

SOLOMON ISLANDS
LAW REFORM COMMISSION



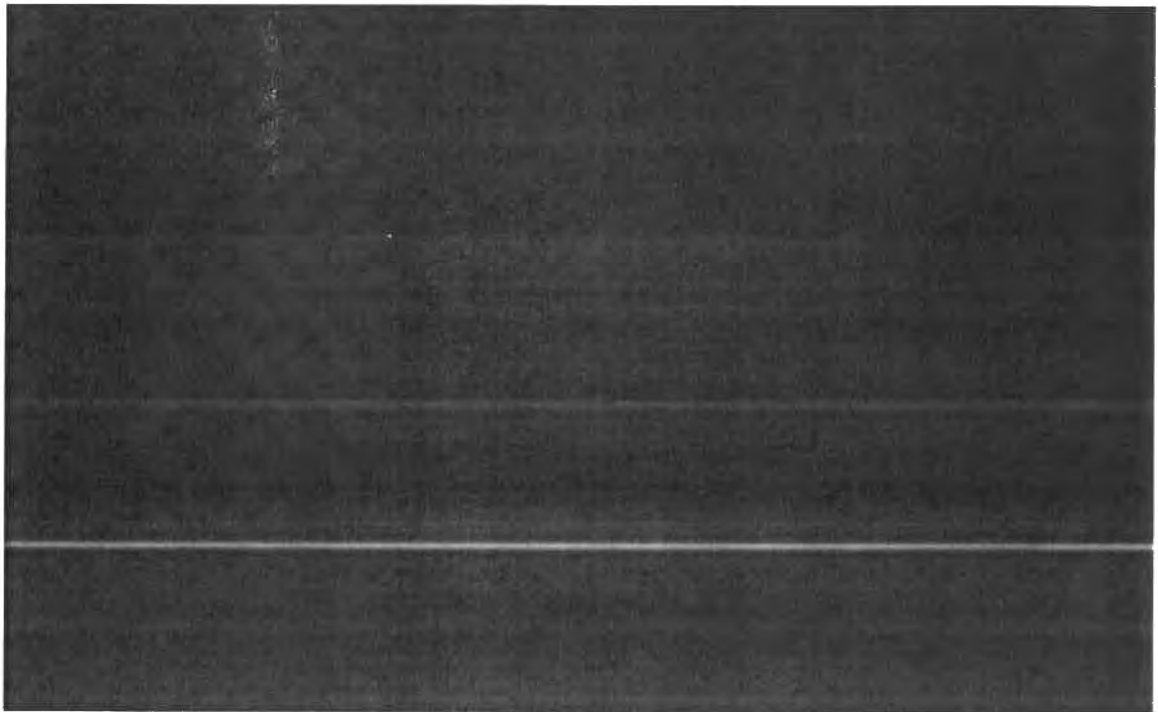
Review of the Penal Code and Criminal Procedure Code
Fifth Interim Report
Sorcery Offence
December 2024



THE SOLOMON ISLANDS LAW REFORM COMMISSION

HONIARA, SOLOMON ISLANDS

REVIEW OF THE PENAL CODE AND CRIMINAL PROCEDURE CODE



FIFTH INTERIM REPORT

SORCERY OFFENCE

DECEMBER 2024

Solomon Islands Law Reform Commission

The Solomon Islands Law Reform Commission (LRC/Commission) is a statutory body established under the *Law Reform Commission Act* [Cap 15]. The Commission (LRC) comprises the Chairman, appointed by the Judicial and Legal Service Commission (JLSC) on the recommendation of the Minister responsible for Justice, and four part-time Commissioners appointed by the same Minister. The Chairman is the head of the Commission.

The Commissioners are:

Philip Kanairara - Chairman – Full-time Commissioner for five years

Reuben Tovutovu – Part-time Commissioner for four years

Anika Kingmele - Part-time Commissioner for four years

Janet Tuhaika - Part-time Commissioner for four years

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The legal officers are:

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Term of Reference

WHEREAS the Penal Code and the Criminal Procedure Code are in need of reform after many years of operation in Solomon Islands.

NOW THEREFORE in exercise of the powers conferred by section 5(1) of the Law Reform Commission Act, 1994, I OLIVER ZAPO, Minister of Justice and Legal Affairs hereby refer the Law Reform Commission the following –

To enquire and report to me on –

The Review of the Penal Code and the Criminal Procedure Code;

Reforms necessary to reflect the current needs of the people of Solomon Islands.

Dated at Honiara 1st day of May 1995

NB: Explanation: The criminal law system in Solomon Islands has now been in operation for many years. Developments in new crimes, their nature and complexity have made it necessary to overhaul criminal law in general to keep it abreast with the modern needs of Solomon Islands.

Acknowledgements

The Commission acknowledges the people of Solomon Islands, in particular those who participated in one way or the other in the progression of this project. Chiefs, elders, community leaders, youth leaders, women leaders and the communities consulted are acknowledged for their contributions towards this project. The warm welcome we received in the provinces and communities were awesome. Thank you so much.

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To the Solomon Islands Government (SIG) for the financial support to ensure that activities to progress the project were implemented despite financial constraints.

To our Almighty God for his care, protection and guidance throughout this project. At times, officers were faced with rough seas, windy and rainy weather, and bumpy flights due to natural hazards in the journey to progress the work on this project throughout our beloved country, Solomon Islands. To God be the Glory, Great Things He Has Done. Amen.

Part 1: Executive summary

Sorcery in general

1.1 The terms 'sorcery' and 'witchcraft' are used interchangeably¹ for the purpose of this report. The terms refer to the practices performed or used by human beings to harm other members of the human race. These practices are believed to be rooted in supernatural powers that cause misfortunes or undesirable outcomes such as sickness and death. Ronald Hutton² identified five characteristics commonly shared by those who believe in witchcraft across different cultures³ and times. First, witches use non-physical means⁴ to cause harm to other humans. Secondly, the harm is to neighbours or kin rather than strangers. This makes a witch or sorcerer a threat to the community. Thirdly, there is strong disapproval or dislike of witches because of their secret acts motivated by malice and spite. Fourthly, the works of witches are based on long standing traditions, through inheritance, training or initiation. And finally, other humans resist the works of the witches or sorcerers through: (a) persuading them to divest from such special powers; or (b) using counter-magical measure which could result in harming the witch or the sorcerer; or (c) use of physical deterrence measures such as corporal punishment, exile, punitive fines or executions.⁵ Hutton's article was published in 2004 and two decades later, in 2024, those characteristics are still identical with witches or sorcerers.

1.2 The belief⁶ in sorcery exists globally.⁷ The United Nations (UN) Special Rapporteur on extrajudicial, summary or arbitrary executions, Professor Philip Alston documented occurrences of the violence resulting from the belief in

¹ This is preferred in most occasions or writings although others argued that the terms are different. For this latter approach, sorcery is defined as a pragmatic, conscious practice, involving acts of magic that empowers the personal power of the practitioner. Sorcerers are considered as people who use magic for malicious ends. Witchcraft on the other hand is regarded as a practice involving inherent supernatural powers. The three characteristics of witches are: they are existentially threatening; they have supernatural powers; and they are morally repugnant. These descriptions of sorcery and witchcraft are taken from the *Perception of public on the law as a deterrent to sorcery accusation related violence, Madang Province, PNG* by Philip Gibbs, Kylie McKenna & Lorelle Tekopiri Yakam, *Contemporary PNG Studies: Divine Word University (DWU) Research Journal* Vol. 28, May (2019).

² Ronald Hutton, "Anthropological and historical approaches to witchcraft: potential for a new collaboration?", *Historical Journal* (2004), 421.

³ The Study covers Europe, America, Africa, India, Australasia and Oceania.

⁴ The means are referred to as uncanny, mystical, supernatural.

⁵ Ronald Hutton, above n 2, 421- 424.

⁶ A belief is an idea that the mind possesses; or in the reverse, an idea that possesses the mind, a definition taken from the Movie 'Witches in the Woods' Directed by Jordan Barker (2019).

⁷ Philip Alston, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, General Assembly, A/HRC/11/2, 27 May 2009. See also Philip Gibbs, Kylie McKenna & Lorelle Tekopiri Yakam, above n 1.

witchcraft or sorcery throughout the globe.⁸ He stated that the persecution and killing of those accused of practising witchcraft is a significant phenomenon in many parts of the world. These acts were committed by private actors, government sponsored, or tolerated acts of violence. Among the violence documented were killings and torture⁹ of those accused of witches in Central African Republic, Burkina Faso,¹⁰ Ghana,¹¹ United Republic of Tanzania,¹² South Africa,¹³ Papua New Guinea,¹⁴ Kenya, Mexico, and Saudi Arabia.¹⁵ In addition, children were accused and persecuted as witches in the Democratic Republic of Congo, Nigeria, Gabon, and Angola. Further, witch hunting on women in India, torture and murder of women in Papua New Guinea, and older women witchcraft accusations in Mozambique and Nepal.¹⁶

- 1.3 The neighbouring countries of Papua New Guinea (PNG) and Vanuatu are also experiencing violent killings as the consequent of the belief in sorcery. This was evident in PNG where women accused of practising sorcery were tortured, killed, burned alive and beheaded.¹⁷ In Vanuatu, two men who were accused of practising witchcraft were publicly hanged in a community hall.¹⁸ These are few examples of the many acts of torture and killings resulting from the belief in sorcery in the two countries.
- 1.4 The level of violence in Solomon Islands, especially killings, in relation to the belief in sorcery or witchcraft is not high compared to accounts of violence in neighbouring PNG¹⁹ and other parts of the World. However, the emergence of violence is sprawling and requires timely and appropriate Government intervention to curb it while it is not yet out of hand. Examples of the sprawling violence include these unlawful conducts: the killing of alleged sorcerers in

⁸ Philip Alston, above n 7.

⁹ Papua New Guinea, Mexico, South Africa, United Republic of Tanzania.

¹⁰ Those accused of witchcraft suffered psychological trauma, physical harm, social exclusion and impoverishment.

¹¹ Alleged witches were confined in camps.

¹² About 1,000 alleged witches killed annually. Also, murdering of albinos for their body parts to be used by witch doctors.

¹³ The alleged witches were burned.

¹⁴ Torture and murder of alleged women witches.

¹⁵ Philip Alston, above n 7.

¹⁶ Ibid.

¹⁷ Miranda Forsyth and Richard Eves, *The Problems and Victims of Sorcery and Witchcraft Practices and the Beliefs in Melanesia: An introduction*, in *Talking it Through – Responses to Sorcery and Witchcraft Beliefs and Practices in Melanesia* (2015), pg 1.

¹⁸ Ibid.

¹⁹ See Philip Gibbs, Kylie McKenna & Lorelle Tekopiri Yakam, above n 1. The article documented the destruction of property and the murder of seven people in which 89 men were sentenced to life imprisonment, and eight were sentenced for death penalty

Isabel²⁰ and in Temotu,²¹ assaults, grievous bodily harms, property destruction and arson,²² and banishment.²³

Context of the inquiry

1.5 The Law Reform Commission (LRC/Commission) progresses this inquiry as part of the Penal Code and Criminal Procedure Code Reference. Section 190 of the *Penal Code* [Cap 26] contains the offence of sorcery. This offence has not been utilised by the criminal justice system for various reasons. The dominant reason is that this offence is difficult to prove in court because the sorcery allegations are mostly not seen but beliefs that resonates with people that something supernatural has caused the misfortune, the sickness, or death. Moreover, the reliance on subjective beliefs and cultural interpretations of sorcery is problematic as these vary widely among communities. Additionally, there is lack of empirical evidence as sorcery involves beliefs and practices that are not easily measurable or observable, making it difficult to gather tangible evidence in a legal setting. The cultural context further complicates the matter, as the belief in sorcery is deeply rooted in the social fabric of societies. This can lead to challenges in how evidence is interpreted, and thus what constitutes proof may vary significantly between traditional beliefs and legal standards. Furthermore, witness testimonies may be unreliable, as individuals may be reluctant to testify about sorcery due to fear of social repercussions or potential backlash from their communities. While prosecution of this offence remains dormant, sorcery is a significant issue throughout Solomon Islands. The belief in sorcery is high that most people link almost all sicknesses and deaths to sorcery,²⁴ even in cases where doctors have diagnosed the causes of the deaths. Police officers reported that they regularly receive complaints from the public which attribute sorcery as the cause of deaths and disputes in the community.²⁵ This stirs up hatred in the community which results in increasing rate of violence. Crimes such as assaults, grievous harm, arsons, property damages, and even murders are committed as

²⁰ *R v Havimana* [2011] SBHC 48; <http://www.paclii.org/>.

²¹ Assumpta Bongidani, Solomon Star, Man hacked over sorcery, Friday 12th February 2021.

²² *R v Arunaala* [2020] SBMC 10; Criminal Case 39 of 2020 (29 April 2020).

²³ Kanairara & Futaiasi, *The Brief in Sorcery in Solomon Islands*, in Miranda Forsyth and Richard Eves (Eds), *Talking it Through – Responses to Sorcery and Witchcraft Beliefs and Practices in Melanesia* (2015). Also, consultation views from Central Islands Provincial Government, Vuranimala, and Siarana (2013), and Honiara stakeholders' views (2016).

²⁴ Lawrence Foana'ota *Sorcery and Witchcraft as a Negative Force on Economic and Social Development in Solomon Islands* in Miranda Forsyth and Richard Eves, *Talking it Through: Responses to Sorcery and Witchcraft Beliefs and Practices in Melanesia* (2015), 82. See also Nazareth (Marovo) consultation views (2015) and Marau consultation views (2014).

²⁵ Henderson Police consultation (2016).

the consequence of the hatred and tensions in the communities. Also, the alleged sorcerers often suffer from unnecessary infringement of their rights including banishment. In addition, some so-called customary healers or doctors take advantage of the belief in sorcery and purport to cure those who believed to have suffered from sorcery. Sometimes, they even take advantage of the victims by committing sexual offences such as indecent assault and rape on them as discussed in Part 4 of this report on State governance of sorcery.

- 1.6 This enquiry looks at sorcery in three dimensional angles as to who is the **victim** of sorcery. Is it the alleged sorcerer who had been tortured, killed, assaulted, or banished? Or is it the one who believed to have suffered from the act of sorcery? Or is it the one who commits violence on the alleged sorcerer in response to the State's failure to take actions to deal with the allegations of sorcery? These questions are the problems (grievances and violence) that the community faces due to the belief in sorcery. Policy responses in this report are aimed at addressing these questions and the guiding principles discussed in Part 2 of this report.
- 1.7 The vision of the LRC is for all Solomon Islanders to have laws that are just, equitable, relevant, responsive, effective and equally accessible to all to ensure peace, good governance and sustainable development. The current law on sorcery, in particular sorcery offence, and how it deals with sorcery is at odd with this vision, especially on ensuring peace. This review of the sorcery offence recommends: (i) revise the sorcery offence with the prohibited conducts that can be proven if committed; (ii) introduce mechanisms to deal with alleged practice of the sorcery; (iii) development improvements; and (iv) embracing of Christianity values or other identical values. All recommendations are aimed at addressing sorcery grievances, violence, and other related issues in the country.

Law reform process

- 1.8 The role of the LRC is to review laws that are referred to it by the Minister responsible for Justice. The LRC conducts these reviews in order to simplify the law, eliminate problems in the law, identify more effective laws, and to ensure that laws are fair and reflect the needs and desires of the people of Solomon Islands as required by the *Law Reform Commission Act* [Cap 15].
- 1.9 When it carries out a review of the law, the LRC consults with provincial governments, government departments, institutions, civil society organisations, churches, women and youth groups, communities, and any member of the

public. Through this consultation process, the LRC educates the community about the law and the legal issues arising from the laws under review. This allows members of the community, who may not otherwise have a voice in the development of law and government policy, to participate in an informed manner at their locality on government law reform programmes or projects.

- 1.10 Law reform is a process of changing the law that requires public participation. This is to ensure that any law reform mirrors societal views and aspirations. Comments and submissions sent to the LRC will not be confidential unless requested that the information provided is to be kept confidential. The LRC employs various mechanisms to gather public feedback, including consultations with community members, government entities, and non-government organizations, as well as radio programs that invite listeners feedbacks. These methods are designed to reach out to a diverse range of stakeholders, ensuring that voices from different segments of the Solomon Islands society are heard. Feedback is carefully analysed and synthesised to inform the reform process, with transparent reporting on how the public input influences the final recommendations.
- 1.11 The LRC gathers information about reform of the law from a wide range of resources including practical issues and concerns raised during consultations and in-house comparative research and analysis on relevant legislation in other jurisdictions. Any reform must also consider the Constitution of Solomon Islands, and the international obligations of Solomon Islands where appropriate. Customary law is also an important source of law to consider given the pluralist legal dimension in Solomon Islands. Understanding the interaction between customary law and formal legal frameworks is crucial, especially regarding sorcery allegations. Customary law often governs community responses to sorcery, providing informal mechanisms for conflict resolution that in some cases may not align with formal legal processes. This can lead to tensions between community practices and the State's legal framework, particularly when traditional beliefs result in accusations or violent actions against alleged sorcerers. Additionally, customary practices can influence the way individuals approach formal justice systems, often leading them to seek resolutions within their communities rather than through the legal channels. Therefore, any reform efforts must carefully consider how to harmonize these legal systems to protect individual rights while respecting traditional customs.

- 1.12 The LRC produces reports containing recommendations on law reform as the end product of its reform process as briefly outlined in paragraph 1.10. These reports among other things will contain the public participation efforts and how such has assisted to shape the recommendations – thus giving legitimacy to the recommendations.
- 1.13 Recommendations for changes to the law are made by the Commission, consisting of the Chairperson and part-time Commissioners, on the basis of research, consultation feedbacks, and submissions received by the LRC. The recommendations do not affect the law until they are implemented by the Ministry of Justice and Legal Affairs (Legal Policy Unit) together with other relevant ministries where appropriate, into a Bill, and later the Bill is passed by the National Parliament of Solomon Islands.
- 1.14 This report recommends four (4) approaches to address sorcery or witchcraft. The approaches which are discussed in Part 6 of the report are criminal justice approach, legal pluralism approach, developmental approach, and the Christianity approach. These approaches are to be implemented together and over time the belief in sorcery is expected to fade away, hence the redundancy of the criminal justice approach and the legal pluralism approach.

Part 2: Guiding principles

1.15 The LRC identifies five principles to guide the recommendations for reform in this inquiry. The principles are:

- 1) Lower the degree of the belief in sorcery;
- 2) Prohibition of alleged practices of sorcery;
- 3) Fair trial offered to alleged sorcerers;
- 4) Reduce the rate of sorcery related violence; and
- 5) Protection of the community from violence.

1.16 These principles are drawn from literature review and the submissions received on this inquiry.²⁶ Most stakeholders that the LRC consulted have expressed their views along these principles although their views are varied on what principle should take priority over others.

Principle 1: Lower the degree of the belief in sorcery

1.17 The belief in sorcery is evident in all provinces of Solomon Islands. While there are some people who expressed that they do not believe in sorcery,²⁷ most of the people the LRC consulted, agreed that sorcery does exist.²⁸ This is evident by the fact that many Solomon Islanders still seek help from custom healers for possible cure to their sicknesses. Some people even believe sorcery as the cause for medical doctors not able to diagnose the diseases in patients.²⁹ Some people still link sicknesses to sorcery even in cases where the sicknesses had been diagnosed and identified by medical doctors.³⁰ But the allegations of conducts of sorcery are beliefs that are difficult to prove. One way to reduce the impacts of the belief in sorcery in society is for people to stop from believing in sorcery or witchcraft. Some expressed the view that sorcery has been used as a convenient excuse to

²⁶ Central Province Gov't meeting, Vuranimala, Soso, Mboromole – consultation views (2013), Choiseul Provincial Gov't meeting, Panarui, Vosa, Moli, (2014) Nju-Marapa (2014), Visale, Tetera Police, Kohimarama, Guadalcanal Council of Women, White River Police, Henderson Police, Naha Police, Honiara Church Leaders, Honiara Community leaders (2016). Also see Miranda Forsyth and Richard Eves, above n 17. Also in Jack Urame, *The Spread of Sorcery Killing and its Social Implications* in Miranda Forsyth and Richard Eves, from pg 23.

²⁷ Some participants at Vuranimala and Siarana Village (2013), Honiara Church leaders' workshop (2013), Moli and Vosa -Choiseul province (2014), Buala Police and Poro Village (Isabel) (2014).

²⁸ Siarana, Mboromole, Tulagi Provincial members, Soso Village- Bonivester, Mboromole Village (2013), Visale, Hatare Community (Marau) (2014), Honiara Consultation with Community Chiefs and leader (2016), Buala Police, Poro Village (Isabel), Buala Village, Nareabu Village (Buala) (2014), Kirakira Magistrates, Nukukaisi Community (Makira) (2014), Auki Police, Arabala Community (Malaita), Save the Children Auki (2016), Tengano Community (Rennell Island), Hutuna Community (Rennell) (2016), Banua Village (Temotu) (2015), Gizo Magistrate Officers, Titiana Community and Gizo Women's Council, Buinitusu Community, Save the Children, Patutiva Village, Seghe Theological Seminary and Magistrate Court Staff in Western Province (2015).

²⁹ Consultation in Nazareth Village, Marovo Lagoon, Western Province (2015).

³⁰ Alite Village, Marau, Guadalcanal Province consultations (2014).

blame others for their own sufferings or misfortunes.³¹ Education, Christianity, quality health services, improved standard of living, active participation of Solomon Islanders in economic activities are identified as elements to reduce the belief in sorcery in society.³²

- 1.18 During a consultation at Niu-Marapa Community, Marau, East Guadalcanal, a participant commented that the belief in sorcery could be reduced by government involving the people in education and business or income generating activities.³³ This will keep people busy from engaging in sorcery discussions as more discussions on sorcery will only perpetuate the belief in sorcery in the society. For instance, implementing educational programs focused on critical thinking and scientific literacy could empower community members to question traditional beliefs and understand the natural causes of illnesses and misfortunes. Additionally, vocational training programs could be established to teach skills such as agriculture, handicrafts, or trades, providing participants with tangible ways to generate income. Initiatives like community workshops on health and wellness, where healthcare professionals explain the medical basis for illnesses, could also help demystify health-related fears associated with sorcery. These educational and economic strategies would not only engage community members but also foster a sense of agency and reduce reliance on sorcery as an explanation for life's challenges.

Principle 2: Prohibition of alleged conducts of sorcery

- 1.19 Given the high level of the prevalence of the belief in sorcery, any law reform option must still consider the prohibition of the alleged conducts of sorcery. A way to address this principle is to establish or identify institutions or bodies to deal with allegations of sorcery. Another way is to criminalise the conducts that could lead to sorcery allegations. For instance, conducts such as threatening to perform sorcery on someone, or accusing someone for sorcery without using the appropriate forums.³⁴
- 1.20 Stakeholders suggested the chiefs or traditional leaders, local court, other courts, and churches as the appropriate bodies or forums to deal with allegations of sorcery. Some stakeholders, however, expressed concerns over favouritism and

³¹ Central Province Provincial Government consultation, Tulagi (2013).

³² See Miranda Forsyth, *A Pluralist Response to the Regulation of Sorcery and Witchcraft in Melanesia* in Miranda Forsyth and Richard Eves, pg 216 - as she made reference to Burton's argument. See also Vuranimala (2013), Niu-Marapa consultations (2014).

³³ Niu-Marapa consultations (2014).

³⁴ Naha Police consultations (2016).

the wantok system³⁵ when chiefs are relied upon to adjudicate disputes.³⁶ The common reason for suggesting the chiefs is that sorcery is a customary wrong and only chiefs or traditional leaders can deal with it properly according to custom. The church is also suggested because of the peaceful approach³⁷ it takes to deal with sorcery.³⁸ In general, Solomon Islanders have expressed views in support of a fair, just and holistic mechanism to deal with both the accused and the victims of sorcery without compromising the peace and harmony in the society. It has also been suggested that both chiefs and churches need to work together to resolve disputes regarding sorcery and deter people from practising sorcery.³⁹

- 1.21 On the other hand, it was suggested that any proof of prohibited sorcery conducts should be supported by evidence which can be obtained and are to be admissible in the court system.⁴⁰ One suggestion is that the chiefs and community leaders should undertake investigation of any alleged sorceries and then provide the evidence or information collected to the courts.⁴¹

Principle 3: Fair trial offered to alleged sorcerers

- 1.22 This principle is very important if someone has to be tried for practising sorcery. This is to ensure that the alleged sorcerer receives a fair trial.⁴² It is important that an alleged sorcerer is given the opportunity to respond to the allegations laid against him or her in an environment free from intimidation. This therefore requires appropriate forums are made available for sorcery hearings.
- 1.23 The appropriate forums are necessary because some traditional ways of dealing with sorcery are unfair and torturous. For instances, forcing the alleged sorcerer to stand in black ants until he or she confesses to be the sorcerer,⁴³ or putting the

³⁵ The "wantok system," derived from the Solomons Pijin term for "one talk," refers to a cultural practice where individuals give preference to their kin or those who speak the same language, based on a series of reciprocal obligations. This system can create biases in decision-making, as chiefs may be more inclined to favour family members or close community ties when resolving disputes. Such favoritism can undermine the principles of fairness and impartiality that are essential for justice, particularly in cases involving serious allegations like sorcery.

³⁶ Central Province consultation notes (2013). Choiseul Province consultation notes (2014).

³⁷ An approach which aims at healing the wounds of the parties due to the sorcery allegations.

³⁸ Soso village consultation, Tulagi Provincial Members, Siarana Village (2013) and Neo Village, Temotu Province (2015).

³⁹ Central Province consultation notes, from Soso village (2013).

⁴⁰ Naha Police consultation (2016), Vuranimala Village consultation (2013).

⁴¹ Honiara consultation notes (2016).

⁴² Moli village, Choiseul Province consultation (2014).

⁴³ Vosa Village, Choiseul Province consultation (2014).

alleged sorcerer in smoke of fire until he or she confesses,⁴⁴ or whipping the alleged sorcerer until he or she confesses,⁴⁵ or coercing the alleged sorcerer to admit that he or she did the sorcery conduct.⁴⁶ These inhumane practices are unacceptable and must be eradicated from any fair trial mechanisms. They are not only violating basic human rights but also undermining the integrity of the dispute resolution mechanisms that embrace the practices.

Principle 4: Reduce the rate of sorcery related violence

1.24 Sorcery related violence is increasing in Solomon Islands. Criminal offences were committed in response to allegations of sorcery. This principle is important to consider in the reform of sorcery offence in order to reduce the increasing trend of violence associated with sorcery. This is important especially when the law is seen as inadequate to deal with sorcery, and hence people are tempted to take the law into their own hands. For example, killing the alleged sorcerer,⁴⁷ burning of homes belonging to alleged sorcerers⁴⁸ or assaulting the alleged sorcerers⁴⁹ are criminal actions often taken by people who think they are victims of the practice of sorcery.

1.25 During consultations, people have expressed their desire for the government to deal with the associated violence seriously because sorcery can lead to more serious offences which can cause instability in the community. For example, it was reported that the issue of sorcery has caused division among families and communities and has resulted in relationship breakdown.⁵⁰ Papua New Guinea in 2013 has responded to the sorcery related violence by introducing death penalty on those who murdered alleged sorcerers.⁵¹ However, since then, the prevalence of sorcery in the country has not changed or reduced.⁵²

⁴⁴ Alite Village, Marau, Guadalcanal Province consultation (2014).

⁴⁵ Tying of the alleged sorcerer to stand in black ants until he or she confesses, put the alleged sorcerer in smoke of fire until he or she confesses, or whip the sorcerer until he or she confesses.

⁴⁶ Buala Police consultation (2014).

⁴⁷ *Havimana* case. Also reported in Assumpta Bongidani, above n 21.

⁴⁸ Choiseul Province consultation notes (2014). Also *R v Arunaala* [2020] SBMC 10; Criminal Case 39 of 2020 (29 April 2020). See also Robert Iroga, Solomon Business Magazine Online, Police investigate sorcery related killing as houses also burnt (17th May 2022) <https://sbm.sb/police-investigate-sorcery-killing-related-incident-houses-also-burnt/> (Accessed 15th April 2024).

⁴⁹ Assumpta Bongidani, above n 21. See also Honiara consultation notes (2016).

⁵⁰ West Guadalcanal consultation notes (2016).

⁵¹ *Criminal Code (Amendment) Act* (No. 6) 2013, New Section 299A (PNG).

⁵² Sorcery killing in Papua New Guinea <https://borgenproject.org/sorcery-killings-in-papua-new-guinea/> (Accessed 8 August 2022). Two women have serious injuries after being accused of witchcraft and brutally tortured by as many as 20 men in Papua New Guinea as punishment <https://www.newshub.co.nz/home/world/2021/04/two-women-endure-hours-of-torture-by-up-to-20-men-in-witchcraft-attack-in-papua-new-guinea.html> (Accessed 11 August 2022). RNZ Pacific, The disturbing rise of

Principle 5: Protection of the community from violence

1.26 The protection of the community from violence is another important principle to ensure that communities in Solomon Islands are safe from sorcery related violence. The sorcery offence reform must strive to achieve this principle. This is because any law reform which does not consider this principle will not reflect the wishes and aspirations of the Solomon Islands society where peace and harmony is of paramount importance. To achieve this goal, several strategies could be implemented. Community awareness programs to educate the public about the legal implications of sorcery accusations and promote understanding of the dangers of mob justice. Establishing support networks for alleged sorcerers and their families can protect them from violence and social ostracism. Additionally, creating formal channels for resolving disputes related to sorcery, such as mediation by local leaders or community elders, can help prevent escalation into violence. Furthermore, training law enforcement on how to handle sorcery-related cases sensitively and effectively will ensure community safety. These strategies collectively foster a safer environment and reduce the incidence of violence associated with sorcery beliefs.

Relationship between the principles

1.27 The relationship between these principles is important for a successful reform strategy. Reducing belief in sorcery (Principle 1) helps to make it easier to prohibit sorcery practices (Principle 2) because fewer people will feel the need to engage in them. This also makes fair trials (Principle 3) more achievable since there will be less social pressure and stigma around sorcery accusations. As people start to believe less in sorcery, this may result in reducing sorcery related violence (Principle 4), which will help in protecting the community (Principle 5). By tackling these principles together, the reform strategy can create a well-rounded approach that promotes understanding, justice, and safety for everyone.

sorcery violence in PNG <https://www.rnz.co.nz/programmes/the-detail/story/2018866311/the-disturbing-rise-of-sorcery-violence-in-png> (Accessed 29 February 2024).

Part 3: Customary governance of sorcery

- 1.28 Under custom, sorcery in Solomon Islands can refer to an act or action that causes serious sickness or illness that could result in misfortune, insanity or death if no customary means of cure is given to the victim. Others used sorcery to lure girls, women or men into relationships or destabilise relationships.⁵³ This is the commonly held perception of sorcery in Solomon Islands.
- 1.29 Sorcery can be for a good⁵⁴ or bad cause. As to the latter, some examples in Solomon Islands of sorcery are *arua*, *kelema*, *bua'abu*, *nafa*, *akalo*, *pona mera*, *wakau*, in Malaita Province. *Piro*, *vele*, *puapoke*, *madu*, *korodule*, *vuri vuri*, *kaumolo*, *paruparu*, *pirupiru*, *wakau*, *torihono*, *one susu*, *kibokibo* are names for sorcery in Guadalcanal Province. In the Western Province, sorcery is known as *pela*, *jiama*, *baha* and *tabunea*. *Poke*, *kaumolo* or *kibo-kibo* in Central Province while *korapau* in Isabel Province. In Makira Ulawa Province, sorcery is regarded as *maru*, *hekuasi*, *hanga-angi* or *tautuku* while *kuba* is the name given to sorcery in Rennell and Bellona Province. Temotu Province referred to sorcery as *wildman*, *kuleo*, *dabo* or *noama* while Choiseul Province regarded sorcery as *parana* (black-stone), *taravalu*, *taravane*, *kokopatu*, or *sukita*.⁵⁵
- 1.30 *Arua*, *piro*, *kibokibo*, *vele*, and *paruparu* are briefly described and discussed to give a picture of the nature of such sorcery. *Arua* is a term given to a sorcery practise in which a male or female sorcerer takes food scraps or a piece of clothes of another person and use them to feed a snake, frog, cat, or rat.⁵⁶
- 1.31 *Piro* is same as *kibokibo* in which remains of food scraps are given to a snake or where someone takes food scraps and feed a snake.⁵⁷ This is similar to *arua*. However, *kibokibo* is more like a generic name for sorcery.⁵⁸
- 1.32 *Vele* means 'to pinch, from the tingling or pinched feeling in the arms that warns protected persons of the proximity of the *vele* magician'.⁵⁹ According to L. W. S Wright '[t]he usual method employed by the *vele* man is to hide by the side of a

⁵³ Honiara community leaders' consultation (2016).

⁵⁴ Anti-social behaviours are low for fear of sorcery; or sorcery provides the community the reason for death, sickness, insanity and misfortune. Or sorcery to keep the family unit together.

⁵⁵ See Law Reform Commission's consultation notes on sorcery.

⁵⁶ Kanairara & Futaiasi, above n 23, pg 282.

⁵⁷ Derek Futaiasi conversation with Associate Professor Tarcisius Tara (Monday 20 May 2013).

⁵⁸ Ibid.

⁵⁹ See L. W. S. Wright 'The "Vele" Magic of the South Solomons' (1940) 70(2) The Journal of the Royal Institute of Great Britain and Ireland 203.

road and, as the victim approaches, to make a sharp noise, thus attracting attention. The man turns and sees the *vasa* suspended from a finger. He collapses, usually in an unconscious condition.⁶⁰ It is basically practised in Guadalcanal.

1.33 *Paruparu*⁶¹ is the sorcery practice that involves tying someone from excelling in whatever he or she does. For example, tying a student from passing his or her exams or tying a person from marrying.⁶²

1.34 In 1932 in Ontong Java⁶³ Ian Hogbin reported that:

When a sorcerer decided to kill a man, there were several ways in which it might be done. One was to get hold of something closely connected with him – his hair, nail-partings, or saliva, the last being the favourite. The sorcerer watched where his victim spat, and subsequently took the wet earth and worked his spells over it. Very soon the man would sicken and, if not treated, would die. Another method was to make spells over some such object as a stone, human bone, or a few grains of sand. During the night the sorcerer took this and either threw it into the house of the victim or buried it near the door. This was equally fatal. The third way was to make an effigy out of pandanus leaf and stick skewers through it. As each one was put in, the man is said to have felt a sharp stab of pain.⁶⁴

1.35 He went on further to say:

The spells, like all others at Ongtong Java, were direct appeals to the spirits of the ancestors.⁶⁵

1.36 Sorcery may arise because of several factors which include:

- Jealousy due to status, social and economic advancement;
- Customary land disputes between different clans and tribes;
- Criminal activities within villages;
- Social control; or

⁶⁰ L. W. S. Wright, above n 59.

⁶¹ Marau villages consultations (2014).

⁶² Central Islands Province Consultation Notes, Soso and Mboromole villages (2013).

⁶³ Ontong Java is in Malaita Province, Solomon Islands.

⁶⁴ H. Ian Hogbin, 'Sorcery at Ontong Java' (1932) 34 *American Anthropologist* 441, 442.

⁶⁵ Ibid.

- Friendship break-down.

- 1.37 Sickness, death, insanity or misfortune, are often attributed to sorcery because of the traditional beliefs in sorcery.⁶⁶
- 1.38 In the past the alleged sorcerers were killed if they were responsible for death of other persons.⁶⁷ Such payback killing could be executed by the relatives of the deceased.⁶⁸ Elements of such practice still exists although such practice is unlawful. For instance, an alleged sorcerer was killed by the son of the person who was believed to have been killed by the alleged sorcerer.⁶⁹ The son was convicted for murder as discussed under paragraph 1.59 of this report.
- 1.39 In other instances, the alleged sorcerers were banished from the village or community.⁷⁰ In one part of Malaita, the sorcerer would be represented by a coconut placed in the *bae*⁷¹ as an affirmation that he or she would not return. In some instances, they were asked to pay compensation before they leave. In some situations, the alleged sorcerer fled the place due to threats⁷² and destruction of his or her properties.⁷³ In Tikopia, in the past, if the Chiefs found someone to be a sorcerer, the sorcerer will be put in a dugout canoe and pushes him or her away into the ocean and never allowed to return to the village.⁷⁴
- 1.40 Proving sorcery was not a problem in the past because each grouping throughout the country had its traditional methods for demonstrating that

⁶⁶ Also see Judith Bennet in her book – *Wealth of the Solomons: A history of a Pacific archipelago, 1800 – 1978* (1987) who said: “...Solomon Islanders attributed major troubles to the actions of sorcerers. In the Melanesian’s view nothing happened by chance; people attempted to channel spiritual forces to their own ends. Consequently, whatever happened – be it illness, a famine, death of a pig, the falling of a branch onto a child, the achievement of leadership, or victory in a battle – all occurred because someone had access to power from the spirits. One major way of gaining access was through sorcery, with the sorcerer using magical ritual to invoke a deity, an ancestral spirit, or less commonly, a demon spirit. Sorcery was universal and, in its negative aspects, greatly feared. A form of social control, it usually restrained the more ruthless and exploitive members of the community and ensured conformity to socially accepted moral values.” (1987: 18). See also Moli Village consultation notes (2014).

⁶⁷ James Ofasia, ‘Traditional Toabaitan Methods of Forgiveness and Reconciliation’ http://www.elc.ac.pg/LinkClick.aspx?fileticket=Dv2jo3F_mY%3D&tabid=80 (Accessed 20 March 2013). See also LRC interview with Chief John Konai, Matakwalao House of Chiefs, North Malaita, Malaita Province (11 February 2013); Also LRC interview with Rinaldo Talo, President, Malaita Local Court, Malaita Province (February 2013). Central Islands Provincial Government and Vuranimala consultations (2013). Poro and Buala Villages consultations (2014).

⁶⁸ As was mentioned in the cases: *Gereu v Director of Public Prosecutions* [1984] SBCA 2; <http://www.pacii.org.vu> and *Orodo v Arurumae* [2010] SBLC 2; <http://www.pacii.org/>.

⁶⁹ *Regina v Havimana* [2011] SBHC 48; <http://www.pacii.org/>.

⁷⁰ Vuranimala Village Consultation (2013).

⁷¹ Place where dead people are buried.

⁷² Guadalcanal Women’s Council consultation (2016).

⁷³ Vuranimala Village consultation (2013).

⁷⁴ Horiara consultations (2016).

someone practised sorcery. However, the relevance and application of these methods in contemporary society are unclear. While some individuals suggest that these customary methods could still be employed to prove sorcery today, there is no evidence to show the current practices of the methods. This may indicate that the belief in sorcery may have been shifted or the traditional practices of proving sorcery may have been difficult to use in today's contemporary society. Due to these hurdles, people who have reported sorcery cases can sometimes be subjected to false accusation of a person practising sorcery,⁷⁵ and sometimes be charged for spreading false rumours,⁷⁶ or accused of defaming the alleged sorcerer.⁷⁷ This complexity reflects a broader shift in how communities view sorcery, leading to potential misunderstandings and legal implications for those involved.

- 1.41 Concerns were raised that innocent people have been blamed for sorcery and were unfairly punished despite no proof of the allegations.⁷⁸ One person accused of being a sorcerer stated that he was chased out of his land where he has his coconut and cocoa plantations due to sorcery allegation. People just believed a dream to chase him out of his properties. And now he lives in a place without benefiting from his plantations. He strongly commented that using a dream to prove someone as a sorcerer is ill-conceived because many dreams are not true.⁷⁹
- 1.42 Others suggested that chiefs and other traditional elders still have the knowledge and ability to prove sorcery according to customary acceptable standards. This is because a person who practices sorcery is noticeable in the community. This may include his or her rare behaviours in the community. Also, this may include strange things that happen at the alleged sorcerer's home. For example, snakes or frogs frequent visit the home of the alleged sorcerer or even laying in cooking pots and plates. In North Malaita (Toabaita and Lau) there are two customary methods of proving sorcery. Both methods involve tracing.
- 1.43 The first method is to trace any contact that the victim had with the sorcerer. For example, the sorcerer might have given some food to the victim to eat or might have taken a piece of the victim's clothes. Any illness caused to the victim after his or her contact with the sorcerer is always suspected to be caused by sorcery. To add with this, if the sorcerer's home was frequented by snakes or frogs to the

⁷⁵ Central Islands Provincial Government consultation (2013).

⁷⁶ Gizo consultations (2015). Spreading false rumours is an offence under s 63 of the *Penal Code*.

⁷⁷ *Fito'o v Rifu & Another*, Malaita Local Court, CC No. 28/98, 26 May 1998.

⁷⁸ West Guadalcanal consultation (2016).

⁷⁹ Siarana Village consultation (2013).

extent that they even lay in cooking pots and plates, this proves the suspicions real without any doubt according to customary standard of belief and proof.

- 1.44 The other method of finding the sorcerer is the use of spiritual rituals (called *sule akalo* and *unu*). This method involves tribal leaders who are specialised in spiritual callings to call the dead person's spirit to lead them to the sorcerer's home. At the grave the expert person will call the deceased's spirit. The deceased's spirit in a form of a firefly (*bubulu*) will lead the expert and his group to the sorcerer's house. The firefly will rest on the sorcerer's house. To further prove that the person is the sorcerer, the leaders of the tribe or community in which the alleged sorcerer is part of can take the person to another house far from his or her original house. If the person is the true sorcerer, the firefly will still lead the expert and his group to the house where the alleged sorcerer moves to and lives. However, according to a chief in North Malaita, the police in that area prohibited the use of this method for proving sorcery.⁸⁰
- 1.45 In Central Province, sorcery was proved in the past by pouring custom medicine made from herbs into the death person's mouth.⁸¹ This will result in the revelation of the name of the sorcerer and three days later that sorcerer will die.⁸² Another way to prove sorcery was to put the alleged sorcerer in a canoe in the sea. A person is guilty of sorcery if the canoe does not stay still in the sea when asked to answer certain questions.⁸³
- 1.46 Other customary ways of proving sorcery are torturous. For example, in Choiseul Province, the practices of identifying the sorcerer involved tying of the alleged sorcerer to stand in black ants until he or she confesses to be a sorcerer,⁸⁴ or put the alleged sorcerer in smoke of fire until he or she confesses to practice sorcery, or whip the alleged sorcerer until he or she confesses of being a sorcerer, or put the alleged sorcerer in a canoe and watched if the canoe moves then he or she is the sorcerer.⁸⁵ In Marau, Guadalcanal Province, they used burned stones and gave them to the alleged sorcerer. A person is guilty of sorcery if the stones burned him or her.⁸⁶ In Makira Ulawa Province the alleged sorcery was put in a

⁸⁰ Chief John Konai, above n 67.

⁸¹ Mboromole Village consultation (2013).

⁸² Ibid.

⁸³ Alite Village, Tavani community, Marau Sound, Guadalcanal Province consultations (2014).

⁸⁴ Vosa Village, Choiseul Province consultation (2014).

⁸⁵ Vosa and Moli Villages consultations (2014).

⁸⁶ Alite Village consultation (2014).

fire. The person will be guilty of sorcery if he or she got burned during that ritual.⁸⁷

- 1.47 Denial of being a sorcerer is a common response of alleged sorcerers. However, in some cases alleged sorcerers would agree that they did have some magical objects for protection and not to harm anybody. In some instances, the alleged sorcerers could point out the source of their magical objects to well-known customary healers in the community.
- 1.48 Consultations revealed that some chiefs had tried to deal with sorcery. For instance, the Police in Marau stated that they were presented to provide security and to maintain peace during a sorcery settlement. The chiefs dealt with the case in which the son of the accused testified against his father for practising sorcery. The father was alleged to use sorcery to cause the death of his son's girlfriend because the son refused to accept the *vele*, a sorcery practice. The penalty awarded by the chiefs includes one live pig, shell money, Chupu, and \$1,500.⁸⁸ In East Guadalcanal, chiefs resolved sorcery allegations and they usually imposed a fine of \$10,000.00 for the alleged sorcerer to pay to the victim.⁸⁹ This fine is beyond the penalties set by the State in the *Penal Code*.
- 1.49 During the ethnic tension period (1998 – 2003), alleged sorcerers were tied up and beaten by the victim's family members. In some cases, the alleged sorcerers were murdered.⁹⁰
- 1.50 Some customary methods of proving sorcery are either irrational or torturous. They are irrational because it is illogical to expect a canoe to remain still or not to shake when in the sea. And to say that the person is proven to be a sorcerer because the canoe shakes in the sea is irrational. Same as the practice of placing someone in the fire if burned is a sorcerer. Logically any person who is placed in the fire will be burned anyway. Some of the customary practices to prove sorcery are torturous as described in paragraph 1.46.

⁸⁷ Kirakira Magistrate Court consultation (2014). See LRC consultation notes on sorcery.

⁸⁸ Marau Police Consultation (2014).

⁸⁹ Tetere Police consultation (2016).

⁹⁰ Tetere Police consultation (2016).

Part 4: The State governance of sorcery

This part is on the State governance of sorcery. It describes the current legal framework on sorcery in Solomon Islands. It also covers instances when this issue of sorcery was discussed under the legal framework, in particular criminal legal framework. It further raises issues for consideration for law reform.

Current law

1.51 Sorcery is an offence criminalised under section 190 of the *Penal Code* [Cap 26]. The provision provides:

Any person who –

(a) performs any magic ritual in respect of which there is a general belief among any class of persons that harm may be caused to any person; or

(b) has in his possession, without lawful excuse, any article commonly associated by any class of persons with harmful magic,

is guilty of a misdemeanour, and shall be liable to imprisonment for two months or to a fine of forty dollars.

1.52 The *Penalties Miscellaneous Amendments Act 2009* increases the penalty for sorcery offence to a fine of \$2,000.00.⁹¹ Economic inflation was used as the policy reason for the increases of the penalties in 2009. The Act does not make any change to the imprisonment term. Hence, the two months' imprisonment term is retained.

Commentary on the sorcery provision

1.53 There are two problems with the provision, section 190 of the *Penal Code*. First, this sorcery offence provision does not fully reflect sorcery as it is commonly known and understood in Solomon Islands society as described under paragraph 1.28 of this report. This is because sorcery as it is known to many Solomon Islanders as captured in Part 3 of this report is an act that causes serious sickness or illness that can result in insanity or death if no customary means of

⁹¹ *Penalties Miscellaneous Amendments Act 2009*, schedule.

cure is given to the victim. Or is an act that causes misfortune to another person. Others used sorcery to lure girls, women, and men into relationships or destabilise relationships or cause economic misfortunes.⁹² In some cases, a sorcerer is known to the victim or relatives as the victim experiences misfortune, sick period or the sorcery is known to relatives after the victim died. This is the common belief and perception as to how a sorcerer is identified in custom. This is different to the sorcery offence as envisaged in section 190(a) that provides for criminalisation of performance of any magical ritual where there is a general belief among a class of persons that may result in harm⁹³ to any person; and under section 190(b) that provides for criminalisation of possession of articles (without lawful excuse) commonly associated by any class of persons with harmful magic. This is because performing rituals and possessing articles (objects) are only partial factors to identifying a sorcerer in custom. However, the approach as taken in the *Penal Code* is understandable because the beliefs in sorcery as known in Solomon Islands would be more difficult to prove as those practices are believed to be supernatural or magical. The current sorcery offence provisions criminalise conducts that could be associated with sorcery and could be proven to the satisfaction of the court if sufficient evidence is provided.

- 1.54 Second, this sorcery provision in the *Penal Code* has not been used to prosecute any alleged sorcerer(s) in the past.⁹⁴ The reason for this non usage is because of the perception that sorcery offence as in section 190 of the *Penal Code* is difficult to prove.⁹⁵ This perception is rationale because sorcery dealings or conducts are done in secret and no one other than the sorcerer knows about them. For instance, the performance of magic ritual and possession of harmful magic objects or articles are conducts and things that are hidden from those who do not practice sorcery. The only people who may have a chance of witnessing such conducts or articles are the close family members. These family members except in rare cases will not reveal the sorcerer because of the stigma that is associated with sorcery in society. They will not wish to be seen and considered as an evil family in the village or community. There was an instance that a child revealed

⁹² Honiara Consultation (2016).

⁹³ *Penal Code* s 4 define harm to mean any bodily hurt, disease or disorder whether permanent or temporary.

⁹⁴ The LRC email correspondence with Mr. Douglas Hou of the Public Solicitor's Office, Mr. Ricky Iomea of the Director of Public Prosecutions and the Police Prosecutions Office (2013). Also LRC verbal conversation by telephone with Mr. Leonard Maina, Chief Magistrate of Solomon Islands (2013).

⁹⁵ The LRC email correspondence with the Police Prosecutions Office (2013).

that her mother was practicing sorcery.⁹⁶ This instance is discussed below in this part under the *Local Court Act*.

- 1.55 On the other hand, the perception that the sorcery offence is difficult to prove needs to be tested in court. This is because although sorcerers perform their magical rituals in secret or hide their magical articles, there are times they could be caught. For example, it is a belief that a sorcerer who practises *arua* often dance in the graveyard after the victim has been buried. A *vele* sorcerer often has in possession a special *vele* bag. There might be some successful cases had cases of sorcery offence were tried in courts, especially the by local court and magistrate court.⁹⁷
- 1.56 Police always refer sorcery or witchcraft matters to chiefs or community leaders to settle because in their view the allegation of sorcery is difficult to prove.⁹⁸ Others think that sorcery does not exist so it cannot be proven.⁹⁹
- 1.57 Another reason for the non-usage of this provision may be because of the low penalty attached to the offence.¹⁰⁰ This is because the current penalty does not reflect the nature of the offence in custom as sorcery is a very serious wrong in custom.¹⁰¹ A suggestion for higher penalty to deter people from practising sorcery was suggested during consultations.¹⁰² Participants thought this would influence the police and other law enforcers to chance their mediating approach to prosecutorial approach in dealing with sorcery matters.¹⁰³
- 1.58 There were no cases since the offence of sorcery was introduced in the *Penal Code* in 1966 although allegations of sorcery were and are common throughout the country. Discussed below are examples of cases, *Regina v Havimana*,¹⁰⁴ *R v*

⁹⁶ Rinaldo Talo, above n 67.

⁹⁷ The local court is the relevant court to deal with sorcery offence. The Magistrate Court is mentioned because it is the court that currently deals with matters that are under the local court jurisdiction as the local court is not active to deal with matters under its jurisdiction.

⁹⁸ Naha Police consultation (2016).

⁹⁹ Central Islands Provincial Assembly consultation (2013).

¹⁰⁰ The maximum penalty for sorcery offence in the *Penal Code* is imprisonment of two months or a fine of \$2000.00.

¹⁰¹ Rinaldo Talo, above n 67.

¹⁰² Ibid, Central Provincial Assembly consultation (2013), Vuranimala Village consultation (2013), Siarana Village consultation (2013), Mboromole Village consultation (2013), Vosa Village consultation (2014), St Bishop Patterson College, Kohimarama consultation (2016), Hatara community consultation (2014), Buala Police consultation (2014).

¹⁰³ Naha Police consultation (2016). Rinaldo Talo, above n 67.

¹⁰⁴ [2011] SBHC 48; <http://www.paclii.org/>.

Thuzea,¹⁰⁵ *Regina v Batalau'ia*,¹⁰⁶ *R v Bitana*,¹⁰⁷ *R v Arunaala*,¹⁰⁸ *R v Ngelea*,¹⁰⁹ *R v Sisiolo*,¹¹⁰ *R v Sisiolo*,¹¹¹ *R v Zama*,¹¹² and *R v Tebounapa*,¹¹³ which touched on sorcery or witchcraft but on different fronts, including people taking the law into their own hands.

Regina v Havimana

1.59 This is a case where sorcery offence was discussed by the court in the context of a defence to the charge of murder. The defendant was charged for murder contrary to section 200 of the *Penal Code*, among other charges.¹¹⁴ The defendant attempted to rely on the argument that he killed the victim because the victim had killed his father by sorcery. The defence alleged that the sorcerer revealed himself through two other victims (Eldon Kari and Veronica Lestro) of sorcery when two Church of Melanesian Brothers (Brothers) conducted clearance and healing in the area. The Brothers used holy water, holy oil and prayer in their clearance and healing sessions. It was alleged by the defence witnesses that the victim in this case (the alleged sorcerer) was speaking through Eldon Kari and Veronica Lestro saying that he was responsible for killing the accused father, the late Rev. Ambrose Havimana. The alleged sorcerer was said to have spoken through Eldon and Veronica when they were made asleep by the Brothers. The High Court of Solomon Islands did not accept this method (voice identification through the victims in which the alleged sorcerer was identified) because of inconsistent evidence given by the defence witnesses.¹¹⁵ The accused was therefore convicted of murder, assault causing bodily harm, and common assault. The accused appealed against his conviction for murder on the basis that he did not have the knowledge that his actions (kicks and attacks) would cause death or grievous harm to the deceased. The Court of Appeal dismissed his appeal.¹¹⁶

¹⁰⁵ [2016] SBHC 31; <http://www.paclii.org/>.

¹⁰⁶ [2016] SBHC 29; <http://www.paclii.org/>.

¹⁰⁷ [2020] SBMC 8; <http://www.paclii.org/>.

¹⁰⁸ [2020] SBMC 10; <http://www.paclii.org/>.

¹⁰⁹ [2023] SBHC 8; <http://www.paclii.org/>.

¹¹⁰ [1998] SBHC 57; <http://www.paclii.org/>.

¹¹¹ [2010] SBHC 35; <http://www.paclii.org/>.

¹¹² [2019] SBHC 10; <http://www.paclii.org/>.

¹¹³ [1999] SBHC 1; <http://www.paclii.org/>.

¹¹⁴ Other charges are for assault causing bodily harm and common assault.

¹¹⁵ *Regina v Havimana* [2011] SBHC 48; <http://www.paclii.org/>.

¹¹⁶ *Havimana v Regina* [2011] SBHC 23; <http://www.paclii.org/>.

1.60 In the case the defence tried to prove sorcery by the use of voice identification evidence arguing that the alleged sorcerer admitted to cause sorcery on Late Havimana, the accused father. It is not clear what would be the legal consequences had the court accepted Allen (the deceased in the case) as the sorcerer of the accused's father. Would the court agree to extend provocation to cover that circumstance? The Court in this case did not make any statement on this issue of provocation as a result of sorcery.

R v Thugea

1.61 The accused in this case was convicted for murder for causing the death of the deceased who was suspected of practising witchcraft.¹¹⁷

Regina v Batalau'ia

1.62 The accused was charged for grievous harm¹¹⁸ contrary to section 224(a) of the *Penal Code*. He pleaded guilty to the charge. The High Court sentenced him to four years imprisonment. The accused used a knife and inflicted grievous harm to the victim, resulting in the permanent loss of the victim's limb. The criminal conduct was a result of a sorcery matter that had affected both the accused and the victims' families. The Honourable Chief Justice Palmer made this statement in the case:

*This court notes with concern that allegations of sorcery or witchcraft whether true or not have a tendency of evoking strong feelings of animosity and anger amongst those affected and exploding often into some form of violence.*¹¹⁹

R v Bitana

1.63 In this case, the accused was charged for arson contrary to 319(a) of the *Penal Code*. The accused burned the dwelling house of the victim because the accused claimed that the victim's son used sorcery to cause the death of his brother. The accused pleaded guilty to the charge of arson so the Magistrate Court sentenced him to two (2) years and nine (9) months imprisonment. In sentencing the accused, Principal Magistrate Chite had this to say:

This is an audacious and heartless act by the accused person against an old, helpless and innocent victim who had not predict such would even happen to him and his own treasured home. A clear lack of respect, empathy and compassion for old people in our society. An attitude orchestrated by the fall of respect, spiritual and societal norms within our rural

¹¹⁷ R v Thugea [2016] SBHC 31; <http://www.paclii.org/>.

¹¹⁸ An offence that carries a maximum penalty of life imprisonment.

¹¹⁹ Regina v Batalau'ia [2016] SBHC 29; <http://www.paclii.org/>.

communities, one which partially hinged on the heathenish conservative mind to take up issues on oneself with the quick violent reaction against persons suspected of practicing sorcery. An approach that is surprisingly active in the twentieth first century.

This is a sad and devastated day for the victim, who has lost all his belongings, properties and home, all because of suspicion that the victim's son practice sorcery or black magic. The incident was triggered by hate and anger from the accused party after which they blamed the victim's son to have caused the death of the accused brother with his sorcery.

No person is allowed to conduct violence, cruelty or ill-treatment against another on suspicion of sorcery. The route to channel it lawfully is available, hence, those who take the law into their own hands will find themselves journey-bound to court to face the vibrant wrath of law.

A house is one's own palace or haven, for reason that it provides security and means of protection for the owner and it enables another to live peacefully and to be sheltered from rain, sun, wind and other danger and threats from animals and others. In this case, the victim's home was simply taken away for no good reason and life was put to risk simply because of the accused ill-hearted act.¹²⁰

R v Arunaala

1.64 In the case of *R v Arunaala*,¹²¹ the accused was charged for arson contrary to section 319(a) of the *Penal Code*. The accused pleaded guilty to that charge. He relied on sorcery as the reason he was provoked to burn the victim's house. He alleged that the victim used sorcery to cause the death of his brother and aunty. However, the Auki Magistrate Court refused to accept that argument as a mitigating factor. Principal Magistrate Chite stated that such contention was too remote and must be proven with evidence in Court before the accused can go under the umbrella of provocation to mitigate his wrongful act. The Magistrate emphasises on taking the allegations of sorcery to chiefs, elders or church leaders to settle between parties, or reporting the matter to police to investigate and prosecute for the offence of sorcery, as two lawful, appropriate and peaceful means to sort out the sorcery allegations than taking the law in one's own hand. The accused was sentenced to 2 years, 6 months' imprisonment term.

¹²⁰ *R v Bitana* [2020] SBMC 8; <http://www.paclii.org/>.

¹²¹ [2020] SBMC 10; <http://www.paclii.org/>.

R v Ngelea

1.65 In the case the High Court considered being very angry and armed and searching for the deceased who was rumoured to be a sorcerer as an aggravating factor for the offence of manslaughter.¹²² The Judge commented that the conduct of the accused borders on the offence of murder.

R v Sisiolo

1.66 The High Court Judge in this case described the act of sexual intercourse in order for the accused to obtain fluid from the victim, a woman, to mix the fluid with blood and scaping from finger nail as a medicine for the female to give to her boyfriend to take in order for her to marry her boyfriend as an act of witchcraft. The Judge went on to say that witchcraft has never been accepted as a defence in law in any part of the world.¹²³

R v Sisiolo

1.67 This case, *Regina v Sisiolo*,¹²⁴ is another rape case. The accused claimed to be a custom doctor who can predict the future. Because of his alleged background, he was allowed to cure a young girl who was believed to be a victim of sorcery. In the course of trying to cure the girl (female complainant) Sisiolo had sexual intercourse with her. Sisiolo claimed that sexual intercourse with the girl is the remedy to cure the alleged sorcery.

R v Zama

1.68 This is a case where the accused was convicted for rape. The rape incident occurred when the accused was performing rituals to cure the witchcraft suffered by the female victim.¹²⁵

R v Tebounapa

1.69 This is another case of rape. In this case the accused who claimed to be a custom doctor was convicted for raping the complainant. He had sexual intercourse with the complainant during a massage session that was aimed at removing a devil from the complainant. The accused told the complainant that if she thought about her children, she must let him have sexual intercourse with her. He told the complainant that without sexual intercourse with her, the sickness would not

¹²² *R v Ngelea* [2023] SBHC 8; <http://www.pacii.org/>.

¹²³ *Regina v Sisiolo* [1998] SBHC 57; <http://www.pacii.org/>.

¹²⁴ [2010] SBHC 35; <http://www.pacii.org/>.

¹²⁵ *R v Zama* [2019] SBHC 10; <http://www.pacii.org/>.

be cured. The accused told the complainant that the purpose of sexual intercourse was to remove the dirty water from her body caused by poison (sorcery). If that was not done, she would die the following month.¹²⁶

Provincial Government level

Moli Ward Chiefs Council Ordinance 2010

1.70 At the provincial level, the Guadalcanal Provincial Assembly passed the *Moli Ward Chiefs Council Ordinance 2010* (Moli Ward Ordinance) establishing the Moli Ward Chiefs Council and provides it with powers to deal with matters within the Moli Ward in accordance with customary law and practices of the tribes of Moli Ward and for the related matters. Among others, the Moli Ward Ordinance stipulated that sorcery is an offence.

1.71 Section 77 states:

- (1) A person who practices sorcery in Moli Ward breaches this section and is liable to a fine not exceeding 1,000 penalty units and one pig, one *chauangavulu*,¹²⁷ and one *chupu*.¹²⁸
- (2) In this section, “sorcery” means any rituals for which there is a general belief among any class of persons that harm may be caused to any person or in possession, without lawful excuse, any article commonly associated in any class of persons with harmful magic, and include heathen practices or black magi commonly known in Moli Ward as *piro*, *vele*, or *kibokibo* for which there is a general belief among any class of persons may cause harm.
- (3) All evidences in sorcery matters shall be by way of eye witness, circumstantial or admissions.

¹²⁶ *R v Tebounapa* [1999] SBHC 1; <http://www.paclii.org/>.

¹²⁷ *Chausangavulu* refers to ten string shell money of one fathom each string in length.

¹²⁸ *Chupu* refers to the piles of cooked food, uncooked garden produce, live pigs and shell money that are exchanged in ceremony which may be made for a range of purposes. Rebecca Monson, *Hu nao save tok? Women, men and land: negotiating property and authority in Solomon Islands* (PhD Thesis, Australian National University, 2012) 229 – 230.

(4) Hearsay evidence is inadmissible and cannot be accepted as evidence against a defendant.

1.72 Apart from the prescribed penalties, the offence in section 77 reflects closely the sorcery offence in the *Penal Code*. This means the problem of proving the offence under the *Penal Code* will still be a problem under the *Moli Ward Ordinance*. Admission of guilt will be difficult as alleged sorcerers are not doing that in Solomon Islands. The only close admission that an alleged sorcerer could go is to say he or she has something for protection and not for killing somebody. Circumstantial evidence could be the only way closer to proving somebody accused of sorcery. For example, in the case of someone accused of arua, facts such as the alleged sorcerer was recently in contact with the victim by giving food to the victim, evidence of frogs and snakes in the sorcerer's home are circumstantial evidence that may be accepted by a State supported court.

Other legislation - the Local Courts Act [Cap 19]

1.73 The *Local Court Act* allows for the local courts to deal with minor civil and criminal matters where parties are all islanders residing within the jurisdiction of the local courts as set out in their warrants that establish them.¹²⁹ The Act allows the local courts to apply custom of the islanders in the area of the jurisdiction of the courts.¹³⁰ They can hear both the law and customary wrongs or breaches. They can impose punishment authorized by law or custom of the islanders that are not contrary to natural justice and humanity, and that the punishment must always proportionate to the nature and circumstances of the offence.¹³¹

1.74 The local courts can deal with sorcery offence both under State law (*Penal Code*) and under customary law. Under State law a local court can deal with sorcery offence because it is a minor offence and if the parties are from the area of jurisdiction of the local court. However, there is no evidence (according the LRC research) to show that a local court has dealt with sorcery offence under State law. On its customary jurisdiction, a local court can deal with sorcery as a customary wrong. This is because sorcery is a customary wrong and custom determines the punishment for alleged sorcerers. Some customs recognised

¹²⁹ See *Local Courts Act* [Cap 19], s 6.

¹³⁰ *Local Court Act* [Cap 19], s 16.

¹³¹ *Local Courts Act* [Cap 19], s 18.

death, banishment, or giving of land to the victim's side as forms of punishment for sorcerers.¹³²

- 1.75 According to the LRC research there was only one instance that the Malaita Local Court has found a person guilty of sorcery under its customary law jurisdiction. In that case, a wife was accused of causing the death of her husband. The community suspected the wife of having *arua* because she danced and talked in the graveyard in the night during moon-light and a customary ritual was performed and found that the wife was responsible for the death. During the local court hearing, the daughter of the wife testified that her mother fed a "cat" in the bush. The daughter led the court officers to the place in the bush and they found a half snake (snake without a tail) in the area. The local court found guilty the wife for sorcery according to custom and ordered her to pay five red shell monies to the husband's side. Apart for this case, the Malaita local court dealt with many cases in relation to rare or extraordinary behaviours of alleged sorcerers during times of death. Claimants came to court claiming compensation from the alleged sorcerers – accusing them of behaving extraordinarily during times of death. The extraordinary behaviours include laughing out loud persistently, putting flowers on the heads, eating a lot, etc during mourning period. The court awarded compensation for such claims because those extraordinary behaviours amount to customary wrongs.¹³³
- 1.76 The cases below shows how the Malaita Local Court tries to deal with the allegations of sorcery or sorcery related claims.
- 1.77 In the case of *Fabiano Launigiau v Hasel Ngwata*,¹³⁴ the plaintiff was a Catechist and the Chairman of Laugwata Primary School. He was accused of causing witchcraft to the defendant's husband, late Luke, who was the Secretary to the Laugwata Primary School. It was claimed that late Luke told his wife and those with him at the Hospital that the person who caused witchcraft to him, and that he came to finish him off was the plaintiff. Late Luke was claimed to say these words prior to his death at the Hospital. "Today you should not go to any place from me. You must stay because today one man will come... He then said that the man is now coming. ... he is now here in Hospital. ... that the man is now here arriving." After those words, the plaintiff arrived. The plaintiff went and

¹³² See Gordon Leua Nanau, 'The *Wantok System* as a Socio-economic and Political Network in Melanesia' <http://www.omnesjournal.org/upload/public/pdf/10/1.pdf> (Accessed 3 May 2013). See also James Ofasia, above n 67.

¹³³ Rinaldo Talo, above n 67.

¹³⁴ Malaita Local Court, CC No. 30/97, 18 February 1998.

stood at the head of late Luke's bed. The defendant, late Luke's wife, asked the plaintiff, of what was his intention for his coming. The plaintiff bowed his head down without saying a word. The defendant told him that her husband suffered a lot. The plaintiff then tapped late Luke's shoulder. Late Luke then told everyone that the plaintiff was the one who caused witchcraft to him. Late Luke then died.

- 1.78 Earlier on, there was an inquiry before the chiefs about that witchcraft issue. The chiefs directed the plaintiff to pay one (1) red-shell money for what had happened. The plaintiff's brother paid that compensation to the defendant's side. The plaintiff instigated in the Malaita Local Court that the defendant pays him compensation for defamation of character. This was because the defendant labelled the plaintiff as witchcraft who was responsible for killing her husband. And also, for the court to order the defendant to pay back the one red shell money paid to the defendant because the witchcraft allegation against the plaintiff was not proven.
- 1.79 In *Fito'o v Rifu & Another*,¹³⁵ the plaintiff brought against the two defendants a claim for defamation of his character. The plaintiff alleged that the two defendants spread false information that he is a witchcraft (Kelema) person and was responsible for two deaths. The court dismissed the claim because there was no evidence to substantiate the plaintiff's claim that his name or character had been defamed. Interestingly, the court in this case went on further to hold that there was no sufficient evidence in custom to prove that the plaintiff is a witchcraft (Kelema) man although that was not part of the plaintiff's claim.
- 1.80 In *Maelimae v Idu*,¹³⁶ the plaintiff alleged that the defendant had cursed his father to die. The plaintiff claimed 10 red shell monies for the claim of the defendant cursing his father to die. The court found no sufficient evidence to prove the claim. The evidence produced was a hearsay account from the father (deceased) to his sons of whom one was the plaintiff. However, interestingly, the court ordered the defendant to pay the plaintiff, one red shell money or \$300.00, plus \$40.00,¹³⁷ to keep the peace between the parties.
- 1.81 Further, in *Are v Makau & Another*,¹³⁸ the plaintiff claimed that the defendants accused his wife of practicing witchcraft, arua. It was stated that the plaintiff's

¹³⁵ Malaita Local Court, CC No. 28/98, 26 May 1998.

¹³⁶ Malaita Local Court, CC No. 42/98, 3 March 1999.

¹³⁷ The \$40.00 was the Civil Case fee paid by the plaintiff to have the case opened in the Local Court.

¹³⁸ Malaita Local Court, CC No. 1/12, date of judgment 22nd April 2013.

wife was sick and went to a Tasiu, also known as 'Brother', at All Saints, Honiara. The two defendants accompanied her to All Saints. The defendants told the plaintiff about the healing process which resulted in his wife discharged blood and on the third day discharged a dead snake. There was no information on the judgment as to what the plaintiff claimed for accusing his wife of been a witchcraft. It could be that he claimed for defamation of his wife's name of been a witchcraft. The court dismissed the plaintiff's claim and stated that the defendants were only stating the true facts as what happened to the plaintiff's wife during the healing process. Other court ruling includes:

- o The plaintiff's wife not to initiate rare actions to raise suspiciousness;
- o Parties are not to spread false news of arua;
- o Parties to reconcile;
- o No order of costs; and
- o Any aggrieved party to appeal within a month from the date of the judgment.

1.82 Violence often stem out from allegations of sorcery. For examples, murder,¹³⁹ grievous harm,¹⁴⁰ and arson¹⁴¹ were often committed in responses to sorcery accusations. In some cases, sexual offences¹⁴² were also committed on victims who think that they are suffering from witchcraft. The current law on sorcery is inadequate for the prosecution of the offence.

1.83 The next part is on how other neighbouring countries in the Pacific region deal with sorcery in their laws.

¹³⁹ *Havinana* and *Thugea* cases.

¹⁴⁰ *R V Batalau'ia* case.

¹⁴¹ *R v Arunaala* and *R v Bitana* cases.

¹⁴² *R v Tebounapa*, *R v Sisiolo*, *R v Zama* cases.

Part 5: Laws on sorcery offence from other jurisdictions

PNG

Sorcery Act 1971

1.84 The *Sorcery Act 1971* defines an 'act of sorcery' to mean any act (including a traditional ceremony or ritual) that is intended to bring, or that purports to be able or to be adapted to bring, powers of sorcery into action, or to make them possible to carry them into effect. Sorcery includes witchcraft, black magic, and enchantment.¹⁴³

1.85 The *Sorcery Act 1971* criminalises the following conducts:

- To professes to be a sorcerer;¹⁴⁴
- To threaten the use of sorcery on another person;¹⁴⁵
- To do any acts of forbidden sorcery, or aids, abets, counsels or procures, or by act or omission knowingly concerned in or party to the act;¹⁴⁶
- To attempt to produce any unlawful result by means of sorcery;¹⁴⁷
- To administer sorcerers' substances to another person or to an animal;¹⁴⁸
- To falsely accuses or threatens to accuse another person of being or having been a sorcerer, or performed an act of sorcery or a party to an act of sorcery or to spread a false report that another person is a sorcerer or practices sorcery; and¹⁴⁹
- To have in possession of or implement of forbidden sorcery to make or adopt for use in an act of forbidden sorcery or intending to use in an act of forbidden sorcery.¹⁵⁰

1.86 The Act allows provocation to be raised when committing another wrongful act or insult.¹⁵¹

1.87 Sorcery was very difficult to prove even though the Act provided for the prohibited sorcery conducts. Evidence is lacking to prove the offences. According to our research, the sorcery charges resulted in convictions were in

¹⁴³ *Sorcery Act 1971*, s 1.

¹⁴⁴ *Sorcery Act 1971*, s 6(2).

¹⁴⁵ *Sorcery Act 1971*, s 6(3).

¹⁴⁶ *Sorcery Act 1971*, s 7.

¹⁴⁷ *Sorcery Act 1971*, s 8.

¹⁴⁸ *Sorcery Act 1971*, s 9.

¹⁴⁹ *Sorcery Act 1971*, s 10.

¹⁵⁰ *Sorcery Act 1971*, s 11.

¹⁵¹ *Sorcery Act 1971*, s 16.

the cases of *State v Parara*¹⁵² and *State v Magou*.¹⁵³ The case of *State v Parara* was on the threat to use sorcery. The accused was convicted for sorcery under the *Sorcery Act* after trial.¹⁵⁴ In that case *State v Parara*,¹⁵⁵ the accused was charged under section 6(3) of the *Sorcery Act 1971* which states: *A person who influences or attempts to influence the acts of another person by the use or threatened use of the powers or services of a sorcerer as such is guilty of an offence.* The offence attracts a maximum of two years imprisonment. The accused in this case told the victim that the deaths in the victim's family can only stop if the victim gave him a chicken. The non-compliance with the accused demand will mean further deaths. The victim gave the accused a pig in compliance to the threat. The National Court of Papua New Guinea found the accused guilty of the offence and sentenced him for one-year imprisonment.

- 1.88 In the case, *State v Magou*,¹⁵⁶ the accused plead guilty to the offence. The accused was charged for practising the forbidden act of sorcery under section 11 of the *Sorcery Act 1971*. The accused got the *puri puri*¹⁵⁷ early in the morning about 5am. He got the vines and pricked it with a needle and put in his house. He then called the person's name as he knotted the vines. The person (victim) died after eight days. The accused was sentence for 18 months with hard labour.

Sorcery (Repeal) Act 2013

- 1.89 The *Sorcery Act 1971* has been repealed by an Act of Parliament, the *Sorcery (Repeal) Act 2013* on the 18th May, 2013.¹⁵⁸ It was repealed due to several high-profile and gruesome killings over the years related to sorcery accusations.¹⁵⁹ It was perceived that the Act contributes to the increasing number of killings as it recognises the excuse of provocation to be raised in wrongful acts committed by the accused.

¹⁵² [2008] PGNC 259; N3957 (22 February 2008).

¹⁵³ [1981] PGLawRp 1 (31 January 1981).

¹⁵⁴ Ravunamu Auka, Barbara Gore and Pealiwan Rebecca Koralyo, 'Sorcery – and Witchcraft-Related Killings in Papua New Guinea: The Criminal Justice Response' in Miranda Forsyth and Richard Eves, *Talking It Through – Responses to Sorcery and Witchcraft Beliefs and Practices in Melanesia*, 241- 253. The case was *State v. Parara* [2008] PGNC 259; N3957 (22 February 2008).

¹⁵⁵ [2008] PGNC 259; N3957.

¹⁵⁶ [1981] PGLawRp 1 (31 January 1981).

¹⁵⁷ One of the names used for sorcery or witchcraft in Papua New Guinea.

¹⁵⁸ *Sorcery (Repeal) Act 2013* (Papua New Guinea) http://www.paclii.org/pg/legis/num_act/sa2013168/

¹⁵⁹ Melissa Demian (ed), *Sorcery Cases in Papua New Guinea Village Courts: Legal Innovation Part IV* (2015) <https://dpa.bellschool.anu.edu.au/experts-publications/publications/1266/sorcery-cases-papua-new-guincas-village-courts-legal> (Accessed 28 March 2023).

- 1.90 In the case of *State v Dakol*,¹⁶⁰ Judge Kaumi of the National Court of PNG commented that the repealed of the *Sorcery Act* by the National Parliament has left a gap for legal recourse for people aggrieved by suspected sorcerers. He further commented that it is imperative that the Legislature introduce a law to fill that gap so that people have recourse in law to deal with sorcery situations and not left in suspense, the consequence of which is taking the law in their own hands.
- 1.91 However, the case note article¹⁶¹ on *State v Dakol* highlights that there are still some avenues for recourse for people aggrieved of sorcery to bring their cases to. The avenues are: first, to the Village court; and secondly, the possibility of using the *Underlying Law Act 2000* to file a case in court on the basis of custom in particular where someone suffers injury or loss due to sorcery. This second avenue was pointed out in the *Towarngar v Tokava case*.¹⁶²
- 1.92 The *State v Dakol* was a 2018 case where involved four offenders who brutally killed the alleged sorcerer to death. They were charged for murder of the deceased. They were all given a head sentence of 20 years imprisonment.
- 1.93 The sentencing tariff for homicide offenders imposed by the National and the Supreme Courts of PNG who killed alleged sorcerers ranges from 20 to 25 years of imprisonment terms.¹⁶³

Criminal Code (Amendment) Act 2013

- 1.94 A subsequent amendment to the *Sorcery (Repeal) Act 2013* was made in the *Criminal Code (Amendment) Act (No. 6) 2013, New Section 299A*, which stipulates that killings in relation to accusation of sorcery or witchcraft will be treated as wilful murder having a death penalty sentence.¹⁶⁴
- 1.95 The objective of repealing the Act was to address the level of violence associated with sorcery allegations and accusations in Papua New Guinea.

¹⁶⁰ *State v Dakol* [2018] PGNC 364; <http://www.paclii.org/>.

¹⁶¹ Georgia Alderton, *State v Dakol: Sorcery and Violence in Papua New Guinea* (Case Note), *Journal of the South Pacific Law* (2021) https://www.usp.ac.fj/discipline-of-law/wp-content/uploads/sites/128/2021/12/2_ISPL-Student-Case-Note_State_V_Dakol-1.pdf (Accessed 30 March 2023).

¹⁶² *Ibid.* *Towarngar v Tokava* [2019] PGNC 34; <http://www.paclii.org/>.

¹⁶³ *State v Dakol* [2018] PGNC 364; <http://www.paclii.org/>.

¹⁶⁴ *Criminal Code (Amendment) Act (No. 6) 2013* (Papua New Guinea) http://www.paclii.org/pg/legis/num_act/cca62013222/

- 1.96 The Papua New Guinea Parliament voted to repeal the country's *Sorcery Act* and to reinstate the death penalty to help stem an increase in violence against people accused of practicing black magic.¹⁶⁵
- 1.97 A spokesperson for the then ruling O'Neill Government said that the decision to reinstate capital punishment was difficult but ultimately necessary to combat a culture of lawlessness and violence in the impoverished country.¹⁶⁶
- 1.98 Interestingly, the four accused in the *State v Dakol* case as discussed above were not charged under this amended provision which puts killings relating to sorcery accusation as wilful murder – attracting death penalty. They were instead charged for murder¹⁶⁷ under section 300 of the PNG *Criminal Code*. The offence of murder carries a maximum penalty of life imprisonment.

Criminal Code (Amendment) Act 2022 (No.10 of 2022)

- 1.99 In January 2022, the National Parliament of Papua New Guinea enacted this criminal code amendment. Among the amendments is the amendment to repeal the **New Section 299A** enacted in 2013. The amendment repeals the death sentence penalty and replaced it with a life imprisonment sentence with eligibility for parole after 30 years.

Criminal Code (Amendment) Act 2022 (No.14 of 2022)

- 1.100 In February 2022, the National Parliament of Papua New Guinea enacted further criminal code amendments on sorcery accusations and on those who purports to be or to use or procure the service of the *glasman* or *glasmeri*. Section 520A defines *glasman* or *glasmeri* as a man or woman who holds themselves as having the ability to identify sorcery activities, sorcery implements, or identifying sorcerers. Section 520B of the Act provides the penalty of up to 20 years imprisonment or a fine up to K20,000.00, or both, for anyone who, directly or indirectly, pretends or professes to be a *glasman* or *glasmeri*. Those who attempts to procure the service of such *glasman* or *glasmeri* are also guilty of an offence punishable for up to 10 years imprisonment or a fine not exceeding K10,000.00, or both, as provided for in Section 520C(1). And section 520C(2) is on the threat of using the powers or services of a *glasman* or *glasmeri*. This offence also attracts the penalty of 10 years imprisonment or K10,000.00, or both. Section 520D(1) criminalises the conduct of, directly or indirectly, procuring the services of a *glasman* or *glasmeri*. This offence also attracts 10 years imprisonment or a fine not exceeding K10,000.00, or both. Section 520D(2) makes it an offence for a person to influence the

¹⁶⁵ Matt Siegel, Papua New Guinea Acts to Repeal Sorcery Law after Strife, The New York Times, Asia Pacific, Sydney Australia May 29th 2013 <http://www.nytimes.com/2013/05/30/world/asia/papua-new-guinea-moves-to-repeal-sorcery-act.html> (Accessed 28 March 2023).

¹⁶⁶ Ibid.

¹⁶⁷ The offence of murder carries a maximum penalty of life imprisonment.

acts of another person by the use or threatened use of the powers or services of a *glasman* or *glasmeri*. The penalty for the offence is 10 years imprisonment term or a fine not exceeding K10,000.00. Section 520D(3) provides that the offences under section 520D(1)&(2) attract a life time imprisonment term if committed by:

- (a) A person or persons acting as or holding themselves out to be a *glasman* or *glasmeri*; and
- (b) Involves accusing a person who is: (i) a minor; or (ii) a child under the age of 12 years; or (iii) elderly, infirm or older than 60 years of age; (iv) physically or mentally impaired; or (v) a woman who is or at the time was pregnant; or
- (c) Results in further offences against or involving more than one person; or
- (d) Results in a death; or
- (e) Results in direct or indirect acts of physical violence, threats, harassment or intimidation towards any person by the offender or any other person; or
- (f) Results in direct or indirect acts of destruction of property belonging to or communally owned by any person, by the offender or any other person.

1.101 Section 520E of the Act is on accusation of sorcery. Section 520E(1) criminalises the conduct of accusing or threatening to accuse another of being a sorcerer or performing acts of sorcery or being party to an act of sorcery. The offence attracts the penalty of up to 10 years imprisonment term or a fine not exceeding K10,000.00, or both. Section 520E(2) criminalises the conduct when a person purports to have had a dream, vision, prediction which results in accusing someone of being a sorcerer. The offence also has the 10 years imprisonment term or K10,000.00 fine, or both. These two offences under section 520E attracts life imprisonment when the offences are committed by:

- (a) A person or persons acting as or holding themselves out to be a *glasman* or *glasmeri*; and
- (b) Involves accusing a person who is: (i) a minor; or (ii) a child under the age of 12 years; or (iii) elderly, infirm or older than 60 years of age; (iv) physically or mentally impaired; or (v) a woman who is or at the time was pregnant; or
- (c) Results in further offences against or involving more than one person; or
- (d) Results in a death; or
- (e) Results in direct or indirect acts of physical violence, threats, harassment or intimidation towards any person by the offender or any other person; or
- (f) Results in direct or indirect acts of destruction of property belonging to or communally owned by any person, by the offender or any other person.

1.102 Section 520F of the Act is on the forfeiture of property of the *glasman* or *glasmeri*. The section provides that where the *glasman* or *glasmeri* is convicted, the Court may order that any money, property or value of any other thing that has been paid to him or her as consideration for performing the act of a *glasman* or *glasmeri*, be paid to the person who has suffered injury or loss or damage of property as the result of the acts or omission of the *glasman* or *glasmeri*. If the suffered person is deceased, the payment be made to his or her next of kin or relatives.

1.103 Section 520G of the Act provides a person may be convicted on the uncorroborated testimony of one witness, and a judge shall not instruct himself or herself that it is unsafe to find the accused guilty in the absence of corroboration.

Village Court Act 1989

1.104 This Act empowers the Village Court to apply custom regardless of its inconsistency with any other Acts of Parliament.¹⁶⁸ The *Village Court Regulation 1974* prescribes the offence of sorcery which allows the Court to deal with conducts of sorcery that includes (i) the practising or pretending to practise sorcery; or (ii) threatening any person with sorcery practised by another; or (iii) encouraging or attempting to encourage a person to practise or pretend to practise, or to assist in, sorcery; or (iv) the possession of implements or charms used in practising sorcery; or (v) paying or offering to pay a person to perform acts of sorcery.¹⁶⁹

1.105 The PNG's recent approach as reflected in the 2013 amendments was on no harm to the alleged sorcerers or witches. Any person who harms an allegedly sorcerer will upon conviction receive a severe penalty. The approach shifted away from focusing on the prosecution of alleged sorcerers. It however, focuses more on the prosecution of those who responded violently on alleged sorcerers.¹⁷⁰

Vanuatu

Penal Code [Cap 135]

1.106 Vanuatu prohibits the practice of sorcery in its *Penal Code* [Cap 135]. Section 151 states that 'any person who practises witchcraft or sorcery with intent to cause harm or detriment to any other person, if found guilty is liable to 2 years imprisonment.'¹⁷¹

¹⁶⁸ *Village Court Act 1989*, s 57(2).

¹⁶⁹ *Village Court Regulation 1974*, s (3)(p).

¹⁷⁰ Georgia Alderton, above n 161.

¹⁷¹ *Penal Code [Cap 135]* (Vanuatu) http://www.paclii.org/vu/legis/consol_act/pc66/.

1.107 The issue of sorcery was described as powerful and prevalent as it causes immense social disruption. The lack of facilities to perform autopsies and lack of understanding about modern principles of medicine certainly contribute to such increase in the belief in sorcery.¹⁷²

1.108 Nakaemas is the Bislama word for sorcery or witchcraft in Vanuatu.¹⁷³ The sorcery is associated with poisoning and other magical practices which harms the body and may result in deaths. Like PNG and Solomon Islands, the sorcery law of Vanuatu is ineffective to address sorcery or sorcery related issues in the Country. The belief in sorcery is often linked to inequalities to cash and the commodity economy,¹⁷⁴ or social development. There is often high tenancy to the belief in sorcery among the disadvantaged population where basic public services such as health and education are not adequately provided.

Cases:

1.109 In the *Public Prosecutor v Malsoklei*,¹⁷⁵ the Vanuatu Supreme Court¹⁷⁶ had convicted seven men for performing witchcraft on a female victim that resulted in her death. The judge relied more on the evidence of one of those participating¹⁷⁷ in the witchcraft and with other circumstantial evidence from other witnesses to convict the perpetrators. They were also convicted of rape and one of them convicted for intentional homicide and others also convicted for the offence of complicity to intentional homicide. The trial judge used section 43(4) of the *Penal Code* to convict the accused and then discharged them at the same time. The judge thinks that is the most appropriate decision to make because the accused were in custody for more than 12 months prior to their convictions and that they were on bail and were faithful to their bail conditions.

1.110 In the *Malsoklei v Public Prosecutor*,¹⁷⁸ the Prosecution appealed the case to the Vanuatu Court of Appeal on the ground of the inadequacies of the sentence. The defence on the other hand made a counter appeal against the convictions on the

¹⁷² Miranda F. *Sorcery and the Criminal Law in Vanuatu* (2006)

https://www.academia.edu/1326920/Sorcery_and_the_criminal_law_in_Vanuatu (Accessed 28 March 2023).

¹⁷³ Siobhan McDonnell, 'The Land Will Eat You': Land and Sorcery in North Efate, Vanuatu in Miranda Forsyth and Richard Eves, *Talking It Through – Responses to Sorcery and Witchcraft Beliefs and Practices in Melanesia* (2015).

¹⁷⁴ *Ibid.*

¹⁷⁵ [2001] VUSC 132; Criminal Case 246 of 2000 (23 November 2001).

¹⁷⁶ Equivalent to the High Court of Solomon Islands.

¹⁷⁷ Channel Sokeok.

¹⁷⁸ [2002] VUCA 28; CA 02-01 (24 October 2002) <http://www.pacilii.org/cgi-bin/sinodisp/vu/cases/VUCA/2002/28.html?stem=&synonyms=&query=title{Malsoklei%20and%20Public%20Prosecutr%20}>.

ground that the evidence if taken as a whole was insufficient to fulfil the onus for the prosecution to prove the charges beyond reasonable doubt. The Court of Appeal agreed with the defence argument and held that the uncorroborated evidence of Channel Soksok, a purported accomplice, was totally unreliable. The Court of Appeal ruled that the appeals against the convictions of the seven men be allowed and all convictions quashed accordingly.¹⁷⁹ The Court of Appeal also commented on the sentence given by the judge of the Supreme Court. The Court of Appeal stated that a conviction and discharge immediately for the purported horrendous premeditated actions could never be a reasonable or sufficient penalty. If such horrendous actions as alleged by the prosecution were true, the standing point for sentence for such atrocious crimes would have been life in prison. There can be no half-way houses to those who commit atrocious crimes.

1.111 In the case of *Peter v Public Prosecutor*,¹⁸⁰ the Vanuatu Court of Appeal¹⁸¹ clarifies that prosecution of anyone for sorcery is still possible. However, adducing relevant evidence to prove a charge of sorcery still remains the hurdle. The 2021 case of *Public Prosecutor v Sepa*¹⁸² affirms to the proposition. In the case the accused tried to rely on sorcery as one of the reasons for killing the victim. The Supreme Court of Vanuatu dismisses the reasoning as there was no supporting evidence to prove the allegation of sorcery.

1.112 The cases of *Public Prosecutor v Trief*,¹⁸³ and *Public Prosecutor v Vemboe*,¹⁸⁴ were interesting. Interesting in the sense that the facts showed that the accused planned to kill the victim by sorcery or witchcraft. However, they resorted to violence to cause serious injuries to the victim as a result of their failed sorcery plan. They were charged and convicted of attempting to commit intentional premeditated homicide on the victim. They were not charged for sorcery even though sorcery was admitted as the initial plan to kill the victim. A reason for not charging them for sorcery could relate to the decision in the *Malsoklei*¹⁸⁵ case where the accused were convicted for sorcery by the Supreme Court by relying on one account of an accomplice and other circumstantial evidence. However, on appeal, the Court of Appeal quashed the conviction saying to rely on the

¹⁷⁹ *Malsoklei v Public Prosecutor* [2002] VUCA 28; CA 28; CA 02-01 (24 October 2002) <http://sig-paclii.mof.gov.sb/cgi-bin/sinodisp/vu/cases/VUCA/2002/28.html?stem=&synonyms=&query=Witchcraft>.

¹⁸⁰ [2018] VUCA 18; <http://www.paclii.org/>.

¹⁸¹ The highest court in Vanuatu.

¹⁸² [2021] VUSC 59; <http://www.paclii.org/>.

¹⁸³ [2020] VUSC 62; <http://www.paclii.org/>.

¹⁸⁴ [2020] VUSC 174; <http://www.paclii.org/>.

¹⁸⁵ *Malsoklei v Public Prosecutor* [2002] VUCA 28; <http://www.paclii.org/>.

uncorroborated evidence of an accomplice is unreliable. This could be the reason for the accused not charged for sorcery.

1.113 Vanuatu still have the offence of sorcery in its *Penal Code*. Prosecution of the offence is still available. However, no prosecution was done successfully for the offence of sorcery due to the lack of evidence and the difficulty to prove the offence to the satisfaction of the courts. The courts however take a hard stand on those who rely on sorcery to cause harm to others. In the case of the *Public Prosecutor v Obed*,¹⁸⁶ the court expresses a strong statement against the killing of the alleged sorcerers. The Supreme Court states that the killings of the two alleged sorcerers were premeditated and barbaric which must attract penalties with the aim of public deterrence and retribution. The punishments must show that the law does not approve the killings of sorcerers no matter how much people believe in sorcery. The court therefore imposed a 24 years' imprisonment term as the starting point for the offence.

Fiji:

Penal Code [Cap 17]

1.114 Witchcraft or sorcery is an offence in Fiji. The *Penal Code* in section 232 states:¹⁸⁷

Any person who-

- a) Holds himself as being able to cause by supernatural means, fear, annoyance or injury to another person in mind, person or property; or
- b) Pretends to exercise or who practices, whether on an isolated occasion or otherwise, witchcraft or sorcery,

shall be guilty of an offence and shall be liable on conviction to imprisonment for five years.

1.115 The *Penal Code* was repealed on the 1st February 2010 and replaced by the *Crimes Decree 2009* which came into force on 1st February 2010.¹⁸⁸ The *Crimes Decree* retained the same sorcery provision but now under section 263 of the *Crimes Decree 2009*.

¹⁸⁶ [2015] VUSC 39; <http://www.pacii.org/>.

¹⁸⁷ *Penal Code* [Cap 17] (Fiji), s 232.

¹⁸⁸ Fiji State Response <http://www.icla.up.ac.za/images/un/use-of-force/asia-pacific/Fiji/Fiji%20State%20Response.pdf>; Crimes Decree 2009 – Commencement Notice <http://www.pacii.org/>.

Cases:

- 1.116 In the case of *Namoumou v Lule*,¹⁸⁹ the plaintiff claimed for damages against the four defendants for slander and libel because they wrongfully accused the plaintiff for practicing witchcraft. The defendants were found guilty and were ordered to pay for the damages caused to the plaintiff.
- 1.117 In the case of *Buka v Nakorotubu*,¹⁹⁰ the appellant was convicted before a Provincial Court of an offence contrary to Fijian Regulation No. 10 of 1948, section 19 for practising the rites known as Draunikau, Kalourere, Luveniwai. The Appeal was allowed. However, on further appeal it was raised that there was no evidence before the Provincial court necessary to prove both the nature of the rite performed by the accused and also the rite to which it was similar. It was also noted that, during the course of the trial a great deal of hearsay evidence was admitted against the appellant. The appeal was allowed and conviction and sentence held in the lower court was quashed.

Samoa

Crimes Ordinance 1961

- 1.118 Sorcery was an offence in Samoa under the *Crimes Ordinance 1961*. Section 95 of the *Crimes Ordinance 1961*¹⁹¹ says:

Witchcraft – Everyone is liable to imprisonment for a term not exceeding 6 months who pretends to exercise or use any kind of witchcraft, sorcery, enchantment, or conjuration, or undertakes to tell fortunes.

Crimes Ordinance 1961 (Final Report) June 2010 [2010] WSLawRComm 2 (1 June 2010)

- 1.119 The Samoan Law Reform Commission (SLRC) when reviewing the *Crimes Ordinance 1961* stated that the offence of sorcery or witchcraft in section 95 of the Act makes everyone who pretends to exercise or use any kind of witchcraft, sorcery, enchantment, or conjuration or undertakes to tell fortunes, liable to imprisonment for a term not exceeding six months.¹⁹²

¹⁸⁹ [1993] FijiLawRp 26; [1993] 39 FLR 102 (17 May 1993).

¹⁹⁰ [1957] FJLawRp 2; [1956-1957] 5 FLR 26 (22 February 1957).

¹⁹¹ *Crimes Ordinance 1961* (Samoa), s 95.

¹⁹² *Crimes Ordinance 1961* (Final Report) June 2010 [2010] WSLawRComm 2 (1 June 2010)

<http://www.paclii.org/ws/lawreform/WSLawRComm/2010/2.html>.

- 1.120 This offence of witchcraft raises a number of issues in relation to challenges in proving the offence in a court. The SLRC questioned how a court be asked to determine whether spiritual practice is pretended. Also, it is unclear whether local practices are caught under this offence considering most common law jurisdictions have removed this offence from their criminal statute books.¹⁹³
- 1.121 The SLRC in its final Report made two recommendations for witchcraft or sorcery offence. Firstly, the witchcraft offence in section 95 of the *Crimes Ordinance* should be repealed; and secondly, the Ministry of Health should consider traditional healers, including the need to introduce a licensing system or some other regulatory model for them.¹⁹⁴
- 1.122 The offence of witchcraft or sorcery was therefore repealed in Samoa in early 2013; making Samoa the first country in the Pacific region to repeal its sorcery law. This was reflected in the *Crimes Act 2013*, which no longer provides for the offence of witchcraft or sorcery.¹⁹⁵
- 1.123 Papua New Guinea is the only Pacific Islands country that once had a standalone legislation, the *Sorcery Act 1971*, dealing with sorcery and witchcraft. The Act has been repealed in May 2013 due to its ineffectiveness to address sorcery and the increasing rate of sorcery related deaths done to those accused of practising sorcery. The Act's use was of minimal assistance to address sorcery or witchcraft. The effect of the standalone Act is basically similar to jurisdictions in the region where only have limited provisions on sorcery. Vanuatu and Fiji like Solomon Islands still have provisions on sorcery but their use to address sorcery is minimal or non-existence in today's time. Samoa has repealed its provision on sorcery in early 2013.¹⁹⁶
- 1.124 The final part of this report is on options for law reform which offers recommendations to deal with the issue of sorcery.

¹⁹³ *Crimes Ordinance 1961* (Final Report) June 2010 [2010] WSLawRComm 2 (1 June 2010) <http://www.paclii.org/ws/lawreform/WSLawRComm/2010/2.html>.

¹⁹⁴ *Ibid.*

¹⁹⁵ *Crimes Act 2013* (Samoa) http://www.paclii.org/ws/legis/consol_act/ca201382/. The Act comes into force from 1st May 2013.

¹⁹⁶ *Crimes Act 2013* (Samoa).

Part 6: Options for law reform

Recommended approaches to address sorcery or witchcraft

1.125 This report recommends four approaches or options to deal with the issue of sorcery or witchcraft. The approaches are criminal justice approach, legal pluralism approach, developmental approach, and Christianity approach. The first option, the criminal justice approach, will require law reform while the other three will rely on the utilisation of the existing frameworks and improvements to existing institutions and service delivery.

1.126 The options for law reform are recommended in the criminal justice approach. This is the approach which will require legislative reform. The second approach on legal pluralism premises more on the utilisation of the current customary jurisdiction of the local courts and the recognition of other existing church or community-based mechanisms. The third approach is a cross-cutting approach which focuses on development and improvements of the standing of living of every Solomon Islander. This is an approach that must be pursued vigorously by all government ministries and other stakeholders including donors and non-state-actors who have interest or concern with the issue of sorcery or witchcraft in the country. And the fourth approach is a complimentary approach to ensure no more enmity among members of the Solomon Islands community hence no more sorcery or witchcraft accusations.

Criminal justice approach

1.127 The LRC recommends that sorcery offence should still be a criminal offence under the *Penal Code* but as a strict liability offence. The revised law should explicitly state that no defence or excuse in the criminal law or any other law should apply to the offence. This is to avoid the accused from relying on defences, except for insanity or lack of capacity, such as mistake of fact or any other defences found in the *Penal Code* or any other law to negate their wrongful actions. Proving the *actus rea* is all that is required to find someone guilty of the offence. The mental state of mind is irrelevant as it would be difficult to prove in an introduced court system. To include the requirement for *mens rea* (mental state of mind) would be just a futile exercise and the prohibited conducts under this offence could never be prosecuted. The concern of introducing strict liability offence for sorcery is mitigated by the low penalty of the offence as well as the greater public need for the Government or the State to participate in addressing

sorcery which is fuelling hatred and disharmony in the communities. As a matter of policy, it is sufficient that the Government participates in dealing with the issue than leaving it to the people to do whatever they think is best for them to solve their sorcery grievances.

1.128 The prohibited conducts of the offence should capture the following:

- 1) Threatening to use sorcery to cause harm to another;
- 2) Obtaining financial benefit through use of sorcery threats to cause harm to another;
- 3) Performing a practice without lawful excuse that is known to be associated with harmful sorcery;
- 4) Possessing an object without lawful excuse that is known to be associated with harmful sorcery;
- 5) Making a statement without prove in custom or law that a person is suffering from sorcery;
- 6) Receiving financial benefits or other benefits in kind for conducts or practices aim to heal a person believed to be suffering from sorcery;
- 7) Paying someone to use sorcery on another;
- 8) Accusing anyone without using the appropriate forums that a person is a sorcerer.

1.129 This reform offence of sorcery should carry a maximum penalty of 2 years imprisonment or 20,000 penalty units or both. Community service work could be used as a form of punishment if practicable in the locality. The penalty reflects a penalty for minor offences because the offence proposes is just a strict liability one where the state of mind of the accused is not considered.

1.130 The above prohibited conducts should be easy for the prosecution to adduce relevant evidence to prove when they are alleged to have been committed or performed. The prosecution can able to prove the prohibited conduct had been committed because all the prosecution is required to show is that the prohibited conduct had been committed. The mental state of the accused in committing the offence is irrelevant. This gives the State the responsibility to participate in dealing with the allegations of sorcery.

1.131 The current sorcery offence under section 190 of the *Penal Code*, together with its amended penalty under the Penalties Miscellaneous Amendment Act 2009, should be repealed.

1.132 The local court should be empowered to deal with sorcery cases.

1.133 To ensure that this criminal justice approach is utilised, access to justice is paramount. The Government, the Ministry of Justice and Legal Affairs, to make Access to Justice a priority to ensure improved access to its justice system. Justice services such as access to courts and justice agencies, policing, accessing legal representations, and legal information raising should be progressively realised throughout the country.

1.134 For sorcery offence, access to justice should include:

- Public access to the relevant laws on sorcery. This is important for everyone to know the laws and develop respect for them.
- The access to available forums, more local courts in the regions, to deal with sorcery offence and disputes.

Legal pluralist approach

Local courts under customary wrongs' jurisdiction

1.135 Section 16 of the *Local Courts Act* [Cap 19] allows any local court to administer law and custom of islanders prevailing in the area of jurisdiction of the court. Section 18 empowers any local court to impose a fine or order an imprisonment or both for any offences against the law or custom of islanders. The court may impose any punishment authorised by law or custom of islanders provided that such punishment is not repugnant to natural justice and humanity. In light of these provisions, the local courts should deal with any forms of sorcery allegations including prohibited abnormal or rare behaviours during sickness or death under its customary wrong jurisdiction. There should not be any appeal allowed except for ones on procedures, natural justice, and the reasonableness of the penalties in custom. The local courts must give reasons as to why they think the penalty is appropriate and reasonable according to custom or customs of the parties concerned.

1.136 In sentencing, the local courts should order customary penalties or other penalties that can achieve restorative justice.

1.137 Restorative justice is relevant because it is based on traditional norms and values. It aims at ensuring responsibility by the offender and restoring peace between the parties. It recognises that a crime or customary wrong is committed by an individual (offender) against another individual (victim). The state should facilitate the offender to mend his or her broken relationship with the victim through awarding of reparation penalties to ensure healing of the relationship between the parties.

1.138 The recognition of the utilisation of the local courts in this space requires more resources including human resource to be given to the local courts in order to assist with resolving sorcery or witchcraft related cases. More local court judges are required to be appointed and the courts should be stationed at their regional localities to bring justice to the communities. Relevant trainings in basic law principles, human rights, natural justice, logical reasoning, the court system, and other relevant areas of law should be provided to the local court judges and officials.

1.139 Any existing mechanisms under the support of the churches or communities are still recognised as avenues to solve sorcery or witchcraft disputes so long as they offer fair hearings for the parties involved. This is because those existing mechanisms serve useful purpose in the society. The church involvement is for healing purpose, and thus the maintenance of peace and harmony in the society. Furthermore, the community mechanism is often considered for maintenance of peace and harmony in the community or society; a purpose that a State mechanism also aspires to achieve. However, those who first resort to the church or community mechanisms can still bring their disputes to the local courts to deal with if they do not agree with the decisions of the church or community resolution mechanisms. This is to make available the State supported mechanism to deal with sorcery in situations which a party does not satisfy with the decision of the church or community mechanism.

Development approach

1.140 Relevant government ministries to provide quality education, health services, and other social services.

1.141 Better and quality education, health service, and other social services can contribute to reducing the belief in sorcery. A well-informed society can lessen its belief in supernatural spirits or magical practices, especially the belief in sorcery or witchcraft. This is because the long-held belief system is not just accepted easily but be questioned and rationalised. Quality health service can assist to diagnose the sick quickly in order for them to receive right treatments and lessen the number of preventable deaths from dying. The causes of sicknesses and deaths can be identified and this will reduce speculations as to what causes the sicknesses or deaths. The provision of other social services to the public will enable people to involve and participate in the services. This will get them engaged, thus lessen their idealness which perpetuates the sorcery or witchcraft belief system. Other relevant government ministries should provide

the support and the environment to ensure active participation of Solomon Islanders in economic activities that will result in improved standard of living for all Solomon Islanders.

1.142 Political governments should align their policies to the National Development Strategy (NDS) 2016 – 2035 or a revised version of that Strategy in order to achieve the vision of the Strategy – “Improving the Social and Economic Livelihoods of all Solomon Islanders”. The Ministry of Rural Development should strengthen its monitoring and evaluation processes to ensure that its funding support realises the vision of the NDS. Other government financial support under other ministries should also go towards realising the NDS vision.

Christianity approach

1.143 The responsible Ministry for ecclesiastical affairs should review its current support to churches with the aim of providing adequate support to them to ensure Christian values and principles are maintained in the society. During consultations, Solomon Islanders have expressed their strong support for relying on churches to fight against the belief in sorcery. There were suggestions during community consultations that churches should take a stronger position against sorcery. This will ensure people love each other as brothers and sisters in the Lord and as well as people doing good to each other. It is expected that there will be no accusation of sorcery when Christian values or other similar or identical values are upheld and practised by the people in the communities. Any church practice or faith-based practice that goes towards perpetuating the belief in sorcery in the community should be discouraged and banned.

1.144 This Christianity approach may be perceived by some segments of the society as unconstitutional as it promotes one particular religion. However, while the freedom of religion is recognised,¹⁹⁷ the same *Constitution* too in its preamble places Solomon Islands under the guiding hand of God. The 2018 Draft Federal Constitution re-affirms God’s divine authority and purpose for Solomon Islands of which Christians and similar moral values are upheld.¹⁹⁸ Hence, recognising Christianity as an approach to deal with sorcery or witchcraft is not out of sync from the spirit of the law of Solomon Islands.

¹⁹⁷ *Constitution*, section 11.

¹⁹⁸ Draft Federal Constitution (2018), preamble.

1.145 This approach is also inclusive of other faith-based organisations that have values and principles which aims at people living harmoniously or peacefully together in their communities.

Conclusion

1.146 All the four approaches discussed above are expected to be implemented together as they complement each other. It is anticipated that over time, the issue of sorcery or witchcraft will be redundant if the development approach and the Christianity approach including other similar or identical moral values of other religions or faiths are taking roots throughout the country. Hence, the first two approaches will be redundant.

1.147 To ensure the effectiveness of these reforms or approaches, a comprehensive monitoring and evaluation plan should be established. The plan should include regular assessments of community engagement, changes in public attitudes towards sorcery, and the effectiveness of legal community-based mechanisms in addressing sorcery and related issues. Key performance indicators and targets should be identified. Government ministries and stakeholders, including community leaders, and local organisations will be involved in the evaluation process. The Ministry of Justice and Legal Affairs should take the lead on this front – systematically tracking progress and making necessary adjustments based on feedback. This is to ensure that the approaches recommended and are implemented and should effectively address the problems associated with sorcery in order to foster a safer, and a more peaceful Solomon Islands.

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