

17th Annual New Zealand Law Foundation Ethel Benjamin Commemorative Address

Her Honour Justice Catharine Davani

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Violence against women – sorcery related deaths

I will speak about sorcery and its effect on Papua New Guineans both male and female, young and old. I chose sorcery because it is a subject that is probably very much unknown to New Zealanders, more particularly the white New Zealanders, it is probably common to the Maoris and to the indigenous people however I speak about sorcery also because we have had a spate of killings in Papua New Guinea which has been publicised in both the world media and my country – the killing of women especially who have been branded as witches or sorcerers, and not just women but men as well.

This presentation will essentially re-emphasise and reflect on the belief in sorcery in Papua New Guinea; the practice of sorcery; killings done because of the belief in sorcery; the victims of sorcery; whether the victims are predominantly women and why; the ripple effects of sorcery killings on Papua New Guinean society; and how the courts have dealt with sorcery killings. Of course in this very short space of time I am unable to cover what a researcher would cover over many years. There have been many articles written about this which I unfortunately have not had reference to but what I will be speaking on is in relation to how the courts have applied the law in dealing with persons charged with wilful murder but with the belief in sorcery in mind.

By way of introduction and to demonstrate the background against the practice and belief in sorcery I just wish to give you a brief background on my country. Papua New Guinea is a country of approximately 8 million people. Its people speak about 800 and more languages or dialects. Within these language-speaking groups there exists a myriad of customs. Customs meaning rules of practice governing the existence of the tribes or language-speaking groups and how they ought to live. The practice of sorcery exists amongst the tribes and the language-speaking groups and I can state for a fact as an indigenous Papua New Guinean that it covers a whole range of people.

Papua New Guinea's legal system is the common law. Its government is based on the Westminster system. The great majority of Papua New Guineans reside in rural areas. However with the advent of the money economy there is a large-scale rural urban migration right now in the country which is probably not unknown to developing countries.

Sorcery is not unique to the rural areas only. It is known to be practiced or exist in urban areas as well.

In a nutshell, what is sorcery?

Sorcery is a belief. It is not academic, conjectural or speculative, nor is it theoretical. Sorcery is entrenched, deeply entrenched, in societies in Papua New Guinea. It is deeply ingrained in the emotions of people in almost all regions of the country. Many parts of the country still maintain their traditional beliefs in sorcery, including the rules of engagement. And the rules of engagement are many and varied. However, in some provinces or rural areas, what was once a localised secret and protected practice governed strictly by custom is now in the public domain as a cheap commodity with economic value. And when I say that I mean that those who need the services of a sorcerer almost always pay for it nowadays.

Sorcerers claim to have healing powers and possess magical powers which a lot of Papua New Guineans believe can explain, describe and interpret complexities, suspicions and events. These sorcerers are described by Papua New Guineans as "Sangumas" or "Puripuri Taunas".

In the Milne Bay Province there are women who are described as witches and who are believed to be shape shifters and who carry out their deeds either at night or during the day.

Over the years there has been a spate of gruesome killings in Papua New Guinea where men and women accused as witches and sorcerers have been killed by other individuals or a group of people. The great majority of these victims are usually women. 2009 saw or witnessed the largest number of massacres, which is confirmed by former Provincial Police Commanders that there were in fact over 50 killings and I believe there are probably more which are not recorded or reported. And in fact the Government believes that the repealing of the present Sorcery Act will somehow enhance the prosecution of those cases and eventually secure convictions. I will discuss that later.

But before going on to the law, just in relation to the events that have been happening now, as recently as February 2013 there was a very serious case of sorcery related killing. This is reported in the national newspaper of February 7th, and this incident happened on February the 6th this year. I will read to you the editorial to show you the concern faced by many citizens of my country, and this is what the editorial said:

"Papua New Guineans do actually live in the 21st Century and use mobile phones, watch television, surf the net and drive to work in cars – we basically have technology at our finger tips.

Just like other members of the global community we have become technological beings and respect the rights of others here and abroad to choose and to enjoy all that this world has to offer. After all that is enshrined in our Constitution and the law of the land is explicit in that there must be respect for the dignity of every individual.

Respect for the rule of law and the rights of others are pillars of a modern-day democracy and we would like to think Papua New Guinea falls under this category.

But when we hear stories of Papua New Guineans being accused of sorcery and burnt alive in a somewhat public spectacle, we recoil with fear and disgust and ask whether we should indeed be proud of ourselves as a nation of individuals who respect our fellow human beings and believe that justice is dispensed in a legally constituted court of law and not a kangaroo court chaired by individuals misled by superstition and trickery.

It is in this light we condemn in the strongest terms possible the gruesome burning of a woman suspected of sorcery in the Western Highlands capital, Mt Hagen.

Tragically, this is not the first sorcery-related killing in a Highlands province as human rights watchdogs Amnesty International and Human Rights Watch wrote to the PNG government in 2009 to express concerns at similar killings. Their concerns at that time came on the back of 50 reported deaths in 2008 and the killing of another two in similar circumstances a year later.

The frequency in the occurrence of this barbaric act warrants the intervention of our political leaders, especially from the Highlands region where there has reportedly been an increase in similar cases in recent years.

Work by the PNG Constitutional and Law Reform Commission to repeal the Sorcery Act, which human rights groups believe is a key factor behind the "prosecution" of alleged sorcerers and witchcraft, should also be fast-tracked and the necessary legislation put to Parliament for this archaic law to be abolished once and for all."

But is that correct? I say otherwise because we have laws in place that deal with people who kill and I will talk about this later. But before I do that I will just explain to you the court structure in Papua New Guinea so that you understand how these cases are dealt with.

The law courts in Papua New Guinea are made up of at the bottom of the structure the village courts and the district courts. Single magistrates sit in those courts and deal with matters provided for under those acts usually simple offences and civil matters carrying claims not exceeding 15,000 Kina. The

high courts are the national courts and the supreme courts. The national courts are the trial courts and they also hear appeals from the district courts. The national courts are also where the judges hear persons charged with major offences provided for under the Criminal Code and more particularly offences like murder, wilful murder, rape etc. The Supreme Court is the final court of appeal, hearing appeals from decisions made in the national court. It also hears references requiring interpretation of constitutional issues amongst others. One judge sits in the national court, the appeal court comprises of three judges or sometimes five depending on what is before it. We do not have a jury system.

The newspaper articles I have on screen show you the public outcry in relation to the recent spate of killings and the steps now taken by the Government in relation to what it considers to be a serious issue. They think the Sorcery Act is archaic and needs to be repealed, and so we have Ministers in Government who have come out saying and condemning what is happening right now.

And also we have got the Constitutional Law Reform Commission, the Minister for Justice who is also the Attorney General and a lawyer who have also condemned these killings and who are now in fact taking steps to seeing the repealing of this legislation.

But how do the national and the supreme courts in Papua New Guinea deal with persons charged with practicing sorcery?

Firstly I will just take you as a matter of interest through the Sorcery Act and why people say it is archaic.

The Sorcery Act defines sorcery and in fact distinguishes between "evil" sorcery and "innocent" sorcery. As an indigenous Papua New Guinean I understand what that is all about. But "evil" sorcery would be sorcery that is used by somebody that wants to kill another or do something bad to another person and "innocent" sorcery is like somebody who wants to cure a person of an ailment that they have been suffering with for a long time. Those are just examples.

The preamble to our Sorcery Act reads:

"There is a widespread belief throughout the country that there is such a thing as sorcery and that sorcerers have extraordinary powers that can be used sometimes for good purposes but more often for bad ones, and because of this belief many evil things can be done and many people are frightened or do things that otherwise they might not do.

Some kinds of sorcery are practiced not for evil purposes but for innocent ones and it may not be necessary for the law to interfere with them, and so it is necessary for the law to distinguish between evil sorcery and innocent sorcery.

There is no reason why a person who uses or pretends or tries to use sorcery to do, or to try to do, evil things should not be punished just as if sorcery and the powers of sorcerers were real, since it is just as evil to do or to try to do evil things by sorcery as it would be to do them, or to try to do them, in any other way.

Sometimes some people may act, or may believe they are acting, under the influence of sorcery to such an extent that –

(a) their conduct may not be morally (and should not be legally) blameworthy; or

(b) actions that would ordinarily be regarded as customary offences may, in traditional social groups, be regarded as excusable or capable of being compensated for."

Now whilst I am there I will just talk about compensation. There is legislation that provides that at custom if a person is aggrieved by wrongdoing by another person you can ask for compensation.

"There is a danger that any law that deals fully with sorcery may encourage some evil-intentioned people to make baseless or merely spiteful or malicious accusations that their enemies are sorcerers solely to get them into trouble with other people, and this is a thing that the law should prevent."

It goes on and on, I do not think I need to take you through that but it tells you as to how sorcery is to be proven and that is in schedule 2.1(1) of the Sorcery Act and it says that the person must belong to a social group that believes the act to be an act of sorcery and that the victim of this sorcery must believe that the sorcery was directed at him or at some other person and that his conduct or the conduct of that other person was intended to be influenced as a result of the act, and of course evidence would have to be called to prove that. I have got a couple of cases which I will take you through.

And also the Act provides that the Court is not bound to observe strict legal procedures or apply technical rules of evidence. And that is because if they are calling evidence they will be calling people from the customary group to give evidence and they will be covering matters that may be hearsay which in a normal court of law dealing with say for example contractual issues this would not be allowed. And so the witnesses then given that freedom to say as much as he wants to and it is really up to the Judge to then weigh up the evidence and consider what is just and proper under the circumstances.

Now, the prosecution of sorcerers. This is provided in sections 7 and 8 of our Sorcery Act. A person is charged on an indictment and is then imprisoned for a term not exceeding five years. But if he is summarily prosecuted in the lower courts then the imprisoned is for a term not exceeding one year.

Now in relation to the decided cases.

This is a case that is reported in the Papua New Guinean Law Reports of 1976 – *Karafa Uari and Aero Evera v Haroharo Taurake*.

Now these are people from the Kerema region of the southern part of the country. In that case, the both accused were charged under 14(1) of the Sorcery Act which provides for false reporting of sorcery etc. Which basically says that if a person falsely accuses or threatens to accuse another of being a sorcerer and these accusations are made to a third person then he is guilty of an offence. In the lower court these persons were found guilty and they were fined 40 Kina each.

But when the matter went on for appeal, the appeal Judge found that the magistrate in fact should have entered a not guilty plea because the persons in the court below said something to the effect that they were not responsible for what had occurred.

Now, in the high courts, when persons are charged with wilful murder or murder they are taken before a Judge and the Judge then hears the case as a trial or a plea depending on the kind of plea the accused person gives. In this matter of *The State v Sedoki Lota and Frank Abenko*, this is a case where two accused pleaded guilty to a charge of wilful murder where they both had killed a woman, somebody called Marcia Kedarossi, whom they believed to be a sorceress. They went into her house, tied both her hands, blindfolded her then decapitated her, using a machete.

At the arraignment, accused Sedoki Lota told the Judge:

"I did not kill the woman without justification. There is a reason for it. She killed my father and mother that's why I killed her. If she would not have done that, I would not have killed her."

Accused Frank Abenko said:

"I killed the woman because it was justified. She killed my father so I killed her... I know she was a witchcraft lady and she killed. She killed my father through witchcraft."

However the evidence was also that the two accused and others had been paid to kill the deceased. The both accused were promised 1,500 Kina cash, 5 bagis and 2 Mwali's (that is some traditional wealth), and they were paid that to kill.

The trial Judge said:

"The State has not asked for the imposition of the death penalty. However, that does not imply that the Court has no power to consider the death penalty. As the Chief Justice had said in the above case, and I agree with his opinion that it is the responsibility of the Court to consider whether a case is suitable for the death penalty. I also agree that the imposition of the maximum death penalty is at the discretion of the Court."

And whilst we are there I will just take you to our Criminal Code. Section 299 of our Criminal Code is the provision on wilful murder and it provides the maximum sentence as the death penalty, although that is not mandatory and that can be exercised at the discretion of the court exercising its sentencing discretion.

The Court said further that imposing the death penalty is of course as I have said at the discretion of the court however the Court took into account the serious aggravating circumstances which were the unlawful entry into the dwelling house, blindfolding of the deceased, tying her hands to her back, decapitating of her head. Those were considered to be very serious aggravating circumstances and so the Court imposed the maximum penalty which was the death penalty.

So going now to the dilemma faced in Papua New Guinea as to whether the rights of people who are called sorcerers should in fact be properly addressed by the courts – would that be an infringement of their human rights? And of course one would say that is in fact an infringement of their human rights. Our constitution provides for the recognition of human rights. And on the other hand another person would say – well why should he be accorded human rights? He went ahead and killed my relative, my brother or my sister.

So Papua New Guinea is in fact now at the crossroads. There is a clash of custom and Western law. So the courts are in fact trying to maintain this balance, trying to find a balance as to what is in the best interests of the people of the country. And sorcery is just one issue.

As to how to determine what is an accepted practice the court takes into account, as provided under the constitution and other legislation, what is repugnant to the general principles of humanity. And what is repugnant to the general principles of humanity is a matter for determination by the courts and that would depend on the kind of evidence that is brought to court. Persons who have killed because of the belief in sorcery would then, if arrested and when arrested, are brought to courts and are charged under an indictment laid by the Office of the Public Prosecutor, charged with either attempted murder, murder or wilful murder, and this is done under the Criminal Code.

So just to address the dilemma now faced by Papua New Guinea, although there is talk about repealing of the Sorcery Act, the Criminal Code if I may say this has always been there to deal with these very serious issues.

The Judge in that case was of the view that this was an execution. Where the prisoners blindfolded the deceased, and the Judge found that it was a very serious crime, what is called a payback killing. In Papua New Guinea if people find that a relative of theirs has been killed or a tribesman has been killed, they carry out what is called a payback killing in retaliation. The other person is then killed and that starts a vicious circle. That custom is very prevalent in the Highlands of Papua New Guinea. But it is a custom, and this is what the courts have to deal with.

When custom is used as a defence, there is no specific defence as such under the Criminal Code providing for the recognition of sorcery as a defence, however it can be used as a mitigating factor in sentencing. Which then means that often the court will exercise its discretion, and more often than not, not impose the maximum penalty of death. However as I have just demonstrated to you the courts have been known to impose the death penalty.

In relation to major criticisms. One leading case on criticisms of what is provided in the Sorcery Act was addressed by Acting Justice Narakobi as he then was, he is now deceased, in *The State v Noah Magou*.

The accused person was sentenced after pleading guilty to having practiced forbidden sorcery. He believed the deceased was interfering with his pigs, that the pigs did not remain in their enclosure but continuously broke the enclosure and destroyed other villagers' food gardens.

He told the Court:

"On May 4th I got this puripuri early in the morning about 5am. I got the vines and pricked it with a needle and put it in my house until evening. Then I called the person's name. I knot the vines, after eight days up the person dies."

The trial Judge was critical about the fact that even if a person died, the Act only provided for prosecution of the practice of bad sorcery. He was sentenced to imprisonment for one and a half years. The trial Judge said this as criticism for what he considered to be a very badly drafted Act:

"The real difficulty with the Sorcery Act is that it was enacted by Australians who are not aware of the real and factual effects of sorcery. In s. 9, the Act imagines that Sorcery really exists, but it does not recognise sorcery as a reality, the existence or effectiveness of powers of sorcery in any factual sense. The act itself provides for much relaxed procedures and onus of proof in schedule 2."

In concluding I will say this, although the Government and non-government organisations are calling for the Sorcery Act to be repealed, it is obvious that accused persons who kill persons suspected of being sorcerers and witches, can be arrested and charged with manslaughter, wilful murder or murder. The few decided cases that I have reviewed demonstrate that if arrests are carried out and the case is successfully prosecuted, the victims' family members will or can rest assured that the perpetrators will be appropriately punished.