

This *In Brief* explores a persistent, and perhaps intensifying, trend in parts of Melanesia for communities to write down their own rules and regulations in the form of what are called community laws, by-laws, constitutions or even ordinances. The focus here is on Vanuatu, but similar processes are occurring in Solomon Islands and highlands Papua New Guinea. My aim is to identify this practice, explore its potential significance for questions of conflict management and local governance, and set out some areas of further research it gives rise to.

There is a long tradition of colonial authorities codifying the customary law of indigenous people, both in the Pacific islands region and elsewhere. This practice was motivated by a variety of factors, primarily the desire to make such laws more useable by the colonial judicial officers charged with dealing with indigenous disputes and rendering customary norms more visible to colonial governments. There is also a long academic tradition of criticising such codification, with the Australian Law Reform Commission concluding: 'Overseas attempts at codification of customary law have not been successful, and are now generally regarded as misconceived' (ALRC 1986, 368).

A central concern about codification has been that customary conflict resolution and governance systems operate according to very different motivating principles, are administered by different institutions, follow very different processes and procedures to justice systems in the Western model, and have very different sources of authority (see Bennett and Vermeulen 1980, 212–16). The substantive norms underlying customary justice and governance systems more broadly are just one part of this system, but the process of writing them down and making them 'look like' state laws obscures this broader reality. The codification of custom has also been criticised on the basis that it 'freezes' custom in the present and hence limits its dynamic and flexible quality (Zorn and Corrin 2002).

Given this historical context, it is interesting that many communities in Vanuatu today are themselves

codifying their customary laws. This has been a sporadic practice throughout the archipelago even before independence, with early examples being in Ambae (Rodman 1985), and the Malvatumauri's (Vanuatu's National Council of Chiefs) *kastom polisi* (custom policy) (Malvatumauri 1994). A number of communities in Penama Province also engaged in this practice under the guidance of the Penama Provincial Council as part of its efforts to restructure the chiefly system in the early 2000s (Forsyth 2009, 112). Most recently, the Malvatumauri (2011) produced a new 'roadmap' for the chiefly system in Vanuatu. One recommendation was to '*raetem ol custom Law mo ol rul*' (write all custom laws and rules). This directive seems to have produced results: during fieldwork in Vanuatu in October 2014, I learnt of the recent or ongoing production of community by-laws on Nguna, Ambrym, Pentecost and Epi.

For example, on the island of Nguna a three-day meeting was held in July this year at which drafts of a constitution for the Duruaki Council of Chiefs (the island-level chiefly council) and a custom law were written. Preliminary research suggests that the motivating factors behind this were to bring about greater peace on the island, to strengthen the power and authority of the chiefs, and to guide chiefs about what the law actually is. In terms of process used, each of the 11 villages on the island was asked to send one representative for five different categories: chiefs, women, youth, church and disabled people. The final draft custom law contains 130 sections covering areas such as ownership of ground, chiefly title, judicial system, penal code act, adultery, provisions about inter-island marriage and black magic.¹ My informant was sceptical of the length of the document, observing that even ten commandments were hard to follow.

Similar processes have been reported as occurring in other parts of Melanesia as well. For instance, the community of Gor in the highlands of Papua New Guinea wrote a Community Base Law in 2006 in response to recurrent election-related tribal fights, a high incidence of sorcery-related killings, and a general breakdown in law and order (Bal

forthcoming). In Solomon Islands, researchers have also reported a proliferation of informal laws in rural communities across the archipelago. These tend to be 'written down and displayed prominently in community halls or churches' (Allen et al. 2013, 72).

Although it is apparent that this practice is an ongoing one, and prevalent across many parts of Melanesia, the literature about it is extremely thin. For example, we know very little about:

- (a) the processes of creating these laws — How are they being drafted and by whom? For what reasons? What individuals/institutions are driving them? What if any is the role of international actors?
- (b) what exactly is being codified — Is it general principles? Detailed customary offences?
- (c) how they are being used — Are they actually being used in managing conflicts at local levels or in the state courts? If so, how? Are they strengthening the legitimacy of community leaders? What impact are they having on youth and women? How publicly available are they?

Another important question is whether what is occurring at present represents a continuation of a long tradition, or whether the particular social stresses being experienced today make this very different to what occurred before and immediately after independence. It is likely that the answers to these questions will vary considerably across the region.

This lack of information limits the extent to which institutions and individuals outside the communities can engage with the process of creating and using by-laws. On one hand this may be seen in a positive light, as it means that these laws are truly community driven and autochthonous, thus enhancing their legitimacy as the community's 'own law'. On the other hand, it is likely that these laws will have increasing relevance for the management of disputes (particularly determinations about forum), community governance, treatment of women and children, and the relationship between communities and the state. Discovering whether there are broadly shared motivating factors will produce a better insight into ongoing processes of state formation, the evolution of non-state justice systems, and changes in understandings of the legitimacy of local authority. Understanding more about the processes behind the

creation and use of by-laws in the region will also facilitate the identification of some best practices that may be used to help communities that are at the start of their voyage down this particular road. On a more theoretical level, it will also shed light on whether or not academic and administrative concerns about the codification of customary law still have legitimacy, or whether the very different postcolonial context has made such concerns irrelevant, or at least resulted in innovative ways to overcome them.

Author Notes

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Endnote

- 1 Interview with Taman Willie Onesmas, Nguna resident and leader of Vanuatu Cultural Centre fieldworker program, Port Vila, Vanuatu, 16 October 2014.

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