

4. *Mat, kava, faol, pig, buluk, woman:* the operation of the *kastom* system in Vanuatu today

This chapter explores the current operation of the *kastom* system through the analysis of a number of initial hypotheses in light of later research.¹ Due to space constraints, it is not possible to provide a full ethnographic account of the whole *kastom* system throughout Vanuatu. Consequently, this chapter focuses on its most salient aspects, especially those that affect its relationship with the state system. It also draws out some of its main principles and fundamental concepts (what Chiba would call the *legal postulates* of the system),² including those of respect, reciprocity, shame, balance and the importance of the community. The discussion is based primarily on fieldwork conducted between 2003 and 2006, and also some of the ethnographic works discussed in Chapter 3 as well as a report commissioned by the Ministry of Internal Affairs³ as a preliminary step in drafting Chiefs Legislation (a project discussed in Chapter 5).

As a preliminary matter, however, I would like to discuss my use of the terms '*kastom* system' and 'conflict management'. The choice of terminology for the non-state system of conflict management in Vanuatu is problematic because there is no one term that ni-Vanuatu use to refer to it. Some refer to 'sitting down in the *nakamal* or *nasara*' (the place where dispute management is often carried out),⁴ some to 'straightening' a conflict 'at the level of *kastom*' or 'in *kastom*', some to 'giving' the conflict 'to the chiefs' and others use a handful of other descriptive phrases. The essential features of the system as shown by these phrases are that the system is indigenous and administered by non-state leaders (chiefs) in their own places of authority. In this study, the term '*kastom* system' is used, the word '*kastom*' meaning generally 'our way of doing things',⁵ thus capturing the most significant feature of the system. Support for this terminology also comes from Hess, who observes that '[t]oday the notion of *kastom* is actively used to stress the participatory "found" public consensus that distinguishes it from adversarial Western legal systems, which entail decisions for someone and therefore also against someone'.⁶

It is recognised that there are some who would argue that the *kastom* system should not be called a 'system' at all. First, it could be said that Vanuatu is so diverse that there are *many* different indigenous legal systems—as many as there are functioning subgroups, to use Pospisil's argument—rather than just one.⁷ While this is certainly true, and the substantive laws and procedures used vary significantly throughout the country, there are common threads that unify them: the emphasis on peace and harmony in the community, on restoring relationships,

on the use of chiefs to facilitate agreement, on community involvement in the processes and on the achievement of settlement by the payment of compensation. So just as the study of the 'civil law system' and the 'common law system'⁸ is legitimate despite the fact that they include within them many different legal systems and subsystems, so too is the study of the *kastom* system despite the variation in its operation throughout Vanuatu.⁹

It might also be argued that the use of the term 'system' is misleading because it implies a coherence and structure that the *kastom* system does not have, being more a collection of subsystems than one with a clear national or even provincial structure, although this is gradually changing as new reforms are effected.¹⁰ To attempt to overcome such problems, some scholars have used other terms—for example, Griffiths¹¹ prefers to speak of 'orders' rather than systems to avoid assumptions of systematic bodies of law, while Woodman instead speaks of 'legal fields'.¹² There are, however, two reasons why the term 'system' is used in this study. First, all legal systems suffer from these criticisms to an extent, as Keebet von Benda-Beckmann argues:

Law is not an amorphous set of norms and principles but neither is it a tightly structured system. This is not even the case for western legal systems, despite the efforts of centuries of legal scholarship. Law typically consists of clustered sets of norms, principles, concepts and procedures.¹³

Therefore, as the use of the term system is retained for the State, and the differences in coherence are ones only of degree, it is legitimate to use it for the *kastom* system as well for epistemological coequivalence. Second, and more importantly, the term system carries with it the concept of interconnectedness, which is important in identifying the fact that although these subsystems operate within a particular social setting, they increasingly have relations with each other, and that these relationships are significant.¹⁴ Thus, in this study, the term system is used to refer to the state and the *kastom* processes, while disclaiming any pretensions to coherence that the term suggests. Seymour-Smith supports this approach, arguing that the key to the productive use of the term system in anthropology is 'the recognition that such systems do not exist in reality but are analytical devices which we may impose in order to investigate our data more fruitfully'.¹⁵

A final justification is that the *kastom* system is conceived of as such by many involved in its administration. For example, the Secretary of the Malvatumauri, in the context of a protest about prison conditions,¹⁶ recently stated:

We made a ceremony and then the Chiefs handed the prisoners over to the other system of governance, that's the police again. So, it was really *from one system to the other and making sure that both systems, protocols, procedures, are observed in the whole process*. Yesterday, we believe that

we observed the two procedures for the two systems and we feel that we are quite satisfied with what we've done yesterday¹⁷ [my emphasis].

The term 'conflict management' is used in preference to others such as 'dispute resolution'. It is broad enough to include processes that go beyond dealing merely with particular disputes, thus allowing a study 'of the relationship of rule orders to behaviour'.¹⁸ It also encompasses processes that manage conflicts, rather than necessarily reaching fixed and permanent settlements. These broader parameters are necessary when discussing the *kastom* system, as often what occurs is a continuing exercise in managing the various consequences of a particular conflict or conflicts. For example, if a violent dispute breaks out between two villages there might need to be a move by the chief from one village to send a payment, such as a pig, first of all to the other chief in order to ease the tension. Then, some days later, a meeting might be held at which temporary agreement is reached and a *kastom* settlement is made, but the conflict might still be one that exists until some new circumstances give it reason to fire up again, thus it cannot be considered to have been resolved.

The pervasiveness of the *kastom* system

The *kastom* system, in one form or another, exists in every village and town in Vanuatu. It is indisputably the way in which the majority of conflicts in every rural and urban community in the country are managed, and even cases managed by the state system often have some level of involvement with the *kastom* system.¹⁹

The central idea of the *kastom* system is that the chief or chiefs of a community are responsible for managing conflicts. They do so through holding a public meeting with the parties involved where the conflict is extensively discussed, responsibility allocated and amends made through the making of a *kastom* payment by one or both of the parties. Around this '*stampa*' (base) there is great variation in the form the *kastom* system can take.

The *kastom* system in almost every island is divided into different levels, although the number of these levels and the formality of the divisions between them de facto and de jure vary from island to island. Generally, the first level (after attempts to resolve a conflict at a family level have been unsuccessful) is the village chief or chiefs. Next, some communities have a 'ward' council made up of chiefs from several villages, then there is often an area council comprising representatives of the various ward councils in a particular area, and then sometimes an island-level (often including offshore islands)²⁰ or a provincial-level chiefly council as the penultimate level. The Malvatumauri is at the top of this structure, representing chiefs at a national level. Although there have been chiefly councils in Vanuatu for decades now, some provincial governments²¹ and the Malvatumauri have recently been instrumental in formalising and

mobilising the different levels of chiefly councils as part of their efforts to promote greater engagement of the chiefs in governance and conflict management.²²

In the two towns of Port Vila and Luganville, the organisation of the *kastom* system is slightly different due to the many different island communities who live there. Each community has its own chief or chiefly representative²³ in town and many have chiefly town councils, depending on the size of the particular community.²⁴ As the organisation of these representatives is often ad hoc, some people are criticised for being ‘self-styled’ chiefs and their right to exercise authority is questioned. Generally, when a conflict involves people from different communities the different chiefly councils will sit to hear the conflicts together.²⁵ The chief of the South West Bay Malekula community in Vila gave the following example:

A young man from our area had decided to leave his wife who was from Ambae. We had to call the chiefs from Ambae and Malekula to sit together to sort that out. Both chiefs chaired the meeting. After the meeting to finalise the judgment, we have what we call a native court, where chiefs go to finalise the penalties, chiefs sit together to discuss the penalty. They then call the meeting back and say this is our decision—it is always a two or three man decision when judging something serious.

In the two towns there are also town councils of chiefs with chiefly representatives from the different communities living in the towns that are not from Efate or Santo. Similar bodies have also been established in some of the bigger villages in the islands where there are diverse communities living together.²⁶ In some urban areas, there are also ‘suburban’ councils of chiefs, such as the Freswota Council of Chiefs, comprising chiefs from that community.

All these different levels of councils and, at the village level, individual chiefs are responsible for managing conflicts that members of their community are involved in. The sorts of matters that they deal with vary depending on a number of factors, including the chiefs’ own assessment of their jurisdictional capabilities and power, community support for the *kastom* system, the wishes of the conflicting parties and the accessibility of the state system. In some places therefore the *kastom* system is used just to resolve minor cases, whereas in other places it deals with cases as serious as murder. The issue of which system should hear which case is currently a major problem, as is discussed in Chapter 6.²⁷

Diversity in conflict management

The validity of the hypothesis that there is a significant diversity in conflict-management practices across Vanuatu can best be tested by separately examining the various stages involved in the management of a conflict.

The people in charge of the management of the conflict

When the research began, I thought that only chiefs were responsible for managing conflicts but, as with so much else, the truth was much more complex. In fact, a wide variety of people are responsible for the management of conflicts in different communities (although chiefs are the primary decision makers), including:

- a chief alone or with one or two assistants²⁸
- a non-chiefly or chiefly chairman who directs proceedings together with a council of chiefs who decide the matter²⁹
- a chief together with a council comprising elders and 'small' (or lesser) chiefs³⁰
- a chief who appoints representatives from the supporters of the two parties to act as judges³¹
- several chiefs³²
- a chiefly chairman together with a council of four counsellors and a woman's representative³³
- several 'small chiefs' who direct the proceedings and the 'big chief' who says nothing until making a decision at the end.³⁴

There is such a wide range of practices that it is difficult to make any reliable predictions about which form will be found at which level and in which place, but where the concept of levels of chiefly councils is firmly established, the councils are more likely to comprise chiefly representatives from the different areas involved. In some areas, there are also other office-holders, such as secretaries who take minutes of the meeting and village police officers who are used by the chiefs to enforce their orders.³⁵

Before the meeting

A *kastom* meeting is almost always initiated by one of the parties or one of their family members approaching the chief or his representative. In some areas, the person must also give the chief some money in order to initiate the proceedings.³⁶ In most areas, the chief or his assistants will then call a meeting to resolve the case, but in other areas the chief or his assistants will go to talk with the people involved in the conflict first of all—to see if it can be resolved without a meeting and also to collect evidence that can be used at the meeting. The formality with which this is done varies: in some areas it is just a matter of the chiefs or assistants talking with the conflicting parties,³⁷ while other areas have a highly formalised system. For example, in Mele, the village police go to take statements and then bring their reports to the council members a day before the scheduled meeting and they then discuss the cases, sometimes sending the police back to get more information to 'balance' the story.

The other variation in what occurs before a meeting is whether or not there is physical aggression by one of the parties or their families towards the other. The only island where this appears to be a regular part of the *kastom* process is Tanna, where sometimes the victim's family will attack the defendant either before the meeting or at the start of the meeting.³⁸ While this is not officially sanctioned, there is often an unspoken agreement not to interfere with this physical retaliation and any harm suffered is then taken into account when 'weighing' the compensation due to one or both sides. A senior police officer in Santo observed that Tannese chiefs in Luganville often allowed the victim's family to assault the defendant before the chiefs 'sat down' to resolve the conflict, remarking 'now everyone knows what to expect if they are invited to a meeting by Tanna chiefs!'.³⁹

At the meeting

There are a number of different procedural variations in the meetings, which are generally held in the community *nakamal* or *nasara*.⁴⁰

Who attends?

The one uniform practice of *kastom* meetings is that they are public events. At a minimum, the two parties and their families are present, and often the community in general as well. The community attendance might be limited to one community or might include neighbouring villages. For example, in Tanna, when the chief of one of the parties calls a meeting, he will generally invite members of neighbouring villages to attend. The reason for this is said to be, alternatively, to keep the peace or to give 'balance' to the discussion. Although community members are present, they might not all physically sit down in the same area—some (especially women and young people) might stay outside the *nakamal*, often listening and staring in through the openings. In the towns in particular, it is also common to invite other people involved with the parties in some way, such as employers or fellow employees. The chief blowing on a conch shell, which makes a loud and distinctive sound, or the sounding of the slit-gong drum, traditionally notifies the community that the meeting is in session.⁴¹ The atmosphere at one meeting has been evocatively described as follows: 'the meeting is called—there are different rumours flying around—whilst people are waiting for the meeting to start they form little groups and discuss the matter informally.'⁴²

Who speaks?

In general, the essence of all *kastom* meetings is to give a chance to the two parties and other interested members of the community to fully express themselves; in Bislama, this is called '*serem toktok*' (sharing talking). In the majority of islands, both parties are invited to speak for themselves—first the

complainant and then the defendant—and the leaders of the meeting question them. The system is thus far more inquisitorial than adversarial, although the parties may also question each other. Where the matters are disputed,⁴³ the two parties often bring witnesses, who are also questioned. In general, the community is also free to participate in the discussion: often the chairman, who gives permission to people to speak once they have raised their hand, controls their participation. Many respondents stressed that the chairman had the right to stop people from talking if they digressed too much from the subject at hand, but in general there was a great deal of tolerance for wide-ranging and repetitive talking. An anthropologist commented on the purpose of the speaking in meetings as follows:

I believe these legal processes are more intended to give space for each party to present their view so they don't feel aggrieved. Public speech is so important in Vanuatu, even if the content is absurd or repetitive. It is important the people feel they have had their say. If there is a notion of justice in this it is in the opportunity to externalise your grievance.⁴⁴

A chief similarly commented that his mediating strategy was 'to let everyone have their say and vent their emotions of frustration and anger and then...[w]hen everyone was exhausted' to lead them 'to find peace among themselves'.⁴⁵

There are, however, some variations to this general pattern. In some islands, women are not allowed to talk in the *nakamal*. This *kastom* is changing fast throughout most of Vanuatu and today appears to be maintained primarily in Tafea Province.⁴⁶ In the *kastom kot* observation⁴⁷ study, women spoke in 58 per cent of cases; they were too scared to speak in 8 per cent of cases; they were not allowed to speak in 29 per cent;⁴⁸ and in one case the chief was allowed to speak to the woman involved alone. If a woman is one of the parties to the conflict and is not allowed to talk then she will have someone representing her. The practice of having someone speaking on behalf of one of the parties is not limited just to women, it happens for youth and occasionally for adult men.⁴⁹ It is more common in the southern islands and is said to be a way of avoiding direct confrontation in meetings. Another way of doing this is to address questions to a person or group not involved in the conflict.⁵⁰ Many people from all over Vanuatu also commented that in *kastom* meetings people often talked in parables, and that it was not direct like the state system.⁵¹

How is a decision reached?

Unlike in the state system, where the decision about culpability is separate from the decision about penalty, in the *kastom* system, there is often no clear distinction drawn between these two types of decisions. The procedures used throughout Vanuatu to determine the outcomes of *kastom* meetings present a complete spectrum of decision-making styles, ranging from those chiefs who

make a decision themselves and announce it to the parties who have to either accept it or take it to another body, to those chiefs who act as facilitators, encouraging the parties to come to their own decisions, to chiefs delegating the decision making to others and acting just as a chairperson of the proceedings. Thus in some islands it would even be wrong to characterise what occurs as decision making, as the parties themselves refer to what occurs as more of a 'disentangling' of a conflict through talking.⁵² As such, the line between arbitration and mediation is blurred in theory and practice.⁵³ For example, one respondent describes the process in Ambae:

Once the parties have put their cases and [their points of] view the meeting breaks off after having elected some judges. These judges are not formally nominated; it is just known which people have the most knowledge and wisdom and have been fair in the past. These people then go away and discuss between themselves what to do and then return and announce how the reconciliation is to be reached. The parties are then called to comment on the decision and if there is disagreement then the meeting will not end until agreement is reached. The contribution of both parties is significant in coming to a reconciliation.⁵⁴

A similar procedure occurs in Erromango, where, when all the talking has finished, the counsellors go away and come to a decision about what to do. They come back and announce the decision and ask if everyone is happy. If people are not then they have to go away and come back with another decision.⁵⁵

In North Pentecost, in contrast, as the following example shows, there is far less participation by the parties in the final decision:

When there is a meeting everyone gathers in the *nakamal* and the chairperson of the village council tells the chiefs that they will be responsible for making a decision. The chairperson directs the meeting. He is chosen by the village but is not necessarily a chief. Everybody talks, to give evidence and so on. At the end of the talking everyone goes outside and leaves the chiefs to discuss the issue and come to a decision. Then they come back inside and the chiefs say what their decision is. Then everyone goes back to their houses to look for pigs and red mats... There is never any negotiation about the *faen* [fine].⁵⁶

Similarly, in Mele, once the decision has been pronounced by the paramount chief there is no disputing it, but this decision has generally been arrived at as a result of the talking and negotiating between the 'small chiefs' and the parties.

The most party-inclusive model is found in some parts of Tanna, where the complainant and all of his or her family and friends sit down in one area, the defendant and all of his or her family and friends sit in another and groups representing the other villages sit in other areas.⁵⁷ The talk then 'goes around

and around' until a decision is reached that everyone accepts.⁵⁸ In Vanua Lava as well, there are times when the chiefs will send the parties away to make a decision between themselves.⁵⁹ The decision that is made generally involves an order that one or both parties must make a payment of some sort. The words that are used to describe this payment vary: in some places, it is referred to as a *kastom faen* (fine), in others a *kastom* settlement or *kastom* compensation.⁶⁰ In this study, the term '*kastom* payment' is generally used. Today many payments are in cash, although *kastom* payments of pigs,⁶¹ pig tusks, mats, kava and root crops are also used, especially in rural areas.⁶² Sometimes there are other orders that can be made, such as that a party should not go to a particular area or should not engage in the same conduct again.⁶³

The issue of how chiefs or the parties or counsellors come to a decision is far more complex and is linked to the purposes or aims of the *kastom* meetings, and that, as discussed below, is a fluid issue at the moment. Traditionally, there was not so much importance attributed to the question of what had really occurred: what was important was finding out how relationships had been damaged and what needed to be done to restore them. There was an assumption that the mere fact that there had been a social disturbance meant that the parties had done something wrong—as one respondent said, '*[L]ong kastom loa yu rong finis i stap—yu mas talem i no yu*' (in *kastom* there is the presumption that you are guilty and you must prove that you are not).⁶⁴ Another relevant factor is that in the past people were prepared to follow a chief's orders even when they were in fact innocent, because of a belief that the truth would eventually come out and then they would gain respect for their behaviour in accepting the chief's decision. One respondent observed:

People knew that if a judgment was not right, if they went along with it then they would be better off in the end because it would become clear eventually that they were right. There are some sayings that support people in this belief. One is that 'the truth is sharp', in other words, you can't hide it as it will cut through everything. Another refers to the hard inside part of a tree, and says that even if the tree trunk is rotten and covered with mud, eventually this hard central bit will come out. So even if a judgment was biased against you, you went along with it to maintain the reconciliation, confident that you would eventually be vindicated.⁶⁵

Today, however, there is increasing emphasis on making sure that people are made to pay only for misbehaviour they have really done, and hence chiefs are being pressured to justify their decisions or the way they '*skelem toktok*' (weigh the speech), especially by members of their communities who have been educated about the state system. There is therefore a developing interest in issues of proof and evidence.

There are a number of different mechanisms used today by chiefs to help them decide whether or not a complaint against someone is justified. Some chiefs maintain that they can tell when someone is lying because they live with the people and know their character. There is also a lot of reliance on the wisdom of certain people who are believed to be able to tell whether someone is telling the truth or not. Another factor is that villages are small places and there is a general belief that if someone has done something wrong then it will not be possible to hide that fact, making it relatively easy to compel a confession. It is also believed that if everyone involved is present then gradually through talking and questioning of witnesses the truth will come out and what has happened will be revealed. In this respect, there is reliance on the fact that people will feel shame for having done something bad to someone else and so eventually they will want to confess to be able to restore the relationship. Sometimes as well the case is 'put on hold' to see if more evidence comes to light. For example, if a boy swears that he did not get a girl pregnant then they just wait for the baby to be born and they see who it looks like.⁶⁶ A final method, used primarily in the north, is for the chiefs to call the priests or the Melanesian Brotherhood⁶⁷ to make people tell the truth. A respondent explains that people in rural areas believe that if you lie to one of these people something terrible will happen to you. The belief in priests and the brotherhood is strongest in those areas that are predominantly Anglican—for example, Pentecost, Maewo, Ambae, Torba Province and Luganville and Vila to an extent.⁶⁸ In the Banks Islands, a chief reports that if people do not confess then he gets a priest to come, who usually manages to find out if the person has done something wrong or not. He said this was the only way he had to find out if something was true or not.⁶⁹

In regard to their investigative role, the chiefs have quite wide-ranging powers to '*faen*' everyone who they consider to have transgressed *kastom*, even if the complainant did not complain about that person's misconduct. For example, in Ambae, the following case occurred:

The case was a case about 'jealousy': a man suspected that his wife, a nurse, was having an affair with Z, one of her co-workers. Initially a village court heard the case and it was settled, but then Y started to talk to the jealous husband, stirring him up and suggesting that his wife and Z had been lying. The case then was taken up again at the area level where the chiefs 'found' that although the wife had not had an affair with Z she had provoked the jealousy because she had once telephoned him when she was away and had told him she was calling from a different place than the place she actually was. The end result was that the wife was ordered to pay a *faen*, but the heaviest penalty was imposed on Y who had to pay a *faen* to the chief, to Z and to the husband for the trouble he had caused.⁷⁰

After the meeting

In many cases a reconciliation or *kastom* ceremony of some sort is held, either immediately after the meeting or a few days later. This might be the time when the *kastom* payments are made or they might have been made before or after if the parties do not have sufficient means to pay immediately. Whether or not such a ceremony is held seems to depend on whether the matter is serious and relations need to be mended. In the *kastom kot* observation study, 33 per cent of cases involved a ceremony in which the parties drank kava or ate together, there was an apology, a *kastom* payment was made or the parties shook hands. In 45 per cent of cases, however, there was no ceremony.⁷¹ A provincial officer comments that the reconciliation ceremony is important because it is where you publicly say what you have done is wrong and that you will do better in the future. This ceremony symbolises that agreement has been reached.⁷²

In the Banks Islands, the reconciliation ceremony is held several days after the meeting. By this time, people's tempers have cooled and they come together to share food and kava and to shake hands and make peace. One chief said if this ceremony was held directly after the meeting the 'feelings are too strong'.⁷³ In the Torres Islands, the reconciliation ceremony involves a kava ritual. One person makes the kava and gives two shells of kava to each party who then have to drink the shells all at once. This is said to symbolise washing the sin of the conflict from your eyes because the truth and facts of the world enter your body through your eyes. From that moment on the grievances should be buried.⁷⁴ In some places, parties make *laplap*⁷⁵ for each other and eat together⁷⁶ and in other places they exchange *kastom* payments, give and accept leaves of plants of special meaning—such as *namele* (cycad) and *nanggaria* (croton) leaves—and shake hands. Chiefs very rarely miss an opportunity to give a speech about how the parties should now be friends and not commit this sort of behaviour in the future.

The restorative nature of the *kastom* system

There has been much written about the restorative nature of traditional practices in the South Pacific⁷⁷ and this aspect of the *kastom* system is constantly promoted by all respondents. I lost count of the number of times respondents stated that in *kastom* both parties won, but in the state system one party won and one lost.⁷⁸ Certainly, the basic principles of the *kastom* system as enunciated by the chiefs, and as practised in the majority of instances recorded in this research, are restorative, particularly in that they focus on restoring relationships that have been damaged by the conflict. The *kastom* systems also emphasise compensation, repair of harm, prevention of future harm, reintegration of offenders and communication of the shameful nature of law-breaking, often followed by a '*kastom sori*'⁷⁹ (sorry, apology) and forgiveness. Hess explains that being '*sori*' is a key

concept in ni-Vanuatu ideas about being human' and the word 'could be approximately glossed in English as grief, regret, compassion, sympathy and empathy'.⁸⁰ In addition, there is also empowerment of multiple stakeholders (not necessarily all women and all youth) to tell their own stories in their own way. Many chiefs explained that the restorative nature of *kastom* decisions was necessitated by the small-scale nature of their communities. Because people live in a communal society where everyone helps each other, if there is a conflict this '*mekem i had sipos yu no mekem fren bakegen from bae oli no helpem yu*' (makes it hard if people do not restore friendship because they will not help each other).⁸¹

Two of the main stated aims of any *kastom* meeting are restorative—namely, '*blong mekem [tufala patij] sekhan mo kam gudfala fren bakegen*' (to make the two parties shake hands and become good friends again)⁸²—and to allow the defendant to '*klinim fes*' (literally, 'clean his face', meaning remove the sense of shame and restore respect to the wrongdoer in the face of the community). The first aim thus focuses on restoring relationships between the disputing parties, while the second is concerned with reintegrating the wrongdoer into the community, allowing any avoidance that might have been practised before the meeting (as a result of the feelings of shame or of anger) to cease.⁸³ The concept of shame is thus intrinsically linked to reconciliation, and Hess explains that in Vanuatu the ability to feel shame 'is seen as a positive attribute of a person'.⁸⁴

The restorative nature of *kastom* decisions is manifested in a number of ways. First, everyone—the parties, their families and their community—is involved in the process. This means that everyone is able to fully understand the issues and background to what has happened. As one respondent comments, in *kastom*, the defendant is asked to explain his or her behaviour, allowing everyone to come to a level of understanding.⁸⁵ A related point is that the investigation into what happened is free and wide ranging. A chief gave an example of the holistic approach taken in *kastom*:

In *kastom* if John comes and looks at Brown and Brown swears at him, John fights him. In court if a man says that he fought the man then he is punished but the one who swore does not get any punishment. So John goes and fights him again. The way that the ni-Vanuatu look at it is to ask who started the conflict and to punish that person as well.⁸⁶

Because of this approach, payments in *kastom* are often two way, with each party paying each other an amount of the same or different weight. An important aspect of *kastom* is a concern to make sure that the person who has lost or been found to have been in the wrong is not left feeling bitter. Therefore even in cases where only one party is in the wrong, the other side will also often pay something to make sure there is peace between them. One chief explains this by saying that in *kastom* when one party wins he then feels *sori* for the other party

and so gives him something so as not to deprive him completely. He gave an example of a conflict over land and said that the winning side might tell the losing side that he could live on a piece of the land that was in conflict. He contrasted this with the state system, where the losing side would have to leave the land.⁸⁷ Even when the payment is just in one direction, however, there are other ways of making the outcome reciprocal. For example, in Pentecost, at the end of a *kastom* meeting the parties eat and drink kava together and it is primarily the responsibility of the complainant to light the fire in the *nakamal* and to provide the kava and food. Lindstrom's observations about the importance of balance in exchanges of goods in Vanuatu are relevant here, and he states that '[a]s imbalance in exchange adversely affects other spheres of life (the body physic and social) a judicious and balanced exchange of goods repairs imbalance in those areas'.⁸⁸ He gives the following example: 'Young brothers, sadly brought to violence by excess of drink, exchange not only the monetary contents of their pockets but also the shirts off their backs as they re-establish balance and good feeling in their relations with each other.'⁸⁹

Another restorative element is the focus on compensation. In some respects, the payment that must be paid is a very literal attempt at compensation—for example, in some islands, a man who has killed someone must 'replace a life with a life' by giving one of his daughters to the family of the victim.⁹⁰ Where the damage is less easy to quantify, however, an amount is set having regard to the surrounding circumstances. Often more than just straight compensation is involved and sometimes this element of the compensation is referred to as a '*kastom sori*' or apology rather than a payment, because it arises from a desire on the part of the wrongdoer to say sorry for what has occurred, and it will be paid to many people involved in the conflict.⁹¹

For example, in Tanna, there was a case where a woman had 'adulterous affairs' with three 'boys' from three different villages.⁹² Everyone confessed what had happened and the chiefs decided that each boy had to pay a big pig and a big head of kava. One pig went to the village chief 'to make his heart happy again', another went to the husband and the third went to the wives of the three boys. It is very common for chiefs to receive part of this payment because committing an offence in a chief's jurisdiction is seen as being in itself an act of disrespect to the chief, and this is often perceived to be just as serious as the offence itself.⁹³ For example, in 2004, a young girl from Ambae, living in one of the peri-urban communities around Vila, killed her newborn baby, which provoked a great deal of community shock and outrage. A *kastom* meeting was held at which the chiefs from Ambae paid a *kastom* payment of pigs, mats and roosters to the Efate Island Council of Chiefs (the Vaturisu). The chief of the Vaturisu stated, 'I declare that [in *kastom*] nothing further is to be said of the incident. Our *nasara* is clean as we turn to a clean page and there is no more bad feeling anymore.'⁹⁴

While these principles of compensation and restoration are present in most cases decided in Vanuatu, there are also a number of cases where the chiefs use *kastom* to impose punitive sanctions on the wrongdoers.⁹⁵ The aims of such decisions seem much less about reconciliation than about punishment, and sometimes revenge.⁹⁶ For example, a young respondent reported:

I will tell you about a case of a relative of mine. She had *flatem* [had sexual relations with] all the men around her and made lots of women very angry with her. The chiefs tried everything they could to stop her—they cut off her hair, and they all whipped her. Then finally they sent her back to the island. She stayed there for ten years and she saw how hard life was there, not like getting paid money for sex, and now she has come back to Vila ten years later a changed woman. Now she stands next to the chiefs to assault the women who have children with no fathers!

Chiefs also beat people (especially youth), make them cut grass or perform other manual labour, grind kava and even run around naked in public as punishments. Occasionally, chiefs also order exile or banishment. For example, the chief of Emae said that if a member of the community caused trouble he had the right to send him out of the area. He explained that 'if a wild dog is inside the yard with your pigs and is slowly eating them, will you save it? No.'⁹⁷ This remedy was resorted to in 2006 in Luganville when chiefs from Sanma Province resolved that a family, originally from Paama, had to leave the island after allegations that the family was behind the assault of a chief from east Santo.⁹⁸

There are also some areas where some 'payback' types of *kastom* still exist. For example, on the island of Malo, there is a *kastom* that if someone is killed then their family has the right to attack the defendant's family by chasing them out of the village and destroying their property and killing a member of the family. A respondent reported that the chiefs of Malo recently authorised a family of a deceased person to do this, but the family was stopped before they caught and killed anyone.⁹⁹ Like the state system, the *kastom* system is therefore also not intrinsically restorative rather than punitive.

Privileging the community over individuals

Three major findings emerge in relation to the hypothesis that the focus of the *kastom* system is on peace and harmony in the community rather than individual justice. First, there is no doubt that restoring peace and harmony to the community is the guiding rationale behind most chiefly decisions.¹⁰⁰ A chief from Pentecost stated: 'under the *kastom* system peace is collectively owned by a group or community and the community has got a collective accountability to peace.'¹⁰¹ There appears to be an almost unspoken fear in the minds of many chiefs that their communities could at any moment erupt into chaos, and hence

they must deal with conflicts quickly, and in a way that discourages other conflicts from flaring up. The metaphor of a fire was often used to convey the sense that small sparks must be contained to avoid a massive blaze.¹⁰² Related to this is the fact that a person involved in an incident is not seen as an individual, but part of a family unit¹⁰³ or, as is increasingly the case in mixed communities, a member of a particular island.¹⁰⁴ Therefore the whole community quite literally is involved in the conflict, as they are likely to be either the victim's or the defendant's family or a close contact.¹⁰⁵ Families and not individuals also often make payments, in turn building up the network of obligations and counter-obligations ni-Vanuatu society is based on. For example, in Pentecost, the chief will make a payment on behalf of someone from his village. They do not have an obligation to pay back the chief with material objects, but there is an obligation to respect the chief. In Ambae, the chief will make the payment, but then the troublemaker must pay him back.

The second major finding is that the focus on ensuring peace and harmony in the community at times conflicts with the restorative notions of the *kastom* system. In other words, victims who might not really be happy with the decision are forced to accept it and 'shake hands' for the good of the community. This is particularly a problem for women, who are often made to stay in abusive relationships for the sake of community stability. One respondent explains that in *kastom* if there is a problem in the home then the decision is taken on the basis of the interests of the family unit; there is always an emphasis on putting the family unit back together. Traditionally, there is the concept that one suffers for the good of the community; the general approach is that couples have to stay together even if one has been wronged.¹⁰⁶

The third finding is that the focus on ensuring peace and harmony in the community is being increasingly called into question as people engage more with modernity and start learning about individual rights and justice. This makes them more reluctant to accept that the needs of the community should prevail over their needs. Many women are also becoming increasingly aware that reference to the good of the community can conceal power dynamics that favour men over women. Thus a counsellor at the Vanuatu Women's Centre observed that even if the *kastom* meeting created peace in the community, the woman still did not have peace, explaining further that the *kastom* system did not look at a woman as a whole being.

The tension between the needs of the community and individual rights is fully appreciated by many chiefs, but they see prioritising the community over the individual as a choice they must make. For example, the Secretary of the Malvatumauri stated, '[O]n Pentecost justice at times is not the priority, but peace is.' This view was also expressed by another chief, who stated that in *kastom* the good of the community was paramount: individuals 'will be given

their day' but if 'at the end of the day' the community would suffer then the community must be given priority.¹⁰⁷

***Kastom* procedures and *kastom* law**

The initial question to be investigated was whether in *kastom* procedures were more important than substantive laws. On further reflection, however, I realised that the real question was whether or not the procedural aspects of the *kastom* system were just as, or more, difficult to reconcile with the state system as the substantive laws. Analysing this question requires a three-stage approach: are there substantive laws in the *kastom* system? Are the differences between substantive laws in the two different systems problematic? Are the differences between procedural approaches in the two systems more or less problematic?

The first question therefore is whether there are substantive laws in the *kastom* system. Many authors warn against using concepts of Western jurisprudence, such as 'rules' or prohibitions to describe Melanesian ways of resolving conflicts, as the use of such terms is said to 'sit uneasily with the ethnographic evidence'.¹⁰⁸ In the *kastom* system today, however, the concept of substantive laws, by which is meant a relatively precise norm with a sanction for disobeying, is widespread. The laws that are spoken about, and increasingly written down,¹⁰⁹ appear to have three sources: *kastom*, the state system and Christianity.

Kastom laws generally relate to regulating kinship relationships¹¹⁰ or prohibitions of various kinds (for example, a chief may put a *namele* leaf¹¹¹ on the beach, which signifies that people must not gather resources from that reef), protection of the environment and respect.¹¹² Some crimes from the state system are also slowly being introduced into the *kastom* system, such as the crime of rape, which did not exist in the same way in *kastom*.¹¹³ The third category of laws is derived from Christianity; thus people will talk about the prohibition on 'coveting' something or on 'fornication'. There are also of course general laws prohibiting people from stealing, assaulting each other, damaging property and so on, which probably come from all three sources.

It is clear that *kastom* laws vary throughout Vanuatu, but it is difficult to determine to what extent.¹¹⁴ Most respondents agreed that the fundamental principles of *kastom* remained constant throughout the country, but there were variations in details such as appropriate amounts of *kastom* payments and laws relating to respect and kinship.¹¹⁵ One chief stated, '[W]e do everything similar, but how we present it in a ceremonial way is different.'¹¹⁶ There are a number of indications that the differences between various *kastom* laws do not pose huge difficulties in resolving conflicts in practice. The Chief Justice and the Chief of the Malvatumauri—men who would be expected to be aware of the differences between *kastom* in different parts of the country—stated that the differences in substantive *kastom* were not of much importance. Also the town councils of

chiefs in Luganville and Port Vila manage to deal with the different laws among the various communities without too much difficulty.

Given that there are therefore substantive laws in the *kastom* system today, the second question is whether or not differences between them and the laws of the state system are likely to be problematic. One of the clear findings of the research was that, with the exception of some human rights provisions in the constitution¹¹⁷ that were widely criticised as being inconsistent with *kastom*, no respondent complained about the particular substantive content of the state system.¹¹⁸ It could be that this is due to a lack of true understanding by the majority of the population of the substantive content of state laws. An alternative reason could be that ni-Vanuatu are used to accepting different *kastom* laws and to finding ways of minimising the difficulties these pose. This suggests that differences between state law and *kastom* law might similarly be able to be negotiated, because people are used to doing so and because the content of substantive *kastom* laws has changed over time anyway, incorporating state laws and Christian laws.¹¹⁹

The final question therefore is whether differences between the procedures in the state and *kastom* systems are more or less problematic than the differences in substantive laws. Except for the complaints about the laws relating to human rights in the constitution, every criticism of the state system and example of the difficulties with it made during this study related to procedures rather than substance. This suggests that differences in procedures are more problematic than differences between substantive laws. As the Chief Justice stated, the focus of reform needed to be on the legal structures and systems—‘the basket’—rather than the substantive law or what was inside the basket. He observed that that could come afterwards: ‘the people can fill the basket with their laws.’¹²⁰

The dynamism of the *kastom* system

There are two main findings from the fieldwork that support the hypothesis that the *kastom* system is dynamic: the conscious adaptations made to the *kastom* system by the chiefs, and the widespread open-mindedness of the chiefs and their willingness to embrace new ideas. This attitude was summed up by a statement made by a former President of Vanuatu when he said, ‘[E]uri samting i gat evolution blong hem. Mi belivim se kastom i gat evolution’ (everything evolves. I believe that *kastom* evolves too).¹²¹

The development of the *kastom* system in the past few decades is apparent from a comparison of the anthropological material discussed in Chapter 3 with the system described above. Some changes are due to conscious attempts by the chiefs and chiefly organisations to deal with the challenges that continue to confront them, and others are unconscious changes as a result of influence from the state system. One of the most obvious conscious changes is the introduction

or formalisation of the levels of chiefly councils¹²² and the process of appeal. Although the word '*apil*' is used often,¹²³ what occurs is more like a rehearing or a renegotiation at a higher level than a strict review of the decision of the chief at the lower level. For this reason, some chiefs prefer the word 'referral',¹²⁴ as this more accurately describes what happens. For example, in Nguna, a small island in the north of Efate, a conflict will first be dealt with at village level. If the paramount chief of his village cannot solve it, he will ask the paramount chiefs of some neighbouring villages to come to help. If there is still no resolution, it will go to the body for the whole of Nguna, the Turuduaki Council of Chiefs, then it can be appealed to the Council for Nguna and Pele (the adjoining island) and, if still a problem, it will go to the Efate Island Council of Chiefs.¹²⁵ Although traditionally there was almost certainly the possibility of bringing a third body into the management of a conflict community leaders were having difficulties resolving, this formal referral structure is a relatively recent innovation of the *kastom* system. There is some criticism of the process of appeals¹²⁶ as they are seen to prolong a conflict and to make final reconciliation difficult: as one respondent put it, with appeals, chiefs '*no save flatem kwik taem*' (cannot quickly finish the conflict).

Another conscious change is the writing down of *kastom* laws. The movement to start to draft what are universally referred to as 'by-laws' appears to have been started by the Malvatumauri, who drafted their by-laws shortly after independence.¹²⁷ Almost every place visited in the course of this research had either written their by-laws, was doing so or was considering doing so. The reasons given for doing so were mixed and included the following:

- it will make it easier to judge conflicts
- if they are not written down they will be forgotten as the young people do not know them
- it will harmonise the different rates of penalty among the different villages/throughout the province
- if a chief goes to court then he has to be able to justify the decision he has made
- if the laws are written down the people cannot question the chiefs' authority—it is 'in black and white'¹²⁸
- to counter the criticisms of young people who say that because the laws are not written down they have no legal effect
- if everyone in the community participates in the writing of the laws then they cannot argue with them
- in order to try to reclaim some territory for the chiefs that has been taken by the State.¹²⁹

The same reasons for drafting by-laws probably prompted the development of the keeping of records of *kastom* meetings and the creation of positions of

secretaries that is increasingly occurring in chiefly councils. In the *kastom kot* observation study, I was astonished that in 58 per cent of cases there was someone who took minutes of the meeting. It is, however, important to consider the extent to which these innovations really work in practice. Thus when I asked whether or not the by-laws were really *used* in judging cases, the answers were very vague and chiefs often generally indicated that there was a copy 'somewhere'. A similar response was given when I asked to see the records of the minutes taken in the meetings, with many chiefs admitting with a laugh that they were '*olbaot nomo*' (all over the place). There are many other examples of conscious adaptation from the state system, including: the creation of village police,¹³⁰ the introduction of the concept of payment of fees to get chiefs to hear cases¹³¹ and even the development by some chiefly councils of summons forms and letterheads.¹³²

The other aspect of the dynamism of the *kastom* system is the open-mindedness and flexibility of approach displayed by the majority of chiefs interviewed for this study. Many others, including the leaders of the two major women's organisations in Vanuatu, also remarked on this feature. It is illustrated by one of the by-laws from a ward council in Penama Province, which, roughly translated, states:

The Council does not agree that women should wear shorts but we understand that they have the right to so she can wear shorts so long as they come down to her knees and she does not wear them in front of her brother or some other relatives or else she will be fined.

During the fieldwork, chiefs continually told me that they wanted to have training and assistance to enable them to '*leftemap*' (lift up) their system.

Challenges for the *kastom* system today

An early hypothesis is that the *kastom* system is currently facing considerable challenges to its survival. Much of the evidence suggests that indeed it is facing significant difficulties and there are some who question its ability to continue to play such a major role in conflict management if it continues to be unsupported by the State and outside agencies. As one respondent said, '*[S]istem blong jif i wik mo mifala i fraet se bae i brokbrok*' (The system of chiefs is weak and we are afraid it will break). A High Chief from Pentecost similarly stated that 'the *kastom* system is being eroded every day'.¹³³ In some places, such as South Santo and some of the Banks Islands, these difficulties are such that the *kastom* system is almost no longer functioning, with the result that the inhabitants of these areas are becoming more and more dependent on the scarce police resources available. The limitations of the chiefly system at present to control law and order in urban environments were also brought home by two incidents of breakdowns of law and order that occurred in Santo and Vila in late 2006 and March 2007,

respectively. In relation to the Santo incident, a newspaper reported that '[w]hat was particularly disturbing was that Chiefs from all Provinces were not able to reach a common ground in the "traditional" way to try and solve the issue'.¹³⁴ Similarly, in the days leading up to what became the March 2007 riots, the chiefs attempted to calm the situation by holding meetings, but these erupted into violence that the chiefs were unable to contain, and three people were killed.¹³⁵ The challenges facing the *kastom* system today can be divided into roughly four groups: the problems with determining chiefly title; problems of loss of respect leading to difficulties with enforcement and lack of power; problems of misbehaving chiefs and the lack of mechanisms to deal with them; and the erosion of the authority of chiefs by societal changes.

Too many chiefs

Chapter 3 discusses the fact that, although chiefly title is not a traditional part of ni-Vanuatu culture, except to a limited extent in the central islands, today the institution of chiefs is entrenched throughout the country. As a result of the lack of a firm indigenous basis for this institution, attempts by the missionaries and the colonial and national governments to artificially create various types of chiefs and chiefly bodies, and the considerable movement of people that has occurred in the country in the past 100 years, today there is considerable confusion and disagreement about who has the right to be the chief in many communities throughout Vanuatu.

The lack of a clear road to chiefly title has a number of consequences. First, there are many people laying claim to being a chief and also many different types of chiefs in the various communities around Vanuatu (I was told about small chiefs, big chiefs, assistant chiefs, paramount chiefs, *kastom* chiefs, community chiefs and church chiefs). One respondent told me that when she went back to her island community after a number of years of absence she was shocked to find that 'every household has got a chief!'.¹³⁶ This proliferation of chiefs leads to the devaluation of the position of chief, as these people are increasingly no longer perceived as being special or authoritative.¹³⁷

Even more importantly, disputes over chiefly title often involve disagreement about who has the right (or obligation) to manage conflicts. For example, a number of respondents said that a person who had become a big-man through the graded system should not necessarily be the chief who looked after the community; 'He can just judge the pigs!' said one cheeky respondent. Such disputes have the potential to completely stymie the *kastom* system. In two places visited during this study, conflicts over who should be on the chiefly council had caused the council to stop functioning,¹³⁸ and in many other places conflicts over chiefly title were causing great instability and even violence,¹³⁹ as well as undermining people's respect for the decisions made through the

kastom system. A recent report into community governance highlighted the problems caused by conflicts over chiefly title, stating that in one village a dispute over chiefly title had caused 'village life [to fall] apart. Violence became the norm and many people left the village fearing for their safety'.¹⁴⁰

There is also a related problem of the appropriate institution to adjudicate on rights to chiefly title—an issue that has been tossed backwards and forwards between the state courts of all levels and various *kastom* bodies for the past number of years.¹⁴¹ There are three major ways that are used in Vanuatu today to determine right to chiefly title: community election/appointment,¹⁴² the graded system (which generally involves killing pigs) and the hereditary or bloodline system. I found these systems to be used all over and fairly indiscriminately, with people claiming they were chiefs on the basis of one, two or three of these criteria. As one respondent puts it, at the moment, the system of chiefs is '*olbaot*' (all over the place). My favourite example of this is a chief from Santo who said, 'I am a *kastom* bloodline chief. My grandfather killed 1,000 pigs which made him a paramount chief and gave the right for all the generations that come after to call themselves chiefs.'¹⁴³ This man had managed to link the graded system, the hereditary system and the new concept of 'paramount' chiefs all together in his ancestry.¹⁴⁴

In an attempt to resolve the problems of conflicts over chiefly title, the Malvatumauri has at various times attempted to create a register of all the chiefs in Vanuatu; however, they have had enormous difficulty in finding what the criteria should be to register them.¹⁴⁵ A recent report suggests that this process has in fact exacerbated the problem of conflicts over chiefly title because '[m]any chiefs now appear to believe that being recognised as the rightful chief will convey significant future benefits, and the position is therefore more attractive'.¹⁴⁶

'Respek hemi lus' (Respect has been lost)

Many of the chiefs' previous sources of power are no longer workable: the State has a monopoly on the use of force, chiefs are no longer revered for their supernatural powers¹⁴⁷ and they often no longer have control over community land.¹⁴⁸ Consequently, chiefs today rely entirely on one fragile source of power: respect. The concept of respect is extremely important in Vanuatu. It involves living harmoniously and peacefully with others; looking after community and family members and the environment; observing social norms; participating in and supporting cultural practices; acting with appropriate behaviour; and honouring and obeying community leaders and also various kinship relations.¹⁴⁹ Respect has also been referred to as the cornerstone of the *kastom* system and the glue that holds society together. It is, however, currently under threat and

this is manifested in two major ways: people not obeying chiefly decisions and people refusing to come to meetings.

While everyone agrees that respect for chiefs has significantly diminished, and in some places has even been lost, there are a variety of opinions about the reasons for this. In general, the chiefs blame social changes such as increasing reliance on the cash economy, education and the younger generation lacking respect for their wisdom. A typical response from the chiefs was that '*yangfala ting se oli save moa bitim ol olfala*' (young people think they know more than old people). A variation on this was one chief, who said with a chuckle, '[W]e say, "More school, more stupid"!' ¹⁵⁰ Another major reason is that the chiefs say they are faced with people challenging them by saying that what they have ordered goes against the constitution or that their laws are not written down in 'black and white' and therefore do not have to be obeyed. Non-chiefly respondents, however, suggested a different range of reasons, citing many of the types of chiefly misbehaviour, discussed below. ¹⁵¹

Problems of enforcement of *kastom* payments

One of the major ways in which the diminishing respect for chiefs is manifested throughout Vanuatu is the growing difficulties chiefs are having in getting people to follow their orders or the decisions made during meetings. This was mentioned to be a problem by almost every chief interviewed, although the extent of the problem varied significantly. In some areas, it was reported that the non-following of chiefly orders was a compounding problem: the more people did not make *kastom* payments, the less other people felt compelled to do so.

The chiefs try to overcome this problem in a number of ways. Some tell people they can pay in food or mats instead of cash and others set time limits in which the payment must be made. Another approach is for the chief to tell other chiefs that the person has not made the payment and ask them to refuse to help that person if he or she later encounters trouble. ¹⁵² Others call on various representatives of the State to try to support them (usually this is the police, but in some instances other authorities are involved) ¹⁵³ or threaten to send the case to the courts. An alternative approach tried in Mele village is to have some younger educated men sitting with the chief on his council and this has apparently helped considerably in getting young people to respect the council decisions.

Orders to carry out community work would appear at first glance to be a way around the problem of non-payment of fines, but in practice it does not appear to work anywhere. Chiefs often mentioned that community work was a good idea, and that it had worked well during the time of the Condominium, but then gave various reasons as to why they did not use it. These reasons—such as the need to supply tools and food for the people doing it—seem to be a bit spurious.

Perhaps the real reason for it is closer to the insightful comment made by an old man to the effect that in the days of the Condominium people accepted community work but today the reaction of the younger generation is different: they do not feel comfortable exposing people to public shame. This means that if the chief gives an order to do community work, the people might challenge the chief.¹⁵⁴ It is for this reason that there is a push for councils of chiefs to be the ones who have the responsibility for overseeing community work, rather than individual chiefs.

Problems of people attending meetings

Another way the lack of respect manifests itself is that people do not attend *kastom* meetings. If the main parties do not turn up then the meeting has to be adjourned, with the inevitable result that the matter is not dealt with.¹⁵⁵ This problem is pervasive across Vanuatu. Chiefs deal with it in a variety of ways: fining people for not obeying them, sending the case to the police (which causes frustration when the police send it back), asking the police to bring people to the meeting, getting a higher chiefly council to look at the case and developing their own police force. They also use the threat of the State to help them, as is demonstrated by the following example:

There was a disagreement between the Council and some boys from one village. The Council had put down a rule that alcoholic drinks could not be sold near the vicinity of the Council house. But some boys set up a fundraiser in the vicinity and sold alcoholic drinks. I wrote to them and asked them to attend a meeting and they refused. So I sent another letter that threatened to involve the police from Ambae and so they came and I presided over the meeting.¹⁵⁶

Chiefly misbehaviour

The most common complaint respondents made about the *kastom* system was the problem of bias or favouritism by chiefs. In small-scale communities everyone is related in some way to each other, and indeed one of the strengths of the system is that it allows decisions to be made on the basis of a full understanding of all the people and surrounding circumstances involved in an incident. Today, however, there is considerable concern about chiefs favouring one side over the other due to political or religious alliances or a close family connection. This concern is most likely exacerbated by increasing knowledge about how the state system functions¹⁵⁷ and the importance placed on independence of the judiciary. As a consequence, disgruntled parties complain increasingly about chiefly favouritism (and use it as a justification for why they do not have to follow the chiefs' orders).¹⁵⁸ In the *kastom kot* observation study, six out of 20 respondents who answered the question stated that they considered the decision reached by

the chiefs in the meeting they had observed was not fair, and six out of 18 stated that they thought that the chiefs had been biased.¹⁵⁹

The other types of misbehaviour complained about are involvement in politics, not setting good examples with their own behaviour and breaking their own laws. For example, in one incident, a chief put a *tabu* on collecting trochus shell on the reef and then broke his own *tabu*, leading to a very tense situation. Traditionally, community leaders did not mix with other members of the community, even cooking on their own '*tabu* fire', and this preserved their mystique and authority. Today, however, they live with the community and are subject to the same temptations as community members, and are easily discovered if they transgress their own laws. Some further reasons for the decrease in the ability of chiefs to command respect include a perception that they are lazy in doing their work and some are considered to be greedy, as they will not hold meetings unless they are paid a sitting allowance.

An extreme example of chiefs failing to act as good leaders, and instead actually spearheading criminal activity, is the riots in Vila on 3 March 2007 that led to the deaths of three people. According to various reports, chiefs from Tanna ordered a man from Ambrym to be 'beaten into submission' to reveal the names of the people alleged to have committed black magic,¹⁶⁰ and at least one chief was behind the decision to go on a killing rampage, apparently 'urging the mob to this course of action saying the only way to deal with sorcery was to kill the sorcerers'.¹⁶¹ Other chiefs who tried to stop the riots were powerless to do so. According to the newspaper, 'The young people were adamant they would no longer listen to their chiefs because they had taken too long to solve the matter.'¹⁶² This in turn illustrates the limitations of the *kastom* system in urban communities in dealing with mob violence, as is also shown in the Santo incident in 2006 discussed above.

Lack of disciplinary mechanisms

The preceding section has shown that many of the weaknesses with the *kastom* system at present are related to individual chiefs losing respect through their own behaviour, as well as through circumstances beyond their control. This indicates that one of the main challenges facing the system is the ability to regulate the behaviour of individual chiefs and make them accountable for their actions.

Although there are a number of factors with the potential to keep a check on the chief's exercise of power—loss of community approval leading to expectation that the chief will resign; appeals to other levels of the *kastom* system; overruling of decisions made by chiefs by state courts; and the decision by other chiefs to remove a chief from his position—in practice, it is often extremely difficult to regulate the use of chiefly power. It is very easy for chiefs to hide behind

demands for respect to get away with acting badly or inappropriately. Further, other chiefs are often reluctant to interfere in the community of another chief out of respect. The Secretary-General of Torba Province states that when a chief is involved in a conflict then the conflict can easily get out of hand because other chiefs cannot deal with the problem and so they have to rely on the state system stepping in. Appeals to state courts, however, are not always possible due to access issues, and appeals to higher levels of the *kastom* system might also be problematic. For instance, one young respondent complained that the system of appeal was no help because often the same person would be sitting on the council at each level so you could never get an independent review of the first decision.¹⁶³ The Secretary of the Malvatumauri explained that often villages contacted the Malvatumauri in desperation because they were fed up with their chief who was causing problems in the village, but due to the lack of a developed structure of chiefly councils in many parts of the country, the Malvatumauri was often not in a position to be able to do anything to assist either.¹⁶⁴ Thus, although there is increasing need for ways to control the exercise of chiefly authority, there is currently no effective way to do so.

Chiefs and modern society

Further challenges to the *kastom* system today come from the multitude of changes posed by increasing modernisation. In addition to the effects of the state system discussed in the next few chapters, the increasing participation of the community in the cash economy rather than the *kastom* economy, over which the chief has considerable control,¹⁶⁵ and the development of a more individualistic mentality among community members, there is the increasing mobility of society and the issue of education and training. Traditionally, one of the factors encouraging people to follow a chief's orders was the limited opportunity to escape from the very small community of which he was the leader and the social ostracism that would follow from failing to obey. Today, however, wrongdoers can escape from the chiefs by taking a boat to one of the two towns, leaving the chiefs feeling powerless and frustrated.

The second challenge is that as society becomes increasingly educated by a Western-based education system, chiefs are having greater difficulties being respected and winning arguments against those more educated than themselves. Many are tired of being publicly humiliated or defeated by such people, commenting that they are able to '*trekem yu long wan foreign wei yu no save*' (trick you in a foreign way that you do not understand).¹⁶⁶ As a consequence, many chiefly respondents expressed a great desire for training in conflict management and to learn about how the state system worked.

The major problems within the *kastom* system identified above can be summarised as in Table 4.1.

Table 4.1 Problems within the *kastom* system

- Disputes over chiefly title are causing the system to break down in some parts of the country.
- Respect for chiefs is decreasing.
- Many chiefs in Vanuatu today experience difficulties requiring people to follow their orders and to attend meetings.
- Some chiefs engage in favouritism or bias in their work, are lazy and/or greedy and break their own taboos.
- Often there is no effective means to redress unfairness caused by chiefs or to regulate chiefly behaviour.
- Women and youth are denied a voice in some parts of the country and are discriminated against by the substance of the decisions made in many areas.
- Many chiefs have low morale and question their capacity to continue with their responsibilities in the face of increasing challenges from youth about their right to assert their authority.

Widespread support for the continuation of the *kastom* system

During the course of the fieldwork, although there were many criticisms of the *kastom* system, there was not a single person who advocated its abolition. The following reasons were given for liking the *kastom* system and for wanting it to continue to manage conflicts in Vanuatu. First, it is an indigenous system and thus has legitimacy in the eyes of the people. As one respondent said, '[W]e need our own system to straighten us. We cannot be adopting a foreign system because that will always bring friction.'¹⁶⁷ Second, the *kastom* system is accessible to everyone and can deal with matters quickly. This is particularly important in small communities where the tensions from an unresolved conflict can fester and cause further problems. Third, the *kastom* system is familiar for people and its procedures are understandable. An element of this is that in *kastom* everything happens in the same place and is dealt with by the same people, as opposed to the state system, where there are many institutions involved: police, prosecution, courts and prisons. Fourth, people feel that they are supported in the *kastom* system by their families and not isolated or publicly humiliated¹⁶⁸ as they are in the state system. Fifth, there is no stigma attached to being found a criminal as there is in the state criminal system.¹⁶⁹ Sixth, the *kastom* system is perceived to be cheaper than the state system, where people have to pay for lawyers and the courts.¹⁷⁰ Seventh, in *kastom* people receive compensation, but in the state criminal justice system they do not receive anything.¹⁷¹ Finally, the factor that was stressed by everyone was that in *kastom* at the end of the meeting the parties

were friends again, whereas in the state system people were still bitter towards each other because in *kastom* both parties 'won' whereas in the state system one 'won' and one 'lost'.

Women and the *kastom* system

The issue of how the *kastom* system treats women is controversial and viewpoints vary considerably. Generally, men were more inclined than women to state that the *kastom* system supported women; educated women were more inclined to be critical of the *kastom* system (although not uniformly) than uneducated women; and women from the south claimed they were treated more unfairly than the women from the north. There were a significant number of respondents, male and female, who stated that they believed that the *kastom* system did help women, that chiefs listened well to women and assisted them and that women felt comfortable using the *kastom* system. There were, however, also many who complained about the way the *kastom* system treated women. This section will discuss first of all some of the major ways in which the *kastom* system is said to disadvantage women and then examine the ways in which it is said to support women or has the potential to do so.

In many areas, women participate actively and vocally in *kastom* meetings,¹⁷² but in a considerable number of communities, women's participation is either limited or non-existent. As discussed above, in some areas, women are not permitted to speak in *kastom* meetings. In relation to Tanna, Lindstrom states that '[w]omen and young men generally remain in the audience. They lack personal qualifications to make statements; these belong to socially powerful men.'¹⁷³ Lindstrom further observes that 'meetings are a procedure that reproduces relations of inequality and power'.¹⁷⁴ In other areas, although women are *permitted* to speak, they are often inhibited from doing so due to shyness or because they are afraid of being laughed at or spoken to roughly or questioned in public about private matters. There is also the problem that, as one respondent said, 'women talk but they are not heard'.¹⁷⁵ One respondent told me that women often felt there was no point speaking because they knew they would always be blamed anyway, especially in cases of sexual assault and adultery.¹⁷⁶ The problem of not being heard is demonstrated in a case study from Lindstrom's work in Tanna:

Tonga had gone over the head of her in-laws to ask Rapi, the big-man of a neighbouring village to convene and witness a meeting. Her agenda (complaints against in-laws for not helping her with childcare; against her husband for not building her a decent house and for adultery) were only fleetingly raised by discussants. Rapi, and other witnesses who closed the debate, enunciated and redirected the problem to be an uppity daughter-in-law.¹⁷⁷

There is also a perception that women are often fined more heavily than a man or punished for conduct for which a man would not be punished. For example, one young man reported that if a girl and a boy had sex then the chief would tend to punish the girl and say that it was her fault for causing the problem, when it was just as much the boy's fault.¹⁷⁸ The Director of the Vanuatu Women's Centre stated that there were many cases where the chiefs in Vila sent women back to the islands because they had extramarital affairs, but they rarely sent men back who did the same thing. She gave the following example:

We had a case where there was a woman who had left her husband about 3 years before and [had] come to Vila. She would go back and visit the man and the children sometimes. Then she met a new man in Vila and wanted to be with him. The chiefs held a meeting and said that she had to go back to the island. But the chiefs didn't know that the woman's husband was diabetic and thus impotent which made him very frustrated and aggressive.¹⁷⁹

There were mixed views about the extent to which chiefs were prepared to deal with domestic violence and sexual abuse.¹⁸⁰ A number of women said that the chiefs did listen to them and lectured their husbands and fined them, but that the men did not listen to the chiefs and continued with their abuse. The majority of women, however, were of the view that chiefs did not act enough in cases of domestic violence. The Director of the Vanuatu Women's Centre stated, '[W]e have not yet seen active support by the chiefs to deal with sexual abuse and violence against women.'¹⁸¹ In many places, it is accepted that it is only if the woman is seriously injured, or if the beating occurs in public, that the chiefs will do something. This is illustrated by one of the 'by-laws' in a village in Maewo: '*yu no save kilim waef blong yu long yad blong narafala man*' (you cannot hit your wife in the yard of another man).¹⁸² Some respondents said that some chiefs blamed women for domestic violence.¹⁸³ For example, one respondent said that if a man beat his wife because she was complaining to him all the time, or did not have dinner ready on time, some chiefs would authorise the man to beat her and would make the woman pay a *faen*. One woman reported that a chief had said to her in such a situation: '*yu yu woman, ples blong yu hem i blong mekem evri wok long haos*' (you are a woman and it is your job to do all the housework). Chiefs are said to be sympathetic to the men because they are their friends or because they are also a man. One respondent commented, '*[O]li yusem kastom blong stan bihaen*' (they hide behind *kastom*).¹⁸⁴ Another woman observed that chiefs favoured men because they did not want to be seen to be putting the man down, as this would harm the chief's reputation in the community. Women are also often blamed, rather than supported, for having a '*pikinini blong rod*' ('child of the road'—an illegitimate child).

A less widespread, but extreme problem is that in some areas women are treated as chattels by the *kastom* system. For example, sometimes women or girls are given away as part of *kastom* payments—hence the title of this chapter.¹⁸⁵ A young actor recounted the following incident:

Last year there was a case involving two men in a boat and one killed the other. No-one knew what had happened, but then one night the man was drunk and told his wife that he had blood on his hands but not to tell anyone. She went straight to her family and they went to the chiefs who put out the word that they would '*katem nek blong hem*' [cut his neck]. The man heard this and became very frightened and so instead of having a meeting, he just made a '*sori*' instead and gave a girl from his family to the other side.¹⁸⁶

A police officer in Tanna confirmed that a way of making peace was to give a woman to replace the life that had been taken.¹⁸⁷ The practice also exists in Malekula¹⁸⁸ and in Erromango—not just for murder but for adultery. One man explained that if he took someone's wife then he must give that person his daughter to '*talem mi sori*' (say sorry). He explained, '*Mining blong hem big wan: mi spoelem property blong yu, mi mas givim wanem we mi bin stilim*' (The significance of it is important: I am saying that I have spoiled some property of yours and so I am giving back what I have stolen).¹⁸⁹ In some areas, if a woman runs away from her husband and a bride price has been paid, the chief will force her to go back, as the belief is that a man owns a woman if he has 'paid' for her.¹⁹⁰

Finally, there are very few places where women are involved in decision making in the *kastom* system. This is problematic because, as one respondent explains, men do not understand the life of a woman. There are a few exceptions to this. In Vanua Lava, there is a female chief who was elected a few years ago¹⁹¹ and also one in Mere Lava. Some villages or areas also have certain women who act as spokeswomen for other women inside the councils, and sometimes the chief's wife acts informally in this capacity. In Dillons Bay, the main town in Erromango, there is a women's representative on the chiefly council. Her role is to act as a link between the chiefs and the women of the community, bringing up issues at the council meetings that women want discussed and passing on decisions and so on to the women.¹⁹² She said that her role was good because many women found it hard to explain their thoughts to men but they felt comfortable going through her. She is, however, only one woman against many men, so if the men do not want to hear what she has to say, they do not listen and they become angry with her.¹⁹³

Despite these many ways in which women are discriminated against by the *kastom* system, there is a vast amount of support by women and women's groups in general for the *kastom* system. The general view is that there are problems,

but these can be fixed and are worthwhile fixing because the alternative—reliance on the state system—also has its problems and does not have many of the advantages of the *kastom* system. I spoke with a number of representatives of women's groups at a national and a regional level and they all affirmed the fact that the chiefs at an individual level were very receptive to their awareness-raising work and supportive of many of their projects and ideas.¹⁹⁴ The head of the Vanuatu National Council of Women stated that the *kastom* system would be preferable to deal with a woman's complaints than the state system, provided the right person was the chief.¹⁹⁵ The Director of the Vanuatu Women's Centre stated that since they had started working with communities they had never been thrown out of a village, and often they found that after they had held their awareness-raising sessions the chiefs were very grateful and said that they had been wrong in their preconceptions about the work they did.¹⁹⁶ She was, however, at pains to contrast the receptive and open-minded response of chiefs at a village and provincial level with that of chiefs at a national level, who had not made any public declarations in support of women.

Youth and the *kastom* system

The initial hypothesis was that the *kastom* system was unfair to youth, particularly because some oft-repeated rhetoric was that the chiefs did not understand young people and that young people did not respect chiefs and were '*strongheds*' (troublemakers). This study found that in fact the situation was more complicated than either of these two stereotypes suggested and that although there were significant problems with its treatment of youth, there was also a great deal of support for the continuation of the *kastom* system by young people in Vanuatu today.

One of the major problems for youth in the *kastom* system is in having their voices heard. For example, in Tanna and Aniwa, young people cannot speak on their own behalf in meetings, but have people speaking for them.¹⁹⁷ Even when they have the right to speak, however, there are still often difficulties with communication. Thus, the Director of Youth and Sports stated that young people had trouble being heard by their elders and were often not trusted by them. There are no special procedures for dealing with youth in the *kastom* system, but in many places the chiefs say they just give the youths a warning or a lecture rather than a *faen*. Young people also complain that the chiefs do not do anything for young people to deter them from committing criminal activities, such as providing sporting and employment opportunities. This is a point also made by Bolton, an anthropologist, who argues that 'if older people want younger people to stay in the islands they have to have things for them to do which are interesting. In the past, ritual and ceremony kept life buzzing. Young people had a lot of objectives and goals, because they had to achieve certain status.'¹⁹⁸

The common response that young people gave when asked to respond to the accusation that they did not respect chiefs was that the chiefs should act in a way that deserved respect and they would give it to them. They complain that many chiefs are biased and double faced: telling the youth to behave and then behaving in inappropriate ways themselves. They also felt that many chiefs were concerned only with getting money from the parties and not with making justice.

The attitude of youth towards the future of the *kastom* system was generated by a quantitative survey.¹⁹⁹ The major finding was that youth wanted chiefs and courts involved in dealing with criminal conflicts. Ninety-three per cent of respondents stated that if they were involved in some kind of trouble they would prefer the chiefs to deal with it rather than the courts.²⁰⁰ When asked whether they would want the courts or the chiefs to deal with a person who made trouble for them, however, the results were far more even—with 57 per cent preferring chiefs and 43 per cent the courts.²⁰¹ They were also asked whether they thought the courts or the chiefs should deal with a range of different types of offences and the answers showed that generally they felt that chiefs should deal with the less serious offences, such as small-scale theft and assault, and also domestic violence. They were roughly evenly divided about who should deal with cases of drunkenness, but overwhelmingly wanted the courts to deal with cases of large-scale theft, rape, murder and underage sexual intercourse.²⁰² The results can be seen in Table 4.2.

Table 4.2 Survey of attitudes of youth in Vanuatu (n = 150) ²⁰³

Type of offence	Prefer chiefs to deal with it (%)	Prefer state system to deal with it (%)
Small-scale theft	86	12
Assault	70	30
Domestic violence	67	33
Drunkenness	52	46
Large-scale theft	15	86
Rape	18	82
Murder	4	95
Underage sexual intercourse	13	85

The research therefore shows that there are some respects in which the *kastom* system is unfair to youth, particularly in relation to giving them a fair hearing. It also shows, however, that young people support the *kastom* system in principle and want it to continue, with the state system, to play a role in managing conflicts in the future. In this respect, it confirms the findings of the Juvenile Justice Project.²⁰⁴

Conclusion

This study has demonstrated that the *kastom* system plays a fundamental role in conflict management in Vanuatu today. On a practical level, it is the first, and often the only, level at which the majority of conflicts are dealt with in rural and urban areas. Given the weakness of the state system, the *kastom* system is thus critical to the maintenance of law and order in Vanuatu today. Second, on an ideological level, the whole population views the *kastom* system as being *their* system, one that they understand, find accessible and consider legitimate, even while recognising that it requires reform. It was notable that even the majority of women and youth, two groups that were often discriminated against or marginalised by the system, strongly supported its continuation.

There is an extraordinary variety in the procedural and substantive features of the *kastom* system throughout the archipelago. The range of procedures used—from basic mediation through to almost autocratic decision making—is another reflection of the Melanesian genius for diversity, which is discussed in Chapter 1. Despite this variety, however, it is possible to clearly identify several core principles that form the base of the *kastom* system throughout Vanuatu: the emphasis on respect and on restoring relationships; the holistic approach to the conflict; the prioritising of community harmony; the importance of public talking and community participation; and the notions of reciprocity, shame, feeling *sori* and balance. These are the features that allow ni-Vanuatu to distinguish ‘their’ system from the state system, even while simultaneously separating ‘their’ *kastom* from that of a person from a different *ples*.

This study has also shown that the *kastom* system today is weak and in need of reform. In much of the rest of this study, the argument will be made that the *kastom* system needs to be given more capacity and recognition. It is, however, currently facing many serious challenges and if it is not given more support in the near future, it might no longer be able to take on a greater role or even continue doing the work it currently performs. The Secretary of the Malvatumauri recently stated:

If you ignore, if donors ignore the chiefs, then the possibility of something happening like in the Solomons is increased, yeah, that is what we see. That is why we try very hard to make the donors

understand that they must support us, that you must support the traditional systems as well.²⁰⁵

In this regard, Nelson's comments in the context of Papua New Guinea are also pertinent. He argues that the broad terms of 'fragile' and 'weak' are concerned most with institutions of central government and so are the strategies for strengthening them. There has been less consciousness of the radical changes that have been taking place in the traditional systems, but it should be recognised that '[w]eakness, fragility and failure occur in the traditional systems of village government'.²⁰⁶

The most obvious weakness of the *kastom* system today is the erosion of respect for chiefs and the decisions made by them, leading to problems of enforcement, but this could be seen as symptomatic of many other problems with the system. The erosion of respect is due in part to systemic issues beyond the control of any one individual, such as the forces of modernisation and the operation of the state system—as discussed in the next two chapters—but also to the behaviour of individual chiefs. There is a widespread perception that many chiefs are biased, and there are also frequent problems with chiefs who break their own *tabus* or who are lazy or incompetent in some way. This leads to an erosion of respect for the chiefs, in turn discouraging chiefs from doing their best, thus perpetuating a downwards spiral. A major factor in this cycle is the current absence of an effective way for a community to free itself of such chiefs. The introduction of such a mechanism, as well as improved processes to determine legitimate claims of chiefly title, are important challenges that must be taken up, in addition to any reform of the relationship the *kastom* system has with the state system.

In light of the above, it is fortunate that one aspect of the *kastom* system that has come out very strongly through the research is the enormous capacity for, and willingness to, change on behalf of the chiefs. This flexibility and dynamism, together with the firm platform of community support for the *kastom* system, augur well for its ability to overcome the many challenges it faces.

ENDNOTES

¹ The chapter subtitle is the order of *kastom* payments that is used by some chiefs and chiefly councils.

² Chiba (*Asian Indigenous Law*, p. 7) describes these as 'a value principle or value system specifically connected with a particular official or unofficial law, which acts to found, justify and orient the latter'. See also Shah, *Legal Pluralism in Conflict*, pp. 2–7.

³ Garu, Selwyn and Yaken, Jack 2001, *Chiefs' Legislation Project Report*, Ministry of Internal Affairs.

⁴ The word '*nakamal*' in Vanuatu is used to refer either to a cleared area near the chief's house or near the central banyan tree in a village, which is used as a meeting place, or else to the meeting house itself. In Efate and the Shepherds, the term '*nasara*' is often used rather than *nakamal*, but it has the same meaning.

⁵ For example, *kastom medicine* refers to traditional approaches to healing and *kastom dress* refers to the types of clothing that were worn before the arrival of the Europeans. I have not referred to *kastom law*, as might seem consistent with these other two examples, first because it would be unnecessary as

this is provided by the context of the study (for the same reason I refer to the state system rather than the state system of criminal justice), and second because for ni-Vanuatu the legal system is not something apart and separate from other aspects of life. As Narokobi says, '[L]aw is not quantifiable as an autonomous institution, but is an aspect of the total way of life of the people.' Narokobi, Bernard 1989, *Lo Blong Yumi Yet*, p. 3.

⁶ Hess, Person and place on Vanua Lava, Vanuatu, p. 196.

⁷ Pospisil, Leopold 1974, *Anthropology of Law: A comparative theory*, p. 98.

⁸ Indeed, in my position as a lecturer at the University of the South Pacific, I teach 'the common law criminal justice system' to students from 12 different jurisdictions.

⁹ Franz and Keebet von Benda-Beckmann ('The dynamics of change and continuity in plural legal orders', p. 18) also comment that 'there may be system-internal pluralism in the sense that the same legal system may contain duplicatory regulations of the same set of activities or domains'.

¹⁰ For example, the *National Council of Chiefs Act (2006)* establishes a uniform system of island councils of chiefs and urban councils of chiefs throughout Vanuatu. This act is discussed in greater detail in Chapter 5.

¹¹ Griffiths, 'What is legal pluralism?', p. 36.

¹² Woodman, 'Ideological combat and social observation', p. 54.

¹³ von Benda-Beckmann, Keebet 2002, 'The contexts of law', *Legal Pluralism and Unofficial Law in Social, Economic and Political Development: Papers of the XIIIth International Congress of the Commission on Folk Law and Legal Pluralism, 7–10 April, 2002, Chiangmai, Thailand*, p. 299. See also von Benda-Beckmann and von Benda-Beckmann, 'The dynamics of change and continuity in plural legal orders', p. 18. Woodman (in Allott and Woodman, *People's Law and State Law*, p. 18) also argues that state laws are 'neither internally self-consistent logical systems nor clearly bounded from other normative orders'.

¹⁴ Keebet von Benda-Beckmann, 'The contexts of law'.

¹⁵ Seymour-Smith, Charlotte 1986, *The Macmillan Dictionary of Anthropology*, p. 275.

¹⁶ Discussed in further detail in Chapter 5 under 'The relationship between the prisons and the *kastom* system'.

¹⁷ 'Vanuatu: chiefs step in to end jail-break impasse', *Pacific Beat*, 10 May 2006, <<http://abc.gov.au/ra/pacbeat/stories/s1635039.htm>>

¹⁸ Chanock, Martin 2000, 'Introduction', in Sally Moore (ed.), *Law as Process*, p. xviii.

¹⁹ It is not possible to quantify the exact percentage of cases dealt with by each system due to the lack of accurate record keeping in the *kastom* system. Anecdotal accounts suggest that the percentage dealt with by both systems varies throughout the country depending on the accessibility of the state system, but 80–90 per cent of cases dealt with by the *kastom* system was the most common estimate by key actors from both systems.

²⁰ For example, the Efate Island Council of Chiefs, the Vaturisu, includes chiefs from the offshore islands of Nguna, Pele, Lelepa, Moso and Emau.

²¹ For example, in Penama, the different levels of councils have been called the 'Penama system' by the province. When chiefs were asked about whether this was a new system or just a new name, however, they were vague in their responses, just suggesting that the general idea had been there before. Although such initiatives are often welcomed by the chiefs and communities involved, they can also cause problems as, for example, occurred in Ambae when the Penama system effectively cut across the authority of the locally developed Lakalakabulu Council of North Ambae.

²² For example, the *National Council of Chiefs Act 2006*, which establishes a structure of chiefly councils headed by the Malvatumauri. This act is discussed in greater detail in Chapter 5.

²³ Who may or may not be a chief in his or her own right, but is often a more minor chief than the 'real' authority on the island.

²⁴ For example, there is a town council of chiefs from East Ambae in Vila and also one for South-West Bay, Malekula, as well as many others.

²⁵ The only council that I came across that did not do this was the Lakalakabulu Council of North Ambae, which insisted that only its members act as decision makers.

²⁶ For example, in Dillons Bay, Erromango, the Dillons Bay Council of Chiefs comprises chiefs from different communities.

²⁷ See Chapter 6 under 'Dispute and confusion over jurisdiction'.

- ²⁸ This is very common at the village level for minor offences.
- ²⁹ This is very common at the area level and above.
- ³⁰ This is another variation found at area and ward levels.
- ³¹ This pattern is found in Tanna.
- ³² This is often the pattern found at the ward level, where a village chief cannot deal with the matter and so calls some chiefs from neighbouring villages to help him.
- ³³ This occurs in Dillons Bay, Erromango.
- ³⁴ This occurs in Mele, Efate.
- ³⁵ For example, in Mele and Nguna.
- ³⁶ For example, in Erromango in Dillons Bay, if a person has a problem they give vt200 to the chief and register their name.
- ³⁷ In Nguna, the chiefs will collect information before a meeting is held and hold a meeting only if there is enough evidence.
- ³⁸ A chief in a town council of chiefs told me about a case involving a man who had an affair with his sister-in-law. The village chief first dealt with the matter but the man did not agree with the decision so it went to the area council. At this meeting, the council allowed the family of the cuckolded man to beat up the defendant. The council also ordered the man to pay vt20 000 and a cow and a head of kava. The man appealed to the town council, which upheld the decision to make the man pay vt20 000 but rescinded the obligation to pay for the cow and the kava because he had been beaten. The chairman explained that normally it was not permitted to fight in the *nakamal*, but the family involved was from Tanna and that was their *kastom*.
- ³⁹ Interview with a senior police officer (Santo, 18 November 2004).
- ⁴⁰ A traditional meeting house or place (see the introduction section).
- ⁴¹ This no longer happens in many communities, particularly not those living in urban areas.
- ⁴² Interview with a man from Ambae (Port Vila, 15 March 2004).
- ⁴³ As in the state system, it is often not necessary to determine guilt as the defendants accept they have misbehaved, but increasingly people are challenging the complaints against them. In the *kastom kot* observation study, roughly one-third of the defendants denied they had done something wrong.
- ⁴⁴ Interview with Carlos Mondragon, an anthropologist who lived in the Torres for three years (Port Vila, 21 July 2004). The importance of 'rhetoric' in conflict management is also highlighted by Santos (*Toward a New Legal Common Sense*, p. 86), who argues that it is a structural component of the law and defines it as 'not only a type of knowledge, but also a communication form and a decision-making strategy based on persuasion or conviction through the mobilization of the argumentative potential of accepted verbal and non-verbal sequences and artifacts'.
- ⁴⁵ Hess, Person and place on Vanua Lava, Vanuatu, p. 203.
- ⁴⁶ Tafea Province comprises the southern islands of Tanna, Aniwa, Futuna, Erromango and Aneitym.
- ⁴⁷ One planned research methodology for this study was to attend and observe *kastom kot* meetings. Unfortunately, I was not able to attend *kastom* meetings personally except on one occasion. This was due to the fact that as *kastom* meetings did not occur at regular and predetermined times and places, the only way to attend such meetings was for someone involved in them to contact me and tell me that they were on. As I spent only short periods outside of Vila, I was not in a village at any time such a meeting occurred. In Vila, despite continued requests to participants and organisers of such meetings, I was not invited to any *kastom* meetings. To overcome this, law students and VCC fieldworkers were engaged to observe *kastom* meetings in their villages and then to record their observations on a form I devised. A number of anthropologists were consulted about the wisdom of this and they all agreed that as long as account was taken of the fact that it would be a perception of what was happening, it would be an interesting methodology to try. Twenty ni-Vanuatu law students were engaged before their long summer break. I had a meeting with them to discuss my research and what I wanted them to do. Unfortunately, only two of them gave me back completed forms. I also gave the forms to about 60 fieldworkers from the Vanuatu Cultural Centre (fieldworkers were ni-Vanuatu who were engaged by the VCC to collect cultural material from the community they reside in. They come from all around Vanuatu and gather together at a workshop once a year to present their findings as a group). In the end, I received reports of 24 different *kastom* meetings. These reports are referred to throughout as the *kastom kot* observation study.
- ⁴⁸ All the cases where the women were not allowed to speak occurred in Tafea Province.

⁴⁹ In the *kastom kot* observation study, the parties talked for themselves in 66 per cent of cases. In 16 per cent, both parties were represented and in 12 per cent of cases the male party spoke but the youth or woman who was the other party was represented.

⁵⁰ So they will, for example, ask a question to a group that represents another village, but the other party will know the question is intended for them and answer either directly or indirectly. This indirect questioning is also a way of showing respect. In Erromango, this technique is often used where youth are involved: the chief will speak harshly to the father but the youth will know that the criticisms are intended for him or her.

⁵¹ Hess also states that '[w]hen talking about taboo topics, such as sex, shame, conflict...or mistakes, people often use euphemisms'. Hess, Person and place on Vanua Lava, Vanuatu, p. 212.

⁵² See, for example, Hess's comments in relation to Vanua Lava. Hess, Person and place on Vanua Lava, Vanuatu, p. 203. See also Lindstrom, 'Straight talk on Tanna'.

⁵³ Greenhouse, 'Mediation'.

⁵⁴ Interview with a man from Ambae (Port Vila, 15 March 2004).

⁵⁵ Interview with a man from Erromango (Erromango, 18 May 2004).

⁵⁶ Interview with a man from North Pentecost (Port Vila, 30 August 2004).

⁵⁷ Some people said that the judges in the *nakamal* were the four men who represented the four '*kastom* roads' that were the ways out of the village to places beyond. Others said there was no judge, while yet others said that the chief of the village was the judge.

⁵⁸ Originally, the side that managed to get the most support would 'win' regardless of the merits of the case, but now the system is moving more towards having decisions made based on what is said in the meeting.

⁵⁹ Hess, Person and place on Vanua Lava, Vanuatu, p. 201. She remarked, however, that at the end of the meeting she observed, although the chairman kept insisting that he was not making a decision, 'he still made everybody follow his vision of the outcome of the meeting' (pp. 216–17).

⁶⁰ The nature of this payment is discussed more in the section under 'The restorative nature of the *kastom* system' (this chapter).

⁶¹ There are many different types of pigs, all with different values. The most valuable are those pigs with rounded tusks, which have been developed by knocking out the pig's two upper incisors. As the bottom incisors grow they curve around and gradually pierce the cheek to grow back inside and form a full circle. Of course, pigs that have tusks like this cannot eat normally and must have someone (normally a woman) prepare a mash for them to eat. To produce a pig with fully rounded tusks takes about seven years.

⁶² In 2007, the Year of the *Kastom* Economy, there were initiatives to discourage the use of cash in *kastom* payments.

⁶³ In the *kastom kot* observation study, the decision in almost all the cases was that payments had to be made and there were also orders made such as: a boy should not go near a particular girl; a person should not go near a piece of land belonging to another person; a man should stop assaulting his wife; another man should leave his mistress and return to his wife; and in a witchcraft case a man had to touch the Bible.

⁶⁴ Many respondents stressed that the fact that in *kastom* there was no presumption of innocence.

⁶⁵ Interview with a man from North Pentecost (Port Vila, 30 August 2004).

⁶⁶ Interview with a man from Erromango (Erromango, 18 May 2004).

⁶⁷ Discussed in Chapter 1 under 'Religion and denomination'.

⁶⁸ Interview with a man from North Pentecost (Port Vila, 11 May 2004).

⁶⁹ Interview with a chief from Vanua Lava (Vanua Lava, 23 October 2003).

⁷⁰ Interview with a chief from Ambae (Ambae, 29 September 2003).

⁷¹ This question was not answered in 20 per cent of cases.

⁷² Interview with the Assistant Secretary in Torba Province (Vanua Lava, 23 September 2003).

⁷³ Interview with a chief from Vanua Lava (Vanua Lava, 21 October 2003).

⁷⁴ Interview with Carlos Mondragon, an anthropologist who had lived in the Torres Islands, north Vanuatu, for three years (Port Vila, 21 July 2004).

⁷⁵ Traditional food cooked in a ground oven.

⁷⁶ For example, in Santo, the disputing parties are often told to make a *laplap* (a traditional meal cooked in a ground oven) for each other.

⁷⁷ For example, Dinnen, Sinclair and Jowitt, Anita (eds) 2003, *A Kind of Mending: Restorative justice in the Pacific islands*.

⁷⁸ See also Hess, Person and place on Vanua Lava, Vanuatu, pp. 201–2.

⁷⁹ This word can also be spelled 'sore'.

⁸⁰ Hess, Person and place on Vanua Lava, Vanuatu, pp. 85–7.

⁸¹ Interview with a man from Erromango (Erromango, 18 May 2004).

⁸² Interview with a chief from Erromango (Erromango, 20 May 2004).

⁸³ In some cases where this does not occur the avoidance becomes semi-permanent, lasting decades, and is often how new villages and new churches are formed. For example, in 2004–05, there was a dispute over chiefly title and religion in the village of Siviri on the island of Efate. As a consequence, one group moved inland and established a new village, Malafau.

⁸⁴ Hess, Person and place on Vanua Lava, Vanuatu, pp. 87–8.

⁸⁵ Interview with a man from Ambae (Port Vila, 15 March 2004).

⁸⁶ Interview with Port Vila Town Council of Chiefs (Port Vila, 26 May 2004).

⁸⁷ Ibid.

⁸⁸ Lindstrom, *Achieving wisdom*, p. 109.

⁸⁹ Ibid.

⁹⁰ Another example is when someone has stolen a particular item of property, such as a chicken, they will be told to return the chicken.

⁹¹ Interview with an Efate chief (Port Vila, 21 March 2007). This is also discussed in the case study in Chapter 6.

⁹² This case also illustrated the practice of the victim's family assaulting the defendants before a meeting because in this case the husband got a group of his boys together and they went and fought the three boys. The police were notified but they went and asked a high chief if he could resolve the situation, so he called a meeting. It seems that the fighting was not even discussed; rather, the subject of the meeting was the cause of the fighting: the woman's affairs.

⁹³ It is also possible that the *sori* is made by people other than the offender, such as the offender's family or chiefs. For example, in 2007, the father of a boy who was killed in the 3 March riots accepted a *kastom* apology from members of the Tanna community in Santo. See Waiwo, Elenor 2007, 'Father accepts sorry for son's death', *Vanuatu Daily Post* (Port Vila), 10 March 2007, p. 6.

⁹⁴ Garae, Len 2004, 'Vaturisu says Ambae chiefs set example', *Vanuatu Daily Post* (Port Vila), 7 October 2004, p. 3.

⁹⁵ A similar point is made by Sally Falk Moore ('Treating law and knowledge', pp. 32–3), who writes, 'I would argue that the "social equilibrium" presentation of African disputational logic is a mixture of African self-idealization and colonial/anthropological political theory. It is also not without some foundation in fact, but it is a well-edited version of the facts. According to this interpretation of "traditional life", the disputants are obliged to work out mutually agreeable settlements because they are fated to go on living together in the same community. Collective pressures encourage them to achieve a harmonious settlement. That is surely sometimes a part of the story, but it is emphatically the view from the outside. As I have written elsewhere on the question of collective liability, the view from the inside is of a much more competitive, much less harmonious entity. Within these groups there are factions and sub-segments and individual interests. There are superiors and inferiors. There are more and less powerful persons in these communities, and they can mobilize more or fewer individuals in the local political arena. Individuals can not only be discredited, they can be expelled. What appears to be an equilibrium from the outside is often a temporary moment of agreement in which a dominant segment of the group has prevailed and everyone recognizes that predominance and acquiesces in all public behaviour. This is what often gives the appearance of unanimity to collective decision making.'

⁹⁶ For example, the man Tanna/man Ambrym riots discussed below under 'Chiefly misbehaviour'.

⁹⁷ Interview with a chief from Emae (Port Vila, 22 September 2004).

⁹⁸ Binihi, Ricky 2006, 'Family Ulas prepared to leave Luganville', *Vanuatu Daily Post* (Port Vila), 3 August 2006, p. 6. This incident is discussed in more detail in Chapter 6 under 'Dispute and confusion over jurisdiction'.

⁹⁹ The chiefs were charged with damage to property but they argued in their defence that they had the right in *kastom* to retaliate in this way. The magistrate dismissed this argument. I asked the Public Prosecutor who recounted this incident to me whether there was a copy of this judgment but she told me that the magistrates did not write down their judgments.

¹⁰⁰ I was told it was essential to ensure peace and harmony inside the community almost as much as the fact that in *kastom* both parties 'won'.

¹⁰¹ Lini, Hilda Motarilavo 2006, Indigenous laws and *kastom* system, Paper presented at the Vanuatu Judiciary Law Conference, Port Vila, 2006, p. 2.

¹⁰² This belief often appeared incongruous given the extremely peaceful and sleepy appearance of most villages in Vanuatu.

¹⁰³ See the comment about 'dividuality' in Endnote 10 in Chapter 6.

¹⁰⁴ See Chapter 1 under 'Place' for a discussion of islandism.

¹⁰⁵ Interview with a man from Ambae (Port Vila, 15 March 2004). He went on to note that to some extent this had changed now.

¹⁰⁶ Interview with a judge (also a chief) (Port Vila, 20 August 2004).

¹⁰⁷ Ibid.

¹⁰⁸ Sillitoe, *An Introduction to the Anthropology of Melanesia*, p. 149. See also the discussion in Chapter 2 under 'The legal anthropological approach' on the place of norms in customary legal systems. Gordon and Meggitt commented that the influence of Malinowski, who derided any study or analysis of 'codes, courts, and constables', also contributed to the scholarly focus on the broader field of processes of social control rather than the analysis of customary law in Melanesia. Gordon, Robert and Meggitt, Mervyn 1985, *Law and Order in the New Guinea Highlands*, p. 192.

¹⁰⁹ This development is discussed in further detail under 'The dynamism of the *kastom* system'.

¹¹⁰ These range from the people with whom one can have sexual relations to the different types of behaviour one should adopt with different members of the family—for example, the prohibition in some areas on brothers and sisters talking to each other once they have reached puberty.

¹¹¹ The *namele* is a type of cycad and its leaves are used to mark *tabu* places. Its importance is shown by the fact that it appears on the Vanuatu national flag.

¹¹² This is a wide-ranging notion that includes the prohibition on women drinking kava in some places, a woman not being allowed to be in a tree that men pass underneath and people speaking out of turn at meetings. Respect is discussed further under "'*Respek hemi lus*" (Respect has been lost)'.
¹¹³ In *kastom*, the idea of consent—central to the state crime of rape—was not considered an issue. What was problematic was sexual intercourse outside societal boundaries, such as adultery and cross-kinship sexual relations. Today, many chiefs use the word 'rape' when in fact they are not referring to forced intercourse but for forbidden intercourse (because the parties are not married, for example), but some use it to mean '*fosem woman*' (force the woman).

¹¹⁴ The by-laws that have been written suggest there is a lot of differentiation in relation to the *kastom* laws relating to kinship and respect but this could result from the differing judgments of the people who wrote them down as to what should be included.

¹¹⁵ Respondents often talked about 'our *kastom*' and 'their *kastom*', but when pressed as to the differences they would mostly respond that the quantum of the fine was different in different communities.

¹¹⁶ Interview with a chief from Efate (Port Vila, 21 March 2007).

¹¹⁷ Freedom of movement and freedom of religion are the principal problems.

¹¹⁸ There were of course many general comments to the effect that it did not sufficiently reflect the cultural context of Vanuatu.

¹¹⁹ This is discussed further in Chapter 5.

¹²⁰ Interview with Chief Justice Lunabek (Port Vila, 7 February 2002).

¹²¹ Maxime Korman, former Prime Minister of the Republic of Vanuatu (Author's notes from the Conference on *Kastom* and the Constitution, University of the South Pacific, Emalus Campus, Port Vila, Vanuatu, 4 October 2004).

¹²² The latest move in this direction is the *National Council of Chiefs Act 2006*, discussed in Chapter 5.

¹²³ People also often say that the conflict '*mas ko long nekis level*' (must go to the next level) or else '*tekem nekis step*' (take the next step).

¹²⁴ A group of chiefs (Author's notes from the Vanuatu Judiciary Conference, University of the South Pacific, Emalus Campus, Port Vila, Vanuatu, 26 August 2006).

¹²⁵ Interview with a chief from Nguna (Nguna, 31 October 2003).

¹²⁶ See in particular the comments about the appeal structure for the Customary Land Tribunals in Simo, Joel 2005, *Report of the National Review of the Customary Land Tribunal Program in Vanuatu*, Vanuatu Cultural Centre, p. v.

¹²⁷ See Malvatumauri, 'Kastom polisi blong Malvatumauri'. The impetus behind making by-laws also comes from the provincial governments, as they are given power under the *Decentralisation Act* (Cap 127) to make regional laws, which also includes criminal offences. Provincial administrators in Penama and Torba Provinces mentioned that they were involved in collecting chiefly by-laws.

¹²⁸ Interview with a chief from Nguna (Nguna, 31 October 2003). See also Larcom ('Custom by decree'), who discusses the power of the written word in local communities in Malekula.

¹²⁹ For example, in Mota Lava, they have included penalties for killing someone. They said this was because the last time someone was killed the police came and took the suspect and he was tried and all he was given was a suspended sentence. The family of the victim waited and waited for the man to pay 'sak' (compensation for the 'head' of the person who was killed) but it never came. They therefore want to be prepared to deal with these cases in future. They said they had the right to deal with these cases because Father Walter Lini had told them chiefs should deal with cases of murder rather than sending them to the police (Interview with a chief from Mota Lava, Mota Lava, 21 October 2003).

¹³⁰ In Mele, for example, there are village police who even wear a special uniform and who work on behalf of the chief to provide security and to take statements from people making complaints. I asked why they wore a uniform and they told me that the effect of this was to '*mekem spirit blong wok blong mifala strong, igat pawa*' (make our work spirit strong and give power) (Interview with a village police officer, Mele, 31 May 2004).

¹³¹ For example, the Lakalakabulu Council of Chiefs charges vt6000 'sitting fees'. Many other chiefly councils also charge sitting fees, although the amounts vary. The highest I encountered was vt15 000 per case, charged by the Sanma Council of Chiefs. Such measures have created problems because people complain that chiefs have the attitude of '*pem mi sipos yu wantem mi mekem*' (pay me if you want me to do something).

¹³² For example, the Lakalakabulu Council of Chiefs has a summons and letterhead with its logo on it, which comprises the *kastom* symbols of a mat and a bird as well as the blue and white check of the police.

¹³³ Lini, Indigenous laws and *kastom* system.

¹³⁴ Lini, Lora 2006, 'Law and order situation in Luganville questioned', *Vanuatu Daily Post* (Port Vila), 22 August 2006, p. 6.

¹³⁵ The newspaper reported, 'A meeting was supposed to have taken place on Saturday to solve the issue followed by reconciliation but apparently the situation got out of hand after a fight broke out that resulted in the stabbing and subsequent death of Keinoho'. See 'Two confirmed dead in Ambrym and Tanna clash', *Vanuatu Daily Post* (Port Vila), 5 March 2007, p. 1; see also Garae 2007c; 'Malvatumauri to meet over riots', *Vanuatu Daily Post* (Port Vila), 9 March 2007, p. 3.

¹³⁶ Interview with the head of the Vanuatu Rural Development Training Centres Association (Port Vila, 16 June 2004).

¹³⁷ This devaluation is being assisted by the increasingly common practice of communities 'awarding' chiefly titles to government ministers and even to prominent businessmen. This is often done for reasons of 'respect' but also clearly sometimes purely for pecuniary motives. For example, the *Vanuatu Daily Post* reported that a community in South Santo had awarded the President of the Vanuatu National Party a chiefly title. It then reported that the community 'petitioned [the president] to build a new road from the main road to their village'. See Waiwo, Elenor 2005, 'Than receives new chiefly title', *Vanuatu Daily Post* (Port Vila), 25 October 2005, p. 6.

¹³⁸ The Dillons Bay Council of Chiefs and the Nikoletan Island Council of Chiefs in Tanna.

¹³⁹ For example, the conflict concerning the chiefs of central Pentecost, which resulted in the police being sent in (who then added to the violence themselves). See Ombudsman of Vanuatu 2003b, *Public report on police brutality during operation on Central Pentecost*, VUOM 16, <<http://www.paclii.org.vu>>

¹⁴⁰ Kalontano, Alice, Vatu, Charles and Whyte, Jenny 2003, *Assessing Community Perspectives on Governance in Vanuatu*, Foundation of the Peoples of the South Pacific International, p. 117. The report goes on to say that a village council was set up with an equal representation of chiefs from the competing

factions, and that this had returned some peace to the village, but that '[r]esolving who is the village's paramount Chiefs [sic] remains a critical issue for the community, and there is high likelihood that tensions will surface again'.

¹⁴¹ In the past few years, there have been a few isolated attempts by individual judges to engage with the *kastom* system in an informal and ad hoc way when dealing with such cases. For example, in *Tenene vs Nmak* (2003, VUSC 2, <<http://www.paclii.org>>), the Supreme Court sent a case to the Malvatumauri for its determination on the issue of chiefly title and then used the recommendations from the meeting as the basis of its decision. On another occasion, the Chief Justice appointed three people knowledgeable in *kastom* to sit with him and hear a case about the right to chiefly title. See Forsyth, Miranda 2003, 'Determining chiefly title: from courts to custom and back again', *Alternative Law Journal*, vol. 28, no. 4, p. 193.

¹⁴² This ranges from a formal type of election with all members of the village voting to an informal system, where the elders identify a suitable person to be the chief on the basis of their perceived leadership qualities. For example, in the Torres Islands group, many chiefs are elected on a yearly basis but I met one who was appointed 22 years ago and who continues to hold the position today.

¹⁴³ Interview with a chief from Santo (Santo, 16 November 2004).

¹⁴⁴ Further, the criteria used do not necessarily correspond to the areas where there were traditionally ranked and hereditary systems (as discussed in Chapter 3). For example, one old chief in the Banks (which had a graded system before the arrival of missionaries and had since become an elected system) told me that he was a bloodline paramount chief 'like Queen Elizabeth'.

¹⁴⁵ They make up three different forms: one for communities where chiefly title is hereditary, one where chiefs are elected and one where the graded system is used. Each community was told to use the form that best suited it, but some communities took all three forms while others refused to use any, saying it did not fit them.

¹⁴⁶ Mavromatis et al., *Implementation of the Customary Land Tribunal Act No 7, 2001*, p. 12.

¹⁴⁷ Although there is still a very strong belief in black magic, during the colonial period, the practice became available to all people through inter-island exchange, rather than being practised just by traditional leaders. See Rio, Knut 2002, 'The sorcerer as an absented third person: formation of fear and anger in Vanuatu', *Social Analysis*, vol. 46, no. 3, p. 137.

¹⁴⁸ See Note below.

¹⁴⁹ One respondent stated that 'the term "respect" in my mother tongue [North Pentecost, Raga dialect] is "BINIHI MARAHI"; in transliteration it may be broken down to mean—BINIHI: thought and MARAHI: heavy, big, weighty. So *rispek* can mean just "being thoughtful"'.

¹⁵⁰ A chief at the Vanuatu Judiciary Conference (Port Vila, 28 August 2006).

¹⁵¹ A final reason proffered by some respondents is that chiefs are interested only in cases that involve sexual matters because they can pry into all the private sordid details, and are not interested in helping to deal with other sorts of cases. As one respondent stated, '[J]if ia hem i gud nomo blong tokabaot problem blong ol woman' (this chief is only good for dealing with sexual issues).

¹⁵² Interview with a police officer stationed in Ambrym (Port Vila, 8 November 2004).

¹⁵³ For example, one case in Santo involved some boys who stole from an aid post. The council said they must pay a fine of vt2000, but they refused to do so. The chief asked the Health Department to write a strong letter to the two boys, which they then did, and one of the boys paid but the other did not. The chief stated that there was nothing more he could do.

¹⁵⁴ Interview with an elder from Santo (Santo, 16 November 2004).

¹⁵⁵ For example, this occurred in the case study discussed in Chapter 6.

¹⁵⁶ Interview with a man from North Pentecost (Port Vila, 30 August 2004).

¹⁵⁷ For example, some respondents stated that because the chiefs had no way of finding proof, and no written guidelines to follow, they tended to make decisions on the basis of 'favour only'.

¹⁵⁸ For example, Hess describes one case she observed where one of the chiefs who decided on the fines was the father of one of the accused, and his son paid the lowest fines. She comments, 'The whole ceremony was heavily criticised both for the outcome as well as the process.' Hess, *Person and place on Vanua Lava, Vanuatu*, p. 47.

¹⁵⁹ Some communities have ways of limiting the potential of bias in the *kastom* system. For example, in Ambae, a traditional notion of the idea that judges should not be too closely related to the parties involved exists (Interview with a man from Ambae, Port Vila, 15 March 2004). The Lakalakabulu Council has developed this into a rule that the parties are asked if they agree with the selection of judges and

if a party does not want one judge then he or she must stand down. Apart from this council, however, I did not come across any other areas where there is more than a general principle that people should not judge cases where they might have a conflict of interest.

¹⁶⁰ 'The roots of the man Tanna/man Ambrym row', *The Independent* (Port Vila), 11 March 2007, p. 3.

¹⁶¹ Ralph Regenvanu, former Director of the Vanuatu Cultural Centre. See Regenvanu, Ralph 2007, State of emergency, Posting to the Vanuatu Research Interest Group, 5 March 2007. The President of the Port Vila Town Council of Chiefs stated, 'I would have thought their primary role was to maintain peace and unity in their jurisdiction, island, province and country. In other words, it was not their duty to instigate the use of black magic or violence'. See Garae, Len 2007, 'Chief Tarilama says chiefs, police to be blamed', *Vanuatu Daily Post* (Port Vila), 13 March 2007, p. 3.

¹⁶² 'The roots of the man Tanna/man Ambrym row', *The Independent* (Port Vila), 11 March 2007, p. 3.

¹⁶³ Interview with members of Wan Smol Bag Theatre Group (Port Vila, 15 April 2004).

¹⁶⁴ Interview with Secretary of the Malvatumauri (Port Vila, 27 July 2006).

¹⁶⁵ A man from North Pentecost stated that traditionally the chiefs were seen as being the ones who controlled the use of the land and as a consequence if someone did not obey them then the chief could reduce the part of land that person was entitled to use. Today, however, with the increasing emphasis on individual ownership of land that power is starting to be reduced (Interview with a man from North Pentecost, Port Vila, 26 July 2007).

¹⁶⁶ Interview with a man from Erromango (Erromango, 18 May 2004).

¹⁶⁷ Interview with the Head of the Vanuatu Rural Development Training Centres Association (Port Vila, 16 June 2004).

¹⁶⁸ Only one respondent stated that in *kastom* she felt that all her 'dirty washing was hung out' in public.

¹⁶⁹ Although in *kastom* there is certainly an element of public shaming, the offender is then reintegrated back into the community through the payment of fines and making a '*kastom sori*'.

¹⁷⁰ Although, as mentioned above, in many places in Vanuatu, chiefs demand sitting fees to manage cases.

¹⁷¹ The law has just changed (partly as a result of recommendations by the author) and now it is possible for complainants to receive compensation in a criminal case. See the *Penal Code (Amendment) Act 2006* (s 40).

¹⁷² For example, in Erromango, women generally feel confident about speaking to men as a group and so, if at the end of a meeting the women are not happy with the way the judges have judged a case and feel that a burden has been unfairly placed on a woman, they will say so and the judges will have to go back and come up with a decision the women will accept.

¹⁷³ Lindstrom, 'Straight talk on Tanna', p. 388.

¹⁷⁴ *Ibid.*, p. 387.

¹⁷⁵ Interview with Marilyn Tahi, Director of the Vanuatu Women's Group (Port Vila, 7 May 2004).

¹⁷⁶ This respondent said that even if a woman was raped she would be blamed and made to pay a fine or sent away from the village.

¹⁷⁷ Lindstrom, 'Straight talk on Tanna', p. 395.

¹⁷⁸ In many communities, a woman walking alone is seen as inviting sexual attention, so there will be little sympathy for her if she finds herself in trouble as a result of this.

¹⁷⁹ Interview with Marilyn Tahi, Director of the Vanuatu Women's Group (Port Vila, 7 May 2004).

¹⁸⁰ There is a specific problem with the treatment of rape in the *kastom* system because traditionally in *kastom* there is no concept of rape as such; rather, the problem is if the girl has sex with a boy to whom she is not married or to whom she is related or to whom she falls pregnant. For this reason, one of the solutions to a case of rape is for the chief to order the man to marry the girl. I was confronted with this once when I went to prosecute a rape case on the island of Epi and the defendant was not present in court because he was with the victim, now his wife, in hospital awaiting the birth of their first child.

¹⁸¹ Interview with Marilyn Tahi, Director of the Vanuatu Women's Group (Port Vila, 7 May 2004). She was speaking mostly about chiefly organisations rather than individual chiefs.

¹⁸² Interview with Gaia Fisher, anthropologist (Port Vila, 11 November 2004).

¹⁸³ Interview with members of Wan Smol Bag Theatre Group (Port Vila, 15 April 2004).

¹⁸⁴ Interview with Marilyn Tahi, Director of the Vanuatu Women's Group (Port Vila, 7 May 2004).

¹⁸⁵ For example, the *Tanna Law* (Article 5) states that the punishment for killing someone through sorcery is to give a girl to the chief, presumably for him to keep as a wife or daughter.

¹⁸⁶ Interview with members of Wan Smol Bag Theatre Group (Port Vila, 15 April 2004).

¹⁸⁷ Interview with a senior police officer (Tanna, 24 February 2004).

¹⁸⁸ A respondent told me of one case in Malekula a few years ago where a man had committed murder and went to prison but when he came back there was still hurt in the community so he gave his 10-year-old daughter as a fine to the other family. She noted wryly that the girl cried and cried but it did resolve the problem between the families and create a linkage between the two groups.

¹⁸⁹ Interview with a man from Erromango (Erromango, 18 May 2004).

¹⁹⁰ Interview with the Chief Executive Officer of the Vanuatu National Council of Women (Port Vila, 16 April 2004).

¹⁹¹ Apparently what happened was that the elected chief made people work on the provincial holiday and two women publicly criticised him. The chief therefore called another election and one of the women was nominated and elected.

¹⁹² She also said that her other role was to clean the meeting room and to organise the food for the meeting.

¹⁹³ Interview with women's representative on Dillons Bay Chiefly Council (Erromango, 19 May 2004).

¹⁹⁴ This was also confirmed on an individual level by some of the respondents. Some women commented that they had really seen changes since awareness about domestic violence and sexual offences was raised. One woman told me that after attending a workshop on domestic violence she felt able to 'preach' to her husband about his abusive behaviour and 'today there is peace in the home at last'. A man who had attended a workshop on gender issues told me that it had really opened his eyes and now he helped his wife with the washing of clothes and looking after the children.

¹⁹⁵ Interview with the Chief Executive Officer of the Vanuatu National Council of Women (Port Vila, 16 April 2004).

¹⁹⁶ A counsellor at the Women's Counselling Service in Santo said that chiefs often viewed the centre as being just for women and tried to stop victims going there as they said the chiefs were there for everyone. Generally, however, after they have explained their purpose to chiefs, chiefs cooperate with them. Many chiefs allow them to go to meetings with women and sit with them and tell them whether what the chiefs have decided is correct according to the law. The chair of the Committee Against Violence Against Women in the Banks Islands also stated that 'we hold hands with the chiefs and the area council secretary to block domestic violence' (Interview with chair of Committee Against Violence Against Women, Banks Islands, Vanua Lava, 21 October 2003).

¹⁹⁷ Interview with the Director of Youth and Sports (Port Vila, 11 June 2004).

¹⁹⁸ Makin, Bob 2005, 'Lissant Bolton on women and trade in Vanuatu', *The Independent* (Port Vila), 27 November 2005, p. 18.

¹⁹⁹ The questionnaire was used in this study to counterbalance the fact that the majority of informants in the in-depth interviews were older than twenty-six years and thus the views of youth were not adequately represented. It also aimed to clarify the finding from an earlier survey conducted by the Juvenile Justice Project in 2001 that ni-Vanuatu youths preferred chiefs rather than police to deal with them if they were involved in a dispute. See Rousseau, *The Report of the Juvenile Justice Project*. The questionnaire was carried out by members of the Young People's Project (which worked through the Vanuatu Cultural Centre) in 2003, with 158 informants from 17 different islands, as part of a broader empirical survey they were conducting. Potential problems of misrepresentations of the questionnaire were addressed in the questionnaire design by working with ni-Vanuatu colleagues to ensure the questions were clear and also by asking the same question in several ways. The potential for misunderstanding by the informants was also limited by the way the questionnaire was administered. Each youth was interviewed by a YPP fieldworker, who wrote his or her reply onto the questionnaire. The fieldworker was therefore able to clarify any misunderstandings the respondent might have had.

²⁰⁰ The most common reasons for this choice were that: preferring chiefs meant that they had respect and trust for their culture, that courts could not solve trouble amicably like chiefs and that chiefs could not send people to prison and the fine was lower than in the court system.

²⁰¹ The major reasons for preferring chiefs are that chiefs will bring about peace and settle the conflict amicably and if the case goes to the courts there will still be division among people. The major reasons for preferring the courts are that courts will give appropriate punishment and will prevent the crime being committed again.

²⁰² I also asked whether they thought that if someone had stolen many times or raped someone or had killed someone they should be ordered to pay a fine or should be sent to prison and 95 per cent responded that the person should be sent to prison, mostly because the person was seen to have caused trouble, had broken the law and would learn a lesson in prison and so would not do the same thing again. The final question was whether they thought that if someone was a troublemaker in Vila or Luganville they should be sent back to the island. Eighty-two per cent felt that they should be, and the most common reasons given for this were that if they remained in town they might lead others astray; the parents, chiefs and elders on the island could give advice and reform the person; and that the person would create a bad image of their island in town. The major reason given for not wanting them to be sent back was that they might cause trouble on the island. Only seven respondents stated that it would be against the person's constitutional rights to be sent back against their will, which supports the observation of many respondents that many young people are not aware of their rights under the constitution.

²⁰³ Some tables do not add up to 100 as not all respondents answered all the questions.

²⁰⁴ Discussed in Chapter 1 under 'Age'.

²⁰⁵ 'Vanuatu chief calls for support for traditional law agencies', *Radio New Zealand International*, viewed 9 June 2006, <<http://www.rnzi.com/pages/news.php?op=read&id=24582>>

²⁰⁶ Nelson, Hank 2006, *Governments, states and labels*, Discussion Paper 2006/1, State, Society and Governance in Melanesia Research Paper Series, The Australian National University, viewed 10 March 2007, <<http://rspas.anu.edu.au/melanesia/research.php>>, p. 6.