

## **Solomon Islands Law Reform Commission**

The Solomon Islands Law Reform Commission (LRC) is a statutory body established under the *Law Reform Commission Act* [Cap 15]. The LRC is headed by the Chairperson and four part-time Commissioners appointed by the Minister for Justice and Legal Affairs.

The Chairperson's post is currently vacant.

The part-time Commissioners are:

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Mr Waeta Ben Tabusasi C.S.I., S.I.M.

Rt Reverend Bishop Philemon Riti O.B.E.

Mrs Emmanuella Kauhue

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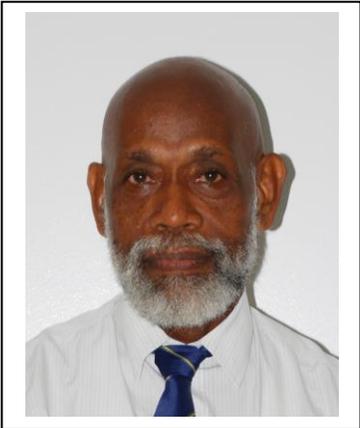
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# Commissioners



**Commissioner Gabriel Suri**



**Commissioner Waeta Ben Tabusasi**



**Commissioner Rt Rev. Philemon Riti**



**Commissioner Emmanuella Kauhue**

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## Introduction

- 1.2 This Paper has five parts. Part 1 focuses on some people's views<sup>1</sup> about sorcery. Part 2 briefly highlights some effects of sorcery. Part 3 deals with customary governance of sorcery. Part 4 deals with State governance of sorcery, and part 5 suggests some way forward and options for law reform.
- 1.3 Sorcery is an offence under both State and customary laws in Solomon Islands.
- 1.4 State law (Penal Code) refer to sorcery as:
- i) the performance of any magical ritual where there is a general belief among a class of persons that may result in harm to any person; or
  - ii) the possession of articles (without lawful excuse) commonly associated by any class of persons with harmful magic.
- 1.5 Under custom, sorcery in Solomon Islands can be referred 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. A sorcerer is known to the victim and relatives as:
- i) the victim experiences misfortune and sickness during the sick period; or
  - ii) the sorcerer is known to the relatives after the victim died;
- 1.6 This is the belief and perception as to how a sorcerer is identified in custom.
- 1.7 Sorcery can be for a good<sup>2</sup> or bad cause. As to the latter, some examples in Solomon Islands of sorcery are *arua*, *kelema* and *bua'abu* in Malaita Province, *piro*, *vele* or *kibokibo* in Guadalcanal Province, *pela* and *Jiama* in Western Province and *parana* (black-stone) in Choiseul Province.
- 1.8 *Arua* is a term given to a sorcery practise in which a male or female sorcerer takes food scraps or a piece of clothe of another person and use them to feed a snake or frog or rat. This is mainly practised in some parts of Malaita Province.

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<sup>1</sup> There was no detailed consultation conducted by the SILRC on sorcery. The views carried in this Paper were the ones people expressed during the general consultation on the review of the Penal Code.

<sup>2</sup>Anti-social behaviours are low for fear of sorcery; or sorcery provides the community the reason for death, sickness, insanity and misfortune.

1.9 *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.<sup>3</sup> This is similar to *arua*. However, *kibokibo* is more like a generic name for sorcery.<sup>4</sup>

1.10 *Vele* means 'to *pinch*, from the tingling or pinched feeling in the arms that warns protected persons of the proximity of the *vele* magician'<sup>5</sup>. According to L. W. S Wright '[t]he usual method employed by the *vele* man is to hide by the side of a 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.'<sup>6</sup> It is basically practised in Guadalcanal.

1.11 In 1932 in Ontong Java<sup>7</sup> 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.<sup>8</sup>

1.12 He went on further to say:

The spells, like all others at Ongtong Java, were direct appeals to the spirits of the ancestors.<sup>9</sup>

1.13 Sorcery may arise because of several factors which include:

- Jealousy due to social and economic advancement;
- Customary land disputes between different clans and tribes;

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<sup>3</sup> Conversation with Associate Professor Tarcisius Tara (Monday 20 May 2013).

<sup>4</sup> Ibid.

<sup>5</sup> 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.

<sup>6</sup> Ibid.

<sup>7</sup> Ontong Java is in Malaita Province, Solomon Islands.

<sup>8</sup> H. Ian Hogbin, 'Sorcery at Ontong Java' (1932) 34 *American Anthropologist* 441, 442.

<sup>9</sup> Ibid.

- Proud about being someone of a higher calibre;
- Criminal activities within villages;
- Social control; or
- Friendship break-down.

1.14 Sickness, death, insanity or misfortune, are possible results of bad cause of sorcery.<sup>10</sup>

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<sup>10</sup> 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)

## Part 1: People's views on sorcery

1.15 The Solomon Islands Law Reform Commission (SILRC) conducted consultations in Solomon Islands in 2009 and 2010 on the review of the *Penal Code*. Sorcery was an issue highlighted by many people as having serious concerns in the society which needs to be addressed by the Government. Below are views on sorcery expressed to the SILRC from some people from Choiseul Province, Temotu Province, Isabel Province, Western Province, Malaita Province and Makira Province. The views are:

*Sorcery causes harm to human life. Sorcerers should be categorised as murderers. Sorcery can result in mental illness, bad luck and death. Capital punishment (death) should be the punishment for sorcerers. Sorcery is caused by power, self-defence and jealousy.*<sup>11</sup>

*Sorcery is a main concern and is happening in a massive scale today. It is very common that when a person died, the death is often linked to an alleged sorcerer. In the past in custom, death was the penalty for practicing sorcery. Sorcery should be seriously considered and its penalty should be equivalent to that of a murderer.*<sup>12</sup>

*Sorcery disturbs the community. Those who practice sorcery should be punished accordingly. The sorcery offence should include threat to commit sorcery.*<sup>13</sup>

*Sorcery in Solomon Islands is an act of murder.*<sup>14</sup>

*Law should recognise customary law that deals with sorcery. The chiefs should deal with sorcery disputes. Use of witchcraft like black magic for house breaking is common.*<sup>15</sup>

*Evidence of sorcery could be a report from the chief. Most deaths are believed to be caused by sorcery. Law needs to recognise death by sorcery. At the moment church leaders and chiefs*

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<sup>11</sup> Frank Waetara, Verbal submission over mobile phone to the SILRC, Toroa Villiage, Makira Province (20 September 2010).

<sup>12</sup> Tom Firilanga, Verbal submission to SILRC, Malu'u, North Malaita, Malaita Province (4 January 2010).

<sup>13</sup> SILRC Consultation meeting with Gizo Police, Western Province (20 April 2009).

<sup>14</sup> SILRC Lata Public Forum Consultation, Temotu Province (6 May 2010).

<sup>15</sup> SILRC Taro consultation, Choiseul Province (13 October 2009).

*conducted reconciliation and counselling to parties. Penalty for sorcery should be one of deterrence purpose.*<sup>16</sup>

*Black magic or sorcery is widespread. There are more deaths caused by sorcery than other means. Law should recognise sorcerers as equal to murderers. People report sorcery incidents to the Church. One alleged sorcerer was beaten to death because of sorcery. The Church has gone on missions to collect evidence used in black magic.*<sup>17</sup>

***1. Do you believe that sorcery exist in your area? If yes, why? If no, why?***

***2. What types of sorcery are practised in your area?***

***3. What are the reasons for practising these types of sorcery?***

***4. Are the types of sorcery introduced in your area or been there for many years?***

***5. Is sorcery a concern in your area?***

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<sup>16</sup> SILRC Bula consultation, Provincial Council of Women, Isabel Province (27 May 2009).

<sup>17</sup> SILRC Bula consultation, Diocese of Isabel, Isabel Province (29 May 2009).

## Part 2: Effects of sorcery

1.16 Today in Solomon Islands, the effects of sorcery are substantial. Among the many, some of these include: Increase in criminal activities and establishment of networks to advance economic interests. Below is a brief description of these effects.

### (a) Increase in criminal activities

1.17 One of the effects of sorcery is that it fuels criminal activities. There were increasing criminal offences like murder, assault and arson committed because of sorcery as are discussed below.

1.18 In 2012, according to the Isabel Provincial Police Commander, unlawful activities related to sorcery have increased in the highlands of Isabel Province.<sup>18</sup> In 2010, relatives of a dead man have burnt down two homes in separate villages in Central Kwara'ae, Malaita Province because they were not happy after suspecting their relative had died over sorcery commonly known in the area as "Kelema".<sup>19</sup> In 2009 in East Kwaio, Malaita Province, a pagan priest who was suspected of allegedly practising sorcery was stabbed to death.<sup>20</sup> These were some instances that suspected sorcerers were harmed and banished from living in communities.<sup>21</sup>

1.19 The above sorcery related stories were reported through the print-media. There were many other sorcery stories that had involved violence against the sorcerers which were not reported in the media.

***6. What age group or gender practise sorcery? What types of sorcery practised by the different groups?***

<sup>18</sup> Jennifer Kakai, 'Sorcery on the rise in Isabel: PPC' Solomon Star (9 July 2012)

<http://solomonstarnews.com/news/national/15359-sorcery-on-the-rise-in-isabel-ppc> (Accessed 10 February 2013).

<sup>19</sup> Jennifer Kakai, 'No police action on burnt homes' Solomon Star (2 December 2010)

<http://www.solomonstarnews.com/news/national/9230-no-police-action-on-burnt-homes> (Accessed 10 February 2013).

<sup>20</sup> 'Hunt for three murder suspects in Solomon Islands linked to sorcery'(16 March 2009)

<http://www.radioaustralia.net.au/international/radio/onairhighlights/hunt-for-three-murder-suspects-in-solomon-islands-linked-to-sorcery> (Accessed 10 February 2013).

<sup>21</sup> Author's knowledge of the effects of sorcery.

*7. How your community deal with sorcery?*

*8. What are the common responses by the people in your area to those accused of sorcery?*

*9. What causes people to resort to criminal activities against alleged sorcerers? Is that a result of State's inability to deal with sorcery? Or is that the belief in sorcery according to custom that the sorcerers must be punished?*

*10. Do you think people accused of sorcery are protected by your community or the law? Should they be protected? If so, by who?*

*11. Are you willing to accept bodies that the State empowers to solve sorcery disputes?*

*12. Who is the victim of sorcery?*

*13. What are your views on the harm (including killing) done by sorcerers?*

*14. What are your views on harm (including killing) done to sorcerers?*

**15. What are your views on person(s) committing criminal offence in response to sorcery harm (including killing)? Is it right or wrong?**

- 1.20 Furthermore, so called customary healers or custom doctors take advantage of the strong beliefs in sorcery to commit sexual offences like rape and indecent assault in the name of curing or healing female victims from sorcery sickness. An example of such is the case of *R v Tebounapa*.<sup>22</sup> In this case the custom doctor who was the accused 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. First, 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 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 this was not done, she would die the following month. Also in this case, the same accused was convicted of indecent assault because the accused during the course of curing another complainant played the clitoris of the complainant. The accused told the complainant that he had been given power and anointed by the chiefs to do such work. He told the complainant not to be afraid of him despite the occurrence of such sexual act.
- 1.21 Rape was also committed in the case of *Regina v Sisiolo*.<sup>23</sup> In this case, the accused claimed to be a custom doctor. He also claimed to be someone 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 a remedy to cure the alleged sorcery caused to the female complainant was sexual intercourse with her.

**16. Do you have customary healers in your area?**

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<sup>22</sup> [1999] SBHC 1; <http://www.paclii.org.vu>.

<sup>23</sup> [2010] SBHC 35; <http://www.paclii.org.vu>.

*17. Do customary healers in your area sometimes abuse their patients?*

*18. What are the church views on customary healers?*

### **(b) Establishment of networks**

1.22 Another effect of sorcery is the formation of a network between those who practise sorcery and those who can cure those affected by sorcery. The network involves a well-established communication link between them. The network entails that some people will be responsible for causing the sickness or misfortune while others will be on standby to cure or heal the sickness or misfortune.

*19. Are you aware of sorcerers' networks? If so, what are the reasons for the networks?*

### Part 3: Customary governance of sorcery

- 1.23 In the past sorcerers were killed if they were responsible for death of other persons.<sup>24</sup> Such payback killing could be executed by the relatives of the deceased.
- 1.24 In other instances, the sorcerers were banished from the village or community. In one part of Malaita, the sorcerer would be represented by a coconut placed in the *bae*<sup>25</sup> as an affirmation that he or she would not return. Also in some instances they were asked to pay compensation before they leave.

#### *20. In your custom, what were the penalties for practising sorcery in the past?*

- 1.25 At present, chiefs or traditional leaders sometimes deal with sorcery because it is a customary wrong. An example was in 2010 in Malaita Province where chiefs were asked to deal with a sorcery case. A House of Chief inquired into the matter and ordered the alleged sorcerer to pay ten red shell monies as compensation to the relatives of the deceased for the life of the deceased. The sorcerer paid the compensation.<sup>26</sup>
- 1.26 Unlike State courts, proving sorcery according to custom is not an issue. Chiefs and other traditional elders 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 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) custom there are two common methods of proving sorcery. These methods both involves tracing.
- 1.27 The first method of tracing 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

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<sup>24</sup> James Ofasia, 'Traditional Toabaitan Methods of Forgiveness and Reconciliation' [http://www.cltc.ac.pg/LinkClick.aspx?fileticket=Dv2joj3F\\_mY%3D&tabid=80](http://www.cltc.ac.pg/LinkClick.aspx?fileticket=Dv2joj3F_mY%3D&tabid=80) (Accessed 20 March 2013). See also SILRC interview with Chief John Konai, Matakwalao House of Chiefs, North Malaita, Malaita Province (11 February 2013); Also SILRC interview with Rinaldo Talo, President, Malaita Local Court, Malaita Province (February 2013).

<sup>25</sup> Place where people are buried.

<sup>26</sup> SILRC interview with Chief John Konai, above n 24.

contact with the sorcerer is always suspected to be due to sorcery. To add with this, if the sorcerer's home was frequented by snakes or frogs to the 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.

- 1.28 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. However, according to one chief in Malaita Province, the police in that area prohibited the use of this method for proving sorcery.<sup>27</sup>
- 1.29 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 can point out the source of their magical objects to well-known customary healers in the community.

**21. How is sorcery dealt with in your community at present? Who or which body deals with sorcery?**

**22. What are the penalties?**

**23. In general, are people (sorcerers, victims, and victims' family) happy with the current customary penalties? If not, what happens?**

**24. How is sorcery proved in your area under custom?**

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<sup>27</sup> SILRC interview with Chief John Konai, above n 24.

*25. What defences are there in custom to a sorcery accusation?*

## Part 4: State governance of sorcery

### *State legal system*

1.30 Sorcery is an offence in Solomon Islands. The *Penal Code* [Cap 26] in section 190 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.

1.31 There are two problems with this provision. First, this sorcery offence provision does not fully reflect sorcery as is known and understood in Solomon Islands society. This is because sorcery as it is known to Solomon Islanders is an act 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. A sorcerer is known to the victim and relatives as the victim experiences misfortune, sick period or the sorcery is known to relatives after the victim died. This is the 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 harm 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.

1.32 Secondly, the sorcery provision in the *Penal Code* has not been used to prosecute any alleged sorcerer(s) in the past.<sup>28</sup> 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.<sup>29</sup> This perception is rationale because sorcery dealings or conducts are done in secret and no one

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<sup>28</sup> SILRC email correspondence with Mr. Douglas Hou of the Public Solicitor's Office, Mr. Ricky Iomea of the Director of Public Prosecutions and Mr. Galvin Ora of the Police Prosecutions Office. Also SILRC verbal conversation by telephone with Mr. Leonard Maina, Chief Magistrate of Solomon Islands.

<sup>29</sup> SILRC email correspondence with Mr. Galvin Ora of the Police Prosecutions Office.

other than the sorcerer knows about them. For instance, the performance of magic ritual and possession of harmful magic objects or articles are conduct and things that are hidden from those who do not practice sorcery. The only people that may have a chance of witnessing the conduct 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. They will not wish to be seen and considered as an evil family in the community. There was an instance that a child revealed that her mother was practicing sorcery.<sup>30</sup> This instance is discussed below in this part under the Local Court Act.

- 1.33 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 can be caught. For example, a sorcerer who practises *arua* often dance in the graveyard after the victim is buried. A *vele* sorcerer often has in possession a special *vele* bag. There might be some successful cases had cases of sorcery offences were tried in courts, especially the local court and magistrate court.<sup>31</sup>
- 1.34 Another reason for the non-usage of this provision may be because of the low penalty attached to the offence.<sup>32</sup> This does not reflect the nature of the offence in custom as sorcery is a very serious wrong in custom.<sup>33</sup> A suggestion for higher penalty to deter people from practising sorcery was proposed during one consultation.<sup>34</sup>

**26. What are your views about the current sorcery offence in the Penal Code?**

**27. Should we retain or remove the offence of sorcery from the Penal Code? If retained, why? If removed, why?**

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<sup>30</sup> SILRC interview with Rinaldo Talo, above n 24.

<sup>31</sup> 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 at the moment.

<sup>32</sup> The maximum penalty for sorcery offence in the Penal Code is imprisonment of two months or a fine of forty dollars.

<sup>33</sup> Interview with Rinaldo Talo, above n 24.

<sup>34</sup> Ibid.

28. *If we retain the offence of sorcery in the Penal Code, how can we deal with the issue of evidence to prove the offence?*

29. *What are your views about Magistrate Court dealing with sorcery?*

30. *What are your views about High Court dealing with sorcery?*

### *Regina v Havimana*<sup>35</sup> case

1.35 This is a case that the sorcery offence was discussed. In this case, the defence alleged sorcery killing in support to the partial defence of provocation to the charge of murder. The defence alleged that the sorcerer revealed himself through two other victims (Eldon Kari and Veronica Lestro) when members of the Melanesian Brotherhood (Br<sup>36</sup>. Zephaniah Leamana and Br. Justin) conducted clearance and healing in the area. Br. Zephaniah and Br. Justin used holy water, holy oil and prayer in their clearance and healing sessions. It was alleged that the victim in this case (alleged sorcerer) was speaking through Eldon Kari and Veronica Lestro saying that he was responsible for killing the accused father late Rev. Ambrose Havimana. The alleged sorcerer was alleged to speak through Eldon and Veronica when they were made asleep by Br. Zephaniah and Br. Justin, respectively. 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 as to the identification of the sorcerer's voice.

1.36 It is not clear as to how the defence wished to advance its case in relation to the manner in which it tried to prove the sorcerer was responsible for the death of the accused father. This is based on these two issues. First, showing to the court that a person killed somebody by sorcery is not sufficient for proving the sorcery offence envisaged under section 190 of the *Penal Code*. Section 190 of the *Penal Code* requires to prove that a sorcerer (person) performs magic ritual where there is a general belief among a class of persons that may result in harm to any person; and proving the sorcerer's possession of articles

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<sup>35</sup> [2011] SBHC 48; <http://www.pacii.org.vu>.

<sup>36</sup> Br is a Brother as known for Church of Melanesia Brothers.

(without lawful excuse) commonly associated by any class of persons with harmful magic. In the *Havimana* case all the defence seems to prove was that the alleged sorcerer Allen was responsible for the death of the accused father. However, there was no mention of whether Allen performed a magical ritual or had possession of articles associated with harmful magic. The second issue is, it is not clear what would be the legal consequences of the court accepting Allen (the deceased in the case) as the sorcerer of the accused father. That is, what benefit would the court render to the accused on the basis that the accused committed murder in payback for the sorcerer killing his late 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.

*31. Should sorcery killing become a defence for any other criminal offences? Or should it become a mitigating factor when sentencing someone for an offence?*

### ***Local Courts Act [Cap 19]***

- 1.37 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 established them.<sup>37</sup> The Act allows the local courts to apply custom of the islanders in the area of the jurisdiction of the courts.<sup>38</sup> 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.<sup>39</sup>
- 1.38 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 to authors' research) to show that a local court has dealt with sorcery offence under State law. On its customary jurisdiction, a local court

<sup>37</sup> See *Local Courts Act* [Cap 19], section 6.

<sup>38</sup> *Local Court Act* [Cap 19], section 16.

<sup>39</sup> *Local Courts Act* [Cap 19], section 18.

can deal with sorcery as a customary wrong. This is because sorcery is a customary wrong and custom determines the punishment for alleged sorcerers. Custom recognised death, banishment, or giving of land to the victim's side as forms of punishment for sorcerers.<sup>40</sup> According to the authors' research there was one instance that the Malaita Local Court had dealt with 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 moonlight 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 sorcerer 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.<sup>41</sup>

### ***Provincial Government level***

#### ***Moli Ward Chiefs Council Ordinance 2010***

1.39 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.

1.40 Section 77 states:

- (1) A person who practices sorcery in Moli Ward breaches this section and is liable to a fine not exceeding 1000 penalty units and one pig, one *chauangavulu*,<sup>42</sup> and one *chupu*.<sup>43</sup>

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<sup>40</sup> 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 ix. Also Authors' personal knowledge.

<sup>41</sup> Interview with Rinaldo Talo, above n 24.

<sup>42</sup> *Chausangavulu* refers to ten string shell money of one fathom each string in length.

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

1.41 The offence except the penalty reflects closely the sorcery offence in the *Penal Code*. 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 can go is saying he or she has something for protection and not for killing somebody. Circumstantial evidence could be the only way close to proving somebody accused of sorcery. For example, in the case of someone with 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.

***32. Should provinces pass laws to provide for sorcery?***

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<sup>43</sup> 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.

## Part 5: Options for law reform and way forward

- 1.42 The first option as way forward and law reform is to utilise the local court customary jurisdiction to deal with sorcery. The *Local Court Act* [Cap 19] establishes the legal framework to recognise, apply, and use customary law in the rural areas of Solomon Islands. It allows the local courts under its customary jurisdiction to determine or settle customary disputes or wrongs. The local courts also have the power to direct an accused or a respondent to pay compensation to a victim; more towards restorative justice. The problem at the moment is that the local court is not fully utilised to perform its customary jurisdiction. The local courts were active in the past than now. Currently, the local courts are operated more in the provincial centres as opposed to the local rural areas as the *Local Court Act* envisaged. Also, currently, the local courts focus more on customary land disputes other than customary wrongs and breaches, minor criminal and civil cases.<sup>44</sup> This makes it impossible for serious customary wrongs like sorcery, adultery and fornication (adultery and fornication are not criminal offences under the State law) to be settled at the local courts. The result is people resorted to *self help approach* of asking compensation and beating of the accused in sorcery, adultery or fornications cases. This sometimes resulted in escalation of violence in the communities. This could be avoided if local courts are functioning in their full capacity.
- 1.43 Under its customary jurisdiction, the *Local Court Act* should clarify that local courts are to have unlimited jurisdiction to order or give punishment or sentence on customary wrongs or breaches appropriate to the seriousness of the wrong in custom. This unlimited jurisdiction however must be subject to natural justice and humanity as provided for in section 18 of the *Local Court Act*. This suggestion is made on the basis that the Act is not clear as to sentence the local court can award under its customary jurisdiction. A broad interpretation of the Act would mean that the local court has unlimited jurisdiction and can award any sentence according to custom so long as the sentence is not inconsistent with natural justice and humanity.<sup>45</sup> In contrast, a narrow interpretation of the Act would mean that the local court can only award a sentence for criminal matters a fine of no more than \$200 or no more than 6 months imprisonment. And for civil matters the local court can only award up to \$1000 for damage or compensation.<sup>46</sup>
- 1.44 In the past when local courts were active, they upheld customary laws, which on appeal to the High Court were also upheld. This was reflected in the *To'ofilu v Oimae*<sup>47</sup> case. In

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<sup>44</sup> The Author's personal knowledge with the justice system of Solomon Islands.

<sup>45</sup> This interpretation is based on custom as the determining factor subject to natural justice and humanity.

<sup>46</sup> See Warrants that established the different local courts.

<sup>47</sup> [1997] SBHC 33; <http://paclii.org.vu>.

that case the High Court ruled that the customary practice of determining payment of bride price would be best dealt with by the Local Court of the area of which both parties were originated. Similarly, sorcery as a customary wrong should be best dealt with by local courts.

***33. What are your views about local courts dealing with sorcery?***

1.45 The second option is to devolve jurisdiction over sorcery to the customary legal system. The chiefs or traditional leaders' custom forum is good because they have the knowledge about sorcery practises. Given their know-how about sorcery they can deal effectively with sorcery. For instance, the move by the Guadalcanal Provincial Government through ordinance in empowering the Moli Ward Council of Chiefs to deal with sorcery is a step in the right direction. Such approach should be carefully considered at the national level to see if it can be adopted as a solution for addressing sorcery.

***34. What are your views about chiefs and other community leaders dealing with sorcery?***

1.46 Finally, the third option is to consider the involvement of churches to deal with sorcery. The Church of Melanesian (COM) have involved in dealing with sorcery on request by communities by way of blessing shrines and neutralising the habitats of dangerous spirits. Melanesian Brothers of COM on request go around in villages to do what is termed as clearance. This process involves going to villages and collect items associated with sorcery or talk to people who are suspected of practising sorcery. They usually urge those who practise sorcery to stop doing sorcery and come forward to the Brothers for healing purpose. An issue with this option is whether such church program will accept taking a step further to settle disputes between parties as a result of sorcery.

*35. What are your views about churches dealing with sorcery? Are churches willing to deal with sorcery?*

1.47 An additional aspect that must be done if local courts, Council of Chiefs or House of Chiefs, and church officials are to involve in dealing with sorcery is for the State to provide training for them in areas of natural justice, human rights principles and other basic law principles. The trainings will empower them to conduct and discharge fair hearings and settlements for parties who seek remedies from them. Further, the Council of Chiefs or the House of Chiefs and the church officials who are to deal with sorcery must register their groups with the local courts. This will ensure proper coordination and oversight over the groups dealing with sorcery.

*36. Do you have any other views about sorcery?*

*37. Should State prohibited sorcery?*