# CONFLICT<br/>MANAGEMENTAND ACCESS TO<br/>JUSTICEJUSTICENRURAL<br/>VANUATU

# CONFLICT MANAGEMENT AND ACCESS TO JUSTICE IN RURAL VANUATU







The Policing and Justice Support Program (Vanuatu) is funded by the Australian Government, and provides targeted support for the policing and justice sector, including community services agencies. The Program aims to strengthen networks within policing, justice, and community services agencies, improve service delivery, and support the use of evidence to improve responses to the needs of women, children and youth in Vanuatu.

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#### Disclaimer:

This report is a product of the work of the Policing and Justice Support Program (Vanuatu) (PJSPV). The findings, interpretations and conclusions expressed in this work do not necessarily reflect the views of the Australian Government. The Australian Government does not guarantee the accuracy of the data included in this work, although PJSPV has sought to check, correct and validate all data that forms the basis of the findings.

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### FOREWORD

It gives me great pleasure to present the *Conflict Management and Access to Justice in Rural Vanuatu* report.

The research that supports the findings in this report was carried out by the Policing and Justice Support Program (Vanuatu) in partnership with the Government of Vanuatu at the request of the Ministry of Justice and Community Services with the intention that it be used to support improvement in the delivery of justice in all its forms to the people of the Republic of Vanuatu.

The report provides an evidence base for the Government, the program and others in terms of how conflicts are truly managed at the community level and how women, in particular, access justice. The research is the first of its kind in Vanuatu and provides a statistically sound basis for enhancing our understanding of the reality of how justice is administered and experienced in rural communities in Vanuatu today.

The policing, justice and community services sector is a system, and improved access to justice for people of the Republic of Vanuatu will come from a holistic approach that includes changes within particular institutions as well as through collaboration with different actors. Therefore, I gratefully support the approach underlying this research to look at conflict management across the board and make recommendations specifically for the courts, police, and leaders at the community level who assist with managing conflicts and women's access to justice as a starting point.

The Ministry is responsible for progressing an effective and accessible justice system in the country. It supports the fundamental principles of equality and fairness while protecting the dignity and rights of our people. It is also core to the Ministry's role to support sector institutions and agencies to deliver improved services to meet the needs of the community and to strengthen the rule of law and the protection of human rights. Building on the findings of this research, fundamental to these goals will be improved support for state justice services to better reach our communities in rural Vanuatu.

I also hope that this report will contribute to the wider conversation beyond the Government and the program, and will help to engender more informed discussion that strengthens the whole of the justice system in Vanuatu, resulting in improved access to justice and service delivery to the people of the Republic of Vanuatu, particularly those most vulnerable and in greatest need.

Mark Bebe

Director General, Ministry of Justice and Community Services July 2016

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# 1. INTRODUCTION

#### BRIEF SUMMARY OF PART 1: INTRODUCTION

#### **Research Overview**

- This research is the result of several years of engagement by the Policing and Justice Support Program (Vanuatu), in partnership with the Vanuatu Ministry of Justice and Community Services, with funding support from the Australian Government.
- The research was carried out in July and August 2015 by a team of 10 Ni-Vanuatu researchers and one lead researcher.
- The research team visited 39 randomly selected villages (selection was carried out with assistance from the Vanuatu National Statistics Office).
- In total more than 800 men, women, chiefs, police, court officers and key stakeholders were interviewed, across Malekula.

#### **Research Questions**

The core research questions included:

- What are the main conflicts at community level?
- How are they managed (from the family level to the level of state justice)?
- · How do people feel about how they are managed?
- How might state and non-state conflict management be strengthened?

Secondary questions included:

- How do people understand justice?
- What are some of the key safety and security issues at the community level?
- What is the level of knowledge about the law and human rights at the community level?

#### **Other Key Aspects**

- The research primarily considered justice from the citizen's perspective.
- A more complex understanding of kastom and chiefs creates a necessary backdrop to this research.
- Access to justice is about more than geography and resources.
- Malekula was selected as the research site for several reasons including: size (it has approximately 15% of Vanuatu's rural population), it hosts a provincial centre, kastom is considered to be strong and enduring, and there is a high prevalence of domestic violence.
- The research used a predominately quantitative methodology, enriched by opportunities for more qualitative information gathered through focus groups, open ended questions, space in interviews for deeper discussion and inquiry, and regular research debriefs.
- The research should not be taken as necessarily definitive, but as a contribution to ongoing dialogue, that will ideally inform future decision making and action.

#### **1.1 BACKGROUND**

The Conflict Management and Access to Justice in Rural Vanuatu report represents the culmination of several years of planning, research and engagement carried out by the Policing and Justice Support Program (Vanuatu), in partnership with Vanuatu's Ministry of Justice and Community Services, and with funding support from the Australian Government. In early 2013 a pilot approach to look more closely at access to justice for women experiencing family violence on Malekula was conceptualised. To inform this approach, case study research entitled Access to Justice: Pathways to Action for Women Experiencing Family Violence was completed in May 2013. Later that year, two brief concept papers were commissioned to gather existing research, and to look more closely at issues around gender, kastom and human rights, and community based strategies for addressing domestic violence<sup>1</sup>. Soon after this preliminary work was completed, however, the vision and need for a broader and more in depth piece of research began to emerge. While 'hybrid' justice is often referenced in Vanuatu, there had been little empirical research to date that has explored and mapped the various intersections, relationships and disjunctures across state and community level institutions and processes in Vanuatu<sup>2</sup>. In fact, it became clear that a bigger piece of research would not only be of significant value to the program, but also to the broader justice and policing sector in Vanuatu.

As it was developed through late 2014 and early 2015, the main approach for this bigger piece of research included: indentifying what kinds of conflicts were prevalent in communities; examining how conflicts were managed and resolved by individuals, institutions and processes from the family and community level to the state; and exploring peoples' experiences of these broader justice processes and institutions. Community level access to justice continued to be a key focus for the research, and in Malekula how women experienced conflict and women's access to justice was a special area of interest<sup>3</sup>. As it was developed, the overarching vision for the research was to provide nuanced evidence about how conflicts are experienced at the community level, and a unique view into some of the complex realities of access to justice in Vanuatu including identifying areas of strength and opportunity, as well as key barriers and weaknesses. This approach was particularly appealing because it offered an opportunity to begin to appreciate and understand, in a more grounded and nuanced way, the complex web<sup>4</sup> of processes, understanding and practical

<sup>&</sup>lt;sup>1</sup> These two pieces of research include: Concept Note: Negotiating Kastom and Human Rights on the 'Frontlines' of Gender-Based Violence and Concept Note: Some Background and a Potential Community Mobilization Methodology, and were carried out with the support of Stretem Rod Blong Jastis, part of the Policing and Justice Support Program (Vanuatu).

<sup>&</sup>lt;sup>2</sup> However, a number of pieces of research have been carried out around the theme of hybrid justice in Vanuatu, in particular work by Miranda Forsyth and Benedicta Rousseau, and work commissioned by the World Bank's Justice for the Poor in Vanuatu and regionally. UN Women has also recently completed research into *Women and Children's Access to the Formal Justice System in Vanuatu* that acts as a complement to this conflict management research, particularly as it relates to women.

<sup>&</sup>lt;sup>3</sup> The research was ultimately carried out in two locations in Vanuatu: Malekula, where women and access to justice was a special area of focus, and in the peri-urban settlement of Blacksands on the outskirts of Port Vila, where youth and access to justice was a special area of focus.

<sup>&</sup>lt;sup>4</sup> The concept of the 'conflict management web' was developed by Miranda Forsyth in her 2011 Spinning a Conflict Management Web in Vanuatu: Creating and Strengthening Links Between State and Non State Legal Institutions. This work, along with a research report from the Solomon Islands entitled Justice Delivered Locally: Systems, Innovations and Challenges

realities that inform how people in their everyday lives in Vanuatu experience 'justice'. Beyond the information it generated, however, it was also hoped that the research might inform clearer – and ultimately more effective – approaches to improving access to justice for all citizens of Vanuatu.

#### **1.2 BRIEF RESEARCH OVERVIEW**

As a result of this process of planning and development, a much bigger piece of research was carried out in 2015. The research itself involved a team of 10 Ni-Vanuatu researchers and one local lead researcher who conducted the research in 39 villages around the island of Malekula in July and August 2015. The Vanuatu National Statistics Office assisted with the random selection of villages<sup>5</sup> and helped to ensure that there was proportionate representation from each of the six areas in Malekula (Northwest, Northeast, Central, Southeast, South and Southwest). In total more than 800 people were interviewed including 379 men, 379 women, 45 chiefs and community leaders and nine police officers. On average 10 men and 10 women (from different households), and at least one chief, were interviewed in each community. Other key stakeholders such as the President of the Malmetevanu Council of Chiefs, the Secretary General of Malampa Province, the Magistrate and other court officers were also interviewed.

#### **Core Research Questions**

The core questions that guided the research included:

- 1. What are the main types of conflicts and disputes that people experience at the community level? How frequent are the various types of disputes? What are the topographies of the various disputes (who is involved, do they involve violence, etc.)?
- 2. How do people manage and seek to solve these conflicts and disputes? What individuals, institutions and processes are involved in conflict management and resolution? How and when are state (police and courts) and non-state (family and community, including church and kastom) conflict management mechanisms accessed and why?
- 3. What are the experiences of people at the community level of the conflict management and resolution mechanisms that are available to them? How do women and men feel about how conflicts are managed and resolved in their communities? How accessible are these mechanisms? How effective are they?

in Solomon Islands, offered some of the preliminary conceptual tools that helped to seed this research, particularly in its early stages.

<sup>&</sup>lt;sup>5</sup> Please see sections 1.4 and 1.5 for more information about why Malekula was selected as the site for the research, and for more details on the research methodology.

4. How might the various state and non-state conflict management and resolution mechanisms available to people at the community level be strengthened or improved (individually and in partnership with each other and given the practical and contextual realities)? Where do key innovations and strengths exist? Where do key weaknesses exist? Where are some of the main opportunities for support and targeted interventions?

#### **Secondary Questions**

- 1. How is justice understood and experienced at the community level? What are key community values around justice? Are these different for different groups in society, and if so, in what ways?
- 2. What are some of the key issues around community safety that community members are facing?
- 3. In general what level of knowledge do people at the community level have of the law and human rights (and specific legal mechanisms such as Domestic Violence Protection Orders)? Are there any key gaps in this knowledge? How do community members access this information? How might community members best access this information?

As noted above, access to justice for women and women's experiences of conflicts and disputes, and the conflict management and resolution systems available to them, were a particular area of interest in the research.

#### **1.3 Key Concepts**

#### Access to Justice

While the research focused on conflict management as its primary area of inquiry, the broader intention of the research was to look at how people in Vanuatu (in this case in rural Vanuatu) access justice in their daily lives. For the purposes of this research, access to justice includes state justice processes – through the courts and the police – as well as access to justice at the community level, particularly focusing on the work of chiefs, but also considering the role of religious leaders and family members. As a key strategic area of focus for Vanuatu's Ministry of Justice and Community Services, access to justice in this context is not simply about geography, resources and service delivery, but also about access to services that are, '…perceived as fair, efficient, effective and appropriately coordinated.'<sup>6</sup>

<sup>&</sup>lt;sup>6</sup> Ministry of Justice and Community Services, Government of Vanuatu 2013. Strategy for the Justice and Community Services Sector 2014-2017, 14.

Access to justice has been defined as the ability of people '...to seek and obtain fair and effective responses for the resolution of conflicts, control of abuse of power, and protection of rights, through transparent processes, and affordable and accountable mechanisms.'<sup>7</sup> Typically it is about considering justice, 'from the citizens' perspective'<sup>8</sup>, including the political, economic, geographic, social, and cultural contexts that contribute to peoples' experiences of justice and access to just processes. To consider it another way, a team of legal researchers has offered a series of elements that provides a more process-based definition of access to justice. In this view, access to justice exists if:

- 'People, notably poor and disadvantaged,<sup>9</sup>
- Suffering from injustices
- Have the ability
- To make their grievances be listened to
- And to obtain proper treatment of their grievances
- By state or non-state institutions
- Leading to redress of those injustices
- On the basis of rules or principles of state law, religious law or customary law<sup>10</sup>
- In accordance with the rule of law'11

In this definition, rule of law is broadly understood to include two basic functions:

- 'Preventing misuse of power by the state vis-à-vis its subjects, and
- Preventing misuse of power by one individual against another'<sup>12</sup>

In the context of rural Vanuatu, access to justice is not only about service delivery in the face of geographic and resourcing challenges, but also about how empowered various members of society are to access these services, how people – particularly more marginalised members of society – are heard and treated in the processes that are available to them, and how issues are managed and resolved.

<sup>&</sup>lt;sup>7</sup> United Nations Development Programme 2012. Access to Justice Assessments in the Asia Pacific: A Review of Experiences and Tools from the Region, 103.

<sup>&</sup>lt;sup>8</sup> Ibid, 104.

<sup>&</sup>lt;sup>9</sup> This allows for a focus on people who are disadvantaged not only economically, but based on other factors including gender, age and ethnicity.

<sup>&</sup>lt;sup>10</sup> 'Customary' here is further clarified in the following way: '... "customary" should be conceived of as including "modern custom" and be seen as something dynamic, not in the static and rather traditional way in which it often tends to be interpreted.' From Bedner, A. and J.A.C. Vel 2010. An Analytical Framework for Empirical Research on Access to Justice. 2010(1) Law, Social Justice and Global Development Journal, 9.

<sup>&</sup>lt;sup>11</sup> Bedner, A. and J.A.C. Vel 2010. An Analytical Framework for Empirical Research on Access to Justice. 2010(1) Law, Social Justice and Global Development Journal, 7.

<sup>12</sup> Ibid.

#### A More Complex Reading of Kastom

Vanuatu is often recognised as one of the most culturally diverse nations in the world, with more than 100 distinct linguistic and cultural groups spread across its more than 80 islands, and a relatively small population of approximately 285,000<sup>13</sup> people, of which more than 70%<sup>14</sup> spend the majority of their lives in a rural, village context. While a number of commonalities are evident (perhaps partially as a result of more than a century of missionary, colonial and global influence, as will be discussed briefly below), practices can and do vary significantly from one location to another, even within the context of one island. In Vanuatu these cultural practices and values are often subsumed within the concept of *kastom*, which is both commonly understood and mobilised, but also represents a complex range of meanings.

In its broader articulation, kastom represents language, group identity, values, and a vast range of practices from house building to dancing, art forms and design, fishing and gardening techniques, social rules and relationships, food preparation, and understandings of ownership, governance and economics, particularly around land and communally managed resources. If there is one 'truth' about kastom, it is that it represents a diverse range of very localised sets of practices and values that are tied to group histories, relationships and identities through complex layers of meaning and understanding that are constantly moving, changing (and adapting) through time. In this way, kastom is not something that is particularly well suited to a singular, static definition. To address this diversity, and the 'living' – and highly localised – nature of kastom values and practices, one group of researchers have offered the following definition:

'Kastom or Custom, if it can be usefully defined at all, could be identified as a series of accumulated, nonstatic, and sometimes conflicting values and habitual activities specific to a group.'<sup>15</sup>

At the same time, kastom is often used in a much more elemental way in Vanuatu. In this view kastom is understood as an overarching category representing all things 'non-Western', an understanding that traces its roots through the colonial and especially the pre and post independence period (which was fought for, and won, from the British and the French in 1980). In modern Vanuatu – particularly in urban areas, but also often at the village level – this view of kastom represents a common short form, where kastom is used to describe practices that are usually understood to be – and in many ways also derive their meaning – in contrast to what are perceived to be introduced practices. In this understanding, kastom is often viewed as unchanged for hundreds of years (and at least pre-dating European contact), and is often represented by a group of what are seen to be core, common values. On one

<sup>&</sup>lt;sup>13</sup> Vanuatu National Statistics Office. http://www.vnso.gov.vu> viewed 4/4/2016.

<sup>&</sup>lt;sup>14</sup> In Vanuatu's 2009 census 75% of the population was identified as 'rural' (http://www.vnso.gov.vu/index.php/social-statistics), although a significant number of individuals in Vanuatu's rural population move back and forth between urban and rural locations guite regularly and the distinction is not as clear as it may seem.

<sup>&</sup>lt;sup>15</sup> Evans, D., M. Goddard and D. Paterson 2011. The Hybrid Courts of Melanesia. *Justice and Development Working Paper Series*, World Bank, 17.

hand, if this is how kastom is currently used and understood in Vanuatu by Ni-Vanuatu, then this should be an unquestioned starting point<sup>16</sup>.

There is also some utility in reasonably functional and straightforward definitions, particularly in certain areas. For example, the Vanuatu Cultural Research Policy defines kastom as, '…indigenous knowledge and practice and the ways it is expressed and manifested.'<sup>17</sup> This fairly broad and simple definition allows Vanuatu as a state, as represented by its cultural institutions (the Vanuatu National Cultural Council and the Vanuatu Cultural Centre), to vet external research projects in a way that ensures they are, 'consistent with Vanuatu's own research priorities'.<sup>18</sup> While this straightforward understanding might have practical benefits in certain contexts (for example, governance of the state research agenda), the greatest weakness of this view is that it fails to make visible the more complex political terrain that can also inform views around kastom, especially in the contemporary period and in the context of the modern nation state of Vanuatu.

Kastom as it is often used and understood in Vanuatu, particularly in its common contemporary usage as everything non-Western and introduced, is not neutral, and what is identified and mobilised as kastom often represents particular interests, and even particular interest groups. This most likely has the greatest impact in the spaces where power and financial interests are at play (land ownership, community governance, gender relations, and even national politics). In these spaces, various practices and relationships, including some of the trappings of modernity, are categorised as kastom or not kastom (or even acceptable or not acceptable, according to kastom) based on a range of more complex agendas, which are often rendered invisible through the process.

For example, while the use of a 22-member national level council of chiefs, the Malvatumauri, (that was and is, in its form and function, a construction of the modern nation state) is accepted as representative of kastom in contemporary Vanuatu, the involvement of women in leadership of this institution (and often in other positions of authority) is not. At the community level, while the wearing of clothes was introduced through missionisation and colonialism, men wearing trousers generally goes unquestioned within kastom (for example, men are not expected to remove and change out of their trousers when they enter kastom spaces like the Chiefs' Nakamal<sup>19</sup>), but women wearing trousers is seen to be against kastom (women are not allowed to enter the Chiefs' Nakamal if they are wearing trousers, and are often not allowed to wear trousers in many communities as well). The use of trucks, boats, concrete block houses, water pumps and tanks, and the use of rice and sugar (including in kastom marriage and funerary practices) commonly goes unquestioned (and is generally seen as non-threatening to kastom), while other things do not.

<sup>&</sup>lt;sup>16</sup> White G. 2008. *Indigenous Governance in Melanesia*. SSGM Discussion Paper 2007/5. Canberra: State Society and Governance in Melanesia Program, The Australian National University, 2.

<sup>&</sup>lt;sup>17</sup> Vanuatu Cultural Research Policy 2004. <a href="http://www.wipo.int/export/sites/www/tk/en/databases/creative\_heritage/docs/vanuatu\_policy.pdf">http://www.wipo.int/export/sites/www/tk/en/databases/creative\_heritage/docs/vanuatu\_policy.pdf</a>> viewed 4/4/2016.

<sup>18</sup> Ibid.

<sup>&</sup>lt;sup>19</sup> A *nakamal* is a traditional meeting place in Vanuatu. The Chiefs' Nakamal is a building managed by the Malvatumauri, the national council of chiefs in Vanuatu, as a national meeting space.

Claims to chiefly titles and land (which are often linked) also take on new meaning, and different kinds of importance, given their increasing (often monetary) value within a functionally capitalist national (and global) economic environment. While Vanuatu tries to bridge local practices and global processes – a difficult and complex feat in any location – decisions about where these lines are drawn, by whom and with what impact, are not neutral. In this way kastom, in its more simple common usage, can also become a way of hedging up authority, increasing access to resources for certain individuals, and of disciplining others, in ways that may have more to do with power, and the politics of certain interest groups, and less to do with what 'might have been' in Vanuatu in any given time and place. At the same time, what should or could be – within kastom and in Vanuatu as a modern nation state – is often silenced, or at least deprioritised, through these processes.

#### A More Complex Reading of Chiefs

Not surprisingly, chiefly authority can also be viewed within this more complex context. While on one hand, chiefs are often accepted as the embodied representation of the more simplified view of kastom in Vanuatu (where chief is almost understood as synonymous with kastom), and as leaders and traditionally endowed authorities at the community level, their position is not as straightforward as it might at first appear. Leadership and community level governance practices varied (and vary) greatly across Vanuatu – even in the present day (although there is a move to standardise community governance structures, led by the national council of chiefs) – and modern day chiefs derive their power and authority through a number of different mechanisms and processes.

Several historians and researchers (including some Ni-Vanuatu researchers, who are understandably cautious about sharing their views), trace the modern day position of 'chief' primarily through processes of missionisation and colonialism that needed to find ways of engaging with (and one could even argue 'disciplining' or at least pacifying) local communities in ways that were largely unknown and unnecessary before European contact. This construction of chiefly authority was later reinforced and reinformed again through the process of Independence, where chiefs and kastom were needed to construct the identity of the new nation state. In the words of two leading Pacific researchers:

'Pacific chiefs are not antique survivals from pre-state political formations. They are, rather, animated, defined, and in some cases produced by the contemporary politics of modern nation-states - states through which wash the swells of an intensifying world economic and political system...The evolutionary narrative of a progression from traditional to legal-bureaucratic authority...has proved only a romantic political fable.'<sup>20</sup>

<sup>&</sup>lt;sup>20</sup> Lindstrom, L. and G.M. White 1997. Introduction: Chiefs Today. In G.M. White and L. Lindstrom (eds). *Chiefs Today: Traditional Pacific Leadership and the Postcolonial State*. Stanford: Stanford University Press, 17.

Even if this interpretation is seen as problematic or unfair, a realistic look at chiefs in Vanuatu at the community level today offers a very mixed picture. Processes for gaining local authority through kastom practices including grade-taking (typically practiced in the northern islands) and hereditary relationships (typically practiced in the southern islands) have in some places been lost. Other processes introduced through the modern nation state (including a state-driven and ostensibly customary land governance process established in 2001) initiated a process for electing chiefs, which most likely would find little basis in most traditional practices (although may be seen as a potentially democratic and necessary compromise). This may be made even more complex by the fact that chiefly power and authority may have scope within the contemporary nation state that may not have existed in the past for local kastom authorities.

For example, in one northern community where grade taking was practiced historically, while often the elder brother of a family unit may have had a recognised role of respect and authority, decision making might have been made more collectively, with men and even women, particularly those with something to offer (experience, charisma, knowledge, relationships) also having influence. Shared decision making between family groups in one broader area may have been motivated by mutual interest or threat, and characterised by mutual respect (and even fear), in a relatively equalised power environment. In the context of the nation state, however, with its own chiefly power and authority structures (through the construction of national and area level councils of chiefs), being a higher level chief holds the potential for wielding greater power and authority, particularly within the nation state itself, but also vis-à-vis local communities. In several places in Vanuatu this has led to a number of chiefs identifying themselves as paramount chiefs – or chiefs with authority over broad geographic areas – where according to local communities, these kinds of authorities (kastom or otherwise) have never existed before.

The stakes for being a chief have also increased in other ways. While land most likely had great (and even immeasurable) value in traditional Vanuatu (as a source of food, influence, access, collective identity and relationships), the impact of the global economy and external (and even local) interest and support for new kinds of land uses from plantations to tourism developments has shifted the value of land (and even land use, where ownership is retained) into something more instantly lucrative, and more easily commodified and traded. In this context, who is a chief, which often has a direct link to land ownership and land management decisions, becomes even more complicated. Vanuatu, the modern nation state, has provided access to power, authority and potentially lucrative resource ownership to chiefs in ways that never existed before. All of these more complex readings of kastom and chiefly authority are worth keeping in mind as the findings of the research emerge through the following pages.

#### **1.4 WHY MALEKULA**

Malekula is part of Malampa Province, one of six provinces in Vanuatu. Malekula was selected as the key rural context for the conflict management research for several reasons including:

- The provincial centre for Malampa Province is based on Malekula, in the small centre of Lakatoro and hosts a variety of services, including a magistrates' court and an island court. At the same time, Malekula can currently be described as one of the less resourced provinces in a number of key sectors, and while civil society is present in Malekula, it is not as thick on the ground, or as well established as it is on several other islands.
- Malekula is a large island (the second largest in Vanuatu) with several offshore islands, villages that can be considered remote, and rural communities that are significantly disconnected from the centres of Port Vila, Luganville, and even Lakatoro itself.
- With an estimated population of approximately 31,893<sup>21</sup> people, Malekula represents roughly 15% of Vanuatu's rural population (and roughly 11% of the overall population of Vanuatu).
- In research carried out by the Vanuatu Women's Centre<sup>22</sup> in 2009, 75% of women in Malampa Province had experienced physical or sexual violence perpetrated by their husband or partner in their lifetime, and Malampa was identified as the province with the highest levels of violence against women.
- Malekula features significant cultural diversity (with approximately one third of Vanuatu's more than one hundred languages), and is recognised as one of the places where kastom is still considered quite strong. There has also been a recent effort to re-establish, revitalise and reorganise community governance systems under the guidance of the Malmetevanu (the Malekula council of chiefs), and the Malvatumauri, the national council of chiefs.

For all of these reasons, Malekula seemed to offer an interesting – and in many ways even an ideal – place to take a closer look at conflict management and access to justice in rural Vanuatu, particularly as it impacts women.

It is important, however, that any findings in the research are not taken as critical of – and certainly not as any indictment of – Malekula itself, or any individuals who were interviewed or whose practices or work might appear as problematic in the research. It is clear that in order to support access to justice, particularly in rural Vanuatu, a number of actors from family

<sup>&</sup>lt;sup>21</sup> Based on the 2009 census population of 27,825 and a population growth rate of 2.3% per year.

<sup>&</sup>lt;sup>22</sup> Vanuatu Women's Centre 2011. Vanuatu National Survey on Women's Lives and Family Relationships.

<sup>&</sup>lt;http://dfat.gov.au/about-us/publications/Pages/vanuatu-national-survey-on-women-s-lives-and-relationships-may-2011.aspx> viewed 4/4/2016, 57.

members, to chiefs and religious leaders, police and the courts – and individuals themselves – all have their role to play. Both state and non-state actors engaged in conflict management are also understandably limited by their own lack of access to training and support (a reality that many of them would identify themselves). The Vanuatu government also has a responsibility to provide services to its citizens, and to support access to justice across Vanuatu, although it does so in a context of limited resources, lack of access to information and knowledge, challenging geography, and largely unexamined social norms that all contribute to creating significant barriers.

As well, it is important to keep in mind that the goal of the research was to consider institutions and broader processes in rural Vanuatu<sup>23</sup>, and consider justice as more of a system that is located within a context of understanding and practical realities that can either work to impede or support access to justice for various individuals. This should also be where attention is focused in terms of the findings and any follow up – specifically at '...the gap between what people experience and need and what institutions provide.'<sup>24</sup> While the findings in the research are specific to Malekula (at a particular point in time)<sup>25</sup>, given broad similarities in geography, resourcing, institutions and general social norms across Vanuatu, there is a good likelihood that several of the findings – and a number of the proposed recommendations – may be applicable to other rural contexts in Vanuatu, despite some expected variations. The people of Malekula should be applauded for their significant contribution to this more grounded study of justice and access to justice in rural Vanuatu, and for their hospitality, openness and honesty, their patience, their remarkable insight, and for their courage and their trust in the research process.

#### **1.5 METHODOLOGY**

#### Sampling and the Research Process

The current population of Malekula (including the surrounding small islands) can be estimated at approximately 31,893 people. This is based on the population of Malekula from the 2009 census of 27,825, with the average annual population growth rate from 1999 to 2009 of 2.3 per cent applied. Based on a standard approach to sampling in research that allows for a 95% confidence level and a 5% margin of error, and to support gender stratification, the sample size for the Malekula research was determined to be 370 women and 370 men aged 15 and over (in fact 379 women and 379 men were interviewed). The table on the following page outlines the calculations that contributed to the determination of the sample size.

<sup>&</sup>lt;sup>23</sup> Where an institution can be thought of as, '...a forum for dispute resolution acting on the basis of formal or informal rules.' From Bedner, A. and J.A.C. Vel 2010. An Analytical Framework for Empirical Research on Access to Justice. 2010(1) *Law, Social Justice and Global Development Journal*, 8.

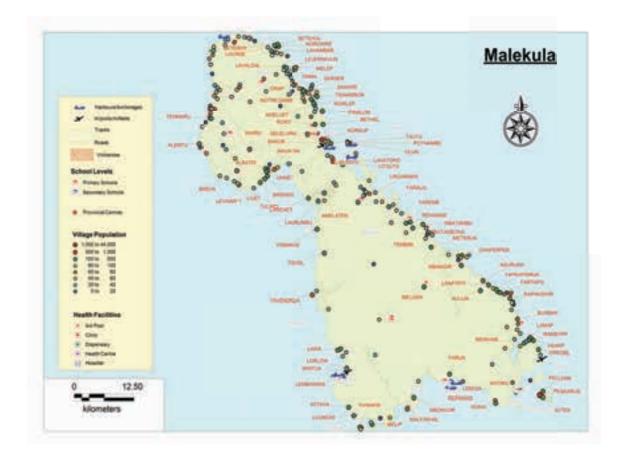
<sup>&</sup>lt;sup>24</sup> Praxis International n.d. The Praxis Safety and Accountability Audit.

<sup>&</sup>lt;a href="http://files.praxisinternational.org/General\_Audit\_Overview\_Methodology.pdf">http://files.praxisinternational.org/General\_Audit\_Overview\_Methodology.pdf</a>>, viewed 7/4/2016.

<sup>&</sup>lt;sup>25</sup> Please see section 1.5 about the methodology for further discussion about the broader applicability of the research.

| Determining the Sample Size         | 2009 Census | 2015 Estimates |
|-------------------------------------|-------------|----------------|
| Population of Malekula and islands  | 27,825      | 31,893         |
| Number of females                   | 13,821      | 15,842         |
| Number of males                     | 14,004      | 16,051         |
| Number of females 15 years and over | 8,290       | 9,501          |
| Number of males 15 years and over   | 8,399       | 9,627          |
| Sample size for women (95% c        | 370         |                |
| Sample size for men (95% c          | 370         |                |

The Vanuatu National Statistics Office verified the sample size, and carried out a proportionate stratified random sampling process to select enumeration areas that also included consideration of proximity to services. This involved dividing Malekula into three broad areas: areas that were closer to services; areas that had moderate access to services; and areas that were remote from services. Every area of Malekula was visited in the research.



Within the selected enumeration areas a random sampling process was again used to select the villages in each area where research would be carried out. A decision was made to only include villages with more than 30 people, as the team generally aimed to interview 10 women and 10 men in each village (in a village of 30 people at least half would most likely be children). As a result of this process, a list of 39 research villages was identified to allow for slight oversampling, with a randomly selected set of backup villages in case replacing one village was necessary. In only one location a village was identified as too difficult to access, and this village was replaced with the selected back up village. In most villages that were a reasonable size, 10 women and 10 men were interviewed. In some cases, particularly in some of the smaller villages where it was difficult to find 10 women and 10 men from different households, slightly fewer than 10 were interviewed, and this number was compensated for in the same enumeration area.

In the research villages themselves the researchers met with the chief or chiefs first, and then a small presentation was typically made to chiefs and community members to introduce the research, the research process, and to introduce the members of the research team. With the chief and the community's permission, the team would then split up to carry out the research. Each interview included a clear consent process that was built into the survey instrument, and all interviews were carried out in private, with only the individual being interviewed present during the interview. Researchers also made a point of only interviewing one person from each 'kitchen' (household). Only individuals who had lived continuously in the research village for more than a month were interviewed, although 97% of the people who were interviewed had either lived in the village for their whole life (65%) or for 15 years or more (32%).

In a small number of communities the team was encouraged to interview certain people – typically more chiefs, community leaders and elders. When this happened it was managed by emphasising the need in the research to achieve a random sample and to interview a range of individuals at the community level. Given the length of an interview (on average one hour with community members), and with the well-trained and skilled team of researchers, this was navigated effectively. A very small number of people also approached the team in some locations and asked to be interviewed, and these individuals were sometimes accommodated where it was feasible and appropriate to do so. Mainly, however, the researchers asked for permission to move freely around the village and randomly approached individuals in different households and areas, trying to ensure a good mix of young, middle aged and older individuals.

#### The Survey and Survey Instruments

The main survey instruments were developed based on tools and approaches offered in a range of justice surveys and resources<sup>26</sup> that were selected and adapted to suit Vanuatu's context and the goals of the research. The lead researcher drafted the original survey instruments, with active input provided by a small advisory committee. The full question sets were circulated to key stakeholders for comment. Different surveys were constructed for community members, for chiefs, and for police, as well as to guide focus group interviews. The original questions were developed in English, but were translated by a skilled researcher

<sup>&</sup>lt;sup>26</sup> Guidance for the conceptual and practical development of the survey instruments was taken primarily from the following: Access to Justice Assessments in the Asia Pacific: A Review of Experiences and Tools from the Region (2012); A Handbook for Measuring the Costs and Quality of Access to Justice (2009); Surveying Justice: A Practical Guide to Household Surveys (2010); Justice Delivered Locally: Systems, Challenges, and Innovations in the Solomon Islands (2013); and Spinning a Conflict Management Web in Vanuatu: Creating and Strengthening Links Between State and Nonstate Legal Institutions. Further information for all of these resources is available in the Bibliography.

and translator, and then were further refined, question by question, by the full group of researchers in a workshop and training session prior to the commencement of the research. This session also allowed for a discussion of the purpose of each of the research questions, and ensured that the way the questions were understood and used across the team of researchers was clear and consistent. Detailed instructions for researchers were also included along with the questions in the survey instrument itself, and more extensive training of the researchers and pilot testing of the survey instruments was carried out in one community before the research on Malekula commenced.

While the survey instruments for women and men were generally the same, women were asked a small number of additional questions. Given the sensitivity of some of the research questions, and social protocols, women were only interviewed by female researchers. Smart phones were used to complete the main surveys with community members, chiefs and police, with results uploaded into a common database, thereby eliminating the need for data entry. The survey tools offered a range of questions, including several that were open-ended (for example, 'What does 'justice' mean to you?'), more quantitative questions, and a number of questions that required respondents to state a preference between two options. The survey instruments also allowed for comments to be captured, either through an audio recording or entered into the phone as text. The researchers received some training in qualitative research methods (most were already experienced researchers), and were provided with a notebook to record longer or more qualitative answers, stories and impressions. Researchers regularly spent time in the evenings or after visiting villages writing out notes.

In addition to this, focus groups were held in four areas, with separate focus groups for men and women, using special discussion guides and with several note takers. Extensive field notes were also taken in interviews with chiefs and police (all of whom were interviewed by two of the most senior and experienced researchers). As well, five group discussion and debriefing sessions were held with the full group of researchers during the research process. These sessions allowed researchers an opportunity to share their additional written notes, and particular pieces of information or impressions that they had from each of the villages that had been visited in the previous days. This approach allowed for an interesting mix of more qualitative information to emerge alongside the more quantitative findings, and provided for a richer collection of data, and for preliminary impressions and findings to be compared, discussed, developed and tested along the way. This mix of quantitative and qualitative research approaches allowed for a more sophisticated handling of the highly nuanced and complex issues around access to justice in rural Vanuatu.

When the active research process was complete, the phone-based data that had been uploaded onto a server throughout the research process was downloaded into spreadsheets, and more active cleaning and analysis of the data was carried out. Handwritten notes were transcribed and compiled, as were the notes from focus groups and research debriefing sessions. All of the findings were then coded and separated into key topic areas, where clear themes and issues began to emerge. All of the combined data was then further refined and processed, with relevant additional research brought in to the analysis as appropriate and useful. While the bulk of the data analysis and all of the writing was carried out by the lead researcher, fact checking was conducted throughout this process, and another senior researcher was brought in to carry out an in depth verification process of the data and analysis. A small advisory team vetted the written report, and preliminary findings were presented to key stakeholders in the sector before the report was made public.

#### Limitations of the Research

The *Conflict Management and Access to Justice in Rural Vanuatu* report, like all research, has clear limitations. First, it is not intended to provide a definitive set of conclusions on conflict management and access to justice in rural Vanuatu, nor will the findings in this report necessarily be representative of issues facing all communities in Vanuatu. As detailed above, Vanuatu is made up of diverse linguistic and cultural groups, with their own histories and identities. While the research population represents a significant (and fairly diverse) segment of Vanuatu's rural population, the findings should primarily be seen to reflect ideas and issues at a certain point in time in Malekula. As well, despite the careful selection and training of researchers, occasional mistakes were made in the collection of data. In the small number of instances where this was identified, the data was cleansed and the data was either fixed or removed. While the use of phone technology, the capacity to check the data through the data collection process, the structure of the questions, and the training and active management and oversight of the research team all contributed to minimising significant inconsistencies or errors in data collection, it may be that some mistakes were made.

The research was also very ambitious, and the team worked under fairly rigorous timelines in order to visit all of the selected research sites, while adhering to challenging logistic and practical realities in remote locations. The research team had to balance off the need to be relatively efficient and consistent across a broad set of questions, with creating space, where necessary, for deeper engagement. While a measure of flexibility was built into the interview process and scheduling to explore emerging issues, some matters might have benefited from further discussion and inquiry. And while the research attempted to include space for more qualitative findings to emerge (though note-taking, the inclusion of some open ended questions, scope for more in depth discussion, focus group discussions, and through group debriefings), the survey was primarily quantitative. In the analysis and writing up of the research findings every attempt was made to share the data itself where appropriate, and to include participant comments as much as possible, but the analysis inevitably includes a level of subjectivity. Where further inquiry would be useful or where there is some ambiguity in the interpretation of findings, attempts have been made to note this in the report.

#### **Final Thoughts on the Research**

As with all research, the findings in the *Conflict Management and Access to Justice in Rural Vanuatu* report should be seen as more indicative – suggestive, bringing some issues to light, and highlighting possibilities – rather than as definitive, and offering final truth claims. In this way the research strives to bring some of the current challenges, realities, and ultimately opportunities for change to the foreground, in order to initiate and contribute to ongoing dialogue. Issues and weaknesses highlighted by the research (or even contained in the research itself) should be seen as providing opportunities for further reflection and engagement. Ultimately, and despite any limitations, this research offers a broad, grounded, and nuanced glimpse into some of the complex realities of justice and access to justice in rural Vanuatu today. Whether we agree or disagree or whether the research reveals what feels like truth to us or makes us uncomfortable, the most effective thing we can do is to engage in further reflection, discussion and exploration. Research cannot provide every answer, but well-crafted research does provide an opportunity for more informed and deeper engagement with crucial issues, and can help to provide a more considered and effective platform for decision making and action.

# 2. FINDINGS RELATING TO THE COURTS AND COURT SERVICES

#### BRIEF SUMMARY OF PART 2: FINDINGS RELATING TO THE COURTS AND COURT SERVICES

#### Background

- There has been a magistrate in Lakatoro (the provincial capital located on Malekula) since 1997, two court clerks, 17 island court justices are listed on the official list (however only nine are described as active), and the Supreme Court circuits to Malekula.
- Courts services are mainly based in Lakatoro.

#### Summary of Findings and Key Issues

- There are significant issues around physical access the highest use of court services were in central and north Malekula (72% of people who had used an island court justice and 77% who had used a magistrate were located in Central, Northwest or Northeast Malekula).
- Women and men rated magistrates as more fair than other individuals who are involved in managing conflict (74% of women said magistrates were fair compared to 41% who said chiefs were fair, and 63% of men said magistrates were fair compared to 49% who said chiefs were fair).
- Chiefs and community leaders who are involved in managing conflict are used more frequently than state justice options. Chiefs often find their work difficult.
- Most chiefs (95%) who were interviewed felt there were some things that should only be dealt with by state justice: mainly criminal matters, rape, and incest (and 26% said land should only be dealt with by the state).
- There is a relatively low level of knowledge of the laws of Vanuatu.
- The main concerns about court services and state justice included: issues around punishment and reconciliation, cost, potential damage to relationships, that it can take too much time, and issues around 'communication'.
- Courts have had a complex engagement in land issues and chiefly title issues, (which are often related to land).
- There are a number of issues that are specific to island courts and island court justices (primarily jurisdictional issues, use of kastom versus law, and training).
- Women are significantly disempowered compared with men and chiefs, and this impacts their ability to access the courts and state justice effectively (28% of women had no idea what justice meant, 44% of women had no knowledge of human rights and 60% of women had no knowledge of the law).

#### 2.1 BACKGROUND

The first island court on Malekula was established in 1984, four years after Independence and around the same time that island courts were set up in Efate, Santo and Tanna<sup>27</sup>. Apart from circuiting courts, for 13 years these were the only local court services available on Malekula until 1997 when a magistrates' court was established permanently<sup>28</sup>. Today the courthouse is located near Malampa provincial headquarters on top of a hill overlooking Lakatoro, and is staffed by an island court clerk and a magistrates' court clerk. The current sitting magistrate, Senior Magistrate Anna Laloyer, was first posted to Malekula in 2011. In 2013 the clerk at the time identified 17 island court justices (two women and 15 men), however a more recent list provided by the court identified nine active island court justices on Malekula, and one in each of the South, Southeast and Northeast.

As the point of this research was to consider justice 'from the citizen's perspective'<sup>29</sup>, the overriding focus was on community members' experiences of conflict and conflict management systems. This report will, therefore, provide less of a formal examination of court systems, and more of a grounded view of state systems from the vantage point of men and women in Malekula. Three island court justices were also interviewed during the course of the research, two of them more formally as chiefs, and each of them from different areas: Northwest, Central and South. The magistrate was also interviewed using a less formal semi structured interview format, and a number of issues arising from the research were also discussed at this time. Beyond the focus on community members' experiences of conflict and conflict management on Malekula, views around justice and the law were also explored in the research, and provide an interesting contextual backdrop to perceptions of state justice on Malekula.

#### **2.2 Key Findings**

'We have had independence for a long time, but all of us here are still "manbus" when it comes to the law.' - Chief, South Malekula

'I have wanted to have something like this [research] for a long time. It was a wish of mine. We do a lot of work without any help.' - Island Court Justice and Chief

<sup>&</sup>lt;sup>27</sup> Goddard, M. and L. Otto 2013. Hybrid Justice in Vanuatu: The Island Courts, *Justice and Development Working Paper Series,* World Bank, 18.

<sup>&</sup>lt;sup>28</sup> lbid, 23.

<sup>&</sup>lt;sup>29</sup> United Nations Development Programme 2012. Access to Justice Assessments in the Asia Pacific: A Review of Experiences and Tools from the Region, 104.

'Justice supports everything in Vanuatu. Vanuatu is seen as the happiest place because of things like justice. Without justice in the country, we will lose everything.' - Chief, Northwest Malekula

#### **General Perspectives on State Justice**

Community members were asked to comment on their experiences with various conflict managers from family members, to chiefs, religious leaders, police, and various court officers, in two different places in the research<sup>30</sup>. First they were asked if they or a close family member had *ever* used one of these individuals to solve a problem, their level of satisfaction with the experience, whether they thought the individual was fair, and if they thought there was anywhere to deal with a complaint or problem with the individual if they did not carry out their duties properly. In another section, specific conflicts were explored more deeply. Here respondents were asked if they, personally, had experienced a conflict in the last year, and if they had needed someone to help them solve it. A more detailed analysis of their experiences around this conflict was then carried out. Opinions and comments about court officers were collected in both of these sections.

In the first section, when community members were asked if they (or a family member) had ever gone to an island court justice to solve a problem 23% of women and 40% of men said they had. A similar number of women (22%) and men (39%) identified having gone to a magistrate in their lifetime. For those who had seen a magistrate to solve a problem (or who had a family member who had), 81% of women and 79% of men said they were satisfied with the experience. For women, this was significantly higher than their rate of satisfaction with chiefs (64%) and any other practitioner except religious leaders (88%). For men, their satisfaction with magistrates was the same as their satisfaction with chiefs (79%) and higher than any other justice practitioner except for religious leaders as well (91%).

There were significant regional differences in the use of court services, with 72% of the respondents who said they or a family member had used an island court justice located in Central, Northwest or Northeast Malekula. For the magistrates' court, 77% of those who had used a magistrate were based in these areas as well. Of those who had gone to see a magistrate to solve a problem in their lifetime (or had a family member who had), women rated magistrates as fairer<sup>31</sup> than any other individual, with 74% of women identifying magistrates as fair. By comparison, 41% of women identified chiefs as fair. For men, 63% felt that the magistrates were fair (with only religious leaders being identified higher at 74%). By comparison 49% of men interviewed identified chiefs as fair in this section.

<sup>&</sup>lt;sup>30</sup> For the purposes of this part of the report, experiences with state justice (island court justices, magistrates, Supreme Court judges and lawyers) will generally be compared to experiences with chiefs (the main conflict managers at the community level), as this is the comparison made most often by community members themselves.

<sup>&</sup>lt;sup>31</sup> Fairness was assessed by asking the question in Bislama, 'Long lukluk blong yu, yu ting se ol XX oli stap skelem gud tufala saed blong ol problem?' According to the translators and researchers this represented a more effective and accurate translation of the concept of 'fairness' than the anglicised 'fea'. Community members seemed to have no trouble understanding the concept when it was expressed in this way.

These findings were quite similar to the findings in the second section, where community members were asked to provide much greater detail on conflicts they had experienced personally in the last one-year period. Some of the findings from this second section are summarised in the following table:

| able 1: Community Members' Experie           | State J    | ustice*                 | Chiefs                |                         |                       |
|--|------------|-------------------------|-----------------------|-------------------------|-----------------------|
| conflict Management in the Past Year         | -          | <b>Women</b><br>(N=179) | <b>Men</b><br>(N=165) | <b>Women</b><br>(N=179) | <b>Men</b><br>(N=165) |
|  | Yes        | 86%                     | 57%                   | 59%                     | 65%                   |
| Was the individual dealing with the conflict | Somewhat   | 7%                      | 22%                   | 14%                     | 14%                   |
| fair in the way they handled the process?    | No         | 7%                      | 14%                   | 24%                     | 20%                   |
|  | Don't know | 0%                      | 7%                    | 3%                      | 1%                    |
| Ware you able to supress your fastings and   | Yes        | 64%                     | 64%                   | 75%                     | 80%                   |
| Were you able to express your feelings and   | Somewhat   | 7%                      | 7%                    | 9%                      | 7%                    |
| thoughts about the conflict during the       | No         | 29%                     | 29%                   | 15%                     | 13%                   |
| process?                                     | Don't know | 0%                      | 0%                    | 1%                      | 0%                    |
|  | Yes        | 86%                     | 79%                   | 76%                     | 77%                   |
| Did the individual dealing with the conflict | Somewhat   | 0%                      | 21%                   | 12%                     | 11%                   |
| treat you with respect during the process?   | No         | 7%                      | 0%                    | 9%                      | 12%                   |
|  | Don't know | 7%                      | 0%                    | 3%                      | 0%                    |
|  | Yes        | 86%                     | 93%                   | 74%                     | 75%                   |
| Did you trust the person who was dealing     | Somewhat   | 0%                      | 7%                    | 9%                      | 9%                    |
| with the conflict?                           | No         | 7%                      | 0%                    | 17%                     | 16%                   |
|  | Don't know | 7%                      | 0%                    | 0%                      | 0%                    |
|  | Yes        | 79%                     | 57%                   | 59%                     | 67%                   |
| Did you find the decision that was reached   | Somewhat   | 0%                      | 7%                    | 11%                     | 8%                    |
| fair or straight?                            | No         | 21%                     | 29%                   | 26%                     | 24%                   |
|  | Don't know | 0%                      | 7%                    | 4%                      | 1%                    |
| Would you use the individual who was         | Yes        | 79%                     | 71%                   | 54%                     | 61%                   |
| dealing with the conflict again?             | No         | 21%                     | 21%                   | 38%                     | 38%                   |
| dealing with the connect agains              | Don't know | 0%                      | 8%                    | 8%                      | 1%                    |

\*Including magistrates, island court justices, Supreme Court judges and lawyers, but not police officers

From the experiences of the women and men whose opinions are expressed in the table above<sup>32</sup>, a number of patterns emerge. In general, women seem to view state justice representatives (justices, magistrates, judges and lawyers) as fairer than chiefs. Women also have a more positive view of the decisions that are reached in the state justice system<sup>33</sup>. Both men and women expressed having had more trust in state justice representatives, and identified being treated with more respect in that context as well. The court system seems to provide less opportunity, however, for individuals to share their thoughts and feelings. Interestingly both women and men said they would use the same state justice representative again, more often than they said they would use the same chief.

Some of these differences between men and women could represent a number of things. In the research, women and men who had experienced conflict and had needed someone to

<sup>&</sup>lt;sup>32</sup> Representing all of the women and men who were interviewed who had experienced a conflict *in the past year, and* who had used someone to help them to solve it.

<sup>&</sup>lt;sup>33</sup> Findings relating to women and access to justice are explored further in sections 2.7 and 3.5, as well as in Part 5.

help them deal with it were asked if they were the victim or the perpetrator in the conflict (respondents were also given the option not to answer). While the answers to this question reflect a level of subjectivity, women self-identified as perpetrators 8% of the time, while men self-identified as perpetrators 25% of the time. This may have put men more often on the 'losing side', particularly in court, and may have given them a more negative view of state processes as a result. As one respondent said in response to questions around fairness, 'If they find on my side then it's fair.' While this may not be the case for everyone, it probably reflects a general tendency to be happier with outcomes that are in your favour.

#### **Use of State Justice Services**

In this part of the survey there were also significant differences in the use of state justice processes and chiefs, although this is not particularly surprising, given the location of court services (Lakatoro for both island and magistrates' court). In general, for women and men, chiefs were used more frequently, with women using chiefs in 42% of their conflicts, compared to 8% for state justice representatives. Men used chiefs for 62% of their conflicts, compared to 9% for state justice representatives. While this may reflect a preference, it could be due to several other factors including the type of conflict, and the proximity and accessibility of chiefs and other community-based conflict management options. Regional use of chiefs and state justice in the past year is shown in the following table:

| Table 2: Regional Use                              | Cen   | tral | North | west | North | neast | Sout  | neast | So    | uth | South | nwest |
|--|-------|------|-------|------|-------|-------|-------|-------|-------|-----|-------|-------|
| of Chiefs and State<br>Justice in the Past<br>Year | Women | Men  | Women | Men  | Women | Men   | Women | Men   | Women | Men | Women | Men   |
| (Women N=379, Men N=379)                           |       |      |       |      |       |       |       |       |       |     |       |       |
| Chiefs   | 36%   | 56%  | 24%   | 38%  | 41%   | 61%   | 55%   | 77%   | 60%   | 89% | 53%   | 67%   |
| State Justice                                      | 16%   | 12%  | 7%    | 17%  | 8%    | 8%    | 3%*   | 4%*   | 0     | 0   | 6%*   | 6%*   |

\*In these locations in Southeast and Southwest Malekula the only courts used were Island Courts

Not surprisingly, the highest use of state justice services for those who had experienced a conflict in the past year was in Central Malekula, the area where Lakatoro and the courthouse are located. Communities in Northwest and Northeast Malekula also enjoy reasonably good access to Lakatoro (with decent roads and regular transport), and use of court services is also higher in these areas. In the southern part of Malekula, however, the rates of court usage are much lower, with no one in the South (Lamap, the Maskelynes, and several more remote island communities) identifying using any court services in the past year. In the Southwest and Southeast, the only court services that were used by respondents were island courts. This is consistent with the other part of the survey where use of court services was also much lower in the south, as well as with the experience of the magistrate who said:

'In the "dog's head" [Northwest, Northeast and Central Malekula] the law works, and has effect. But Lamap is a crying shame. Nothing comes to me from Lamap. Why is the court not going there? Why are there no cases from there?'

#### The Current Magistrate

Although this was not part of any direct line of questioning, during the research a number of people offered comments about the current magistrate, and magistrates in general. Very few negative comments were offered overall, although the researchers felt that men tended to have more grievances about magistrates, perhaps particularly as a result of ongoing land cases and because of the side they are often on in cases like domestic violence. There were exceptions as well, however, as reflected in the following comments:

'The magistrate now is perfect because she is a woman and she is doing really good work. All the male magistrates were different and people weren't happy, but she judges things really well and fairly. A woman is better than a man – her concept of justice is totally different – and she tries to deal with things in a straight way following the truth, and justice, and in a complex way, and with understanding of degrees of truth...' - Man, South Malekula

> 'The current magistrate is doing good work.' - Island Court Justice and Chief

In general, the researchers felt that women seemed to have a more positive view of the current magistrate, perhaps in part because of how she is seen to handle domestic violence cases. In one woman's words 'This magistrate *really* knows what the situation is in my house'<sup>34</sup>. Some respondents in the Southwest also commented positively about the magistrate touring to their community in the last two years, and providing information about the law. In at least two communities very positive comments were also made about the current island court clerk who had recently carried out awareness sessions on the law and court processes.

When asked if they thought there was anywhere to deal with a magistrate who was not doing their job properly (a question that was asked for all conflict managers), 24% of women said 'No' and another 48% said they did not know. For men, 13% said 'No' and 30% said they did not know. Of the 28% of women who felt there was some place to report a magistrate, 47% said the place to deal with complaints about the magistrate was in the courts and another 39% said it was the responsibility of chiefs. Of the 57% of men who felt there was some place to report a magistrate, the majority (76%) said it should be dealt with by the courts, 11% said they would see a lawyer (including the Public Solicitor), one man said it should go to the Ombudsman, and only 12% of men felt that this was something that should be brought to the chiefs.

<sup>&</sup>lt;sup>34</sup> In Bislama this woman said 'Majistret ia hemi save gud kitjin blong mi.'

#### **Chiefs' Views of State Justice**

In the research, chiefs who were interviewed<sup>35</sup> were also asked to offer their opinion about community members' level of trust for various justice practitioners. The results are shown here:

| Table 3: Chiefs' Opinions about Community Level of Trust $(N=39)$ | Chiefs | Island Court<br>Justices | Magistrates | Supreme Court<br>Judges |
|---|--------|--------------------------|-------------|-------------------------|
| Yes, they trust them  | 62%    | 59%                      | 59%         | 54%                     |
| They trust them somewhat  | 33%    | 38%                      | 36%         | 38%                     |
| No, they do not trust them  | 5%     | 3%                       | 5%          | 8%                      |

As this table indicates, chiefs who were interviewed rated community members' level of trust in state justice practitioners comparably to their sense of community members' trust in chiefs. In fact, as discussed above, community members expressed an even higher level of trust for state justice practitioners than they did for chiefs. This is not highlighted as an indictment of chiefs, who are, as one chief pointed out, '...the first line of justice in the country', and are doing a lot of valuable work. Community members are also accessing chiefs to solve conflicts for a range of valid reasons. These views about state justice are interesting, however, because they may call into question the popular view that people prefer chiefs to courts, and may also speak to an interest at the community level in having access to individuals and processes that are perceived as more 'neutral' to solve certain types of conflicts.

In the research, the chiefs who were interviewed were also asked about their relationship with state justice representatives and processes. 74% of the chiefs said that they had already worked with a magistrate to solve a problem in their community, and 67% said they had worked with an island court justice. By comparison only 26% said they had worked with the police. When asked about how frequently they sent cases to the state system, 59% of chiefs said they rarely did and 33% said they never did. The remainder said they did only sometimes. When asked about the kinds of cases they sent to the state system, chiefs identified trespass and garden disputes most frequently, along with marijuana cases. Criminal matters and rape were identified second most frequently, followed by theft and domestic violence. Interestingly some of these issues (trespass and garden disputes, and potentially many cases of theft) are the kinds of things that could (and perhaps should) feasibly be worked out at the community level. Only one of the chiefs who were interviewed identified having sent an incest case to the state system.

95% of chiefs who were interviewed said that there were some matters that should only be dealt with by the state justice system. When asked what these were, chiefs identified 'criminal' matters most frequently, followed by specific identification of rape and incest.

<sup>&</sup>lt;sup>35</sup> Please note that one chief (usually the village chief) was interviewed in each community, with 39 chiefs interviewed in total. The findings relating to chiefs are not, therefore, representative of all chiefs in Malekula (please see part 4 for further discussion of this).

Interestingly the next most frequent answer was land. Land was identified as an issue that should *only* be dealt with by the state system by 26% of chiefs who were interviewed. When asked if they thought it would be good for the courts to work more closely with them, every chief said, 'Yes', except one who said he did not know. When asked how they wanted to work with the courts, responses included the courts: consulting more with chiefs; providing assistance around problems chiefs cannot solve; providing more awareness and information about the law; training chiefs about justice and the law; and providing more support to chiefs in big cases, and in criminal matters.

#### 2.3 OPINIONS ABOUT COMMUNITY AND STATE JUSTICE

'Kastom should overrule the foreign law when dealing with issues at the community level.' - Man, Central Malekula

'We have to handle domestic violence through kastom because it is too expensive to deal with it in other ways. And if we go to the law of the white man it pushes the man out of his culture and his relationships.'

- Men's Focus Group Participant, South Malekula

'...most practices in kastom are similar to our laws.' - Man, Central Malekula

'Justice is the rights of the people and being under a constitution and laws, and living in peace as a nation. Justice equals peace. The chief, the law and peace are all together and everything is good.'

- Men's Focus Group Participant, South Malekula

'The law has not been implemented yet at the community level, just kastom. The law is a foreign law.'

- Chief, Central Malekula

'Vanuatu's laws came from kastom and then went to Parliament.' - Chief, Central Malekula

'The Mama Loa [Mama Law or Constitution] is a foreign concept.' - Men's Focus Group, Central Malekula

'The Constitution is the law of the country and we need to know about it at the community level.' - Man, Northwest Malekula

As demonstrated through these comments, community members shared *very* diverse opinions about justice and the law in the research. These opinions are interesting because they form the backdrop for community members' approach to the courts and court services. In part, the diversity of opinion could simply reflect levels of knowledge about the law. When

asked if they had any knowledge of Vanuatu's laws, 3% of women said yes, 37% said they knew a little and 60% said they had no knowledge of the law. Men identified having slightly more knowledge of the law, with 11% saying yes, 62% saying they knew a little, and 27% saying they had no knowledge of the law. Among chiefs only 5% said they knew the law, 90% said they knew a little about the law, and 5% said they had no knowledge of the law. This relatively low level of knowledge and understanding surely contributes to misunderstandings about law and state justice.

#### **Retributive vs. Restorative Justice**

There is also, however, something deeper in the views that were shared about state justice and community justice as articulated in the comments above. While a number of people see continuity between kastom and Vanuatu's laws and state justice, several people expressed the notion that Vanuatu's law was 'foreign'<sup>36</sup>, and saw kastom in quite oppositional terms to state justice and the law. This is often elaborated as a fairly simple dichotomy, with kastom being identified as being more restorative (where people can say sorry, and restore relationships), and the court system identified as being a more retributive system (focused on punishment and holding individuals responsible for their actions), as expressed in the following statements:

> 'The formal court is about punishment, not peace. Punishment only, no reconciliation.' - Chief, Central Malekula

'Justice should be fair to everyone but in the court process one side wins and one side loses. This is especially hard when family members are involved, or people who live close to each other. It's better if family members don't take cases to court. This is important to protect families, because people hold grudges and bad feelings.' - Police Officer, Lakatoro

'The judgments in the criminal justice system are good but the punishments are too hard, because a lot of men don't know they are breaking the law. It would be better to teach people first.' - Chief, Northeast Malekula

'The problem with the court system is that it penalises people and they don't feel good, and this in turn breaks the community.' - Chief, Southeast Malekula

These perspectives are not unique to Vanuatu. Retributive and restorative justice are often seen in opposing terms in other jurisdictions as well, as evidenced by the ongoing popularity of alternative dispute resolution processes to counter what is often viewed as more punitive, and retributive, state justice systems. As a number of legal researchers have noted however,

<sup>&</sup>lt;sup>36</sup> Several of Vanuatu's laws are based on the laws of Vanuatu's two colonisers: Britain and France, and a number of them still contain language and references to these other contexts. So in a real sense a number of Vanuatu's laws are 'foreign' in terms of their language and derivation, although they are now clearly the laws of the Republic of Vanuatu.

turning restorative and retributive justice into oppositional approaches is problematic, as illustrated in the following quote:

'We should stop comparing retributive justice and restorative justice in oppositional terms. Such a strong, oppositional contrast cannot be sustained empirically.'<sup>37</sup>

As several researchers have pointed out, retributive justice usually has restorative aspects, through the fact that victims also feel better when they see that the individual who has done wrong has suffered some consequences<sup>38</sup>. Restorative approaches also usually involve the perpetrator being held responsible for their actions<sup>39</sup>. In a number of ways, these approaches in practice may have more in common with each other than they are different, and setting them up as opposites is not necessarily helpful in terms of analysing and supporting peoples' complex needs, experiences and responses to multifaceted conflict events.

#### **Kastom: Punishment and Peace**

In Vanuatu there is an additional dimension to this discussion because kastom and justice at the community level are strongly associated with historical meaning and continuity. Making peace and getting along is often seen as 'traditional' in Vanuatu. Several Pacific scholars, however, have questioned this fairly simplistic and one-sided view, linking the often-articulated preference for more peaceful resolution of disputes to the influence of Christianity more than anything else<sup>40</sup>. As well, while kastom differs across Vanuatu, historically a number of practices were carried out in the name of justice at the community level, that have distinctly punitive (and retributive) qualities. According to one report:

'...the historical record shows that Pacific traditions of dealing with transgression were not necessarily as peaceable and reconciliatory in past times as people imagine them to have been'.<sup>41</sup>

Along these lines, in the research a chief in Northwest Malekula responded to a hypothetical scenario about incest by saying that in the past they would have drowned the perpetrator, but now they would send them to the police. Another chief, also in the Northwest, said that the influence of Christianity has mitigated how he deals with issues in the following way:

'Sometimes I use the church instead of kastom in cases, because kastom may require that someone be put to death, but that is no longer a good idea. So instead I refer to the churches' teachings.'

<sup>&</sup>lt;sup>37</sup> Daly, K. 1999. Revisiting the Relationship between Retributive and Restorative Justice. In Strang, H. and J. Braithwaite (eds). *Restorative Justice: Philosophy to Practice*. University of Michigan: Ashgate, 3.

<sup>&</sup>lt;sup>38</sup> Roche, D. 2007. Retribution and restorative justice. In Johnstone, G. and D.W. Van Ness (eds). *Handbook of Restorative Justice*. Taylor and Francis, 2.

<sup>&</sup>lt;sup>39</sup> Daly, K. 1999. Revisiting the Relationship between Retributive and Restorative Justice. In Strang, H. and J. Braithwaite (eds). *Restorative Justice: Philosophy to Practice*. University of Michigan: Ashgate, 5.

<sup>&</sup>lt;sup>40</sup> Goddard, M. and L. Otto 2013. Hybrid Justice in Vanuatu: The Island Courts, *Justice and Development Working Paper Series*, World Bank, 4.

<sup>41</sup> lbid, 5.

Many of these more punitive practices are also not completely 'in the past'. While sentencing people to death in community justice processes is very uncommon in Vanuatu in the present day, it does happen.

A recent case involving a group of men in South Malekula who were accused of black magic resulted in two men being put to death after a community trial that had reportedly been going on for several weeks, and potentially even involved consultation with the police<sup>42</sup>. During the research it was interesting that local commentary around the killings<sup>43</sup> involved more of a critique of the community 'taking justice into their own hands' and commiseration around the challenges posed by black magic to both state justice and kastom, than any condemnation of the response as overly punitive. Even a police officer commented at the time of the incident that he thought the community's handling of the situation was good because the law had no way of dealing with these kinds of issues.

While cases like this one are rare in the present day, practices of beating recalcitrant youth are not uncommon in Vanuatu. While on Malekula a significant number of people stated that physical fighting was 'not their way', and that people tended to 'fight with words' only, nearly one third of all men (30%), women (31%) and chiefs (31%) interviewed felt that it was more acceptable for chiefs to beat young people who were causing problems, than it was for them to respect their rights. When asked about the acceptability of police officers beating people who were suspected of breaking the law, an even higher number of women felt that this was more acceptable (37%), while fewer men (24%) and even fewer chiefs (10%) felt that this was a more acceptable option. Clearly while the majority of people on Malekula generally do not support corporal punishment, a significant number still find societal use of corporal punishment acceptable.

#### The Cost of State Justice

The complexity and even contradictory nature of what people have to say about justice – and what they do – is worth exploring more deeply because it has a significant bearing on perceptions and approaches to state justice. It does not seem to be the case, for example, that people in Vanuatu do not want to see those who do wrong punished<sup>44</sup>, and would prefer that all issues are dismissed after a reconciliatory shaking of hands. And despite the popular view that the court system is too punishing, peoples' concerns with state justice may be less about it being punitive per se, and more about other issues, some of them potentially much

<sup>&</sup>lt;sup>42</sup> One officer who was interviewed in the research independently offered the following information (in response to a question about the kinds of things that needed to be dealt with by the police only): 'They stopped talking to me at 3 pm and they hung the two men at 4 pm. Before that they had been talking to me for three weeks and I had asked them not to take the law into their own hands.'

<sup>&</sup>lt;sup>43</sup> While the researchers were careful not to probe around this issue because it had already been dealt with in the courts, and out of respect for the community where clearly it was a very sensitive matter, perspectives about this case were volunteered by a number of people during the research, particularly in South Malekula.

<sup>&</sup>lt;sup>44</sup> The overwhelming popular support for the recent incarceration of 14 Members of Vanuatu's Parliament, who were found guilty of accepting bribes, supports this view as well.

more practical. For example, a common complaint that was raised in the research about state justice was that it was expensive, as illustrated in the following comments:

'Only people who have money can access formal justice.' - Chief, Northwest Malekula

'The Island Court just sits in Lakatoro, which is very expensive.' - Chief, Northeast Malekula

'Lots of people group up to deal with a case, because justice is expensive too. Sometimes they need to fundraise in the community to take a case forward.' - Man, South Malekula

A number of community members and chiefs also commented that fines imposed through the courts were much higher than those imposed in the community and there seemed to be a number of underlying *economic* reasons for people choosing to resolve their issues at the community level<sup>45</sup>. In an environment where access to the cash economy is still highly limited for the vast majority of people, monetary fines (that when they are not honoured result in incarceration) may be viewed – justifiably – as highly punitive. While some recent changes to the laws (including those relating to the island courts) allow for alternative sentencing (for example, community work as an alternative to a fine or imprisonment), it is not clear that this has gained popular understanding, or how much this option is being used by the courts in rural areas.

It is also interesting to note that monetary fines are increasingly being used at the community level as well, which may represent a significant change from the past where fines might have been imposed using kastom items (for example, mats, kava, chickens, etc.). While this will be discussed in greater detail elsewhere<sup>46</sup>, a consistent issue raised by community members in several locations was the high level of fines chiefs were now imposing. Community members who had experienced a conflict in the past year were also asked to identify the cost of the process to them<sup>47</sup>, allowing for the separate identification of kastom items, and not including any fines. For community members who had used a chief to resolve a conflict in the last year, 69% said that the process had cost them money, 26% said there was no cost (again this did not include fines) and kastom items<sup>48</sup> were used in only 3% of the cases. While the use of court services was identified as significantly more expensive on the whole, it will be interesting to see, as community level conflict management becomes increasing monetised and more expensive, and as more complex land cases are managed at the community level, whether these perceptions may change.

<sup>&</sup>lt;sup>45</sup> In fact, two chiefs explicitly said they wanted to know what fines were in the state system so they could use this as a deterrent for people pursuing cases outside of the community (by demonstrating that their fines were lower) as discussed in section 4.6.

 <sup>&</sup>lt;sup>46</sup> Section 4.5 includes a discussion about the cost of using chiefs, and the use of monetary fines at the community level.
 <sup>47</sup> The *average* cost identified by community members for processes involving chiefs was VUV 53,522, while the average cost

identified for court processes was VUV 300,375. Given that these costs were estimates and could not be verified, they may not be completely accurate, and some may include fines and penalties, as well as travel costs. While court processes appear to be (and probably are more expensive), the types of conflicts that are brought to each venue may also impact the cost.

<sup>&</sup>lt;sup>48</sup> Kastom items may now also represent a *monetary* expense, as people do not always have access to materials like pandanas to weave mats, or may not grow their own kava or raise their own livestock.

# The Value of Apology

Another persistent matter that was raised in the research, and that may also contribute to the view that state justice is overly punitive, has to do with the form of court processes themselves. A number of respondents commented that the court does not allow for putting the relationship between the two parties to rights, or even simply saying sorry and shaking hands, which is a powerful and consistent element of community justice processes. Several chiefs, including two of the island court justices who were interviewed, identified this as a concern with state justice:

'The courts often make people more cross because they don't sort out the issues with the relationship. Why can't they add a simple "sorry" process at the end of the court process?' - Island Court Justice and Chief

'It would be good to have the magistrates' court include kastom at the end – shaking hands, and some food and kava.' - Island Court Justice and Chief (a different one)

> 'There is no handshake at the end of a court session.' - Chief, Northwest Malekula

While this may appear to represent a more deep seated philosophical difference between state and community processes (along the lines of retributive and restorative justice above), it may also represent a more easily addressed practical matter. Interestingly, community members and chiefs consistently discussed the role and use of prayer in community justice processes in the research. In many locations after a decision is reached by the chief the matter is prayed over, with the implication that while the two parties may still have bad feelings, the prayer encourages them to forget their differences and move on<sup>49</sup>.

When the current magistrate was asked about the idea of including a small reconciliation process at the end of court proceedings, she said that it was up to individual judicial officers to decide how to handle this, but that she did often try to incorporate some kind of reconciliation in criminal cases. She also said that she spent time trying to explain decisions that she had made in court, particularly to the 'losing' side as a way of 'making peace', and she thought that adding some kind of reconciliation after civil cases would also be possible. It may be that the lack of this relatively simple practical element (with high symbolic value and meaning), contributes significantly to the view of state justice as more punitive and less conciliatory, particularly in small communities where people need to find ways to move past disagreements and live together<sup>50</sup>.

<sup>&</sup>lt;sup>49</sup> This was, in fact, the key role identified for religious leaders in conflict management in Malekula, and is often referred to as 'praying and forgiveness', along the lines of the Christian value of forgiving and forgetting.

<sup>&</sup>lt;sup>50</sup> The concepts of apology and reconciliation are explored further in section 5.7 below.

## **Values Relating to Justice**

Given that views about state (and community) justice are based on a complex set of practical and ideological factors, the research also attempted to gauge how community members and chiefs weighed various values relating to justice. For example, all respondents were asked to identify a preference between having good relationships in a small community, versus the importance of families living peacefully together and being free from violence. In this question, more than two thirds of all community members and chiefs who were interviewed, including women (69%), chiefs (69%) and men (71%) said that families living peacefully and free from violence was more in line with their thinking. This is not to say that having good relationships was not also of value, but that the majority did not prioritise relationships over families living peacefully and free from violence.

In the research, community members and chiefs were also asked to share what the word 'justice' meant to them<sup>51</sup>. While their answers might have been somewhat loaded by the fact that 'justice' is an English word (even as it is translated into Bislama as *jastis*) the answers were interesting here as well. While 28% of women said they had no idea what justice meant (compared to only 7% of men and none of the chiefs), men and chiefs related justice to values of fairness and equality slightly more often than they did to values around community harmony and good relationships. So while there is a common assumption that in Vanuatu good relationships and community harmony are valued above all else (and this is often held up as a critique of state justice processes versus community justice processes), the answers were not as predictable in this area either<sup>52</sup>. The research also looked at the impact of community and state justice processes on relationships, as shown in the following table:

| Table 4: Community Members'Experiences of Conflict Managementin the Past Year |            | Experience with State Justice |                       | Experience with Chiefs  |                       |
|---|------------|-------------------------------|-----------------------|-------------------------|-----------------------|
|   |            | <b>Women</b><br>(N=179)       | <b>Men</b><br>(N=165) | <b>Women</b><br>(N=179) | <b>Men</b><br>(N=165) |
| Did the way the conflict was  | Yes        | 57%                           | 29%                   | 63%                     | 64%                   |
| managed improve the   | Somewhat   | 22%                           | 21%                   | 8%                      | 13%                   |
| relationship between you  | No         | 21%                           | 50%                   | 25%                     | 23%                   |
| and the other party?  | Don't know | 0                             | 0                     | 4%                      | 0                     |
| Did the way the conflict was  | Yes        | 50%                           | 36%                   | 53%                     | 44%                   |
| managed spoil any of your   | Somewhat   | 29%                           | 21%                   | 8%                      | 10%                   |
| relationships with your   | No         | 21%                           | 43%                   | 38%                     | 46%                   |
| family or your community?   | Don't know | 0                             | 0                     | 1%                      | 0                     |

For community members who had experienced a conflict in the last year, while justice processes involving chiefs had a slightly less negative impact on relationships, there was not as great a difference as one might assume. This was especially the case for women. Again, the reason for the difference between women and men could relate to a number of factors,

<sup>&</sup>lt;sup>51</sup> Respondents were encouraged to say whatever they thought, and were reassured there were no right or wrong answers. The researchers did not provide any suggestions, with answers disaggregated in the analysis.

<sup>&</sup>lt;sup>52</sup> However, while chiefs may have a more nuanced sense of justice as a concept, what they see themselves doing at the

community level around conflict management may have more to do with mediating relationships than with justice as discussed in section 4.4.

including the kinds of conflicts that men brought to the state justice sector. In the research men had attended court in the past year mainly because of land cases (93%). By comparison only 39% of the conflicts men brought to chiefs to solve in the last year related to land. Women also identified bringing significantly fewer land cases to both the courts (64%) and chiefs (29%). It may be that men's views of court services are significantly impacted by their experiences of land cases in particular<sup>53</sup>.

# 2.4 OTHER CONCERNS ABOUT STATE JUSTICE

'Court cases carry on and on because people don't know and understand the laws and how justice works. So things never get solved and there is too much confusion.' - Man, South Malekula

'The process of reporting to the police, then going to the magistrate and maybe the Supreme Court takes far too long.' - Man, Southwest Malekula

'There is confusion around the court system and where to go...and people don't know what to do with things that are moving too slowly.' - Men's Focus Group, South Malekula

## State Justice Takes Too Long

A number of other concerns were raised in the research relating specifically to state justice processes, including a common concern about the amount of time the courts can take to resolve issues. Land cases in particular can take an inordinate amount of time to move through the court system. In the research other cases as well were identified as moving very slowly through state justice processes. This backlog may be partly based on the fact that a number of cases that are making their way to the police and the courts relate to matters that should and could be resolved elsewhere. This could, in turn, be partly due to the actual or perceived ineffectiveness of chiefs in some areas, and could also be due to the fact that island court justices generally are not functioning effectively or to their full capacity<sup>54</sup>. It could also have to do with how matters are being processed through the police.

In the research it was clear that a number of issues that are making their way out of the community and to the police are not being effectively progressed beyond that point, leading to the perception at the community level that matters take too long in the courts. In at least two communities the chiefs said that the police had not been progressing domestic violence cases that the community was sending to them. The magistrate also raised deep concerns

<sup>&</sup>lt;sup>53</sup> See section 2.5 for more about the courts and land issues.

<sup>&</sup>lt;sup>54</sup> Section 2.6 offers more on the island courts.

about a number of rape cases (more than 10 dating back to 2008) that had never been brought to court by the State Prosecutor<sup>55</sup>. While there is no doubt that court processes can take a long time, other factors (such as police inaction) may be stalling cases, leading to the perception that state justice takes a long time.

#### 'Communication' Challenges

'People are afraid of the courts and going to "the law" especially because some people can't speak Bislama or don't want their problems to become public.' - Men's Focus Group, South Malekula

'In court, if you can speak, you will win. If you can't speak well, even if you are right, you will lose. Even the Supreme Court makes decisions based on those who can speak and express themselves better.' - Chief, Northwest Malekula

> 'People who can talk and who have money win in court.' - Chief, Northeast Malekula

Another concern about state justice raised in the research had to do with a perceived bias, or the idea that if you can 'speak well' (that is, if you have a higher level of education or greater social status) you will win in court. As will be discussed further, this may not be an unfair or inaccurate assessment, particularly at the level of the island courts. For many community members, especially those without substantial education or experience outside of their village, the courtroom space itself, and the processes of court, may be so unfamiliar and intimidating that they may not be able to speak effectively about their case. Having to air personal conflicts in the court environment and in public may pose an additional challenge (although this may also be a challenge in community justice processes as well).

A related complication is the fact that the court functions in an environment, particularly in rural areas, where evidence may be quite limited and based on oral rather than written records and accounts. In fact, in the island courts, rules of evidence do not apply and the court is directed to, '...admit and consider such information as is available.'<sup>56</sup> As one island court justice stated in the research, 'Justices and magistrates can make wrong decisions if the information is not straight.' Other cases are complicated by the lack of police capacity to effectively investigate and prepare cases for court. In a reading of charges in the magistrates' court that was observed during the research, the State Prosecutor had drafted a series of charges improperly, leading the magistrate to say, 'If the police don't do their work, it's not the court's problem.' While the courts have no control over these issues, community members may still view them as failures of the court system.

<sup>&</sup>lt;sup>55</sup> This will be discussed further in section 3.5 in the section on police services, women and access to justice.

<sup>&</sup>lt;sup>56</sup> Vanuatu Island Courts Act (Consolidated Edition) 2006. <a href="http://www.paclii.org/vu/legis/consol\_act/ica164/">http://www.paclii.org/vu/legis/consol\_act/ica164/</a> viewed 4/4/2016.

#### Lack of Access and Resourcing Issues

'Each kastom area should have a police post and should have a regular visit from the magistrate and a place for the magistrate to come and hear cases.' - Island Court Justice and Chief

'They need to hold courts in more rural areas – Lakatoro is too far and too expensive.' - Chief, South Malekula

Concerns were also raised in the research about the cost of traveling to court (both to initiate cases and to attend court), which relates to the lack of decentralisation as discussed above. While there were references to the island court sitting in Northwest Malekula a number of years ago, because the island court 'has no funds' according to one court officer, they mainly hear cases in Lakatoro. The magistrate also identified the lack of resourcing for the court to tour as a significant issue, saying that it would be ideal for the court to tour four times a year, and for longer than five days. Ideally, in a tour, the police could tour first (with a female officer as well) and then the magistrates' court and the island court could tour together after the police. The need to 'market' the courts and court services was also identified as valuable, and could potentially be carried out at the same time as court tours. Another significant area of need related to training for the island court justices.

Other resourcing issues identified during the research included the need for a dedicated vehicle for the courts. In fact, a recent report on the island courts said that this need was identified as early as 1985, and stated further that, 'The lack of vehicles remains an impediment to the functioning of island courts to this day.'<sup>57</sup> The lack of vehicle also impacts the magistrates' court with the magistrate commenting that a number of summons were being served illegally because of this issue. Another stakeholder suggested that it would be very helpful to have a lawyer from the Public Solicitor's office on Malekula again<sup>58</sup>. This was supported in the research where there seemed to be a clear need for access to free legal information and services. When the court tours, it would be ideal if the Public Solicitor (when one is available) and the State Prosecutor could tour as well.

## The Need for Mediation

In the research, it was clear that community members regularly come to the police for help with issues that they are unable to solve within their families or communities. Some of these issues are progressed to court, but a number are mediated more informally by police themselves, either at the request of the community member or based on the officer's discretion<sup>59</sup>. This informal mediation usually takes place in the form of a 'roundtable' where

<sup>&</sup>lt;sup>57</sup> Goddard, M. and L. Otto 2013. Hybrid Justice in Vanuatu: The Island Courts, *Justice and Development Working Paper Series*, World Bank, 19.

<sup>&</sup>lt;sup>58</sup> While a fairly new office, with administrative support, was established several years ago, the office has been empty since the original lawyer from the Public Solicitor's office was brought back to Port Vila over a year ago.

<sup>&</sup>lt;sup>59</sup> Section 3.4 offers more discussion on police exercising discretion and the need for mediation.

both parties (and often their family members as well) sit down with a police officer to discuss the issue or conflict and come up with some kind of resolution. According to one officer, community members like roundtables because they can speak more freely than they can in their communities, and they feel safer because they are sitting with the police. In some ways roundtables and other informal mediation processes model community processes, but with extra protections and controls, including practitioners who presumably know something about – and are acting in accordance with – the law. Roundtables may also be seen as a more neutral space.

Recently, however, the police executive formally discontinued the use of roundtables on Malekula. A variety of reasons were provided for this during the research including returning power to the chiefs, and the fact that police officers are not trained for this role and conduct roundtables without supervision or oversight which can lead to inconsistencies in the way conflicts are handled (and that may not be in line with the law). According to one officer the roundtables were stopped because police '...should just do police work and leave it to the courts to judge'. While the limitations of police officers exercising significant discretionary power without training and in a context of limited policing resources, active oversight and supervision is clear, this decision has left police officers and community members in a difficult position in some situations. There are cases where people come to the police because the issue cannot be solved at the community level, but at the same time they may have no interest – or it may be inappropriate – to take the matter through the courts.

Given the understandable limitations of the court system, including under resourcing and significant backlog, as well as the limitations of community conflict management systems – and the nature of some conflicts – it is not clear if this is adequate. In fact, without access to more formal mediation options it is likely that mediation of some kind will continue to happen in an ad hoc way. The courts have also recognised the need for more formal mediation, including creating provisions for mediation in Vanuatu's Civil Procedure Rules<sup>60</sup> although to date it seems that this has not been utilised except in a limited way in the Supreme Court. In fact, mediation services of some kind (accessed directly or through court referrals or both) would be even more valuable in rural contexts like Malekula, and could help to extend court services and conflict management options to a greater number of people.

# 2.5 THE COURTS AND LAND ISSUES

'The chiefs shouldn't deal with land cases as it's a conflict of interest.' - Man, Central Malekula

'The courts have really messed up land issues – and this has an impact on everything.' - Chief, Northeast Malekula (involved in a protracted land dispute)

<sup>&</sup>lt;sup>60</sup> Vanuatu Civil Procedure Rules (Part 10). <a href="http://beta.paclii.org/vu/rules/CPRules2002/Part10.html">http://beta.paclii.org/vu/rules/CPRules2002/Part10.html</a> viewed 4/4/2016.

'The Supreme Court is not trusted in terms of land cases, but is trusted to deal with criminal cases. Criminal cases should follow the law, and land cases should follow kastom.' - Chief, Northwest Malekula

#### Case Study: An Island Court Land Case<sup>61</sup>

This case involves a community of more than 200 people in Northwest Malekula. The original village site is set back from a long stretch of beach, adjacent to a waterfall, which also acted as the village's water source and as a place to swim and wash. According to the chief and a male community leader, an 'adopted son' in the community, who is also a prominent businessman, brought a land case against the community several years ago. This adopted son first brought his case to the village 'court' and the area 'court' (all managed by local chiefs) and lost in both of these venues. He then appealed the case to the island court, and won his case there. The chief contends that none of the island court justices were from their kastom area, and so were ill equipped to hear the case. This chief was also of the opinion that as simple villagers who were not used to a court environment, they were at a significant disadvantage as the other party was a skilled speaker and was also a well-known businessman in the area where the island court sat to hear the case.

Based on this island court decision, an eviction order was issued and the Vanuatu Mobile Force was sent to remove the community from the village. The eviction was described as very quick and the community was removed from the village in one day – the Mobile Force arrived at 8 am and the community was moved out by 4 pm. Originally this created a crisis, as the community did not have any proper shelter in the new location and very little food. One community member talked about having to raise a new set of chickens from one mother hen, as many of their chickens ran off during the eviction. The community was grateful to have been given this piece of land by a 'brother' chief (in Big Nambas kastom each chief has a 'brother' chief from another village that he can consult with or rely on in times of need) that they have been allowed to occupy temporarily. While they have built temporary houses out of local materials, they do not have a good water source in this location, either for drinking or for washing (a very shallow, somewhat muddy creek).

The eviction took place in 2011, and at the time of the research in July 2015, the community was still living in these 'temporary' arrangements. The community has appealed their case to the Supreme Court, but they have been waiting for several years for the case to be heard. The community has a garden area that is about an hour inland from the coast (up fairly rugged and hilly terrain). The chief said three families from the community moved up into the bush near the gardens after the eviction. The rest of the community is waiting for final resolution of the land case. It is not clear what will happen if the Supreme Court finds for the other party, as the land that they are on now was only offered as a temporary solution. After four years of being abandoned, most of the buildings in the original village site have deteriorated significantly.

While this case represents a fairly extreme and tragic set of circumstances, land cases with big impacts are not unique in Vanuatu. And it is easy to understand how community members are justifiably frustrated and deeply disappointed in how state justice has handled cases involving land, particularly in situations where the loss is so profound. Land cases in

<sup>&</sup>lt;sup>61</sup> This case study reflects only the perspectives of one side in this dispute (the story was shared by the chief and another senior community member). As well, many of the issues relate to island courts in particular, rather than the courts as a whole. Several of these issues will be discussed further in section 2.6 on island courts.

any forum are, by their very nature, highly complex and contentious, and about finding a winning and a losing side, with high stakes, in a relatively limited and complex evidentiary environment. They are also linked to so many other aspects of community life. As a result, and as the magistrate pointed out, in many cases land issues also '...create a chain of violence'. This view is backed up by research into island courts in Vanuatu that found there was, '...a clear inference that many disputes that might at first sight be otherwise classified were actually generated by underlying disputes over land ownership and use.'<sup>62</sup>

The length of time that land cases take to be resolved can lead to other conflicts as well. This is true particularly in Vanuatu's overburdened and under resourced state justice system where cases often take a long time to be heard, and can drag on for many years through appeals. While the new land laws were set up to take land cases out of the courts as a way to address some of these issues, they will not remove all land matters from the courts. Many land related cases dealing with trespass, assault, theft and property will still make their way to court. As discussed above, these are some of the kinds of cases that the chiefs who were interviewed identified sending to state justice already. And land cases that are already in process will continue to be heard by the courts.

#### **Chiefly Title Disputes**

Island courts are also still hearing cases around chiefly title disputes<sup>63</sup>, and these cases are often directly linked to land disputes, as the research into island courts quoted above also points out: '...chiefly titles are linked to land ownership, and contemporary land dealings hold the possibility of substantial monetary profit for a landowning chief.'<sup>64</sup> A court representative on Malekula wondered if, in fact, leaving chiefly title in the island courts might have been an oversight. Chiefly title disputes were identified as a major concern in the research and were directly tied to land disputes. In fact, in one place visited during the research a chiefly title dispute had virtually paralysed the community's ability to solve any other conflicts and left the community in fear that they would be removed from the land<sup>65</sup>.

In another community a respondent discussed an ongoing land dispute involving the community's paramount chief (who was also described as an island court justice). The respondent said that this chief was not the rightful chief, and that a chiefly title dispute was underway in this community as well. It was also reported that this dispute had resulted in police involvement, but in the respondent's view the police were not involved in a neutral and

<sup>&</sup>lt;sup>62</sup> Goddard, M. and L. Otto 2013. Hybrid Justice in Vanuatu: The Island Courts, *Justice and Development Working Paper Series*, World Bank, 7.

<sup>&</sup>lt;sup>63</sup> In Vanuatu chiefly title disputes typically involve two or more parties who are in conflict over who has the right to be recognised as the chief in a particular area.

<sup>&</sup>lt;sup>64</sup> Goddard, M. and L. Otto 2013. Hybrid Justice in Vanuatu: The Island Courts, *Justice and Development Working Paper Series,* World Bank, 6.

<sup>&</sup>lt;sup>65</sup> This case allegedly involved three brothers, one of whom was reported to be involved in land processes and was also described as an island court justice (in another jurisdiction). This individual was said to be disputing the chiefly title that was linked to ownership of the land that the community currently lives on. Community members feared that if the chiefly title dispute was found in his favour that they would be removed from the land.

fair way, and acted in support of the chief (because they stayed with the chief and were fed by him). While these stories and the case study above represent only one side of these issues, and present a highly simplified view of complex situations, what is clear is that land cases are contentious, often linked to chiefly title issues and other community conflicts, and that in a number of cases chiefs and even court officers themselves may also be personally implicated.

So while community members and chiefs expressed understandable frustration in the way that land issues had been handled by the courts, it is not a simple picture, and many of the issues are ones that the court itself seems to recognise. As well, a number of respondents said that the way chiefs were handling land issues was problematic too, with one man in Southeast Malekula saying, '... our chiefs here just aren't capable of handling our land issues'. As mentioned above, 26% of the chiefs who were interviewed identified land as an issue that should only be dealt with by the courts. To add to the complication, in several parts of Malekula elected chiefs are the norm (reportedly as a result of an earlier Customary Land Tribunal process), and these individuals may not have the same local kastom knowledge that chiefs in other locations might have.

While chiefs and community members expressed strong support for the new land laws and returning the power to determine land cases to the chiefs during the research, it is not clear how much of this is part of an understandable reaction to the overwhelming frustration that people have experienced around the courts' handling of land cases. And while it may be politic to provide chiefs with greater power and recognition in terms of land, it is not evident that chiefs will be any better positioned to deal with land cases, especially those made more complex by issues of internal migration and displacement. It is also clear that the courts will still not be effectively separated from land issues, given their mandate to hear cases that are already in the system, and given the fact that chiefly title disputes are still within the jurisdiction of the island courts. The relationship of many other community conflicts to land disputes, which will continue to make their way to court, regardless of where the land cases themselves are heard or how they are resolved also ensures courts are not, in fact, separated from land disputes.

# **2.6 THE MALEKULA ISLAND COURT**

'There are a lot of problems with island courts in particular. Kastom is different in every part of Malekula and the island court justices aren't judging in the right kastom area. The system also privileges people who can write and who are able to talk. Lots of island court justices create problems and they aren't guided by policies and guidelines.'

- Chief, Northeast Malekula

'Malekula has eight kastom areas, and the people who judge cases need to be taken from the same kastom area. The problem with the island court before is that they took them from the wrong kastom areas.' - Island Court Justice and Chief

'Island courts all sit in Lakatoro and there is an issue with island court justices hearing cases that are not in their kastom area.' - Chief, Northeast Malekula

A number of issues were raised about the island courts during the research, including several that have already been discussed. These include challenges around evidence, and the perception that island court justices in particular base decisions around who can speak better, and some of the substantial challenges around the island courts involvement in land and land-related cases, including chiefly title disputes. One of the most common and persistent complaints about the island courts, however, relates directly to its mandate to: '...administer the customary law prevailing within the territorial jurisdiction of the court'<sup>66</sup>, as illustrated in the comments above.

This mandate was most likely created with good intentions, particularly in consideration of the substantial engagement the island court was originally intended to have with land issues. Unfortunately, as several respondents in Malekula pointed out in the research (including one island court justice), the 'territorial jurisdiction of the court' specified above does not correspond with kastom jurisdictions. Malekula has several distinct kastom areas, and what should have been required, if the courts had wanted to give kastom knowledge a role in land and land-related cases, was at least one justice with detailed knowledge of the very local kastom histories and relationships of the specific area in question. Instead only one of the three justices that sit on a case is simply required to have knowledge of kastom in Malekula more generally, as a '...custom chief residing within the territorial jurisdiction of the court'<sup>67</sup>.

So while the courts have on the one hand attempted to create a space for, and even privilege, kastom knowledge within the state justice system through the island courts by allowing for justices to be selected based solely on their knowledge of kastom, and even going so far as to mandate the court to '...administer the customary law...so far as the same is not in conflict with any written law'<sup>68</sup>, it has still failed to equip the island courts with the specific kastom expertise that would be necessary to carry out this mandate effectively. This is particularly true for land and land-related cases, where general knowledge of kastom is not sufficient to determine cases, and more detailed, specific and specialised knowledge of the area in question is necessary. Under these circumstances it is not surprising that justices are resorting to making decisions based on what they are told or what is said in court.

<sup>&</sup>lt;sup>66</sup> Vanuatu Island Courts Act (Consolidated Edition) 2006. < http://www.paclii.org/vu/legis/consol\_act/ica164/> viewed 4/4/2016.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

While the island court's official role in determining land cases was removed in 2001, pending land cases were still being heard in the courts more than a decade later<sup>69</sup> and, as discussed above, the island courts are still mandated to hear chiefly title disputes on Malekula, although the magistrate stated in the research that several of these cases had also been '...sleeping there for years'. At the same time that kastom has been privileged but poorly supported in the island courts, the law and legal knowledge seems to have almost been neglected. While island court justices have the potential to be engaged in a limited way in some civil and criminal matters, most really just know kastom and know very little about the law. In the magistrate's words, 'The island court justices know kastom, but know "zero" about court processes.'

The magistrate commented that while the justices often seem to try to imitate the authority and style of magistrates and judges, they often get the substance wrong because they do not have sufficient training in the law. This leads to a high number of appeals that then come to the magistrates' court to be heard and dealt with. The magistrate said that beyond chiefly title disputes, the only cases that the island court is currently allowed to hear on Malekula are cases involving child maintenance<sup>70</sup> and debt less than VUV 50,000 (given restrictions imposed by the Chief Justice). Currently, only half of the island court justices are being used because several of them have been found to be too poorly qualified (which accounts for the decrease from 17 to nine active island court justices in the last two years). The following case study highlights some key areas of concern about a number of island court justices on Malekula:

#### **Case Study: Some Areas of Concern about Island Court Justices**

While most island court justices are from Malekula, some are from neighbouring islands, where despite being in the same provincial jurisdiction, kastom governance, land ownership and other issues may be substantively different. One island court justice who was not from Malekula said that they had learned about Malekula kastom by sitting through a lot of cases.

One island court justice described their decision making process in the following way: 'I listen to what people say in court, and I try to see who the majority of people seem to support, and then I pick that individual or group. I also watch people and try to figure out who is right.'

When asked about how they deal with negotiating kastom and law, one island court justice said 'I only deal with cases on the side of kastom. Sometimes law isn't straight with kastom'.

When asked a question from the research, 'Do you agree or disagree: It is more important to follow the decision of a chief, even if it isn't in line with the law?', two of the three island court justices interviewed said it was more important to follow the decision of a chief, than it was to follow the law.

<sup>&</sup>lt;sup>69</sup> Goddard, M. and L. Otto 2013. Hybrid Justice in Vanuatu: The Island Courts, *Justice and Development Working Paper Series,* World Bank, 20.

<sup>&</sup>lt;sup>70</sup> No information was shared by respondents about how the island court handles child maintenance cases. Recent research carried out by UN Women on *Women and Children's Access to the Formal Justice System in Vanuatu* may look at this issue in greater depth.

One island court justice seemed confused about the role of the magistrate, and the relationship between kastom and the law in Vanuatu and the work of the courts saying, 'I have worked with two magistrates, and the previous one was based mainly in kastom. The current magistrate deals mainly with the law, though – she is really strong in the law. Is this okay?'

While very few island court justices were interviewed, the commitment of those who were interviewed was clearly strong. Two of the island court justices who were also chiefs were charismatic, expansive thinkers who seemed to have a solid understanding of the basic principles of Vanuatu's laws and human rights, and in at least one case the justice seemed to be applying this knowledge to his work as a chief as well. These justices also shared some less than ideal perspectives relating to the law and kastom, however, including one island court justice who made the statement that 'The European Constitution (and human rights) isn't straight with kastom.' Another justice also thought it was all right for the police to use corporal punishment with difficult young people, but only on the order of the chiefs.

In many ways, the island courts seem to be the most challenged part of the state justice system in Malekula. This is partly the case because their powers have been stripped back (in Malekula more than in other jurisdictions apparently) because of their lack of knowledge and training. With their role in land cases removed, the necessity of their having kastom knowledge has diminished substantially, and yet their knowledge of – and even their support for – the law in Vanuatu is very thin. While one insightful island court justice said he had gone through two additional training sessions since he was trained more than 30 years ago when the island court was first set up, it is not clear that all of the justices have experienced this level of training. Another justice seemed to have gone through only two training sessions in nearly 20 years.

In fact, there does not seem to be a practice of providing significant organised support to the island court justices, including any manual or written materials to guide them in their work. One justice said that he had requested a 'book of laws' but was told he would have to pay for it himself given limited court resources. It seems clear that while several island court justices are doing the best they can, they are doing so under challenged conditions, and with multiple limitations. These significant weaknesses have a direct impact on community access to justice by failing to adequately serve the community members who attend the island court, and by creating a greater backlog in appeals to the higher levels of court.

While the island court in Vanuatu is regularly referred to as a 'hybrid' court, it is unclear in its current state how it is adequately representing either kastom or the law, particularly on Malekula. While there are most likely numerous ways to address this, it will require the will of the courts and resourcing. In her supervisory capacity the current magistrate is keen to contribute, particularly to the further training of the current island court justices. This could be a good interim measure, to assist and improve the ongoing functioning of the court in

Malekula. It also seems timely, however, to review the role of the island court itself<sup>71</sup> over the longer term, in light of lessons learned in its 30-year history, and the changing social and legal context in Vanuatu.

# 2.7 COURT SERVICES, WOMEN AND ACCESS TO JUSTICE

'Women don't understand how the state system works.' - Researcher

#### 'Lots of women pursue Protection Orders through the magistrate, and a lot of them come back to thank me.' - Police Officer, Family Protection Unit

In the research chiefs and community members were provided with a hypothetical scenario where a young woman in a village is being beaten regularly by her husband. When asked how they would handle this in the first instance, not one man or women said they would take this matter to the courts and only 5% of chiefs said they would take it to the magistrate. The vast majority of respondents said they would see a chief first, with women identifying chiefs with the greatest frequency (71%). When asked about the *best* place to deal with a situation like this, however, while 48% of chiefs still said that chiefs were the best people to deal with this kind of situation, 36% of men and 42% of women felt the police were the best place for this kind of issue. The courts were identified as the best place by 17% of the chiefs, 10% of men and only 3% of women.

In considering the courts and court services, there are two main areas that relate to access to justice for women that arise from the research. The first has to do with the challenge of getting serious cases involving women, including rape and domestic violence, into the courts. This will require work in several areas beyond the courts, including ensuring that cases are sent out of the community in the first place, and that police are effectively carrying out their work to progress these cases to court. In one earlier meeting the magistrate commented that South Malekula must be a really hard place for women as she never receives any cases from there. While this is obviously dependent upon other factors and stakeholders, more regular court tours would also help immeasurably in this regard.

As demonstrated by many of the findings discussed above, women seem to have a fairly high level of trust for court officers and the magistrate in particular. Women also perceive the courts as somewhat more fair than men do. While this is probably the case for a number of reasons, it may also be that women feel that their needs and interests are more effectively dealt with in a court environment, particularly for the kinds of issues for which they more

<sup>&</sup>lt;sup>71</sup> This is the same conclusion that was drawn in the 2013 study of island courts in Vanuatu. See page 37 of Goddard, M. and L. Otto 2013. Hybrid Justice in Vanuatu: The Island Courts, *Justice and Development Working Paper Series*, World Bank.

regularly seek help. While women seem to use chiefs more often than any other justice practitioner, it is not clear that this always represents a preference. As demonstrated in the hypothetical scenario above, when women were asked to identify the *best* place for an ongoing domestic violence situation, the majority of women did not choose chiefs.

It is likely, however, that women find it much more difficult to access the courts than men do. This does not seem to be related to the actions of any court officials, however. The island court justices who were interviewed expressed fairly progressive and supportive views about women, particularly around domestic violence issues (that they handle in their capacity as chiefs rather than as island court justices). One of the justices even raised a valid concern in his community about how domestic violence issues were being handled. The magistrate also seems to be providing effective support to women in domestic violence cases, when these cases reach her, and is passionate about trying to ensure that serious cases involving women, like the outstanding rape cases mentioned above, are progressed as well. Giving more women access to the courts through court tours will not only provide physical access, but will also help to demystify court processes for women, which will also be important.

The other main area that needs attention in terms of women's access to state justice, however, relates to empowerment and information. Women consistently had significantly less knowledge about the state justice system, its processes, and about Vanuatu's laws and human rights than any other respondents in the research. The researchers also consistently commented on the fact that they found women to be far more likely to say they did not know, say that they would ask 'no one' for help, and regularly resorted to 'prayer and forgiveness' as a way to solve their problems (which often seemed to represent more of a necessity than a preference). One chief in Northwest Malekula who said that he thought women could play a greater role in decision making in his community (two thirds of chiefs supported this) added that women would need to be able to see for themselves that they could do it – and would need a lot of confidence building and support.

Ultimately creating pathways for women to state justice through the chiefs, and the police, and even by creating greater access to court services will be necessary, but can only be part of the strategy. If women are not empowered to access this support, or do not fully understand the processes and options available to them, particularly in the realm of state justice, they will not be used. While both the women and men who were interviewed in the research had a comparable average age (in their late thirties), and had a similar average number of years of education (between seven and eight years), some of the statistics for women in terms of their knowledge of the law, human rights and justice were shocking:

- 28% of women had no idea what justice meant (compared to 7% of men, and no chiefs)
- 44% of women had no knowledge of human rights (compared to 20% of men, and no chiefs)

60% of women had no knowledge of the law (compared to 27% of men, and 5% of chiefs)

Women's access to state justice and effective use of court services will not be substantially improved until some of these significant gaps are addressed.

# 3. FINDINGS RELATING TO POLICING AND POLICE SERVICES

# BRIEF SUMMARY OF PART 3: FINDINGS RELATING TO POLICING AND POLICE SERVICES

#### Background

- The main police station is in Lakatoro, and police posts are located in Lamap and Windua (with one temporary, 'unofficial' post also identified during the research).
- The official police roster identifies 23 officers on Malekula, but the 'active' list is probably closer to half (due to retirement and sick leave).
- One police truck is functioning and one police boat (there should be two of each), and there is no official holding cell on Malekula (although one community, where there is no police officer stationed, has constructed their own cell).

#### Summary of Findings and Key Issues

- Police views were generally found to be 'progressive' overall.
- Police services are poorly decentralised people generally have to go to the police (95% of community members and 98% of chiefs said they rarely or never saw the police in their community).
- Police are on average 4.4 hours away and the average cost to reach them is VUV 2,350 (58% of men and 44% of women said they had used the police).
- People said they were generally satisfied with police services, and assessed them as reasonably fair (72% of men and 73% of women said they were satisfied with police and 69% of men and 67% of women said they thought the police were fair or somewhat fair).
- The main concerns about police and policing services included: limited resourcing and infrastructure, issues of alleged misconduct, police referring issues back to the community and chiefs, lack of clarity around what is handled where, police engaging in mediation (roundtables, peace notes), capacity issues particularly in investigations and prosecutions, and lack of knowledge about where to take complaints about the police.
- Domestic violence and sexual assault were identified as the main reasons for women seeking help from the police, however, a lot of these issues are managed in the community, and some domestic violence is referred back to the community by the police.
- A number of outstanding rape cases had not been progressed from state prosecutions to court at the time of the research.

#### **3.1 BACKGROUND**

Police in Malekula are under the immediate authority of the Officer in Charge of Malampa Province and the Officer in Charge in Lakatoro. Within the police authority structure, oversight of the police on Malekula is through Commander North who is based in Luganville, Santo. The Officer in Charge of Malampa Province was aware of the research and endorsed it, although he was on extended leave through the research period. An official police human resource list for 2015 identifies Malekula as having 23 police officers in total. According to the list, 19 should be based in Lakatoro, and two officers should be in each of the official police posts: Lamap in South Malekula and Windua in Southwest Bay.

In reality there are probably fewer active officers in Malekula than the list reflects. Only one officer was stationed in each of the two official police posts at the time of the research, and an additional officer was based in an office in an Area Council building and living in a nearby village. This officer is identified in the official list as being Lakatoro-based, and stated that he was there under the authority of the Officer in Charge of Malampa Province. In Lakatoro there are probably fewer than 19 active officers as well. One officer in Lakatoro who was interviewed said that there were only 16 officers for all of Malampa Province.

In total nine officers were interviewed during the research: six in Lakatoro (including the Officer in Charge in Lakatoro and the Family Protection Unit Officer) and three in police posts (Windua and Lamap) and in the Local Area Council building. The average age of the officers who were interviewed was 45 (the youngest was 29 and the oldest was 63), and they had spent an average of 10.8 years working as police officers in Malekula (from six months to 20 years). The officers who were interviewed identified having an average of 12.1 years of education, and one third of the officers interviewed were from Malekula, with at least one also identifying himself as a chief in his community. Eight male officers and one female officer were interviewed.

In terms of physical resources and infrastructure, at the time of the research there was one functioning police truck based in Lakatoro (a double cabin pick up, not a 'cage' truck), with a second pick up truck awaiting repair. These trucks serve all of Malekula (with an estimated population of more than 30,000 people), with none of the police posts having a dedicated truck. The Lakatoro police station contains a number of offices that are all in use. Officers' housing is located close to the police station, and is also in use but is said to be in need of repair. Malekula has no official, functioning holding cell or prison. The Officer in Charge of Lakatoro said that he had authorised shutting it down because it did not meet minimum standards. One community in Southwest Malekula had constructed its own holding cell, although they have no active police officer in the village or nearby.

In Lamap there is a police post and housing for up to four or five officers, however neither are in use, and they may be in significant disrepair. The officer in Lamap was using an office in the back of a central administrative building and has arranged his own accommodation in a nearby village. In Southwest Bay, the police post is based in Windua in a small complex that was built in 2008 to house the police and the Area Council. While the building appears to be in good condition, it does not seem to be in active use. The officer in Southwest Bay was living in a village about a 45-minute walk from Windua. Both official police posts have a boat, although the one in Lamap was not in use because the engine was undergoing repair. While the boat in Southwest Bay was not sighted during the research (it is said to be parked in the village where the police officer is living), it was reported to be functioning.



The former police post buildings in Lamap (no longer in use).



The police post in Southwest Bay.



The Lamap police boat (the engine is being repaired).



A community built holding cell in Southwest Malekula.

# **3.2 Key FINDINGS**

## **Police Views about Justice and Conflict Management**

'If you win, it's justice, if you lose, it's justice – it's going through a [fair] process that is justice.' - Police Officer

> 'People break the law because they don't know the law' - Police Officer

#### 'Justice is everyone knowing the law and living by the law. It's not justice if everyone doesn't know the law.' - Police Officer

'There aren't enough police to uphold the law in the country. People at the community level need information about the law. People just don't know the law at all. Some people live far away from the law and the police, and they may have problems, but they would never know.' - Police Officer

During the interviews police officers consistently shared what might be considered fairly progressive views around certain aspects of justice, with every officer interviewed stating that: everyone (and not just heads of families) should have the right to speak in the nakamal; chiefs and community leaders should respect the rights of young people, and do not have the right to use corporal punishment or force; and police do not have the right to use force and should look out for everyone's rights including people who have broken the law. While two officers who were interviewed said that they did not think women were involved in resolving conflicts in Malekula (both were from other islands), every officer interviewed said that women should be more involved in managing conflict at the community level.

When asked what justice meant to them, several officers cited values of community peace, a sense of fairness, and knowledge of the law. While every officer interviewed said that they felt that community bylaws were a good idea at the community level, they said that these bylaws should comply with the law and human rights standards<sup>72</sup>. Every officer interviewed stated that community members needed more information about the law and their rights, with women, youth and chiefs identified as being in particular need of this information. Several officers also supported the need for greater engagement of community members around security, and law and order issues, with one officer even suggesting the need for something like a 'Neighbourhood Watch' program.

## **3.3 MAIN SAFETY AND SECURITY ISSUES**

The main safety and security issues that were raised by police, community members and chiefs on Malekula in the research were (in no particular order):

## **Domestic Violence**

Domestic violence was identified consistently as an issue that many women are dealing with silently. In the research women and men were asked if they (personally and directly) were involved in any conflicts in the last 12-month period that had required someone else's assistance to solve (including friends or family members). While there were significant regional

<sup>&</sup>lt;sup>72</sup> See section 4.6 for a more in depth discussion of bylaws, and to view several examples of community bylaws.

differences, 19% of all conflicts reported by women across Malekula related to domestic violence<sup>73</sup>. Several police officers raised domestic violence as a major issue on Malekula, and in some areas women seemed to be dealing with profound security issues relating to domestic violence, and the inability of the community to deal with these issues.

#### Lamap and Surrounding Communities

One stakeholder identified the Lamap area as a 'crying shame', and the research team identified it as the most challenging place they visited, from a law and order perspective. There seemed to have been several unprovoked physical attacks in the community in the past year. It was reported (and observed by the research team) that young men in the community walk around with knives for their own security (not for gardening, as one would expect in most locations in Vanuatu). The magistrate also said that nothing comes to her from Lamap. The death of one local chief's brother, allegedly as a result of youth violence, and other issues around youth and security, have made many people in the community fearful about getting involved.

#### Marijuana

Marijuana was identified as a significant concern in different parts of Malekula, and an issue that was not being dealt with effectively. In several places community leaders raised security concerns in relation to the growing of marijuana, particularly vis-à-vis groups of young people, and marijuana was also linked to black magic in some locations. According to one police officer, the proceeds from growing marijuana often benefit the whole family in a cash poor environment so dealing with it is complex. Interestingly, in the research when chiefs and community members were asked what some of the key causes of fighting were in their communities<sup>74</sup>, despite regular expressions of concern about marijuana, this issue emerged as a relatively small source of fighting and violence overall, and relatively few people linked conflicts they had experienced in the past year to marijuana<sup>75</sup>. It may be an area where the level of concern does not match its actual impact, and is certainly an area that merits further exploration.

## Land Issues

Land issues were identified as a priority concern and a major source of conflict in almost every part of Malekula. Both women and men in the research who had experienced conflict in the past year, identified conflicts involving land as the ones that were the most important to

<sup>&</sup>lt;sup>73</sup> Section 5.4 offers a broader discussion of women and domestic violence conflicts.

<sup>&</sup>lt;sup>74</sup> Respondents were able to answer whatever they thought were the causes of fighting. Researchers did not provide any suggestion or list of answers, and answers were disaggregated in the analysis.

<sup>&</sup>lt;sup>75</sup> See section 4.3 for further discussion about marijuana.

them<sup>76</sup>. A number of stakeholders suggested that land issues often lead to other criminal activities, and the research also highlighted the fact that land issues are often linked to a number of other disputes in communities. In one area ongoing land issues that were linked to a protracted chiefly title dispute had virtually shut down the community's ability to manage all conflicts.

# 3.4 COMMUNITY VIEWS OF POLICE AND POLICING SERVICES

Of the 758 community members who were interviewed, 9% identified having a family member (immediate or extended) who was a police officer. When questioned about the use of force by police officers, 76% of the men who were interviewed said that police did not have the right to use force and should look out for everyone's rights including people who had broken the law. Only 63% of women interviewed felt that police did not have the right to use force, with 37% saying that police had the right to use corporal punishment if they thought that a person had broken a law. 90% of chiefs interviewed felt that police did not have the right to use force also said that he had asked the police to come once to 'whip' someone who would not listen to him. Another chief who was also an Island Court Justice said it was okay in his opinion for the police to use corporal punishment, but only on the order of the chiefs, adding, 'Young people are afraid of beatings from the police, so it is powerful.'

When asked what kinds of options were available for dealing with disputes in their community, only 30% of the chiefs who were surveyed identified police as a dispute management option in their community. This could mean that police services are seen to be far away or less effective, or are not a preferred option. When community members were asked about the kinds of options they had for dealing with disputes in their communities, only 26% of men and 13% of women identified police. While both men and women identified chiefs with the greatest frequency in response to this question, for men, police were second, followed by religious leaders and family members. Women, on the other hand, identified police fifth, after chiefs, family members, 'No One', and religious leaders. In one community someone said that a provincial civil servant acted as the police officer in their community.

In the research, community members were asked if they or an immediate family member had ever dealt with a problem with the help of the police. 58% of men said that they had. This is higher than the number of women (44%) who said that they or a family member had used the police. Of the men and women who said they or an immediate family member had used police services, 73% of women and 72% of men said that they were satisfied or very satisfied with how the police had handled the problem. The research also asked respondents to comment on whether they thought that police were fair when they solved problems. For

<sup>&</sup>lt;sup>76</sup> For more about land issues see sections 2.5, 4.3 and 5.3.

those who had used police (or had a family member who had used the police), 45% of women and 42% of men said that they were fair and another 22% of women and 27% of men said they were somewhat fair.

The research also asked community members and chiefs where or how they would find more information about the law if they needed it. Chiefs said that they would ask the police more than any other individual or institution. Among community members, men identified the police most frequently as well, followed by chiefs, and then the answer 'Don't know'. Women, on the other hand, identified chiefs most frequently, followed by the answer 'Don't know', followed third by the police. This seems to indicate that women rely more frequently on chiefs to access information about the law, and may not feel as comfortable or may have a harder time accessing police on their own.

When asked about access to police services, community members identified that a police station or police post was on average 4.4 hours away with the average cost for reaching the police identified as VUV 2,350. Of the community members interviewed, 56% said they rarely saw the police in their community and 39% said they never saw the police. This was the case even in communities where police posts were located nearby. Among the chiefs who were interviewed, 67% said they rarely saw the police in their community, and 31% said they never saw the police. Only one chief said he saw the police in his community on a monthly basis (this chief identified the officer in the Local Area Council building as his closest police post or station). 26% of chiefs interviewed said that they did not have an ongoing relationship with any police officers.

In the main survey, 70% of community members interviewed identified Lakatoro as the police station or police post that was closest to them, 19% identified Lamap, 9% identified Southwest Bay and 2% identified the officer in the Local Area Council building. In the most part, this probably represents the distribution of the population on Malekula, and the fact that the Lakatoro police station serves a very large number of communities. Interestingly, however, 14% of community members in one area identified a police station or post *other* than their geographically closest police station or post as the closest place to access the police, and no chiefs identified having an ongoing relationship with this same location. In these communities, if chiefs did identify having an ongoing relationship with police, they identified officers from another location as well.

## **Overview of Police Posts**

'We really need to take justice down to the community level.' - Police Officer

'Here in [Community X] we have no justice. People don't have respect for each other. We call the police and they don't help.' - Chief, Northeast Malekula

#### 'Crimes happen in communities, so we need police in communities.' - Police Officer

'We would like the police to pass more often.' - Male Community Member, Southeast Malekula

In the research, the need to have police officers based at the community level was consistently identified. The officer in the Local Area Council building said that he was there because '...people want a post here'. The researchers also identified a need for police services in Northwest Malekula, with some communities in that area unable to contact police by phone because they are out of range for both mobile phone providers. Currently the police post in Southwest Bay has responsibility for communities from Dixon Reef to Lanur Island. The Lamap post is responsible for the area from Aulua (just south of Tisman) to Melip (which seems to represent some overlap with Southwest Bay). The officer in the Local Area Council building worked in an area that overlapped with an area under the responsibility of other officers, although it is not clear how these officers interacted or shared responsibility with each other. Both Southwest Bay and Lamap serve several communities that are only accessible by boat.

A number of stakeholders including several police officers said that there should be at least two officers in each police post, with one officer saying that the Lamap post had originally been envisioned with five officers (although it seems to have only ever had two). The officer in Lamap has been based in that community for 20 years, and seems to have been on his own for about 15 of those years. The officer in Southwest Bay said that he had come as one of two officers when the post opened in 2009, but he said he had been on his own for about half of that time, including over the last year and a half. The officer in the Local Area Council building was also by himself, although he probably had more active engagement and support from the Lakatoro station than the other two posts.

Beyond the security and effectiveness issues that are raised by having only one officer in remote locations, a number of concerns were also raised around having officers in the same post on a long-term basis, especially if they are on their own with little oversight. Several stakeholders identified the need to rotate officers, with one chief stating that, 'Some police do family business only', particularly when they have been based too long in the same community. Another stakeholder said that when police are posted too long in the same community they become too 'embedded' and cannot keep law and order. One of the officers in a police post said that a former Police Commissioner had supported the idea of having other officers in Malampa Province rotate through the police posts for a few weeks at a time, but this had not yet been carried out. Each of the officers in police posts said that they would prefer to have other officers posted with them.

#### **Resourcing Issues**

'There is not enough focus on justice at the community level yet, because of manpower and resourcing. Lots of big issues happen that one or two officers can't handle.' - Police Officer

'When I was first posted here there was another officer with me, and we used to go out to communities two times a week. Now it's just me, and there aren't any resources to travel or go out to communities. So now I just stay here and wait for communities to come and request my help, and pay for my transport costs to go out.'

- Police Officer

#### 'We need to decentralise finances – there was a big report in 2013 or 2014 and decentralisation was agreed to, but it hasn't been implemented.' - Police Officer

'Police should be civil servants [they shouldn't have to be paid to come]. This police officer only comes if he is given money.' - Men's Focus Group, Malekula

No matter where they were posted, every police officer that was interviewed said that they went out to communities rarely or very infrequently. Several officers said that they invited people to where they were based instead of going out. The ones that did go out said that it was just for specific cases, citing a lack of resources. The Family Protection Unit Officer said that she had been invited by a community to conduct an awareness session, but had to cancel at the last minute because her request for fuel was not approved. The Family Protection Unit in Malekula (as in other locations) often relies on the Vanuatu Women's Centre to support their fuel costs. Community members around Malekula said that police regularly cited lack of fuel when they tried to call the police for help, and could take a long time to follow up on reported issues.

Beyond fuel, several other issues around police resourcing were identified consistently during the research as well. As outlined above, Malekula has two trucks and two boats, with one truck and one boat currently out of commission. The lack of a cage truck was identified as a significant issue as well. Police reported that they were often forced to use public transport to make arrests or carry out police work, and this raised significant security and liability issues, with one officer wondering if the police force was in a position to pay for damages if someone was injured, or if a transport driver's truck was damaged. Two officers said that they had used their own money to carry out police work, and a number of officers said that the process of accessing money and gaining approval for expenditures was difficult and slow, with all requests, even minor ones, having to go through Luganville, Santo.

The issue of communities paying for fuel to support police work was also consistently raised by community members themselves who questioned having to pay for government services in this way. One chief said, 'The chiefs have to pay for the transport of the police when they come here, so if the chiefs don't have money, they can't call the police.' Concerns around impartiality were also raised when community members provided funding for police to come, as reflected in the following statement:

#### 'You need to pay for the police to come if you want them to come. So they don't come in a neutral way, because they have come on behalf of one family.' - Researcher

In one case when one half of a disputing community refused to pay half of police transport costs (because it had been arranged as 'security' by the other side in a dispute, without their consultation), one officer was reported to have said to them, 'What will happen the next time you need the police?' Perhaps as a result of this, several community members identified going to the police as 'expensive', and the cost of engaging the police was seen as prohibitive for many communities, particularly more remote ones.

Significant resourcing issues were also raised around retirement. At least two officers who were interviewed said that they were ready to retire, and four officers were identified as being at retirement age in Malekula. One of the officers said that he felt he was blocking young officers from coming into the profession and taking up positions of responsibility, and said, 'The police force needs good people – active, young, fit people – to do the work.' Another officer seemed to have put himself into de facto retirement, stating that he referred most issues to the chiefs now and was by most accounts doing very little police work. Some concerns around impartiality and alleged misconduct were also raised about some of the officers who were of retirement age, backing up their own statements that it was time for them to retire.

# **Alleged Police Misconduct**

#### 'We have a police officer here, but he just works in his garden.' - Woman, Malekula<sup>77</sup>

'When we take things to the police, he does nothing at all. Maybe he doesn't know the law? The law we are talking about, is it alive? Is this man [the police officer] using it?' - Men's Focus Group, Malekula

> 'You are a police officer, but you aren't on the side of justice.' - Man, Malekula

'The police officer here is just doing his own business – fishing and copra – and using [police resources] to support this.' - Man, Malekula

<sup>&</sup>lt;sup>77</sup> The locations have been removed to protect the identity of the police officers.

'Lots of the police in Malekula are too involved in community problems. I don't like it when they come and take our money, and lie to us that they will do the work we have asked them to do, but then they never do anything.' - Woman, Malekula

> 'You really need to look into issues around police conduct here.' - Man, Malekula

'We report things to the police, but they don't do anything.' - Man, Malekula

During the research community members raised a number of issues around police behaviour and misconduct. While none of these reports were investigated or substantiated beyond the comments that were received, several of the issues were repeated by a number of individuals in different locations, lending them a level of credibility. One issue that was repeated regularly was police inaction. In several locations chiefs and community leaders said that they had tried to send cases to the police (including domestic violence, rape, black magic, and land cases) but the police had not moved on them and they never heard anything further. In one community the chief's brother had tried to stop a group of youth from vandalising a church and a store, and was injured to the extent that he subsequently died of his injuries. The police were reported to have failed to pursue this as a criminal case, and the chief and others were now nervous about dealing with any youth issues in the community.

Other reports of misconduct related to police accepting bribes and 'favouring the side with money', as alluded to above. In one area it was reported that the officer would come and threaten to lock people up based on reports of wrongdoing. He would then ask for money, and if he was paid, no charges would be laid and the matter would be dropped. One chief said that he had witnessed police 'fining' people themselves as much as VUV 20,000, collecting the fine and sending people away. In other communities police and chiefs seemed to be working together, with police apparently enforcing a VUV 40,000 fine put in place by a chief in one location, and in another location it was reported that the chief would regularly call the police, who would in turn issue a large fine (VUV 40,000 or 50,000), and when the fine was paid it would be split and pocketed by both parties.

In another community a young woman described an awareness session about marijuana that was requested by the chief for young people. When a police officer came to do the session, he allegedly proceeded to use the opportunity to fine every young woman who was wearing trousers, and every young man who had their hair in 'rastas' VUV 500 each, collecting a total of VUV 9,000 in fines, which he was reported to have kept. In another marijuana awareness session police were reported to have beaten some of the youth, and made several arrests in another, leading the communities to feel sorry that they had engaged the police, and also leading to a significant lack of trust for police among a number of chiefs and community members. In one community a chief stated that an officer had come and overturned a decision he had made, not because it was against the law (which this chief said he would

have accepted) but because, according to this chief, the officer was offered a bribe by the other side.

In another part of Malekula at least two police officers were alleged to have been involved in what seemed to be a fraudulent seasonal workers scheme where the officers collected money for passports and other documents, and then never produced the promised documents. In some areas community members alleged that police were actively involved in local conflicts (from adulterous relationships to marijuana use and land disputes). The issue of police officers being related to some community members and failing to act impartially was also raised as a concern. Again, while these issues were not investigated or substantiated (this was outside of the scope of the research), and may even represent the views of disgruntled community members, they were often repeated by different individuals. While most of these situations related to a handful of specific officers, the stories were often shared in several locations.

In other areas the lines between the authority of the police and chiefs was blurred, with at least one officer declaring his status as a chief and potentially using both positions to influence the other. In another location a senior officer was reported to have carried out a kastom ceremony with the chief to give the community more responsibility for their own policing, and had also committed to training a 'community police force'. In this community when asked about matters that might be sent to the police, the chief said, 'Some things go but are sent back, especially now that we have done the kastom ceremony with [Officer X].' A senior officer who was reported to have personal ties to the area was also involved in a protracted dispute relating to a cruise ship that resulted in a crowd of about 60 community members traveling to the Lakatoro police station to confront this officer.

In another location, an officer was reported to have used a police boat to further his own personal and business interests, and did not seem to be actively engaged in police work on a daily basis. Several people in the surrounding communities commented that this officer no longer wore a uniform, and rarely came to the police post. Several different people reported that the officer had used the police boat to sell and transport fish, firewood and copra, and said that the boat was also sometimes used as public transport. It was reported that the police boat was also regularly 'hired out' to people who wanted to use it as long as they paid for the fuel. In this community a significant number of people said that they relied upon officers in a different location if they needed assistance even though it was quite far away.

When asked if they thought there was anywhere to report police misconduct or to deal with a police officer who was not doing their job properly, more than half of the community members who were interviewed said 'No' (26%) or 'Don't know' (31%). Of the 43% who said that they thought there was a place to lodge complaints about a police officer, the majority (55%) said the place to deal with police complaints was in the courts. Interestingly 28% of women who said there was somewhere to lodge complaints or report on police misconduct, identified chiefs as the appropriate place to take these issues. No one in any of the

communities mentioned the Vanuatu Police Force Professional Standards Unit that was launched in 2014, and it seems clear that further information about this service would be of real benefit to rural communities.

# **Community – Police Interface**

The research findings in general highlighted significant variation and differences in understanding around the interface between community and state justice. This was perhaps most evident in the relationship between policing and community level justice processes and included: how police and chiefs relate to and understand each other, the practice of police sending issues back to the community and the kinds of issues that communities should be – and are – bringing to the police, and police acting as mediators and conflict managers. While state and non-state are often treated as discrete processes and entities (even within communities themselves), the research supported the understanding that there is more of an active and uneven interface between them. While these may represent necessary compromises and individual adaptations in a complex, highly diverse and significantly under resourced system, it is important and helpful to understand some of the dimensions.

## The Relationship Between Policing and Community Justice Processes

'Only about 10% of people are glad with the way their cases are handled at the community level, but lots run for justice. When things are referred back to the chiefs, people often don't want to them to go back.' - Police Officer

All but one officer interviewed said that there was a need to change how conflicts were managed and dealt with at the community level. When asked how it should change, all of the responses related to: improving how chiefs deal with issues (including ensuring punishments and fines are appropriate, decisions are made more fairly, and supporting the reestablishment of councils of chiefs); ensuring that the way issues are solved at the community level is in line with the law (including community bylaws); and having chiefs work more closely with police and courts. One officer said that 'repeat' cases should also be sent out of communities, and another said that chiefs and communities should not see domestic violence as their issue to deal with.

The majority of police officers interviewed felt that chiefs and community leaders should know more about the law and human rights. Most officers who were interviewed identified a lack of understanding of state processes as a key issue in communities. Chiefs agreed that people at the community level did not understand state justice processes very well, with 38% saying that the state system was not well understood. Key weaknesses in community processes identified by the officers who were interviewed included the perceived inability of community processes to effectively solve problems (66% felt that issues were not solved at the

community level) and 55% said that they did not feel that community processes treated people well, or that people fully understood community conflict management processes, and why and how decisions were reached by chiefs. 55% of the officers who were interviewed also did not feel that community decisions were well enforced.

Overall the police surveyed felt that communities had greater trust in the police than they had in chiefs. 44% of police interviewed answered 'No' to the question, 'Do you think people trust the chiefs?' (only 22% said they felt community members did not trust the police). Chiefs who were surveyed felt that communities trusted chiefs more than anyone else to solve their problems (62% of chiefs who were interviewed said that they felt communities trusted the chiefs), although a significantly fewer number of chiefs (13%) answered 'No' to the question, 'Do you think people trust the police?'. Every officer interviewed said that they thought it would be good if chiefs could work more closely with them. When asked how, several said they wanted chiefs to ask for advice and information about the laws of Vanuatu more often. Several felt that chiefs could also assist police in their investigations. One officer described the need to build relationships of mutual trust.

When chiefs were surveyed, 26% said they had never worked with the police to solve a problem, and 67% said they had rarely worked with the police. Every chief who was interviewed, however, said they wanted to work more closely with the police. Chiefs felt police could help by: supporting enforcement and encouraging people to listen to chiefs; providing awareness and information about the law; helping to deal with marijuana issues; handling major or criminal cases; having an ongoing relationship and visiting regularly; and a small number said police could help more with domestic violence cases. Only one chief said that police could work more closely with him by referring cases back to him.

## **Referral of Issues from Police to Communities and Vice Versa**

'Justice doesn't just exist in courts. You need to do it at the community level too.' - Police Officer

'The chief needs to authorise any problems that are brought to the police.' - Chief, Southeast Malekula

Police in Malekula are embedded in the social and cultural context in which they work, and often share a number of common beliefs and values with community members, including understandings about kastom and the role of chiefs. In the research, one officer stated that it was more important to follow the decision of a chief even if it was against the law, although the clear majority of officers (89%) said that following the law was more important. 33% of police officers interviewed said that chiefs should be handling all conflicts and issues first at the community level, and at least three officers (none of whom were from Malekula interestingly) said they left most issues to the community to deal with, and were mainly involved in 'police assistance' cases. Referring things back to the chiefs was also seen as

way of reinvigorating community mechanisms and helping people to, in the words of one officer, 'regain respect for the chiefs.'

The majority of officers interviewed, however, stipulated that referral back to the community should only happen with certain kinds of conflicts, and that others (sexual crimes and criminal cases) should only be handled outside of the community, by the state justice system. When asked if they sent cases back to chiefs to deal with them, only one officer said that he did this regularly. Some of the others said that they did this sometimes, and most said they rarely did this, and mainly for 'minor' cases. While one officer suggested that it would be beneficial to let chiefs know the penalties in the formal system to '...stop people from pursuing things to the police', this was likely not an opinion that was shared by most officers who were interviewed.

When asked if they sent cases to the police, only 8% of chiefs said that they sometimes sent things to the police (the rest said they rarely did or never did). When asked about the kinds of matters they sent to the police and courts, trespass and marijuana were cited most often, along with 'criminal cases', followed by rape, domestic violence and theft. Only one chief specifically said he had sent an incest case to the police (although this might have been covered under the 'criminal cases' response). When asked if there were some things that were better off being dealt with by the state justice system, however, 95% of chiefs said yes. When asked what kind of cases were better dealt with by the state system, the most frequently cited answer was 'criminal cases', followed by rape and incest.

Interestingly, as was noted by several police officers and was supported in the research, sometimes chiefs seemed to be dealing with more serious cases in the community, while many of the more minor cases were making their way out to the police and ultimately the courts, creating a backlog and making it difficult for police to deal efficiently and effectively with 'straight' police work. According to several officers, minor issues like swearing and garden disputes were regularly brought to the police, with one officer saying that people, '...run to the police for every small, small thing'. Sometimes community members were not happy with decisions or fines that were put in place by chiefs, or they felt that their chiefs were not working well, and so they came to report the issue to the police. According to one officer, '...the police do a lot of the work of the chiefs here'. One officer said that because of this they write a lot of letters, and refer a lot of issues back to the chiefs.

In the research it was clear that there is significant inconsistency around what should be managed, by whom. The confusion around appropriate referrals is probably happening for a variety of reasons, from failures and limitations in policing services, to failures and limitations in community justice processes, challenges of geography, lack of resources, services, strong relationships and communication, and because of various efforts to reinvigorate community systems. The research showed that particularly in some locations serious issues were not being progressed by either chiefs or police, and there needs to be much greater clarity for police and communities regarding what should be dealt with at the community level and what

should be handled by the state system. In fact, providing a level of clarity around police officers' engagement with chiefs – and addressing a tendency of some officers to act as agents of kastom, even ahead of their role as police officers – particularly in rural areas, would be of significant benefit.

#### **Police Acting as Mediators and Conflict Managers**

The typical role of police officers is to carry out standard police duties including receiving complaints, conducting investigations, making arrests and notifying people to attend court. In Vanuatu, however, with limited access to state justice mechanisms, limited knowledge of roles and processes, and a reliance on authority figures to solve problems, police officers are often called upon (and sometimes take it upon themselves) to solve conflicts on their own. This is often accomplished through the use of letters (also referred to as 'peace notes') to request that one party refrain from engaging in a particular behavior and outlining the various consequences if they do not. Sometimes letters are also used to invite both parties (and often their families as well) to a meeting with the police, often referred to as 'roundtable'.

During the research a number of officers said that the practice of holding roundtables had recently been discontinued on Malekula. Various reasons were given, including the concern that it was taking up too much police time. One officer said roundtables had been stopped because the Police Commissioner had noticed that on Malekula the numbers of police assistance cases and roundtables were high, while the number of charges and cases progressed to court was low. Another reason that was offered was that police '...should just do police work and leave it to the courts to judge'. At least two officers also said it was discontinued because it was seen to undermine respect for community leaders, and roundtables were stopped 'to give power back to the chiefs'. One of the officers who identified spending 65% of his time managing conflicts said he was trying to send more issues back to the community for this reason.

Despite the recent directive to not hold roundtables, however, all of the police officers interviewed said that they were still involved in solving problems themselves (without progressing the issue, or referring it to anyone else) to a greater or lesser degree. When asked about the various processes they used for solving problems, roundtables were cited most frequently, followed by informal mediation (talking to both parties), and the use of letters or 'peace notes'. One officer also said that he talked to community members about how they would feel if they proceeded to court, using the law and examples of court fines and punishments as a kind of disincentive for progressing cases. In the case of roundtables, it was not clear if police officers were referring to practices that were carried out before they were discontinued, or after, but it was evident that several officers still felt that roundtables were valuable and necessary. According to one officer they still held roundtables in cases where they believed someone to be in danger or in cases they believed might become serious.

In the research the police officers that were interviewed were also asked how much time they spent directly solving problems themselves (without progressing or referring them). One third of the officers interviewed said they spent between 50% and 75% of their time managing conflicts themselves, while the rest said they spent less than 25% of their time. This additional role for police officers raises a number of complex issues. One is that police are not trained for this role. In the words of one officer, 'police aren't judges', yet in this role they are required to make complex value judgments and exercise significant discretionary power. And several officers said that they would typically hold roundtables or conduct informal mediation for 'less serious' or 'minor' cases. What entails a minor or less serious case, however, is highly subjective, and police often included domestic violence matters as an example of the kind of case they might deal with in this way.

On the other hand, as the research demonstrated, community members often come to police for help with issues that they are unable to solve within their families or communities, and officers are put in the difficult position of either providing assistance or leaving the individual to sort it out on their own. As well, in many communities in Vanuatu there is understood to be a standard progression for dealing with conflicts: try to solve it in the community first (including through family members, the church, and chiefs). If it cannot be solved there, then go to the police, and potentially after that, to the courts. In several cases, people may come to the police because the issue cannot be solved at the community level. At the same time, however, they may also have no interest in progressing the matter any further than the police, or in taking the matter to court, creating a dilemma for many officers.

One officer stated that in his opinion community members like roundtables as a forum for solving their conflicts because they can speak more freely in a roundtable than they can in their community, and they feel safer because they are sitting with the police. In some ways roundtables and informal police mediation models a community process but with extra protections and controls – including practitioners who it is assumed know something about the law and who are acting in accordance with the law – in what may be seen as a more neutral space. Another officer commented that roundtables and sending letters are often quite effective in Malekula, because people are usually very respectful of the law and relatively compliant with police requests and directives. Given the limited understanding of the role of police and the limits of police powers, police are probably also given more power and authority by community members than they may (or should) have under the law.

So while the limitations of police officers exercising significant discretionary power without training and in a context of limited police resources and active oversight and supervision is clear, the alternative also raises significant concerns. If the role of police officer as conflict manager is removed – as the directive to discontinue roundtables hopes to accomplish – this really leaves two general categories of conflicts: those that should and do go to court (with police officers doing 'straight' police work to support this process) and those that are left to communities to solve. With the limitations of both the court system and community conflict management processes, and the significant resourcing and geographic challenges in

Vanuatu, it is not clear if this highly limited model will effectively support people in adequately meeting their justice needs in places like Malekula<sup>78</sup>.

# **Capacity Issues**

Stakeholders including police identified several police capacity and training needs in the research. A major area of need was for prosecutions training, particularly around rape. It was also suggested that Malekula might benefit by having a female State Prosecutor and by rotating State Prosecutors through the office. Investigations capacity was also identified as weak in the research. Police officers themselves said that they lacked good investigators in Malekula. This was also offered as one of the reasons that some of the senior officers had not yet been retired – because they know how to run investigations. One stakeholder said that police also needed to learn to manage and direct cases appropriately, so that everything did not end up in court.

Every officer interviewed said they would be happy to receive training that would support them in their work with communities. The following specific training needs were identified:

- More information and deeper knowledge about the laws of Vanuatu
- Human rights
- Mediation
- Investigations
- Standard Operating Procedures
- Community policing<sup>79</sup>
- Structure of the justice system
- Dealing with youth and juvenile crimes
- Prosecutions
- Warrant procedures

The Family Protection Unit Officer also said that she wanted to receive more training on how to counsel women, and another officer said that all police officers needed more training in how to deal more effectively and quickly with family protection cases in particular.

<sup>&</sup>lt;sup>78</sup> In fact, without access to more formal mediation options it is likely that mediation of some kind will continue to happen in an ad hoc way. The courts have also recognised the need for more formal mediation, including creating provisions for mediation in Vanuatu's Civil Procedure Rules although to date it seems that this has not been utilised except in a limited way in the Supreme Court. Ultimately, mediation services of some kind (accessed directly or through court referrals or both) would be very useful in rural contexts like Malekula, and could help to extend court services and conflict management options to a greater number of people (see section 2.4 as well).

<sup>&</sup>lt;sup>79</sup> There is significant lack of clarity around what community policing means in Vanuatu. While community policing in most jurisdictions is understood to mean decentralising police services and police working more closely with community members, in Vanuatu it is often understood to mean setting up community members to carry out policing functions. Where community policing is referenced in Vanuatu, some clarity should be sought around this.

## 3.5 POLICE SERVICES, WOMEN AND ACCESS TO JUSTICE

'The Family Protection Act works but some victims find it very hard to progress their cases. They are also reluctant as well, and often change their minds.' - Police Officer

> 'Getting to the police station is just too hard.' - Woman, South Malekula

'Rape should go to the police, but issues of domestic violence should not be dealt with through the state legal system.' - Police Officer

'Chiefs are dealing with problems they shouldn't be. The Penal Code says that chiefs can't deal with rape, incest or other serious crime, and should be dealing with minor cases only.' - Police Officer

'There is a lot of domestic violence in Malekula. I see three or four women come to the station every day for these issues. It also really impacts children here too.' - Police Officer

'More information about the law and human rights is needed in remote areas where women are abused but don't know its wrong because they think that its kastom.' - Police Officer

'Women in this community are very afraid. They don't have trust for anyone in the community – not the chiefs and not the men. A woman went to the police [in Lakatoro] and was told to wait at the side of the road for a police truck to report [her concerns].' - Researcher Debrief of a Women's Focus Group

Police who were interviewed identified things like kava drinking and issues around household responsibilities as causing the greatest number of conflicts at the family level in their opinion, with one (male) officer stating that the '...belief in men's superiority, and the idea that women should do everything – based in culture' was the biggest cause of conflict at the family level in Malekula. Police officers who were interviewed identified domestic violence as the main reason women sought their help, with sexual assault including rape, marital rape and incest as the next most common reason. All officers were in agreement that there were some matters that should only be dealt with by the state, with the majority identifying rape and incest as two issues that should not be dealt with at the community level.

Every officer who was interviewed had heard about Domestic Violence Protection Orders, and two thirds said that they had used one. All of the officers who had used a Protection Order said they were effective, with the exception of one officer who said that it was only somewhat effective, citing the fact that men did not always respect the orders, and sometimes victims changed their stories, as key reasons. When asked to chose the statement they agreed with more, only one officer stated that a married man had the right to discipline his wife in whatever way he saw fit, while the remainder of the officers interviewed said that in some situations it was important for the community to get involved in these kinds of issues. As mentioned above, the officers who were interviewed generally articulated fairly 'progressive' views about women and gender in the formal interviews.

In the research, police and chiefs were also provided with a hypothetical scenario where a young woman in a village is being beaten regularly by her husband. When asked where the best place to deal with a situation like this would be, the majority of the officers interviewed said that the police and the Family Protection Unit were the best place to deal with this, with two officers identifying the Vanuatu Women's Centre, and one saying the magistrate. When chiefs were asked how they would handle a situation like this, only 5% of chiefs said that they would send this kind of a situation directly to the police, and only 21% said they would ask the police for help in the first instance. When asked about the best place to deal with a situation like this, the majority of chiefs (48%) said that chiefs were the best people to deal with this kind of situation, followed by the police (22%), and then the courts (17%).

In a second hypothetical scenario that was provided to police and chiefs as well, a young girl (a child) is being sexually abused by an older male family member. When provided with this scenario the majority of the officers interviewed said that the police where the best place to deal with this kind of a situation. Other answers included the Vanuatu Women's Centre, the Family Protection Unit and the magistrate. When chiefs were asked how they would handle this situation, however, only 10% of chiefs said they would send this kind of situation directly to the police, and only 28% said they would ask the police for help in the first instance. When asked about the best place to deal with a situation like this, the majority of chiefs identified the courts as the best place (35%), followed by the police (31%), and then chiefs (28%)<sup>80</sup>.

The tendency for chiefs to hang on to domestic violence cases, and often sexual crimes as well, was also supported in the research. Several police officers stated that chiefs were dealing with sexual crimes on their own, and they should not be. At least one chief stated that he was not sending rape cases to the police during the research. And in another community one perpetrator of rape who was interviewed said that his case had been dealt with in the community by the chiefs, and never referred to the police. In at least one community, however, the chief said that he had reported cases of rape to the police, but they were not processed. Another chief said that the police officer in their area used to send incest and rape cases back to the community if they had already been heard by the chiefs, so he was now just sending cases like that straight to the police without hearing them first. Clearly there are a number of serious cases involving women that are either not making it out of the community or are not being progressed by the police.

According to a number of officers who were interviewed, the courts and the police, and even chiefs, were only dealing with some of the sexual and domestic violence cases that exist in

<sup>&</sup>lt;sup>80</sup> Sections 5.4 and 5.5 contain more information and the data tables relating to both hypothetical scenarios.

the community. Several police officers said that in their view a number of issues like rape and incest were being dealt with by families on their own, and never making it to the chiefs. For example, in the research police officers were asked to comment on where they thought community members went to solve their problems, and what kinds of conflicts were brought where. In their answers a number of police officers indicated that family members and religious leaders were dealing with domestic violence cases<sup>81</sup>, and sexual crimes like rape and incest were also being dealt with at the family level. The fact that families were dealing with these kinds of issues on their own was reported in at least one community as well, where women said they had been forbidden from reporting sexual crimes to anyone outside of the family by senior male relatives who said that doing this was against kastom.

Some cases involving women, and particularly domestic violence cases, that did make it to the police sometimes seemed to be sent back to the chiefs and communities. One officer identified sending cases back to the chiefs to deal with and when asked what kind of cases, this officer said domestic violence cases that are 'not serious' – elaborating on this by saying cases that were not everyday, and giving an example of a man slapping a woman. While none of the other officers reported that they sent domestic violence cases back to the community per se, several did say that they sent 'minor' cases back, which could conceivably include some domestic violence cases. When asked about the kinds of things they tended to handle on their own (through roundtables, mediation or 'peace notes'), without referring them elsewhere, a number of officers said that they dealt with small fights within families including issues like domestic violence through these informal processes. At least one officer also implied that he tried to dissuade domestic violence cases from going further.



Translation: Public Notice

The office is letting everyone know that starting today, 3 June 2015, the Family Protection Unit will provide a Domestic Violence Protection Order only if you are willing to make a formal report and have your case go to court.

If you just want a Protection Order but don't want to make a formal report, you can go to the Malampa Counselling Centre office for counselling etc.

Thank you for your understanding.

The Family Protection Unit in Malekula has also instituted a new policy (that was said to have originated in the Family Protection Unit in Port Vila) that they will only assist with Domestic Violence Protection Orders for women who are willing to pursue charges (as detailed in the notice above that was found on the public notice board outside the police station in

<sup>&</sup>lt;sup>81</sup> In fact, for women who had identified experiencing domestic violence in the last year, 49% had sought help in the first instance from a family member, 24% had gone to a chief, 15% had seen a religious leader and only 5% had gone to the police as discussed in section 5.4.

Lakatoro). The rationale provided for this decision was that sometimes women came in for a Protection Order, but did not have any interest in pursuing a criminal case. If women do not want to pursue a criminal case and go to court, they will now just be referred to the Vanuatu Women's Centre for counselling, leaving police to focus only on cases that have a 'criminal side'. Another officer in Lakatoro said that women often come in seeking protection in the case of domestic violence matters, but not punishment, and often do not want the perpetrators to go to prison. He thinks that women should pursue the criminal side and punishment though, and he said for this reason he really supported the notice as well.

It is not clear, however, if this decision will support women's access to justice in Malekula in domestic violence situations, and it is worth re-examining. At least one police officer also raised significant concerns around victim safety in relation to domestic violence cases on Malekula, which also highlights the need for relatively straightforward access to Protection Orders for women, through police and others. According to this officer, the fact that there are really no safe houses for victims on Malekula raises serious issues around victim safety. This officer said that women are sometimes put in guesthouses where they continue to be at risk. While the Vanuatu Women's Centre provides significant support to women and police around these issues, there were some changes in the Malekula branch of the Vanuatu Women's Centre that were reported during the research that may have impacted their ability to support women as effectively as they might have, at least for the time being<sup>82</sup>.

Another issue of significant concern relating to access to justice for women and policing in Malekula is the fact that there were reported to be a significant number of rape cases (according to the magistrate, there were eight, although the State Prosecutor said there were 'more than 10') dating back as far as 2008 that had not yet made it to court. These cases were sitting with the State Prosecutor's office, with several cases dating back to a previous State Prosecutor. Both the magistrate and the current State Prosecutor said the main issue seemed to be the ability to print out the cases. The State Prosecutor said he did not have a printer, and needed to print out 'bundles' in order to progress the cases to court. In the magistrate's view, however, if these cases make it to the formal sector – if they are reported – the state has a duty to act. The magistrate said that she had offered the use of the court's printer, but the offer had not been taken up.

<sup>&</sup>lt;sup>82</sup> See section 5.4 for a brief discussion of some of these issues.

## 4. FINDINGS RELATING TO CHIEFS AND COMMUNITY JUSTICE

## BRIEF SUMMARY OF PART 4: FINDINGS RELATING TO CHIEFS AND COMMUNITY JUSTICE

## Background

- 39 chiefs were interviewed during the research one from each community where research was conducted. These chiefs were identified as the key leaders in their communities who were involved in managing conflict.
- Chiefs ranged in age from 19 to 73 (the average age was 53), had an average of nearly seven years of education, 95% of chiefs who were interviewed identified as literate, and they had been leaders for on average 18 years.

#### Summary of Findings and Key Issues

- Land issues are very complex and are often linked to chiefly title disputes this can have an impact on all conflict management at the community level.
- Governance at the community level is very mixed: 79% of chiefs, and 82% of community members said fighting among chiefs and community leaders was an issue; there were elected chiefs in several areas; and 38% of the chiefs said they had not gone through any training to support them as conflict managers.
- Chiefs seem to be guided by community harmony and peace more than justice in their conflict management and decision making.
- Just over half of the communities said they had 'polis blong jif', and 67% said they had bylaws. Issues with bylaws included: causing confusion with law; dealing with social norms to criminal issues; inconsistency in fines; and not being in line with Vanuatu's law and human rights commitments (however, 79% of chiefs said bylaws should comply with Vanuatu's law, and 87% said they should be in line with Vanuatu's human rights commitments).
- The main concerns about chiefs and community justice included: mixed communities and complex issues; issues of bias, favouritism and self interest; chiefs charging fees (of people who had used a chief, 69% said it had cost them money, 26% said there was no cost, kastom items were used in 3% of cases), inconsistent fines and chiefs keeping fines; decisions not being in line with the law; lack of clarity around engagement with state justice and mimicking state justice; and the handling of serious cases (including sexual assault and domestic violence) at the community level.
- Many people did not know where to take complaints about chiefs or said the police or courts (who would have no jurisdiction unless a law had been broken). There is no effective complaints or oversight mechanism in place for chiefs.
- Chiefs generally had a strong desire to know more about the law and human rights (41% wanted to know about every law, 26% about land laws, 18% about laws relating to domestic violence, and 15% about human rights), although concerns about 'frontier' justice need to be taken into serious consideration.

## 4.1 OVERVIEW

'If there is no justice in the communities, there can't be development in the country.' - Chief, Northeast Malekula

> 'Dealing with a nanny goat is easy. Dealing with people is hard!' - Chief and Island Court Justice

'You can talk about justice but here in the rural areas we don't receive any services – so what does justice really mean? You can't talk about it but not provide it. Why can't the government really look at our needs?' - Man, South Malekula

'Chiefs really need training. You can't just stay on top and expect justice to reach the community level.' - Chief and Island Court Justice

At least one chief was interviewed in each of the 39 villages in Malekula using a special set of interview questions. While there are usually several chiefs in each village, communities were asked to identify the chief who should participate in the longer interview. Typically the chief who was interviewed was identified as the 'village' chief, or the main chief in the village, and was someone who had an active role in solving problems at the community level. Two of the chiefs who were interviewed were also island court justices and all of the chiefs who were interviewed were also island court justices and all of the chiefs who were interviewed were men. The chiefs ranged in age from 19 to 79 years old, with the average age being 53, and most of them (77%) had lived their whole life in the village where they were now chief. The remainder had spent a good portion of their adult life in the village, with the exception of one young chief who had spent most of his young adult life in town, only returning to his village a few years ago.

All of the chiefs who were interviewed were literate and had gone to school, with the exception of two, both of them over 70 years old. The average number of years of education of the chiefs was 6.9 years. 90% were village, paramount or principal chiefs (discussed further below) – the others identified themselves as nakamal (or family) chiefs, some had roles in area councils, and one identified himself as 'the mouth of the chief'. The chiefs who were interviewed had been leaders for, on average, 18 years. When asked what their main duties were as a chief, solving problems was the most frequently cited duty (identified 33% of the time), followed by keeping the peace (20%) and helping people (19%). Kastom was mentioned 8% of the time.

It is worth noting briefly that the position of chief is both accepted at face value in contemporary Vanuatu (typically as a traditionally endowed authority figure with a specific role to play in community life), at the same time that it is also representative of a fairly broad, diverse and often contested space. In the words of one Pacific researcher:

'Jif is an equivocal and commodious title. It subsumes a miscellany of characters who stake their leadership claims in both tradition (kastom) and modernity. These leadership claims trace inward, seeking roots in locally recognised systems of inequality, and outward, highlighting a chiefly ability to mediate with state organs and programs.'<sup>83</sup>

As a result of this contested space, some chiefs can be dismissed as not being 'straight' chiefs, or as less legitimate because they are not 'kastom' chiefs, and there is certainly a lot of discussion about this in Vanuatu. When the head of the Malmetevanu, the Council of Chiefs on Malekula, heard that in some areas where the research was carried out there did not appear to be any existing contemporary kastom chiefs (information that was offered by communities and chiefs themselves), he raised his eyebrows in disbelief. In the research, however, a range of different chiefs and chiefly styles were evident in Malekula.

While the purpose of the research on Malekula was not to explore (or question) chiefly authenticity, it is worth looking at the complex terrain of this contested space of 'who is a chief' to a limited extent as it relates to the research and who we interviewed. For example, some people may be inclined to question or dismiss some of the perspectives offered by the chiefs who were interviewed, with the implication that they were not 'straight' chiefs<sup>84</sup>. The research was more concerned at the community level with practically determining who community members, including chiefs themselves, identified as the appropriate person to interview as 'chief', and tried to identify those who were more actively involved in managing conflict. These were the people who were interviewed. Whether they are 'straight' chiefs or not, these are people who are actively engaged in managing conflict at the community level.

It is also worth noting, however, that the views and circumstances of the chiefs who were interviewed should not be taken as necessarily representative of all chiefs in Vanuatu, or even all chiefs in Malekula<sup>85</sup>. The main goal in the research was to consider justice 'from the citizen's perspective'<sup>86</sup>, and therefore the overriding focus was on community members' experiences of conflict and conflict management systems. There were not enough chiefs interviewed to provide a statistically valid sample. This report will, therefore, offer more of a grounded view of community justice and the work of 'chiefs' (whoever they are) from the vantage point of men and women in Malekula. The perspectives and experiences of the chiefs who were interviewed and the views they expressed, however, are worth considering, and also provide an important backdrop and useful context to community justice in Malekula.

<sup>&</sup>lt;sup>83</sup> Lindstrom, L. 1997. Chiefs in Vanuatu Today. In G.M. White and L. Lindstrom (eds). *Chiefs Today: Traditional Pacific Leadership and the Postcolonial State*. Stanford: Stanford University Press, 212.

<sup>&</sup>lt;sup>84</sup> The language of 'straight' (meaning real) chief is often used to question the legitimacy of chiefs and their claims, particularly those seen to have tenuous claims to kastom authority. See section 1.3 as well for more about chiefs and kastom.

<sup>&</sup>lt;sup>85</sup> See section 1.5 for more on the limitations of the research.

<sup>&</sup>lt;sup>86</sup> United Nations Development Programme 2012. Access to Justice Assessments in the Asia Pacific: A Review of Experiences and Tools from the Region, 104.

## 4.2 CHIEFS AND CHIEFLY STRUCTURES

'Before the Paramount Chief was like a king, but now he is more like a judge.' - Chief and Island Court Justice

> 'It is hard work being a young chief.' - Chief, Northwest Malekula

Chiefs are organised in Malekula as they are to a greater or lesser extent across all of Vanuatu. The main body for chiefs in Malekula is the Malmetevanu or the Malekula Council of Chiefs, which is affiliated with Vanuatu's national council of chiefs, the Malvatumauri. The Malmetevanu has twelve members, two from each of the six areas of Malekula (Northwest, Northeast, Central, Southeast, South and Southwest). These areas are also represented by six area councils that consist of a chair, who is a chief from that area (and one of the twelve members of the Malmetevanu), representatives of various groups in society (women, the church, youth), and an Area Secretary who is a public servant representing the province and ultimately the government of Vanuatu at the area level. In this way chiefly structures are directly interlinked with state structures, at least at this level.

In each area in Malekula there is typically an area council of chiefs, made up of representatives of the various villages and communities in that location. At the community level, while there was some diversity evident during the research, and differences from area to area, there is often a more senior chief who represents the whole village, and other chiefs who usually represent smaller family groupings in the community. Often the chiefly structure at the village level includes a number of chiefs, established in a loose hierarchy with family chiefs typically being seen as 'junior' to the village chief. Sometimes the organisation of chiefs at the village level is represented through a council of chiefs, and often chiefs in communities have different roles to play, while ideally working together for the betterment of the community.

In the research a number of different kinds of chiefs were identified, including bloodline chiefs, boundary or area chiefs, principal chiefs, paramount chiefs, 'small' chiefs, and a variety of chiefs identified through their kastom names and roles. While chiefs are often more senior men in communities, Big Nambas communities in Northwest Malekula generally continue to have what is identified as a strong kastom system where men can become chiefs at a very young age through a grade taking process. Some chiefs indicated that they had various 'advisors' to support them in their work. The chiefs who identified using advisors more frequently often seemed to be less experienced chiefs (younger or recently elected) who indicated that they consulted with older men (or former chiefs) in the community<sup>87</sup>. Big Nambas communities also have a system of 'brother chiefs' where chiefs from different villages are formally linked and provide support and advice to each other. Another structure

<sup>&</sup>lt;sup>87</sup> In one case a chief indicated that he relied on his wife as an advisor and consulted with her frequently.

that was evident in several communities was a weekly community meeting, usually held on a Monday, and often referred to as 'Monday Meetings'. These meetings involved chiefs, but were also church affiliated, and typically involved the presentation of small problems, apologies from both sides, praying together and offers of forgiveness.

Of the chiefs who were interviewed, 59% said that they had *polis blong jif* or community members who carry out some police-like functions in their community, in collaboration with and in support of the chiefs (64% of women and 52% of men said their community had them as well). Sometimes these are also 'small' chiefs themselves (more junior or lower level chiefs). The main role identified for these 'community police' was to bring people to meetings, to report people who had done wrong to the chiefs, or to act as messengers for the chiefs. Community police were also identified as providing more general support to the chiefs, and had a role in keeping the peace. In at least one location community members said that the people working in this role were provided with a small allowance. In another community, people referred to some of their community police as 'secret police' suggesting more of a clandestine role.

Many of the chiefs who were interviewed held different roles in their communities as well as outside of their communities. Several chiefs identified themselves as religious leaders, some said they had a formal role in land management processes, and as mentioned above two chiefs who were interviewed were also island court justices. Another chief who was interviewed was a teacher in a community in another part of Malekula, so spent significant time away from his own community, and one chief indicated that he sometimes went to work as a regional seasonal worker. Another chief said that he traveled quite a bit, and because of this issues sometimes took a long time to be solved. It is probably not uncommon for chiefs to have other roles or other work inside or outside of their community. At least one of the police officers interviewed identified himself as the 'chief of my tribe'.

In the research chiefs were also asked about their personal experiences as people at the frontlines of community justice, who were often called upon to make difficult decisions and solve complex problems in closely related communities. As these surveys were carried out in complete privacy, this question often seemed to provide chiefs with a safe place to express themselves and to share some of the challenges of their role, as illustrated in this table:

| Table 5: Chiefs' Personal Experiences as Conflict Managers   | Yes | Some  | No  |
|--|-----|-------|-----|
| (N=39)   |     | times |     |
| Does your work solving problems make you very worried or stressed?                                 | 72% | 18%   | 10% |
| Does your work solving problems ever damage any of your relationships with people in the community | 20% | 31%   | 49% |
| Does your work solving problems sometimes make you feel frustrated or upset?                       | 28% | 51%   | 21% |
| Do you ever think that your work solving problems is too difficult?                                | 56% | 36%   | 8%  |

For many of the chiefs who were interviewed, it was clear that they were genuinely committed to their communities and took their role to heart. One younger chief thoughtfully said that he

sometimes took up to a week to reach a decision, because he really wanted to make sure he was doing the right thing, and doing his best for both parties and for his community.

## ROLE OF CHIEFS IN THE DELIVERY OF JUSTICE

It is important to recognise that chiefs and leaders at the community level who are involved in managing conflict play a significant role in the delivery of justice at the community level in Vanuatu, often mediating complex relationships and issues, with little to no support or formal training. In fact, the main mechanism for solving conflicts in most places in Vanuatu is through community leaders such as chiefs. While family members and religious leaders are used as well, and to a lesser extent police and courts, chiefs were the primary category identified by most respondents in the research, and were the people community members said they were likely to go to first, as illustrated in the following table:

| Table 6: Use of Conflict<br>Management | Who can you go to for help when you have a conflict? |                       | Who would y             | ou go to first?       |
|--|--|-----------------------|-------------------------|-----------------------|
| Practitioners in General               | <b>Women</b><br>(N=379)                              | <b>Men</b><br>(N=379) | <b>Women</b><br>(N=379) | <b>Men</b><br>(N=379) |
| Village chief                          | 34%  | 38%                   | 32%                     | 45%                   |
| Family or nakamal chief                | 21%  | 18%                   | 25%                     | 31%                   |
| Area chief                             | 6%   | 8%                    | 2%                      | 3%                    |
| Other chief                            | 2%   | 2%                    | <1%                     | 0                     |
| Family member                          | 15%  | 7%                    | 23%                     | 11%                   |
| Friend                                 | 2%   | <1%                   | 2%                      | <1%                   |
| Religious leader                       | 9%   | 10%                   | 8%                      | 5%                    |
| Police                                 | 7%   | 12%                   | 2%                      | 2%                    |
| Court                                  | <1%  | 2%                    | <1%                     | <1%                   |
| No one                                 | 3%   | <1%                   | 5%                      | <1%                   |

In the research, community members were also questioned about particular conflicts they had experienced in the past year. In general, for both women and men, chiefs were used more frequently in the past year, with women using chiefs in 42% of their conflicts, compared to 8% for state justice representatives. Men used chiefs for 62% of their conflicts, compared to 9% for state justice representatives. While this may reflect a preference, it could also be habitual or could be due to several other factors including the type of conflict, and the proximity and accessibility of state justice options.

## 4.3 MAIN COMMUNITY ISSUES

Several issues were raised as key matters of concern for the chiefs who were interviewed. Some of these showed up in the data relating to conflicts that chiefs said they had managed in the past year, and other issues were raised in discussions and focus groups. The following table provides a summary of the main conflicts that chiefs who were interviewed reported dealing with in the last year:

| Table 7: Most Common Cause of<br>Conflicts Chiefs Dealt with in the<br>Last Year<br>(N=39) | Percentage of chiefs who had<br>managed a conflict of this kind in<br>the last year | Total number of this type of<br>conflict for chiefs who had<br>managed one |
|--|---|--|
| Theft  | 59%   | 79   |
| Adultery   | 56%   | 30   |
| Land   | 49%   | 49   |
| Black magic  | 49%   | 40   |
| Fighting (not domestic violence)   | 39%   | 25   |
| Money (including debts, loans)   | 36%   | 34   |
| A decision a chief had made  | 33%   | 16   |
| Divorce (and separation)   | 28%   | 15   |
| Domestic violence  | 28%   | 12   |
| Community project  | 26%   | 13   |
| A decision the courts had made   | 26%   | 13   |
| Child custody/maintenance  | 23%   | 12   |
| Sexual assault   | 23%   | 10   |
| Gambling or playing cards for money  | 21%   | 18   |

Other conflicts were identified as well, but were not dealt with as commonly or with the frequency of the conflicts above by the chiefs who were interviewed. These included conflicts around the community water supply, logging, use of the reefs, religion, politics, and swearing and gossip. Conflicts relating to chiefly title were also identified by two of the chiefs who were interviewed although these are often dealt with elsewhere (for example, the area council of chiefs or through the island courts).

In the research community members were also asked to identify conflicts that they had personally experienced in the past year, and that they had needed someone to help them solve. For the women and men who reported experiencing a conflict in the past year, the three conflicts they experienced with the greatest frequency related to land, domestic violence and theft as demonstrated in the following table:

| Table 8: Community Members'           Conflicts in the Past Year           (Women N=246, Men N=212) | 1 <sup>st</sup> most frequently<br>cited conflict* | 2 <sup>nd</sup> most frequently<br>cited conflict* | 3 <sup>rd</sup> most frequently<br>cited conflict* |
|---|--|--|--|
| Women   | Land (19%)   | Domestic Violence (18%)                            | Theft (12%)  |
| Men   | Land (25%)   | Theft (17%)  | Domestic Violence (8%)                             |

\*Percentage relates to the number of conflict of this kind, out of all reported conflicts.

There were also some regional variations in the experience of conflicts. For example, land was identified with the least frequency in southern Malekula by community members overall. In the conflicts identified by chiefs in the past year, interestingly no chiefs who were interviewed in Southeast Malekula said that they had managed a dispute relating to land in

the past year, and overall fewer chiefs said they had dealt with a land conflict in south Malekula as well. Theft was identified with greater frequency by chiefs in southern Malekula as a conflict they had managed in the past year, and also showed up as more prevalent in the south according to community members reported conflicts, as illustrated in the following table:

| Table 9: Regional           Breakdown of Most           Frequent Conflicts           (Women N=246, Men N=212) | Percentage who<br>experienced ANY<br>conflict |     | Percentage who<br>experienced a<br>land conflict |     | experie | age who<br>enced a<br>s violence<br>flict | experie<br>conflict r | age who<br>enced a<br>elating to<br>eft |
|---|---|-----|--|-----|---------|---|-----------------------|---|
|   | Women   | Men | Women  | Men | Women   | Men                                       | Women                 | Men                                     |
| Central   | 76%   | 70% | 35%  | 33% | 23%     | 21%                                       | 12%                   | 12%                                     |
| Northwest   | 72%   | 45% | 16%  | 25% | 24%     | 11%                                       | 12%                   | 11%                                     |
| Northeast   | 71%   | 59% | 20%  | 37% | 25%     | 9%  | 7%                    | 9%                                      |
| Southeast   | 57%   | 61% | 7%   | 25% | 13%     | 8%  | 10%                   | 13%                                     |
| South   | 49%   | 43% | 14%  | 16% | 12%     | 6%  | 18%                   | 10%                                     |
| Southwest   | 51%   | 51% | 23%  | 29% | 8%      | 0%  | 15%                   | 5%                                      |

In general, the frequency of conflicts identified by community members correlates fairly well with the conflicts that chiefs identified dealing with in the past year, with some key exceptions. Domestic violence shows up among community members, particularly women in central and northern Malekula with fairly high frequency but it is not identified as an issue that chiefs themselves reported dealing with as frequently. This is most likely due to the fact that community members often seek help with these issues from other individuals including religious leaders and family members. In fact, for women who had identified experiencing domestic violence in the last year, only 24% said that they had sought help in the first instance from a chief, while 49% said they had sought help from a family member, 15% said they had seen a religious leader and 5% said they had gone to the police<sup>88</sup>.

## **Black Magic**

There were also significant differences in the findings around black magic. Overall only 3% of conflicts women said they were personally involved in and 4% of conflicts men said they were personally involved in over the past year related to black magic, yet 49% of chiefs said they had managed a conflict relating to black magic in the past year. This difference may be due to the fact that community members may be less inclined to identify their own involvement with cases relating to black magic given how stigmatising it can be. As well, in communities there would generally be a limited number of suspected black magic practitioners, whose victims are thought to be those who are very ill or who have died. For both reasons, individuals associated with black magic either as victims or perpetrators may not have shown up as frequently in this part of the research.

<sup>&</sup>lt;sup>88</sup> Section 5.4 includes more information about women and domestic violence conflicts.

In another part of the survey, however, chiefs and community members were asked more general questions about common types of conflict in their community. While not every conflict identified in the section above was queried, community members and chiefs were asked whether they were concerned about a number of common sources of conflict. In this part of the research while land and theft appeared prominently as a concern again, black magic also seemed to be a bigger concern than several other potential sources of conflict, as shown here:

| Table 10: Assessment of Key General Conflict A<br>Chiefs and Community Members | reas by      | Chiefs<br>(N=39) | <b>Women</b><br>(N=379) | <b>Men</b><br>(N=379) |
|--|--------------|------------------|-------------------------|-----------------------|
| Is conflict or fighting about land a big issue here?                           | Yes/Somewhat | 97%              | 88%                     | 91%                   |
| is connict of righting about land a big issue here?                            | No           | 3%               | 12%                     | 9%                    |
| Are you concerned about theft and damaging peoples                             | Yes/Somewhat | 92%              | 93%                     | 91%                   |
| gardens or other property here?  | No           | 8%               | 7%                      | 9%                    |
| Are you concerned about violence against women and                             | Yes/Somewhat | 90%              | 77%                     | 83%                   |
| girls – such as rape and sexual assault – here?                                | No           | 10%              | 23%                     | 17%                   |
| Is conflict or fighting about black magic a big issue here?                    | Yes/Somewhat | 82%              | 76%                     | 83%                   |
| is connector righting about black magic a big issue here:                      | No           | 18%              | 24%                     | 17%                   |
| Is conflict or fighting among community leaders and                            | Yes/Somewhat | 79%              | 80%                     | 83%                   |
| chiefs a big issue here?   | No           | 21%              | 20%                     | 17%                   |
| Is conflict or fighting about religion a big issue here?                       | Yes/Somewhat | 82%              | 68%                     | 68%                   |
| is connect of righting about rengion a big issue here:                         | No           | 18%              | 32%                     | 32%                   |
| Is conflict or fighting about politics a big issue here?                       | Yes/Somewhat | 74%              | 70%                     | 77%                   |
| is connect or righting about politics a big issue here?                        | No           | 26%              | 30%                     | 23%                   |
| Is conflict or fighting among youth a big issue here?                          | Yes/Somewhat | 62%              | 68%                     | 61%                   |
| is connect or righting among youth a big issue here?                           | No           | 38%              | 32%                     | 39%                   |

It is interesting that while community members reported having very little direct experience of conflicts involving black magic in the past year, it was consistently identified as a general issue of concern for both community members and chiefs, and as a source of community conflict. This is worth exploring a bit further.

#### Case Study: Briefly Exploring Black Magic and its Relation to Justice

There are three key areas where black magic is of particular interest around access to justice:

- As a significant source of community conflict
- Given the particular challenges it poses for all justice actors
- It demonstrates the interconnections between justice and other social issues

#### Black Magic as a Source of Community Conflict and Insecurity

Chiefs and a number of community members identified black magic as a significant concern and source of conflict in communities, particularly in southern Malekula. And black magic may be linked to a range of other conflicts that may make their way to chiefs, to the police and even to court, as cases of arson or fighting for example. In one community a major conflict had erupted around a black magic accusation relating to the sudden death of a young person that resulted in several houses being burned, widespread fighting, and a number of families being driven out of the village.

Another community had been directly involved in a case where two accused black magic practitioners had been put to death<sup>89</sup> after a several weeks long trial.

Beyond these more extreme cases, in several places researchers were told that black magic practitioners were usually cast out of the community<sup>90</sup>. This would have a significant impact on their children, families and partners (who are most likely women, given that in Vanuatu black magic practitioners are generally understood to be men). In one focus group men stated that people pulled out the gardens and destroyed the houses of accused black magic practitioners, and the comment was made that an accusation of black magic, '...can really destroy people'. In another community the researchers reported that the chief and several community members had reported that people who were suspected of black magic were routinely beaten up. None of these are uncommon responses to accusations of witchcraft or sorcery in the region, and the level of insecurity that surrounds black magic was also clear during the research<sup>91</sup>.

#### **Challenge for Justice Actors**

One chief who said that black magic had been on the rise in his community said that, '...poison is a hard case for the community [because you] can't find evidence for poison'. He said that they were now working with members of 'Revival' (identified as part of the Presbyterian Church), however, to find the alleged practitioners. The process of identifying the practitioners seems to often involve groups of mostly children and women praying together. This chief said that in the past they were unable to find out who the black magic practitioners were even after holding meetings, but now because of the Revival movement, he said God identifies them to the prayer groups. At the time the two accused black magic practitioners were hung in Malekula, even a police officer commented that it was probably good that the community had handled it in this way because state justice did not have any way of dealing with these kinds of issues because of the lack of tangible evidence.

In a focus group in another community men also stated that people were using the holy spirit to divine 'poison' practitioners in the community, and then were taking action against the accused based on this 'evidence'. In a different community a male respondent identified himself as a Peacemaker (this was identified as part of the Presbyterian Church as well<sup>92</sup>), and said that, '...all the things the chiefs can't solve come to me'. This individual referred to his 'gift' and his ability to '...see things as a man who prays'. In other communities people referred to Prayer Warriors who seemed to be engaged in similar practices. It is clear that black magic is challenging from an evidentiary perspective in all justice contexts, and there is a growing use of questionable forms of 'evidence' gathering by chiefs, churches, and community members that can result in communities taking these issues into their own hands in potentially quite harmful and problematic ways. The use of children in these prayer groups (apparently based on interpretations of texts from the bible) is also of significant concern.

<sup>&</sup>lt;sup>89</sup> While this is a very rare occurrence in Vanuatu it is not inconceivable that this could happen elsewhere. The researchers were told that at least one other community had alleged black magic practitioners on trial at the same time, but did not go as far as killing them.

<sup>&</sup>lt;sup>90</sup> One chief suggested that black magic accusations are sometimes used in land disputes, where a false accusation might result in running one party out of the community, leaving the land for the use of the other disputing party.

<sup>&</sup>lt;sup>91</sup> The researchers themselves were warned not to dispose of flowers from welcome gifts in villages or peelings from food across a whole area of Malekula, for fear that it could be used for black magic purposes.

<sup>&</sup>lt;sup>92</sup> This individual referred to two big disputes in his community and he said they were both interrelated – black magic and a conflict in the church. The church conflict seemed to relate to the older church leaders not agreeing with the younger church members (the group he was part of) using prayer for this purpose. So this practice may not have complete acceptance even in the local Presbyterian Church communities.

#### Interconnections Between Black Magic and Other Social Issues

Justice matters are never removed from their broader social context, and experiences of justice processes, as well as a number of conflicts at the community level, often have clear connections to a range of social issues. Black magic provides a good example of this. In most of the places where black magic featured as a greater concern for community members and chiefs in the research, concerns around health care were also raised consistently (and independently of any questioning). In one community the chief discussed the rise of black magic over the past few years, and gave examples of several deaths and illnesses in the community as evidence of this. At the end of the interview, however, this same chief spent quite a bit of time outlining the community's desperate need for improved health care. They had not had a nurse in this community for the past several years and had to travel quite far to access any health services.

In each of the communities where black magic concerns seemed to be quite high, in fact, the same situation was evident. Most of the communities had not had a resident health care worker of any kind for a significant period of time and all of them had to travel quite far to access even basic health services. While simply providing a health care worker will certainly not address all of the issues around unexplained illness and death in these communities – and allay all community fears about black magic – improving access to basic health care, and spending time to talk to communities about modes of disease transmission and common causes of illness and death in communities in Vanuatu, may be as effective in addressing issues around black magic as any law and justice response might be. This multidisciplinary approach is also supported by recent regional research that states:

'Dealing comprehensively with the issues relating to sorcery and witchcraft beliefs was felt to require working across multiple government departments, in particular health, education and justice, in addition to working with a range of non-state institutions and organisations. Legislative responses, although important, are not sufficient in and of themselves to stem sorcery – and witchcraft-related violence. Similarly, a regular law-and-order approach (for example, recruiting more police and increasing penalties) is not likely to be effective unless coupled with other interventions.<sup>93</sup>

## Youth Violence, Marijuana and Alcohol

Although fighting among youth was not identified as a particularly big issue in most communities (as shown in Table 10 above), concerns about youth were raised in several locations during the research. Typically concerns raised about youth related to marijuana cultivation and use (and to a lesser extent alcohol and homebrew consumption). Marijuana was often identified as a concern by community leaders and described as an issue that was hard to manage at the community level. In one men's focus group community members said, '...the chiefs deal with these issues, but they continue. They fine them, and they continue.' According to one police officer, the proceeds from growing marijuana can often benefit a whole family in a cash poor environment, and so people may be more reluctant to deal with it actively from that perspective as well. Marijuana was also linked to black magic in a few locations, which most likely created another level of concern and insecurity.

<sup>&</sup>lt;sup>93</sup> Forsyth M. and R. Eves 2015. The Problems and Victims of Sorcery and Witchcraft Practices and Beliefs in Melanesia: An Introduction. In M. Forsyth and R. Eves (eds). *Talking it Through: Responses to Sorcery and Witchcraft Beliefs and Practices in Melanesia*. Canberra: ANU Press, 48.

#### 'I am very worried about marijuana. If young people smoke, who will become the leaders of tomorrow?' - Chief, Northeast Malekula

In several places community members also raised security concerns about young people in general. In at least one community youth were observed walking around with knives that were described as being for security purposes and not for gardening. While it is not clear if these individuals had any involvement in growing marijuana, youth violence was identified as a significant issue in this community, with several violent assaults by groups of young people in the recent past reported during the research (allegedly including a tourist, a young man, and a relative of the chief). This issue of young men carrying bush knives for 'security' purposes was identified as an issue by chiefs from neighbouring villages as well, who said they were trying to stop it from spreading to their own communities.

In another community in Southeast Malekula the chief had been beaten up several years ago by a group of youth who were said to be involved in marijuana cultivation and use, and several people reported independently that the chief and community members in this location were afraid to stand up to these young men as a result. One woman said she wanted to move out of this community because she did not feel safe, and a police officer also described the situation in this community saying, '...the chiefs are now afraid'. While marijuana and youth violence were not examined as conflict types on their own in the research, it is likely that some of the other conflicts including theft and fighting that people reported at the community level had been caused by youth, and some might have had some relationship to marijuana cultivation and use as well. However, in the research when chiefs and community members were asked what some of the key causes of fighting were in their communities<sup>94</sup>, interestingly these issues emerged as a relatively small source of fighting and violence overall:

| Table 11: Causes of Fighting and Violence at the CommunityLevel According to Chiefs and Community Members | Chiefs<br>(N=39) | <b>Women</b><br>(N=379) | <b>Men</b><br>(N=379) |
|---|------------------|-------------------------|-----------------------|
| Land issues   | 22%              | 31%                     | 32%                   |
| Fighting between women and men  | 14%              | 26%                     | 21%                   |
| Theft and stealing (property and gardens/reef)  | 15%              | 13%                     | 14%                   |
| Alcohol and drinking  | 12%              | 6%                      | 7%                    |
| Black magic   | 8%               | 7%                      | 7%                    |
| Gossiping, swearing and disrespectful behaviour   | 6%               | 2%                      | 2%                    |
| Youth conflict  | 4%               | 5%                      | 4%                    |
| Marijuana   | 3%               | 3%                      | 4%                    |

It is not clear why there was such a difference between what people expressed about youth violence and marijuana in several communities, and what they concretely identified as areas of conflict and actual sources of fighting and violence in the research. In terms of youth violence in general, it may be partly a generational issue. Talking about the 'problems with young people today' is also something that happens in Vanuatu society, and talk about

<sup>&</sup>lt;sup>94</sup> Respondents were able to answer whatever they thought were the causes of fighting. Researchers did not provide any suggestion or list of answers, and answers were disaggregated in the analysis.

stronghed (stubborn, difficult, rebellious) youth is quite common. Youth are also increasingly marginalised in urban and rural communities, with limited opportunities for education and even more limited prospects for paid work or meaningful ways of occupying themselves. In the case of marijuana, it may be that the significant stigma surrounding marijuana cultivation and use, and the fact that it was introduced fairly recently, has led to a situation where its reputation is significantly bigger than its actual impact.

Marijuana has also been a substantial focus for police in Malekula over the past several years, with several large police operations and mass arrests. This may also have contributed to the level of concern that people expressed about marijuana in particular. At the same time, marijuana cultivation may be making a substantial economic contribution to a number of families and communities in an otherwise cash poor environment, and this could also mean that how people relate to it at the community level is complex and somewhat contradictory. In fact, marijuana is an area that is worth further exploration, to ensure that any response and interventions are scaled appropriately, and also to consider the broader social context that surrounds marijuana cultivation in particular. As with black magic, it may be that law and justice responses on their own are not sufficient to address this issue.

#### Theft

'There is too much stealing in the community – stealing from gardens, stealing cocoa, stealing copra that belongs to someone else. And chiefs aren't taking any serious action to deal with this issue.' - Man, Northeast Malekula [former chief]

Theft was identified as a key source of conflict in several areas, a significant matter of concern for many community members, and seems to be an issue that chiefs are involved in managing with considerable frequency. Theft at the community level may involve taking property that belongs to another person from their household. This type of theft may become more of an issue as ownership of material goods increases, village populations swell, and people are living in closer proximity to each other. Theft from gardens and from the reef was also a concern in many different places, and showed up clearly in the research as well. With high reliance on gardens, fishing and the reefs as the primary food source for most people in rural areas (and often as a significant source of income as well), this can be an area of great concern for community members. Theft can also be linked to land and other conflicts<sup>95</sup>.

#### Land

Another major issue of concern on Malekula was, not surprisingly, land. As illustrated in every table above, and for everyone interviewed, land conflicts were identified as the most important conflict they had experienced in the past year. In the assessment of key conflict

<sup>&</sup>lt;sup>95</sup> See in particular the case study in section 5.3 relating to land and theft.

areas outlined above, chiefs most frequently identified land as a source of conflict, and women and men identified it as the major source of conflict along with theft. A number of stakeholders also suggested that land issues often lead to other conflicts in communities, and the research highlighted the fact that land issues are often closely linked to a number of other kinds of conflicts, especially chiefly title disputes. The following case study illustrates some of the complexity of many land issues:

#### Case Study: Land, Religion, Ethnicity

One community visited during the research was completely divided by a major dispute linked to religion, land and island of origin. The main division was between members of the Presbyterian Church, who were mainly people from another bigger island in Vanuatu (the 'big island group') and a coalition of other church groups including Seventh Day Adventist, Neil Thomas Ministry and Mormon made up mainly of people from another smaller island in Vanuatu (the 'small island group'). While the people from both of these islands consider themselves to be family, there is also an ongoing dispute about who should be chief, and this has contributed to the tension.

Historically the Presbyterian Church was described as 'ruling the whole village here'. The breakaway church groups were said to have resulted from infighting in the Presbyterian Church leadership in the community, which made some people leave to join other church groups. Religion in this area was described as similar to politics in Vanuatu – with lots of factions and breakaway groups. While most of the people in this community do not come from Malekula, they have been living there for many years (several decades) and claim to have different entitlements to the land based on historic agreements with the landowners. The small island group claims that they paid the landowners for the use of land.

The major dispute in the community that led to the current divisions resulted from the Presbyterian Church wanting to use a piece of land in the community to build a new concrete block church building. This land is seen as part of the communal space in the village, however, and has a prominent place at the entrance to the community. The small island group, who are not part of the Presbyterian Church and who see themselves as having a more legitimate entitlement to the land, however, were not in support of the use of this communal land for this purpose.

The conflict was first brought to a 'village court' that found on the side of the Presbyterian Church and the big island group. The village court, however, was described as being made up of Presbyterian Church members and so the decision that was reached was seen as biased. According to one individual from the small island group this court also failed to answer the simple question of whether the big island group had ever paid the landowners for the use of the land, and questions were raised about the legitimacy of their claim to the land.

Based on this perception of 'favouritism' in the village court and the failure of the first village court to effectively determine if the Presbyterian Church and the big island group had any legitimate rights to the land, the small island group brought the issue to an area court, and held what was described as a 'fresh' court. The area court involved chiefs from neighbouring communities. The big island group invited the police (from Lakatoro) to be present at this court to provide security and keep the peace. The area court overturned the decision of the village court, based on the issue of who had

paid for the land. As a result of this meeting the construction of the church was halted (with only the frame of the building and partial walls completed).

In the area court, the big island group was given 30 days to appeal the decision, but they did not do so within this timeframe. Four months later, however, the big island group lodged an appeal, but the small island group refused to participate in any new trial based on the fact that the deadline for the appeal had already passed, and they said that the appeal was therefore 'unlawful'. To date the community remains very divided, with community members living in the same general space, but with two different chiefs, separate places of worship, and a high level of underlying tension. While this issue has been 'solved' in a technical sense, it is clearly not solved in any practical way for community members, and continues to have an ongoing impact on their daily lives, safety and wellbeing.

## Land and Chiefs

'Everything is linked to land disputes and chiefs are also involved in land disputes.' - Chief and Island Court Justice

'Tourism can be a cause of disputes as well, and is also linked to land issues.' - Chief, Northeast Malekula

'All land in this area is unregistered and the chiefs here are all involved in the land disputes.' - Man, Southeast Malekula

'Land issues are the biggest issue in Malekula...and relate to everything else. Land is the base of every conflict. And land issues are very difficult to solve. The Land Management Act is not working at all, and the Land Tribunal is also problematic. Chiefs are biased. This leads to lots of other problems that then heap up in court.' - Magistrate

'Chiefly title disputes are a big issue in Malekula and automatically involve land. Land disputes are also very big.' - Police Officer and Chief

Land issues were prevalent in almost every community visited in the research, and had clear links to other major conflicts, as well as a strong connection to conflict management more generally. While a significant number of chiefs and community members who were interviewed expressed support for the new land laws, often using it as an example of how power to resolve major conflicts had been 'returned to the chiefs', and expressing frustration with how state justice had handled these issues, the picture that emerged about land through the research was not entirely straightforward, and it is clear that at the same time that land is the biggest source of conflict, it also represents some of the most complex and pervasive conflicts that can exist at the community level.

For example, on several of the smaller offshore islands of Malekula the chiefs described themselves as the first people in the area, and several claimed ownership over areas of land

on mainland Malekula as well, resulting in disputes with other chiefs on the mainland. In one area a land dispute between a smaller island and the mainland involved more than twenty parties, and was linked to a chiefly title dispute as well. Chiefly title disputes in turn can also have a significant impact on community conflict management<sup>96</sup>. Another chief on a small island said that groups from the mainland had fled to their small island seeking shelter at the time of more active warfare and cannibalism on the mainland, saying, '...they came to save their lives'. While these groups had been accommodated (in some cases, generations ago), their claims to land on the island and nearby mainland posed challenges.

In some areas, mission centres including schools and health facilities drew people into new places, or brought them down to more coastal locations, where they have continued to live until the present day. In other areas significant plantations were established at the time of colonialism, and this drew in large communities of people from other islands who came to live permanently in Malekula. While various accommodations and arrangements were made around all of these movements of people, issues around internal migration within Malekula and from other parts of Vanuatu clearly play a role in many land disputes, even in a rural location like this. As well, in some areas kastom chiefs are no longer identifiable and there may not be people who are in possession of the necessary kastom and historical knowledge to mediate these complex relationships to land that were also potentially more fluid in the past.

At the same time land has begun to take on a different kind of value in some areas. This is the case in small centres on Malekula where various interests associated with economic and social development make ownership of the land potentially more lucrative. Commercial interests, through opportunities like cruise ship visits and small-scale tourism have also added to the high stakes involved in land disputes. In one community a dispute around a regular cruise ship visit with deep links to ongoing land and chiefly title disputes created such a high level of conflict nearly 60 people from the community marched into Lakatoro to threaten the former head of police for Malampa Province (who was also alleged to have had some connection to the dispute). As a result of this conflict, dispute management in this community was completely shut down for a significant period of time, and the land and chiefly title disputes, as well as a high level of tension, are ongoing (and the cruise ship visits have been suspended indefinitely).

Not surprisingly a number of the chiefs who were interviewed identified being involved in protracted land disputes themselves. This was also raised as a concern by a number of community members, as illustrated in the comments above. In one island community a chief said he had been in a very long land dispute over a large piece of land on the mainland that was still making its way through the courts. In a nearby mainland community, however, the chief there identified being the landowner of an even bigger area, that also contained the territory claimed by this other chief. Both identified themselves as paramount chiefs. In

<sup>&</sup>lt;sup>96</sup> Section 5.3 includes a particularly compelling case study relating to women, conflict management and a chiefly title dispute.

another community a woman commented that the main chief in her community was involved in an ongoing land dispute that influenced the way he handled cases in her view, particularly those involving the family members of the other disputing party.

In the idealised form, every community member is from *that* community, and village and area councils of chiefs are made up of individuals with deep (and complete) kastom knowledge of *that* area and do not have any personal interest or stake in the dispute, *and* disputes involve relatively simple disagreements between neighbouring parties about boundaries in a context with fairly equal stakes. The realities, however, even in rural contexts like Malekula, are significantly more complex. One community member described how his community had held their own 'court of hearing' in 2014 so people could stand up and tell the community and their children about their connections to the land. This individual said that it became clear in this process that their chiefs were not capable of dealing with land issues<sup>97</sup>. In the research as well, 26% of the chiefs who were interviewed also identified land as an issue that should *only* be dealt with by the state justice system.

So while chiefs and community members regularly expressed support for the new land laws and returning the power to determine land cases to the chiefs and to the community level during the research, how much of this is part of an understandable reaction to the overwhelming frustration that people have experienced around the courts handling (and regular mishandling, particularly at the island court level) of land cases is less apparent. While it may be politic to provide chiefs with greater power and recognition in terms of land in Vanuatu, it is not clear that chiefs will be any better positioned to deal with many of the more complicated land cases, and particularly those that involve members of their own family.

In addition to this, what 'returning the power' to chiefs might mean for how other non landrelated cases are managed is also worth considering. Community level governance emerged as challenged in several places during the research, as will be discussed briefly below. Given that land often represents incredibly difficult and interconnected sets of issues, it is also not clear how the management of these complex land cases will impact conflict management by chiefs around other issues. For example, as with ongoing chiefly title disputes, it is possible that big land cases may essentially tie up village and area level conflict management processes in a way that will make it very difficult for people to have other kinds of cases heard and dealt with.

<sup>&</sup>lt;sup>97</sup> In Bislama he said 'Ol jif oli no inaf blong jajem ol lan kes', implying that they did not have the adequate kastom knowledge to resolve land disputes in that area. Chiefs in this community were also identified as involved in land disputes themselves.

# 4.4 COMMUNITY CONFLICT MANAGEMENT, GOVERNANCE AND DECISION MAKING

'A community is like a jigsaw puzzle – when you put someone in the wrong place, you will always have problems.' - Researcher, Malekula Research

> 'The council of chiefs is not functioning here.' - Chief, Northwest Malekula

'Some chiefs are saying that they are "paramount" chiefs here, but there isn't anything like that in our system.' - Chief, Northeast Malekula

'A chief's perspective is: "Whether I am right or I am wrong, I am the boss." But this is ridiculous. Even if you're a chief, if you're wrong, you're wrong.' - Man, South Malekula

#### **Governance Structures**

While there has been some effort to set chiefs up in a standardised structure through the Malvatumauri, with different roles for chiefs, councils of chiefs at the village and area level, and with bylaws in each community, it was clear in the research that this idealised form does not always exist. A number of chiefs and community members who were interviewed stated that the council of chiefs was not working in their community, and a police officer reported that, 'Lots of people come to the police to say that their councils of chiefs don't work.' In one area where the community was dealing with significant conflict, including a dispute between two chiefs, a respondent mused that they could bring the problem to the Malmetevanu, but they would need to go through the area council of chiefs first, and in his words, '...sometimes the area council of chiefs is not straight.' Community bylaws, while they are intended to provide some consistency and standardisation to community level conflict management also presented as quite problematic, as will be discussed below.

Some chiefs were finding their own ways around some of these challenges. In one village the chief said he had set up his own 'House of Chiefs' to govern over a nearly 200-person community, and that he was using roundtables<sup>98</sup> to manage conflicts. In another community an innovative council of chiefs had been set up that consisted of several male chiefs, and two women who were members of the Vanuatu Women's Centre's local Committee Against Violence Against Women who regularly sat together to hear cases on a range of matters<sup>99</sup>. At another extreme, one chief seemed to have set up his own mini state with a 'constitution',

<sup>&</sup>lt;sup>98</sup> A kind of informal mediation technique often used by the police, and usually involving sitting down with all parties and their immediate family members and talking through an issue with facilitation support provided by an authority figure (often police) who also provide their own views on the situation.

<sup>&</sup>lt;sup>99</sup> See section 5.2 for a case study on this unique council of chiefs.

and a fairly formal 'court' system for managing issues where he described using 'clerks' and 'police' (all untrained community members) and where he said that he would sometimes '...hear twelve cases in one hour'. This chief also stated that he had his own 'kastom family protection order'.

While all of these may represent interesting innovations, it is not clear how effectively they are meeting community access to justice needs, and tensions around chiefs and chiefly authority were sometimes evident in the research. As shown in the table above, 79% of chiefs, and 82% of community members said that fighting among chiefs and community leaders was an issue in their community. The chiefs who were interviewed also raised issues around the legitimacy of other chiefs in some areas. One chief suggested that if they had dealt with 'straight' chiefs in the context of a major conflict, that the issue would not have happened, saying '...bloodline chiefs would never mess things up like this.' Another chief on the other side of this issue, however, suggested that all of the chiefs who were identifying themselves as paramount or 'bloodline' chiefs in this situation were only being swayed by their interest in money, land and power and referred to them as *giamen* (fake or illegitimate) chiefs, adding that there had never been anything like a 'paramount' chief in their kastom before.

In another area where fighting among chiefs was identified as a significant issue, a police officer who commented independently on these communities said they were in need of some assistance because in his view it was, '...too hard to deal with cases through kastom' in this area because the communities were 'mixed' (that is, several people living in them had come from other places). Perhaps because of the challenge of dealing with more mixed communities, and also because identifying a 'straight' kastom chief was described as difficult in several communities as well, some areas seemed to have instituted a system of elected chiefs (it was suggested that many of these had been introduced through the Customary Land Tribunal system in the last decade). Elected chiefs were particularly evident in communities in Southeast and South Malekula.

While the idea of elected chiefs appears somewhat appealing – and potentially quite democratic – on one hand, with chiefs elected for fixed terms (two year and four year terms were mentioned) and even allowing for greater diversity in leadership<sup>100</sup>, there were also some obvious drawbacks. Elected chiefs may come into a position of significant authority in terms of conflict management fairly quickly based on a set of perceived qualities or their popularity in the community (or even because few others are interested in taking up this level of responsibility), with very little knowledge about conflict management or deeper knowledge of kastom. One newly elected chief said he had been a church leader and was elected as a chief because he is 'able to talk'. This chief and others like him said they relied on other (often older) men and former chiefs for advice and mentorship, and some elected chiefs seemed to struggle with their role in making decisions. While kastom chiefs may struggle in the same

<sup>&</sup>lt;sup>100</sup> One chief said his community had a woman chief in the past, although it is not clear that this had happened anywhere else, or how this had worked for the woman or for the community.

way, they may at least have been groomed for their role more actively and for a longer period of time.

'We have elected chiefs here but they don't have any training in the law, the constitution, new acts passed through parliament, human rights. It would be good to have a program to teach people about this.' - Men's Focus Group, Malekula

On the other hand, having elected chiefs seems to be something of a necessity in several communities. In some areas there seemed to be more of a mixed system with one island court justice and chief stating that they had moved to elected chiefs because they could not agree on the 'straight' kastom chief in their area, although he said that the elected chiefs 'use kastom in their rulings'. In another community the chief said that while they had used elected chiefs for some time, they had recently determined who their kastom chiefs were and have reverted to that system. In the research it was clear that a number of different arrangements are being made to fill the position of chief, and who chiefs are, how they derive their authority, and what their knowledge is based upon, is diverse. While this does not necessarily mean that these various individuals are incapable of making sound decisions and solving community conflicts effectively, it does suggest that treating all chiefs as equally qualified, capable and even comfortable in making complex decisions and judgments at the community level is not ideal.

## The Role of Religion in Community Conflict Management

'People want to run away from their problems, so they go to church and use religion like a blanket to cover up their problems...pastors don't go deep enough [though], its just "Say sorry and pray." Pastors don't deal with issues like chiefs do. Problems should be dealt with first outside of the church. People use church as the easy way.' - Chief and Island Court Justice [also a church elder]

While many chiefs stated that religious leaders were not (and should not be) solving problems on their own, as illustrated in this comment, many chiefs also recognised the role that the church plays in community level conflict management. Several chiefs said that ideally problems should be solved first by the chiefs, and then reconciliation could be 'handed to' the church leaders. In the words of one chief, 'Praying comes after kastom.' In other places, however, the use of church practices around conflict management were more integrated with what chiefs were doing, as in the 'Monday Meetings' mentioned above. The use of prayer by some communities to deal with issues around black magic is another area where church affiliated groups and chiefs seem to be working more closely together. And sometimes chiefs said they relied on church teachings to assist them in their decision making.

While community members identified using chiefs more frequently than any other conflict manager, a significant number said that they or a family member had seen a religious leader

to 'solve a problem' as well. For community members who had experienced a conflict in the last year, religious leaders were primarily used to manage certain types of problems. For men it was mainly religious conflicts, as well as conflicts involving adultery, black magic, domestic violence and fighting. The majority of problems that women brought to religious leaders in the last year were issues around domestic violence and fighting. Reported use of different conflict managers by women and men in the research are provided in the following table:

| Table 12: Overall Use of Conflict Management Practitioners                        | <b>Women</b><br>(N=379) | <b>Men</b><br>(N=379) |
|---|-------------------------|-----------------------|
| Have you or a family member ever used a chief to solve a problem?                 | 58%                     | 71%                   |
| Have you or a family member ever used a religious leader to solve a problem?      | 46%                     | 48%                   |
| Have you or a family member ever used the police to solve a problem?              | 44%                     | 58%                   |
| Have you or a family member ever used an island court justice to solve a problem? | 23%                     | 40%                   |
| Have you or a family member ever used a magistrate to solve a problem?            | 22%                     | 39%                   |

It is worth noting that 'solving' a problem in this sense may be less about seeking justice, identifying right and wrong, or even about getting to the bottom of a conflict and solving it, than about finding a way to move past it. In the case of religious leaders' involvement in conflict management, community members (particularly women) often referred to 'praying and forgiveness' as an approach used to manage conflict. While forgiveness is laudable, it is not clear how doing this results in the effective resolution of conflicts, particularly for victims. Interestingly, community members who identified managing a conflict with the help of religious leaders in the last year, and who said they were dissatisfied with the process, identified the issue not being solved as the main reason. While they expressed dissatisfaction with other conflict managers for the same reason, it was more frequently expressed with religious leaders.

## **Chiefs' Decision Making and Conflict Management Processes**

In the research chiefs and community members were asked a number of questions about decision making at the community level. While 62% of the chiefs who were interviewed said they had gone through some kind of training to support them in their work as a chief, 38% had not. For the chiefs who had undergone training, most said they had been trained through 'kastom', and a significant number said they had been trained through the Customary Land Tribunal system. Only one chief specifically identified having undergone conflict management or mediation training<sup>101</sup>. And while there has been support from the Malvatumauri through the Malmetevanu to put consistent *structures* in place (re-establishing councils, creating bylaws) at the community level, it is unclear if there has been much, if any, focus on support for decision making procedures and processes with chiefs.

As a result, how chiefs reach decisions and manage conflicts seems to be quite diverse. In one community a respondent stated that the chiefs had 'too much love' implying that they

<sup>&</sup>lt;sup>101</sup> This chief said he had been trained in something called the 'spider web approach' by the Malvatumauri and representatives of an Australian university several years ago. He said he found it quite helpful and used it in his conflict management practice.

had a hard time judging cases because they felt sorry for people. In another community the chiefs were likened to dictators. One male respondent said that cases in his community were decided by a show of hands. And in a women's focus group in another area, women said that the only procedure their chiefs used was '...taking statements and putting in place fines', which they described as effective only some of the time. In one community (and it is most likely the practice in several) there was a right of appeal in place that allowed people thirty days to take matters up at the area council level if they were not happy with the decisions reached at the village level.

In one part of the research chiefs and community members (who had experienced a conflict in the past year) were asked to comment on a number of aspects of the conflict management process as they had experienced it. Perhaps not surprisingly, chiefs reflecting on their own practice had a fairly positive view of their processes and outcomes, as shown in the following table:

| Table 13: Chiefs' perceptions of their own conflict management practice $_{\left( N=39\right) }$  | Yes  | Some<br>what | No  |
|---|------|--------------|-----|
| Do you give everyone a chance to speak when you judge a case?                                     | 100% | 0            | 0   |
| Do you give everyone a chance to share their thoughts and feelings?                               | 97%  | 3%           | 0   |
| Do you explain the process to everyone?   | 100% | 0            | 0   |
| Do you apply the same rules to both sides?  | 97%  | 3%           | 0   |
| Do you allow people to correct information that is wrong?   | 97%  | 0            | 3%  |
| Do you think that treating everyone equally is important when you judge a case?                   | 87%  | 10%          | 3%  |
| Do you think that people in the community are happy with the way you judge cases?                 | 90%  | 10%          | 0   |
| When you make a decision in a case, do you think about the needs and interests of both parties?   | 92%  | 8%           | 0   |
| Do you think that the way you judge cases helps to improve the relationship between both parties? | 97%  | 3%           | 0   |
| Do you make sure that decisions that you have made are respected?                                 | 90%  | 10%          | 0   |
| Do you think people are happy with your decisions?  | 77%  | 20%          | 3%  |
| Do you think the problems are solved after you have judged them?                                  | 87%  | 10%          | 3%  |
| Do you think that people take their cases elsewhere after you have judged them?                   | 49%  | 18%          | 33% |

Community members were asked a similar set of questions, and while their responses are generally fairly positive as well, there were some differences in the responses of women and men, and in some instances perceptions of unfairness in some aspects of the processes and decisions of chiefs<sup>102</sup>, as illustrated in Table 14 on the following page.

<sup>&</sup>lt;sup>102</sup> Please note that the experiences community members expressed having with chiefs may have had nothing to do with the individual chiefs who were interviewed. Most communities have several chiefs, and the research was more interested in examining systems and processes overall, rather than the practice of any individual chiefs.

| Table 14: Community members'<br>experiences of chiefs' conflict                                    |     | Women<br>(N=76) |     |               | <b>M</b><br>(N= | <b>en</b><br>⊧99) |     |               |
|--|-----|-----------------|-----|---------------|-----------------|-------------------|-----|---------------|
| management practice  | Yes | Some<br>what    | No  | Don't<br>know | Yes             | Some<br>what      | No  | Don't<br>know |
| Were you really worried about the problem?   | 66% | 22%             | 12% | 0             | 72%             | 8%                | 20% | 0             |
| Was the chief fair in dealing with the problem?  | 59% | 14%             | 24% | 3%            | 65%             | 14%               | 20% | 1%            |
| Were you able to express your thoughts<br>and feelings?  | 75% | 9%              | 15% | 1%            | 80%             | 7%                | 13% | 0             |
| Were you treated with respect?   | 76% | 12%             | 9%  | 3%            | 77%             | 11%               | 12% | 0             |
| Was the process explained to you?  | 71% | 7%              | 21% | 1%            | 76%             | 5%                | 19% | 0             |
| Did you trust the chief who managed your problem?  | 74% | 9%              | 17% | 0             | 75%             | 9%                | 16% | 0             |
| Would you use this chief again?  | 54% | n/a             | 38% | 8%            | 61%             | n/a               | 38% | 1%            |
| Did you find the decision that was reached<br>fair or straight?                                    | 59% | 11%             | 26% | 4%            | 67%             | 8%                | 24% | 1%            |
| Did how the conflict was managed improve<br>your relationship with the other party?                | 63% | 8%              | 25% | 4%            | 64%             | 13%               | 23% | 0             |
| Did going through the process spoil any of<br>your relationships with your family or<br>community? | 53% | 8%              | 38% | 1%            | 44%             | 10%               | 46% | 0             |

It is worth noting as well that for the community members who had experienced a conflict in the past year and had used other conflict managers (family members, religious leaders, police and court officers), women generally expressed greater levels of satisfaction with the processes and outcomes of other practitioners than they did with chiefs<sup>103</sup>. While men's responses were more mixed, there were some areas where they also rated chiefs lower than other justice practitioners. While this may be based on the kinds of issues that are brought to the different conflict managers, it may also indicate that there is less trust and less of a sense of fairness around conflict management processes handled by chiefs. Some of these concerns will be explored further below.

'I try to make decisions in a way that people can accept them. I solve problems through teaching and try to keep fines low. I don't get cross if some people aren't happy with my decisions. Some chiefs do, but that's not justice.' - Chief and Island Court Justice

In the research chiefs were also asked about what considerations guided them most in their decision making at the community level. It is interesting to note that while chiefs and several community members defined justice in quite a nuanced way, and associated it with fairness and issues of right and wrong, when chiefs actually make decisions at the community level they may be thinking less about justice than about other considerations. When the chiefs who were interviewed were asked about what guided them the most in their decision making around conflicts, the answers that were offered most frequently were community peace (27%) and community harmony (23%). Other more secondary considerations included

<sup>&</sup>lt;sup>103</sup> See section 2.2 for further discussion of this.

fairness (13%), and the bible (11%). Justice on the other hand was only mentioned in 9% of the responses, and righting a wrong (8%) and punishment (4%) were mentioned even less frequently. So while chiefs may have a more nuanced sense of justice as a concept, what they see themselves doing at the community level around conflict management may have more to do with mediating relationships than with justice. This most likely has significant implications for community level access to justice.

## 4.5 Key Concerns about Chiefs Involved in Managing Conflict

'Lots of chiefs are corrupt now. Money has really spoiled them.' - Chief, Southeast Malekula

'Chiefs need to make sure that they are not involved in bad practices or issues when they are solving other peoples' problems.' - Men's Focus Group

In the research chiefs and community members expressed several perspectives about chiefs who are involved in managing conflict. Some of these related to the idea that chiefs should have greater scope to manage conflict. Concerns around youth violence, for example, were raised in some communities, and led to comments that chiefs needed to have more 'power'. This is an opinion that is often expressed by formal chiefly bodies as well, including the Malvatumauri. In several places the new land laws were also praised because they were seen to be returning power to the chiefs in at least one key area. A number of concerns about chiefs who are involved in managing conflict were also raised in the research, however. Some of these related to a perceived lack of effectiveness of chiefs to deal with certain issues, and challenges chiefs face in navigating conflict in mixed communities and around complex issues such as land claims. A number of other concerns were also raised with respect to perceived bias, self-interest, a sense that chiefs were not acting in accordance with the law, and that fact that chiefs were sometimes implicated in conflicts themselves.

## Bias, 'Favouritism' and Chiefs' Perceived Involvement in Conflict

'Chiefs have to be neutral. Issues of "favoritism" with chiefs make people lose respect for them.' - Chief, Southeast Malekula

A key area of concern about chiefs who are involved in managing conflict related to what community members often talked about as 'favouritism', referring to a perceived bias or lack of neutrality in the decision making of some chiefs. This sometimes relates to gender, and may be part of the reason why women seemed to find chiefs and their decisions less fair than men did in the research. This may also have to do with the idea raised above that some chiefs may be more interested in making decisions that result in greater community harmony,

which may in turn predispose them to finding on the side of more 'important' community members. Some chiefs may also be less inclined to act fairly with people who challenge or disrespect them. One chief who is also an island court justice stated quite openly that if someone 'breaks protocol' or disrespects or questions his authority or judgment, this '...will impact everything else including how his problems are dealt with.'

Community members (and several chiefs) also said that chiefs sometimes made decisions in their own – or their family's – interest. The issue of chiefs or their close family members being involved in conflicts themselves was raised as a concern in several locations, and had different impacts on conflict management. People in several parts of Malekula stated that their chief's involvement in conflict made it very difficult to deal with matters in an unbiased and neutral way. In one community a young 'acting' chief had recently replaced the main chief because the older chief had been involved in an adulterous relationship that was seen to have compromised his role. This did not always seem to happen, however, when chiefs were involved in problems. In one community the primary chief and his family members were implicated in a major and highly impactful community-wide conflict. Several people in this community said they had been 'forced' to elect this chief, and some expressed fear about the chief and his family.

While this situation represents an extreme case, fear and challenging relationships around chiefs, their family members and community conflicts were not isolated to this community, and not surprisingly this was identified as having a significant impact on various aspects of conflict management at the community level. The involvement of chiefs in disputes around money and 'politics' (for example, the cruise ship issue discussed briefly above) was also seen to compromise chiefly decision making, and in at least one case had shut down a community's ability to deal with problems at all. Chiefs' involvement in land conflicts and chiefly title disputes, were also identified as key concerns in the research. In the words of one chief, 'Chiefs in the villages aren't settled, and so problems in communities can't be solved.'

## Cost of Using Chiefs, Use of Money and Fines

'A weakness with chiefs is the fact that you need to pay some chiefs to solve problems. The strength is that you can bring any dispute to them, as long as you pay them.' - Men's Focus Group

Community members raised a number of concerns around the use of money in solving conflicts at the community level. In the research, community members who had experienced a conflict in the past year were asked to identify the cost of the process to them, allowing for the separate identification of kastom items, and not including any fines. For community members who had used a chief to manage a conflict in the last year, 69% said that the

process had cost them money<sup>104</sup>, 26% said there was no cost (again not including fines) and kastom items<sup>105</sup> were used in only 3% of the cases. While the cost of state justice is often used as a reason why community members prefer to resolve their issues at the community level, it is also clear that conflict management at the community level, particularly with chiefs, is becoming increasingly monetised. Interestingly, for community members who had solved a conflict in the past year with a chief, and who expressed dissatisfaction with the process, 10% of the respondents cited cost as a reason (compared to 19% who cited cost as a reason they were dissatisfied with a court process).

Issues regarding fines imposed at the community level were also raised often in the research. In some communities separate concerns were raised with researchers about chiefs allegedly benefiting financially from the fines they were imposing<sup>106</sup>. In one case, a chief was said to have imposed a fine of a pig and VUV 12,000 and then gave the pig to the victim but held on to the cash part of the fine himself. In another community there was another fairly high monetary fine imposed, along with a cow. Again the cow was given to the victim, but the chief was alleged to have held onto the money in this case too. Beyond the concerns around chiefs pocketing fines themselves, community members said that this practice also could leave issues unresolved, as the victims did not feel adequately compensated. In another community it was reported that a fine of VUV 40,000 was imposed by a police officer and a chief, with both allegedly splitting the fine.

Another perpetrator in a separate community who had been fined VUV 20,000 for an incident also raised a similar concern himself, suggesting that chiefs had increased fines in order to ensure they received their cut. Perpetrators may also be less inclined to pay their fines when they know part of the fine is going to the chief. Interestingly, in this community the chief also complained that he had a very hard time enforcing fines, and said he hoped for support in this area. In fact, when asked about how he wanted to work more closely with the state system, the only answer he provided was 'enforcement'. This chief also described going to the police in one case to get a note to force a perpetrator to pay a fine, which the perpetrator did after receiving the note. While the police officer most likely thought he was doing a service to the victim, the victim may not have benefited in this case. While these reports related to a small number of chiefs, they were mentioned in several locations through unsolicited comments, and the issue of fines and penalties at the community level is worth exploring further.

In other communities issues were also raised about fines being too low. One chief raised concerns around the issue of deterrent saying, '...one pig is not enough for a crime. People could have a lot of pigs, and so it would be easy for them to pay the fine and they will just

<sup>&</sup>lt;sup>104</sup> The *average* cost identified by community members for processes involving chiefs was VUV 53,522. These were estimates, however, and could not be verified, and may include fines and penalties, as well as travel costs.

<sup>&</sup>lt;sup>105</sup> Kastom items may now also represent a *monetary* expense, as people do not always have access to materials like pandanas to weave mats, or may not grow their own kava or raise their own livestock.

<sup>&</sup>lt;sup>106</sup> In at least one community this practice was institutionalised in their bylaws, where the fine was detailed, along with a separate amount that is payable to the 'Village Court'. See section 4.6 for examples of several bylaws.

keep doing it.' A man in one community raised this issue as well saying, '...the judging of chiefs is not straight now.' This individual said that chiefs had imposed higher fines in the past that had worked as a deterrent, but they had now reduced the fines. This respondent provided examples saying that where before a fine would have been VUV 3,500 or VUV 10,000 depending on the issue, they were now often as low as VUV 1,000 or VUV 1,500. While these examples reflect a number of different issues, and in some cases may have been done to benefit community members, the lack of standardisation, consistency, and transparency regarding the cost of using chiefs, compensation for chiefs, and how fines are set and used, and how these processes actually benefit victims (and deter offenders), were concerns that were raised by community members at several different times in the research.

## **Addressing Chiefly Misconduct**

When asked if they thought there was anywhere to report misconduct in relation to a chief or to deal with a chief who was not doing their job properly, 80% of men and 64% of women said they thought there was. Interestingly, however, more than a third of the women who were interviewed did not think there was any place to report a chief who was not doing his job properly (27%) or said they did not know (9%). Of the women who thought there was a place to lodge complaints about a chief, the majority (70%) said the place to deal with complaints about chiefs was with the police, 14% said it should be taken to another chief or body of chiefs, and 5% said it should go to court. The remainder identified church leaders (9%) and family (2%) as the place to deal with complaints about chiefs was to the police, 29% said another chief or body of chiefs should handled these issues, 12% identified the courts, and 3% said it should go to a church leader.

While it is interesting that community members identify state justice as a possible venue to bring complaints about chiefs, as an authority structure that sits largely outside of state justice processes, it is not clear that bringing complaints about chiefs to either the police or the courts would result in any kind of action unless the complaint related to a crime or some other breach of the law, *and* the individual was interested in pursuing it as such. It is unclear, for example, how the practice of a chief extracting his own 'fee' from the payment of a fine would be viewed by the courts, particularly in the unregulated space of community justice. While 29% of men and 14% of women thought issues relating to the misconduct of chiefs should be taken up with other chiefs or chiefly bodies, it is also not clear how issues around chiefly misconduct are actually addressed in these contexts, if they are addressed at all. It may simply be that the decision itself is considered again, rather than there being any examination of the conduct of individual chiefs.

Interestingly only one man who was interviewed identified the Malmetevanu as the place to bring an issue of chiefly misconduct. While this body does seem to function in an oversight capacity for chiefs on Malekula, it is not clear that they have any specific procedures in place to manage these kinds of issues (and with what authority), and they may require that complaints are brought through local and area chiefs first, which could be very difficult. In one area where there were elected chiefs, one male respondent said that the thing to do about the misconduct of a chief was to elect a different one, although this would also take time to action, and would require that the majority of people in the community have similar concerns. While there may be processes in traditional governance practices that would allow for these kinds of issues to be raised and addressed, it is not clear what kind of redress they might offer, and the reality may be that there is practically very little to do about the misconduct of chiefs, beyond some community sanctions. Given the role they play in community access to justice, this also raises a number of issues.

'The chief is the final authority and decision maker. What he says, everyone has to follow.' - Man, Northeast Malekula (in response to this question)

#### Chiefs and the Law

'The chief here just makes decisions based on his own thinking, but it's not in line with the law.' - Woman, Southeast Malekula

'A lot of chiefs make decisions that are not straight with the law. But now people in the communities have gone to school and if you as a chief tell them to do things that aren't straight with the law, they won't follow what you say.' - Chief and Island Court Justice

'People here are too respectful of the decisions of the chief, even if they are against the law.' - Man, Central Malekula

Another issue that was raised about chiefs who are involved in managing conflict had to do with the basis for their decisions and the sense that sometimes the decisions chiefs are making are not in line with the law, as illustrated in the comments above. Several chiefs themselves also said that they sometimes had a hard time judging cases, particularly with younger community members who knew more about the law and human rights and sometimes questioned their judgments. In the research there were also several reports that chiefs (and sometimes senior family members) were restricting community members' access to conflict management options outside of the community (such as the police), which is also not in line with the law. In one community the chief stated that he had to approve any matters that were brought to the police, and 97% of the chiefs who were interviewed supported the idea that chiefs should handle *every* problem first in the community.

Some of this relates to the attitudes discussed above and the idea that chiefly power and authority are weakening, and the associated desire to support chiefs in 'regaining' their power. However, it may also relate to the fact that chiefs who were interviewed said they knew relatively little about the law. Interestingly, when asked whether following the decision of a chief was more important than following the law, the majority of men, women *and* chiefs

who were interviewed said that following the law was more important, as shown in the following table:

| Table 15: Chiefs and the Law                           |            | Chiefs<br>(N=39) | <b>Women</b><br>(N=379) | <b>Men</b><br>(N=379) |
|--|------------|------------------|-------------------------|-----------------------|
|  | Yes        | 33%              | 26%                     | 24%                   |
| Do you agree or disagree: Everyone should follow the   | Sometimes  | 5%               | 3%                      | 2%                    |
| decisions of the chief, even if it is against the law. | No         | 62%              | 69%                     | 74%                   |
|  | Don't know | n/a              | 2%                      | <1%                   |

So while chiefs may not be making judgments or managing conflicts in a way that is always in line with the law (or in support of human rights), the majority of chiefs and community members seem to support the idea that they *should* be. In this area it is also clear that it is not only information about the law and human rights that is lacking for chiefs but also clear guidance on how their role intersects with state justice and other conflict management processes, and how knowledge of the law and human rights might be more effectively integrated into what they do.

## 4.6 CHIEFS, HUMAN RIGHTS, LAW AND JUDGING CASES

'People need to have the feeling that justice has been done. When they are unhappy, they want to run to the police and the court system, and circumvent existing processes.' - Police Officer and Chief

'There are lots of things in the law that we don't know about – and things like human rights. So issues just stay here and they don't get dealt with. But we should know.' - Men's Focus Group (that included a number of chiefs)

> 'Community leaders have to know the law.' - Police Officer

'People who know the law well can sometimes take advantage or push their interests unfairly with people who don't know the law. This is why community members need more information about the law.' - Chief, Southeast Malekula

'We would like a workshop about justice. Particularly about how to navigate understandings of rights <u>and</u> respect for chiefs and community processes.' - Man, Southeast Malekula

'Why hasn't the government ever sent the law down to the chiefs? The chiefs just work from their experience, and chiefs really need [support from the government]. Sometimes chiefs face things that are very hard. And people depend on the chiefs.' - Chief, South Malekula

#### Knowledge of the Law and Justice Processes

Community members shared very diverse opinions about the law in the research, with some community members and chiefs identifying the law as a foreign construct<sup>107</sup>. One prominent chief suggested that '...we need to make kastom work, so we don't need the law', and for a number of respondents state justice and kastom were often articulated in quite oppositional terms. In part, these opinions could also reflect levels of knowledge about the law. When asked if they had any knowledge of Vanuatu's laws, 3% of women said yes, 37% said they knew a little and 60% said they had no knowledge of the law. Men identified having slightly more knowledge of the law, with 11% saying yes, 62% saying they knew a little, and 27% saying they had no knowledge of the law. Among chiefs only 5% said they knew the law, 90% said they knew a little about the law, and 5% said they had no knowledge of the law. This relatively low level of knowledge and understanding contributes in some cases to misunderstandings about law and state justice.

In the research it was evident that there was also some confusion about how state law and state justice processes, and community rules and processes, might be related and should be engaging with each other. While there is a standard hierarchy of procedures that is often evoked at the community level with the idea that conflicts should progress from family chiefs, to village and then area chiefs, and then if necessary into the state system through the various levels of courts, how the various community and state justice processes relate is probably much more convoluted in practice. For example, women seemed to be choosing a different approach for some of their conflicts. As mentioned above, women seemed to deal with domestic violence issues with family members and religious leaders more than they brought them to chiefs, the police or the courts. Chiefs also identified a number of conflicts that should not be dealt with at the community level<sup>108</sup> – although several of them continue to deal with these issues for a variety of reasons.

'I would like to know what the actual laws of kastom courts, island courts and magistrates' courts are.' - Man, Southeast Malekula

The common assumption that community level processes are well understood by all community members may also not be completely true. Interestingly, when male community members were asked what they would like to know more about in the (state) law, 5% said that they wanted to know more about the 'laws' the chiefs were using, and the roles and processes of chiefs, and the rules for how conflicts are solved at the community level. While community conflict management processes are clearly more accessible and familiar, and generally better understood by community members than state law processes, it was interesting that even 5% of chiefs who were interviewed, and 56% of police who were interviewed said that in their view community members did not understand how justice at the

<sup>&</sup>lt;sup>107</sup> See section 2.3 for further discussion of this issue.

<sup>&</sup>lt;sup>108</sup> Section 2.2 contains further information about chiefs' views about state justice.

community level actually worked. Some of the responses from community members also supported this view, as demonstrated in the following comments that were offered in response to the question, 'What laws (of the country) would you like to know more about?':

'I would like to know about the proper roles of chiefs. Should nasara [family] chiefs be judging cases?' - Man, Southeast Malekula

'I think we need a workshop on good governance, so that it can help our leaders to make good decisions at the community level.' - Man, Northeast Malekula

'I would like to know more about the laws for how disputes should be solved at the community level.' - Man, Northwest Malekula

## **Community Bylaws**

Community bylaws are often seen to be the local articulation of 'law' at the community level, and there has been a big push through the Malvatumauri to establish, and to some extent standardise, written bylaws at the community level across Vanuatu<sup>109</sup>. In Malekula 67% of communities stated that they had bylaws in place, although several did not seem to be using them. For those that had bylaws in place, they seemed to be quite different. Only 81% of the communities that identified having bylaws in place said they had written them down. For those who had written bylaws, some said they had written them within the last year or two, and one said they had written them 35 years ago, with the average being 14 years. A number of chiefs who were interviewed said that their bylaws were 'out of date' and in need of revision. According to one chief whose community bylaws were over 20 years old, 'Our bylaws don't work anymore – they are just hanging by a thread.'

In one community the chief identified the community's bylaws as a 'constitution', and in at least one case bylaws were referred to as 'Laws' in the written document (the third bylaw excerpt below), which might cause some confusion for community members who may think that these bylaws are a reflection of state law (this community also seemed to have had assistance writing these bylaws from a state justice representative). In two communities there only seemed to be one bylaw in place, and in both of these communities this bylaw related to the use of the reef. For chiefs who said their communities had bylaws, 65% said their bylaws were based on kastom and/or on rules that the community had agreed upon, 35% said they were based on rules that community leaders had agreed upon, and only 23% said they were based on the law.

<sup>&</sup>lt;sup>109</sup> For example, Resolution 6 of a National Customary Land Workshop organised by the Malvatumauri and held in 2011 (and also referred to as the Malvatumauri's Kastom Roadmap) directs communities to 'Transcribe custom rules and laws', although this process seems to have no basis in Vanuatu's state law.

The bylaws that were shared and viewed during the research covered a range of conflicts including: alcohol use, prostitution, murder, rape, religious choice, gossip, respect, incest, black magic, adultery, children born out of wedlock, abortion, lying, arson, damage to livestock, damage to property, theft, swearing, trespass, and fighting. Not surprisingly, bylaws contained a number of issues that relate more to social norms rather than formal law, and most communities had bylaws that related to major criminal matters like murder and rape as well. While one set of bylaws (see second bylaw excerpt below) referenced a kind of informal referral process to the state justice system, it is not clear how this functioned in practice or how most communities related their bylaws to the state system. Some chiefs who were interviewed said that they had used the assistance of a lawyer or a state justice representative to draft their bylaws. Here are excerpts from three sets of community bylaws viewed during the research:

wetem rop yu fasem fastaem boulouk. Taem we owner blong boulouk i no respectem tree taem notice, owner blong property i putum long kot.

#### ARTICLE 3 : PIKININI BLONG ROAD.

- Section 1: B.C.C i talem strong se wan man i no kat raet blong givim pikinini wan woman or girl after i livim pikinini ia i stap wetem mama blong hem mo i ranwe i go stap long samples or i no tekem woman.
- Section 2 : Sapos wan man i givim pikinini long wan marred woman hem i mas tekem aot pikinini blong hem mo hemi mas faen from marred woman long kastorn.
- Section 3 : Sapos wan man or wan boy i givim pikinini long wan girl we i no marred yet mo sapos boy ino marred yet, boy i save tekem woman ia olsem waef blong hem. Mo boy ia i mas stretem long kastom.

#### ARTICLE 4: ADOLTRL

- Section 1: Marred man i tabu blong comitim adoltri wetem woman blong narafala man.
  Section 2: Marred woman i tabu blong comitim adoltri wetem man blong narafala woman.
  Section 3: (a) Marred man i tabu blong hamback wetem single woman or under age.
  (b) Marred woman i tabu blong hamback wetem single man.
  - (c) Single boy mo single girl i tabu blong hamback wetern marred man or woman.

Bylaw Exerpt 1: From bylaws written 20 years ago, featuring bylaws relating to children born out of wedlock and adultery.

| SECTION 9:                     | (5)<br>ALCOHOL.  |
|--------------------------------|--|
| CP/PTION .                     | a) Ol boy/girl we iusum alcohol, smoke, drink kava mo home<br>bru under long 18 years. 1000 vt.  |
| SECTION 10:                    | PROSTITUTION.  |
|                                | a) Man/Woman we i salem body blong hem. 5000 vt.   |
| SECTION 11:                    | MURDER.  |
|                                | <ul> <li>Taem yu tekem/killim laef blong wan man or woman, ol<br/>family blong victim ia bai oli disaedem compensation blong<br/>hem.</li> </ul>   |
|                                | <ul> <li>Boy mo Gel icommitim fornication (slip tugeta) mo iresult<br/>long gel ikat bel mo tufala i disaed blong spoilem/killim.</li> <li>20000 vt.</li> </ul>  |
|                                | <ul> <li>c) Any man/woman we icontribute blong kilim laef long Section<br/>11 (a), mo (b), bai imas faen long 10,000 vt.</li> </ul>  |
| SECTION 12:                    | SECTS:   |
| a)                             | Bai inomo kat any mo mavement isave kam insoed long Community<br>biside long ol religions ia: - Presbyterian<br>- Catholic<br>- Assemblies of God.<br>- S.D.A<br>- Church of Christ<br>- Apostolic Life Ministry |
|                                | <ul> <li>Praise and Worship.</li> </ul>  |
| N/B: Blong talen<br>of Rv-Laws | n nomo se ol kes we i scrious tumas under long each section blong<br>ia, mo ol Chief ino save dil wetem long level blong Village, baei i   |

Bylaw Exerpt 2: From bylaws written 10 years ago. The note at the bottom states: 'Please note that for very serious cases in any sections of these bylaws, and where the chief is not able to deal with the case at the village level, these matters will be passed on to the courts to be judged.'

passem iko antap long kot blong kot ijajem.

|      |                          |                           | CIVIN FAFA LONG PROPERTIES  |
|------|--------------------------|---------------------------|---|
| (9)  | ARSON/                   | NARAE                     | R NOGUD FASIN BLONG GIVIM FAEA LONG PROPERTIES<br>ALA<br>ing Man o Woman iputum fire long properties blong different person.  |
|      | Hemi no a<br>Penalty:    | How blue<br>Sport<br>same | ng Man o Woman iputum fire tong properties then must compensate of<br>a anyone itrespass long rule is then hemi must compensate of<br>using we hemi destroyem no pem 1,000 vt. Ikam long Court.   |
| (10) | Hemi no a                | llow blo                  | NG PIGS MO CATTLE,<br>ing one person iletem Pigs or Buluk blong hem idamagem properties   |
|      | blong diffe<br>Penalty:  | dana<br>lanas<br>anek     | son.<br>one we iletem animals blong hem, hemi damagem different person<br>st pem damages la folem price blong Agriculture Department. Mo<br>sua se ol animals la istap long fence or rope mo pem 1,000 vt. ikam<br>e Court.                       |
| (11) | HOMICID                  | E/OR F                    | ASIN BLONG KILIM ONE PERSON IDEAD   |
|      | Penalty:                 | Anyo<br>kilim<br>izo li   | ng Man or Woman ikilim narafala idead.<br>one we itrespass long Law ia hemi must replacem person we hemi<br>a idead I girl igo long Nakamal blong dead mo pem 80.000 vt. cash<br>ong Famely we ilusum life mo 20.000 vt. ikam long Village Court. |
| (12) | BLONG H                  | EM.                       | LONG TOKABOUT NOGOOD ONE PERSON BEHIND BACK   |
|      | ino gat pers<br>Penalty: | Anyo                      | Right blong talem nogood long one person behind back blong hem.<br>one itrespass long Law ia imust tekem 5,000 vt. mo pem long person<br>emi mekem problem long hem mo pem 2,000 vt. ikam long Court.   |
| (13) | WITCHCR                  | AFT/BI                    | LACK MAGIC.   |
| (13) | Hemi no all              | ow blon;                  | ig one person istap under long possession blong Black Magic olsem<br>ny leaf blong spolem man, "Sou" or any nara samting blong spolem   |
|      | Penalty:                 | a)                        | Anyone itrespass long Law ia mo igat good proofs blong hem nao<br>prson ia imust pem 10,000 vt. igo long Man or Woman we hemi<br>mekem black magic long hem mo 4,000 vt. ikam long Court.   |
|      |                          | <i>b)</i>                 | Spos Black Magic ia ikillim man idead mo igat good proofs blong<br>hem nao person blong Black Magic ia imast replacem death man<br>ia long 1 girl + 8000 vt. mo pem another 20,000 vt. ikam long<br>Village Court. 80 000 vt.                     |
| (14) | ABORTION                 | FASIN                     | BLONG KILIM LIFE BLONG BABY INSIDE LONG BEI   |
|      |                          | w blong<br>Spos o         | one person ikilim life blong one Pikinini inside long Bel blong hem<br>one girl or woman itrespass long Law nao hemi must pem 10,000<br>om long Village Court.  |
|      |                          |                           |   |

Bylaw Exerpt 3: From bylaws written four years ago. Note the reference to penalty amounts includes payments for the victim and a separate payment for the 'Village Court'. As well, the penalty for murder (both through black magic and more straightforward homicide) also includes the direction that the perpetrator 'must replace the dead person with one girl' along with the monetary fine and payment to the 'court'.

As demonstrated in these bylaw excerpts, some of the bylaws that were viewed contained information about fines as well, with the level of fine quite different for similar matters in different communities. For example, the fine for gossip in one community was VUV 500 (based on bylaws that were written 10 years ago), and in another community it was VUV 5,000 for the victim and an additional VUV 2,000 for the 'Village Court' (based on bylaws that were written four years ago). In most cases where the bylaws were viewed, the fines were mainly monetary, except in the case of one set of bylaws (the third bylaw excerpt above) that

involved a fine for murder or for killing someone through the use of black magic (identified as two separate types of conflicts). This fine involved replacing the dead person with 'a girl'<sup>110</sup>, along with a fine of VUV 80,000 and VUV 20,000 for the village court. It is not clear how or if these fines are enforced, or in the case of this community how the money that was provided to the village court was used.

As is apparent from the bylaw excerpts above, several aspects of community bylaws are not in line with the law or with human rights principles, and some have specifically gendered dimensions. While none of the bylaws that were viewed had one, some bylaws contain rules that forbid women from wearing trousers, and in one community a chief in response to a question about women's participation in community conflict management, said, 'We have a bylaw that says women can't judge cases here'. When the chiefs who said they had bylaws in their community were asked if their bylaws complied with the law and human rights, however, interestingly 85% thought their bylaws *did* comply with the law, and 88% thought they were in line with human rights. When all of the chiefs who were interviewed were asked about whether community bylaws *should* be based on the law and human rights, the answers were fairly consistent as well. Both of these findings are shared in this table:

| Table 16: Chiefs' Views on Bylaws and their Relationshipto Law and Human Rights(N=39)                                     |     | Some<br>what | No | Don't<br>Know |
|---|-----|--------------|----|---------------|
| Do you think that your bylaws are in line with the laws of Vanuatu?   | 85% | 11%          | 4% | 0             |
| Do you think that your bylaws are in line with human rights (the rights of men, women and children)?                      | 88% | 8%           | 0  | 4%            |
| Do you think that community bylaws <i>should</i> be in line with the laws of Vanuatu?                                     | 79% | 18%          | 0  | 3%            |
| Do you think that community bylaws <i>should</i> be in line with human<br>rights (the rights of men, women and children)? | 87% | 10%          | 3% | 0             |

These findings shown side by side potentially raise some questions about the views of the chiefs who were interviewed. For example, if they believe that their bylaws are already generally in line with the law (but they are not), then how might chiefs actually view concrete recommendations to bring their bylaws more in line with law and human rights (despite their expressed interest in doing this)? It may be that answers to the first two questions above (and perhaps all of them), reflect levels of knowledge about the law and human rights among chiefs who were interviewed as much as anything else. It is unclear if chiefs would adjust their views, and how, after they have had the opportunity to receive more information about Vanuatu's laws and human rights. As well, how rules at the community level could (and should) intersect with state law is still an area of significant confusion.

At the same time, it is worth noting that while a number of chiefs who were interviewed were of the view that community bylaws should not be in line (or at least not completely in line) with the law or human rights, the *majority* of the chiefs who were interviewed said that that they

<sup>&</sup>lt;sup>110</sup> This is not an uncommon practice in Vanuatu and may sometimes involve a formal rather than an actual giving away of a girl child from the perpetrator's family to the victim's family (often through marriage or the promise of marriage).

should, which may be all that is important. And perhaps the perspectives of chiefs are not all that should be considered. It is worth asking in the broader context of law and justice in Vanuatu, if it is appropriate to have written community level rules that increasingly use the form and language of – and sometimes even mimic – state law and court processes, but contain key elements that run counter to Vanuatu's laws and the commitment to human rights in Vanuatu's Constitution. As bylaws become more formalised (and endorsed by various stakeholders), these questions and issues become increasingly important.

# The Use of Law and Human Rights at the Community Level

'Sometimes we bang against the Constitution – sometimes kastom isn't in line and chiefs make their own decisions. But all small laws should be in line with the Constitution.' - Chief, Northeast Malekula

'I would like you to come and do a training to tell people "If you don't respect the chiefs, the law will get you".' - Chief, Southeast Malekula

'It would be better for the two systems [kastom and state justice] to work more together. For example, the training about land issues was very good.' - Chief, Northwest Malekula

'We need to have copies of the laws. We don't know all of the processes. If we knew them, we would use them.'

- Chief, South Malekula (who used the Family Protection Act as an example)

In the research, many chiefs saw a clear role for both kastom and the law in their respective spaces, and felt that there needed to be greater understanding about law and human rights at the community level. In fact every chief who was interviewed said that it was important for them to know about human rights and the law in their role as a chief, with the exception of one chief who said it was only somewhat important for chiefs to know the law. In the research only 31% of chiefs who were interviewed said they knew about human rights and the remainder (69%) said they knew a little. Every chief who was interviewed said they would be glad to undergo training that would support them in their role in conflict management at the community level. Law was the most common area identified by the chiefs as an area where they would like further training<sup>111</sup>, as illustrated in the following table:

| Table 17: Main Training Needs/Interests as Identified by Chiefs Who Were Interviewed $_{(N=39)}$ | Percentage of chiefs who identified wanting training in this area |
|--|---|
| Law  | 54%   |
| Human rights   | 31%   |
| Mediation  | 23%   |

<sup>&</sup>lt;sup>111</sup> Chiefs were able to answer whatever came to mind as a training need or particular area of interest. Researchers did not provide any suggestion or list of answers, and answers were disaggregated in the analysis.

| Kastom   | 23% |
|--|-----|
| How to judge/handle cases at the community level | 15% |
| Women's rights                                   | 13% |
| Justice/what is justice?                         | 13% |
| Children's rights                                | 8%  |

One chief also said he would like training on how to manage land cases, another said he would like to know more about social issues in Vanuatu, one chief said he would like training on 'leadership', and one chief wanted to know more about the penalties in state justice.

Chiefs who were interviewed were also asked what they would like to know about in the law. While chiefs identified a range of laws that were of interest, the most popular responses were: 41% said they wanted to know more about every law, 26% said they wanted to know more about land laws, 18% said they wanted to know more about domestic violence laws, and 15% said they wanted to know more about human rights. Chiefs and community members were also asked about whether there were any groups in their community who they thought needed to have more information about the laws of Vanuatu and human rights. Every chief who was interviewed answered yes, and 91% of women and 96% of men said yes. The main groups at the community level who were identified as being in need of more information about the law and human rights by women, men and chiefs are shown in the following table:

| Table 18: Groups That Need<br>More Information About the<br>Law and Human Rights | Percentage of<br>Chiefs Who<br>Identified This<br>Group<br>(N=39) | Percentage of<br>Women Who<br>Identified This<br>Group<br>(N=379) | Percentage of<br>Men Who<br>Identified This<br>Group<br>(N=379) | Total<br>Percentage of<br>Chiefs, Women<br>and Men<br>(N=797) |
|--|---|---|---|---|
| Chiefs   | 56%   | 60%   | 59%   | 59%   |
| Women  | 62%   | 60%   | 41%   | 51%   |
| Youth  | 64%   | 32%   | 49%   | 42%   |
| Men  | 33%   | 38%   | 34%   | 36%   |
| Religious leaders  | 36%   | 36%   | 32%   | 34%   |
| Everyone   | 18%   | 21%   | 20%   | 20%   |
| Parents  | 10%   | 23%   | 18%   | 20%   |
| Children   | 18%   | 16%   | 19%   | 18%   |
| People with disabilities   | 8%  | 11%   | 14%   | 12%   |

While it is not surprising given their role in conflict management at the community level, it was interesting that overall chiefs were identified as the group that was most in need of information about the law and human rights.

# 'Frontier' Justice and Unintended Consequences

It is worth raising a caution at this stage, and while it is may not be perceived as ideal to refer to justice at the community level in Vanuatu as 'frontier' justice, it is worth exploring this notion a bit further<sup>112</sup>. 'Frontier' justice has been defined as '...extrajudicial punishment that is motivated by the nonexistence of law and order or dissatisfaction with justice.'<sup>113</sup> It is worth recognising that there are elements of 'frontier' justice at play at the community level in Vanuatu today. This is the case particularly because of the increasing number of untrained chiefs (people who may not even be trained through kastom or any family or community processes), because of the existence of fairly anarchic, unregulated and often highly modified processes and structures at the community level, *and* given the promise – and the very real limitations – of state justice, that has still failed to effectively deliver 'justice' to the vast majority of the population, particularly in rural communities.

Not surprisingly the research raised a number of concerns in this area. While providing more information about the law to chiefs has significant potential to improve the way that conflicts are managed at the community level, there is the danger that some chiefs will use greater knowledge about the law to expand their role and authority, and may even see themselves as de facto judicial officers as a result. Given the existing challenges around the more regulated space of island courts<sup>114</sup> this is problematic. Several chiefs already use the language of 'court' to refer to community meetings, talk about 'judging' cases and as discussed above, community bylaws were also referred to as 'laws' in at least one location. In one rural community the community leaders had built a modern holding cell that the chief said he would use, even without a police officer nearby or any state justice oversight or involvement.

In the research a police officer also said that in his view one of the reasons that chiefs wanted to know more about the penalties in the state justice system was so that they could use that information themselves when they were hearing cases. The possibility that chiefs might use information about the law and penalties in the state justice system to function as a kind of disincentive for community members pursuing their cases with police and the courts was also raised in the research. In fact, one chief explicitly said that he would use the information about legal penalties to encourage community members to keep their cases in the community. This chief also made the comment that if he sent rape cases to the police, a lot of the men in his community would be in jail. This chief already seemed to be actively circumventing state justice in his work as a chief, and it may be that in the case of this chief (and others like him), providing greater information about the law will only enhance his ability to do this.

So while the point of increasing chiefs' knowledge of the law is to provide broader context to chiefs, to guide some of the decisions they should be making, to ensure that their practice is more in line with the law and human rights, and to support them in referring appropriate cases to the state system more regularly, information about the law if used in these other

<sup>&</sup>lt;sup>112</sup> From one point of view, community level justice, because of its associations with kastom - and traditional knowledge and practices - is not a 'frontier', but rather could be seen as pre-dating other forms of 'justice' in Vanuatu. On the other hand, several different forms of governance seem to be present at the community level, some with clear kastom links and others representing new practices. Please see section 1.3 for further exploration of the concept of kastom.

<sup>&</sup>lt;sup>113</sup> Frontier Justice n.d. In Wikipedia <a href="https://en.wikipedia.org/wiki/Frontier\_justices">https://en.wikipedia.org/wiki/Frontier\_justices</a>, viewed 4/4/2016.

<sup>&</sup>lt;sup>114</sup> Some of the challenges with island courts are discussed in section 2.6.

ways could have the opposite effect. In fact, rather than increasing access to justice it could, particularly for more marginal members of society, make accessing justice even more difficult. Given the lack of regulation and oversight for chiefs in practice, the inconsistencies in the roles of chiefs, and in their levels of training, experience and knowledge, and some of the issues raised above (including bias in small interrelated communities and chiefs who are implicated in community conflicts), having chiefs use the law in this way could lead to a number of problematic and unintended – but completely foreseeable – consequences.

It will be very important, therefore, that any information about the law is also shared with community members, so that they are more informed. Clear information about the kinds of things that should and can be handled at the community level, and other matters (criminal matters and serious conflicts) that must be sent to the state justice system will also be essential for both chiefs and community members. Several of the chiefs who were interviewed seemed to be fairly clear about what these kinds of things might be<sup>115</sup>. Information about the law should also be provided along with information about human rights (well explained and contextualised for Vanuatu), and with practical knowledge that can help chiefs to improve their own mediation and decision making practices. At the same time, state justice systems also need to be strengthened so that where referrals are made appropriately by chiefs, or where state justice is accessed directly by community members, cases are not dropped or take so long to be processed that they revert back to the community. It would also be very worthwhile to set up a functioning, effective, and neutral complaints mechanism that would allow community members to raise concerns about chiefs, and seek redress where appropriate.

<sup>&</sup>lt;sup>115</sup> Section 2.2 contains further information on chiefs' views about the role of state justice.

# 5. FINDINGS RELATING TO WOMEN AND ACCESS TO JUSTICE

# BRIEF SUMMARY OF PART 5: FINDINGS RELATING TO WOMEN AND ACCESS TO JUSTICE

# Background

• Women who were interviewed ranged in age from 16 to 75 (with an average age of 36), had an average of seven years of education, and 87% identified as literate and 9% as somewhat literate.

# Summary of Findings and Key Issues

- Women have a limited role in decision making, but there seems to be some openness to expanding this: 38% of chiefs, 49% of men, and 56% of women thought everyone should have the right to speak in the nakamal; and while 39% of chiefs said women currently played a role in solving problems in their community, 64% said they should. Women need to be prepared for this role.
- Land issues have an impact on women, and women are often poorly supported as landowners and as decision makers around land.
- 19% of women said they had experienced a domestic violence conflict in the last year and 76% had sought help – mainly from family (49%), a chief (24%), a religious leader (15%) and the police (5%). 98% of women and 99% of men said they would solve an ongoing domestic violence conflict in the community if it happened tomorrow (with chiefs, family, religious leaders), but more than half of the women and men (and almost half of the chiefs) said that state justice would be the best place to solve a conflict of this kind.
- 10 women identified having a conflict in relation to sexual assault in the last year, and 23% of chiefs said they had managed a case relating to sexual assault in the last year. 79% of women and 84% of men said they would solve a sexual abuse conflict in the community if it happened tomorrow (with chiefs, family, and religious leaders), but 70% of women, 65% of men, and 68% of chiefs said state justice would be the best place to solve a conflict of this kind.
- Improving women's access to justice will require: creating more space for women's voices to be heard; empowering women with knowledge and confidence, and creating an environment of equality and respect; supporting women as leaders, landowners, decision makers, and conflict managers; strengthening community processes and institutions so they are in line with the law and human rights, and are dedicated to seeking justice; ensuring that women's cases are dealt with effectively, including sending all serious, criminal and repeat cases to state justice, and ensuring they are progressed; improving women's direct access to state justice, through greater decentralisation of services, and supporting women's right to choose where they would like their cases to be heard; and strengthening apology and reconciliation processes so they are more supportive of victims' needs and interests.

# **5.1 OVERVIEW**

'Vanuatu's culture is hard on women. Women don't know themselves, and are not well empowered.' - Chief and Island Court Justice

> 'There is no justice for women here.' - Woman, South Malekula

What does improving access to justice for women actually mean? As outlined in the introduction, access to justice is defined as the ability of people 'to seek and obtain fair and effective responses for the resolution of conflicts, control of abuse of power, and protection of rights, through transparent processes, and affordable and accountable mechanisms.'<sup>116</sup> Typically it is about considering justice, 'from the citizens' perspective'<sup>117</sup>, including the political, economic, geographic, social, and cultural contexts that contribute to peoples' experiences of justice and access to just processes. In this part of the research, these issues will be considered from the point of view of women in particular, including the kinds of conflicts that impact women's lives at the community level in Vanuatu, the options women realistically have available to them for managing these conflicts, their experiences of the different conflict management options, and any barriers that might exist. As well, strategies for how conflict management and access to justice more generally might be strengthened for the benefit of women, and in support of greater gender equality, will be considered.

The women who were interviewed ranged in age from 16 to 75<sup>118</sup>, with an average age of 36. 35% of the women who were interviewed came from the village where they were interviewed, 46% had come from another village on Malekula, 14% had come from another island in Vanuatu, and 5% grew up in town (Port Vila or Luganville). Women who had come from other places had lived in the community where they were interviewed for, on average, 13 years. The majority of women who were interviewed identified as Presbyterian (44%), with Catholic (17%), and Seventh Day Adventist (13%) also prominent among women. 96% of the women who were interviewed said they were literate (87%), or somewhat literate (9%). Women identified having had, on average, seven years of education<sup>119</sup>. The majority of women who were interviewed spent most of their time doing gardening work (47%), working at home (24%) or were self-employed in markets or stores (13%). 60% of the women who were interviewed said that they or a family member had gone to a community meeting in the last

<sup>&</sup>lt;sup>116</sup> United Nations Development Programme 2012. Access to Justice Assessments in the Asia Pacific: A Review of Experiences and Tools from the Region, 103.

<sup>&</sup>lt;sup>117</sup> Ibid, 104.

<sup>&</sup>lt;sup>118</sup> One woman in the research stated that she was 105 years old. This was verified with the researcher who said it was also verified at the time of the interview by her children (although it could still be based on an estimation as recording specific birth dates and even year of birth has not been common in many parts of Vanuatu until fairly recently). Because it was something of an anomaly, however, it was removed from this calculation. If it is included the average age of women who were interviewed changes very little to 37 years old.

<sup>&</sup>lt;sup>119</sup> This includes primary, secondary and formal post secondary training or education. Men who were interviewed had a similar breakdown in religious affiliations (45% Presbyterian, 18% Catholic and 11% Seventh Day Adventist), and had similar but slightly higher levels of literacy (90% literate and 7% somewhat literate) and years of education (eight years on average).

year, although when asked if they felt that members of their household took part in community decision making, 34% of women said 'No' (compared to only 12% of men).

The research also tried to assess levels of knowledge about law and human rights, with women generally saying they knew far less about these matters than the men who were interviewed, as illustrated in the following table:

| Table 19: Knowledge of the Law and Human Rights  |                 | <b>Women</b><br>(N=379) | <b>Men</b><br>(N=379) | Chiefs<br>(N=39) |
|--|-----------------|-------------------------|-----------------------|------------------|
|  | Yes             | 3%                      | 11%                   | 5%               |
| Do you know anything about the laws of Vanuatu?  | A little        | 37%                     | 62%                   | 90%              |
|  | No / Don't know | 60%                     | 27%                   | 5%               |
| Design the second transformed the second state of the second state | Yes             | 10%                     | 22%                   | 31%              |
| Do you know anything about 'human rights' (including<br>your rights, women's rights, children's rights)  | A little        | 46%                     | 58%                   | 69%              |
| your rights, women's rights, children's rights)  | No / Don't know | 44%                     | 20%                   | 0                |

When asked where they would go if they needed more information about the law, 37% of women said they would see their chief, 21% said they would go to the police, and 15% said they would ask a family member. 26% of women, however, said that they did not know where they could go to get more information. Given the limited knowledge of the law among community members in general (including chiefs), and the fact that the police are relatively inaccessible – 97% of women said they rarely or never saw the police in their community, and on average police stations or posts were more than four hours away – these findings indicate that most women not only have very little information about the law, but also currently have significant limitations on their ability to access information as well. Interestingly, 41% of men identified women as a key group in society who were more in need of information about the law and human rights, 60% of women thought women needed more information about the law and human rights, and 62% of the chiefs who were interviewed thought women needed more information.

In the research chiefs and community members were also asked to assess general community safety, and men and women were also asked to assess their own sense of safety in their village. 85% of chiefs said that they thought that community members felt safe and 73% of women and 74% of men who were asked this question said they felt safe. When asked if there was a chance that someone could hit or attack them if they walked alone at night, 33% of women said yes and 12% said there was a small chance. Answering the same question only 18% of men said yes, and 14% said there was a small chance. When asked about how concerned they were about violence against women and girls (including rape and sexual assault) in their community, while 77% of women said they were concerned or somewhat concerned, women expressed more concern about theft, violence relating to land, and fighting among community leaders. Interestingly, men and chiefs expressed a higher level of concern about this issue than women, with 83% of men and 90% of chiefs saying they were concerned about violence against women and 90% of chiefs saying they

The research also considered women's attitudes about various matters relating to justice at the community level. Some of the perspectives of women (compared with answers provided by men and chiefs) are shared in the following table:

| Table 20: Attitudes about Justice at the Community Level   |  |     | <b>Men</b><br>(N=379) | Chiefs<br>(N=39) |
|--|--|-----|-----------------------|------------------|
|  | Yes  | 26% | 24%                   | 33%              |
| Do you agree or disagree: Everyone should follow the   | Sometimes  | 3%  | 2%                    | 5%               |
| decisions of the chief, even if it is against the law.   | No   | 69% | 74%                   | 62%              |
|  | Don't know   | 2%  | <1%                   | n/a              |
|  | t use of force by chiefs:  |     |                       |                  |
| All community members, including the chiefs, should respect<br>including women   | the rights of everyone, and youth, at all times.                                 | 69% | 70%                   | 69%              |
| <u>OR</u> It is okay for a chief to use force or physical punish particularly those who are causing problems or are seen to be |  | 31% | 30%                   | 31%              |
| <u>Views about the rights</u><br>A married man has complete authority over his wife, and it is u<br>he would lik               |  | 33% | 32%                   | 31%              |
| <u>OR</u> In some situations it is important for the community to inte<br>in the household matters an                          | 0  | 67% | 68%                   | 69%              |
| <u>Views abc</u><br>Maintaining good relationships is the most important thing   | out peace and violence:<br>in small communities.                                 | 31% | 29%                   | 31%              |
| <u>OR</u> Ensuring that every family is living peacefully and is free<br>import  | e from violence is more<br>ant than anything else.                               | 69% | 71%                   | 69%              |
| <u>Views abou</u><br>Police have the right to use force or physical punishment if th   | <u>t use of force by police</u> :<br>ney think that someone<br>has broken a law. | 37% | 24%                   | 10%              |
| <u>OR</u> All police officers have to respect everyone's rights, incl<br>th  | uding people who they<br>nink have broken a law.                                 | 63% | 76%                   | 90%              |

While the women who were interviewed generally held similar views to men (including chiefs) in most respects, one key difference was in their views about use of force by police. More women than men, and especially chiefs, felt that police had the right to use force if they thought someone had broken the law. In the research women, men and chiefs were also asked about what 'justice' meant to them<sup>120</sup>. Some of their views are offered in Table 21 on the following page.

<sup>&</sup>lt;sup>120</sup> Respondents were encouraged to say whatever they thought, and were reassured that there were no right or wrong answers. The answers were also left open and researchers did not provide any suggestion or list of answers, with answers only disaggregated in the analysis.

| Table 21: What Does the Word 'Justice' Mean to You?   | <b>Women</b> (N=379) | <b>Men</b><br>(N=379) | Chiefs<br>(N=39) |
|---|----------------------|-----------------------|------------------|
| I don't know what justice means   | 28%                  | 7%                    | 0                |
| Peace and harmony in the community*   | 22%                  | 25%                   | 22%              |
| Equality and equal relationships**  | 12%                  | 24%                   | 22%              |
| Fairness and treating people fairly**   | 13%                  | 14%                   | 15%              |
| Maintaining good relationships*   | 11%                  | 8%                    | 12%              |
| Listening to people   | 6%                   | 7%                    | 6%               |
| Solving problems and judging people   | 5%                   | 4%                    | 5%               |
| Living right and doing the right thing  | 1%                   | 5%                    | 9%               |
| The law   | 1%                   | 2%                    | 1%               |
| Respecting peoples' rights  | 0                    | 1%                    | 3%               |
| Combined percentages for peace and harmony in the community and maintaining good relationships (typically seen to represent key community values around justice in Vanuatu) | 33%                  | 33%                   | 34%              |
| Combined percentages for equality and equal relationships and fairness and treating people fairly (typically seen to represent more 'Western' values around justice)        | 25%                  | 38%                   | 37%              |

In this area as well, some of the answers women provided were somewhat different than answers provided by men and chiefs. The most glaring difference is that more than a quarter of the women who were interviewed did not know what justice meant (nor were they willing to venture a guess). As well, while all community members associated justice with community harmony and peace most frequently overall, women related justice to values around community harmony and good relationships more often than they did to values of fairness and equality, but this was different for men and chiefs, who associated justice with fairness and equality slightly more than they did with peace and harmony overall.

# **5.2 WOMEN AND DECISION MAKING**

A number of questions in the research explored community views about women as decision makers and women's participation in community conflict management processes. In state justice on Malekula, the first female police officer joined the local force as a Family Protection Unit Officer one year ago, the current magistrate is a woman (in Vanuatu four out of the eight magistrates are women), and two of the more active island court justices on Malekula are also women. At the community level while women often hold leadership positions through the church and on school committees, and in area and provincial councils, men often oversee these roles, and for a host of reasons women in these positions may be able to exercise very little agency or actual power. In Malekula (as is generally the case throughout Vanuatu), there have been very few examples of women chiefs<sup>121</sup>. Within this context, women's role in

<sup>&</sup>lt;sup>121</sup> While the possibility of women becoming elected chiefs was raised (by chiefs) in two communities during the research, there is only one known story of a woman becoming a kastom chief on Malekula (available here:

http://content.time.com/time/world/article/ 0,8599,2047561,00.html). Unfortunately this woman died of a stroke soon after this article was written and several people believed that this had happened because a woman should not have been made a kastom chief, and her chief stone was subsequently removed.

decision making at the community level can be seen to involve mainly two key aspects: women's ability to speak for themselves and represent their own interests; and women's ability to participate as decision makers and conflict managers.

# Women's Ability to Speak for Themselves

'Women can raise complaints in the nasara [family level] but in the nakamal only the chiefs can speak.' - Chief, Northeast Malekula

> 'Women don't have the right to say anything.' - Woman, Northwest Malekula

'Most disputes involving women are dealt with either by family members or by the chiefs. Women aren't involved in conflict management at all – just chiefs and men.' - Women's Focus Group, South Malekula

'Women aren't allowed to talk and to defend themselves in our community.' - Woman, Northeast Malekula

In many places in Vanuatu, including most communities in Malekula, the 'nakamal' is the place where community decisions are made, and in many locations women are restricted from speaking in this space. A male relative normally speaks for women (and young people), and may or may not represent their views and interests fairly and in an unedited and unbiased way (particularly in cases where they might conflict with the interests of men or the broader community). In the research, women (and men) held fairly mixed views about this practice, however, and a number of the chiefs who were interviewed also expressed some openness to the possibility of women speaking for themselves in this key public and decision making space. While the majority of chiefs who were interviewed felt that it was more appropriate for male heads of families to speak, more than a third of the chiefs, almost half of the men, and slightly more than half of the women who were interviewed thought that women should be able to speak for themselves in the nakamal, as shown in the following table:

| Table 22: Views About Speaking in the Nakamal   | <b>Women</b> (N=379) | <b>Men</b><br>(N=379) | Chiefs<br>(N=39) |
|---|----------------------|-----------------------|------------------|
| Everyone – including women and youth – should have the right to speak and defend themselves in the nakamal. | 56%                  | 49%                   | 38%              |
| OR Only the head of the family should speak on behalf of all family members in the nakamal.                 | 44%                  | 51%                   | 62%              |

Police officers who were interviewed also held the view that everyone, and not just heads of families, should have the right to speak in the nakamal. While this may not be happening very often, it is clear that a number of women have an interest in being able to represent their own issues and speak for themselves in this key community decision making space. In a number

of areas as well, men and some chiefs may also be ready to support and encourage women (and others), to speak in the nakamal, and may even be doing so already.

'We are trying to support everyone in speaking in the nakamal.' - Chief and Island Court Justice

# Women as Decision Makers and Conflict Managers

'Women have good ideas too.' - Chief, Northwest Malekula

'Women only deal with conflicts in church or simple things. It would be good for women to be chiefs though, so they could deal with women's problems.' - Chief, South Malekula

> 'It would be good to have women chiefs in our community.' - Woman, Central Malekula

'Even in our Provincial Council we have women's reps, but its not really good enough because they don't have voting rights. We need to have reserved seats at the Provincial Council level and it needs to go right down to the Area Councils.' - Male Leader, Malekula

> 'There used to be a woman chief here, but not now.' - Chief, Southeast Malekula

'In Big Nambas kastom, the man is seen to be over the woman.' - Chief, Northwest Malekula<sup>122</sup>

'I was raised in an environment [in Malekula] where the man has power, but I always noticed that women worked harder than men. Usually in decision making, the women just hang back and let the men do things. I don't agree with this though. Men are the ones who always go to the meetings, and then nothing ever changes. This is because the wrong people are going. Women are always so silent in decision making. Even though they have good ideas, they just stay back. We really need to change women's mindset and help them to see where they can contribute...we really need to have equal participation of men and women.' - Male Leader, Malekula

Chiefs and community members' views about women and decision making in the research was quite interesting. While in some communities it was clearly articulated that women's position in the community was seen as secondary to men's, with one chief even pointing out that, 'We have a bylaw that says that women can't judge cases here', a number of chiefs appeared to be fairly open to increasing women's role in managing conflict at the community level in some areas. When the chiefs who were interviewed were asked about women's role

<sup>&</sup>lt;sup>122</sup> Interestingly this chief also thought that women could play more of a role in decision making at the community level but that they would need to be more empowered first.

in solving problems at the community level, it was clear that most chiefs at least saw the potential for an increased role for women:

| Table 23: Chiefs Views About Women and Managing Conflict           (N=39) |                    |     |
|---|--------------------|-----|
|   | Yes                | 39% |
| Do women play a role in solving problems and managing conflict here?      | Sometimes/somewhat | 28% |
|   | No                 | 33% |
|   | Yes                | 64% |
| Should women play a role in solving problems and managing conflict here?  | Sometimes/somewhat | 26% |
|   | No                 | 10% |

As well, while two of the police officers who were interviewed said that they did not think women were involved in resolving conflicts in Malekula (interestingly both were from other islands), every officer interviewed said that women *should* be more involved in managing conflict at the community level.

Although this was not observed anywhere else in Malekula during the research, one community already seemed to be actively engaging women in conflict management at the community level, as illustrated in the following case study:

#### **Case Study: Women on the Council of Chiefs**

In one community the council of chiefs was described (by the chief of the community) as having two women members. How this innovative council of chiefs came to be was described by the chief in the following way:

This community had experienced a very big dispute that had divided this community and the surrounding community for a long time. As a result, the council of chiefs was not functioning, and the community had no way of solving problems at the community level. After this had been going on for some time, members of the local Committee Against Violence Against Women (CAVAW) of the Vanuatu Women's Centre approached some of the chiefs about the need to deal with this problem and re-establish a functioning local body to deal with conflicts in the community.

These women had been working on gender equality and violence against women in the community for some time, and had a good relationship with some of the chiefs. Based on this request, the chiefs reorganised themselves, and – impressed by the initiative and leadership of these women – invited two of them to be on the council as well. While the two women council members continue to be most active in cases involving women, they participate in hearing all cases as part of the council. According to the chief, 'The two women are really involved and we are glad for what they have to offer.'

One of the two women members was asked about this unique community decision making and conflict management model, and her role in it. She said that she really enjoyed her work on the council, and felt that she was treated as an equal and valued member. Even when she was away from the community, the chiefs would still call her to consult about conflicts they were dealing with.

The influence of these women was also evident in some of the council's approach to domestic violence cases.

The chief said that in dealing with domestic violence cases, they hear the two parties separately and on their own first, before they have a bigger meeting. According to the chief, they do this because having an open, public meeting can 'change the picture'. Sometimes the chief said that he also goes straight to the victim first, particularly if it is a woman, because women who are victims are often afraid to speak, especially in public. Because of this, they try to give women an opportunity to express themselves and share their experiences in a private setting first.

While this council was happy to be functioning again, the chief expressed concern that they had not been formally recognised yet (by the Malmetevanu). This chief also expressed frustration about a recent experience at a training program offered about the new land laws. He said that while they had brought one of their two female council members along, when they arrived the organiser (who was from another island) told them that the only role for women in the process was as a secretary. The chief found this really problematic because this woman was an active member of their council and needed training for this decision making role, and not as a secretary.

While this council of chiefs represented a very innovative model, it would be interesting to explore it further. For example, it is not clear how this council functioned in practice, how the involvement of women council members influenced how this council solved other problems (beyond their handling of domestic violence matters above), and how community members felt that it influenced the outcomes of their conflict management processes (perhaps even compared to previous councils). Whether formal bodies and processes will also recognise this council – and the women council members – as equal to the male council members, is also in need of further exploration.

In general, however, beyond this innovative model, the views among community members about women's role in community conflict management offered more of a mixed picture and may be dependent upon the type of conflict being solved. While the same question that was asked of chiefs about women's role in community conflict management above was not asked of community members in general, in the research the women and men who had not experienced conflict in the past year were given the opportunity to comment on a series of hypothetical disputes. For the women and men who responded to these questions, more women seemed to support a situation of shared conflict management with men, particularly for certain types of conflict, as illustrated in Table 24 on the following page.

| Table 24: Views About Who is Best to Solve Certa<br>Problems  | Women's Answers<br>(N=116) | Men's Answers<br>(N=161) |     |
|---|----------------------------|--------------------------|-----|
| In a hypothetical situation involving ongoing and severe      | Women                      | 8%                       | 3%  |
| domestic violence perpetrated by a husband to his wife,       | Men                        | 42%                      | 58% |
| who do you think would be best to manage this situation, a    | Both                       | 48%                      | 38% |
| woman, a man, or both?  | Don't know                 | 2%                       | 1%  |
| In a hypothetical situation involving incest perpetrated by a | Women                      | 11%                      | 3%  |
| senior male relative with a young girl, who do you think      | Men                        | 40%                      | 55% |
| would be best to manage this situation, a woman, a man, or    | Both                       | 49%                      | 41% |
| both?   | Don't know                 | 0                        | 1%  |
| In a hypothetical situation involving a dispute between       | Women                      | 1%                       | 0   |
| families in neighbouring communities over land to make a      | Men                        | 53%                      | 63% |
| garden, who do you think would be best to manage this         | Both                       | 45%                      | 36% |
| situation, a woman, a man, or both?                           | Don't know                 | 1%                       | 1%  |

As is evident in this table, men generally believe that men are the best people to deal with cases involving land, and to a slightly lesser extent domestic violence (although over a third of the men who answered these questions also saw a role for shared decision making with women). Slightly more women also identified men as better suited to managing the land case (although nearly half also saw a role for shared decision making in this area as well).

Some of these views about men's greater suitability for solving certain types of conflict is partly based on the reality of men's established authority, where men solving problems, in most areas, is just how it is done. As well, women may not be seen to be adequately empowered to act as effective conflict managers at this stage. It is also important to note, however, that where it exists, the potential openness to women's greater involvement in conflict management at the community level could also be based on particular understandings about women. One male leader suggested that women should be involved more in domestic violence issues, because they would '…really listen to the issues', and lend a more sympathetic ear to women who are victims. Women are also sometimes seen to hold the role of peacemaker, with one chief saying, 'In fights at the community level it is the women and children who often ask the people who are fighting to stop and use their words.' Assuming that women are inherently more peaceful or sympathetic, even to 'women's issues', is also problematic, however, particularly in a context where women have been socialised into traditional roles in a predominantly patriarchal society, as suggested here:

'Most women have been socialised into traditional roles in a patriarchal society and have integrated these traditional values of inequality between women and men. It would be an exceptional woman who is a self-made, self-taught feminist. One or two sessions to raise gender awareness as part of women's leadership trainings may not be adequate to undo the deep socialisation in traditional values of most women.'<sup>123</sup>

<sup>&</sup>lt;sup>123</sup> Miranda, R.L.T. 2005. Impact of Women's Participation in Decision-making. United Nations Expert Group Meeting on Equal participation of women and men in decision-making processes. Addis Ababa, 4.

In fact, in the research women often appeared to hold more conservative views than men, and many women (in Vanuatu and elsewhere) hold the belief that violence against women is justified, particularly in certain circumstances. This was supported in extensive research carried out by the Vanuatu Women's Centre where it was found that 60% of women '...condone or sanction some level of physical violence by a husband/partner.'<sup>124</sup> This is not surprising in a context where women's secondary status often begins from birth, and is reinforced through both religious and customary belief systems, and in daily practices. One researcher recounted two occasions where while he was interviewing a man, their wives intervened and told their husbands to select the option 'A married man has complete authority over his wife, and it is up to his judgment how he would like to discipline his wife.' In fact, a recent report by the Overseas Development Institute points out that:

"...the evidence does not substantiate the premise that having more women in power – even a critical mass – will automatically improve outcomes for women more generally."<sup>125</sup>

Clearly it is not as simple as putting more women in leadership and decision making roles. While increasing the involvement of women in community decision making and problem solving *does* have the potential to support greater gender equality by modelling an alternative way of doing things, and may provide women with an opportunity to experience a more active and influential role in the community (which is also of value), it is not sufficient in isolation. Increasing the presence of women in leadership, decision making and conflict management roles, also needs to be combined with ongoing support and training in a number of areas, including gender equality, for both women and men. As the research quoted above also points out, there are really three interrelated but separate objectives that are necessary to support more effective leadership for women:

- 1. Increasing women's presence
- 2. Increasing the ability (and context for) women to be more politically influential, and
- 3. Increasing the chance that these more powerful women will use their influence to increase women's rights and gender equality.<sup>126</sup>

In several ways, the unique council of chiefs outlined above potentially represents significant progress even in this expanded view of women in leadership. The women who were on the council of chiefs were already trained and actively working on issues of women's rights and gender equality (and in many ways were selected *because* of these qualities), and there seemed to be significant uptake of these understandings by the chief who was interviewed as well.

<sup>&</sup>lt;sup>124</sup> Vanuatu Women's Centre 2011. Vanuatu National Survey on Women's Lives and Family Relationships. <a href="http://dfat.gov.au/about-us/publications/Pages/vanuatu-national-survey-on-women-s-lives-and-relationships-may-2011.aspx">http://dfat.gov.au/about-us/publications/Pages/vanuatu-national-survey-on-women-s-lives-and-relationships-may-2011.aspx</a> viewed 4/4/2016, 80.

<sup>&</sup>lt;sup>125</sup> O'Neil, T. and P. Domingo 2015. The Power to Decide: Women, decision-making and gender equality. London: Overseas Development Institute, 5.

<sup>&</sup>lt;sup>126</sup> Ibid, 6.

It is also interesting to note that several of the male leaders who were interviewed during the research and who indicated that they would support women in more active conflict management roles, also suggested that women would need to be supported to take up these roles. Given the state of women's knowledge about law and human rights, and a context of systemic disempowerment of women and girls, significant work will need to be done to address major gaps in knowledge and confidence. As well, several of the researchers who interviewed women in Malekula suggested that women who were from the community where the research was being carried out (approximately one third of the women who were interviewed) often seemed less comfortable answering questions, especially about leadership and conflict management. This is most likely also the case because women are understandably deeply enmeshed in familial relationships in their own communities. While the need to appreciate (and improve upon) how justice is negotiated through social and familial ties is essential for everyone at the community level, it seems particularly important for women, and for solving conflicts involving women.

# 5.3 WOMEN AND LAND

'Women have the right to talk about land cases. If a man only has a daughter, the land is hers now.' - Chief and Island Court Justice

> 'Women should take part in decision making, just not around land issues.' - Chief and Island Court Justice (a different one)

'Land disputes have a particular process, including the use of spokespersons, who can be a man or a woman.' - Chief, Central Malekula

'A widow in this community has been abused by her brother in law due to land and plantation assets. She decided to go back to her family because she is feeling insecure with her husband's family now.'

- Researcher (based on an interview in Northwest Malekula)

'Women here contribute in a big way to solving land disputes at the family level.' - Woman, Southeast Malekula

> 'Men own the land, women just come to work on it.' - Man, South Malekula

In the research, views about women and land were – not surprisingly – very diverse, complex and even contradictory. For several of the chiefs who were interviewed, even those who were in support of women playing a more active role in decision making and conflict management at the community level, land was often seen to be the domain of men. This is in line with a general attitude in many parts of Vanuatu that women do not (and should not) have as great a role in land issues, which is usually justified through the related assumption that men are seen as the primary landowners in many parts of Vanuatu. In Malekula, this sentiment was expressed regularly, although the research also highlighted a number of exceptions. In several cases women who do not have any brothers or who are widows (or even potentially based on individual family decision making processes) may also have rights to land. Exercising these rights, however, can often put women in situations of conflict as highlighted in the quote above, and in the following case study:

#### **Case Study: Theft and Land Disputes**

'Mary' is a retired nurse and a widow and she said that the biggest conflicts in her community have to do with land and theft. Mary said that she is actively involved in making decisions about land in her community because she is a 'straight' landowner. She is the eldest daughter in her family and does not have any brothers. Her landownership is being disputed though, and the boundaries of her land are not respected, and this has caused significant conflict.

She said she has hung namele leaves on the boundaries of her land to stop other parties from gardening there. This has resulted in some community tensions and as a result she has had several major thefts in her house when she has been away from her community. During one trip, many of her belongings were stolen, and her home was vandalised. Her kitchen was burned down, and the people who did this also put faeces on the ceiling and urinated in her sheets and clothes, and even in a thermos. She thinks that this is all related to the conflicts around the land. In her view the chiefs were not dealing with these issues effectively. In fact, she said, 'the chiefs can't fix it' partly because (in her view) members of the chief's family were also implicated in some of these issues.

Beyond the pressure, and even maltreatment, that some women may experience in relation to their claims about ownership of land (which may not be adequately addressed under Vanuatu's new land laws<sup>127</sup>), conflicts about land – and how they are managed – may have other impacts on women's lives. One relates to the case study above where a chief was told that the only role for a woman on his council was to act as a secretary in land processes. In this case, women who were actively taking on a greater leadership role at the community level locally (and supported in doing so by their chiefs) were undermined and marginalised by this formal, national process<sup>128</sup>.

A related concern has to do with the potential unintended consequences of some aspects of the new laws. While they were developed to address often grievous and crippling problems with Vanuatu's land processes to date, and a number of community members and chiefs expressed significant support for the new way land would be managed during the research, they are also being embraced because of the return of power that they represent for chiefs.

<sup>&</sup>lt;sup>127</sup> A key architect of the new land laws in speaking to women about these laws suggested that it was important for women to inform themselves about their rights to land in kastom, and advocate for their interests around land, but beyond this there seemed to be few considerations – and protections – around women's interest in and rights to land in the new laws. Given some of the findings of this research it is unclear if women's kastom knowledge and advocacy efforts will be sufficient.

<sup>&</sup>lt;sup>128</sup> A technical advisor who assisted in drafting Vanuatu's new land laws also expressed concern in a stakeholder meeting about the impact of the new land laws on women, and said that she planned to write an academic paper about this.

The key challenge in this respect is that in a number of instances this may not be seen simply as a return of power to the chiefs for land cases, but potentially also a return of power to judge cases in general at the community level, as implied in this statement offered by a chief and island court justice during the research:

# 'Justice at the village level is not legal. But the new land laws will change this.' - Chief and Island Court Justice

Given the prominence and importance placed on land in Vanuatu, this perceived 'legalisation' of justice at the village level, unless it is very carefully managed, may also extend to how other conflicts are managed in communities, with the possibility that chiefs may hang on to (or take back) an even greater number of cases at the community level, now that they have been (re) authorised to deal with land cases. Given the existing reticence of some chiefs to send cases like rape and domestic violence outside the community, this has the potential to further complicate how these issues are managed and how women are able to access justice at the community level, even for these serious issues.

As was also clear in the research, conflicts around land are also often deeply interlinked with other conflicts, as the case studies in this section and the previous section illustrate. Given that land, and conflicts involving land, are often highly complex and deeply connected to other community conflicts and tensions, it is also not clear how the management of land cases at the community level will impact conflict management by chiefs in general, and around other issues, as illustrated quite compellingly in the case study below. For example, it is possible that having the full responsibility for solving particularly big and complex land cases may essentially tie up village and area level conflict management processes in a way that will make it very difficult for people to have other kinds of cases heard and dealt with by chiefs. This would be of particular concern in areas where land disputes are deep and complex. Unfortunately this seems to be the case with many land disputes throughout Malekula.

And while protracted land disputes are often identified as the *main* concern and represent one of the biggest issues and challenges, given the complexity of many land cases, it is not clear that land conflicts (or the outcomes of how these conflicts are resolved) will not continue to drag on at the community level, despite all good intentions and regardless of venue. In these situations the impact on women is often more significant than for men, as the following case study highlights. While this case arose in a context where the courts were (and in fact still are, even under the new laws) responsible for managing the primary conflict – a chiefly title dispute – it is not clear that a case of this kind will find any more effective resolution if it is managed at the community level (or if even just the land aspect is managed at the community level). And regardless of the efficacy of either context – state or community justice – the impacts of these major, all consuming, and interrelated conflicts, often involving high stakes and potentially self-interested conflict managers at the community level, are often disproportionately borne by women.

# Case Study: The Impact of a Chiefly Title and Land Dispute on Women's Lives and Security

It is very quiet. A group of women sits with the female researchers. The men are being interviewed in another location by the male researchers. Many of the women seem uncomfortable and hesitant to speak. When asked what the main issues or conflicts are in the community, the women quietly say stealing, a chiefly title dispute, land issues and fights between husbands and wives (which they describe as usually related to money). For them, land is the biggest one, though, and it is directly related to the leadership dispute.

In this community an ongoing chiefly title dispute has crippled the community's ability to solve any conflicts. During the research women and men independently identified this as the key issue in their community. According to the men, there were at least three people disputing the chiefly title that was also directly linked to a land dispute. In this community men said that because of this issue, their dispute resolution processes are completely dysfunctional and they effectively have no real mechanism for solving problems in their community at this time. One man offered the comment, 'We have lots of problems but there is nothing to do.'

To illustrate this further, when men were asked what problems were not being dealt with in their community, they said that because of the chiefly title dispute, all of the other problems are overlooked or brushed aside, because they are focused on trying to resolve this major dispute. Similarly when the men were asked how problems were solved in their community, they said problems were not solved because the chiefly title dispute is an ongoing issue and other issues are not being dealt with. The researchers were told that if one chief tries to solve a conflict, the perpetrators just go to another chief. As a result there is currently no functioning dispute resolution process in place in this community.

The women in this community also expressed having nowhere to go to solve their problems. In the context of the land and chiefly title dispute, there are significant concerns around safety and security in the community in general, and these conflicts also cause fighting, and put women in a very difficult place. Even when they try to send relatively straightforward issues like stealing to the chiefs, they are not dealt with. Because the chiefs are not dealing effectively with most issues, they are also worried about repercussions if they do raise concerns.

When asked generally where people go to solve problems in this community, the women started by describing a standard process of seeing a family chief first, and if the issue is not solved there, going to the village chief next, and then the council of chiefs. Women said that if an issue still cannot be solved after this, they just pray that the problem will go away. When asked how these processes worked in practice, however, most of the women seemed uncomfortable about saying anything, and several just gave a thumbs down gesture.

Women in this community said they are not allowed to go to the nakamal themselves to raise their concerns – only their husbands are allowed to go to represent family members. The women said that they did not know what their husbands were doing or saying about concerns or conflicts they raised, however. As a result, many issues that are raised are not dealt with, and women have had to find ways to manage themselves and their families around them.

When asked about domestic violence specifically, a number of women said that it was very common in this community, but that they generally did nothing about it. One woman described how she just prayed on her own about her problems because she felt that she could not do anything else. She said if she talked to friends, her husband would hit her. If she talked to a chief, he would hit her. Another woman said, 'We are unhappy, we feel badly, but we just live with it.'

Several women wanted to know more about the Vanuatu Women's Centre, and about how to bring a case to the police if they needed to. According to the women, usually only men in the community brought issues to the police. One woman described how she had gone to the police station in Lakatoro once to ask how to access the police for help and was told, 'If you see a police truck pass, that's your chance.' But the police pass very infrequently, and this community has no cell phone reception and is located at a significant distance from any police station.

Most women in this community seemed very afraid and did not seem to have trust for anyone – not the chiefs, and not the men – but they also seemed uncomfortable with each other. Everyone is part of the same family (and related to the disputing chiefs), and there are restrictions in kastom too about where women can take personal problems, and talk about issues. Because of this, and in the broader context of the chiefly title and land dispute, women were basically shut down. One woman said it is just 'Amen nomo [praying only] now. Men can do whatever they want.'

# 5.4 WOMEN AND DOMESTIC VIOLENCE CONFLICTS

'When leaders hit their wives, it doesn't get reported because people respect their leaders.' - Men's Focus Group, South Malekula

'Family Protection Orders don't work because they are not in line with kastom – because men are above women, and women have been paid for.' - Chief, Northeast Malekula<sup>129</sup>

'This community is sending violence cases to the police and courts, but they are just sitting there and are not being progressed.' - Chief, Northeast Malekula

'Before there was a lot of domestic violence here and women had black eyes, but now there is not too much. Kastom before had no regard for women, but this is improving with the church.' - Chief and Island Court Justice

'A female relative of mine was involved in a domestic violence situation and it was not handled well by the chiefs.' - Man, Central Malekula

<sup>&</sup>lt;sup>129</sup> This chief was somewhat exceptional in his views and his experiences. While he was under 40 years old, he also stated that he had been divorced two times and was married to his third wife.

# Background to Findings around Domestic Violence

In 2009 the Vanuatu Women's Centre (VWC) carried out extensive research on women's lives and family relationships using an internationally endorsed research protocol. This research provided a broad and detailed look at women's experiences of physical, sexual and emotional violence. Some of the key findings from this research include<sup>130</sup>:

- 60% of all women had experienced physical or sexual violence perpetrated by their husband or partner in their lifetime (in Malampa Province the rate was 75%)
- Of the women who had reported experiencing physical violence, only 10% said it had been moderate (slapping, pushing and shoving), while the remaining 90% could be described as severe (being punched, kicked, dragged or beaten repeatedly, choked, burned or hit with a weapon such as a piece of wood, iron bar, knife or axe), and 21% were left with a permanent disability
- 44% of women reported experiencing physical or sexual violence perpetrated by their husband or partner in the last year

These findings form the backdrop and context for this research into conflict management and access to justice on Malekula, particularly as it relates to women, and the conflict management research was in no way meant to either duplicate or to test the VWC's research findings. Rather this conflict management research hopes to build on, and ultimately support, work carried out by the VWC, particularly with respect to violence against women at the community level.

With this understanding, it is important to note as well that the prevalence rates for domestic violence offered through the VWC's research should be seen as accurate, even if some findings in this research may appear different. For example, in the VWC research 44% of women reported having experienced physical or sexual violence in the past year. In this research, the number of women who identified having a conflict relating to domestic violence was significantly lower at 19%. This is not at all surprising given that the VWC research asked women specifically about their experiences through a series of questions such as, 'Has your current or any other partner ever slapped you or thrown something at you that could hurt you?'<sup>131</sup> In the conflict relating to domestic violence in the past year that they had needed someone to help them solve. Many of these women may have been hit by a partner, for example, but might not have viewed this as a domestic violence conflict<sup>132</sup> or one for which they required any external assistance. Establishing prevalence rates around sensitive issues like domestic violence (in a situation where they have already been established) were of less

<sup>&</sup>lt;sup>130</sup> Vanuatu Women's Centre 2011. Vanuatu National Survey on Women's Lives and Family Relationships.

<sup>&</sup>lt;a href="http://dfat.gov.au/about-us/publications/Pages/vanuatu-national-survey-on-women-s-lives-and-relationships-may-">http://dfat.gov.au/about-us/publications/Pages/vanuatu-national-survey-on-women-s-lives-and-relationships-may-</a>

<sup>2011.</sup>aspx> viewed 4/4/2016.

<sup>&</sup>lt;sup>131</sup> Ibid, 220.

<sup>&</sup>lt;sup>132</sup> In fact, research in Vanuatu and in other places has recognised that women often do not identify their own circumstances as a situation of domestic violence, and in many instances, may not even regard it as 'wrong'.

importance in this research than tracing experiences of how conflicts were managed for those individuals who sought help and were comfortable disclosing their experiences.

# Women's Experiences of Domestic Violence Conflicts

In the research women who were interviewed were asked about the number of domestic violence conflicts they had experienced in the past year. As with other conflicts, they were asked to focus on conflicts that were bigger, and that they might have needed assistance to manage. Some of the findings relating to women and conflicts involving domestic violence were:

- 19% of all of the women who were interviewed identified experiencing a conflict of this kind relating to domestic violence
- The women who experienced this kind of conflict ranged in age from 18 to 63, with an average age of 32
- 61% of women who had experienced a conflict relating to domestic violence in the last year had experienced it more than once, with an average of three conflicts
- 71% of women who had experienced domestic violence in the last year identified it as their most important conflict
- 92% of women said they were the victim in the domestic violence conflict, 4% said they were the perpetrator and 4% refused to answer
- 76% of women said they had sought help from someone to manage it

As well, 28% of the chiefs who were interviewed said they had dealt with a conflict relating to domestic violence in the past year, and police who were interviewed identified it as the most common reason women sought their help. Among women, 18% of *all* conflicts that women reported experiencing in the past year related to domestic violence. There appeared to be regional differences in women's experiences of domestic violence conflicts in the past year, however, as shown in the following table:

| Table 25: Regional Breakdown<br>of Women's Experiences of<br>Domestic Violence Conflicts (as<br>Victims)<br>(N=72) | Percentage of<br>women who<br>experienced a<br>conflict | Percentage of<br>women who<br>experienced a<br>domestic violence<br>conflict (as a victim) | Average number of<br>domestic violence<br>conflicts per woman<br>(who were victims) |
|--|---|--|---|
| Central  | 76%   | 21%  | 4.1   |
| Northwest  | 72%   | 21%  | 3.3   |
| Northeast  | 71%   | 24%  | 3.5   |
| Southeast  | 57%   | 11%  | 2.1   |
| South  | 49%   | 12%  | 2.7   |
| Southwest  | 51%   | 8%   | 1.3   |

From these findings women in southern Malekula seemed to experience fewer conflicts overall, and fewer conflicts relating to domestic violence in particular. The average number of domestic violence conflicts per woman in the past year also appears to be much higher in the north. It is not clear why this might be the case. It may reflect a greater frequency of domestic violence conflicts in some areas, or it could also indicate a greater level of comfort in identifying and addressing domestic violence conflicts in the areas where the rates are higher. Given the exposure that women in northern Malekula have had to services and information over a longer period of time, this may be the most plausible explanation.

When community members and chiefs who were interviewed were asked about the most common causes of violence at the community level, chiefs identified fighting between men and women as a cause of violence less frequently (14%) than men (21%) and women (26%). This could partly be due to the fact that mainly village chiefs were interviewed, and family chiefs may be more likely to deal with domestic violence matters. This may also be due to the fact that women seem to bring domestic violence conflicts to other conflict managers to be solved more often than they bring them to chiefs. As reported earlier, for women who had identified experiencing domestic violence in the last year, only 24% had sought help in the first instance from a chief, while 49% had sought help from a family member, 15% had seen a religious leader and 5% had gone to the police. This is supported by a comment made by one chief who said, 'Domestic violence cases happen here but they don't come to the council of chiefs.'

It is possible that the choice in conflict manager may represent more of a necessity than a preference, however. In the series of questions relating to hypothetical disputes one question related to domestic violence, with the women and men who answered these questions asked what they would do if this situation arose tomorrow, *as well as* what they thought would be the *best* way to deal with this kind of a situation, if distance or cost were not a consideration. The answers in this part of the research were quite interesting:

| Table 26: Hypothetical Dispute 1 – Actual vs. Ideal Conflict<br>Manager  |                        | <b>Women</b> (N=116) | <b>Men</b><br>(N=161) | Chiefs*<br>(N=39) |
|--|------------------------|----------------------|-----------------------|-------------------|
| In the hypothetical situation involving<br>ongoing and severe domestic violence<br>perpetrated by a husband to his wife, who<br>would you go to first to seek help in this | Family Chief           | 47%                  | 27%                   | 7%                |
|  | Village Chief          | 22%                  | 29%                   | 19%               |
|  | Area Chief/Council     | 2%                   | 2%                    | 23%               |
|  | Family member          | 22%                  | 34%                   | 9%                |
|  | Religious Leader       | 5%                   | 4%                    | 12%               |
| situation, if it happened tomorrow?  | Magistrate             | 0                    | 0                     | 5%                |
| *[Chiefs were asked if they would ask<br>anyone else for help if it happened<br>tomorrow and who this would be – 100%  | Island Court           | 0                    | 0                     | 0                 |
|  | Police                 | <1%                  | <1%                   | 21%               |
|  | Family Protection Unit | 0                    | 0                     | 0                 |
|  | Vanuatu Women's Centre | <1%                  | 0                     | 0                 |
| said they would ask for help.]   | Don't know             | 0                    | 0                     | 0                 |
|  | Other                  | <1% <sup>133</sup>   | 4% <sup>134</sup>     | 4% <sup>135</sup> |

<sup>&</sup>lt;sup>133</sup> One woman said she would talk to the husband herself and ask him to stop.

<sup>&</sup>lt;sup>134</sup> Two men said they would talk to the man themselves, and four said they would threaten or beat the man up.

| Table 26: Hypothetical Dispute 1 continued   |                        | Women             | Men               | Chiefs            |
|--|------------------------|-------------------|-------------------|-------------------|
| If you could seek help anywhere or from<br>anyone, without consideration of cost or<br>distance, where do you think is the best<br>place for a situation like this to be<br>managed? | Family Chief           | 10%               | 4%                | 7%                |
|  | Village Chief          | 12%               | 9%                | 29%               |
|  | Area Chief/Council     | 7%                | 11%               | 12%               |
|  | Family member          | 5%                | 7%                | 2%                |
|  | Religious Leader       | 7%                | 8%                | 3%                |
|  | Magistrate             | 3%                | 6%                | 10%               |
|  | Island Court           | 0                 | 4%                | 7%                |
|  | Police                 | 40%               | 34%               | 22%               |
|  | Family Protection Unit | 2%                | 2%                | 0                 |
|  | Vanuatu Women's Centre | 6%                | 10%               | 7%                |
|  | Don't know             | 4%                | 2%                | 0                 |
|  | Other                  | 4% <sup>136</sup> | 3% <sup>137</sup> | 1% <sup>138</sup> |

So while 98% of women, and 99% of men said they would solve this kind of problem within the community (with family members, chiefs and religious leaders), just over half said state justice or the VWC would be the *best* place to solve this kind of problem. For chiefs, nearly half said it would also be ideal for this kind of problem to be solved by state justice or the VWC. These answers are interesting and seem to suggest that while there is a heavy reliance on chiefs and family members to solve domestic violence disputes, a significant number of women, men and even chiefs see these situations as better addressed elsewhere.

When women were asked about the main causes of fighting within families in their community, 65% of women identified issues relating to 'household responsibilities', which often refer to men's and women's roles and responsibilities around meal preparation, child care, earning money and other daily household tasks. Often women are blamed for not having meals ready for their husbands, even when men come back late after drinking kava. 51% of women identified kava specifically as the next most frequent cause of fighting at the family level<sup>139</sup>. Often kava causes fighting if men are using scarce household resources or neglecting other household responsibilities because of kava drinking. 35% of women identified money specifically as a cause of fighting within families, and 10% identified food. In a rural context like Malekula, with limited access to cash, and high reliance on food crops and fishing (both of which are labour intensive activities and can be seriously impacted by natural events), it is not surprising that these were also identified as causes of fighting in families.

<sup>&</sup>lt;sup>135</sup> These chiefs said they would involve a women's leader.

<sup>&</sup>lt;sup>136</sup> Other responses for women included just praying, seeing a Peace Maker, seeing the MP, sending the woman back to her home island and seeing a kastom man to make something to stop the man from wanting to fight.

<sup>&</sup>lt;sup>137</sup> One man said he would take the woman out of the relationship, another said they should get a divorce, one said he would talk to both of them, and two said they would see the Public Solicitor.

<sup>&</sup>lt;sup>138</sup> One chief said it should go to the Public Solicitor.

<sup>&</sup>lt;sup>139</sup> Less than 1% of women who were interviewed identified alcohol or marijuana as a cause of fighting in families.

# **Domestic Violence Protection Orders**

One of the ways that women and other victims of domestic violence might seek help for this kind of conflict is through a Domestic Violence Protection Order. Of the women who were interviewed, 74% said they had never heard of Domestic Violence Protection Orders or did not know what it was (compared to 38% of chiefs), and only 6% said they had used one. Of the small number of women who had used one, 60% said that they thought it was effective. Of the chiefs who were interviewed, 44% said they had heard of Domestic Violence Protection Orders and 18% said they knew a little about them. When asked if a Protection Order had been used in their community, 52% of the chiefs who were interviewed said 'No', 19% said they did not know, and 29% said that one had been used in their community. For those who said a Protection Order had been used in their community, slightly more than half said that it had been somewhat effective, and the remainder said it had not. The main reason cited for the Protection Order not being effective was that it had taken too long.

# The Vanuatu Women's Centre on Malekula

'Many of us in the village go to listen to the VWC's talks, but several just don't go too. Lots of women have problems here, but they don't talk about them to anyone.' - Woman, Northeast Malekula

'We have lots of support from the chiefs here to solve problems, but sometimes the family becomes a barrier. Family members sometimes come to take the issue back into the family.' - CAVAW Members, North Malekula

'The VWC has to strengthen the work of the CAVAW in our area and have them do more, because there are too many problems here.' - Woman, South Malekula

'This woman has never used the state system, so she doesn't understand the processes. But she knows about the VWC and domestic violence issues, and she knows that women should go to the Women's Centre when they are facing these kinds of issues.' - Researcher (Commenting on a female respondent in Central Malekula)

'I would like to receive more training to support the chiefs in doing their work more effectively. Here lots of the chiefs and men look down on women, and they really need more information and training. The CAVAW members also need more training and more financial support to do our work. We are given VUV 30,000 to work for a whole year, and it's just not enough.' - CAVAW Members, North Malekula

The VWC's presence on Malekula at the time of the research consisted of the relatively newly opened Malampa Counselling Centre (that had recently undergone significant staffing changes), and six Committees Against Violence Against Women (CAVAWs). Three CAVAWs were located in the north (Northwest, Northeast and Central Malekula), and three in the south (two in South Malekula and one in Southeast Malekula). The CAVAWs in the north seemed to

be functioning relatively well at the time of the research, and seemed to have generally good cooperation from chiefs in their communities, which is an achievement in itself given the challenging nature of the work they do, and the issues they raise. A number of the CAVAW members who were encountered during the research said that they felt they were not adequately resourced to carry out the work they needed to do, and it seems that their reach was still somewhat limited, perhaps as a result of this.

In the research, the VWC showed up in answers with some limited frequency in every area, except in Southwest Malekula where there is no CAVAW, and no respondents identified it in any of their responses. One police officer at a police post in South Malekula said that he would refer a case of domestic violence to the 'Vanuatu National Council of Women' in Port Vila, and seemed not to have heard about the VWC or their local office or CAVAWs, although several officers and the Family Protection Unit officer in particular, clearly had a close and very positive working relationship with them. Only three respondents (all women) who had experienced a conflict in the past year and needed help to solve it identified using the VWC in the first instance. Two of these conflicts related to sexual assault and one related to child custody. A small number of respondents (3% of women and 2% of men overall) also identified the VWC or their local CAVAW as one of the places they would go to seek more information about the law (in general) if they needed it, which is quite interesting and speaks to the VWC as a clear advocate for the law in Vanuatu.

As indicated in the table above on the hypothetical dispute, while the actual use of the VWC's resources may still be somewhat limited in Malekula, 6% of women, 10% of men, and 7% of chiefs who responded to this part of the survey identified the VWC as one of the best places to bring a serious domestic violence case. The recognised value of this option may not match its current use, however, because of its somewhat limited reach. As well, in one area significant issues were raised about the local CAVAW by a number of people, including this woman who said, 'The CAVAW here isn't doing its work properly.' While this issue seemed to be unique to this area (and perhaps to a lesser extent one other location), several people indicated that they felt that domestic violence issues were not being addressed well because of the way they were being handled by this CAVAW<sup>140</sup>. While the CAVAW in this location consists of fairly young members, and police are also quite difficult to access from this area, it seemed clear that this situation needed to be addressed.

'In this area the CAVAW members are judging cases themselves and are giving people fines, and then collecting the money and giving it to the victim as compensation. But it's not addressing the issue. I think it would be better if they referred these cases to the police or to the chiefs, because otherwise it won't stop.'

- Chief and Island Court Justice

<sup>&</sup>lt;sup>140</sup> Instead of facilitating the referral of cases to the police as they do in other areas, this CAVAW seemed to be handling cases themselves, including judging cases and putting in place fines, which were reportedly given to the victim. The concern raised about this, was that these cases did not seem to progress beyond the CAVAW. Several people (including a number of men and chiefs) also asked whether this was an appropriate role for the CAVAW, and commented that this process did not seem to be particularly effective in addressing domestic violence issues, suggesting that some of these issues should go to the police.

The work of the VWC overall, however, appeared to be a clear asset in addressing physical and sexual violence against women and girls, and supporting gender equality, where it is active on Malekula. Women in particular, as indicated by the findings around the two hypothetical disputes (above and below), may also see the VWC as playing an even more important role in helping to address cases of sexual assault and incest. As well, cases that are dealt with by the police and the Family Protection Unit Officer are often managed in cooperation with the VWC or CAVAW members, and the partnership there is a clear strength. CAVAW members in several locations are also prominent in community leadership, including as members of one council of chiefs as illustrated in the case study above. Given that nearly a quarter of the men (22%) and chiefs (18%) who were interviewed, and more than half of the women (53%), said they wanted to know more about domestic violence laws in particular, there seems to be a clear and ongoing need for the VWC on Malekula – and ideally for expansion of their work.

# 5.5 RAPE AND SEXUAL ASSAULT

'Rape cases are sent straight to the police because I see them as too serious.' - Chief, Northwest Malekula

'Sexual violence is high and there is no respect for women's bodies.' - Women's Focus Group

'Lots of sexual crimes are dealt with at the level of the chief. Sometimes chiefs come and ask for advice. A lot of sexual offences are also dealt with just at the level of the family – the family just sits down together and the parties say sorry.' - Police Officer

'When there are sexual assaults here between family members, we are not allowed to report them to anyone, because [senior male family members] say it is against kastom. Is this right?' - Woman, Southeast Malekula

'Chiefs are dealing with problems they shouldn't be. The Penal Code says that chiefs can't deal with rape, incest or other serious crime, and should deal with minor cases only.' - Police Officer

In the VWC research the findings around sexual assault were also very high, as indicated by the following statistics<sup>141</sup>:

- 36% of rural women had experienced non-partner sexual violence in their lifetime
- 39% of ever-partnered women had been forced to have sex

<sup>&</sup>lt;sup>141</sup> Vanuatu Women's Centre 2011. Vanuatu National Survey on Women's Lives and Family Relationships. <a href="http://dfat.gov.au/about-us/publications/Pages/vanuatu-national-survey-on-women-s-lives-and-relationships-may-2011.aspx">http://dfat.gov.au/about-us/publications/Pages/vanuatu-national-survey-on-women-s-lives-and-relationships-may-2011.aspx</a> viewed 4/4/2016.

- 30% of women had been sexually abused before the age of 15
- 28% of women said that their first sexual experience was forced

For the same reasons outlined above, the statistics from the VWC should be seen as accurate (and may even represent underreporting, as is often the case with disclosure of domestic violence and sexual assault). In the Malekula conflict management research, women and men were asked whether they had been involved in a conflict relating to sexual assault in the past year, and had needed someone to help them to solve it. Ten women and five men identified being involved in a conflict relating to sexual assault in this time frame, with six of these women and one of the men saying it was their most important conflict. All six of the women identified themselves as victims, and the man identified himself as a perpetrator. At the same time, when chiefs and community members who were interviewed were asked about their level of concern around various issues in their community, violence against women and girls – including rape and sexual assault – was the third greatest area of concern.

In three of the sexual assault related conflicts examined in the past year (including the one involving the male perpetrator) the conflict was managed by a chief, in two the victims sought help first of all from the VWC, one of the conflicts was managed by a religious leader, and one by the police. Of the chiefs who were interviewed, 23% said they had managed a case relating to sexual assault in the past year, with a total number of 10 sexual assaults reported between them. According to at least two of the police officers who were interviewed (both from Malekula), many chiefs were dealing with rape and other sexual assault cases<sup>142</sup> at the community level when they should be sending them to the police. While several of the chiefs who were interviewed were very clear that they sent rape cases to the police, two chiefs who were interviewed explicitly said they did not. One commented that several of the men in his community would be in jail if he dealt with these issues through the police and the courts. Another expressed the following opinions:

'Rape is an accident because of the feelings of the boy or happens because a man has mental problems, and so it is better to use a pig and kava [and solve it in kastom]. There are two kinds of rape cases – one with mature women which is often fake because the woman leads the man on. These should be dealt with in the village. Rape with a child is too risky and is different.' - Chief, Northeast Malekula

While these views seemed to be uncommon among the chiefs who were interviewed, again reflecting the views of only two chiefs<sup>143</sup>, reports of rape, including several accounts of rape that had been handled at the community level were quite common during the research. Several of these accounts were shared by a number of different community members in the same community, and were raised in debriefings by the researchers who discovered that

<sup>&</sup>lt;sup>142</sup> Beyond the reports of rape, other issues around sexual assault were also raised during the research, with a male and a female researcher being told by community members in two different communities about Prayer Warriors, and reports of men touching women inappropriately during prayer sessions.

<sup>&</sup>lt;sup>143</sup> Both of these chiefs were also unique because they were the only two chiefs who identified having spent significant time in Port Vila. One of them was also the only chief who said he had gone through formal training in the law (through what seemed to be a diploma course at the University of the South Pacific).

they too had heard a similar account in that community. In one community, the chief (one of the two quoted above) and at least two other community members separately described a situation involving a 13-year-old girl who was sexually assaulted. The girl and her family identified it clearly as rape, but the chief said they had been boyfriend and girlfriend and dismissed it. In another community several researchers were told there had been a rape case that some people had wanted to report to the police, but others decided that it should be handled within the community. In this case the woman had been left for dead in the road after she was raped, and was reported to have moved out of the community as a result.

In another community where the current elected chief said that he sent all rape cases to the police, a gang rape was alleged to have taken place involving a 16-year-old girl and four married men from the community. The chief at the time had heard this case, and reportedly fined each of the perpetrators VUV 15,000, but apparently these fines were never fully paid, and the men who committed the rape were still in the community. In at least one other community, an unsolved rape case was mentioned, and the perpetrators had not been identified and dealt with. In another community, wo men independently identified rape and sexual assault as a major issue in their community, and the young man who identified being the perpetrator in a sexual assault conflict in the past year spoke to the researcher about the process for managing his case that had also been handled in the community.

At the same time, community members and chiefs generally seemed to indicate that sexual assault, and particularly rape and incest, *should* ideally be dealt with outside of the community. As with the hypothetical dispute relating to domestic violence above, the women and men who answered questions in the hypothetical disputes section were also asked what they would do if they were faced with a situation involving incest committed by a male relative against a young girl, *and* what they thought would be the *best* way to deal with this kind of a situation, if distance or cost were not a consideration. The answers in this part of the survey were also quite interesting, as illustrated in the following table:

| Table 27: Hypothetical Dispute 2 – Actual vs. Ideal Conflict<br>Manager   |                        | <b>Women</b><br>(N=116) | <b>Men</b><br>(N=161) | <b>Chiefs*</b> (N=39) |
|---|------------------------|-------------------------|-----------------------|-----------------------|
| <b>-</b>  | Family Chief           | 26%                     | 17%                   | 3%                    |
| In the hypothetical situation involving<br>incest committed by an uncle against a<br>young girl, who would you go to first to<br>seek help in this situation if it happened | Village Chief          | 29%                     | 35%                   | 14%                   |
|   | Area Chief/Council     | 5%                      | 1%                    | 19%                   |
|   | Family member          | 16%                     | 27%                   | 14%                   |
|   | Religious Leader       | 0                       | 1%                    | 12%                   |
| tomorrow?   | Magistrate             | 0                       | <1%                   | 3%                    |
| *[Chiefs were asked if they would ask<br>anyone else for help if it happened<br>tomorrow and who this would be – 97%  | Island Court           | 0                       | 0                     | 2%                    |
|   | Police                 | 17%                     | 12%                   | 28%                   |
|   | Family Protection Unit | 0                       | <1%                   | 0                     |
|   | Vanuatu Women's Centre | 4%                      | 2%                    | 3%                    |
| said they would ask for help.]  | Don't know             | 0                       | <1%                   | 0                     |
|   | Other                  | 3% <sup>144</sup>       | 2% <sup>145</sup>     | 2% <sup>146</sup>     |

<sup>&</sup>lt;sup>144</sup> One woman said she would hit the girl and would speak to the uncle, and another woman said she would not tell anyone (especially not the girl's parents), but would teach the girl how to manage in the future.

| Table 27: Hypothetical Dispute 2 continu   | ed                     | Women             | Men               | Chiefs |
|--|------------------------|-------------------|-------------------|--------|
| If you could seek help anywhere or from<br>anyone, without consideration of cost or<br>distance, where do you think is the best<br>place for a situation like this to be<br>managed? | Family Chief           | 3%                | 2%                | 0      |
|  | Village Chief          | 13%               | 11%               | 21%    |
|  | Area Chief/Council     | 7%                | 5%                | 7%     |
|  | Family member          | 2%                | 5%                | 0      |
|  | Religious Leader       | <1%               | 6%                | 4%     |
|  | Magistrate             | 7%                | 15%               | 23%    |
|  | Island Court           | <1%               | 2%                | 12%    |
|  | Police                 | 49%               | 34%               | 29%    |
|  | Family Protection Unit | 0                 | 3%                | 2%     |
|  | Vanuatu Women's Centre | 11%               | 8%                | 2%     |
|  | Don't know             | 3%                | 3%                | 0      |
|  | Other                  | 4% <sup>147</sup> | 6% <sup>148</sup> | 0      |

So while 79% of women and 84% of men said that they would solve this kind of problem within the community (with family members, chiefs and religious leaders), 70% of women and 65% of men said state justice or the VWC would be the *best* place to deal with this kind of issue. 68% of chiefs also said it would be ideal for this kind of problem to be solved by state justice or the VWC. This view is in keeping with what the chiefs who were interviewed also said in another part of the research, where 95% of the chiefs said that there were some matters that should *only* be dealt with by the state justice system. When asked what these were, chiefs identified 'criminal' matters most frequently, followed by specific identification of rape and incest.

The significant difference between actual practice, and views about the ideal management of some conflicts is most likely based on a number of factors. As identified above, 97% of women said they rarely or never saw the police in their community, and on average police stations or posts were more than four hours away. The courts also tour very infrequently, and have not been to certain parts of southern Malekula for several years. A number of issues may also be managed within communities because of lack of information about how to access state justice (and what to expect when you do), or even out of habit. In some cases it also seems that chiefs and family members are restricting access to state justice. There may also be some differentiation going on at the community level between different types of sexual assault cases by chiefs (and even community members) that may influence where these issues are dealt with.

One way that this might be happening is in situations where the perpetrator is from outside the community (or even from outside a community leader's family). For example, during the research a chief (and the victim's family members) shared a story of a violent rape involving a

<sup>&</sup>lt;sup>145</sup> Two men said they would solve it themselves, one said he would just pray and one said he would tell no one.

<sup>&</sup>lt;sup>146</sup> One chief answered that in kastom someone who did this would be killed.

<sup>&</sup>lt;sup>147</sup> One woman each said they would: just pray, see their Member of Parliament, go to the State Prosecutor, go to the Public Solicitor, and go to a women's leader.

<sup>&</sup>lt;sup>148</sup> Five men identified state justice (State Prosecutor, Supreme Court, prison, and two said Public Solicitor), one each said a youth leader and a woman's leader, two men said going to no one would be ideal, two said they would beat the man up, one man responded 'Only the chief can go to the police', one said the man should be sent straight to hell, and one said that the man and the girl should be married.

young woman from their community and a perpetrator from another community. This young woman had been left for dead on the shore of a neighbouring community, and in this case the rape was referred to the police and the perpetrator was charged. In several other accounts that were shared about rape, however, including the one shared by the perpetrator himself, the perpetrators were all from the same community as the victim and the cases were all handled within that community. While this was not questioned specifically during the research, given other reports of 'favouritism' and the challenges of negotiating intracommunity conflicts in highly interrelated communities, it is completely feasible that this kind of differentiation is happening, and cases involving perpetrators from outside the community may be more likely to be referred to state justice.

It may also be that some responsibility for the sexual assault may be placed with the victim, making a chief or community members less inclined to report the perpetrator to the police. Often women who are victims of sexual crime are blamed for their own assaults, as suggested in the quote above by a chief. Even in some cases of sexual assault involving girls, it seems that victims may be held equally responsible, and there may be some implication that they had a role in leading the perpetrator to commit the crime. This was implied by a comment made by one woman about how she would handle the hypothetical dispute involving incest above by 'hitting the girl'. This is also similar to a statement made by one woman in the research who said that, 'In cases of incest both parties are told to stop by the chief.' These cases, where the woman or girl is held partly responsible, may also be managed within the community as indicated by the following statement:

'In cases of incest at the community level, the solution is often to marry the girl out or to hide the issue. I would like to know how to deal with it better.' - Chief and Island Court Justice

The perceived seriousness of the matter may also be taken into account, and some sexual assaults may not even be identified as problematic or as a crime. This is likely true in most situations of marital rape or sexual assault within relationships, which was also raised as an issue by a limited number of people in the research. Several women raised the issue of being pressured for sex, and identified sex as a cause of conflict in married relationships, although they did so very carefully and quietly. It is not clear that women being forced to have sex by their husbands would even by identified as an issue in most places. According to the magistrate, 'People just don't understand things like marital rape', and in her view even providing simple information about this issue, when talking about the law and sexual assault, would be of great value. So there are a number of reasons why sexual assault may not progress out of the community, despite substantial recognition in principle that the police and the courts are the best places for these matters to be solved.

Another significant issue relating to sexual assault that was raised during the research was the problem of police not acting on, or failing to progress, some cases that are sent to them. Two respondents, including the current State Prosecutor in Lakatoro, raised the issue of at

least eight rape cases that have been sitting in the State Prosecutions office for about seven years and have not made it to court<sup>149</sup>. According to the magistrate, one of these cases involved a father who was raping one daughter, and because nothing had been done, he had now progressed to other daughters as well. In her view, if these cases make it to the formal sector, if they are reported, 'We <u>have</u> to act'. In the research several chiefs, particularly in more remote communities, also raised the issue of police failure to act on reported issues, including some reference to sexual assault cases.

As with many cases of domestic violence, it is crucial that cases of sexual assault are not only referred outside of the community, but that when they reach state justice there is a reasonably quick and effective response by police and the courts. Issues relating to the release of sexual offenders in particular back into communities also needs further consideration. One chief expressed confusion and disappointment about how the police and the courts had handled two rape cases in his community. In this case, the chief had reported both of these situations to the police, but what happened with both cases was quite different, as illustrated in the following statement offered by the chief during the research:

'We had a church elder from here who committed rape, but he only went to prison for two months and then he was released and now he is back in the community. This is a real problem because no one consulted with me or with the community about his release, and when he just appeared in the community it also made me look bad. Another young man from our community has been in prison for three years for rape. To the community, this just looks like a case of favouritism.'

# 5.6 SUMMARY OF ACCESS TO STATE AND COMMUNITY JUSTICE FOR WOMEN

'We have lots of problems but we are not free to speak. We feel we have nowhere to go.' - Women's Focus Group

Access to state justice for women consists of access to the police, the courts and other state justice mechanisms (including lawyers and the Public Solicitor). In Malekula the police are mainly concentrated in Lakatoro with most officers, including one Family Protection Unit Officer and one State Prosecutor, based there, with little resourcing or capacity to get out to communities. Two police posts – one in Lamap and one in Southwest Bay – have one officer each and face similar limitations. There is one magistrate on Malekula who tours very infrequently, and island court justices (two of whom are women), who sit mainly in Lakatoro and have a very limited mandate. There has been no lawyer from the Public Solicitor's Office on Malekula for more than a year.

<sup>&</sup>lt;sup>149</sup> This is discussed further in section 3.5 focusing on women, police services and access to justice.

Within this context, state justice appeared to have the following qualities in the research, as it relates to women:

- In general, women seem to view state justice as somewhat more fair, and women had a more positive view of the decisions that are reached in the state justice system.
- State justice is often very difficult for women to physically and practically access, especially in southern Malekula where services are poorly decentralised.
- Women's access to state justice is often restricted at the community level as well, with women often having to navigate access to state justice through chiefs and male family members.
- When women's cases (including sexual assault) do make it to the police, police do not always action them, and there can be a significant delay in progressing cases, leaving women at risk.
- Police sometimes refer domestic violence cases back to the community and chiefs, or to other organisations (like the VWC), particularly those viewed to be less serious, also leaving women at risk.
- Women have a disproportionately low level of knowledge about the law and human rights, a poor understanding of state justice processes and how to access them, and often seemed to be lacking confidence.

As a result, most women manage their conflicts with what they are able to access at the community level. While 63% of the women who were interviewed said that they were happy with how problems were solved in their community, the researchers found that many women were also noticeably uncomfortable answering this question, particularly women who were from that community and whose problems were most likely being managed by community leaders who were also family members. Many chiefs who were interviewed were committed, expansive, and sometimes quite progressive thinkers, even in some cases around gender issues, however, the dispositions and capabilities of chiefs are also highly uneven, and chiefs and other leaders in the community who are involved in managing conflict function in a space with poor access to information (including about law and state justice), very little training, limited back up and no real oversight.

Given women's limited knowledge of the law and human rights, they may not realise what options are available to them as well. It is incredibly difficult for many women to make other choices or provide any critique of what is offered to them at the community level, because doing so requires knowledge and understanding of alternatives and a level of empowerment and support that they may not have. Even where women might have this, stepping out of prescribed roles or critiquing local power structures can often lead to the perception that a woman is being disrespectful (which is seen as a significant shortcoming throughout Vanuatu society), or thinks too highly of herself, or is responsible for undermining kastom and the status of chiefs (and challenging the existing power structure). This perspective was evident in

a comment that was made by a prominent male community leader and chief during the research:

'Women think they are too high now. Women should know that for any problem they need to go through the chief first. This will also help in restoring respect.'

Within this context, community justice appeared to have the following qualities in the research, as it relates to women:

- Community justice is primarily managed by chiefs, but family members and to a lesser extent religious leaders also play a significant role, particularly in conflicts involving women such as domestic violence and sexual assault.
- Big community conflicts around land and chiefly title, and how they are managed, can have a direct and negative impact on women's lives and how women's conflicts are managed.
- Women's issues and conflicts are often negotiated by male family members at the community level, and may not be prioritised or adequately represented by them. This may also have a silencing and disempowering effect on women.
- Institutionalised processes and systems (including bylaws) at the community level may not be in women's and girls' best interests and may contravene basic human rights and even the laws of Vanuatu.
- Finding ways to restore community and family harmony, rather than actively solving problems and seeking justice are often prioritised at the community level, especially around conflicts involving women such as domestic violence and sexual assault, which may not benefit women who are victims.

In fact, it seemed clear in the research that women are often not treated the same as men in community level conflict management<sup>150</sup>. Women's conflicts and issues are frequently deprioritised, women are regularly restricted from representing their issues and perspectives, women play a limited role as conflict managers and decision makers, and the resolution of conflicts involving women often seems to prioritise men's interests and community interests over women's wellbeing, and even justice itself. Women also may not always view this as a problem, or at least not as a problem that they have any scope to address. Several women in the research shared more conservative views than men in some areas, and sometimes appeared to be accepting of their secondary status. Researchers frequently described the overwhelming sense of disempowerment among women they interviewed, and several men and chiefs themselves also identified this as a problem.

However, there were also a lot of spaces where women's views and interests in seeing change came through in the research. One interesting finding was that the majority of women

<sup>&</sup>lt;sup>150</sup> For example, while it was out of the scope of this research, there were reports from different locations about the tendency of chiefs to give custody of even small children to fathers.

thought that women and youth *should* be able to speak and represent their own concerns and issues in the nakamal. As well, in the series of questions on hypothetical disputes, women who answered these questions consistently saw a role for shared conflict management with men. In the hypothetical domestic violence scenario, slightly more than half of all women who were asked this question thought that this situation would be better dealt with by state justice, and in the incest scenario, the vast majority of women thought that it would be better dealt with outside of the community as well, a view that is not necessarily in keeping with the status quo. A number of men, and chiefs, also saw an expanded role for women, particularly in community conflict management.

In leadership and decision making, some women were also standing up for their interests in land cases (sometimes despite significant opposition), and in at least one location women were not only members of the council of chiefs, but played a key leadership role in reestablishing a functioning conflict management process in their community. As well, the majority of women who were interviewed seemed to see the need for change, as illustrated in the following table:

| Table 28: Women's Perceptions of How Women are Treatedin Community Conflict Management(N=379) | Yes | Some<br>what | No  | Don't<br>know |
|---|-----|--------------|-----|---------------|
| Are women and men treated the same when problems are solved at the community level?           | 36% | 16%          | 42% | 6%            |
| Should women and men be treated the same when problems are solved?                            | 77% | 4%           | 15% | 4%            |

Changing how women are treated in conflict management, however, will require a number of things, including:

- Creating more space for women's voices to be heard.
- Empowering women with knowledge and confidence, and creating an environment of equality and respect.
- Supporting women as leaders, landowners, decision makers, and conflict managers, either in a truly shared and equal capacity with men, or on their own as appropriate.
- Strengthening community level processes and institutions (including bylaws) so that they are in line with Vanuatu's laws and commitment to human rights, and are dedicated to seeking justice as much as they strive to maintain community harmony.
- Ensuring that cases like domestic violence and sexual assault (that disproportionately impact the lives of women and their children) are dealt with appropriately, including sending ALL serious, criminal and repeat cases to state justice, and ensuring they are dealt with effectively and efficiently by the police and the courts.
- Improving women's direct access to state justice processes when they need it including greater decentralisation of crucial services, and support for women's right to choose where they would like their cases to be heard.

### 5.7 POSTSCRIPT: RECONCILIATION, APOLOGY AND WOMEN

Reconciliation has significant practical and symbolic importance in the context of Vanuatu. In the space of community level justice which takes place within a context of highly interrelated villages and communities, people need to find ways of getting on with their lives and getting along with each other after conflicts take place. While this ideal is not always achieved (some communities encountered in the research were completely divided by disputes that were clearly unresolved and very deep), it is always a goal, and represents a major value, particularly at the community level. The concept of reconciliation is also understood to be a powerful element of contemporary kastom in Vanuatu (and in church teachings) where apology, forgiveness and mending relationships is seen to be a crucial element of conflict resolution.

Apology and reconciliation also play a central role in the delivery of justice in Vanuatu, where state justice may be seen to be potentially more effective in mediating most conflicts fairly (albeit slowly), but is also seen to be potentially destructive to relationships because it does not allow space for apologies and reconciliation in any formal way. Community justice, on the other hand, with its focus on apology and reconciliation is seen to be better suited to maintaining community harmony and good relationships, but is potentially less effective in its ability to solve problems. The emphasis on apology and reconciliation as an end in itself, can also serve to marginalise and even silence the needs of victims. As a result, people often feel alienated from state justice, and disappointed by community justice where problems often seem to be poorly resolved.

For women in particular, how apologies and reconciliation processes are mobilised have special importance. Women are often seen as second to men in Vanuatu society (a view often held by women themselves) particularly at the community level, and women's access to power – or even more complex agency – is often severely restricted. At the same time, rates of violence against women, from domestic violence to sexual assault, by partners, extended family members and strangers are very high. At the community level, women's problems often seem to be solved in a way that emphasises apology, forgiveness and reconciliation, often at the expense of justice. As victims, women are in many cases compelled to accept an expression of apology as the only option (and the socially endorsed response), make peace, and carry on.

It is therefore worth exploring these two concepts of apology and reconciliation a little more deeply. Beyond their symbolic importance and meaning, they should ideally perform a psychological function, and should be linked to concrete action and understanding, and a commitment to change. Without these elements, issues may appear to have been solved on the surface, but may not really have been effectively resolved in the minds and hearts of the individuals involved. While this not only leads to a lack of effective resolution for conflicts, it can also be silencing and disempowering for victims, who may need to accept the apology at

the expense of real resolution. This may be one of the key reasons that women often resort to praying and forgiveness. Community processes fail them in terms of access to real justice, and 'humbling' themselves and finding ways of getting on with life are the only options available.

One researcher has referred to this as the 'cheap justice problem'<sup>151</sup>. The cheap justice problem is often seen to have two parts. In one part the overemphasis on the importance of the perpetrator saying sorry as a kind of marker of rehabilitation, and at the expense of taking moral responsibility for their actions and authentically recognising the circumstances these actions have left their victim in, both ignores (and silences) the victims' needs, and may coerce the victim to 'forgive' the offender, even if they are not ready. In this way simply saying sorry carries with it the moral obligation on the victim's part to accept the apology and pay attention to the perpetrator's expressed rehabilitation, at the expense of their own needs and interests, and whether they feel the apology is genuine, or even whether they are ready to accept the apology or not.

The other aspect of the cheap justice problem happens when apologies are overvalued and function as ends in themselves. In the context of domestic violence in particular, apology has been identified as part of the 'honeymoon phase' in the cycle of abuse, where the abuser often expresses remorse, apologises and asks for forgiveness. For many abusers this just becomes part of the process, and the apology can function more as a manipulation, particularly when the act of apologising in itself becomes the focal point in the process. Even where apologies may be offered in a sincere and remorseful way, they can still be ineffective. According to research which examined the management of domestic violence conflicts in the context of First Nations peacemaking processes:

'The abuser's apology must be accompanied by changes in his underlying belief system, which provides the context for a relationship of domination. If there is no commitment to the restructuring of that relationship, it is "just talk" and "cheap reconciliation."<sup>152</sup>

Recent research into restorative justice in particular has considered how apologies function in the context of conflict management, mainly focusing on complex situations of domestic violence<sup>153</sup>. As this research points out, apologies can be genuine or insincere, and represent much more than simply the exchange of words. In conflicts involving women, especially in the context of Vanuatu where men hold significantly more power (practically and symbolically) than women, apologies particularly around issues of sexual and physical violence perpetrated by men against women take on even greater importance. In a study on the use of apology in mediation, apology is defined in its modern usage as, 'to acknowledge and express regret for

<sup>&</sup>lt;sup>151</sup> Coker, D. 1997. Enhancing Autonomy for Battered Women. In A.K. Wing Ed *Critical Race Feminism: A Reader*. New York: NYU Press, 294.

<sup>&</sup>lt;sup>152</sup> Ibid.

<sup>&</sup>lt;sup>153</sup> In particular, Julie Stubbs 2007 article entitled, Beyond apology?: Domestic violence and critical questions for restorative justice, offers a particularly cogent examination of the use of apology in restorative justice practice.

a fault without defense'<sup>154</sup>. According to this study, apologies should have three core elements:

- 1. Acknowledgement, which includes some recognition of, and some genuine responsibility taken for the harm (which may be moral, relational, physical) by the person who has committed the offence.
- 2. Affect (a sense of regret or feeling, or even shame) on the part of the person who has committed the offence.
- 3. Vulnerability, on the part of the person who has committed the offense, that includes offering the apology without defence or excuse, and in recognition of the possibility that it may be refused.<sup>155</sup>

Genuine, effective apologies should include exchanges of shame and power, where the offender '...relinquishes power and puts himself at the mercy of the offended party'<sup>156</sup>, and where the '...offender submits to the power of the group and thereby helps remove shame from the victim by taking it on himself'<sup>157</sup>. Restitution and reparations, particularly for significant acts of wrongdoing, and efforts to change behaviour and actively mend the relationship are also important elements<sup>158</sup>. So while state justice in Vanuatu is often criticised for its lack of acknowledgment of, and incorporation of, these crucial symbolic and practical elements of conflict management in Vanuatu society, it may be that the way that apology is practiced and enacted at the community level is more about form than function in some contexts, and while present, may not be fulfilling some of its most essential functions. This may be the case particularly for conflicts involving women.

In this vein, reconciliation is also worth a brief exploration. Reconciliation has a powerful role in kastom and community conflict management in Vanuatu – and also is often recognised as a potential mitigating factor in state justice processes<sup>159</sup> – as elaborated in a case note on the use of customary reconciliation in sentencing in Vanuatu:

'[In Vanuatu] there is a very well established custom for a wrongdoer to perform a formal reconciliation with the victim. This practice is widespread and applies to all kinds of wrongdoings...The basic purpose of this custom of reconciliation is to restore harmony and peace between the members of the community who have been affected by the wrongdoing. Because that is the purpose of the practice, reconciliation ceremonies are usually held as soon after the event as possible,

<sup>158</sup> Ibid.

<sup>&</sup>lt;sup>154</sup> Schneider, C.D. 2000. What it means to be sorry: The power of apology in mediation. *Mediation Quarterly*, Volume 17, Issue 3, 266.

<sup>&</sup>lt;sup>155</sup> Ibid, 266 to 267.

<sup>&</sup>lt;sup>156</sup> Ibid, 267.

<sup>&</sup>lt;sup>157</sup> Ibid, 268.

<sup>&</sup>lt;sup>159</sup> One legal researcher in Vanuatu has said that even simply having had a kastom reconciliation process (no matter the outcome or how it was carried out) will often result in a one third reduction of a sentence in the courts, even for more serious crimes like sexual assault. Personal communication 3/5/2016.

and they are facilitated and, indeed often, ordered to be performed by chiefs to ensure the maintenance of law and order within the community.<sup>160</sup>

While not denying the high importance of the symbolic value and meaning of reconciliation in Vanuatu, how it is practiced, particularly in circumstances of differential power, or in the context of significant wrongdoing or injury, is important. For women in particular, how reconciliation is performed, is crucial. As with apologies, the way reconciliation is practiced on a day-to-day basis at the community level may be more about form than function as well, and may not actually pay enough attention to what has transpired between the people it is meant to reconcile. In many cases there might be an exchange of words and often an exchange of goods, kastom items or even money, but what happened and why, almost becomes secondary or is even erased through this process. While one could argue that erasing the wrongdoing and restoring the relationships is the only goal, from this vantage point it may not be successful in creating effective and lasting change in either behaviours or relationships.

Canada has recently undergone significant soul searching as a nation around systemic racism and institutionalised genocide (cultural and otherwise) perpetrated by the state, European settler populations, and the church through a system of residential schools, that have had a lasting and profound impact on generations of indigenous peoples. After several years of testimony, Canada's Truth and Reconciliation Commission has come up with a list of 'Principles of Reconciliation' that are meant to guide the ongoing relationship and process of healing of injustices into the future between these groups. While these principles relate to reconciliation in the context of a nation, and for large groups of people, and have been developed for significantly difference circumstances, they may help to point to what a more active process of reconciliation might look like in a modern nation state, perhaps even in the context of Vanuatu.

In fact, some of these principles – simplified and adapted – may be worth considering particularly in terms of how reconciliation is thought about and practiced at the community level in Vanuatu, especially for conflicts involving women.

#### Draft Principles of Reconciliation for Conflicts Involving Women<sup>161</sup>

(adapted from Canada's Truth and Reconciliation Commission's Principles of Reconciliation)

- Reconciliation must be based on a framework of human rights.
- Reconciliation is a process of healing, and must include truth telling, acknowledgement, apology, and redress.
- Reconciliation requires constructive action to address the destructive impacts on victim's lives.
- Reconciliation must be guided by an interest in creating a more equitable and inclusive society and closing the gaps.

<sup>&</sup>lt;sup>160</sup> Paterson, D. 2006. Case note: Customary Reconciliation in Sentencing for Sexual Offences. *Journal of South Pacific Law*, Volume 10 (1).

<sup>&</sup>lt;sup>161</sup> These principles have been adapted from Canada's Truth and Reconciliation Commission's What We Have Learned: Principles of Truth and Reconciliation 2015 <

http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Principles\_2015\_05\_31\_web\_o.pdf> viewed 4/4/2016.

- Reconciliation is based on a sense of shared responsibility for establishing and maintaining mutually respectful relationships.
- Reconciliation should include the integration of customary knowledge and values (where they are not in conflict with these principles, the law or human rights).
- Reconciliation requires leadership, trust building, accountability, and a substantial investment of time and effort.
- Reconciliation is strengthened by ongoing public education and dialogue, including engaging youth, and by recognising the value and contributions of all members of society.

# 6. CONCLUDING THOUGHTS

#### BRIEF SUMMARY OF PART 6: CONCLUDING THOUGHTS

- There is a tendency to view justice issues from a single perspective, but this is problematic. We need to see justice as a set of interrelated systems and processes.
- There is a tendency to see state and community justice on opposing sides, and to try to solve perceived issues in one area by reverting to 'the other side', but this may simply replace one set of weaknesses with another.
- State justice has clear challenges (under resourcing, lack of training, and it is poorly decentralised), but some clear strengths as well (greater neutrality, and better support to victims).
- Community justice is complex because of the highly interrelated nature of communities, issues around money, power, lack of consistency, oversight, and training.
- Community members and leaders see a role for state justice.
- While there are resourcing challenges, all options for improvement and expansion are not necessarily expensive, but it is a matter of priorities.
- There are no simple fixes, and we need to navigate a more complex approach to supporting access to justice.
- We need to collectively prioritise the realities, needs and interests of our most marginalised and disadvantaged citizens, and help to provide multiple pathways for them, wherever they are situated (geographically or in society) to have their issues heard, and to obtain fair and equal treatment – and redress – in a way that ensures a level of consistency, and with effective controls against abuses of power either by the state or by one citizen toward another.
- In the words of one chief, 'If there is no justice in the communities, there can't be development in the country.'

## 6.1 THE VALUE OF A BROADER APPROACH

While the capacity of state and community level justice institutions and processes are often discussed in Vanuatu, there has been little research to date that has practically mapped out how community level justice (through chiefs mainly, but also religious leaders and family members) and state justice (including courts and police) actually function in Vanuatu, both on their own and as part of a broader system. Understanding this broader system – and some of the assumptions upon which it is based – is crucial, however. In a context like Vanuatu it can become too easy to view issues from our particular vantage point (policy maker, chief, police or court officer), without seeing the bigger picture. In fact, discussions around justice (that are

also often informed by the simplified view of kastom outlined in the introduction) regularly seem to situate justice in Vanuatu in two distinct (and usually opposite) camps: state justice and community justice (or kastom).

As a result of this highly simplified thinking, there is a tendency to try to solve a perceived set of problems or weaknesses on 'one side' by simply reverting things to the 'other side'. More recently in Vanuatu the trend seems to be that where state justice systems are seen to be failing to meet their promise, these functions are being increasingly reverted to the community. So where state law has not yet reached communities, bylaws are encouraged; where policing services are inadequate or unavailable, there is a call to set up community members to carry out policing functions; where state justice fails to adequately and effectively manage land issues, decision making around land is given to chiefs. These processes may be carried out with good intentions and with consideration of the significant resourcing and geographic challenges – and in an attempt to reinvigorate one aspect of Vanuatu's unique cultural heritage – but they may be bound to fail or cause harm by simply replacing one set of problems and weaknesses with another.

This conflict management research has given stakeholders across the justice sector a unique and timely view into what justice looks like from a range of different vantage points, and prioritises the experiences of *the people* that all justice institutions and processes (state or community) are intended to serve: the men, women and children of Vanuatu. As well, this research has provided a window into what supporting improved access to justice might look like, particularly in rural Vanuatu. What the research makes clear is the fact that changes to only one part of the system will be highly unlikely to result in significant and effective change for people seeking justice. In fact, without taking the broader set of issues and realities into consideration, and addressing weaknesses wherever they exist, we risk the real possibility of simply setting up new systems and processes of injustice. Improving access to justice for all citizens in Vanuatu will require dialogue, openness, sharing, and adjustments across the whole spectrum of justice institutions and processes from the community to the national level.

### **6.2 THE WAY FORWARD**

As the research demonstrated, the court system offers significant benefits to citizens (including the potential for greater neutrality, and extra protections for more marginalised community members), but suffers from a number of clear and indisputable weaknesses (the role, functions and training in the 'lower' courts primarily, under resourcing), and the fact that it is still very poorly decentralised. Policing services are also weakest in more remote communities, and seem to function with significant lack of oversight, and an almost complete lack of operational resourcing. Interestingly a clear weakness in rural policing services also

seemed to be its failure to act consistently as an effective representative of state justice in some areas. In the realm of state justice, therefore, delivering training, clarifying roles, providing greater oversight, and supporting continued decentralisation of resources and services would be of significant short-term benefit. Consideration for improving infrastructure and legal mechanisms and processes would be helpful in the longer term.

At the community level, chiefs and community leaders are functioning in a complex space. Governance in communities in Vanuatu is highly uneven in terms of capacity and effectiveness, and it is not clear that simply setting up structures and mechanisms (councils and bylaws) will solve these issues. Chiefs themselves are looking for more support from the state, and see a clear role for state justice in several areas. As in most human societies, some problems are very difficult to solve within the context of small, interrelated communities. The added complications of internal migration, global capitalism, colonialism, national power politics, recognition of the rights and interests of more marginal community members, and lack of access to training, information and oversight, make community level justice processes even more complex. And despite an interest (particularly it seems among more centralised policy makers and power brokers) in 'reviving' community level processes<sup>162</sup>, there is also a clear interest from citizens and leaders at the community level in receiving a level of support and services from the national government that does not yet exist.

Of course, resourcing – human and financial – is often raised as a major stumbling block in Vanuatu. It is not clear, however, that some of these solutions are either as expensive or as challenging in terms of the human and financial investment required, as is often assumed. What it will take – on the part of policy makers and government as a whole – is the interest, and the will to prioritise access to justice, and the needs and interests of rural communities. Vanuatu's government has made significant and important steps towards decentralising government services through provincial authorities, and mechanisms such as Local Area Councils and Financial Services Bureaus. Unfortunately, policing and justice have been the most poorly decentralised of all government services to date<sup>163</sup>. The decentralisation of state justice mechanisms and their engagement with local, community level justice processes and realities needs to be prioritised wherever possible through further decentralisation efforts and through the government's global financial decision making<sup>164</sup>.

Vanuatu as a nation state has been independent since 1980, with its own constitution and laws that were written or adopted by our Ni-Vanuatu leaders. The men and women who participated in that process were charged with significant responsibility – they were called

<sup>&</sup>lt;sup>162</sup> If going back to the 15<sup>th</sup> or 16<sup>th</sup> century is even possible or desirable, which often seems to be left out of these considerations.

<sup>&</sup>lt;sup>163</sup> Several high level authorities have recognised that in the government's decentralisation planning, law and justice functions seem to have been basically left out. Interestingly, a recent visit to a provincial Financial Services Bureau highlighted the fact that while every other service and function of government seemed to be putting this financial decentralisation mechanism to use, police were noticeably absent.

<sup>&</sup>lt;sup>164</sup> It is also worth considering the fact that in a population of 285,000 people, we spend significant scarce resources on supporting two levels of political representation (national and provincial), and resourcing many levels of political advisors in a highly top heavy and unstable government structure. It may be less of a question of 'With what resources?' and more of a question of how can we better manage the resources we have, to provide improved services to our citizens.

upon to navigate Vanuatu's canoe through the complex waters of modern statehood, while ensuring that Vanuatu's unique and distinct cultures, and none of its citizens (rural, urban, men, women, children), were left behind. This required significant care and consideration. Guiding a small but incredibly diverse country, through these complex waters is not easy, but given the more than 35 years that have passed since Vanuatu became a nation state, it may be worthwhile considering (perhaps even reconsidering) how we can collectively harness our own wisdom, experience and knowledge – and carefully selected global wisdom, experience and knowledge – to meet our unique needs and realities, and create a better, more equitable, and more just future for our children.

Ultimately justice for all in a context like Vanuatu will not be achieved through simple 'fixes', or by continuing to perpetuate a tired and highly oversimplified tug of war between kastom and law, men and women, community and government. We need to put our energy and scarce resources towards exploring and developing more creative ways of bringing forward expertise, knowledge, evidence and understanding from all sides, in order to establish a more inspired and innovative way forward. Access to justice for all citizens in Vanuatu will not be achieved by politicking or power brokering, or by appealing to any special interest groups or issues. We need to collectively prioritise the realities, needs and interests of our most marginalised and disadvantaged citizens, and help to provide multiple pathways for them, wherever they are situated (geographically or in society) to have their issues heard, and to obtain fair and equal treatment – and redress – in a way that ensures a level of consistency, and with effective controls against abuses of power either by the state or by one citizen towards another<sup>165</sup>. In the words of one chief who was quoted earlier in this report:

'If there is no justice in the communities, there can't be development in the country.'

How we get there, however, is up to all of us, and will require significant sophistication, willpower, openness, honesty, dialogue, and creativity.

<sup>&</sup>lt;sup>165</sup> This is based loosely on the process definition of access to justice quoted in the Introduction and offered by Bedner, A. and J.A.C. Vel in 2010 An Analytical Framework for Empirical Research on Access to Justice. 2010(1) *Law, Social Justice and Global Development Journal*, 7.

# 7. RECOMMENDATIONS

### **BACKGROUND TO THE RECOMMENDATIONS**

The following recommendations relate primarily to work on Malekula, although several could be targeted at Malekula first, and then implemented in other areas if they are found to be useful, effective and applicable. It is recommended that primary responsibility for implementing the recommendations lie with government and the relevant policing or justice organisations, with support from development partners and other stakeholders as appropriate.

## 7.1 Possible Interventions Through 2016

#### Supported by Stretem Rod Blong Jastis

1. Dissemination of Findings:

Research findings (presentation and/or printed long version and/or executive summary) to be shared by the program with stakeholders in Port Vila and Malekula including (but not limited to):

- a. Ministry of Justice and Community Services (and other Ministries as appropriate)
- b. Vanuatu Police Force
- c. Vanuatu Judicial Services and Courts
- d. Stretem Rod Blong Jastis Partnership Management Group
- e. Key justice and police stakeholders
- f. Key Malampa provincial stakeholders
- g. Australian High Commission Staff
- h. Civil society including:
  - i. Vanuatu Women's Centre
  - ii. World Vision
  - iii. UN Women
  - iv. Save the Children
  - v. Oxfam
  - vi. Care
  - vii. Wan Smolbag Theatre
  - viii. University of the South Pacific Law School

#### 2. <u>Community Information</u>:

- a. The program (in collaboration with key organisations) support the development (and/or collection) and distribution of plain language, accessible, Bislama materials focusing on relevant laws for people at the community level, providing a simple, contextualised overview of human rights, outlining complaints procedures (including information about the Professional Standards Unit and police complaints processes), and court processes and information about what should be sent to state justice (including ideally an indicative referral process and relevant contact information).
- b. These materials should be circulated to communities during Community Outreach/Strategic Dialogues, and through other venues (Local Area Councils, Health Clinics, Provincial Councilors). The materials should include a focus on women's rights and improving access to justice for women.
- 3. <u>Community Outreach/Strategic Dialogues</u>:
  - a. The program carry out a series of well organised but relatively informal and more discussion-based community presentations supported by skilled facilitators (representing law, policing, Vanuatu Women's Centre, possibly the Vanuatu Law Commission) in four or five different locations in a number of selected main areas in Malekula. Ideally a team will go to an area for a few days, and chiefs and community members from the surrounding villages will be invited to join in. Presentations and discussions will take place both in larger community forums, and also in smaller informal discussion groups with an emphasis on engaging women and young people.
  - b. Community Information set out in #1 above should be distributed at this time.
- 4. <u>Preliminary Research into Piloting an Alternative Conflict Management Process for</u> <u>Domestic Violence:</u>

The program (and relevant stakeholders) carry out limited research and preparatory work into the development of a mediation process for domestic violence that incorporates the following elements:

- a. Targeted at appropriate domestic violence cases at the community level (with the victim's agreement and ability to opt out at any time, in 'less serious' cases of domestic violence (for example, first time, not involving physical or sexual assault)
- b. Based on international best practices with respect to the careful use of alternative dispute resolution in domestic violence
- c. Taking into consideration elements of effective apology and reconciliation (as outlined in the report), and
- d. Builds on existing resources, opportunities and innovations identified in the research.

(Note: To be researched and developed in 2016 and piloted after 2016).

#### 5. <u>Trialing a Phone Based Domestic Violence Protection Order Process</u>:

Supporting a trial process (in a limited and select number of communities) on Malekula of putting in place domestic violence protection orders by phone with the following elements:

- a. Focused on communities with active Vanuatu Women's Centre CAVAWs and
- b. Coordinated with Authorised Persons piloting efforts being carried out by the Ministry of Justice and Community Services in Santo, Port Vila, and North Efate.

(Note: Only with permission and active collaboration from the Courts).

## Supported by the Courts

6. <u>Training of Island Court Justices</u>:

The program support the judiciary to implement training for the active group of Island Court Justices on Malekula (and potentially in other jurisdictions), with support as needed for curriculum development. All active island court justices to be provided with a manual.

#### 7. <u>Magistrates Training</u>:

Support the implementation of training with magistrates in areas where they identify needing more support, with a special focus on the handling of family protection cases and gender-based violence.

#### 8. Court and Police Tours:

Support as appropriate two tours and court circuits per year on Malekula involving the magistrate, a court clerk, some of the (trained) island court justices, as well as some police officers (including at least one with Family Protection Training) who could tour with (or perhaps slightly before) the courts. (Ideally targeting Lamap area regularly).

### Supported by the Police

(See #8 under The Courts above)

9. Police Post Rotations:

Encourage and support the rotation of police officers in Malekula (including some with Family Protection training) through police posts in Southwest Bay, Lamap, and perhaps even Northwest and Southeast Malekula (where there are planned or existing Local Area Council buildings), with the following considerations:

- a. Ensuring that there are at least two officers in each police post on a regular basis
- b. Rotating officers in posts regularly.
- c. Providing police in posts with a budget
- d. Identifying a roster of communities to visit from each police post on a regular basis (and providing this information to the relevant communities).

#### 10. Police Training:

Supporting and implementing training with police officers in Malekula in the areas identified in the report including:

- a. Prosecutions
- b. Investigations
- c. Standard Operating Procedures (including those relating to Domestic Violence)
- d. Community engagement by police
- e. Human rights, the laws of Vanuatu, and the structure of state justice
- f. Dealing with youth and juvenile crimes
- g. Warrant procedures
- h. Domestic violence and the role of police in family protection matters for all officers

This training should not be one-off, but rather ongoing and focused on developing particular skill sets, especially in younger officers, and in officers rotating through the police posts.

11. Local Financial Access and Management for Police Services:

Trialing the use of a local financial management structure (such as Financial Services Bureaus) in Malekula with a small and accessible budget for fuel, toner, etc, particularly relating to supporting women's access to justice (for example, for carrying out awareness around domestic violence, fuel for sexual assault and domestic violence cases). (Note: There already is a provincial government finance mechanism set up in the Public Works office in Lakatoro that could be used).

12. Repairing Police Vehicles:

Ensuring that, if possible, the engine for the police boat in Lamap and the second police truck in Lakatoro undergo necessary repairs and are returned to service.

13. <u>Providing Clarification on Police Handling of Domestic Violence Protection Orders:</u> Supporting the clarification of appropriate practices of police with respect to the issuing of Domestic Violence Protection Orders to ensure that the police fulfill their role in a way that is consistent with the law and in the best interest of victims.

# 7.2 AFTER 2016

- 1. <u>Piloting an Alternative Conflict Management Process for Domestic Violence:</u> Relevant stakeholders pilot a mediation process for domestic violence (as described in #4 above). This approach should include the following elements:
  - a. Only to be used in appropriate domestic violence cases at the community level (with the victim's agreement and ability to opt out at any time, in 'less serious' cases of domestic violence (for example, first time, not involving physical or sexual assault)
  - b. Be based on international best practices for the careful use of alternative dispute resolution in domestic violence
  - c. Take into consideration elements of effective apology and reconciliation as outlined in the body of the report, and
  - d. Build on existing resources, opportunities and innovations identified in the research.
  - e. Must be closely monitored, with careful evaluation, to ensure that it is meeting primarily victims' needs, and functioning in a way that is understood, and with effective collaboration from relevant stakeholders.
- 2. <u>Women's Empowerment Programming</u>:

There is a clear need for targeted outreach and programming for women in several areas of Malekula focusing on women's empowerment, legal empowerment, gender equality, domestic violence, etc. This should be carried out by a range of stakeholders in a coordinated and collaborative way to avoid duplication and extend potential reach. The program could provide support for effective coordination.

3. <u>Carrying out Further/Additional Research</u>:

It is recommended that there be further research on the following:

a. Using the same methodology in one or two strategically selected other islands/areas of Vanuatu.

- b. Marijuana cultivation and use in Vanuatu, including consideration of the social, legal, policing and practical issues, and providing guidance on appropriate legal, policing and other interventions given the particular context in Vanuatu.
- c. Black magic including sketching out a more complex multi stakeholder approach (including health, religious leaders, education and justice), and building on regional initiatives, to guide possible interventions.
- d. Reconciliation including the basis in kastom, why it is used, the value and effects of reconciliation, in what ways it is effective/ineffective and why, and key elements to support more effective use of reconciliation in state and non state justice processes and practices.

#### 4. <u>Contact List of Chiefs</u>:

Assisting the Malmetevanu in creating a simple contact list for all chiefs in Malekula, including their location, their 'status' (for example, elected, kastom), level of responsibility, term, and their contact details.

5. Community Conflict Management 'Manual':

Developing a plain language manual for leaders in the community who are involved in managing conflict including clear information about Vanuatu's laws, the Constitution, a simple, contextualised overview of human rights, a map of state justice roles and processes, and appropriate referral rules and clear recommendations on what they can manage appropriately, and what should be referred to others, including contact information for various state justice providers. The manual should be distributed through training and information sessions, and also provided to Area Secretaries, and made available to community members as well. This responds to the clear lack of awareness and understanding of the legal framework and the desire by community members and leaders alike for a greater understanding.

6. <u>Mediation and Decision Making Training</u>:

Carrying out intensive training with leaders in the community who are involved in managing conflict on mediation techniques, sound decision making processes and natural justice principles, with particular guidance and support around the appropriate management of conflicts involving women.

7. Engaging with Communities around Community 'Bylaws':

Supporting state justice stakeholders to work with leaders in the community and community members to ensure existing community 'bylaws' are in line with Vanuatu's laws and Vanuatu's commitment to human rights, and helping to provide clarity and consistency around community rules, fines and penalties. (This could potentially be done in collaboration with the Vanuatu Law Commission and/or the State Law Office as well as the Malmetevanu).

#### 8. Complaints Mechanism/Process for Community Level Conflict Management:

Consider the establishment of a neutral process for citizens to raise concerns about the work of leaders in the community who are involved in managing conflict (including chiefs) with respect to their conflict management practice (that can be investigated and mediated).

9. <u>Developing Mediators/Mediation Capacity</u>:

Developing or selecting an existing curriculum, and training a small number of carefully chosen individuals to act as mediators, particularly at the provincial level. This may help to address an ongoing need by community members for assistance with conflicts that:

a. Community members do not want to deal with at the community level.

- b. Cannot or are not being effectively managed at the community level.
- c. Community members are not ready to progress to court.
- d. Represent an inefficient or inappropriate use of the court's time.

(Note: It may be that a significant number of certain types of domestic violence cases and other small matters could be handled through this kind of mechanism, with appropriately trained individuals.)

#### 10. Review of the Island Courts:

With the approval of the judiciary, supporting a review of the island courts (including reviewing relevant legislation), as well as carrying out a review/assessment and renewal of island court justices across Vanuatu.

#### 11. <u>Retirement of Police Officers</u>:

Consulting on and supporting appropriate retirement of officers in the Vanuatu Police Force who are of retirement age (potentially through a negotiated settlement).

#### 12. Major Infrastructural or Resourcing Projects:

Providing support to a number of physical resourcing needs on Malekula including:

- a. <u>Lamap Police Post</u>: Improving and renovating the existing buildings in order to eventually support two permanent officers, and at least one additional officer on a part-time basis through a regular rotation.
- b. <u>Infrastructure Improvements in Lakatoro</u>: Renovating existing holding cell (or constructing a new holding cell), and making necessary (crucial) renovations to police housing and offices in Lakatoro.
- c. <u>Cage Truck</u>: Providing a dedicated cage truck for Malekula with access to a budget for fuel so that it can effectively be used for policing work.
- d. <u>Court Truck:</u> Providing a dedicated truck for the use of the court and with access to a budget for fuel so that it can effectively be used to support the work of the courts on Malekula (and the security of the sitting magistrate).

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