

FORMAL AND INFORMAL OPERATIONS OF A
VILLAGE COURT IN MAPRIK

By Richard Scaglion*

I. *Introduction.*

The broad outlines of the structure and jurisdiction of Village Courts in Papua New Guinea are fairly well known. The primary function of a Village Court as described by s.18 of the *Village Courts Act* 1973 (No. 12 of 1974) is 'to ensure peace and harmony in the area for which it is established by mediating in and endeavouring to obtain just and amicable settlements of disputes' by applying relevant native custom. Ideally, such courts should provide an interface between traditional conflict management techniques and the introduced Local Courts and should combine elements of both traditional and introduced legal principles.

Since their introduction, individual Village Courts have been criticized for a variety of shortcomings, including favouritism, misappropriation of funds, and corruption. A common criticism of the Village Court system in general is that the courts in operation often resemble Local Courts rather than the blend of introduced and traditional structures originally intended. In the matter of procedure:

Some Village Courts have used the common law courts rather than traditional moots, as role models, imposing unduly formal procedures in the dispute settlement process. For this reason it was felt that there should be more emphasis on customary procedures of mediation, compromise, compensation and popular participation, and less on fines and imprisonment, and winner-take-all adjudicatory judgements.¹

In the matter of substantive law:

While many village courts tend to follow these customary principles there is a tendency in other courts to ignore these principles and to try and behave like local or district courts. For example, in one case in the Central Province involving damage to property, the complainant wanted to withdraw his claim for compensation as it was a quarrel between friends. However, the magistrates said that although the complainant could withdraw his own claim, the courts had "a duty to enforce the government's law". Therefore, they fined him for the offence of "damage

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1. J. Gawi, Y. Ghai and A. Paliwala, 'National Goals and Law Reform: A Report on the Goroka Seminar' (1976) 4 *Melanesian Law Journal* 264.

to property".²

A brief analysis of Village Court records would suggest that these criticisms are valid: orders and decisions are usually recorded and rationalized in terms familiar to Western jurisprudence. Village Court hearings appear very formal, leading to the conclusion that they are too 'Westernized'. Yet the present field research revealed that a Village Court in the Maprik District, East Sepik Province, also operated on an informal level not readily apparent to government officials. These informal operations were quite extensive, involving frequent and lengthy mediation by Village Court magistrates according to customary practice. These findings indicate that a comprehensive study of Village Courts should assess the operation of such courts within a broader conflict management framework.³

The present paper is an attempt to provide such a study. The ethnography of law in pre-Village Court Maprik was previously researched during November 1974 - January 1976. The data from that earlier project combined with the present research will be used to assess the interplay among agents in the Maprik area and to analyze the position and functions of Village Courts within the framework of regional and local conflict management structures.

II. *Background.*

The focus of this study is the Balupwine Village Court Area, covering an approximate population of some 2,700 persons in 1976. The area is located in the Maprik census division and includes five villages: Cheragum, Kuminibis, Maprik, Nagapaem and Neligum. Nagapaem is an Arapesh village; the other four are Samukundi Abelam. The Balupwine Village Court was established in July, 1976. At that time there were five magistrates (one each from Kuminibis, Nagapaem, and two from Maprik) two peace officers (Kuminibis and Maprik) and one clerk (Maprik). These officers' terms expired in July 1979 at which time two magistrates were re-elected (Maprik and Neligum), and three new magistrates (Kuminibis, Maprik and Nagapaem), two new peace officers (Kuminibis and Maprik) and a new clerk (Neligum) were elected.

Previous research was conducted in the Samukundi Abelam village of Neligum.⁴ A case study approach was used to develop a corpus of

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2. A. Paliwala, 'Village Courts in Papua New Guinea: Colonial Courts or People's Courts', at p.2. (This is an unpublished report prepared on the basis of research conducted by students of the Faculty of Law).
 3. Several promising studies have recently been done. Preliminary results of George Westermarck's Ph.D. fieldwork are available in 'Village Courts in Question: The Nature of Court Procedure', printed in this volume. Aspects of Steven Zuckerman's research are described in an unpublished paper, 'Forogere's Fathers: The Social Dynamics of a Compensation Case' (1979).
 4. Aspects of this previous research are described in R. Scaglione, *Seasonal Patterns in Western Abelam Conflict Management Practices: The Ethnography of Law in the Maprik District* (1976), Ph.D. thesis, University of Pittsburgh; R. Scaglione, 'Seasonal Births...continued

materials from which principles of Abelam customary law were abstracted. It should be noted that although the Arapesh village of Nagapaem is within the Balupwine Court jurisdictional area, aspects of customary law summarized below apply only to Abelam within this jurisdiction.

Traditional Samukundi Abelam conflict management techniques consist largely of three basic practices: (1) informal talk and/or formal negotiation and mediation (KUNDI)⁵ coupled with exchange of shell rings and conciliatory songs (NGWAYE KUNDI); (2) yam exchanges, which both terminate disputes and prolong them non-violently by channelling aggressions into a socially acceptable and non-violent form; and (3) fighting, avoidance and sorcery accusations. The specific management technique employed depends largely upon the affiliation of the disputants. This relationship is illustrated in simplified diagrammatic form in Figure 1.

FIGURE 1

TRADITIONAL ABELAM CONFLICT MANAGEMENT TECHNIQUES

KUNDI	YAM EXCHANGES	FIGHTING
<u>disputants in same ceremonial group</u>	<u>disputants in different ceremonial groups in the same village</u>	<u>disputants in different villages</u>

In recent years the traditional system has been modified through the virtual elimination of warfare and the substitution of intervillage meetings (*kibung*) for the conflict resolution involving disputants of different villages.

In addition to the above-described conflict management practices, there were five formal governmental organizations which operated in the management of disputes in the Maprik area in 1975. In order to assess the functions of the newly introduced Village Courts, a brief review of the conflict functions of these five organizations were: the Greater Maprik

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4. *continuation...in a Western Abelam Village, Papua New Guinea*' (1978) *Human Biology* 50:313-323; R. Scaglione, 'Samukundi Abelam Conflict Management: Implications for Legal Planning in Papua New Guinea' (1979) and R. Scaglione and R.G. Condon, 'Abelam Yam Beliefs and Sociorhythmicity: A Study in Chronoanthropology' (1979), *Journal of Biosocial Science* 11:17-25.
 5. In this text, words in the Abelam vernacular are capitalized and follow the Samukundi dialect. Words in *Tok Pisin* are italicised and follow the conventions established by F. Mahalik in *The Jacaranda Dictionary and Grammar of Melanesian Pidgin* (1971), Jacaranda Press.

Local Government Council, the Royal Papua New Guinea Constabulary, the Welfare Office, the Courts, and the Department of the Chief Minister and Development Administration. Meetings with members of these organizations for purposes of conflict resolution were called *kot* by the Abalam. While other individuals and organizations would occasionally mediate or arbitrate disputes, and would in such situations be perceived as part of the *kot* system, such instances were relatively few. The main remedy agents in the introduced legal system in 1975 are briefly described below. The present tense is used where patterns are still ongoing.

A. The Local Government Council.

The Local Government Council consists of elected councillors representing areas usually consisting of two to three villages. Each councillor may have several unofficial assistants called *komiti*, who generally represent villages or village sections other than that of the councillor. The councillors were expected, in their official capacity, to aid in settling disputes and to bring litigants to court when necessary. Often their role and authority in such matters was delegated to *komiti*. Councillors are usually men with some experience in town affairs, who have a fair understanding of the introduced system, and are often big men in their villages. *Komiti* are virtually always big men who usually have somewhat less experience in town affairs than councillors, but more than most men in the village.

B. Police.

Aside from the obvious function of bringing offenders into the system directly through arrest, the police have another important function in channelling disputes to the Local Court. Many villagers (including councillors and *komiti* do not realize that cases may be taken directly to the magistrate: they believe that they must first be heard at 'police court'. The police thus act as a clearing house for the court even in civil matters. This perception of the police as an interface between the people and the courts and government officers is probably due to the long period of time during which police functioned in exactly this capacity as assistants to government patrol officers.

C. Welfare Officers.

Female welfare officers are available to arbitrate in family disputes. The function of the welfare officers is strictly advisory, but villagers, unfamiliar with formal structures, view them as representatives of the government and thus as authority figures, and often accept their suggestions as binding decisions. Legally sophisticated Abalam make use of the welfare office in the belief that they will get a fairer hearing in this office than in the male-oriented courts.

D. Local Court Magistrates.

In 1975 the Local Court in Maprik town heard most of the disputes which villagers brought to the introduced system. The court is a relatively new structure in Maprik, the first Resident Magistrate being assigned in 1973. While any litigant may request a hearing before the District Court, this is not clearly understood and usually not done. The Local Court has jurisdiction over virtually all disputes in its

geographical area except for indictable offences, which are brought to the (then) District Court or the (then) Supreme Court.

E. Kiaps.

Officers of the Department of the Chief Minister and Development Administration, generally referred to as *kiaps*, were Reserve Magistrates and had magisterial powers. While most disputes which came to the attention of *kiaps* in town were referred to the Local Court or appropriate department, some were brought directly to the *kiaps* and settled by them when they were on patrol in the villages.

Immediately preceding the introduction of the Village Courts in 1976, all personnel in the introduced system were Papua New Guinean nationals with the exception of two expatriate *kiaps*.

Traditional means of conflict resolution were usually resorted to before the introduced system was considered as an option. Conflicts were ordinarily settled through these traditional means. Threats to bring the problem to court frequently hastened settlement, as oftentimes neither party wanted the case to be brought to court.

Traditional mechanisms failing, most Abalam who wished to pursue their grievance usually approached their councillor or *komiti* to act as their advocate. The councillor or *komiti* may have been involved previously in his capacity as a village big man, but would now act as the first stage in the *kot* system referral network. The councillor or *komiti* usually brought the party whom he represented to the welfare office, police or *kiap*, who may in turn have referred the case to the Local Court. Occasionally these agencies referred cases between themselves, as summarized by the diagram below (Figure 2) which illustrates the usual stages of conflict management and referral networks between and among traditional and introduced remedy agents in pre-Village Court Maprik, and the numbers of cases from Neligum Village heard at the various levels in 1975.

Given this background, the position and functions of the Village Court can now be assessed.

III. *Analysis of Court Records.*

During July 1979, the researcher collected all available Balupwine Village Court records. A full set of such documents contains four basic types of records: settlement orders (Form 2), preventive orders (Form 4), orders (Form 6) and orders for imprisonment (Form 8). Some of these documents were located in Maprik and some in Wewak. Unfortunately, one book containing orders from 1978 was not located. The calendar year 1977 was thus used for purposes of analysis.

A. Location of Hearings.

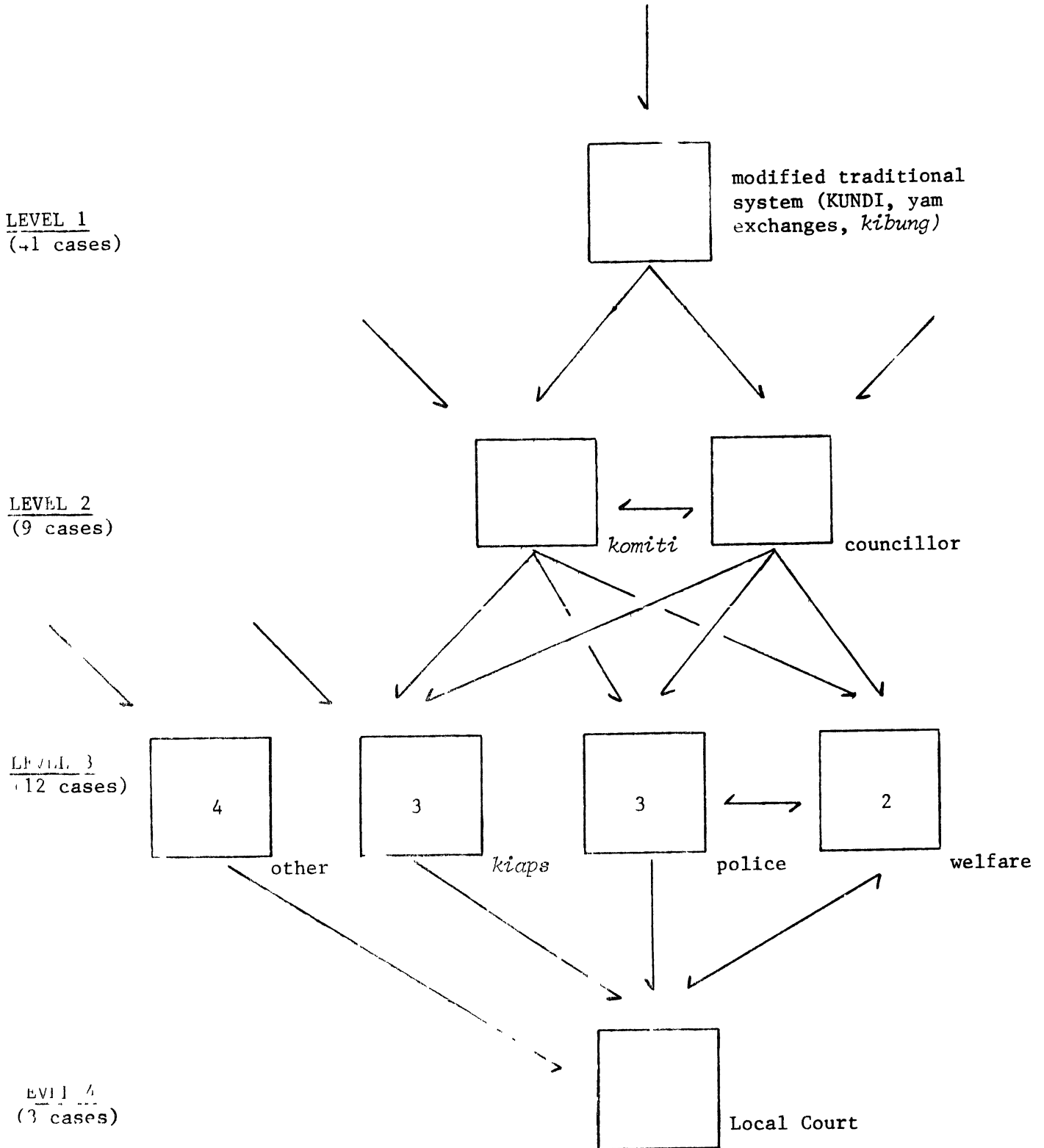
Part II Division 2 of the *Village Courts Act* 1973 states: 'A village court may sit at any place in the area for which it is established...'. The intention is clearly to allow disputes to be mediated or adjudicated in the village setting according to customary practice. However, the cases from 1977 show that only rarely were hearings conducted in the village proper. Most cases were heard in somewhat non-traditional

FIGURE 2

PRE-VILLAGE COURT MAPRIK

Levels of Conflict Management and Referral Networks

(with numbers of cases from Neligum Village, 1975)



settings. The most common venue for cases was at Balupwine, an area at the side of the road leading to Balupwine school, where much commercial activity takes place. Maprik was the second most common venue, followed by the Seventh Day Adventist compound near Neligum Village.

TABLE 1

LOCATION OF HEARINGS

BALUPWINE VILLAGE COURT

1977

<u>LOCATION</u>	<u>SETTLEMENT ORDERS</u>	<u>PREVENTIVE ORDERS</u>	<u>ORDERS</u>	<u>TOTALS</u>
Balupwine	5	3	31	39
Maprik	8	2	27	37
S.D.A. Neligum	3	9	13	25
Cheragum	2	-	-	2
Neligum	-	-	1	1
TOTALS	18	14	72	104

This is particularly interesting considering the fact that nearly all disputes involved litigants from the same village, and could easily have been heard in that village. The relationship between litigants is shown in Table 2.

B. Judgments.

Subject to certain conditions, Village Courts are generally limited to K100⁶ on amounts of judgments for compensation or damages. In fact, judgments of the Balupwine Court usually involved far smaller amounts. The average fine or compensation was about K15. Contrary to customary practice, the overwhelming number of judgments involved fines rather than compensatory payments: during 1977, some K930 was paid in fines to the Greater Maprik Local Government Council, compared with only K150 paid in compensation. See Table 3.

C. Substance of Disputes.

The substance of disputes was often rather difficult to ascertain. The original entries in court documents are recorded in *Tok Pisin*, and are generally rather terse. It is obvious that many cases arose over some unrecorded issue, the only entry being something like *em i bin paitim em* or *em i bin tok nogut o tok bilas long en*. For lack of a more accurate category, such cases were considered to be

6. *Village Courts Act* 1973, s.24. This amount was raised to K300 by the *Village Courts (Amendment) Act* 1977 (No. 17 of 1977).

TABLE 2

NUMBER OF ORDERS BY LITIGANTS' VILLAGEBALUPWINE VILLAGE COURT1977

<u>VILLAGE</u>	<u>SETTLEMENT ORDERS</u>	<u>PREVENTIVE ORDERS</u>	<u>ORDERS¹</u>	<u>ORDERS FOR IMPRISONMENT</u>	<u>TOTALS</u>
<u>Intravillage Disputes</u>					
Cheragum	2	1	3	0	6
Kuminibis	2	5	19	0	26
Maprik	7	0	10	0	17
Nagapaem	4	1	19 ²	0	24
Neligum	1	1	14	3	19
Other	0	6	1	1	8
<u>Intervillage Disputes</u>					
	2	0	6	0	8
<u>TOTALS</u>	<u>18</u>	<u>14</u>	<u>72</u>	<u>4</u>	<u>108</u>

1. Actually from the period November 1976 - October 1977, since orders for November and December 1977 were not located.
2. Includes 14 cases of failure to do Local Government Council work.

assault and defamation respectively. Since cases were recorded in terms familiar to Western jurisprudence they have been similarly categorized and are summarized in Table 4. Whenever possible, the ultimate cause has been coded. Thus, where a dispute over adultery resulted in an assault, the case would be coded as a 'sexual dispute'.

It is interesting to compare this categorization of Village Court cases with cases which arose in Neligum in a comparable period of time before the introduction of the Village Court. Table 5 illustrates the categorization of sixty-five conflict cases which arose in Neligum in 1975.

In comparing the two sets of categories of conflicts, several differences are apparent. Traditional problems of sorcery, yam exchanges and domestic animals (usually pigs ruining gardens) were quite frequent in the village, together comprising some 26.2% of all cases. These types of cases, however, were less frequently heard in the Village Court. Other than one case of domestic animals and a few sorcery accusations which appeared in the Village Court as defamation-type cases, these traditional problems were not brought to the formal

TABLE 3

AMOUNTS OF ORDERSBALUPWINE VILLAGE COURT1977

<u>PAYEE</u>	<u>AMOUNT</u>	<u>CASES</u>	<u>AVERAGE PER CASE</u>
Greater Maprik Local Government Council	K930.00t	62	K15.00t
Complainant	150.00	9	16.67
Appealed & Dismissed by Local Court	75.00	8	9.38
Not Paid	20.00	2	10.00
TOTALS	1175.00	72¹	16.32

1. Represents the total number of cases heard. The Column total is actually 81 since, in the 9 cases in which a complainant was awarded compensation, a fine payable to the G.M.L.G.C. was also levied.

Village Courts. Less traditional cases such as failure to do council work, drunk and disorderly, assault and defamation were commonly heard in the Village Courts.

D. Case Load.

In the Maprik Local Court over a one year period (1 November 1974 - 31 October 1975), some 1146 cases were heard. Of these, 67 or 5.8% were civil cases, 754 or 65.8% were criminal cases, and 325 or 28.4% were cases involving infractions of council rules. No detailed statistical analysis of the present Local Court case load was possible. However, an initial survey was made which revealed almost a total absence of civil cases. Cases involving infractions of Council rules were also sharply reduced.

Out of the 65 conflict cases which arose in Neligum Village in 1975, only 3 or about 5% found their way to the Local Court. Since 19 cases involving Neligum litigants were heard in the Village Court in a one year period in 1977, it would appear that the Village Court is a more popular forum for conflict management than is the Local Court. It is also clear that quite a number of conflict cases arising in the villages are not being heard in the formal Village Court - they are still being settled by traditional means such as avoidance, mediation by big men, yam exchanges and *kibung*, or by the informal operation of the Village Courts as described below.

IV. OPERATION OF THE COURT.

On the basis of the above analysis, it would appear that criticism

TABLE 4
ETIC CATEGORIZATION OF COMPLAINTS
BALUPWINE VILLAGE COURT

	<u>1977</u>				
	ORDERS	SETTLEMENT ORDERS	PREVENTIVE ORDERS	TOTALS	%
Assault	18	3	2	23	22.1
Sexual Disputes	12	8	-	20	19.2
Failure to do council work	13	-	-	13	12.5
Drunk and Disorderly	12	-	1	13	12.5
Defamation	7	5	1	13	12.5
Failure to obey a lawful order	6	-	-	6	5.8
Debt	-	-	5	5	4.8
Theft	1	-	4	5	4.8
Making Threats	2	-	-	2	1.9
Breaking and Entering	-	-	1	1	1.0
Interrupting Court Proceedings	1	-	-	1	1.0
Domestic Animals Ruining Gardens	-	1	-	1	1.0
Others	-	1	-	1	1.0
TOTALS	72	18	14	104	100

of the Village Court as unduly 'Westernized' is justified. Cases are usually heard in a centrally located courthouse rather than in the villages, fines rather than compensation payments are levied, and the substance of disputes tends to involve Western categories and infraction of written rules (Council rules, court orders, etc.) as often as customary matters. Yet this conclusion must be modified when the broader operation of the court is considered.

Balupwine court hearings, while held in a formal 'courthouse', can be relatively informal in nature. There is often no particular seating arrangement, and magistrates and litigants sit wherever there is space, making for an informal atmosphere. Litigants are usually not required to stand or face the magistrates. Few formal rules of evidence or

TABLE 5

ETIC CATEGORIZATION OF CONFLICT CASESNELIGUM VILLAGE1975

	NUMBER	%
Sexual Disputes	15	23.1
Petty Domestic Disputes	10	15.4
Theft	8	12.3
Other	8	12.3
Sorcery	7	10.8
Domestic Animals	6	9.2
Yam and Yam Exchange	4	6.2
Debt	3	4.6
Land Use and Ownership	2	3.1
Drunk and Disorderly	2	3.1
TOTAL	65	100

procedure are followed. The hearings can be quite lengthy. Magistrates wear no uniforms. The only outward sign of their status is a medallion, which is often worn underneath a singlet or tucked into the pocket of a shirt.

It should be noted that this informality is in contrast to the operation of other Village Courts observed, even within the Maprik District.⁷ In the Highlands, extreme formality was noted in the Chimbu Province, where magistrates wore uniforms, peace officers carried handcuffs, and formal rules of procedure were common. In one Village Court in the Maprik area, smoking was prohibited in the courtroom, and participants often genuflected upon entering or leaving the courtroom. It is possible that Balupwine Village Court magistrates may be moving in this direction. When asked whether they had any particular problems or 'worries', Balupwine magistrates indicated that they wanted a 'proper' courthouse with a concrete floor.

Even with formality in full court sittings, however, it is likely that most Village Courts operate on an informal level as well. This was certainly true of the Balupwine Court. I observed several informal

7. Brief trips were made to the Western Highlands, Southern Highlands, Chimbu, Gulf and Western Provinces to observe Village Courts. Five Village Court Areas in the Maprik area of the East Sepik were also observed.

settlements mediated by the Chairman of the Balupwine Village Court Area during my fieldwork. In his role as traditional big man, he had always been involved in such mediation, and continued this practice as Village Court magistrate. The 'hearings' I witnessed were structured as originally intended in the *Village Courts Act* 1973. Hearings took place within the village, were informal and lengthy, and were accompanied by the usual betelnut chewing, spitting and storytelling which marks traditional conflict resolution. One case which I witnessed involved a dog belonging to one family which had killed a chicken belonging to another family. The discussion was conducted in the village, in the hamlet of the chicken owners. After several hours discussion a compensation payment of K2 was agreed to and paid on the spot by the dog owners. The chicken owners then gave some yams in exchange as a traditional sign of good faith. Throughout the discussion, the Village Court magistrate acted as a mediator. However, he was not accompanied by a Village Court clerk, and there was no written record of the settlement.

In a two-week period of fieldwork during which the researcher was resident in the village, this magistrate was involved in no fewer than five cases: the dog killing the chicken described above, a dog killing a piglet, a domestic dispute, an alleged sorcery case, and a theft of betelnut. None of these cases was recorded on Village Court forms, and it is quite likely that a casual researcher would have overlooked the mediatory role of this magistrate. These cases came to the attention of the author primarily because he was living with this particular magistrate during the fieldwork.

Thus the court operates on both formal and informal levels, with the informal level being less conspicuous but equally important. The usual stages of conflict management and referral networks between remedy agents in post-Village Court Maprik are summarized in Figure 3.

V. *DISCUSSION.*

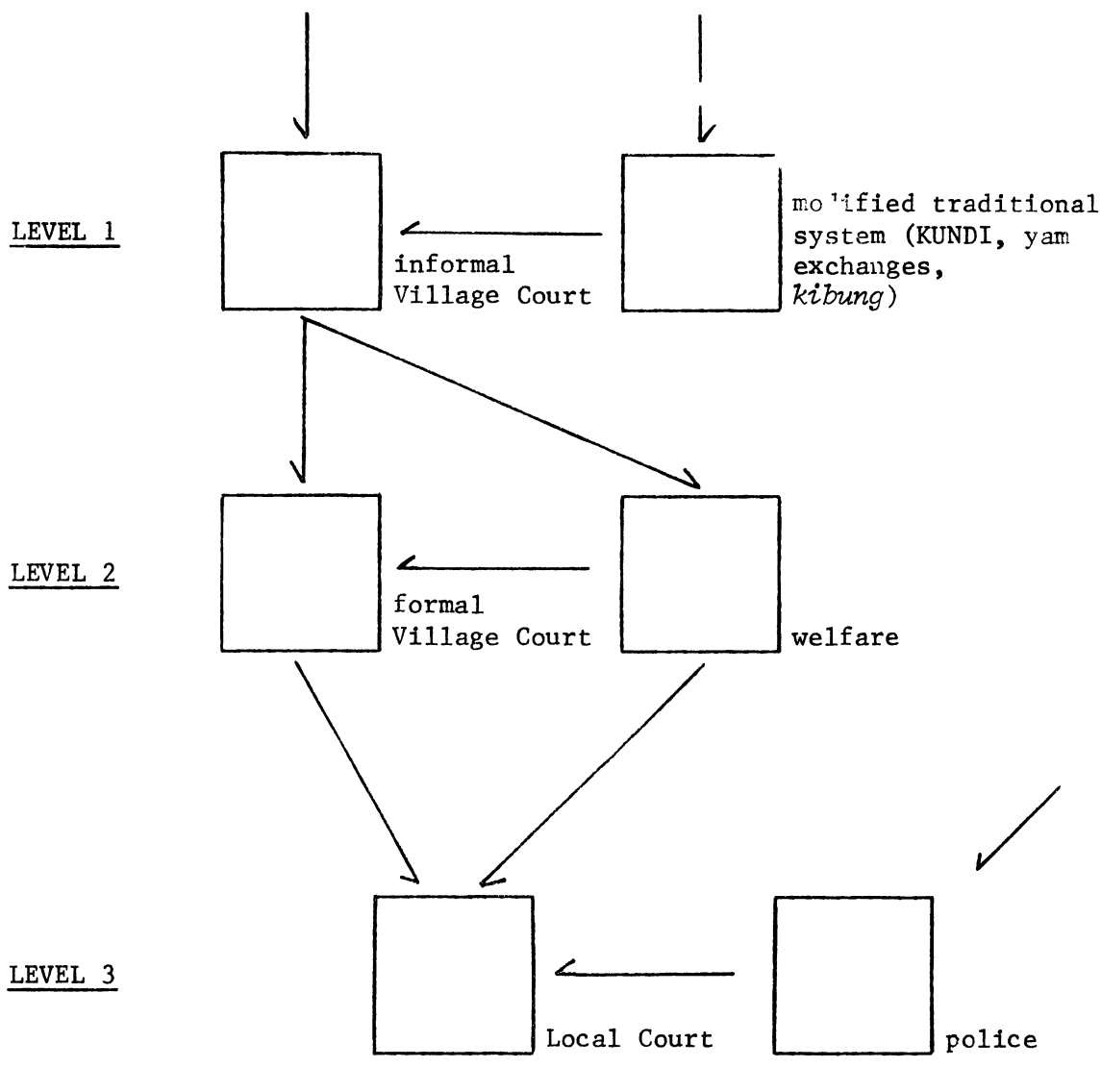
It would appear that the Balupwine Village Court is functioning quite successfully, but perhaps not in the way it was originally intended. The Village Court has virtually replaced the Local Court as a forum for non-traditional conflict management. The network of informal remedy agents consisting of Councillors, *komiti*, *kiaps*, etc., is falling into disuse, since the Village Court is favoured as a forum for conflict management, although the Welfare Office still handles a number of domestic disputes. Thus, rather than providing a forum for settling traditional matters according to customary law as originally intended, the Village Court in its formal sittings functions as a court of primary jurisdiction for matters involving introduced law and/or introduced problems. Such use of the Village Court is encouraged by Village Court magistrates, who attempt to Westernize both procedure and substance in the Court. It is encouraging, however, that these courts are used more frequently than were Local Courts in the past. Scaglione⁸ documented how traditionally-oriented Abelam were uncomfortable at Local Court hearings and rarely took village disputes out of the village. It would appear that, since Village Court magistrates are known to the litigants and are familiar with local language and custom, litigants feel more comfortable and feel that proceedings are equitable.

8. Scaglione, (1976), *op. cit.*

FIGURE 3

POST-VILLAGE COURT MAPRIK

Levels of Conflict Management and Referral Networks



In addition to this formal functioning, the Village Court magistrates also operate at an informal level. On the basis of 1975 data and Village Court caseloads, nearly 70% of all conflict cases arising in the villages do not enter the formal introduced system in any way. Yet magistrates often mediate in their role as big men, and their status as Village Court magistrates gives more weight to their opinions. As I heard one magistrate remark: 'Well, you could bring this before the full (Village) Court, but the decision would be the same'. Suggestions of big men who are magistrates consequently have the weight of law. Other than the fact that such mediation is not formally recorded, hearings of this sort fulfill the expectations of the *Village Court Act 1973*. They are heard traditionally and are based on customary law and compromise.

Only when such mediation is unsuccessful are cases brought before the full court. It may be argued that the formality in proceedings and structure favoured by the magistrates aids in the settlement process at this next level. In any case, the Balupwine Village Court, both formally and informally, has been quite successful at administering justice at the local level.

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