

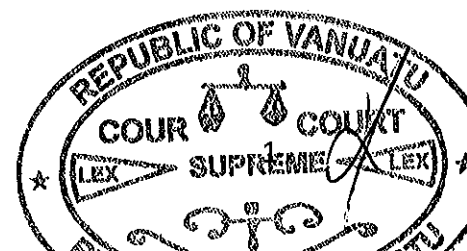
PUBLIC PROSECUTOR

-v-

1. SASSEN PHILIP
 2. CHARLIE IELUN
 3. BOB WOL
 4. JOEL LAZARUS
 5. THOMAS NAM
 6. JIMMY NAM
 7. DANIEL TOM
 8. CHARLIE MANBUSH LAVA
 9. HIWA SARAWIA
 10. KOLWIN KIAU
 11. GRAHAM KIEL
 12. MISUEL TOM NIMISA
 13. BODJA IATA
 14. CHALTON IATA
 15. MALA YELUN
 16. IANGNAMTA IELUN
 17. NAIES LAVA
 18. STEVE TOM
 19. JACK ROEL
 20. NIES SIBLY
 21. SHEM NAUKA
 22. SAM KULIK
 23. ALLAN NAUKA
 24. ALFRED HIWA
 25. NICOLAS ANDREW
 26. TOM MATUA
 27. FRANK SAM
 28. MANU JAICK
 29. IAUSAH NAMTENGAS
 30. ROGER SAM and
 31. LUATA SAM
- (Defendants)

Coram: Chief Justice V. Lunabek

Counsel: Mr Tristan Karae for the Public Prosecutor,
Mr Willie Kapalu for the Defendants



Dates of hearing and submissions: 25 & 28 February 2013

Date of sentence: 1 March 2013

SENTENCE

This is the sentence of the above-named Defendants: Sassen Philip, Charlie Ielun, Bob Wol, Joel Lazarus, Thomas Nam, Jimmy Nam, Daniel Tom, Charlie Manbush Lava, Hiwa Sarawia, Kolwin Kiau, Graham Kiel, Misuel Tom Nimisa, Bodja Iata, Chalton Iata, Mala Yelun, langnamta Ielun, Naies Lava, Steve Tom, Jack Roel, Nies Sibly, Shem Nauka, Sam Kulik, Allan Nauka, Alfred Hiwa, Nicolas Andrew, Tom Matua, Frank Sam, Manu Jaick, Iausah Namtengas, Roger Sam and Luata Sam.

I write your sentence for your understanding. I read and explain your sentencing to each of you so that you understand your wrongdoings and you stop breaking the laws.

You were charged with unlawful assembly, unlawful entry and damage to property as reflected in the criminal Information dated 20 February 2013.

On 25 February 2013, each and all of you entered guilty pleas on:

- One (1) count of unlawful assembly;
- Eight (8) counts of damage to property; and
- Following Defendants entered guilty pleas on six (6) counts of unlawful entry into properties of other persons:
 - Sassen Philip (x 5 counts of which 1 is into a dwelling house);
 - Nies Sibly (x 3 counts of which 1 into a dwelling house);
 - Daniel Tom (x 2 counts);
 - Bob Wol (x 2 counts);
 - Joel Lazarus (x 2 counts);
 - Thomas Nam (x 2 counts);
 - langnamta Ielun (x 1 count).

On a detailed consideration, Sassen Philip, you entered guilty pleas to 14 offences; Nies Sibly, you pleaded guilty to 12 offences. For both



of you the penalties of the offences you have committed range from 1 year to 20 years imprisonment.

Daniel Tom, Bob Wol, Joel Lazarus and Thomas Nam, you each pleaded guilty to 11 counts of offences the penalty of which range from 1 year to 10 years imprisonment.

langnamta Ielun, you pleaded guilty to a total of 10 counts of offences the penalties of which range from 1 year to 10 years.

You, other Defendants (Charlie Ielun, Jimmy Nam, Charlie Manbush Lava, Hiwa Sarawia, Kolwin Kiau, Graham Kiel, Misuel Tom Nimisa, Bodja Iata, Charlton Iata, Mala Ielun, Naies Lava, Steve Tom, Jack Roel, Shem Nauka, Sam Kulik, Allan Nauka, Alfred Hiwa, Nicolas Andew, Tom Matua, Frank Sam, Manu Jack, Iausah Namtengas, Roger Sam and Luata Sam), you each entered guilty pleas to 9 counts of offences, the penalty of which ranges between 1 year to 3 years imprisonment.

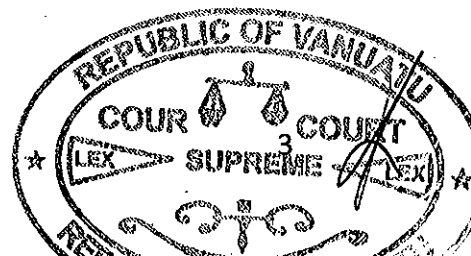
Each of you is now convicted of the offences you are charged with on the Information and upon which you entered guilty pleas.

The brief summary of facts of this case is set out by the prosecution. Your defence lawyer agrees and accepts the summary of facts on your behalf. It is as follows:

Sometime between the months of October 2012–December 2012 there was feud that occurred in Port Vila between the people from South Tanna and West Tanna.

After several meetings were held between the two communities in Port Vila both communities were still in conflict and the conflict was not resolved for several weeks. At that time the people from West Tanna on Tanna Island, specifically the villagers of Letakren area were also having several meetings regarding the feud that is going on in Port Vila. Each and all of you come from villages around Letakren village area, West Tanna.

The Incident on 9th of December 2012



On or about the 9th of December 2012, you were not happy that the feud in Vila has not been resolved because there was another attack on the people of West Tanna on the 8th of December 2012 in Vila. You then decided to take the matters into your own hands and decided to retaliate on the people of South Tanna who own shops at Lenakel Blackman Town, Tanna. On the 9th of December in the early hours of the morning you unlawfully assembled together with the intentions of damaging shops and houses that belonged to the people of South Tanna living at Lenakel Blackman Town, Tanna.

That morning you walked all the way to Lenakel Blackman Town carrying knives, stones, iron rods, axes and wood. Your actions caused the people of Lenakel, specifically the people of South Tanna to fear for their lives which caused some of them to leave their homes and belongings to seek refuge with other family members.

Damages to Properties on Lenakel Blackman Town

You arrived at Lenakel Blackman Town sometime around 6:00am – 7:00am on 9 December 2012 and you damaged six (6) shops and one (1) sleeping house by using your knives, axes, stones and wood.

Your first raid took place at the complainant Mr Jacob Kapere's shop. You arrived at the complainant's shop and Sassen Philip, you used a pinch bar to break the door locks and went inside. Other defendants then followed Sassen Philip in and started damaging the shop by damaging all the goods inside the shop. The value of the properties that were damaged totaled to VT1,887,760 as a result of your offending.

Your second raid was carried out at the second complainant's shop Mr Kourua Loui. On that day the complainant heard that you were coming so the complainant quickly locked up his shop and took his families out of the house to find refuge with other family members. When you arrived at the complainant's shop, Sassen Philip, you again used a pinch bar to break the locks of the doors to the shop and the other defendants followed you in and again you all damaged all the



goods in the shop. The complainant lost a total value of VT1, 636,500 worth of damages as a result of your offending.

Your third raid was carried out at Mr Walter Kota's shop, the complainant also heard that his shop was to be targeted next so he took his family and they run up the hill to Isini village. When you arrived there you began throwing rocks at the complainant's shop. Defendant Nies Sibly, you used a pinch bar to open the doors to the shop which allowed the other defendants to go inside and damaged the goods inside. The complainant loss is valued at VT1,564,770 worth of damages as a result of your offending.

Your fourth raid took place at the complainants George Sandy's and Daniel Namuri's shops. Each of the complainants has a separate small shop housed in one building. It was during the assault that you went through a window and from inside the shop others gave access to the other defendants through the main doors to which they came in and damage all the properties in the shop. The complainant lost a value of VT1,007,330. The other shop belonging to the complainant Daniel Namuri was also damaged at that time. This complainant's loss of damages was worth VT1,206,000. Both losses occurred as a result of your offending.

The next raid you then walked to the complainant Mr Michael Iati's shop. The complainant and his family live next to the shop and on that morning they were ready to go to church when they were attacked by you. Defendants Sassen Philip and Naies Sibly, you both unlawfully entered the complainant's house followed by the others and you all caused a lot of damage to the complainant's sleeping house and his properties. You all then gained access to the complainant's shop and in there, you threw out the goods from the shop and also damaged most of the goods in the shop. The complainant loss of damages is estimated to VT1,759,000 as a result of your offending.

Your sixth and last raid took place at the complainant Filiami Nikiou's shop. You all gained access through the shop by breaking the locks to the doors and once inside you began damaging and throwing spare parts and other goods outside on the road damaging them. The



properties that were damaged are worth VT559,000 as a result of your offending.

After the raid you returned to your respective villages living behind damages worth around VT 9,620,360.

Below are the provisions of the law that you have broken on 9 December 2012 by committing the offences you are each charged, convicted and sentenced:

- The first law that you have broken is the law that prohibits unlawful assembly under s.69 of the Penal Code Act.

It says: *"No person shall take part in an unlawful assembly.*

Penalty: Imprisonment for 3 years." (s.69)

The law makes an assembly of persons unlawful in the following 3 circumstances:

1. When three or more persons assembled with intent to commit an offence; or
2. Being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause nearby persons reasonably to fear that the persons so assembled will commit a breach of the peace; or
3. (persons so assembled) will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace (s.68(1) of the Penal Code Act).

The law also says that "when an unlawful assembly has begun to execute the purpose for which it assembled by a breach of the peace and to the terror of the public, the assembly is called a riot (s.68(3) of the Act) and the penalty for the offence of riot is an imprisonment for 10 years (s.70 of the Penal Code Act).

- The second law that you have broken is the law that prohibits a person to enter into the sleeping house (dwelling) or a building... or other place with intent to commit an offence therein. That law says that if the place (house) is used by a person as sleeping house (human habitation) the penalty for such an offence is imprisonment for 20 years; where the place (house) is not used



for sleeping house, the penalty is imprisonment for 10 years (s.143 of Penal Code Act).

- The third law that you have broken on 9 December 2012, is the law that prohibits a person to maliciously damage a property belonging to another person (s.133 of the Penal Code Act). The penalty for this offence is a fine of 5,000 Vatu or imprisonment for 1 year or both [s.36(3) of the Interpretation Act [CAP.132]].

In considering your sentencing, the Court on behalf of the society and communities and particularly the communities living on Tanna Island, condemns in the strongest terms your offending. Your actions, behaviours and conducts of 9 December 2012, were not tolerable and not acceptable in any society, community, island, town or village of Vanuatu and this includes Tanna Island.

In considering your sentencing, you must understand that the persons originating from South Tanna who live and do business at Lenakel Blackman Town, Tanna, are not responsible and cannot be held accountable for the criminal offences committed by their relatives to your families or properties in Port Vila. A person is not responsible or cannot be held accountable for the criminal offences committed by another person. The persons who made threats and damaged the properties of your families in Port Vila are the persons to be held accountable for their offending. You must understand that the only way to hold these persons accountable for their offending is to bring them to justice and deal with them according to law. Retaliation or revenge is against the law as it is motivated by your personal vendetta and greeds and you end up breaking the law by committing offences yourselves. You must stop offending individually and/or grouped together as you did on 9 December 2012. In this case, the victims of your crimes are innocent persons.

This is not the first time that the Courts have to deal with this type of offending on the Island of Tanna. Below are some of the examples of such type of cases dealt with by the Supreme Court at Isangel Tanna of which two are also referred to by the prosecution and defence counsel in their submissions:

- **PP v. Jimmy Niklam & others**, Criminal Case No.04 of 2004;
- **PP v. Bruno Neprei & others**, Criminal Case No.113 of 2010;
- **PP v. Iavilu Tess & others**, Criminal Case No. 105 of 2011.



The common trend that is emerged from the analysis of these cases reflects common custom practices used - in that:

- Chiefs called and held meetings in nakamal;
- Persons assembled together in the nakamal;
- Persons so assembled in nakamal are not necessarily from the same nakamal. They may be from various nakamals, villages or areas. They were called to join through the custom process of "custom roads" or "custom linkages".
- Chiefs informed persons so assembled in the nakamal of the purpose of the meetings.
- The above cases show that the purposes of the meetings were to commit crimes;
- Chiefs solicited and incited the persons so assembled to carry out criminal activities jointly and together.
- Persons so assembled planned and carried out the joint criminal activities as ordered and directed in the nakamal.

The above common custom practices described are used against the law. They could not be part of accepted custom practices. They are abuses of custom practices in the manner they were used to commit criminal activities.

In the case of **PP v. Bruno Neprei and 52 others**, Criminal Case No.113 of 2010, the Court stated:

"As citizens of Vanuatu, each and all of you and your chiefs, you are subject to the laws of Vanuatu. Each and all of you must understand that you cannot take the law into your own hands to do justice to yourselves out of frustrations, reactions, misunderstanding and lack and/or poor communications."

The Court also stated:

"Your custom and practices are not excuses for each and all of you to commit criminal offences."

The Court further states:

"Custom chiefs and leaders shall refrain from soliciting and inciting their people to commit criminal offences out of frustrations and reactions using their custom and practices as justifications for the breaking of the criminal laws of the Republic of Vanuatu."



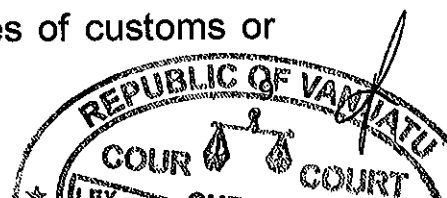
In the case of PP v. Narwie Netai & ors, Criminal Case No.113 of 2010 (sentence dated 26 August 2011), the Court stated:

“Defendant Narwie Netai, you appear today for sentence. You are a paramount custom chief of Erkirirang area, South Tanna.... you have broken the law against unlawful assembly... the law against soliciting and inciting others to commit the criminal offence of malicious damage to property...

In sentencing you, the Court must inform you that as a citizen of Vanuatu, you are subject to the laws of Vanuatu. You must understand that you cannot take the law into your own hands to do justice to yourselves out of frustrations or reactions. Your custom motives or custom rational may be the basis of your actions. However, your custom and traditional practices are subject to the laws of Vanuatu and so as such your local customs and traditions are not excuses for you to break the laws and commit criminal offences.”

The present case is an extreme case as minors and youth are among the offenders. It is an intolerable situation. This begs for instigators of crimes who are behind the scene such as chiefs and/or leaders of the communities or villages to be seriously investigated and prosecuted so as to ensure that they are brought to justice and accountable for their involvement in the instigations of crimes through abuses of their custom practices.

In this case, when the Court considers your sentencing, you must understand that you cannot take the law into your own hands and retaliate as you want. All persons living in Vanuatu including Tanna Island, are protected by the laws of Vanuatu and the properties of all persons in Vanuatu including Tanna Island, are also protected by the laws of Vanuatu. Your customs and /or practices are also subject to the laws of Vanuatu. This means that if your customs or practices are against the law, you cannot apply them anymore. If your customs or practices are not against the law but you use them to achieve an unlawful purpose such as committing criminal offences, then, you have abused your customs or practices. Such abuses of customs or



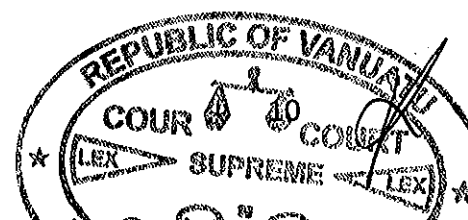
practices are condemned as they are not acceptable customs or practices. They are against the law.

When the Court considers the appropriate sentence the Court is going to pass on each of you for your offending, the Court takes into account of the submissions made by the prosecution and submissions made by your lawyer on your behalf. The Court also notes and considers the same day report reflecting your personal circumstances and your antecedents to assist the Court in your sentencing.

Unlawful assembly, unlawful entry and malicious damage to properties are serious offences as reflected by the penalties imposed by law for such offences. In the present case, the seriousness and circumstances of your offending must attract custodial sentences.

Further in this case, the seriousness and the circumstances of your offending are aggravated by the following factors:

1. There is a high degree of planning and pre-meditation.
 - You held meetings and decided to damage shops and houses of others.
 - You walked all the way from Letakren area to Blackman Town. You arrived at 6.00am-7.00am o'clock when the public at Blackman Town were in their houses and some prepared themselves to go to church.
 - You armed yourself with knives, axes, stones, iron rods and wood;
 - You pre-selected the houses or shops operated or owned by people originating from South Tanna.
2. This was a criminal enterprise by a group of men. You are 31 Defendants facing the Court for sentencing today. There were probably more people involved in this criminal enterprise occurring on 9 December 2012.
3. The frightening experience, the fear and terror to the public at Lenakel, especially those originating from South Tanna living at Blackman Town had for their lives. They left their homes and belongings to seek refuge with other families. Others were also attacked by you although charges of assault were not pursued.



4. This was an act of retaliation or "pay-back" on innocent people of South Tanna living in Lenakel area who were not involved with the feud in Port-Vila. An act of retaliation or revenge is against the law as it pushes you to take the law into your hands and commit serious offences. The business people originating from South Tanna, in Tanna, cannot be held responsible or accountable for the acts, behaviours or conducts of their relatives in Port Vila against people of West Tanna living in Port Vila.
5. The value of the damaged properties is totaling an amount of VT9,620,360. It is a very substantial loss for all the persons/victims of your crime of 9 December 2012.

The seriousness and circumstances of your offending justify a charge of riot to be laid against each of you. You were initially charged with one count of riot. It was withdrawn by the prosecution.

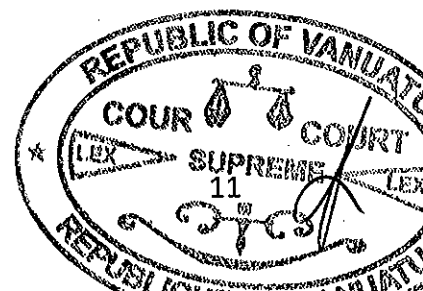
In the present case, you are all 31 Defendants. You appear today for sentence. You are to be sentenced for unlawful assembly, unlawful entry and damage to property as charged against each of you in the information. One of you, Roger Sam is a minor. The Court considers his status as a minor and the Court will sentence Roger Sam differently than the rest of you all.

Section 54 of the Penal Code Act says:

- "(1) A person under 16 years of age is not to be sentenced to imprisonment unless not other method of punishment is appropriate.*
- (2) If a person under the age of 16 years of age is sentenced to imprisonment the Court must give its reasons for doing so."*

In light of the above considerations, (save for Roger Sam), each and all of you are sentenced to 2 years and 6 months imprisonment as a starting point for the offence of unlawful assembly, contrary to s.69 of the Penal Code Act.

Defendants Sassen Philip and Nies Simbly are both sentenced to 4 years imprisonment for the offence of unlawful entry into a sleeping house, contrary to s.143 of the Penal Code Act.



Defendants Sassen Philip, Nies Sibly, Daniel Tom, Bob Wol, Joel Lazarus, Thomas Nam and Iangnamta Ielun are each sentenced to 4 years imprisonment as a starting point for the offence of unlawful entry into shop buildings, contrary to s.143(1) of the Penal Code Act.

Save Roger Sam, each and all of you, are sentenced to 11 months imprisonment as a starting point for the offence of malicious damage to property, contrary to s.133 of the Penal Code Act.

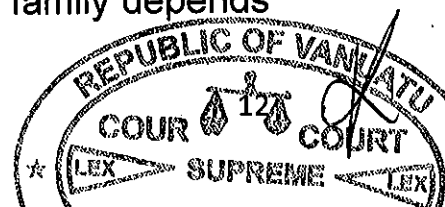
In mitigation, your lawyer makes submissions on your behalf. As it is mentioned earlier, the Court takes into account all of what your lawyer told the Court about in your sentencing.

The Report (same day report) filed by the Probation Officer shows the following in respect to each and all of you:

1. Sassen Philip, you are from Lounikavik Village, West Tanna. You have a brother and a sister. You are 27 years old. You are married and you live with your wife and three children. You attended primary school. You acquires skills in mechanic in a Technical Training Centre. You are also a youth leader in your community. Your family gains their family financial means through subsistence farming.

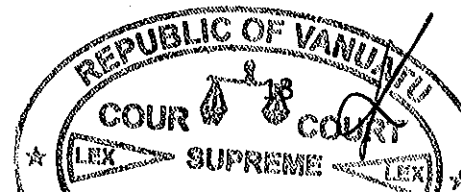
You are a first time offender. You do not have previous convictions. You admitted that on the date of offending you planned to join your community group in performing unlawful entering of commercial properties and damaged these properties. You explain your actions as a revenge to the complainants' for the threats and damages of properties happened in Port-Vila. You told the writer that you realized that is was wrong to commit such offences towards those business people on Tanna and you felt guilty. You have taken part in a custom ceremony performed to the victims.

2. Charlie Ielum, you are from Lowin Village, West Tanna. You are 30 years old. You are married with a new born baby. You attended primary and secondary school. You finished school at year 10. You are a subsistence farmer and your family depends



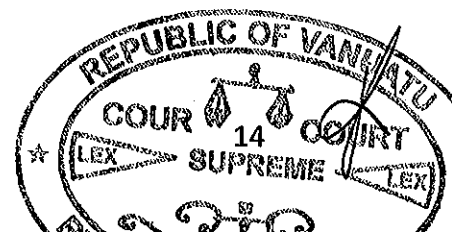
on you. You are paying for the school fees of your brother's children in the secondary school. You are a first time offender. You explained your offending related to the damages and threats made in Port-Vila by the victims' relatives towards your families and communities' properties. You realized that you were wrong to commit the crimes against other people and their properties and you felt guilty. You say you took part in custom ceremony performed to the victims. You are a first time offender. You do not have previous convictions.

3. Bob Wol, you are from Lounikavik Village, West Tanna, you are 34 years old; Married; lives with a wife and three children; two children in secondary school. You say you are illiterate. Your family depends on you. You pay for your children school fees and assist your wife to look after her grand father of 90 years old. You are a first time offender. You explained your offending is related to the damages and threats made in Port-Vila by the relatives of the victims in Vila towards his families and communities properties. You realized you were wrong in your offending. You felt guilty. You took part in a custom ceremony performed to the victims.
4. Joel Lazarus, you are from Lounikavik Village, West Tanna. You are 18 years of age. You are single and live with your grand parents. You did not attend higher education. You are a subsistence farmer. You depend on your family and you assist in taking care of an old person of 80 years at home. You are a first time offender. You explained that your offending related to damages and threats made in Port-Vila by the victims' relatives in Vila towards your families and communities properties. You realized it was wrong for you to commit such unlawful entry acts towards other people and their properties and you felt guilty. You took part in custom ceremony performed to the victims.
5. Thomas Nam, you are from Lounikavik Village, West Tanna. You are 29 years of age. You are married. You live with a wife and three children. You attended primary school. You attended a technical training centre and acquired mechanic skills. You are a first time offender. You do not have previous convictions. You



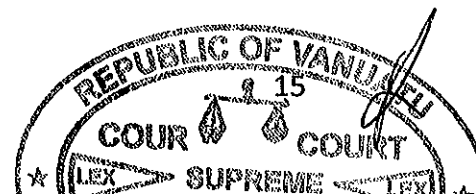
explained your offending related to damages and threats made in Port-Vila by the victims' relatives in Vila towards your families and communities properties. You realized it was wrong to offend against those business people on Tanna Island and you felt guilty. You took part in a custom ceremony performed to the victims.

6. Jimmy Nam. You are from Lounikavik Village, West Tanna. You are 26 years old and single. You live with your parents. You're a subsistence farmer. You sell the produce of your garden in the market to make a living. You are a first time offender. You do not have previous convictions. You explained your actions related to damages and threats made in Port-Vila by the victims' relatives in Vila towards your families and communities properties. You now realized that you were wrong in offending against those business people and you felt guilty. You took part also in a custom ceremony performed to the victims.
7. Daniel Tom, you are from Lowin Village, West Tanna. You are 16 years old; single. You attended primary school. You attended secondary school and you are now a student in Auto Mechanic Technical School in Port-Vila. You are living under a parents' care who is a teacher and works on Efate Island. You are a first time offender. You do not have previous convictions. You explained your offending related to the damages and threats made in Port-Vila by the victims' relatives in Vila towards your families and communities properties. You realized that it was wrong for you to offend towards these business people and you felt guilt. You took part in a custom ceremony performed to the victims.
8. Charlie Manbush Lava. You are from Lounikavik Village, West Tanna. You are 25 years old. You live with a four month pregnant wife. You are not attending any formal school. You are a subsistence farmer. You earn a living through your gardens. You are a first time offender. You do not have previous convictions. You explained your offending related to the threats and damages of properties made to your families in Port-Vila.



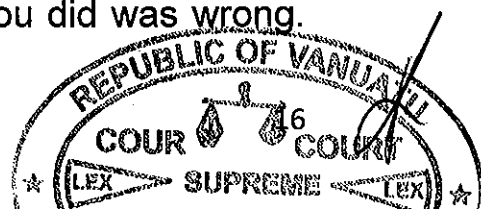
You realized you were wrong. You felt guilty. You took part in a custom ceremony performed to the victims.

9. Hiwa Sarawia, you are from Lowin Village, West Tanna. You are 48 years old, married. You have five children. One child at the secondary school and others at the primary school. You are an elder at the Assemblies of God Church. You take up responsibilities in your community. Your family gain their daily financial means through subsistence farming and selling at the market. You are a first time offender. You have no previous convictions. You explained your offending related to the threats and damages of properties made to his families in Port-Vila. You realized you were wrong and you felt guilty. You took part in a custom ceremony performed to the victims.
10. Kolwin Kiau, you are from Lounikavik Village, West Tanna. You are 30 years old. Married and lived with a wife of five months pregnant and two children. One child attends kindergarten and the other still an infant. You are a subsistence farmer. You make a living through your gardens. You are first time offender. You do not have previous convictions. You explained your offending related to threats and damages of properties made in Port-Vila. You realized it was wrong an you felt guilty for you wrong doings. You took part in a custom ceremony performed to the victims.
11. Graham Kiel, you are from Lowin Village, West Tanna. You are 26 years old. Single and live with your parents. You were a year 10 secondary school leaver. You earn a life by subsistence farming with your family. You are a first time offender. You do not have previous convictions. You explained your offending as a revenge to the complainants for the threats and damages of properties made to your families in Port-Vila. You realized it was wrong to offend against those business people on Tanna. You felt guilty. You took part in a custom ceremony performed to the victims.
12. Misuel Tom Nimisa, you are from Lowin Village, West Tanna. You are 27 years old. Live with a wife and two children. Your



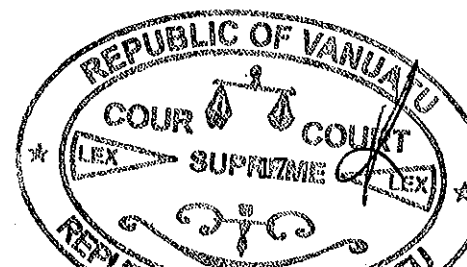
family depends on you for their daily need. You are a subsistence farmer. You are a first time offender. You do not have previous convictions. You explained your offending related to the threats and damages of properties made to your families in Port-Vila. You realized that it was wrong to offend against those business people and you felt guilty. You took part in a custom ceremony performed to the victims.

13. Bodja Iata, you are from Lowin Village, West Tanna. You are 38 years old. Married and live with your wife and four children. You attended primary school. Your elder daughter is in year 9 at Lenakel Junior Secondary School. You are a subsistence farmer. Your family depends on you for their daily needs. You are a first time offender. You do not have previous convictions. You explained your offending related to the threats and damages of properties made to your family in Port-Vila. You realized it was wrong to offend against those business people. You felt guilty. You took part in the custom ceremony performed to the victims.
14. Chalton Iata, you are from Lounikavik Village, West Tanna. You are 24 years of age. Married and have two children. You attended primary school. You attended secondary school to year 10. You are employed at Lanakel Hospital on temporary basis. You are selected to attend nursing school this March 2013 in Port-Vila. You are a first time offender. You do not have previous convictions. You explained your offending as revenge to the complainants for the threats and damages of properties made to your families in Port-Vila. You realized what you did was wrong. You felt guilty. You took part in the custom ceremony performed to the victims.
15. Mala Yelun, you are from Lowin Village, West Tanna. You are 37 years of age. You are married and have two children both in primary school. You are an assisting chief in the community. You are a subsistence farmer. You are a first time offender. You do not have previous convictions. You explained your offending related to the threats and damages of properties made to your families in Port-Vila. You realized that what you did was wrong.

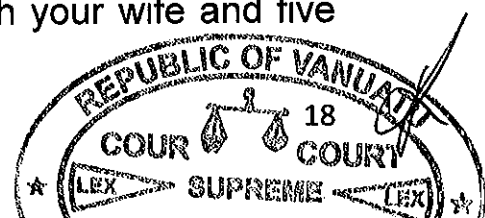


You felt guilty. You attended the custom ceremony performed to the victims.

16. langnamta Ielun, you are from Lowin Village, West Tanna. You are 37 years old. You are married and have six children. One of your children is in year 10 at Onesua Presbyterian College and others are still in primary school. You are a subsistence farmer and you are the main bread winner of your families. You are a first time offender. You do not have previous convictions. You explained your offending is a revenge to the complainants for the threats and damages of properties made to your families in Port-Vila. You realized that what you did was wrong and you felt guilty. You took part in the custom ceremony performed to the victims.
17. Naies Lava, you are from Lowin Village, West Tanna. You are 29 years old. You are married and have four children, all in primary school. You operate a concrete blocks business at Lenakel Blackman Town. Beside your business, your family gain their daily means through subsistence farming. You are a first time offender. You do not have previous convictions. You explained your offending as a revenge to the complainant for the threats and damages of properties made to your families in Port-Vila. You realized that what you did was wrong and you felt guilty. You took part in the custom ceremony performed to the victims.
18. Steve Tom, you are from Lounikavik Village, West Tanna. You are 24 years old. You are single and you take care of your divorced mother. You attended primary school. You have building and farming skills. Your family gain their daily financial means through subsistence farming. You are a first time offender. You do not have previous convictions. You explained your offending as a revenge to the complainants for the threats and damages of properties made to your families in Port-Vila. You realized that what you did was wrong. You felt guilty. You took part in the custom ceremony performed to the victims.



19. Jack Roel, you are from Laruanu Village, West Tanna. You are 22 years of age. You are married, you live with your wife and your mother – your father passed away. You are doing some part time job in a garage. You have some skills in mechanics. You are responsible for your younger brother and sister school fees. Your family daily needs depend on the subsistence farming. You are subsistence a first time offender. You do not have previous convictions. You explained your offending as a revenge to the complainants for the threats and damages of properties made to your families in Port-Vila. You told the Probation Officer that you realized that what you did was wrong. You took part in the custom ceremony performed to the victims.
20. Nies Sibly, you are from Laruanu village, West Tanna. You are 31 years old, married, you live with your wife and three children all in primary school. You are a primary school teacher, teaching grade six at Lounahunu Primary School. You are also taking a degree course at Tafea USP Sub-centre at Isangel as a distance flexible learner. You are also paying school fees for some students. Your family depends on subsistence farming for daily needs. You are a first time offender. You do not have previous convictions. You explained your offending as a revenge to the complainants for the threats and damages of properties made to your families in Port-Vila. You realized that what you did was wrong. You took part in the custom ceremony performed to the victims.
21. Shem Nauka, you are from Lounikavik village, West Tanna. You are 33 years old. You are married, live with your wife and two children both at kindergarten. Your family depends on subsistence farming for daily needs. You are a first time offender. You do not have previous convictions. You explained your offending as a revenge to the complainants for the threats and damages of properties made to your families in Port-Vila. You realized that what you did was wrong. You took part in the custom ceremony performed to the victims.
22. Sam Kulik, you are from Laruanu village, West Tanna. You are 41 years old. You are married. You live with your wife and five



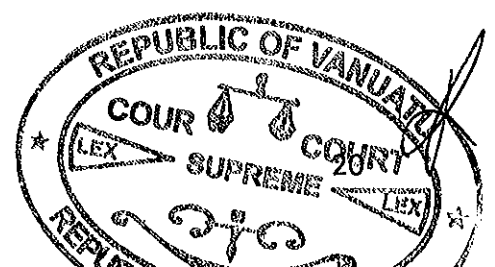
children, one attending secondary school and the other four are in the Primary schools. Your family depends on the subsistence farming for daily needs. You are a first time offender. You do not have previous convictions. You explained your offending as a revenge to the complainants for the threats and damages caused by the family of the complainants' relatives to properties of your families in Port-Vila. You realized that what you did was wrong. You took part in the custom ceremony performed to the victims.

23. Allan Nauka, you are from Laruanu village, West Tanna. You are 26 year old, married. You live with your wife and two children, one in primary school. Your family depends on the subsistence farming for your daily needs. You are a first time offender. You do not have previous convictions. You explained your offending as a revenge to the complainants for the threats and damages by their relatives to properties made to your families in Port-Vila. You realized that what you did was wrong. You took part in the custom ceremony performed to the victims.
24. Alfred Hiwa, you are from Lounikavik village, West Tanna. You are 33 years of age. You are married, you live with wife and two children. One of your children is in the primary school. You are employed as part time seaman. You take care of school fees of your brother's children. You are a first time offender. You do not have previous convictions. You explained your offending as a revenge to the complainants for the threats and damages done by the complainants' relatives to properties of your families in Port-Vila. You realized that what you did was wrong and you felt guilty. You took part in the custom ceremony performed to the victims.
25. Nicolas Andrew, you are from Lapangmita village, Lenakel area, West Tanna. You are 24 years of age. You live with your two months pregnant wife. You are employed as gardener at Lenakel Cove Resort. Apart from your salary, your family depends on the subsistence farming for daily needs. You are a first time offender. You do not have previous convictions. You explained your offending as a revenge to the complainants for



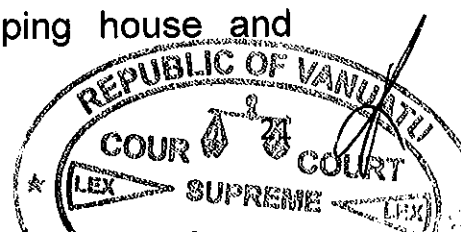
threats and damages of properties made to your families in Port-Vila. You realized that what you did was wrong and you felt guilty. You took part in the custom ceremony performed to the victims.

26. Tom Matua, you are from Lounikavik, West Tanna. You are 18 years of age. You are single and live with your parents. You do not attend any school. Your family depends on the subsistence farming for daily needs. You are a first time offender. You do not have previous convictions. You explained your offending as a revenge to the complainants for threats and damages of properties made to your families in Port-Vila. You realized that what you did was wrong and you felt guilty. You took part in the custom ceremony performed to the victims.
27. Frank Sam, you are from Loutaliko village, West Tanna. You are 31 years of age. You are married and you live with your wife and four children. Two are pre-schools, one in the primary and one is at home. You also pay school fees of the children of your cousin. You are a member of RSC working scheme in New Zealand. You told the Probation Officer that after you have offended, you are now black listed in the scheme. Your family depends on the subsistence farming for their daily needs. You realized that what you did was wrong and you felt guilty. You took part in the custom ceremony performed to the victims.
28. Manu Jaick, you are from Loutaliko village, West Tanna. You are 31 years old. You are married. You live with your wife and two children. You are employed by a furniture company. Apart from your job, your family depends on the subsistence farming for their daily needs. You pay for the school fees of your brother's children at Imaki Junior Secondary School. You explained your offending as a revenge to the complainants for the threats and damages of properties made to you families in Port-Vila. You realized that what you did was wrong and you felt guilty. You took part in the custom ceremony performed to the victims.



29. lausah Namtengas, you are from Laruanu village, West Tanna. You are 17 years of age. You are single and you live with your father and mother in Port-Vila. You attended primary school but you could not further your schooling. Your family depends on subsistence farming for their daily needs. You are a first time offender. You do not have previous convictions. You explained your offending as a revenge to the complainants for the threats and damages of properties made to you families in Port-Vila. You realized that what you did was wrong and you felt guilty. You took part in the custom ceremony performed to the victims.
30. Roger Sam, you are from Laruanu village, West Tanna. You are a minor of 15 years of age. Your mother passed away when you were a baby. You were looked after by your grandfather with whom you now live with. You do not further your education because of school fees. Your grandfather helps your training through a private auto mechanic. You have some skills in mechanic as you are doing temporary work in a garage as a practical to upgrade your skills. Your family depends on the subsistence farming for their daily needs. You explained your offending as a revenge to the complainants for the threats and damages to properties made to your families in Port-Vila. You realized that what you did was wrong and you felt guilty. You took part in the custom ceremony performed to the victims.
31. Lautu Sam, you are from Laruanu village, West Tanna. You are 16 years of age. You live with your parents. You are year 8 secondary student. You depend on your parents' support for your education. Your family depends on the subsistence farming for their daily needs. You explained your offending as a revenge to the complainants for the threats and damages to properties made to your families in Port-Vila. You are a first time offender. You do not have previous convictions. You realized that what you did was wrong and you felt guilty. You took part in the custom ceremony performed to the victims.

In mitigation, each and all of you pleaded guilty to offences of unlawful assembly and damage to property. Some of you pleaded guilty for committing offences of unlawful entry to 1 sleeping house and



property shops. One of you is a minor (Roger Sam) and others are young offenders of 16 and 17 years of age and still undergoing their education.

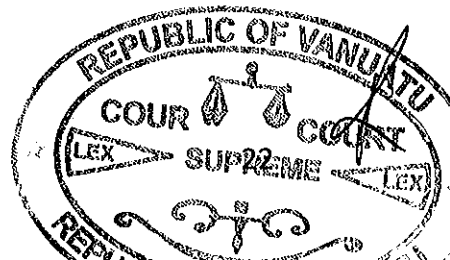
You are all first time offenders. You all realized that what you did on 9 December 2012 was wrong and against the law. You all felt guilty for what you have done.

On balancing between the aggravating and mitigating factors and cross-referencing each to the other and taking into account your individual circumstances, you are each ordered to serve following sentences:

ORDERS AND OBSERVATIONS FOR SENTENCE

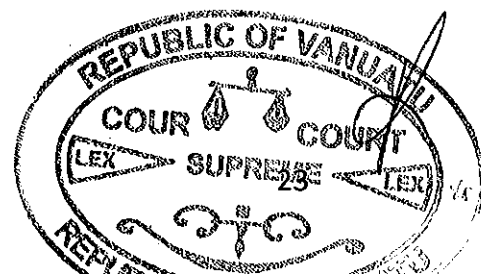
ORDERS

1. Defendant Roger Sam. You are sentenced to 18 months supervision under the standard conditions for the offences of unlawful assembly and damage to property, contrary to ss. 69 and 133 of the Penal Code Act. This sentence is the same on all nine (9) offences you have been convicted of. They shall run concurrently to each other. This means that you are ordered to undertake 18 months probation for the totality of your offending.
2. Save Roger Sam, each and all of you (30 Defendants) your sentence for unlawful assembly is reduced to 2 years imprisonment.
3. Sassen Philip and Nies Sibly, your sentence for unlawful entry into dwelling house is reduced to 2 years imprisonment.
4. Sassen Philip, Nies Sibly, Daniel Tom, Bob Wol, Joel Lazarus, Thomas Nam and langnamta Ielun, your sentence for unlawful entry into houses (not used for human habitation) is reduced to 2 years imprisonment.
5. Save Roger Sam, Each and all of you (30 Defendants) your sentence for offences of damage to property is reduced to 10 months imprisonment.



6. For each of you (30 Defendants), your terms of imprisonment are concurrent to each other on all counts each of you is convicted of.
7. Order 6 above means that for each and all of you 30 Defendants (save Roger Sam) you have to serve a total of 2 years imprisonment for all your offending.
8. For each and all of you (30 Defendants), your 2 years terms of imprisonment is suspended for a period of 3 years.
9. Save Roger Sam, during the period of 3 years suspension, each of you must not re-offend. If any of you re-offend again before the end of 3 years suspension period, he shall be charged and convicted on the new offence and the current suspended sentence terms of 2 years imprisonment shall be reactivated by the Supreme Court.
10. In addition to your suspended terms of imprisonment under s.58G of the Penal Code Act;
 - (1) Following Defendants: Sassen Philip, Charlie Ielun, Bob Wol, Joe Lazarus, Thomas Nam, Jimmy Nam, Daniel Tom, Charlie Manbush Lava, Hiwa Sarawia, Kolwin Kiau, Graham Kiel, Misuel Tom Nimisa, Bodja Iata, Mala Yelun, Iangnamta Ielun, Naies Lava, Steve Tom, Jack Roel, Nies Sibly, Shem Nauka, Sam Kulik, Allan Nauka, Alfred Hiwa, Nicolas Andrew, Tom Matua, Frank Sam, Manu Jack, Iausah Namtengas – are ordered to serve 100 hours of community work.
11. The Order 10 above for Community Service does not apply to following Defendants: Luata Sam and Chalton Iata as both to continue their schooling.
12. Each and all of you sentenced today is entitled to appeal his sentence within 14 days if you are not happy with it.

OBSERVATIONS



13. It is noted that you were all initially charged with one count of riot, contrary to section 70 of the Penal Code Act [CAP. 135] with its maximum penalty of 10 years imprisonment. The prosecution withdrew the charge of riot and decided instead to proceed with the offence of unlawful assembly. If the prosecution had maintained the charge of riot and if convictions were secured against each and all of you, you would have received heavier imprisonment penalty as starting point and it would be more likely that you would be sent directly to custody. This must be a warning to each of you and any other who commit such offences again in the future.
14. As a final note, the prosecution informs the Court that the complainants will file civil claims separately against each and all of you seeking for damages. That should be separate civil proceedings from your criminal sentencing.

DATED at Isangel, Tanna this 1st day of March 2013

BY THE COURT

Vincent LUNABEK
Chief Justice

