“Come and See the System in Place”
Mediation Capabilities in Papua New Guinea’s Urban Settlements

David Craig, Doug Porter, and Fiona Hukula
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Cover photo: A mediation convenes at short notice in a public market, presided over by the chair of the Village Court. David Craig/Worldbank
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“Come and See the System in Place”
Executive Summary

Although Papua New Guinea’s (PNG) urban settlements and mixed neighborhoods have a reputation for endemic violence, many local observers report some improvements in urban safety and security over recent years. These are attributed to both political-economic factors, including economic growth, an improved employment outlook, and the successful removal of former raskols, or criminal gangs, by business-oriented settlers, and also to institutional factors, such as the failure of criminal gangs to become institutionalized and the ability of local leadership to prevent the escalation of ethnic conflict and youth-related crime.

The first phase of research under Urban Safety in Port Moresby and Lae, Papua New Guinea (P152112) (NL-TA) in 2015 was exploratory, intended to guide future engagement under the World Bank’s technical assistance program rather than provide conclusive findings. It comprised over 200 individual and group interviews, conversations, and observations during 2015 with people in Port Moresby’s ethnically and socially mixed settlements and villages, including Tokarara, Sabama, and Vabukori (see map in section 2.1).

The research applied an “institutional capabilities” approach. Rather than focus on the stigma and governance deficit associated with settlement violence and the weakness of formal law and order, it set out to identify how people create safety by recognizing what already works, day to day, across much of the city, concentrating on two institutions: markets and mediation. This report focuses on mediation in mixed settlements, where the majority of the population of PNG’s cities live. Three dimensions of institutional capability are considered: i) efficiency (accessibility, affordability, timeliness, and sustainability), ii) power and authority, and iii) outcomes and legitimacy. Although the results are preliminary, as this initial investigation focused on “what is there and how it works,” the research reveals significant differences in outcomes for different groups that need further clarification.

What is neighborhood mediation?

Neighborhood mediation is an established, locally recognized practice in which a community leader or organization brings together different parties in an explicitly neighborhood venue to negotiate and agree on a settlement acceptable to the people living there. This settlement would then be reinforced by these participating actors, producing local “peace and good order.”

Consistent with convention, the report distinguishes between the functions and forms of mediation institutions. Function refers to the purposes or kinds of disputes that mediation deals with, in other words, the problem the institution aims to tackle. Neighborhood mediation addresses everyday conflicts: youth and ethnic fights, family and marital disputes, and so forth. It is also moving into functionally new areas of dispute over land and property, employment opportunities, and conflicts with public authorities and formal sector commercial actors.

Mediation may occur through a range of forms of organization, including local territorial committees (komitis) and courts (cots) operating at various levels of scale, each of which might have a place-specific relationship with the police or other agencies of the state. The report shows that neighborhood mediation is growing in significance to urban residents, who regard it as an effective, legitimate way of handling problems related to prosperity and security. The report also points to a number of challenges.

How does neighborhood mediation work?

Neighborhood mediation relies on the necessity of personal engagement and self-help in sorting out local, family, and communal issues. This means being ready to defend interests by enrolling and mobilizing the support of relatives and ethnic group members. Parties call on their recognized community leaders to assist in resolving a dispute rather than follow a process they are unsure of, such as going to the police.

People approach mediation not just as individuals but as a member of a communal group. Each group brings beliefs about both justice in general and how it relates to the particular case. These beliefs and perspectives are explicitly recognized as reflecting the kastom (tradition or custom translated into modern contexts) or pasin (fashion) of the group that reaches back to the rural homeland of the original migrants, for example “pasin bilong Sepik,” or “the Sepik way.”

When a relative or friend is involved in a dispute, considerable time and money will need to be invested by others. Local mediation events involving dozens or even hundreds of participants over several hours are common. Because of this heavy cost, there is also pressure to avoid disputes and to respond quickly in the event of a small but potentially escalating incident.

Payments of fees embody respect for the authority of the mediators and support for the process. They are often handed over with a word of thanks to the mediator. Mediators set standard fees (30–100 kina [K30–100], or about US$8–40) for a mediation hearing to be paid either in advance or at settlement. Some mediators can ask high fees because of the scope of the authority they bring. Compensation can be considerable, especially where it reflects the expectations of Highlander groups.

Neighborhood mediation combines the personal authority of a number of participants, including the two sides to the mediation, their families and kin, and the mediators themselves. At the same time, it invokes and appropriates a range of locally available forms of authority, many drawn from the state. All convene with the aim of reaching a consensus or agreement, and the broad and active participation of stakeholders lends authority and durability to outcomes.

The mediators are typically urban communal leaders, now referred to as leadermen (or female leadermeris). Leadermen commonly have the basic respect of both their own ethnic and other local groups and are often appointed by the (urban/ethnic) communities themselves, having already played leading roles in organizations inside and outside the locality. They may be former sportspeople, church elders, community (or badged) policemen, ward councilors or komiti members, business people, or public servants. All of these associations can add to their authority, as can their personal skill and performative prowess, and to the authority of the mediation process itself.

What organizational forms does neighborhood mediation take?

Mediation processes and mechanisms are expressed through diverse forms of organization operating at significantly different levels of scale. Most prominent are local territorial komitis and courts, in particular the Village Courts, all of which are associated with the police in various ways. Although komitis can perform at a citywide scale, the largest number are found between the ward and its subunits, such as blok (ethnic compound) or street level. Although komitis perform well in representing ethnic differences, at the same time, they are less than inclusive in terms of representation across age, class, or gender differences. Nevertheless, komiti mediation is usually timely, accessible, affordable, and flexible and can happen on the next suitable occasion at any convenient place (for example, Sunday after church, under the large tree).

Often, komiti members, or individuals who operate individually as komitis, will be approached to mediate cases. In this, they resemble Village Court magistrates, who often mediate as individuals. This type of mediator will typically ask members of other komitis or people with authority from outside the settlement to join him or her.
The ability for dispute parties to approach individuals like this is crucial to mediation’s self-regulation. Parties in many locations are not strongly bound to individuals or even exclusively to their own ethnic group leaders. They can choose a mediator with a strong reputation, who charges reasonable fees and is available on a regular basis as a local professional with some trappings of official or komiti recognition. That person can then bring in or grasp local or outside authority, creating a team or panel of mediators needed to reach across differences of ethnicity, territory, and class.

Village Courts and their magistrates have a significant role in mediation. The courts convene once a week to deal with family and local disputes, that is, disputes arising in their territorial jurisdiction: adultery, violence, swearing, unpaid loans, unruly competition in markets, and youth. Courts routinely combine mediation and adjudication, often within the same case. Outside the weekly sittings, magistrates are often in high demand as mediators by virtue of their respected standing and ability to access and grasp the formal order-writing authority of a gazetted court.

Police collaborate and compete with local mediators, offering quick solutions and powerful coercive backup to those who can afford these services. Many police live in settlements, and thus as members of the neighborhood maintain social relations and obligations. Many cases are mediated on the front steps of the police station, often quickly by lone ranger officers operating in neighborhoods regardless of the location of their residence or the station to which they are posted.

Competition between different mediators can be seen as having a positive effect in that people are free to choose the most accessible, affordable, and reliable mediator. But it also creates weakness. Police may lack incentives to support local mediators and sometimes be motivated to undermine their decisions. Police involvement in neighborhood mediation thus sometimes adds uncertainty and unpredictability.

<table>
<thead>
<tr>
<th>Institutional Capability</th>
<th>Efficiency</th>
<th>Power and Authority</th>
<th>Outcomes and Legitimacy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Komiti mediation (individuals, panels, teams)</td>
<td>Accessible: multiple local entry points Affordable Timely; meet as need arises Sustainable Can offer choice of mediators Self-regulating</td>
<td>Grasp: high local/ horizontal authority Reach: high ability to bridge ethnic differences</td>
<td>Depends on negotiated, mediated settlement among wide range of people.</td>
</tr>
<tr>
<td>Village Court mediation</td>
<td>Moderately accessible Meets weekly State-financed magistrates improve access Mediation fees can be higher, constraining access</td>
<td>Grasp: local leadership and vertical state authority Reach: court orders can reach into families, neighborhoods, across differences</td>
<td>Can combine mediation with adjudication Moderate outcomes for GBV</td>
</tr>
<tr>
<td>Police mediation</td>
<td>Unpredictably quick or unresponsive Limited access for settlements, higher though still limited for middle classes; high cost</td>
<td>Grasp: high formal and coercive power Reach: sporadic, resisted in many settlements</td>
<td>Unpredictable, able to be captured, diverted Police influence can disrupt mediation Limited GBV outcomes</td>
</tr>
</tbody>
</table>

Table 1. Neighborhood Mediation: Capabilities at a Glance
How does mediation deal with gender-based violence?

The initial research on which this report draws was not designed to assemble the large portfolio of cases needed to assess mediation’s capability around gender-based violence (GBV). However, as GBV features in all forms of mediation institutions, the research was able to ask extensive questions about how GBV comes to mediation and to describe cases whose outcomes raise important questions.

It is clear from cases, observations, and interviews that public neighborhood mediation can be a powerful weapon for unmasking GBV abuse and creating a public discourse on the problem (and also for occasioning public shame for the perpetrators). Dealing with GBV, mediation institutions compare reasonably well with the Village Court processes, though they lack the authority to issue court orders and there is no compulsory official female participation. Mediation is regarded as necessary in cases where families as well as individuals are affected and want to have a voice, as it allows time for families to deliberate on and agree to the settlement; without this, the issue will not be resolved.

However, mediation in GBV cases also raises problems. Sexual violence cases, which legally should not be heard at the village level, are regularly transacted through mediation, despite the fact that mediation can and regularly does divert formal criminal justice proceedings, even where the victim desires them. This means that cases are heard in situations not primarily focused on the victim’s rights but also on the interests of families, the inherited frameworks of custom, and the need for conflict to be resolved in win-win ways. Initial research suggests that this can weaken the rights of the victim to seek criminal prosecution of, and court order protection from, the perpetrator and often subordinates these rights to the interests of wider family and kin. Although there are some women mediators, the vast majority are men, operating within male-dominated structures (and frequently, local relationships) that are not trusted by or accessible to women and whose processes are not always entirely public.

Women in GBV contexts therefore need access to pathways beyond mediation. Two-track proceedings, involving both mediation and criminal proceedings led by police, are seen by many as desirable but in practice are complicated and hard to achieve. The effect of police involvement in GBV mediation is often to divert, or try to divert, a criminal investigation.

Conclusions and recommendations

The vision of the PNG government’s 2000 National Law and Justice Policy and Plan of Action for building the capability of restorative justice in PNG is being institutionalized within the practices of neighborhood mediation. The longer-term work of nongovernmental organizations (NGOs), including the Peace Foundation Melanesia, also continues to bear fruit. Now is a good time for policy makers to revisit mediation—and especially neighborhood urban mediation—and see how it is functioning, how it may or may not be fulfilling the restorative justice vision, and importantly, whether the positive trajectory can be sustained.

The following recommendations are highlighted:

- Enable leadermen/meris, mediators, Village Court officials, and district-, ward-, and lower-level governments to consolidate and improve their mediation practices and develop mediation’s scope and reach at the local level. Help them to better define their different roles (mediation, adjudication, arbitration) and levels of authority. Find ways to bring their experiences and “best practices” into the national and regional development of mediation capability.

- Ensure that oversight by national policy and regulatory bodies protects neighborhood mediation’s flexibility and inclusiveness. To help achieve this, create a research partnership and capability within relevant agencies, including the Constitutional and Law Reform Commission and the Department of Justice and Attorney General’s Restorative Justice Unit.
• Create more public awareness of good practices and outcomes from mediation, thereby reducing the stigma of mediation, and building recognition of its capabilities and what makes it work best.

• Address mediation’s risk and problem areas, including with respect to serious crime involving GBV. Initiate a policy learning process, critically addressing women’s involvement in GBV mediation, on komitis, and with police.

• Explore ways that police engagement in mediation can be addressed to provide more predictable outcomes and minimize the disruption of local mediation processes.
1. Introduction: the Story in Summary

Box 1.1. A Neighborhood Mediation Case, Observed in Port Moresby, Early 2015

The case this morning is of alleged adultery, a long-term affair, which came to a head two nights ago. The plaintiff and his wife stand opposite each other, across a fenced residential backyard, each surrounded by supporters, with the alleged male adulterer sitting at a third angle of the triangle, next to his own wife. There is a mix of ethnic groups and social classes: the wife is Papuan, holding down a formal sector job; the husband, currently jobless, is from the southern Highlands; her lover, also jobless but educated, is from the New Guinea islands. Nearly 100 people attend. The mediator, an ethnic leader from Morobe province, former sporting great, retail manager, and member of the ward’s law and justice committee, sits up front with his assistant, a local public servant. He stands and slowly rehearses the familiar rules of neighborhood mediation, gesturing over a table piled with case files and a Village Court rule book. He speaks in measured tones, weaving together authority, showing it through the raised platform and stack of files… but also pointing out its true source: “It is the group’s responsibility to come to an agreement; the mediator can only help.” If the groups fail to create the shared authority of a mediated agreement, the case will be referred up to the “full bench”: the local Village Court with its five mandated local magistrates. “All clear on that?” he asks, scanning for nods and bowed heads. “Alright.” Everyone present has been enrolled in the process, from the storytellers to those there to “witness” and add their weight to procedures. Papua New Guinea (PNG) law may not regulate what happens now, but a boundary has been crossed: we are now “in mediation.”

Each side tells its story; anyone present is able to speak, for as long as it takes. Stories have been rehearsed; contrasting accounts emerge and are variously corroborated and countered. The wife had not been at the place where they agreed the husband would pick her up because she had been sent across town on work duties, as she had tried to explain on the phone to a husband often violent, now increasingly shrill. The wife later returned by an unusual route “because I was fearful of my husband’s rage” and his jealousy over her alleged lover, a jealousy that had lasted five years. She recounted the public screaming match and ugly beating he gave her when she finally arrived at the bus stop (within minutes of the lover). The lover said little but that he was sick of allegations and wanted the thing cleared up. His own wife sat, silent and embarrassed, beside him. The husband agreed with the lover—it was time for this public shame to end. Just a day and a half later, a summons had convened the sides for a process that for a small fee and the social costs of mobilizing witnesses, would assemble enough authority to avert more fighting between the partners or their families.

The two sides address their histories and explanations to the mediator, but he again puts the issue and its questions back to the attendees. “They must be the ones to make this work.” With the lines between the stories clearly drawn, he asks them to break into discussion groups to weigh the evidence. Fifteen minutes later, he asks what the groups have decided. A witness comes forward on the husband’s side, saying she had seen the couple together elsewhere recently. A murmur goes through the crowd; a consensus, already emerging, has been underscored. The husband stands, close to tears, “The marriage is over,” he says. The wife concurs, saying she had wanted it so for a long time. There is a pause of calm, almost shock. The mediator advises the next steps: formal annulment and settlement negotiation to be conducted at the family court, a level higher than the Village Court, based on the mediation outcome. It appears for a moment as if things might end there. But there is animated
1.1 THE SIGNIFICANCE OF MEDIATION TO URBAN SAFETY AND SECURITY

This report examines the capabilities of mediation institutions in mixed settlements where the majority of the population of Papua New Guinea’s (PNG) largest cities live and work. In these mixed settlements, both the formal sector employed (referred to in PNG as “working class”) and informal sector residents live in multi-generational households clustered within ethnic compounds or sub-ward blocks. They are widely stigmatized as zones of illegality and refuges of criminality. It is a matter of public record that minor disputes in these areas—whether between buai (betelnut) or street sellers around markets, groups within a school, parties to a traffic incident, or drunken youths—can rapidly escalate into intercommunal violence. Neither is there doubt that family and sexual violence is endemic, as is police violence. A primary challenge for urban safety and security in PNG then is dealing with this basic conflict—its drivers, its effects, and the ways it is regulated.

This challenge is formidable in urban PNG because of the ways conflict is embedded in social and other differences that the state and other organizations struggle to regulate. Violence related to ethnic differences is often spectacular; PNG is highly diverse, and ethnic loyalties are catalyzed by minor property crime, perceived disrespectful behavior, or alcohol-fueled disorder, frequently resulting in deaths and/or houses being burned. Gender differences, often involving control of scarce household finances, see chronic daily violence covered up inside families and ethnic compounds. Differences might be of age (involving older leaders and settlement youth, rivals...
in school fights, youth cults and gangs), economic status (insecure trading by young, informal street vendors), or security of land tenure (where even long-term residents can be driven out without legal recourse). These differences are volatile fault lines of violence, magnified in settlements and in relations between settlements and state authority, including police, precisely because they are also embedded within institutions and animate the ways in which all institutions operate. What this report reveals, however, is that behind the stigma and well-publicized incidents, mediation institutions are thriving, and through these institutions, residents of mixed settlements are engaging with disputes by drawing upon state, corporate, customary, and other kinds authority to promote urban safety.

Mixed settlements have long been no-go zones for law enforcement agencies. Policing today tends to occur along the lines of the punitive raid model that targeted recalcitrant local groups and communities during the colonial era. In contemporary form, this model of state policing makes a significant contribution to overall levels of violence. The wider range of state regulatory authority and services (land administration and municipal services, law and justice, health, education, training, and public works employment) has also had limited reach in mixed settlements. Although the expectation remains strong that at some point the government might reach down and provide a durable kind of territorial security, the reality is that much depends on what mixed settlement dwellers can do for themselves and on the institutions that they can build up from the various forms of authority and practice that can be evoked locally. This is not simply local or “community” authority; rather, as this report will show, it is embodied in leaders and institutional forms like Village Courts and komitis (local territorial committees) as well as practices that assemble and combine every possible element of authority available, from the state to the individual, via churches, sports, businesses, police, and the courts. Through these practices, diverse and fragmented authorities are grasped together and enable these institutions to reach across the differences and regulate the contests that often escalate into violence. Mediation is one highly significant example of such regulation.

Differences and contests, and the crime and violence associated with them, must feature in the story of safety and security in urban PNG. But they are not the whole story. Whether the difference is ethnic, gendered, or economic, it must be negotiated, maneuvered, and reconstructed as a basis for ongoing competition for oversubscribed assets and opportunities. Differences do not disappear; rather,

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**Box 1.2. Crime and Violence Trends in Port Moresby Settlements: Views from Above and Below**

We can’t see any reason why things could be getting better. The police are still in serious crisis. Crime statistics are hopeless, and murder rates are high. Corruption is everywhere, and institutions are weak. The traditional and village authority breaks down in the urban context, into entrenched ethnic violence. The settlements are still growing: they are still no-go zones and hotbeds of crime and violence. If you think there’s any settlement that is getting better, what’s its name? What could possibly be improving things? **Security researcher, Canberra**

Are things better here [in Sabama, a notorious, ethnically mixed settlement] than they were 10 years ago? Of course. Look around. Ask people. Do you see any raskol [criminal] gangs here? No, you see a few drunken youths. It’s mainly rats and mice we are chasing now. How is that? We did it. The community leaders did it. **Community leader, Sabama, Port Moresby**

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they provide the institutional bases for establishing a new order of security and safety. How this happens and how it might be enhanced by public action and policy are the focus of this report. The research concludes that it is the processes in and around local mediation that make life possible in urban settlements; in other words, these mediation efforts are crucial for the production and accumulation of capital—economic, social, and symbolic—in PNG’s urban areas.7

1.2 A NEW POLICY ANALYSIS APPROACH: UNDERSTANDING EVERYDAY INSTITUTIONAL CAPABILITIES

Box 1.3. “How Can People Live in There?”

Unless you go into an area and know it, you can’t know what is going on. So, when people say, “These areas always looks rough, how can people live in there?” Well, there must be a system in place, and you’ve got to know how to ask the questions to find it, otherwise, people don’t realize what is in there and working. It’s hard to describe unless you see it in specific cases. Mediator, Sabama

There’s a song about this: “Kerema yu no savi. Yu yet cam na lukim.” “You don’t know Kerema [a provincial town of mixed reputation]: you need to come and see.” Community leader, Vabukori

Rather than focus on the stigma and deficit associated with settlement violence and the weakness of formal sector law and order, this report suggests a different, proactive beginning point that starts by recognizing what already works, day to day, across much of the city. It attempts to take seriously what the quotes above exhort: to “come and see the system in place” and to provide a positive answer to the question, “how can people live there?” Its aim is to understand “what is in there and working,” in other words, what are the venues and processes through which people collaborate to deal with problems arising in diverse mixed settlements and what do these arrangements deliver? The report records efforts to “ask the questions to find it” and, by “seeing it in specific cases,” begins to think about options for programmatic support for safety and security in urban PNG.

Safety and security in urban areas have, largely for reasons of safety and access, been almost entirely unexplored in PNG history. It is thus important to stress the exploratory nature of this research. Initial phases of the project, including methods and field activities, were shaped by safety and access issues, notwithstanding that local people themselves proved exceptionally open to discussion. Findings presented here are based on over 200 individual and group interviews and observations during 2015 with people in Port Moresby’s mixed settlements and villages (see the map and a summary of research sites in section 2.1 below and Annex 1 for an account of the methodology, including the various constraints inherent in the research). Investigation efforts focused primarily on “what is there and how it works” and sought to understand the range of significant differences in process, form and outcomes, and participation. Those most closely engaged with the processes were interviewed: mediators, Village Court judges, those participating in and around mediation events, and so on. Although considerable efforts were made to validate and triangulate results, the conclusions and recommendations drawn in the report should be regarded as preliminary and tentative.

The experiences recorded show that the extremes of crime and insecurity that dominate media and outsider perspectives are very real but are experienced in very different ways by people across the city, depending on age and gender, wealth and source of livelihood, ethnicity, and the duration of urban residence. Albeit with some strong dissension, people overwhelmingly reported that especially

over the decade up to 2015, things had variously improved; indeed, most were clear in their own minds about how change had emerged.

When prompted to explain, some noted changes in the political ecology of the city. They cited generational shifts that resulted in youths growing out of crime rather than gangs becoming a permanent feature of urban life, the maturing of settlements, the deaths of crime leaders, the cumulative effects of education, the relatively long periods of economic growth, and the backflow of capital from resource development projects into urban infrastructure. As often, and crucially for this report, people also pointed to institutional changes in which both the quality of leadership and maturing of mediation arrangements were especially noted. Leadership includes both high-profile citywide leaders and those in neighborhood networks in churches, sports organizations, local government, Village Courts, and committees that have created new forms of urban association and identity. These act through new kinds of pacts and arrangements, including mediation, to create local capability for self-regulation.

To relate these developments to a wider set of frameworks, what is called an institutional capabilities approach was developed. Simply put, this approach addresses the axiom that institutions matter; in other words, that the capability and legitimacy of institutions are crucial for social and economic development. This approach draws on current conventions in institutional analysis (including the function and form distinction) and also provides tools to both describe institutions—as purposive bundles of rules, roles, and resources—and then evaluate their capability.

### Table 2. Institutions as “Purposive Bundles of Rules, Roles, and Resources”: Basic Terms

<table>
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<tr>
<th>Terms</th>
<th>Defining Questions</th>
<th>Examples in PNG Mixed Urban Settlements</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Function</strong></td>
<td>What problems does the institution respond to? What is the purpose of the institution?</td>
<td>Resolve local disputes (neighborhood mediation) Secure economic opportunity (local markets)</td>
</tr>
<tr>
<td><strong>Form</strong></td>
<td>Which different organizations/ agencies perform that function?</td>
<td>Komitis, individual mediators, mediation teams, Village Courts, police</td>
</tr>
<tr>
<td><strong>Rules</strong></td>
<td>What are the rules of the game?</td>
<td>Leaders’ understandings of kastom and other law, Village Court manual, mediation practices</td>
</tr>
<tr>
<td><strong>Roles</strong></td>
<td>Who is enrolled and how? Doing what?</td>
<td>Leaders, local authority figures, market vendors, customers, women/mothers, youth</td>
</tr>
<tr>
<td><strong>Resources</strong></td>
<td>How is it resourced?</td>
<td>Revenues, taxes and fees, people’s time</td>
</tr>
</tbody>
</table>

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9 This report offers only a summary of this approach. A fuller explanation will be provided in a future report after it has been further refined and tested in Lae under Urban Safety in Port Moresby and Lae, Papua New Guinea (P152112) (NL-TA).

10 This distinction has become clichéd and is often difficult to sustain in practice. However, it can be a useful corrective to the predominant approach in development practice, namely the tendency to evaluate institutions in terms of the presence or absence of formal characteristics thought to define “the right institution.” A recent summary of the emerging convention is in Andrews, Pritchett, and Woolcock, “Doing Problem Driven Work.”


12 Capabilities in wider social science literature refer to a person or organization’s opportunity and ability to generate valuable outcomes in relation to functions. See A. Apsan Frediani, “Sen’s Capability Approach as a Framework to the Practice of Development,” Development in Practice 20, no. 2 (2010): 185.
In part 2 of this document, the core mechanisms of mediation institutions are described: the rules, combining kastom (defined as tradition or custom translated into modern contexts) and lay understanding of common law and fairness, as well as the enrollment of local people and available authorities as actors in mediation and the resources available to them (time and money, but also the social capital of kinship bonds and shame). It shows how these elements are bundled in different organizational forms (Village Court, komiti, and police mediation), which overlap, compete, and are often hard to align.

Part 2’s analysis of mediation institutions responds to two key questions. First, how capable are they of grasping together and reassembling the different, often fragmented kinds of authority (ethnic or other leadership, custom law) available in neighborhoods? And second, how capable are mediation institutions of reaching or extending that authority across the key parameters of difference (whether ethnicity, class, age, gender, or tenure) to include the vulnerable and to deliver outcomes regarded as inclusive and legitimate?

Grasping and reaching are key terms in the discussion of institutional capability in parts 2 and 3. Having described how neighborhood mediation works, it is possible to evaluate the outcomes or results. In this section, three dimensions of institutional capability are apparent: first, capability in relation to efficiency, which in this report is assessed in utilitarian terms: accessibility, affordability, timeliness, and sustainability. Second, capability to grasp and reach: how powerfully does it pull together and reach out to enroll, regulate, resource? Third, outcomes: can it right wrongs committed by the powerful (including men), defend the vulnerable against the unscrupulous or violent, and bridge rather than reinforce inequalities of power and gaps in the reach of public authority?

Table 3. Efficiency, Power, Outcomes/Legitimacy: Basic Terms to Evaluate Institutional Capability

<table>
<thead>
<tr>
<th>Institutional Capability is the Sum of…</th>
<th>Defining Questions</th>
<th>Evaluative Questions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Efficiency</td>
<td>How efficiently does it do what it does?</td>
<td>Is it accessible, affordable, timely, and sustainable?</td>
</tr>
<tr>
<td>Power and authority</td>
<td>How powerfully does it grasp and reach?</td>
<td>It is able to grasp together and organize rules, roles, and resources? How powerfully does it reach out, enroll, regulate, and distribute resources across differences?</td>
</tr>
<tr>
<td>Outcomes and legitimacy</td>
<td>What are its results/outcomes and for whom?</td>
<td>Is it inclusive by enabling access of vulnerable people, or exclusive and extractive, favoring powerful interests?</td>
</tr>
</tbody>
</table>

It is in the nature of institutions that they will handle some purposes or functions more effectively than others and deliver outcomes that serve particular interests or powerful groups more than others. In the same way, the legitimacy of these institutions may be widely accepted in some domains but be ferociously contested in others. A neighborhood mediation komiti may be effective in dealing with ethnic fights, but is it the best place for a woman to take family violence issues? Institutions can be highly capable in terms of their efficiency or the power and authority they wield but still fail on the third dimension of capability, which is public good outcomes. Family and sexual violence, for example, is an area where it seems likely that mediation, for all of its efficiency, grasp, and reach, is not producing good outcomes.

For a framing of the ideas of grasp and reach in terms of the “infrastructural power” of states, see M. Mann, States, War and Capitalism: Studies in Political Sociology (Cambridge: Blackwell Publishing, 1988). The application of Mann’s approach to the conceptual framework of this non-lending technical assistance is dealt with in the forthcoming report on concepts and applied methods.

outcomes for women who are victimized, because often it restricts access to formal legal remedies and manages domestic disputes within patriarchal local and family contexts. Here, the unintended consequences of mediation’s wider success as an institution are apparent, indicating once again the need to evaluate institutions’ capability within the political economy and wider power relations. These issues are discussed in part 3.

1.3 MEDIATION IN PORT MORESBY’S MIXED SETTLEMENTS: A GROUNDED DEFINITION

Mediation in PNG has sometimes been disparaged as a set of local informal arrangements, tolerable in settlements or as a transitional measure but ultimately not an effective or legitimate basis for governing a modern economy and society. This report demonstrates, however, that mediation is of growing significance in mixed settlements (see box 1.4), where an increasing number of urban residents regard it as an effective and legitimate way of handling challenges to their prosperity and security.

This report uses examples to elaborate on the practices, forms, and outcomes of mediation in mixed settlements. For the purposes of this research, the working definition of neighborhood mediation is an established, locally recognized practice in which a community leader or organization brings together different parties in an openly and explicitly neighborhood venue to negotiate and agree on a settlement acceptable to the people living there. The ensuing settlement would then be reinforced by these participating actors, especially as it contributes to local “peace and good order.”

This definition aligns broadly with international perspectives on mediation at local levels, sometimes called “insider” or local, community, or neighborhood mediation.15 It is linked to alternative justice, community violence, and wider peacemaking in contexts where formal justice is weak, absent, or inaccessible. In three respects, emphases in this report’s definition may be somewhat distinctive:

First, neighborhood mediation is typically (though not always) public within the locality or settlement in terms of leadership, time and place, the basic willingness of disputing parties, and the community of people who identify with that locality to collectively accept the decision and witness that it has been achieved through an acceptable process. This public aspect is premised on a variously agreed sense of community as based in public, territorial identity legitimately uniting different interests.

Second, neighborhood mediation is understood as a locally authoritative way of grasping together diverse (but locally distinctive) forms of authority: local and communal (or as described later, horizontal authority) and wider, non-local (vertical) state-related authority.16 Although bringing them together requires agency and innovation, these forms of authority are not transitory but are already institutionalized. The

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16 UNDP and EU, “Supporting Insider Mediation,” 4: “Insider mediators—working overtly or behind the scenes—use their influence and legitimacy to constructively alter the behaviour, relationships and trajectory of parties in conflict. Using facilitation, dialogue and mediation, they work horizontally and vertically, formally and informally, at local, regional and national levels.”
authority and skills of the mediator are crucial, as is the personal and communal authority of those present. At the same time, mediation is performed in the shadow and at the edges of the state; though state authority is evoked, its interests are not primary. PNG neighborhood mediation appropriates and assembles a composite authority from the different kinds of institutionalized authority available and enacts this largely, but not exclusively, for local interests.

Third, it remains that neighborhood mediation is deeply embedded in the patterns of difference and inequality (that is, political economy) present in the city. This has some advantages. Neighborhood mediation often provides quick, affordable access and flexible, restorative win-win outcomes where formal public authority is absent, unreliable, or not regarded as legitimate. It is clear, however, that in most contexts, the efficiency and outcomes—and thus legitimacy—of neighborhood mediation are still impacted by the power of more formal institutions (the police, the local state executive, Village Courts, and so forth), as well as the political economic patterns of ethnic-, gender-, or age-related power across the city. Neighborhood mediation can empower local actors and give them access to locally grounded and restorative law and justice, safety, and security within difficult urban settings, but it can also be a vehicle for powerful vested interests, for whom its informality, ease of access, and rapid results are also an opportunity.

The rest of the report is organized as follows:

1. Part 2 describes the study sites as well as the institutional functions, rules, roles, resources, and forms of neighborhood mediation and considers their efficiency and power in terms of delivering outcomes. In the concluding discussion, it considers the interactions (mutual support, overlap, competition) between mediation and formal law and justice in the context of urban social (class) relations, informality, and the failure of formal institutions.

2. Part 3 focuses on gender-based violence (GBV) and raises questions about neighborhood mediation’s efficiency, outcomes, and legitimacy in this area.

3. Part 4 draws conclusions and offers recommendations, including for further activities under the World Bank’s ongoing technical assistance project, Urban Safety in Port Moresby and Lae, Papua New Guinea (P152112) (NL-TA).

17 Neighborhood mediation is in many respects a pulling together of public authority that is capable in the absence of the state and is bolstered by references, implicit and explicit, to the “idea of the state.” Neighborhood mediation institutions define their credibility by vindicating their non-state status and, on the other hand, by adopting the administrative regalia of the state (tables, summons forms, orders, stamps, etc.), indicating how the state should behave if it were present. Neighborhood mediation institutions are similar to what are defined elsewhere as “twilight” institutions. See C. Lund, “Twilight Institutions.”
2. Case Studies of Neighborhood Mediation Capability in Port Moresby

Port Moresby’s expansion over the 40 years since independence has seen the growth of mixed settlements that increasingly share three key characteristics. First, they are becoming more internally diverse, as several generations of ethnically, socially, and economically varied groups have established enclaves seeking income, status and dignity, and the social, economic, and cultural capital to enjoy a good urban life [Tok Pisin (the lingua franca in PNG): gutpela sindaun]. Second, although residents brought their diverse rural identities and expectations to the settlements, they have since adopted additional, urban place-based identities and understandings, including about communality and justice. Third, as they have matured, the relationships between mixed settlements and the wider city have become more intense and dynamic. As a result, the residents of mixed settlements invest heavily in dealing with the situation beyond their compound’s barbwire fence by building business, social, political, and religious relationships, affiliations, identities, and connections with place and, where they have the means, investing in private security.18

2.1 STUDY LOCATIONS
Life in PNG’s contemporary cities has not been well researched, and certainly there exists no comparative set of studies or a typology against which to reliably choose one locality over another as being more or less representative or reflective of variations across the city. For the same reasons, it was not feasible to pre-identify localities where neighborhood mediation was more or less efficient, powerful, or legitimate.

Map 1. Port Moresby: Downtown and Inner Neighborhoods

18 By the late 1990s, private security had become one of the fastest growing industries in PNG. R. J. May, State and Society in Papua New Guinea – the First Twenty-Five Years (Canberra: ANU-E Press, 2001).
Fieldwork was conducted in several locales. Two, Tokarara and Sabama, are highlighted in this report for two reasons. First, the research team engaged in these two localities over the most sustained period of time and thus places the greatest confidence in the findings drawn from these locations. Comparative case studies continue, including in Lae, which will enable the findings in this report to be validated and for recommendations to be articulated through a forthcoming Policy Note. Second, although they are similar in some ways, the two localities mentioned above are plausibly representative of mixed settlements in Port Moresby as defined earlier, that is, age, duration of settlement, tenure, ethnicity, and so on. However, they became of special interest early in the fieldwork due to evident differences in relations between mediation komitis, Village Courts, and particularly the police. It was obvious that these differences were crucial to the local institutions’ capability, and they will be explored in future publications covering a wider range of sites.

Tokarara/June Valley. This is a suburb in Ward Eight in the Moresby North West Electorate. The wider Tokarara/Hohola urban population (51,393) is the largest single area of the National Capital District. But the smaller scales matter more. Tokarara is a planned suburb established not long after independence (1975) to provide low-cost housing for public servants. In the past 20 years, a settlement known as Gomosasipo (sometimes also called New Block) has been established on the northern fringe of Tokarara (in an area known as June Valley) under customary land tenure. During the 1980s, further in-fill occurred as state-owned entities and private companies acquired land for employee housing. Tokarara is more than ever an ethnically mixed area (with large populations of Eastern Highlanders but also Sepiks, Morobe, and Popondetta people) that combines untitled, informal settlements and working class and corporate enclaves first developed in the early 1970s. Tokarara has a strong Village Court and a range of local komitis operating at the settlement block level and even street or “hausline” (neighborhood cluster or compound) levels. Churches, schools, and sport clubs play an important role in neighborhood life; although there is sporadic fighting between groups of youth, there are no substantial youth gangs. Relations with police are characterized by local law and justice leaders as “distant.”

Sabama. This was established as a low/no covenant (“self-build”) leasehold neighborhood on state land to the southeast of the city in the 1960s. After a slow start, it grew rapidly and became ethnically mixed but with a heavy presence of Eastern Highlanders joining the Kerema and Gulf people, adjacent to Motu Koitabu (indigenous to Port Moresby) communities, especially Kirakira. Census figures from 2011 put the Kaugere/Kirakira population (including Sabama) at 20,759, up 25 percent from 2000. Kaugere and Sabama have experienced large influxes of migrants since the 1970s. The first generations of migrants are now grandparents; their children, many of whose children added to earlier problems, are now mature adults. Raskol gangs have been largely overcome by a combination of Eastern Highlander communal hegemony and the maturing of former youth leaders and institutions (church, sports). As in other low covenant and mixed settlements, the Port Moresby housing crisis means many formal sector employees now live in Sabama, often in large, stable, and extended families. Local law and justice leaders remark that they benefit from exceptionally good relations with the local (Badili) police. Local Village Court officials, leaders who include members of the Peace and Order Committee, and the police are regularly involved in local mediation.

2.2 FINDINGS: WHAT NEIGHBORHOOD MEDIATION DOES, HOW IT WORKS, THE FORMS IT TAKES

2.2.1What it does: neighborhood mediation’s function and efficiency
The capability of neighborhood mediation derives from both efficiency and its enduring power in

19 Including settlements, villages, markets, and neighborhoods in Tokarara, Sabama, Vabukori, Gerehu, 6 Mile, and Horse Camp.
21 This is an acronym for Goroka, Morobe, Simbu, Sepik, and Oro/Popondetta, denoting the places of origin of the settlers. According to the 2011 census, Gomosasipo has 370 people, very likely a large under-enumeration.
achieving its core function, which is the resolution of local conflicts. In over 40 years of settlement, mediation has consolidated its reputation within mixed settlements as a reliable way to deal with neighborhood disputes. Box 2.1 lists the “core business” of neighborhood mediation and then draws from a senior mediator’s case records to illustrate what he and other senior mediators regard as new trends, in which the problems, scale, and law and justice character of cases handled by mediation is changing. Thus, it is important to appreciate that what residents call mediation can include associated regulatory functions of enabling advocacy and political voice for local people, promoting access to justice, ensuring accountability, facilitating commercial regulation, and addressing gender equity.

Box 2.1. Neighborhood Mediation’s Day-to-Day Scope and Reach

- **Family, marriage and relationship disputes, adultery, violence**: extra-marital affairs, disputes between marital partners/family members over money (including inheritance, shares of windfalls), negotiations over bride price repayment, access to children (after awarding of custody), treatment of different wives in polygamous relationships, daughter’s loss of virginity (and thus bride price), family violence, sexual violence

- **Fights and ethnic conflict**: fights between individuals and groups at schools, markets, and local sports events, and fights and ongoing conflicts between larger groups

- **Swearing and slander**: public or private defamation, talking “baksait” (behind another’s back), spreading gossip, including possible curses, bordering on sorcery

- **Public order**: drunkenness and damage to property, disruption of neighbors and public spaces, youth and children’s public behavior, drunk driving

- **Personal injury**: by accident, dog bite, or children’s activities, or involving vehicles

- **Loans and money**: disputes at the local market or over street selling, loans and repayment, irregularities around sports or other funds

- **Property**: infringement on another’s property, boundary issues, downstream waste or sewerage impacts, rental/tenancy/occupancy disputes, unlawful sale of property

**The Expanding Reach of Mediation: the Scope of Cases in a Single Port Moresby Mediator’s Casebook**

- **A land dispute**, within a single clan, a contest around the mutation and succession of ownership rights

- **A business dispute**, involving a registered (formal sector) company, wherein a manager had taken control over the client list and set up a separate company

- **A governance dispute**, where a government official obtained title to some public land and tried to extract rent from the government agency occupying it; mediator proactively intercedes on behalf of the aggrieved community

- **A case involving corruption** in the issuing of government contracts

- **A case involving a government electricity** utility and a fatality associated with the failure of its machinery
2.2.2 How it works: neighborhood mediation’s core mechanisms

**Self-help and agency in neighborhood law and justice**

Neighborhood mediation relies on a strong sense of the necessity of personal engagement and self-help in sorting out issues. This means being ready to defend your interests, not least by enrolling and mobilizing the support of relatives and ethnic group members. It means actively recruiting authority figures (community leaders, police) as well as garnering the symbols of authority from outside your settlement (such as a police occurrence book number, a medical certificate from the hospital); it also means moving quickly with leaders to set up dialogue, often by an initial exchange of resources (a belkol or “cool the belly” payment) that precedes mediation.

The basis for these actions has been established by ongoing investment on everyone’s part in local relationships and in disputes involving others (who can then be expected to come and support you when you need it). When a relative or friend is involved in a dispute, considerable time and money will need to be invested by others; local mediation events involving dozens or even hundreds of participants over several hours are common. Because of this heavy cost, there is pressure to avoid disputes and also to respond quickly in the event of a small but potentially escalating incident. A dog bite, for example, can quickly prompt offers to pay for medical treatment and a small compensation payment of perhaps K50 (about US$15).

People’s choices about which mediation organizations to utilize are both specific to individuals and their investments in personal relationships and deeply embedded in social, ethnic, economic, and geographical relations, including class and gender. Middle-class people living in Port Moresby’s relatively few homogeneous formal suburbs frequently engage with mediation komitis, but they can opt out of (or exit) these organizations because they have the means to rely on the formal system (for instance, the police or magistrate’s court) and private security. People living in mixed settlements have no such option; they must voice their position and grievance in public, while drawing on and protecting their loyalty to those they live with locally and to the overall processes of mediation that make this possible. What may be most significant about the contribution of mediation to urban security and safety is that when conflict arises, mediation enables voice but contains and manages it within structures of loyalties and authorities, both local to the settlement and beyond. Making some exit options harder has the effect of making agreements more durable (box 2.2).

**Box 2.2. Mediation’s Durability**

It’s because everyone there [at the mediation] has been a part of it, that’s why it will last. The family, the neighbors, the police, the komitis. People want it to be over, for the thing to be sorted out: they want other people to know that is the case. People who know both sides. Mediation belongs in public, with witnesses. It’s not something small you can walk away from, and no one will say anything.

Sabama resident

As explained below, parties call on their recognized community leaders to assist in resolving a dispute rather than follow a process that they are unsure

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of, such as going to the police (box 2.3). In some instances, this means that mediators and the community follow the wishes of the disputing parties to resolve the dispute out of court and do not refer cases that formal law says should be dealt with through criminal proceedings, as is seen below in relation to sexual violence. Often people say “it is not a case with others” [Tok Pisin: ino narapla]; they are most concerned with keeping the peace and not causing damage to already strained local relations.

Box 2.3. We Sort it Out Ourselves

*If it is a problem that affects my immediate family, I would immediately try and resolve the issue within the family—this would be my utmost aim. We want to sort it out ourselves.* If we cannot resolve it then we ask a middle man to come and assist. The main aim would be to resolve the problem and maintain unity and harmony in the family. If it is an issue outside the immediate family then again I would seek to resolve the issue and if this does not occur, I will bring in the Village Court. If it is an issue within the community that cannot be resolved within, then I would refer the matter to the police. Tokarara resident

Managing volatile communal emotion: timing, place, and truth telling in mediation

Mediation actively manages relationships under stress. It is often able to both contain and give vent to strong emotions within a structured environment and set of expectations about justice and injustice, truth and consequence.

Those involved in disputes will act quickly to secure both immediate family support and the engagement of a respected leader and mediator. Where there is a clear injury to one party, some initial payment is needed, even where there is a possibility or likelihood that the final resolution may not support the liability of one party. This indicates good will and signals to all that the process is headed for mediation and justice. In this respect, neighborhood mediators have been more successful than, for example, the police, whose involvement will often raise suspicions and tensions on both sides. Thereafter, formal mediation can happen on the next suitable occasion at any convenient place (such as Sunday after church, under the large tree). If things are not concluded then or if they blow up again at that first meeting, which is not uncommon, the dispute will enter into a longer period of informal deliberation between the parties, and various possibilities are floated with (and via) the mediators.

Actual mediation procedures have a set piece or staged aspect. Both rules and roles are institutionalized, that is, routine and predictable, widely understood, and accepted, and at the same time they are flexible and subject to pressure and influence. Summons, bearing the state-like stamp of (for example) the local Peace and Good Order Committee, may be issued, announcing the time and place and outlining the dispute. On the day, formality is established by the senior mediator. Rules are carefully reiterated at the start of each event, along with the likely consequences if an agreement is not reached. In general, people want and need win-win conclusions and will invest time and money to ensure them and future peace of mind.

Mediation is a performance of carefully staged and presented storytelling (see box 1.1 above). Emotion too is carefully calibrated to different stages of the mediation process. But mediation is much more than a set of charismatic properties or cultural norms; it is an institutional process in which rules and resources are routinely applied. Those crossing the emotional lines (for example, yelling while the other side presents) will be reprimanded by everyone present. Provocateurs and hotheads also play important roles—as in box 1.1, by raising the threat of violence if a good settlement is not reached—but they too must submit to the rules of engagement. At any point, either party may say, “Enough, no point in going any deeper into this, dragging up more anger, let’s settle now.” The mediator needs to be able to seize the moment at which a genuine settlement is possible and to conclude agreements and bring proceedings to a close at a point when people will walk away feeling due process has been served and that next steps, such as compensation, have been agreed.

25 See section 2.2.3 on the various forms of mediation arrangements, including committees/komitis.
Resources and mediation: compensation and fees

Resource transactions, including fees paid for consideration of cases or to settle issues collaterally, alongside mediation processes and compensation payments, play an important part in creating an economic imperative and interest in mediation. This acts also to draw people to invest in making it efficient and powerful. Actual mediation fees are often paid before the mediator pronounces the final settlement and certainly well before compensation payments are made. Payments of fees embody respect for the authority of the mediators and support for the process, and they are often handed over with a word of thanks to the mediator. There is a standard fee (K30–100) for a mediation hearing that is set by the different komitis and distributed among members. Some mediators ask high fees and are able to do so because of the scope of the authority they might bring. A Village Court magistrate, for example, might charge a higher fee because she is able to issue a binding court order in support of the settlement. Police mediation fees are typically higher than those for neighborhood mediators. Larger compensation payments usually entail higher fees.

Compensation amounts can be considerable, especially where they reflect the expectations of Highlander groups. Collecting compensation money usually requires both considerable agency and humility on the part of the payer and also contributions from (and debt incurred to) kin. Compensation thus exacts the punishment and registers the painful effects of the wrong done to the perpetrator and his or her kin. The actual payment signifies complete acceptance of both wrongdoing and the integrity of the mediation mechanism. Given the humiliating acceptance of shame and guilt as well as the financial scale of this investment, it is crucial that the payment works, that it is accepted as a full and final settlement by the injured party and its supporters. There is usually a highly symbolic and ceremonial aspect to paying the compensation and often real relief and joy once it is paid and accepted, even where its cost has been a huge imposition.

Mediation and heterogeneity: bringing different traditions together to create composite authority

Strong ethnic identities and differences can mean that a fight between two drunken youths quickly draws in their direct kin, and trouble flares further as members of their ethnic group join from across the city. But in ethnic difference or heterogeneity also lies a possibility of combining different forms of authority to create a stronger, wider composite authority that enables people to incorporate and thus transcend differences.

Ethnic identities today reflect features of modern, urban, and national life more than they do actual rural or village traditional origins. Arriving in the city, a person from a small Okapa village becomes an “Eastern Highlander” or just a “Highlander.” These modern adaptations of ethnicity enable belonging, safety, and access to network benefits, including
work. In this way, they are akin to other adaptations, such as PNG’s shared language (Tok Pisin), its widely shared group mobilization arrangements (the wantok system), and the traditional-modern term kastom, often referring to legal usages. Kastom is not the same as traditional or customary; it is already an urban accommodation and remains flexible and subject to change. But just as kastom, Tok Pisin, and wantok systems make mediation possible, mediation also plays a crucial role in creating and honoring these urban concepts and practices, and seeing them used to bridge differences.

People therefore approach mediation not just as individuals but inevitably as members of a communal group (box 2.4). Each group brings with it beliefs about justice in general and how this relates to this particular case. In the course of mediation, these beliefs and perspectives are actively aired and frequently explicitly recognized as reflecting the kastom or pasin (fashion) of the group that reaches back to the rural homeland of the original migrants: “pasin bilong Sepik,” or “the Sepik way.”

In everyday practice, this recognition is broad brushed, expansive, and flexible; it might relate to the acceptance of polygamy or to the conviction that some ethnicities (for example, “Papuans”) are not familiar with large compensation payments. More specific claims are also made about the pasin in a particular place of origin. Much then depends on the specifics of a group’s claims with regard to these traditions and the ways these claims are respected by the other group and the mediators involved.

Box 2.4. The Story of Urban Modernity in PNG

People here are beginning to realize how to live in a community, meaning this: they come from different backgrounds. They are used to those groups, to staying inside those groups, so it’s just Sepiks or Wabags or Gorokas. When they mingle with other groups, like now, it’s different: you go into a space and its different ethnic groups. If anything arises in that space, you solve it then within that: you don’t go outside the place and make all the Chimbus come and fight the Sepiks. You mediate inside instead. You don’t think you are separate from the other groups, that you are a different group. People living inside, now, know each other. If you, me, him are living inside, and someone says “you should not be here,” others will say, “no, he lives here ever since… why should you want him to be gone? Why should you want to get rid of him?” We say, well, if you want compensation, money, a pig, we will argue to the point, and then you leave him alone. So, in a community, everyone is different but they still belong. This mediation helps people to agree, to belong. It’s unique to PNG: 800 different languages! We don’t break them, the cultures; we ensure they enter into society, where it is kept alive, is brought inside. We keep it alive, but inside the community. Two Village Court magistrates in discussion, Tokarara

New urban identities, knowing and being known: the basis of safety, security, and mediation

Day-to-day safety relies on everyday investment in basic relationships that often involve social and cultural capital. Knowing and being known, maintaining good relationships, and keeping up with community knowledge are basic to everyday safety. A newcomer, lacking social support, can be seen as a legitimate potential victim by people with a strong territorial sense of identity in streets or neighborhoods, as well as in family and ethnic groups.

Safety and security thus rely on the adoption of multiple forms of urban identity, each of which must


be invested in (time, money, support) so that it can be drawn on when needed. Ethnic classifications (Tari, Chimbu, Sepik) are important, but so too are school cohorts, sports and other (such as political) teams, and even street residence (see box 2.5). One might become a “man bilong Sabama” (a Sabama man, or Mr. Sabama) or “mangi Toks” (a Tokarara lad). Attached to each identity are local obligations as well as rights and standings, in other words, tangible forms of social capital that can be invested in and turned into physical and economic security.

Box 2.5. Local Looksavy; Streets, Teams, and the Significance of New Forms of Urban Identity for Local Law and Justice

Before we used to go in ethnic lines, now, we go by street. But it’s the same thing, you have to be in that community to gain that respect. You have to be there, not somebody they say, “she’s just somebody who’s come and gone.” You’ve got no status in the community unless you prove yourself that you are part of there. If you just come up, it’s nothing. People have the influence because they’ve been in the places for a long time. You have the “looksavy” [recognition] in the relationships with people that you build all the time. From that you get the understanding of leadership in the community. That’s how you live here, be safe here. Customer, Tokarara market

It’s people’s attitude now—we talk, people comply. Before there’s no law and order. Now with people [market staff and security] picked from the ethnic groups, we stand together, Engan, Kerema... We work as a team. You talk together, that’s your way to do it. Sabama resident

We are Tok boys: this market is our place. We are not wantoks, we grew up here together, we became brothers in the same place. Because you live in the same place. He’s Tari man, he Central, he Eastern Highlands. I am one of the people who have been here long term in Tok; I was born here. I’m a Tok man. But so are they. When we were young, we played touch together. Now, we are older, higher status. We still know, we trust each other. It’s not like wantok, we are brothers. So, when we are here together in the market, we are relaxed. Tokarara market man

As new urban territorial identities transcend their original ethnic identities (box 2.5), various forms of safety that stem from being known and local can intertwine. Those outside of these networks either face serious security issues (see the examples in box 2.6) or must invest heavily in various other forms of capital, such as the social capital of relationships (with police and community) and/or the physical capital of contracted security (with both police and private contractors), to keep themselves safe. The experience, however, of the local storeowner cited in box 2.6 illustrates that without social capital and investment in relationships—and by referring to locals as “terrorists”—even heavy investment in physical or privately contracted security may not create security.
Since we installed the “cop shop” around three years ago, there has been no major holdups. But we experience theft from market vendors and people who live around here. I tell these market people “I am your wantok… if you want food you buy it from me, don’t steal.” Sometimes the young men come and tell me “Allan, I am hungry, I want to eat something.” It is better they ask me than steal. When youth groups have sporting tournaments, I give cartons of water. When there is some religious or community awareness, I allow these groups to connect their sound systems to the shop electricity. Tokarara supermarket owner

We have big security issues. Our main problem is the security guards and the “terrorists” around here. The security guards do not do their job, they allow people to come in here with their bags and steal from us. Just before New Year, the terrorists from this street up here came and did an armed robbery. I know it is them because they always go out that way. Local storeowner

"Ol Lidaman":
The role of community-appointed leaders
Grassroots agency, combined with heterogeneous urban identity, is an essential condition for the emergence of effective mediation. But these are hinged together by people who are increasingly referred to as “the leadermen” [Tok Pisin: ol lidaman]. The leaderman appears to be a relatively recent identity that expresses the need for mediation across ethnic divides (box 2.7). Leadermen can be male or female; typically they are also mausman [“mouth men”], or good speakers. In contrast to notions of the bigman,28 they need not be wealthy or capable of mobilizing funds and, unlike the chief, they do not acquire authority through hereditary office. They do need the basic respect of their own and other local groups in order to represent the interests of their community in ways that can resolve disputes between parties. They are, in this sense, primarily recognized and appointed by the (urban/ethnic) communities themselves, that is, by those who choose to go to them to get issues sorted out. Leadermen also count personal skill and performative prowess in mediation as key assets. Many adopt the title “peace mediator,” which suggests that they have received Peace Foundation Melanesia training.29

Leadermen also embody authority drawn from gender (patriarchy), age (gerontocracy), ethnicity, and class (cultural hegemony). They are expected to represent their own group at the same time as they work with other local leadermen to mediate conflict. Here, basic and important questions of legitimacy


29 Peace Foundation Melanesia was involved in a long and extensive series of mediation training events across PNG during the late 2000s, supported by the Government of Australia. Although many contemporary mediators were not formally trained by the Peace Foundation, echoes of the language used continue to frame local “best practice” talk in study locales. See http://www.peacefoundationmelanesia.org.pg/.
and fairness arise. On balance, although complaints are common (especially from women, see below), the emergence of leadermen as mediators seems a positive outcome, especially as in many ways it appears to be self-regulating, in that people will not appoint or seek mediation from those they do not respect. Since people typically have several different possibilities in seeking mediation, an aspect of choice or exit adds strength to self-regulating features.

The co-production of mediation: grasping diverse forms of authority
In urban settlements, leadermen and mediation are two sides of the same institution: the leaderman role is crucial to the enactment of the rules of mediation. The craft of consensus building involves more than just getting to an agreed story but also recruiting or enrolling the agreement and authority of the groups and individuals present, both in relation to what is seen to have been the case and what needs to happen next. Although the mediator might personally embody various forms of authority, what matters most is that s/he is able to channel and grasp the various forms of authority present on the occasion itself and ensure that the agreement endures beyond the day the agreement is reached.30

In this sense, mediation contrasts with the court, where the authority that the judge embodies may be exercised in a verdict or decision. Rather, capable mediation is achieved through a performance that assembles as many different forms of authority as possible in support of the consensus over the dispute and a just outcome. All these actors combine their skills and authority to co-produce an institution (mediation) with far more authority than their own separate, disparate, and often informal forms of authority would be able to achieve.

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30 The metaphor of “grasping authority” is a convenient but also slightly limiting way of conveying what is implied. As will be explained, it involves (i) collecting and assembling authorities (the classic image of grasping) but also (ii) combining them in potentially new ways, (iii) resulting in the emergence of new forms of authority. The emergence of ol lidamar, a resolutely urban and reportedly recent institutional role, may be one instance of the latter point.
The grasping of authority in PNG neighborhood mediation therefore has at least three dimensions.

1. **Horizontal grasping of authority.** This involves the production of inclusivity and agreement, enrolling the personal and communal authority of those affected by and attending the mediation. It requires recognition of their relational, communal, and territorial links, their standing (as representatives of resident ethnic groups, family members, or neighbors) and stakeholding as well as their testimony and witnessing. It recognizes their right and responsibility to see justice done for their group or for a relative, and their need as local residents to secure safety for themselves and others. Horizontal grasp and reach across all those affected (and the local territory) combine all available local authority and enable new agreements and pacts to be sealed, publicized, and made durable over time (that is, reach). Defined in this way, people are consciously participating in the creation of forms of public authority that are distinguished or standing apart from state forms of public authority—in other words, autonomous and communal but also connected to vertical power.

2. **Vertical grasping of authority.** Vertical authority is an indispensable element in the co-production process because it enables a bridging—a syncretic accommodation—between neighborhood authority and what is claimed to be its opposite, namely state and other hierarchical, publicly recognized institutional authority. Vertical authority is not therefore the same as the state invoking its authority such as through an announcement or formal sanction; rather, it is assembled by mediators and through mediation processes in three main ways: i) by enacting formal links to hierarchies of law and justice (Village Courts, police) or ward- and community-level bodies affiliated in some way with the state, ii) by drawing on the locally recognized regalia of the state (for example, initiation of the Village Court order process, use of Peace and Good Order Committee stamps and summonses, etc.).

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Table 4. Grasping Authority at Sabama: the Multiple Hats of Komiti Members and Mediators

<table>
<thead>
<tr>
<th>Komiti/ Mediator</th>
<th>Village Court/ Law and Justice</th>
<th>Lives Close/ Adjacent to Central Market, Long-Term Resident</th>
<th>Community Ethic/ Youth Leader</th>
<th>Market Community Police/ Security/ Staff</th>
<th>Public Servant, Including Retired or Senior Business Person</th>
<th>Church/ Sports Leader</th>
<th>CDC* Role</th>
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<tbody>
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<td>Peter</td>
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Note: CDC*: Community development committee, a quasi-local government agency.

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31 The CDCs were created as local appendages of urban executive authority and have, under some regimes, such as when Dame Carol Kidu was South Moresby Member of Parliament and Minister of Community Development, been important vessels of patronage by powerful political leaders.

maintenance of court records, ceremonializing of events and settlements) to bolster mediation procedures, and iii) by linking the local process to the authority of those other (ethnic, community) leaders or respected persons (police, visiting guests, leaders and mediators from other neighborhoods, people with bigman or formal hierarchical status in sports or corporate fields) who attend, often as witnesses of the process, and allow the mediation to piggyback on their authority.

3. The personal authority of ol lidaman (“the leadermen”). This may come from their embodiment of various forms of vertical and local horizontal authority or their respect as wearers of multiple hats (table 3). Respected mediators will go to great lengths to avoid being seen as merely a bossman by garnering their reputation for sound judgement, personal integrity, and ability to sum up, communicate to everyone present, manage the process especially when it becomes heated, and deal with conflicted, potentially explosive situations. This personal, embodied authority may take the form of a mediation team, panel, or komiti of selected leadermen who together supply the composite skills and standings.

Crucially, however, no single form of authority is sufficient in these neighborhood settings to underpin the efficiency or outcomes of mediation.

2.2.3 What do mediation institutions look like? Neighborhood mediation’s multiple institutional forms and sites

The mechanisms and processes described above enable mediation to work in the various functions of dispute management: resolving fights, family issues, and disputes with commercial or official bodies. The efficiency and power of these mechanisms, however—

their capability in the horizontal and vertical grasping of authority that enables them to reach across social differences and into marginal domains—depend on their enactment through forms of organization at the most appropriate scale. At times, individual leadermen may be the most appropriate scale of mediation institution. In practice, local territorial committees (komitis) and courts (in particular, Village Courts) provide the forms and scales at which most neighborhood mediation happens, often with the involvement of local police.

Mediation in the komiti: the grasping of mediation authority into a state-like institution

Historically, komitis and cots emerged spontaneously and, to the dismay of many in the colonial regime, in both urban and rural settings during the mid-20th century.33 Nowadays, most mediation in mixed settlements occurs in komitis, though what is meant by this term is flexible. As Hukula’s34 research has noted, komitis vary in name, definition, and scale of operation. Some law and justice komitis are simply known as “the komiti”; others are called the hevi (problem) komiti, or by the prefix blok (subward local area) or line (compound or group of houses). The great strength of mediation is that the mechanism can be capable across different scales, from disputes at the family level through to large-scale public ethnic disputation, where hundreds of tribally and locally affiliated potential combatants from across the city can be involved. Komiti can denote collective powers that may be ascribed to an individual (“He’s a komiti”); thus, a member of a settlement’s dispute-resolution committee may claim, “I am the komiti at the market.” At the same time, the komiti may appear as a “team,” citywide in its authority and scope of work and comprised of senior mediators with a range of skills and backgrounds, with the same premium on reputation and ability to rise above wantokism to deal with everyone fairly as evident at the smallest scale.

33 Oram’s (1976) history of Port Moresby comments on the emergence (and initial failure) in the 1950s of both councilors and committees in both homogenous and heterogeneous settlements, including June Valley and Kaugere, next door to Sabama. See N. Oram, Colonial Town to Melanesian City, Port Moresby 1884-1974 (Canberra: ANU-E Press, 1976). Goddard’s (2009) history of Village Courts captures much of the pre-independence conservative judicial concern about the kind of justice these komitis and cots were delivering. See M. Goddard, Substantial Justice: An Anthropology of Village Courts in Papua New Guinea (New York: Berghahn Books, 2009). After some official and judicial reticence, Village Courts have been recognized and councilors have become ward-level actors, with various komitis forming at subward levels. June Valley is reputed to have an especially dense formation of komitis. Local explanations of this relate to the agency of the Village Court chair in supporting komiti formation right down to very local levels and in providing support during the tenure of Moresby South MP Dame Carol Kidu as Minister of Community Development, during which time CDCs sponsored many subcommittees, including law and justice.

Often, individual komiti members (or individuals who function as komitis) will be approached to mediate cases. In this, they resemble Village Court magistrates when they mediate as individuals. A mediator may enroll others, perhaps other komiti members or people with authority from outside. The ability for dispute parties to approach individuals like this is crucial to mediation’s self-regulation. The parties are not strongly bound to individuals or even to their own ethnic group leaders. They can choose, on a regular basis, someone with a strong reputation, who charges reasonable fees and is available as a kind of local professional with some trappings of official or komiti recognition. That person can then bring in and grasp local or outside authority and create a team or panel of mediators as needed.

Commonly, as neighborhood-scale institutions, komitis will have a chairperson and several senior members, and sometimes teams of other leaders, who mediate (and adjudicate) through fairly regular public gatherings “under the tree after church” (box 2.7). Although there is a strong territorial and ethnic basis to their claims to be representative, they are commonly less than inclusive in terms of representation across age, class, or gender differences. Procedures for komiti membership indeed vary widely, from appointment by members of parliament or landowners to more deliberative local elections and “community appointment” procedures. One way or another, they seem quite accessible; every mixed neighborhood seems to have and need komitis, and everyone knows someone on a komiti to whom they can go. What all this means for komitis’ law and justice capability (including in mediation) needs further investigation, as discussed in the conclusions of this section.

The proliferation of komitis at different territorial levels may reflect the weak “grasp and reach” of government or simply that the nature of local issues and disputes requires improvisation, agency, and the co-production of authority that state institutions acting alone cannot achieve. For whatever reason, without formal statutory limits (or financial support), komitis have served to grasp authority where needed for local regulation. Never standardized by higher authorities, they remain highly variable in composition and function.

Neighborhood mediation and Village Courts
Although initially resisted by colonial authorities, Village Courts now operate as a genuine local court within a statutory jurisdiction firmly embedded in state policy, resourcing, and rules. With trained (but formally unqualified) local leaders enrolled as magistrates and no credentialed legal representation allowed, these courts adjudicate (and mediate) based on broad and hybrid understandings of kastom and pasin, with frequent reference to the published Village Court manual. Magistrates, a clerk, and uniform-wearing peace officers (Village Court bailiffs) are chosen from local leadermen, but after training they are formally gazetted as Village Court officials. Like law and justice komitis, Village Courts, meeting once a week, deal with family matters, local disputes, adultery, violence, swearing, unpaid loans, unruly competition in markets, and youth issues.

Magistrates are in considerable demand as mediators, by virtue of their respected standing and ability to access and grasp the formal order-writing authority of a gazetted court. However, not all Village Court magistrates engage in mediation (and not all are asked to), and they do not have the field all to themselves. At Tokarara, for example, Village Court magistrates are, by virtue of both their Monday morning Village Court role and the standing it gives them, heavily involved in day-to-day mediation activities away from the immediate court. But they keenly maintain the distinction between the Village Court and the court-related mediation they do outside the court’s Monday morning sessions as well as other mediations involving non-court actors, including komiti mediation (box 2.8). In fact, they believe it is important to suppress mediation by non-court mediators, especially where it involves payment of mediation fees. Their assertiveness makes neighborhood komiti mediation in Tokarara a little more closely linked to the Village Court than it is in other places.35

The adaptability of mediation’s mechanisms allows it to fit with the Village Court. As in komiti mediation, magistrates rely on a grasping of horizontal authority; each has prior standing in the community as a church or other community leader, a wise and well-regarded person, and a capable mediator and judge. But unlike komiti mediation, Village Court—

35 In Tokarara, Village Court officials have actively established komitis, and referral links to the Village Court are reportedly strong. By contrast, in Sabama, senior mediators operate independently and at times resist attempts by the Village Court to supervise their activities.
related mediation involves leveraging the formal vertical authority of the state in more explicit and plausible ways. Sessions conducted after hours by Village Court magistrates will be backed by court orders issued at the next court hearing. Mediations that fail are referred to the “full bench” of the Village Court and from there can go to the district court. Magistrates also perform mediation within the precincts of the Tokarara market and may adjourn court sessions (coming out from their bench behind the remaining shard of market fence) to interact “in mediation” at various points where consensus, rather than top-down judgement, is needed. In this way, the Village Court reinforces or embeds the practice of mediation.

On the other hand, as mediation expands and as actors beyond Village Court magistrates are increasingly involved, competition has become a reality. Competition is given a significant edge by the payment of fees to mediators, and this has raised the issue of whether Village Court magistrates too should be paid more for their after-hours work (box 2.8—more on this issue below).

Box 2.8. Mediation in the Shadow of the Village Court: Co-Production and Competition

The full [village] court. That is the rule of law. What we do down in mediation is different: it’s to assist them to come up with a decision. We allow them to talk, and when they get stuck, you give them some ideas. They are the ones who have got to live in here. If they don’t decide on something they are likely to have fights, especially when the men have had a few beers, they’ll fight. So, there has to be a solution. **Tokarara Village Court magistrate**

Komiti here [in Sabama] sits beside the VC; it’s like a community arm, with the VC. They do mediation in the community level, between our people. When community don’t agree with komiti decision, we go to Village Court. Without the VC magistrate, komitis can’t really run a mediation in a community or make a strong decision. The power to rule is with the VC magistrates, not the komiti, not the community, not the mediator. If anything happens, if it goes wrong, the VC magistrates witness the case in the VC or send it to district court. **Kaugere Village Court magistrate**

We always say, “Don’t pay mediation fees”—you don’t know what you will get [for the money]. **Village Court magistrate/mediator**

**Neighborhood mediation and the police**

Competition and cooperation are also core elements in neighborhood mediation’s relationship with the Royal Papua New Guinea Constabulary (RPNGC). The RPNGC is intimately involved in mediation at the neighborhood level. Whether the “blue shirt” is actually present, simply appears as a shadow of the law, or is conspicuously absent is crucial, both to the functions that mediation komitis can tackle and to their grasp and reach capability.

Neighborhood mediation happens in the shadow of the law, meaning that even when not personally present, police are an important point of reference and potential source of authority. People entering neighborhood mediation or taking issues to the Village Court will often have already been to the police station and obtained an occurrence book number, demonstrating that the complaint has been formally lodged. Police presence can add authority and security to neighborhood mediation processes, either by referring minor cases back to the neighborhood (box 2.9) or by attending and participating in mediations as co-mediators, witnesses, or simply as security figures. Actual police presence at the time of mediation can be the key to successfully mediating fights between local youths or disputes about theft or damage to property. Mediation-police links can be direct and personal, as some mediators and komiti members are former policemen or community policemen or have active police connections; Moresby’s peak mediation team, for example, which deals with major ethnic clashes, is led by a policeman. Mediation-police links vary locally, depending again on personal connections and trust. In Sabama, the personal qualities of the local (Badili) police commander have led to good relations, strengthening reliance on mediation.
If it’s neighbor vs neighbor, we will put it back to the community. If we address it here, it’s ok, but it’s actually better fixed if they do it. If we deal with all those cases ourselves, we get very stressed. It’s basic psychology—the police have to work with the community.

Badili policeman

[Sabama people] manage their own law and order issues, instead of giving us a truckload of rabis (rubbish) to deal with. Many big cases, we have to be there just to observe; we have a presence so we get a good decision. Sometimes we have to advise mediators or people on legal aspects, so the decisions are seen to be fair. [The mediators] know when they can step in. They know where the police come in. It’s like we are running in parallel; we address it in the police way, but we understand that they will have their own way. It’s not something you can learn at school. So, you have to learn it the hard way.

Sabama policeman

Box 2.9. Police Sending Cases Back to the Community: Sabama Experiences

Police also compete with komitis (and Village Courts) in mediation by offering quick solutions and powerful coercive backup to those who can afford these services. Many cases are quickly mediated on the front steps of the police station by lone ranger officers operating in neighborhoods.

At the same time, police involvement in mediation can sometimes have a negative impact. Police support or active involvement as a primary mediator may have been enlisted by one side or the other of a mediation; in cases of car accidents, for example, police powers of detention are commonly exercised in support of one party, with the other party locked in the cells until compensation is paid, along with “snake money” to the police officer concerned. Police can be absent or unresponsive, or can undermine already mediated outcomes by responding to one side [Tok Pisin: wansait] of the dispute. They can also simply drop cases on komiti that are beyond their capacity or incentive to resolve and thus discredit them, just as the very act of a police referral can bolster the legitimacy of komiti mediation. Thus police involvement in mediation often means that paradoxically, formal criminal charges are not pressed. Experiences cited below (box 2.10) reflect the fact that across much of Port Moresby, relationships between citizens and the police are poor—there is little trust on the community side. Village Court and komiti leaders are likely to cite ways police interfere with or undermine their efficiency and authority.

Box 2.10. The Status of Village Court and Mediation Outcomes: Mixed Experiences

The VC can get the [local] police to execute their court orders; they will lock someone up if we ask them to. But other places it’s not so sure. Sometimes police from outside [i.e., beyond Waigani] undermine us. Even when the police are just 3–4 feet away from us, they might as well be hundreds of miles. Village Court official/mediator

We do not involve the police, they are the last resort. If we go to the police, they will send us back and tell us to sort it out within our community. We only go to the police when someone has been killed or if it is a very serious matter such as rape. Local resident

I mediate police brutality, family problems, fatherless, motherless children; I have a lot on the agenda. It’s very upsetting for us when sometimes the police don’t do their job properly. The police come around here and they muck it up; they play around with the law. Village Court official

Sad to say you can’t trust the police. I can say in all honesty, you can’t rely on the police. The moment you are in trouble, if you want the police involved, whether it’s to mediate or for safety in the mediation or whatever, you need a whole bundle of money. For police, mediation always means money. Every time. Always. They will detain you, charge you or the other guy, depending on who gets to them first. Even if it’s just a small thing. If they have got you, just get out of there, get out of the police station whatever it takes. Village Court official
2.3 DISCUSSION: OVERLAP AND COMPETITION INVOLVING KOMITIS, VILLAGE COURTS, AND THE POLICE

Komitis and Village Court magistrates are practiced in grasping together authority at the neighborhood level, but they often struggle to turn formal authority into real authority on the ground. Although the efficiency and outcomes of komiti mediation are founded on how the komiti grasps horizontal authority, for some kinds of functions—such as large fights, problems involving commercial or government agencies, and also family-based violence (discussed below)—the ways the komiti grasps together the vertical or hierarchical forms of authority can be more important. Three kinds of vertical authority appear to be most crucial to the outcomes and ultimate legitimacy of neighborhood mediation: 1) the authority derived from the executive and legislative organs of state authorities (wards, lower local government, city government, or members of parliament); 2) judicial authority, namely the Village Courts, and 3) the police.

In terms of executive and legislative authority, the law and justice komitis of most Port Moresby mixed settlements will actively draw vertical authority from the ward’s community development committee (CDC) or a related law and justice subcommittee. Although CDCs have been important vehicles for political patronage, at present in Port Moresby, ward-level councilor appointments have been delayed, and CDCs have been disempowered or bypassed by political leaders. Although komiti members will commonly reference their association with the CDC when verbalizing their list of credentials, it does not appear that this association (or its current lack) grossly distorts, unduly influences, captures, or otherwise impacts on the mechanisms of komiti mediation or the outcomes delivered. Rather, it is the “community-appointed” (bottom-up) aspects of hierarchy and legitimacy that komitis currently rely on.

More consequential for capability are the processes whereby the judicial authority of the Village Court is invoked (or appropriated) by the komiti. The relationship with the Village Court can either add to komiti authority (for example, when the possibility of having the case referred upward is invoked) or undermine it (when competition between the two emerges—see below). Similarly important are

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36 CDCs have been a feature of Port Moresby local government for more than 15 years in some parts of the city. Appointed ward councilors develop and work with ward-level CDCs, which each have a range of representatives and often subcommittees: youth, law and justice, education, health, water, etc. In Lae, elected ward councilors funded by local-level government superintend and resource these arrangements, which involve hierarchies of blok and other komitis.
the ways that police power is solicited by komiti members or by parties in the dispute, is alternately kept at bay, or unhelpfully runs riot across komiti procedures. The unpredictability generated by police involvement shows that mediation komitis’ capability depends heavily on how vertical grasping occurs, that is, whether it undermines, negatively distorts, or positively curtails neighborhood komiti work. How these relationships impact on capability with regard to GBV is considered in part 3.

**Institutional contests: komiti, Village Court, police**

On the face of things, the police and the courts, including the Village Courts, are two parts of a unified justice system supported by the komitis. The formal rules governing these arrangements should provide clarity, and strengthening these rules and the formal roles and resourcing associated with them should provide greater neighborhood security. In practice, these different institutional forms both collaborate (unevenly) and compete over whose rules will be applied and over who will enact the mediation role and get the resources, for example, of mediation fees.

There is much blurring of roles, sharing of rules, and tension over resources. At the neighborhood level, Village Court mediators do not claim a monopoly over mediation; they too respect the roles and authority of komiti members and will act to support them by providing a regular point of referral for komitis and participating in their hearings, as guests or witnesses. Both Village Court and komiti rely on combinations of vertical and horizontal grasping, with the Village Court holding the advantage of formal vertical mandates, while komitis are more local, available, and immediate (although Village Court magistrates mediating after hours also have high accessibility). Cases might be heard in any forum, as the vertical authority of the Village Court can be grasped into komiti hearings by having a court magistrate or policeman sit in. Komiti members are often Village Court magistrates (and vice versa); in fact, komiti and police mediation events resemble Village Courts in many ways, including in elements of the proceedings (the regular convening, the panel of members, the hearing of testimony), the use of paraphernalia, and, it was also observed, a tendency in some cases to arbitrate when pressures rise. All, in practice, charge fees.

This research has identified a number of ways in which this kind of informality and overlap is an advantage for the (shared) practice of mediation. Informality enables the quick grasping of authority, essential in keeping disputes from escalating via ethnic connections. Ethnic, kastom, kinship, and contemporary diversity can be flexibly enrolled and included. People can often choose between more than one point of resort (police, Village Court, komitis), according to where they think they and their supporters can best represent themselves. Informality also means that the boundaries on the issues that can be brought into mediation are not greatly restrictive. All of this explains the ongoing proliferation of mediation in terms of what it does and the forms it takes; it also indicates that informality is crucial to both the efficiency and the successful grasp and reach capability of mediation.

However, informality also makes neighborhood mediation practice vulnerable. Association with the village and the settlement means both Village Courts and komiti mediation already have a barrier of stigma to overcome. Informality can be readily associated with things ad hoc and amateurish, unprofessional and temporary. By association, Village Courts lose face, recognition, and the respect they see as vital to ongoing public and official support. Komiti mediators feel their motives are impugned by officials (“They’re just doing it for the fees/compensation”), a disregard reinforced by the lack of official resourcing for komitis and their mediation efforts. Komitis constantly have low-value (economic/fees) family transactions referred back to them by police; they are commonly in the position of deciding the questions, on balance and given uncertain jurisdictions, turf wars, and competition, “Do I want the Village Court magistrate in this mediation? Do I need the police?” Village Court magistrates and officials (who get a government stipend and official gazetting) lament the informality of komiti mediation, claiming that it lacks credentials, its members are not officially recognized and gazetted, it cannot issue orders, and it collects irregular fees. When komitis use summonses and Peace and Good Order Committee stamps or

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37 In the influential framing of Albert Hirschman, mediation means local people have choices outside the formal system. These “choice” options are designed to enable people’s “voice,” while addressing all sides in terms of their existing loyalties, which mediation processes harness and rely on to enforce outcomes. See A. Hirschman, Exit, Voice and Loyalty.
call themselves cots (courts), komiti mediators are stung by Village Court accusations that they are pretending to have authority that they do not have and are reminded that they are subordinate to the real system of justice service delivery.

It is important, however, to avoid seeing these vulnerabilities through the single lens of gaps or shortfalls that can be easily fixed by enacting regulation to officially recognize mediators and measures to certify them, or by directing budget, training, and attention toward them. Informality, which renders komiti mediation most vulnerable, is most needed at the peripheries, in the places that formal and unified vertical/top-down authority seldom reaches or sustains. Criticisms of informality need to be tempered by a strong appreciation of the failures of the formal system to grasp together authority or reach the vulnerable.

So there is also a dimension of urban class difference at work here, one that underscores both the vulnerability and power of informality and the risks of well-intentioned engagement. Few professional or elite people (referred to as working class) have direct experience of neighborhood mediation; by virtue of literacy, connections, money, and persuasion, they can make the formal system work for them, exit and turn to private security, or resort to coercion and violence (box 2.12). Class difference contributes to a lack of trust but also to caustic distain and a desire to

**Box 2.11. A Fraught, Fragile Form of Authority?**

I’m in a part of the Valley, Dorigo-Mafa Street. I’ve been there 25 years. There’s no real trouble there, I sort it out. We are the leaderman of our community, we deal with these things, but we are not recognized by government. We risk our lives in this work, but the government don’t recognize. We don’t want to risk our lives when we are not recognized. Mediators, komiti, we represent all races: Kerema, Papua, Highlands. We hear cases any day, especially the weekend. In the afternoon we sit up at place, and people come. We do it, but we are vulnerable. Who knows about this outside? If they do know, then what happens? Do they support? What do you see? **Tokarara leaderman**

I am a senior mediator here. I work across the whole city, any time of the day or night. But to get to where it’s happening, even to major incidents, I have to go by [bus] or walk. What do they expect me to do, fly in? **Sabama mediator**

**Box 2.12. Class, Informality, Violence, and Mediation**

Different groups of people take it on themselves to enforce the law or deal with trouble. Here at the market or at home with neighbors, working class [formal sector employed] people are offended by the drinking and what it leads to. They take it on themselves to enforce good behavior: “If you drink, you behave!” Well, the illiterates, if they are confronted, they will make an issue out of it too. They accuse the working class people, say it’s a monetary thing. Then [the illiterates] will take it to mediation. The working class people, though, they will just chase or belt the illiterates. So when we conduct mediations, we are dealing with different classes of people: literate and illiterate, different ethnic backgrounds. Sometimes the arguments start at the house, at home, but then they spread out into the market, and the common people get involved. **Tokarara mediator**
civilize. The Tokarara mediator frames the situation well; here, the resort that working-class people have to the formal systems of government, justice, or private security and the impunity with which they are able to “chase or belt the illiterates” is somewhat mitigated by the illiterates’ access to mediation-based justice.

It might therefore be argued that mediation is uniquely able to provide a bridge across which marginal people can hold their better-off neighbors to account, as observed in box 2.12. This throws a different light on the informality of mediation. It is a creature of a context in which the majority—the informals—predominantly occupy land and shelter, rely on occupations, and invest in businesses that at best are on the edge of legality and which, as a result, are neglected or poorly served by public authorities, are subject to predatory regulation, and so on. Mediation offers one avenue for informals to get back into justice settings, be represented, and safeguard their local standing and capital accumulation. It is they who will lose out from ill-considered regulation, whether this be motivated by the broader public interest or more self-serving class interests.

**Unpredictability:**

**informality and vulnerability to police predation**

Although the police present as a form of vertical authority that can support both formal and informal arrangements, the reality is often very different. In part, this relates to the police’s role in competing for mediation resources. It also relates to police susceptibility to enticements by the better-off, urban middle class, and thus to accusations that they act in the interests of power and money. But arguably more important is the police’s overall contribution to institutional uncertainty in and around neighborhood mediation. Put simply, police are a powerful but unreliable form of vertical authority that can and do shape and disrupt the other grasplings of authority that neighborhood mediators rely on being able to assemble. Unpredictability undermines efforts to stabilize and routinize any institutions, but when this unpredictability is attached to a coercive authority that is able to replicate, replace, or undo mediation’s main mechanisms of informal grasping, its effects are corrosive. Thus, for local mediators and disputing parties, and given the crisis of discipline, corruption, mistrust, and turbulence in the RPNGC, questions about whether to enroll the police are basic to any case (box 2.13).

In sum, the police, because of their unpredictability, are often a direct constraint on komiti mediation’s institutional capability and outcomes. Neither komitis nor Village Courts can mobilize the rules, roles, and resources that command the police; indeed, not even the highest levels of national and urban government have recently been able to impose a unified command on them or regulate their relationship with the other disciplined services. This matters a great deal, not least because urban safety and security at a basic day-to-day level rely on the capabilities of neighborhood mediation, which is especially crucial, as part 3 will now explore, in relation to family and sexual violence, or GBV.
3. Risk and Problems: Mediation’s Capabilities and Legitimacy in Gender-Based Violence

3.1 INTRODUCTION

This section offers a preliminary exploration of how well neighborhood mediation deals with GBV. This is a form of “difference-based” violence and contest that is especially susceptible to being referred back into the coercive domains of the already powerful and that therefore requires effective vertical authority to enforce rights and protect the vulnerable.

The three key aspects of neighborhood mediation capability are considered here. First, in relation to functions, people are increasingly calling on these mechanisms, venues, and institutional forms to deal with family disputes and GBV. Second, mediation institutions are inherently asymmetric in their capability (grasp and reach, accessibility, affordability, timeliness, and so forth). In some kinds of conflicts, the very involvement of so many can diminish the rights of individuals or groups (such as women and youth) who are not well represented in typical local graspings of authority. Moreover, as not all actors have equal say in the grasping, the mediation tends to favor powerful interests, including established male leadership, to the relative neglect or exclusion of others. It can also open the door to coercion, in which actors are empowered by connections to police or security services or family patriarchs. In certain situations affecting particular groups, this will produce negative outcomes.

Third, mediation institutions work in contexts where social contests arising from pronounced differences—in norms and economic, political, and other interests—demand to be negotiated and bridged. Simply put, if they are not just to reinforce existing power relations, these institutions need to be able to combine the different forms of authority locally available in new ways, particularly ways that give voice to the disempowered and bring issues and injustices out into public debate. Clearly, mediation has some of this potential through its inclusion of a range of actors, voices, and horizontal and vertical authorities and its articulation (and enactment) of laws based on areas of agreement. Here, it is not insignificant that neighborhood mediation is most subscribed to by the poorer urban majority who, because they are on the periphery of economic and political power, are least able to marshal the rules, resources, and enrollments needed to ensure that formal sector agencies meet their needs.

Institutions, however, generally favor the powerful, whether these are local, patriarchal, or ethnic. Institutions typically offer voice and legitimacy to already recognized actors and enable them to form new pacts and agreements. Neighborhood mediation can enable them to escape scrutiny and exit contests, block complainants’ access to appropriate processes and authorities, or have cases referred up or back into situations they control (the formal justice system, the workplace, the family, the compound). As seen below, it can also enable elites to use money to buy freedom from accountability or to impose ruinous direct costs on others through compensation demands. To be both effective and legitimate, then, neighborhood mediation will need to respond well to the range of other differences that residents bring to contests—marked by age, gender, and other ethnic/kastom differences—and to ensure that they can be bridged. To do this, the vertical and horizontal authority that can regulate them need to be grasped and performed in ways that empower and protect the most vulnerable.

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38 This research did not track the trajectories (or what are commonly called patterns of resort) of the victims/survivors of GBV, but rather focused on how GBV cases that came before neighborhood mediation organizations were dealt with. The ongoing research in Lae is more explicitly concerned with trajectories, including in relation to courts, police, and special purpose bodies such as the female sexual violence units.

39 Bridging ethnic difference is in fact another area where mediation is encountering challenges. Although mediation is enabling new urban identities to be negotiated from ethnic differences, within this it is important to observe that Highlanders engage enthusiastically, whereas Port Moresby’s indigenous Motu Koitabans (and other Coastal peoples) frequently feel disadvantaged and vulnerable in mediation and related compensation, and that Highlanders use and prefer mediation because of the scale of settlements it enables them to achieve.
In GBV, the relations between vertical and horizontal authority and the rights of vulnerable persons are especially fraught. In public discourse, it is commonly proposed that a “two-track” approach, involving both mediation and criminal proceedings, offers an ideal solution to bridge the tensions between the collective “social order” and the individualized “human rights” perspectives. The two-track approach combines mediation’s ability to reach out and grasp the (mostly horizontal) authority and interests of family with the possibility of securing a woman’s rights through criminal prosecution using the (vertical) authority of formal law (box 3.1). An overall consensual outcome might be achieved through a recursive mediation process able to bring both these dimensions together. In doing so, such an approach might address the risks associated with restorative justice with respect to functions where power differentials are marked, and might thus offer a “transformational” justice. Yet, as discussed below, in practice in GBV and other criminal violence situations, the two dimensions are rarely combined well.

**Box 3.1. Horizontal and Vertical Dimensions of the Grasping of Authority in Gender-Based Violence Cases**

1. Horizontal (but not simply horizontal) forms of ethnic/family authority. These include the roles and interests of the woman’s (and the man’s) family as parties to the marriage and also of neighbors, as well as their testimony in support of their family members.

2. Vertical forms of authority (vested in formal justice, criminal procedures, and support for the legal rights of victims); involvement of the police and village and other courts.

### 3.2 MEDIATION, WOMEN, AND GBV

The role of gender inequality in shaping local justice outcomes, including GBV, has thus far only been explored in research focused on the Village Courts. These findings continue to be debated, but one body of opinion reasons that the predominance of male officials (roles), the reliance on patriarchal interpretations of kastom (rules), and the greater control that males have over the economy (resources, fees, compensation) surrounding mediation will mean that Village Courts will find it hard to bridge gender differences, both in how they function and in results. However, although it is clear that women make little use of the formal court system at district and higher levels, research on the Village Courts shows that women are active users of local dispute-resolution processes.

Beyond Village Courts, however, there has been no comparable gender analysis of how neighborhood mediation institutions function. Yet it is immediately obvious that aside from women Village Court

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40 These roles include payment of bride price and a related role as guardian and supporter of the woman’s status and safety within the marriage.


magistrates, very few komiti or other local mediators are women. This undoubtedly means that the ways that horizontal and vertical forms of authority are grasped by leadermen/komiti mediators will draw disproportionately on particular expressions of gender (patriarchy), as well as on age (gerontocracy) and particular interpretations of kastom and ethnicity.

Insofar as komiti mediation struggles to achieve recognition from vertical and formal authorities, having women’s complaints heard primarily in mediation also frames those complaints in terms of what predominates in horizontal authority, that is, the interests of families, the inherited frameworks of custom, and the need for conflict to be resolved in win-win ways. Initial investigations suggest that this can indeed weaken the rights of the victim to seek criminal prosecution of, and court order protection from, the perpetrator and subordinate these to the interests of wider family and kin. This raises basic and important questions of legitimacy and fairness with regard to komiti mediation of GBV.

On the face of things, the Village Court’s power to grant court orders embodies a more powerful grasp of vertical authority, for it marshals the police and through this, the prosecution and court justice services. In the absence of this kind of capability, non-Village Court mediation is always prone to becoming too embedded in local power structures to enable women to reach help beyond the local and domestic. But gender imbalance can mean that Village Court arrangements too can result in danger for women, even when backed by court order authority. As the female Village Court official in box 3.2 warns, Village Court links to vertical authority are no guarantee of equitable outcomes.

**Box 3.2. “You’ll be Holding a Funeral Service for Her.”**

> Sometimes I really think honestly it’s not good enough. When it’s brought out in front like this, only once or twice, well that’s the only time a woman’s voice is heard. The judges take this into account, good, but in terms of awareness they still come from the men’s side of things. I say to them, you do this judgement, you need to provide for the woman’s safety now; you can’t send her back into that house with that man. This kind of decision [not providing for her safe separation], you’ll make sure she’s bashed up straight away. I told them, I think you’ll be holding a funeral service for her. That husband loses his temper instantly; he’s got a bush knife, a stone, he throws it, this lady is vulnerable.

Village Court official (female)

Without denying the powerful constraints to women’s access, representation, and voice in settlement contexts, it is clear that public neighborhood mediation can be a powerful weapon for unmasking GBV abuse and promoting public discourse (and public shame for perpetrators) (box 3.3).

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44 Up to 900 women Village Court magistrates were selected for appointment in recent years. Final appointment however will depend on available funding.
Box 3.3. Does Mediation Produce Good Outcomes for Women?

In terms of outcomes for women, I think they are better in mediation [than in court]. A woman can have plenty of witnesses and supporters there with her, speaking. Her family can all be there and know they will get a say. Family is the main person who stands by the victim; they can come out and speak, and they have seen it all. They can tell you, “Ever since they were married he’s been bashing her—let the mediators consider that!” They can demand that the mediators consider a wider range of opinions; anyone there can do that. Police mediator (male)

In mediation you get the woman’s people involved and the husband’s people involved. They need to be involved; bride price has been paid, so there’s pigs and compensation going to be involved. It’s an agreement and therefore it has to be settled in mediation. There’s no written law in there, it’s an understanding; where there is an agreement it has to be mediated. It’s better for the woman in the event she is attacked in the hearing; she has supports from her own people, she will talk more freely. From the others, honesty and truth will be there at the back of her; it’s harder to tell lies to a lot of people. It’s like she’s having the consensus of people backing her up; law is made out of consensus, and that’s behind her standing there. Village Court magistrate (female)

She’s allowed to say all these things in public. Other women in the same situation also come out and speak out. The women came out and supported the woman: “Now we’re going to say what our husbands do to us.” Several called for their husbands to go to mediation, pay compensation. The outcome is that these issues that are very, very silent and get buried, where all you see is the black eye, placing them in public view like that you hope they won’t repeat. Tokarara Village Court official (male)

Informants made it clear that procedurally, mediation institutions also compare reasonably well to the village hearing process. As table 4 shows, mediation was regarded as better suited to cases where families as well as individuals are affected and implicated, and where many affected people want to have a voice. Mediation allows time for families to deliberate on and agree to the settlement; without this, the issue will not be resolved. The preference, then, for hearing GBV cases in mediation rather than courts (including the Village Court) has an important basis in mediation’s strengths. The procedural differences summarized in table 4 underpin the favorable assessments of mediation often made by police and Village Court officials.
### Table 5. Procedural Comparison: Village Court and Mediation

<table>
<thead>
<tr>
<th>Who attends?</th>
<th>“Full Bench” of Village Court (VC)</th>
<th>Mediation Hearing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Both parties, families, public</td>
<td>Both parties, families, public</td>
<td></td>
</tr>
<tr>
<td><strong>Who needs to be involved?</strong></td>
<td>Individuals, VC magistrates, including women</td>
<td>Both parties and families; it’s expected that a woman will have support of family and friends as she represents them and their interests</td>
</tr>
<tr>
<td><strong>Who can give evidence?</strong></td>
<td>Those asked by the VC; sometimes only complainant and defendant, witnesses at magistrate’s discretion</td>
<td>Anyone can speak up at his/her own discretion; a woman can ask all of her family to attend and speak</td>
</tr>
<tr>
<td><strong>Opportunities for private/group discussion</strong></td>
<td>Done away from the court or in temporary adjournment</td>
<td>Group discussions are built into hearings; women get to have their voice heard even if they are afraid to speak out in crowds</td>
</tr>
<tr>
<td><strong>Who makes the decisions?</strong></td>
<td>Magistrates, court officials</td>
<td>Everyone. If a woman’s supporters don’t agree, they can shape the decision</td>
</tr>
<tr>
<td><strong>What orders are possible?</strong></td>
<td>Court orders</td>
<td>VC magistrates in mediation will write court orders and get them endorsed by the full bench; for komiti mediation, no orders can be issued</td>
</tr>
<tr>
<td><strong>What compensation/fine limit?</strong></td>
<td>K1,000 compensation, K200 fine</td>
<td>Unlimited</td>
</tr>
</tbody>
</table>

Mediation’s powerful preferential advantage over formal justice arrangements means that serious cases, including rape and violent assault (box 3.4), are routinely concluded in mediation, with compensation paid explicitly in lieu of criminal procedures. The reasons for this are many, but they relate to the (horizontal) authority of the family members and the subordination of the woman’s interests to this. The victim is often not in control of what happens but is prevailed upon by others, including family members and likely the offender himself.

### Box 3.4. Mediation and the Law: Two-Track Systems

A returning husband violently assaults his wife:

The *husband left his wife* two years ago, and went off with another. Then he decides to come back to the wife. But he asks her in the night, “While I was gone, did you go with another man?” She tells him, “After a time, OK, there was this one man who was very persistent...” When I saw the situation, she has been very badly cut up, all up her arms, and worse. Even mutilation of the private parts.... The husband’s relatives come and see me, saying “We need to do something, or this is going to be a murder case. Husband and wife come from the same Highlands village—there’ll be a tribal fight over this, there’s bride price involved.” I say, “Take this guy in to the police now and have him charged!” [But no prosecution eventuated; fears over communal violence resulting in the Highlands meant it remained within mediation.] We *need guidelines for mediators in such cases; the family wanted mediation, but this needs to go through the court too. Mediation and law have to come together; for the rest of the relatives, for continuity of life, mediation must take place. But it hasn’t happened in this case.* **Police mediator (male)**
3.3 A BETTER ARTICULATION OF TWO-TRACK, VERTICAL, AND HORIZONTAL AUTHORITY IN GBV CASES?

Box 3.5. Medecins Sans Frontieres’ Assessment of Risks of Hybrid Justice and GBV in PNG

Inadequate or inappropriate responses from the country’s hybrid system of formal and traditional justice, and the dysfunction of the protection system, are putting survivors’ lives and health at risk. Patients’ experiences expose a culture of impunity, and a continuing reliance on traditional forms of justice to solve serious family and sexual violence cases. The widespread tradition of ‘compensation’, whereby either money or pigs are paid to victims’ families for crimes committed, means that perpetrators often remain within their communities, exposing survivors to the threat of repeated violence.


Women who have faced GBV need access to pathways of legal resort and safety that go well beyond mediation and that will not entrap them in local, family, and other male-dominated structures. It is essential that there be procedures that reach into local contexts but they must do so with the assurance of anonymity, professionalism, and rights-based legal approaches, especially where mediation will also be practiced.

Mediation is clearly emerging as a widely practiced means of resolving GBV incidents, at the same time as awareness and activism around GBV are spreading (box 3.6). That both horizontal and vertical authority are needed for effective and legitimate mediation is nowhere more evident than in GBV cases; as the mediator in box 3.4 put it, “mediation and the law have to come together.” But will the rise of mediation support better resolution of GBV cases? If so, how can this be facilitated?

Box 3.6. GBV and Mediation: Mediators and Other Village Court Officials Speak

I am certainly noticing that the issue of [increased awareness of] family and sexual violence is making an impact, a very positive one. But it’s not yet always spilling over into the things getting reported on at the police station, or in the formal court system. Generally speaking, for abuse of women, children, cases do come more frequently before mediation than the courts. The law does have an impact. We remind people about the law. Each time before we go to mediation we say “Be warned: the law now is much more powerful for women and children. Any assault, however minor, will be taken seriously. You’ve got the Child Welfare Act now, taking care of these ones.” Sabama mediator (male)

Most of the vendors here have been bashed, most of the market women are on their second, third marriage, because of that. If there’s a family matter, and a woman in the market, beaten up by her husband, I ask them what is happening. We have a referral pathway to the police station. We can bring them in there. If the husband comes back in the market situation, if he’s very violent, I’ll get the police involved, and he will be charged. If it can be mediated, I will. I don’t take them to the VC, I leave the [market] clerk on duty, I bring them here [to the market office/ former VC site] and we talk. If I see it’s just jealousy, I tell them to sort it out, and to go buy something, coke, Fanta, for reconciliation. After that she can carry on, nobody else is going to feed you. It’s your living, you need something to put on the table. Women are the breadwinner. Here, the men are good for blah. The women are setting the table. Gerehu market official (female)
A key issue is whether current practices are amenable to intervention—through guidelines, instructions, or other ways of changing the alignments and competition over rules, roles, and resources—or whether, on the contrary, they are firmly entrenched in clashes of interest and political economy. The second quote in box 3.6 above points to the potential of having more women trained and involved in mediation, whether as komiti or Village Court magistrates or members of community organizations and staff of state agencies. Recent experience suggests that women enabled through such training could find niches in a range of local authorities and develop serious competition as well as networking and coordinating capability. Action research enabling women to become mediators and tracking their experience looks like a viable way forward here.

As fundamental, however, are questions about whether two-track pathways can combine the horizontal authority of neighborhood mediation with the needed vertical authority, whose main expression, the police, remains so unpredictable. Perhaps the sometimes predatory, competitive nature of the formal justice system/policing means that there are simply too many obstacles to institutionalizing good two-track procedures. The police mediator in box 3.3, a long-serving and highly respected leaderman, sees merit in guides and instructions to mitigate egregious injustice and make two-track happen. But in the case in box 3.4 in which he was involved as mediator, although proper criminal investigation was warranted and urged, prosecution did not occur. The victim was not in control of what happened but was prevailed upon by others—police, family, and likely the offender himself—and community support was either absent or primarily concerned with the possibilities for further violence. Not in control either was the victim in the case outlined in box 3.7, which also involved the police and demonstrates a dysfunctional variation on two-track pathways.

As evident in other cases examined in this research, the effect of police involvement in mediation processes here was to divert, or try to divert, a criminal investigation. Here is not the place to speculate about the particular mix of conditions this reflects—the command and discipline regime, the enticements, the formal remuneration or culture of policing—but it seems clear that when vertical authority is unable to be grasped, the victim’s interests will be excluded, subordinated to the desires of wider family, and her claims for compensation likely to be taken up and taken over by family. The cases also show, however, that police involvement in serious crime is multifaceted, and that the rules and hierarchies of coercive power are not always dominant. But even where a police mediator is involved and urging two-track arrangements, s/he will not necessarily be heeded.

**Box 3.7. Mediation Undermining Criminal Proceedings in a GBV Case**

A businessman rapes a female staff member, as related by one of the police attending the crime:

A businessman hired two young women assistants. One afternoon, he asked them to join him for a drink after work, in the workplace. He made advances to the women, and they made to leave. One got away, the other was caught and raped. The other woman returned with the victim’s parents, catching the rapist in the act. Police were called. While one officer took evidence, another was found to be “mediating” a settlement in an adjacent room, where he was alone with the victim and the rapist. The victim was being jointly pressured by the policeman and the rapist to accept a K3,000 settlement in exchange for an undertaking to drop all formal police charges. The policeman could have expected a fee of at least 10 percent of this settlement.
4. Conclusions and Recommendations

4.1 MEDIATION AND RESTORATIVE JUSTICE

Box 4.1. Mediation and Restorative Justice: since 2000

Papua New Guinea has a distinct advantage in restorative stakes... Our nation’s many traditions and customs provide a rich foundation for the development of a homegrown system of justice best able to meet the changing needs of the people... The idea of finding out what a particular community’s security needs are... extends far beyond community policing. It entails learning from the traditional view that sees crime more as an injury to the [victim], rather than as an injury to the government or the state. A restorative justice approach sees criminal justice as involving the victim, the offender, and the entire community in its processes, [and] as an opportunity to repair the damage caused by the conflict.


The vision of the PNG government’s 2000 “National Law and Justice Policy and Plan of Action” has not yet been realized, at least not via the complete transformation envisaged in the plan. At that time, it was anticipated that policy makers would take the lead; legislation would revitalize law and justice agencies; new kinds of inter-sectoral linkages within government would link policy, budgets, and performance; and training would be informed by national strategies.45

The Plan of Action was a high water mark of the multi-sector, multi-stakeholder approach to reforming PNG law and justice that emerged from the crisis years of the 1980s and 1990s. Internationally, such approaches aim to transform entire sectors or geographical locations and typically generate extensive records of reviews, workshops, summits, sector-wide action plans, and implementation frameworks, along with priority (though often unbudgeted) programs, projects, and proposals.46 The 2000 plan reached for similar kinds of comprehensive transformation and it too has struggled for traction, especially at the edges of its reach.

Yet despite these struggles, restorative justice capability is being institutionalized through neighborhood mediation, and it would be a mistake to see this institutionalization as merely a transitional and inept grassroots response to the weakness of the state. Certainly the rise and spread of mediation reflects the longer-term, nationwide success of Village Courts and their restorative justice orientation. The courts also show that the work of the Peace Foundation Melanesia’s trainers and restorative justice advocates over the years continues to bear significant fruit. There is also enduring and substantial policy support for restorative justice within core PNG legal institutions, law and justice sector agencies, and partnerships. But perhaps it makes most sense to see the institutionalizing of mediation within neighborhoods as a response to the challenges of urban migration,

arrival, and settlement; the difficulties facing mixed urban populations and the constant risk of conflict and predation; and the imperative for all people to protect the capital they have pulled together. In investing their time, participation, and resources in mediation, urban residents have initiated a cycle of positive institutional returns that could be building a new basis for class politics, democracy, urban vitality, and public order.

These trends reach well beyond large-scale reform or government intervention. Yet clearly, mediation works best within the shadow of the law, where, although the state is often formally absent, it can be invoked by local actors to support good law and justice outcomes. If it is to continue to thrive, mediation needs careful understanding and support (rather than unpredictable disruption) from formal law and justice agencies, including the police.

4.2 THE IMPLICATIONS OF MEDIATION’S NATURAL EXPERIMENT IN INSTITUTIONAL CAPABILITY MAKING

Table 5 summarizes the preliminary findings of this research on mediation capability in mixed settlements, which have four implications. First, ongoing and future empirical research will need to test these findings, but it seems clear that now is a good time for policy makers to revisit mediation and see how it is playing out, the ways in which it may or may not be fulfilling the restorative justice vision, and importantly, whether the positive trajectory observed in this research is generalizable or likely to be sustained. For just as mediation capabilities are a response to the exigencies of urban politics and economics, this context is also dynamic; in fact, the economic fortunes, jobs, and public and private urban investment fueled by the construction phase of the liquefied natural gas project have already been replaced by a much less certain outlook.

Table 1. Neighborhood Mediation: Capabilities at a Glance

<table>
<thead>
<tr>
<th>Institutional Capability</th>
<th>Efficiency</th>
<th>Power and Authority</th>
<th>Outcomes and Legitimacy</th>
</tr>
</thead>
</table>
| Komiti mediation (individuals, panels, teams) | Accessible: multiple local entry points  
Affordable  
Timely; meet as need arises  
Sustainable  
Can offer choice of mediators  
Self-regulating | Grasp: high local/ horizontal authority  
Reach: high ability to bridge ethnic differences | Depends on negotiated, mediated settlement among wide range of people. |
| Village Court mediation | Moderately accessible  
Meets weekly  
State-financed magistrates improve access  
Mediation fees can be higher, constraining access | Grasp: local leadership and vertical state authority  
Reach: court orders can reach into families, neighborhoods, across differences | Can combine mediation with adjudication  
Moderate outcomes for GBV |
| Police mediation | Can be quick  
Limited access for settlements, higher though still limited for middle classes  
High cost | Grasp: high formal and coercive power  
Reach: sporadic, resisted in many settlements | Unpredictable, able to be captured, diverted  
Police influence can disrupt mediation  
Limited GBV outcomes |

Institutional Capability:  ● High  ● Moderate  ● Limited
Mediation is already relating to the wider range of associations that mobilize and press for service delivery, citizenship rights, access to public spending, and so on. How could or should contemporary forms of neighborhood mediation be encouraged to reach into these new functions? How, in doing so, can mediation protect the vulnerable and not work as a mechanism for the powerful to deflect formal criminal proceedings? And how best to respond when mediation’s informality is a crucial asset so easily disrupted by the external intervention of vertically empowered actors? There is no way of knowing in advance, but first and foremost, this research suggests that the most reliable source of intelligence about these questions will be everyday urbanites, mothers in homes and markets, leadermen/meris in komitis, youths competing for jobs, and close to all of these, the officials of Village Courts and district- and lower-local governments.

Second, to support people at these levels, it is crucial that the formal law and justice policy agencies be more informed about the trends, opportunities, and risks presented by mediation, as well as about the potential unintended effects of ill-considered regulation. Third, because public authorities, including specialist law and justice agencies, inevitably respond to public opinion, it is important that the wider public (and especially the working or middle classes) are aware of the strengths, limitations, and potentials of mediation so as to enable this process to emerge from its stigma as informal and associated only with settlements and crude, unreliable justice accessed mainly by the poor. And finally, more attention is needed to real areas of concern with regard to mediation’s limits, particularly in the absence of two-track processes when the role of the police becomes crucial.

Consistent with these conclusions, five preliminary recommendations are offered, each of which could be supported through follow-up actions under Urban Safety in Port Moresby and Lae, Papua New Guinea (P152112) during 2016 and 2017.

**Recommendation 1: Enable careful and positive local-level recognition and development of neighborhood mediation and its expanding scope, and explore what is needed to make it more capable.**

Mediation is developing new areas of capability, but this is occurring very unevenly and without much public recognition. Mediators are getting involved in local market safety, informal vending, women’s issues, youth justice, employment concerns, police relations, the management of social disorder issues such as homebrew (alcohol abuse), and intercommunal disputes. But there is little real sharing of this experience and how it can be turned into good practice across PNG. Overall, the ongoing development of a “community of practice” involving leading, practicing, and emerging mediators seems highly desirable.

A careful program of knowledge exchange and co-development—starting small, working closely with local actors—could track developments and support better outcomes in all of these areas. Second, the governance arrangements of larger urban areas, including Port Moresby, Lae, Mt. Hagen, and others, are undergoing significant changes, especially as they intersect with the new district development authorities and city authorities. They will need to develop stronger citywide mediation capabilities.

**Follow-up actions: Enable leadermen, mediators, officials of the Village Courts, and district- and lower-local governments to consolidate understanding of the locally existing mechanisms of mediation, and develop mediation’s scope and reach.**

With a range of agencies (initially at the local, urban, district, lower-level government, and/or ward level and subsequently with national agencies), conduct workshops, learning by doing, action research activities, and master classes led by senior mediators to identify, understand, and document the essential components and capabilities of the good urban mediation practices happening in that locale, in order to learn the answers to the following questions:

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47 See UNDP and EU, “Supporting Insider Mediation,” 39: “The existence of a community of practitioners with members who possess the requisite experience and skills to, for example, conduct training of trainers is invaluable. Where individuals or organizations with high-level of skills do not exist, expertise can be drawn upon from the neighbouring region.”

48 Including the Department of Justice and Attorney General Restorative Justice Unit and the Constitutional and Law Reform Commission.
• What are others doing, and what is best practice in neighborhood mediation?

• How does authority come together in particular locales; how does it enroll, grasp, and reach, vertically and horizontally; how can it best be supported and not damaged; how can it be made more effective and inclusive?

• How can mediators expand their existing ability to be proactive, for example, in youth justice, fights around homebrew or in markets over buai, disputes surrounding arrival and settlement, and clashes over business opportunities?

• What should the roles of different mediators be? Who should mediate, adjudicate, and arbitrate, and around which kinds of cases? How are mediators managing their relationship with police and formal courts and other authorities (Village Court, court-based alternative dispute resolution)?

• Where will official recognition and regulation help or hinder the effort?

Recommendation 2: Promote awareness of, and the ability to respond to, neighborhood mediation in national policy agencies.

To facilitate Recommendation 1, it is appropriate that national agencies be supported to meet the opportunities and risks presented by the rise of mediation as the most common form of local justice in urban areas. Current government policy remains generally positive, but institutional mechanisms to implement it are not in place. There are also real risks that as mediation expands and competes with other forms of local justice, and as in some risky areas its powers are abused, mediation will become subject to regulatory overreaction, limiting access to what has become a very efficient and accessible system of dispute management.

Nonetheless, in some areas, mediation needs greater formal support. Some issues, such as fees, roles of different mediators, two-track justice, and the roles of police and community leaders/law and justice komitis need to be carefully addressed.

It is important that the flexibility—the community recognition (of the person/people and the rules), and the ability to choose who is involved in mediation—be maintained so that case-appropriate diversity and grasping of authority can happen, the community can self-appoint, and relevant leaders can emerge.

It is important too that this authority is not undermined by suspicions over payment for mediation services. Financial recognition (from the district or ward level) of the time and effort senior local law and justice leaders (beyond the Village Court, such as komiti or blok chairpersons) put into mediation work would be welcome. It is crucial too, however, that stand-alone, self-funding participation be maintained (including through payment of some form of informal fees, contributed by all parties) to ensure that the local responsiveness, accountability, and self-regulation of mediation be sustained. Again, overregulation (or even well-intentioned but ill-considered support) could limit this capability.

Follow-up actions: Assist national policy and regulatory bodies to ensure that oversight protects neighborhood mediation’s flexibility and inclusiveness.

National policy agencies have a strong, positive interest in mediation. These include the Constitutional and Law Reform Commission, the Department of Justice and Attorney General (especially the Restorative Justice Unit), and the Law and Justice Coordinating Committee.

• Initially, support the development of a research partnership capability within national policy agencies, whereby findings from the above local processes can make their way into policy forums, programs of review, and development programming driven from the national level.

• This research partnership could in time revisit the 2000 National Law and Justice Policy and Plan of Action to consider the extent to which mediation is aiding the realization of restorative justice policy aspirations. In a Constitutional and Law Reform Commission context, it could consider the possible contribution of mediation to the constitutional project of declaring underlying law. Where needed, it could initiate national regulatory review processes designed to recognize and strengthen mediation’s role.
• Improve the quality and supply of first-rate mediation through learning exchanges and master classes involving leading mediators. Expanding the supply and scope of high-quality mediators and refining the skills at the top end of mediation among the mentors and leaders of mediation might be a way to both enhance its best practice and produce public good outcomes in recognition of the broadening scope and functions serviced by mediation.

Recommendation 3: Build wider public awareness and support.

The stigma of settlements and their law and justice arrangements continues. Mediation in many circles remains one of the unseen aspects of urban capability, operating day to day in settlements and neighborhoods and contributing to wider safety and security. Mediation processes tend to attract media attention when they fail and dramatic intercommunal conflict occurs, or when local attempts have failed and a grander, larger-scale event is needed to reestablish peace and good order.

Insofar as mediation is stigmatized by its association with informality and settlements, its value in supporting security and safety will be restricted by pressure to regulate mediation in prejudicial ways.

Follow-up actions: Contribute to reducing the stigma of mediation and create awareness of its capabilities.

• Working with both local and national policy agencies and media partners, collect and publish/circulate cases and accounts demonstrating the ability of mediation to resolve issues across a range of settings and problems.

• Seek ways to generate public understanding of, and institutional support for, the roles of leadermen, komitis, Village Courts, and others in solving local conflicts through mediation.

Recommendation 4: Address mediation’s risk and problem areas, such as serious crime, including family and sexual violence.

There are areas where diversions of justice involving mediation are especially important, particularly the prosecution of serious (including family and sexual) violence. Currently, mediation acts in many instances as an alternative to criminal prosecution, which is then delayed or stopped altogether by the mediation process, and the rights of victims to seek criminal redress are subordinated to the interests involved in the wider mediation effort. Inevitably, the outcomes of mediation affect formal court functioning and findings (the willingness of victims to lay charges, fines, and penalties, for example), though how this happens is subject to vast variation.

It is a policy consensus that though mediation is necessary to arrive at compensatory arrangements that can deal with the harm done to families, mediation alone is a highly unsatisfactory solution. A two-track approach, involving both mediation and criminal prosecution, needs to be enabled. The problem of the diversion of criminal prosecution by mediation will not be solved by simple legislation. In particular, there is a need for a closer understanding of women’s patterns of resort as they respond to violence against them in order to assess precisely what enables and constrains two-track approaches to GBV. Building on the progress in mandating the appointment of female Village Court magistrates, the potential role of GBV-trained women mediators and komiti members needs further exploration and development.

Again, a number of the actions below should be implemented within the scope of the current technical assistance work and in partnership with local agencies engaged through this project.

Follow-up actions: Develop a policy learning process supporting the greater involvement of women in GBV mediation, on komitis, and with police.

• With national leaders in GBV prevention/law and justice and with women community leaders in pilot local contexts,49 instigate a policy-

49 These pilot locations may include Lae, where Urban Safety in Port Moresby and Lae, Papua New Guinea (P152112) (NL-TA) is currently active, and others identified bilaterally via PNG-Australia law and justice and governance programming.
focused learning process that can address the dangers of mediation in GBV cases and lead to a better understanding of obstacles to and support for two-track approaches in order to inform regulatory review. The process could focus on identifying and mapping existing and potential patterns of resort in GBV cases that enable access to formal support, and find ways to ensure that these cases are not routinely referred back to local mediation and away from formal/vertically empowered resolution. Shared action research investigations (researchers working with Village Courts, women’s groups, komitis, police), case-based dialogue (within safeguards), and the delineation of problem points could enable innovative responses to be developed and trialed in real GBV service and community contexts.

• With women community leaders, investigate ways for women to take on a wider set of roles in mediation and not just in GBV. This could include support for women’s involvement on komitis, in Village Courts, or in relation to police mediation/criminal prosecution processes.

• Training more women in mediation—and creating a wider expectation about a role for women on komitis—would be a first step, developing skills that could be applied in a range of contexts. Having trained and recognized women mediators working in a variety of community settings could have multiple benefits over time.

• Better understanding and analysis of existing komiti mediation practices and capabilities around GBV, along with the training of existing (that is, male) komiti members to respond better to GBV cases, would also be valuable. In many situations, however, existing practices of mediation may still be unsympathetic to women’s needs. In general, women need the option of bypassing komiti mediation and going straight to higher-level formal services. Komitis need to know that this is legitimate.

Recommendation 5: Investigate how police involvement in mediation can be better governed.

As the current technical assistance, and the larger program of Australian assistance to which it relates, proceed, issues around police participation in mediation processes should be specifically addressed. This should happen initially by seeking local mediation participants’ perspectives on how the police might profitably be engaged and on cases and situations where they had participated in constructive ways in the past.

Follow-up actions: Learn how to improve outcomes from police involvement in mediation.

Attention should focus on what factors make it more likely that police will engage local people and authorities in constructive ways:

• Examining how women victims might avail themselves of choices around resort that could include the police but are not, as a result, restricted by that inclusion

• Examining how local komitis can involve police without losing control over situations or having their own positions and integrity compromised

• Examining how issues of police responsiveness can be handled by komitis and police together, so as to better promote timely and appropriate responses when issues emerge

• Creating wider awareness of typical ways in which police engagement disrupts and damages local mediation capability, and ways this can be minimized

• Informing codes of practice and training and experimenting with local relationship brokering for police, enabling them to better recognize and communicate with local komitis
Annex 1: Research Methods

This exploratory and formative piece of research used primary ethnographic and qualitative methods to examine neighborhood mediation practices: observation, participation, case studies, and group and individual interviews. It developed and validated initial findings through triangulation and qualitative sampling strategies, including snowball sampling and sampling for difference and redundancy. At the same time, it applied theoretical and analytic approaches (drawn largely from international/comparative political science, urban political economy, and historical institutional analysis) to predict and explore patterns of institutional development and capability.

These investigations enabled a wealth of empirical materials to be assembled. Only the most illustrative of these, however, could be used in the body of the report itself. Initial conclusions drawn in the report, though preliminary, reflect the balance of the full range of materials and perspectives assembled.

- Given the complete absence of studies in this area within Papua New Guinea (PNG), mainly due to access and safety issues but also stigma, as well as the access and safety issues for this study itself, it was crucial that formative work, framing analyses, and empirical exploration be conducted flexibly. Researchers needed to be able to secure access and at the same time respond to new, presenting perspectives where these came to light. They needed to make clear that they were not looking in the first instance to criticize or stigmatize local mediation processes, nor to enable others to discipline them from formal law and justice positions.

- Research began with an extended series of conversations with local people in public spaces (markets, churches, shops, bus stops) and private homes and moved from these contexts to a series of more structured individual and group interviews and the development of case studies in public sites, homes, workplaces, and businesses. It continued with observations at mediation events, at which extended interviews were conducted/carried out with the main actors and a number of other participants.

- Relevant PNG and international literature was consulted, and the researchers’ considerable experience of community-level organization in relation to law and justice drawn on. But descriptive and analytic framings were also approached flexibly and developed through well-known exploratory and formative investigative techniques.

- These techniques included both triangulation and snowball-, difference-, and redundancy-based sampling, as well as ongoing dialogue and iterative analysis. Snowball sampling, where a member of one group with whom rapport and a level of communication and trust have been established is asked to introduce researchers to others who might inform the research, has the advantage for researchers entering the field for the first time of being able to draw on the trust established with one group or interviewee in order to engage others. It works particularly well in intense social contexts such as PNG markets and settlements, providing researchers with the basic safety of being known and under the care of known local actors. Short of entering under full armed official escort (which would impose constraints of its own on research reliability), there is simply no alternative to this kind of relational approach during entry and to some extent ongoing research in and around settlements.

- For obvious reasons, snowball sampling needs to be complemented by other sampling techniques, including, in this case: i) applying triangulation (a technique that validates data by deliberately seeking different perspectives from multiple sources to cross verify, with the differences based on accepted social science parameters), ii) using multiple points of entry and research team mixes50 (not becoming dependent

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50 At various points in the process, the core research team included two expatriate social scientists, a PhD-trained woman anthropologist who is highly experienced in Port Moresby settlements, two elder researchers, a resident in the settlements, and a youth researcher drawn from a local nongovernmental organization (NGO).
on or captured by one person, group, or site), iii) sampling for difference (ensuring that the qualitative sample includes the full range of points of view), and iv) sampling to redundancy (pursuing these techniques until little or no new material and perspectives come to light). In urban PNG’s mixed settlements, differences that matter include, at a minimum, ethnicity, gender, class, age, and duration of residence, and this research actively sampled for these differences at every point. To some extent, as below, sampling and questions were based on analytic framings found to be significant elsewhere.

- Common issues in this kind of research include the predominance of perspectives from (older, male, educated, dominant ethnic) leaders themselves and the difficulties in accessing those most vulnerable or peripheral to power. This research indeed focused on understanding in the first instance the institutional mechanisms themselves and focused its attention on those intimately involved in mediation: mediators, komiti members, local leaders, and Village Court officials, as well as those participating as parties to mediation events. Around these parameters, which certainly favored older males, initial triangulation and sampling for ethnic, gender, age, and class difference as described above occurred, with interviews and focus groups at and around each site deliberately involving only women, youth, or ethnic minorities. As there was more limited participation in this initial research from those not immediately involved in (but often powerfully affected by) mediation processes, the need for further research, especially involving those vulnerable and peripheral to mediation processes, is strongly stressed.

- Single interviews with strangers in these kinds of contexts produce results with very low reliability. Within both neighborhoods and the research team, this research was informed by ongoing iterative practices of reflecting together on emerging findings (in groups, individually, in review of writing and conversation). Clarifications were often sought and different perspectives explored, and time for reflection enabled all sides to sharpen their sense of what was happening and what needed further, wider investigation. Following these protocols respectfully within local settlement contexts meant that interviews needed to be flexible in terms of attendees, since family members would want to be in the conversation and some would want to dominate. Multiple and iterative conversations involving different individuals and groups, and careful use of group and researcher splitting to enable different kinds of voices to emerge, were used throughout.

- Altogether, more than 200 separate individual and group interviews of this kind were performed across the two sites, with smaller numbers (n=40) at Vabukori. Twenty-three case studies of varying detail were compiled. Conversations occurred in the familiar mix of Tok Pisin and English within which much of this “local public” business is pursued. Translation was available on both sides. Overall, researchers were pleasantly surprised and impressed by both the eagerness of locals to talk and the ways their discourse reflected obvious local development of critical perspectives and widely shared understanding of what is happening in neighborhood mediation processes. Variously or even randomly encountered people at very diverse sites would use highly similar language to describe what local leaders are doing in mediation.

**Theoretical and analytic perspectives**

- Researchers inevitably bring to new sites a sense of what has been important elsewhere, and this shapes methods and practices. The researchers involved in this study had longstanding interests in a range of relevant fields: political economy, institutions and state formation, urban studies, local law and justice, and social and ethnographic analysis. Perspectives on political economy, state formation, and local-based imitation of the state are strongest in African contexts, urban violence in (Latin) American. Although there is a vast ethnography of tribal and rural PNG, material focused on urban life is much sparser (though typically of high quality) and not heavily informed by analytic perspectives on either urban political economy or institutional formation.
Michael Mann’s influential framing of infrastructural power\textsuperscript{51} was important to this study. Although this framing has been largely applied to macro-level political analysis of the ability of state and state-related public authorities to grasp power and resources centrally and extend them to the edges of territorial authority, the authors felt this same analysis had explanatory value when applied to more micro-territorial contexts (settlements, markets) and to the infrastructural power of institutions that functioned at and beyond the edges of effective state rule. This study’s use of grasp and reach represents some theoretical/analytic innovation, the success of which readers can judge for themselves. It introduces an element of power and authority and thus insists on questions of legitimacy (something uncommon in much New Institutional analysis). Its operationalization in terms of measurement remains limited, but it (uniquely) demands that questions of power and capability against functions, rules, roles, and resources be described, explained, and assessed. The processes as well as the “grasp” and “reach” of crucial aspects of institutional capability—such as regulatory power, authority, and legitimacy and the ability to enroll actors and sustain resourcing—are all central to the analysis.

\textsuperscript{51} M. Mann, States, War, and Capitalism (see note 13).
mediation Capabilities in Papua New Guinea’s Urban Settlements