New Guinea: The Role of Land Mediation

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Anecdotal evidence suggests that conflicts over land and extractive resource developments are on the rise across Papua New Guinea. These micro-level conflicts have the potential to scale-up and feed into large-scale armed conflicts—such as those that occurred on Bougainville and in neighbouring Solomon Islands—which require costly external intervention. Against this backdrop, this paper examines PNG’s legally-mandated land mediation system in theory and practice. A number of weaknesses are identified and described; and a case study of an apparently successful “hybrid” approach is discussed. The paper concludes with recommendations for further analytic work and interventions that may strengthen the land mediation system and, in turn, the prospects for both national and regional security.

Struggles over land and natural resources have been an enduring characteristic of social and political life in Papua New Guinea since pre-colonial times.<sup>1</sup> However, extensive anecdotal evidence indicates that land disputation has intensified in many parts of PNG over the past several decades. This is attributed to the advent of large-scale extractive resource industries, accelerating rural-to-rural and rural-to-urban migration, continuing high rates of population growth, and the expansion of smallholder cash-cropping activities. Left unattended, land disputes can boil over into interpersonal and inter-group violence, which, in turn, can scale-up and escalate into more widespread armed conflict.

Land disputes have been a major, though not exclusive, cause of inter-group violence in the Highlands.<sup>2</sup> Land has also been at the centre of social and ethnic tensions in places where there are large numbers of migrant-settlers occupying customary land,<sup>3</sup> such as in the oil palm growing regions of West

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<sup>1</sup> Bruce M. Knauft, ‘Melanesian Warfare: A Theoretical Perspective’, *Oceania*, vol. 60, no. 4 (1990), pp. 250-311.

<sup>2</sup> *Ibid.*; Glen Banks, ‘Understanding “Resource Conflicts” in Papua New Guinea’, *Asia Pacific Viewpoint*, vol. 49, no. 1 (2008), pp. 23-34; Polly Wiessner and Nitze Pupu, ‘Toward Peace: Foreign Arms and Indigenous Institutions in a Papua New Guinea Society’, *Science*, vol. 337 (2012), pp. 1651-4.

<sup>3</sup> Notwithstanding a “double movement” currently underway—which involves the increasing “customisation” of alienated land on the one hand, and increasing legal encumbrances of customary land on the other—a significant proportion of PNG’s land area remains under customary tenure: Colin Filer and Michael Lowe ‘One Hundred Years of Land Reform on the Gazelle Peninsula: A Baining Point of View’, in

New Britain Province.<sup>4</sup> Inter-generational disputes within landowning groups over the distribution of economic benefits from the Panguna mine were a significant cause of the Bougainville conflict.<sup>5</sup> Intergenerational and ethnopolitical grievances regarding access to and control over land were also central to the violence that took place in neighbouring Solomon Islands between 1998 and 2003.<sup>6</sup> Indeed intra- and inter-group conflicts over benefit-sharing have been an important factor in “resource conflicts” across the western Pacific<sup>7</sup> and have often been characterised by salient inter-generational and gendered dimensions.<sup>8</sup> The conflicts in Solomon Islands and Bougainville highlight the potential for localised, micro-scale disputes over land and resources to escalate and feed into large-scale armed conflict.<sup>9</sup> When such large-scale conflicts have occurred, they have directly engaged Australia’s national interests, and Australia has responded, in conjunction with regional partners, with costly peace-keeping and peace-building interventions.

A senior PNG Law and Justice sector official told us that “land use and land mediation will make or break this country”. The processes of social and economic change that give rise to land disputation are likely to continue to intensify over the coming decades, making the timely and effective resolution of land disputes a critical public policy issue for PNG. Moreover, the potential for such disputes to scale-up into larger armed conflicts that threaten regional stability and engage Australia’s national interests makes it an important policy issue for Australia. Effective land dispute resolution processes will be required to realise the Government of PNG’s objectives for increasing the economic productivity of customary land under the National

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Veronica Strang and Mark Busse (eds), *Ownership and Appropriation* (Oxford: Berg Publishers, 2011), pp. 147-70.

<sup>4</sup> Gina Koczberski and George N. Curry, ‘Divided Communities and Contested Landscapes: Mobility, Development and Shifting Identities in Migrant Destination sites in Papua New Guinea’, *Asia Pacific Viewpoint*, vol. 45, no. 3 (2004), pp. 357-71.

<sup>5</sup> Colin Filer, ‘The Bougainville Rebellion, the Mining Industry and the Process of Social Disintegration in Papua New Guinea’, *Canberra Anthropology*, vol. 13, no. 1 (1990), pp. 1-39; Anthony J. Regan, ‘Causes and Course of the Bougainville Conflict’, *The Journal of Pacific History*, vol. 33, no. 3 (1998), pp. 269-85.

<sup>6</sup> Matthew G. Allen, ‘Land, Migration and Conflict on Guadalcanal, Solomon Islands’, *Australian Geographer*, vol. 43, no. 2 (2012), pp. 163-80.

<sup>7</sup> Matthew G. Allen, ‘Melanesia’s Violent Environments: Towards a Political Ecology of Conflict in the Western Pacific’, *Geoforum*, vol. 44 (2013), pp. 152-61.

<sup>8</sup> Rebecca Monson, ‘Negotiating Land Tenure: Women, Men and the Transformation of Land Tenure in Solomon Islands’, in Janine Ubink (ed.), *Customary Justice: Perspectives on Legal Empowerment* (Rome: International Development Law Organisation and Van Vollenhoven Institute for Law, Governance and Development, 2011).

<sup>9</sup> Cf. Stathis N. Kalyvas, ‘The Ontology of “Political Violence”: Action and Identity in Civil Wars’, *Perspective on Politics*, vol. 1, no. 3 (2003), pp. 475-94.

Land Development Program. The way in which disputes over land and resources are managed will also influence the degree to which PNG is able to achieve peaceful, sustainable and socially inclusive economic development.

This article examines the state of land mediation in PNG. It is based on a review of the literature and relevant legislation, and brief periods of fieldwork conducted in Port Moresby, and in Hela and Eastern Highlands provinces, in mid-2013. The paper is divided into three substantive parts. The first briefly describes two new potential sources of land-related conflict: the reforms being undertaken as part of the National Land Development Program, and the so-called “land grab” that has seen the long-term leasing of more than 12 per cent of PNG’s land area over the past twenty years or so.

The second section examines PNG’s legally-mandated land mediation system in theory and practice. Land mediation has become orphaned by the institutional ambiguities surrounding the devolution of functions to the provinces and subsequent reforms to national departments and agencies. Lacking adequate funding, legally-mandated land mediation services have limped along, often replaced by informal mechanisms supported by provincial governments, Village Courts and, in resource-rich areas, services provided by resource companies and, in some cases, the parties to land disputes themselves. The problems in the land mediation system reverberate into the formal land court system, and proposed legislative reforms appear to have been stalled by “institutional friction”.

The final section of the article provides a case study of mediation approaches to inter-group fighting in the Highlands. This is directly relevant to the question of land mediation because there is a crucial interaction between land disputation and tribal fighting. Land disputes are a major cause of tribal fights; and the destruction of property and displacement of people during tribal fights can, in turn, produce new land disputes which must be addressed if the fighting is to be resolved. Land mediation and tribal fighting must therefore be dealt with in an integrated manner, rather than as distinct problems to be addressed by separate legal approaches. The District Peace Management Teams (DPMTs) of Eastern Highlands Province are good examples of what can be achieved through “hybrid” institutions that link state and non-state actors and integrate different sources of legitimacy and authority at different scales. The DPMTs also underscore the importance of these sorts of initiatives being embedded in wider systems of local, district and provincial level governance.

In concluding the article, we suggest some ways in which land mediation services could be improved and sketch out an agenda for further research, policy and programmatic work.

## Current Law Reform and the PNG Land Grab

Recent amendments to PNG's land law—made as part of the National Land Development Program (NLDP)—may contribute to an escalation of land disputation in rural areas. The NLDP seeks to implement the numerous recommendations emerging from the National Land Summit (held in 2005) and the National Land Development Task Force Report.<sup>10</sup> The NLDP is being implemented over the period 2011-2030 in four phases. The first and current phase (2011-2015) includes a number of pilot activities, one of which is a program of provincial engagement carried out by the Magisterial Service with a view to moving towards a “new look” land court. The main thrust of this engagement, taking place in eight pilot provinces, is to “resuscitate and invigorate the Provincial Land Dispute Committees (PLDCs)” and to seek commitments from provincial administrations that they will meet the costs of land mediators' allowances.<sup>11</sup>

As part of the NLDP, a number of amendments to the *Land Groups Incorporation Act 1974* and the *Land Registration Act 1981* came into force in March 2012. Incorporated Land Groups have proliferated over the past twenty years, and are now thought to number more than 20,000. The amendments to the *Land Groups Incorporation Act* now require that all of these groups be made compliant with new governance requirements within a five-year window. The amendments to the *Land Registration Act* enable the “voluntary” registration of customary land. While rigorous analysis of the social impacts of these reforms is yet to be undertaken, informed observers are of the view that they could result in considerable conflict and violence. While registration of customary land is often directed at providing tenure security and reducing conflict, there is empirical evidence from many parts of the world that suggests it is often associated with an increase in disputation and conflict.

Furthermore, PNG is currently experiencing a so-called “land grab” which is likely to lead to an increase in land disputation in rural areas. This land grab has seen, since 1995, the long-term leasing of around 12 per cent of the nation's land area in the form of Special Agriculture and Business Leases (SABLs), a process which was the subject of a recently-concluded Commission of Inquiry. It seems likely that a significant number of these SABLs would enable foreign logging companies to circumvent the rigorous procedures of PNG's forestry legislation by dealing directly with landowner companies and exploiting loopholes in the *Forestry Act 1991*. Of even

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<sup>10</sup> See further Michael Manning, ‘The Paths to Land Policy Reform in Papua New Guinea and Vanuatu’, in *Making Land Work? Volume Two: Case Studies on Customary Land and Development in the Pacific* (Canberra: Commonwealth of Australia, 2008), pp. 285-305.

<sup>11</sup> M. Papuka, ‘Protocols for Provincial Engagements’, unpublished paper, Magisterial Services, Port Moresby, n.d.

greater concern is the possibility that the lease-leaseback provisions of the *Land Act 1996* may entail the transfer of the economic benefits that usually accrue to landowners under logging, mining, and oil and gas agreements to the holders of SABLs. According to Colin Filer, who has conducted extensive research on the subject, this would “almost certainly provoke an upsurge of rural social unrest and civil disorder”.<sup>12</sup>

The Commission of Inquiry found irregularities and flaws in relation to most of the land that has been leased, however the Government of PNG has been slow in responding to its findings. Prime Minister O’Neill has recently indicated that leases “that have been abused for forestry” will be cancelled or suspended and that cabinet approval will be required for leases over “large parcels of land”.<sup>13</sup> However, at the time of writing the Government of PNG is yet to release an official policy response and it remains to be seen if changes will be made to the *Land Act*.

## **Land Mediation in Theory and Practice**

The resolution of disputes about the use, ownership and boundaries of customary land is generally governed by the *Land Dispute Settlement Act 1975* (hereafter LDS Act).<sup>14</sup>

The LDS Act establishes a system of land mediation that is intended to be “close to the people” and to provide “an avenue for traditional dispute settlement processes to be utilized”.<sup>15</sup> It establishes a system of land mediation that is to be conducted by state-sanctioned Land Mediators. These mediators are intended to have detailed local knowledge of customary land tenure systems, which vary widely from place to place. The administration of the land mediation process is the responsibility of provincial governments. According to data maintained by the Village Courts and Land Mediation Secretariat (VCLMS), there may be around 1200 “permanent” Land Mediators across PNG. This is only an estimate, as the data held by the VCLMS is incomplete and is thought to contain inaccuracies.<sup>16</sup> According to an authoritative source within the VCLMS, there is only one female Land Mediator, who is in the National Capital District. There is, therefore, a strong need for more women as Land Mediators.

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<sup>12</sup> Colin Filer, ‘New Land Grab in Papua New Guinea’, *Pacific Studies*, vol. 34, nos. 2/3 (2011), p. 290.

<sup>13</sup> ‘PNG PM Says He Will Cancel Controversial Land Leases’, Radio Australia, 28 April 2014.

<sup>14</sup> Disputes between members of an Incorporated Land Group are governed by the *Land Groups Incorporation Act 1974*.

<sup>15</sup> Rudolph W. James and Lawrence Kalinoe, ‘Resolving Customary Land Disputes Settlement’, *Melanesian Law Journal*, vol. 43 (2005), p. 5, available at <http://www.paclii.org/journals/MLJ/2005/2.html> [Accessed 29 April 2014].

<sup>16</sup> The number of permanent Land Mediators may have increased since fieldwork was conducted in mid-2003.

Under the LDS Act, a land dispute can come before a Land Mediator via a number of routes. In practice, it seems most common for a person to register a complaint at the district administration office, which then assigns a Land Mediator. It appears that in some cases, a Land Mediator is not being assigned to parties due to a lack of mediators, or due to other factors including a fear of violence associated with a dispute. It should be noted the LDS Act provides that parties to a dispute may approach a Land Mediator directly with a request for mediation. In some instances people may be approaching 'informal' Land Mediators due to a lack of formal, gazetted Land Mediators.

The LDS Act provides that if land mediation is unsuccessful, disputes will proceed to the Local Land Court, with a further right of appeal to the Provincial Land Court. The approach of the courts is intended to be one of arbitration, with an emphasis on mediation and compromise.<sup>17</sup> However, according to a senior law and justice sector official with direct experience of this system, the magistrates who preside over them often adopt adversarial and adjudicative approaches. This particular official believes that these approaches are far more likely to exacerbate land disputes, possibly leading to violence. This is why the Magisterial Service is advocating for amendments to the LDS Act that would make it more difficult for land disputes to enter the courts (see further below).

Although the LDS Act largely replaced the role of the Land Titles Commission (LTC) with that of the Land Courts, the Act provides that the Head of State may still refer disputes to the LTC under particular circumstances. It has become common practice for the Head of State to direct the LTC to hear disputes regarding extractive resource developments on customary land, especially cases that involve the identification of landowners.<sup>18</sup> By 2007, the LTC had heard disputes associated with the Hides and the South-East Gobe oil and gas projects, the Kainantu gold project and the Ramu nickel project.<sup>19</sup> This practice is highly problematic for reasons that are outlined below.

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<sup>17</sup> Ibid.

<sup>18</sup> National Research Institute, *The National Land Development Taskforce Report: Land Administration, Land Dispute Settlement and Customary Land Development*, Monograph 39 (Port Moresby: The National Research Institute, 2007), p. 14.

<sup>19</sup> According to a paper written by an employee of Oil Search PNG Ltd, in the Gobe case no agreement could be reached after ten years and two Land Titles Commission (LTC) investigations. In 2002, the parties "agreed to disagree on the ownership of the land but agreed on a formula to split the accumulated money and the future stream of income ... the money accumulated during the dispute, which amounted to millions of kina, was distributed amongst the 21 ILGs": Willie Kupo, 'Customary Land and the Extractive Resource Industry', in Charles Yala (ed.), *The Genesis of the Papua New Guinea Land Reform Program: Selected Papers from the 2005 National Land Summit*, Monograph 42 (Port Moresby: National Research

Despite the vital role of land mediation in the resolution of disputes regarding customary land, land mediation services have been plagued by institutional uncertainties and ambiguities associated with the *Organic Law on Provincial Governments and Local Level Governments 1995*, as well as other institutional reforms. In 2009, the National Executive Council issued a determination stating that land mediation is a provincial function. However, unlike the system of tied national government payments to the provinces for Village Courts, there are no specific funds allocated to provinces for land mediation. In other words, the cost of land mediation services, in the form of allowances for Land Mediators and administrative and logistical expenses, is not currently funded through the national system of tied grants to the provinces.<sup>20</sup> In the absence of such funding, it is not surprising that the land mediation services mandated under the LDS Act are not being provided in many places.

In some provinces, such as Hela, land mediation has been partially privatised with parties paying up to 1000 kina each for mediation conducted by state-appointed Land Mediators performing their role outside the terms of the LDS Act,<sup>21</sup> or by informal, non-gazetted land mediators. Parties are willing to pay for these services because the stakes are very high in the context of compensation payments associated with extractive resource projects, and all parties are likely to benefit from a mediated outcome.<sup>22</sup> There are reports of similar user-pays land mediation systems operating in East New Britain and Morobe provinces, where they are organised by Village or Ward Committees.<sup>23</sup> In other provinces, such as Eastern Highlands

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Institute, 2010), p. 72. The Ramu landowner determination case has been recently completed following almost six years of deliberations by the LTC: 'Ramu Land Case Ends', *Post Courier*, 7 August 2013.

<sup>20</sup> Note that there is growing support amongst Government of PNG stakeholders for the introduction of two tied grants to the provinces for land mediation: a functional grant and payment for allowances.

<sup>21</sup> For example, a district-level Customary Lands Officer in Hela Province, who was interviewed during fieldwork, said that he frequently assigns up to eleven Land Mediators to mediate disputes over benefits associated with extractive resource projects. He draws upon mix of ad hoc and permanent mediators, but mostly the former as there are only around seven to ten "gazetted" mediators in the district. However, according to a senior law and justice sector officer in Hela, all of the permanent Land Mediators in the province have had their three-year terms lapse and the chair of the Provincial Land Dispute Committee (PLDC) is yet to appoint any ad hoc mediators. In this sense, Land Mediators are being assigned by the state (in the form of the District Administration), but not in accordance with the Act.

<sup>22</sup> A senior law and justice sector officer in Hela Province stated that a disproportionate number of cases before the District Court concern applications for stays and injunctions to prevent other parties from receiving compensation payments from resource companies.

<sup>23</sup> James and Kalinoe, 'Resolving Customary Land Disputes Settlement'.

Province, the provincial government is meeting the cost of land mediation; and in many places Village Courts are filling the gap even though they are only mandated to hear disputes over land use, as opposed to land ownership.<sup>24</sup>

Extractive resource companies often perform their own land mediation activities, sometimes interacting with state actors in the process, especially in cases where their own land mediators have been unable to mediate disputes to the satisfaction of the parties involved. In the case of the oil and gas sector, each resource project developer has a community affairs division that includes a dedicated land section that works on landowner-related issues.<sup>25</sup> According to a paper by an Oil Search (PNG) Ltd employee, the company performs the following activities in relation to land dispute management:

The community affairs division provides mediation services on disputed land claims. When mediation fails ... the company assists the disputing parties to pursue the issue through the formally established procedure defined in the *Land Disputes Settlement Act* ... In some instances, land disputes have ended up in the higher courts.<sup>26</sup>

The under-funding of land mediation services creates difficulties for the courts because the Local Land Court, while presided over by a Magistrate, requires two officially appointed Land Mediators to complete its quorum, at least one of whom should have mediated the case before it was appealed to the Local Land Court. The non-payment of allowances to Land Mediators means that the Local Land Court is often prevented from sitting. The failure to appoint and maintain a full complement of permanent Land Mediators, which is the responsibility of Provincial Land Dispute Committees (PLDCs), also frustrates the effective functioning of the Local Land Court (as well as land mediation services more broadly).<sup>27</sup> A further concern on the part of the

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<sup>24</sup> Note that Village Courts may assign temporary orders about land use when a dispute is pending but are not able to hear cases about land use separately from this.

<sup>25</sup> Kupo, 'Customary Land and the Extractive Resource Industry'.

<sup>26</sup> *Ibid.*, pp. 71-2.

<sup>27</sup> The Senior Provincial Magistrate may also appoint "Ad hoc" Land Mediators. However, neither the Magisterial Service nor the Village Courts and Land Mediation Secretariat (VCLMS) regard this as good practice and it is discouraged by both agencies. PLDCs are essential to the effective functioning of land mediation services in the provinces and districts. According to an informant at the VCLMS, the following provinces did not have PLDCs as at mid-2013: Central, Oro, Enga, Western, Gulf, Madang, West Sepik, New Ireland, West New Britain, Simbu and Western Highlands. Interviews with provincial officials in Tari revealed widely contrasting understandings of the role and composition of PLDCs, indicating a need for training about roles and responsibilities.

Magisterial Service is that “Mediators out-vote the presiding Magistrate, often not on the bases of law, reason or logic, but to serve other expediencies”.<sup>28</sup>

For these reasons the Magisterial Service is seeking amendments to LDS Act that would remove the requirement that official Land Mediators preside alongside Magistrates in the land courts and make it more difficult for land disputes to enter the court system. The draft bill has been put before the Constitutional Law Reform Commission (CLRC) and requires further consultation before it can be tabled in parliament.<sup>29</sup> The Magisterial Service is of the view that land disputes should be resolved at the most local level possible, employing local knowledge and customary principles and approaches. This sentiment was also articulated by the 2007 White Paper on Law and Justice in Papua New Guinea:

justice is best served in the first instance by having an accessible dispute mechanism that is as close as is possible to the dispute and the parties i.e. a local forum, using local languages in a manner that encourages mediation and the preservation of peace and harmony ... Disputes should be resolved with the customary laws of the people being an integral facet of the process, not a residual overlay. Land disputes and customary law are inextricably linked.<sup>30</sup>

The White Paper was more or less in agreement with the National Land Development Taskforce’s (NLDT) (2007) recommendation that a single land court system or land dispute resolution mechanism be established to address the fragmentation of the current system. Both the White Paper and the NLDT called for the abolition of the National Lands Commission (NLC) and the Land Titles Commission (LTC), with their functions to be transferred to a consolidated land court system. Both also affirmed the need for a system that allows land disputes to first be considered at the community level, through a process of mediation and in accordance with customary laws and principles, before proceeding to the court system. However, the White Paper and the NLDT were at variance on the questions of whether an entirely new land court system should be established and the role of the Magisterial Service. While the NLDT called for the “removal of the *Land Settlement Act* from Magisterial Services”, the White Paper rejected the option of establishing a entirely new land court system on the basis that it would potentially be “expensive and remote from the people”, and instead

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<sup>28</sup> M. Papuka, ‘Additional PET Consultation Points—Clarifying the Situation on Land Mediators’ Engagement and Remuneration’, unpublished paper, Magisterial Services, Port Moresby, n.d.

<sup>29</sup> A senior national-level law and justice sector officer attributed the slow progress with this bill to “institutional friction” in the form of vested interests within the Department of Justice and Attorney General (DJAG) who are benefiting from the status quo. According to this informant, the bill was withdrawn from DJAG after three years of inaction, and submitted to the Constitutional Law Reform Commission.

<sup>30</sup> Government of Papua New Guinea, *A White Paper on Law and Justice in Papua New Guinea* (Port Moresby: Government of Papua New Guinea, March 2007).

called for the establishment of a specialist District Court (Land Division) within the Magisterial Service.<sup>31</sup>

It appears that several elements of the preferred option outlined in the White Paper have been implemented. However, a number of important reform agendas remain unaddressed, most notably in relation to the NLC and the LTC. The White Paper called for the abolition of these bodies and the transfer of their functions to the District Court (Land Division), with appeals to the National Court. Their continued operation is highly problematic, especially in light of the state's on-going practice of "opting out" of the LDS Act for extractive resource developments, instead directing the LTC to hear disputes regarding customary land in resource project areas.

As pointed out by the NLDT, a critical issue with the LTC is its lack of independence in accordance with the doctrine of the separation of powers.<sup>32</sup> Both the LTC and the NLC are quasi-judicial tribunals, located within the Department of Justice and Attorney General (DJAG). This means that the commissioners are subject to administrative control by the Minister and lack the independence of judicial office holders. Moreover, only the most senior commissioners are required to hold formal legal qualifications. In 2000 the National Court set aside a decision of the LTC in respect of the South East Gobe customary land dispute on the basis that the Commission had exceeded its jurisdiction and had failed to be fair and impartial, with one of the commissioners singled out for biased actions.<sup>33</sup> According to a knowledgeable insider, commissioners get paid very large allowances to sit on the LTC, which physically convenes at the location of the dispute, meaning that it is in the interests of commissioners to prolong deliberations and in the broader interests of DJAG to retain the LTC. These incentives contribute to the "institutional friction" that, in the view of this informant, is preventing the implementation of the reforms laid out in the 2007 White Paper.

## **Land Mediation and Mediation Approaches to Inter-group Conflict**

Land disputation and tribal fighting are closely linked, making it worthwhile to look at District Peace Management Teams (DPMTs), which appear to have been extremely successful in reducing tribal fighting in Eastern Highlands

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<sup>31</sup> Ibid.; National Research Institute, *The National Land Development Taskforce Report*, pp. 73-85.

<sup>32</sup> National Research Institute, *The National Land Development Taskforce Report*, pp. 73-85.

<sup>33</sup> Lawrence Kalinoe, 'Customary Land Dispute Settlement', in Charles Yala (ed.), *The Genesis of the Papua New Guinea Land Reform Program: Selected Papers from the 2005 National Land Summit*, Monograph 42 (Port Moresby: National Research Institute, 2010).

Province. DPMTs have been operating in this province since 2007, and tribal fights have decreased from a baseline of eighty-four fights in 2007, to four fights in 2010, with two 'active' fights as at April 2013 (according to provincial government data). The success of the DPMTs can be attributed to a number of factors.

The first important factor is their composition, which differs from place to place but variously includes provincial and district officials, local level government presidents, police, village court officers, Land Mediators, NGOs and community and church leaders. There are women on the DPMTs in Goroka and Unggai-Bena districts. The DPMTs are usually chaired by, and work under the supervision of, the District Administrator. This diverse membership reflects an understanding of the importance of adopting a cross-sectoral approach towards tribal fighting: a recognition that a range of both state and non-state actors must be involved if tribal fights are to be successfully mediated.

Secondly, the provincial administration has explicitly acknowledged the close interrelationship between land disputes and inter-group fighting. This relationship is borne out by district-level data on land disputes, land mediation and tribal fighting that is collated by the provincial administration on a quarterly basis. Land disputes are the main cause of tribal fights in Eastern Highlands Province, followed by sorcery (which is said to be often used as a ruse for underlying land disputation). The province has recognised the relationship between land disputes and tribal fights and, with the assistance of an Australian aid funded program, has invested heavily in the appointment and training of Land Mediators and in the regular collection and analysis of district-level data on land disputes and mediation. Eastern Highlands Province is one of the few provinces that pays allowances to Land Mediators on a regular basis. Informants in Eastern Highlands Province noted effective land mediation services are required not only to prevent land disputes from escalating into inter-group violence, but also to deal with land-related tensions caused by the fighting itself. Once a cease-fire is agreed upon, village courts and Land Mediators attend to the litany of disputes that must be resolved if a lasting peace is to ensue.

Thirdly, in terms of funding, DPMTs have been supported by a combination of provincial government, district, PNG-Australia Law and Justice Partnership, and District Support Improvement Program (DSIP) funding. The current MPs for Kainantu, Henganofi and Unggai-Bena districts have been especially proactive in supporting the activities of the DPMTs in their respective districts. During fieldwork a visit was made to the new District headquarters at Lahame in the Bena area. The MP for Unggai-Bena, Benny Allan, is currently serving his third consecutive term and, since first taking office in 2002, he has prioritised the resolution of tribal fighting as a prerequisite for restoring service provision in the district. It appears that he has consistently provided DSIP funds to support the work of the DPMT and

acknowledges the critical role of the provincial government in supporting peace-making activities. An important break-through in the peace process occurred in 2008 and 2009 when the churches formed the 'Pastors' Inter-denominational Peace Council' which has subsequently worked alongside the DPMT.<sup>34</sup>

After ten years of peace-making efforts, seventeen long-running tribal fights have been successfully brought to an end in the Bena valley. A major peace ceremony was held in 2011, involving compensation, gift-exchange and the signing of peace agreements. This is commemorated annually at 'Peace Hill', which stands as permanent memorial of the peace process and the fighting that preceded it. With the advent of peace in the Bena valley, government services to the area have been restored. The new District HQ—replete with a well maintained road link to Goroka (and plans to extend it to Ramu), mains electricity, staff housing, administrative offices and a clinic—stands as a testimony to what a proactive MP can achieve with the assistance of DSIP funds and strong linkages to a relatively functional provincial administration.

## **Research, Policy and Programmatic Agendas**

At the start of the article we made three interrelated points: local level disputation over land and natural resources appears to be increasing throughout PNG; these local-level conflicts have the potential to scale-up into more widespread armed conflicts that can threaten both national and regional security; and, therefore, the effective and timely resolution of land disputes is a critical public and security policy issue for both PNG and Australia. Having considered the state of land mediation services in theory and practice, we conclude the paper by mapping out some priorities for analytical work, as well as programming and policy interventions.

In light of the political economy context noted above—sensitivities around the current land reform process, "institutional friction", and the Commission of Inquiry into abuse of the SABLs—we explicitly acknowledge that land mediation is a very contested public policy space in PNG. This makes it especially important that policy debate and formation is informed by a solid evidence base and, with this in mind, we suggest the follow agenda for analytical work.

First, relatively little is currently known about the ways in which disputes over customary land are being addressed in practice. There is a need for further work in this area, including research into the different ways in which women and men access land mediation services. There is also a need for further information on the participation of women and men in agreement-making regarding extractive industries. Research of this nature is of critical

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<sup>34</sup> Field notes.

importance in light of the well-known gendered and generational dimensions of conflict over land and natural resources.

Second, there is a need for further analytical work on private sector engagement in land mediation. Private sector actors, particularly in the extractive resource sectors, have very specific security requirements, which, in a context such as PNG, the state often struggles to meet. In practice, security services around extractive projects—mine sites for example—are co-provided by the state and the private sector. At present very little is known about private sector engagement in land mediation, and this may be an area in which both state actors and aid donors could engage or partner with companies. Examining success stories such as the West New Britain oil palm experience, where three decades of migration and settlement on customary land have occurred in a relatively peaceful fashion, might provide lessons that could be applicable elsewhere.

Third, there is a need for a deeper understanding of how land disputes are managed in urban and peri-urban settings, particularly in informal settlements. And, finally, there is a need for detailed analysis of the potential social impacts of the NLDP and the current SABL 'land grab', particularly in relation to their likely impact on disputes and conflict in rural areas.

In relation to suggestions for programmatic and policy interventions, support could focus on the key national agencies with responsibility for land mediation—notably the Village Courts and Land Mediation Secretariat as well as the Magisterial Service—with a view to institutionalising devolved funding for land mediation services. Support to the VCLMS could include the establishment of a database of Land Mediators and Land Mediation Areas and Divisions; and support for increased involvement of women as Land Mediators. Measures targeting the increased involvement of women may be particularly viable in matrilineal areas where there may be less resistance to the participation of women in land mediation. Training for land mediators—including gender-sensitivity training—should also be supported.

Programmatic support could be provided to selected provinces, in conjunction with the Magisterial Service, VCLMS and the Department of Provincial and Local Level Government Affairs, to assist with the strengthening of land mediation services within provincial governance structures. This could include support for the establishment of Provincial Land Dispute Committees; the coordination of law and justice sector agencies at provincial and district levels; and the clarification of roles and responsibilities among various officials at different levels. It is essential that land mediation interventions coincide with efforts to strengthen the sub-national governance structures in which they are embedded.

Important lessons for land mediation can be learned from the DPMTs of Eastern Highlands Province, which appear to have been successful largely

because they have been able to draw together a range of state and non-state actors, and develop strong linkages between local level government, district and provincial governance structures. For this reason, models such as the DPMTs cannot be easily transplanted into new locations, and they require the support of advisors with a deep knowledge and understanding of the contexts in which they are operating.

This means that flexibility needs to be built into the national policy framework on mediation approaches to land and conflict. A rigid one-size-fits-all approach is destined to fail in a context as diverse as PNG, and interventions need to be tailored to suit local socio-political, administrative, and cultural circumstances. Land mediation should be seen as a hybrid institution in the same sense that the Village Courts are hybrid institutions: they are resourced and sanctioned by the central state, but inhabited by lay persons who are well-versed in local customary law and practice, and are seen by their communities as legitimate arbiters of justice. Appropriate support for land mediation could potentially replicate the successes of the Village Courts, serving not only to provide effective land dispute resolution services but a means to extend the functional authority and reach of the state into rural areas.

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