

# 12. A Pluralist Response to the Regulation of Sorcery and Witchcraft in Melanesia

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## Introduction

This chapter focuses on the dimension of sorcery and witchcraft defined by Mary Patterson as ‘the belief, and those practices associated with the belief, that one human being is capable of harming another by magical or supernatural means’.<sup>1</sup> Sorcery and witchcraft in Melanesia mean that misfortune, accidents, business failures, sickness and death are commonly believed to have been deliberately caused by certain individuals through the use of supernatural powers, rather than resulting from natural causes. In turn, this may lead to violent responses against those accused of sorcery or witchcraft, which can involve prolonged torture, public executions, riots, warfare, banishment of individuals and entire families, and burning of houses and other property damage (Chandler 2013). These responses differ enormously in type and scale around the region, and are at their most extreme in parts of Papua New Guinea (PNG). However, in many other areas of PNG and Melanesia in general, sorcery- and witchcraft-related concerns are dealt with through non-violent community mechanisms.

In light of the apparent rise in sorcery-related violence in PNG,<sup>2</sup> and particularly two horrific incidents in early 2013 that attracted extensive international attention (Chandler 2013), there have been calls from both inside and outside the country for the government to take action to address the problem. At the same time, the law reform commissions in both Vanuatu and Solomon Islands have identified sorcery and witchcraft as an area of considerable concern for their populations and as requiring a legal response (see McDonnell, Chapter 8 and Kanairara and Futaiasi, Chapter 15 this volume).

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1 M. Patterson ‘Sorcery and Witchcraft in Melanesia’ (1974:132), cited in Aleck (1990) (copy on file with author). The terms sorcery and witchcraft are problematic and misleading, neither being an appropriate term for the various forms the belief takes around the region. Although anthropologists draw distinctions between the two terms (see Eves 2013), they are used interchangeably in the region and also in this chapter.

2 See the claims made in CLRC (2011:9). However, the absence of reliable statistics makes any definitive claims about increases or decreases problematic.

This chapter therefore explores some of the questions that sorcery and witchcraft raise for the criminal justice systems of Melanesia, and in particular what regulatory responses may be of assistance. These questions include: whether or not there is a role for the criminal justice system in regulating this area, whether there should be witchcraft- or sorcery-related offences in the state criminal justice system, whether sorcery- and witchcraft-related beliefs should be treated as a defence of any sort, how sorcery- and witchcraft-related violence should be punished, and whether allegations of sorcery or witchcraft practices should be an offence.<sup>3</sup>

This discussion needs to be seen in the light of two important contexts as far as PNG is concerned. The first is the extensive corpus of literature about the treatment of sorcery and witchcraft in the region since the colonial period, and the legislative framework that reflects/reflected those discussions, much of which has been helpfully discussed in this volume by Stewart (Chapter 10) and Keenan (Chapter 11). The immediate post-independence approach, embodied in the PNG *Sorcery Act 1971*, tried to find a middle road between dismissing the beliefs as irrelevant to the criminal law and allowing them to become a justification for violence. The second context is the recent response of the PNG government towards the issue, which is directly counter to this post-independence position. As discussed in detail below, it essentially entails dismissing the belief in sorcery as ‘nonsense’, repealing the Sorcery Act on the basis that its existence has contributed to the violence, both by supposedly sanctioning the belief in sorcery and in facilitating the lenient treatment of those who kill accused witches (Miae 2013a). Instead, the government’s new approach regulates the issue solely through tough new criminal laws to penalise those who kill accused sorcerers.<sup>4</sup> It is a very ‘rational’, command-and-control approach to the issues without, however, the existing institutional capacity to back it up.

In response, this chapter proposes that rather than viewing the issue of regulation of sorcery as solely a state matter, as has been done both historically and recently, questions of regulation should be viewed through two broader paradigms. One is a pluralist paradigm that views the state criminal justice system as one of a number of systems of legal ordering (the other most common ones are customary orders and the church). The other is a responsive regulatory paradigm that sees the state criminal justice system as part of a broader regulatory framework in which it can both support, and be supported by, other regulatory actors, such as non-government organisations, civil society advocates, academic institutions and other government departments. Regulation is conceived of in this chapter as involving legal rules and standards, but also other social activities such as ‘persuasion, influence, voluntary compliance and self-regulation’ (Parker and

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3 This chapter expands upon my previous consideration of these issues; see Forsyth (2006, 2010).

4 Section 229A, *PNG Criminal Code (Amendment) Act 2013*.

Braithwaite 2003; see also Braithwaite 2002:29). These two regulatory paradigms may be a way of overcoming some of the operational problems that existed with the previous legislative framework. This in turn leads to my overall argument that this framework should not be completely jettisoned, but rather should be re-evaluated through asking the questions outlined above, in the light of these two paradigms.

Although referring at times to Vanuatu and Solomon Islands, this chapter focuses on the situation in PNG. This is because it is in PNG that the law and order problems are the most extreme, and also where there is an emerging national conversation about how to deal with these problems. This conversation was stimulated by a number of coalescing events, including the highly publicised deaths of two women accused of witchcraft in early 2013. It has involved two conferences, one in Canberra in June 2013,<sup>5</sup> and one in Goroka in December 2013,<sup>6</sup> and a workshop in June 2014 in Port Moresby in which participants drafted a national action plan to overcome sorcery- and witchcraft-related violence (Forsyth 2014). Each event involved a minimum of 80 participants from a range of government departments and civil society, church and academic organisations. I was involved in the organisation of all three events and they have greatly informed the ideas and observations in this chapter.

## The role of the criminal justice system

It is clear from both the chapters in this book, and the significant body of literature on the topic, that the negative social consequences arising from sorcery and witchcraft, while in some respects rooted in a traditional past, stem from a number of current underlying social problems. In particular, they reflect conflicts and tensions over land, jealousies arising from inequalities in wealth distribution and access to resources, intergenerational tensions and the effects of declining health and education services. These developments also have a very definite gender dimension to them, which is being increasingly highlighted by academics, activists and even recently by the PNG Permanent Representative to the United Nations (Aisi 2013). It was recognised as early as 1977 by the Law Reform Commission of PNG that:

It is possible that the amount of sorcery is increasing as a result of the uncertainties involved in modern development or ‘underdevelopment’ in Papua New Guinea. In a society in which differences in status and

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5 Sorcery- and Witchcraft-Related Killings in Melanesia: Culture, Law and Human Rights Perspectives Conference, The Australian National University, Canberra, 5–7 June 2013.

6 Sorcery and Witchcraft Accusations: Developing a National Response to Overcome the Violence Conference, Goroka, PNG, December 2013.

income are increasing and traditional obligations are no longer as strongly upheld as they used to be, people often act against those who get too far ahead in social status through sorcery. Many senior public servants who have died young are believed to be sorcerised by their work mates who are believed to be envious of the promotions of the former. (LRCPNG 1977)

This reality raises very important questions about the role of the criminal law in this field. Some scholars have suggested that because the negative social consequences of sorcery beliefs and practices are symptomatic of deeper underlying social tensions and problems, the state justice system should not regulate this area. This view sees the criminal law as only able to have a relatively superficial effect, and expresses concern that the intrusion of the state could make particular conflicts worse. Knut Rio, for example, argues that increasing involvement of the state in the regulation of sorcery activities in Vanuatu is 'producing a transformation of the concepts of guilt and blame evoked in sorcery accusations and is leading to more widespread aggression and violence against those accused'. He does not, however, substantiate his claim with quantitative evidence (Rio 2010:187). McDonnell (Chapter 8 this volume) similarly states that she is concerned that 'the approach of prosecution under criminal law fails to recognise, or offer any resolution, for the underlying tensions in which the accusations, threats or acts of *nakaemas* take place'. In a presentation in 2013 at the Canberra conference, Burton also argued that accusations of sorcery and witchcraft were '100%' related to the appalling levels of mortality in rural PNG, and that therefore the focus should be on building up health care, rather than focusing on the law. 'No deaths, no reason to accuse witches', he opined (Forsyth 2013). The conclusion of these (and other) scholars is therefore to stop focusing on a state criminal justice response, and instead address the range of underlying causes of the problems.

While these arguments have considerable merit and point to the delicacy with which the issues must be addressed and the need to broaden the focus, they do not mean that a criminal justice response is irrelevant. There are several reasons why the state criminal justice system is legitimately and necessarily involved in questions of both actual and threatened personal physical violence and destruction of property, such as is occasioned by accusations of sorcery and witchcraft. First, the state criminal justice system claims to have a monopoly on the use of force, and therefore its help is needed to deal with threats and use of violence as a matter of practice. Second, the state criminal justice systems in the three Melanesian states considered here are engaged in an ongoing project of developing legitimacy in the eyes of the populations through extending the rule of law, and this cannot be done by ignoring what is considered by many to be a major cause of threat and violence in a community. The criminal justice system

is widely seen by much of the population in all three countries as needing to do ‘something’ in response to the problems caused by sorcery and witchcraft beliefs, although there are widely differing views about what that something is. For instance, the PNG Constitutional and Law Reform Commission report 2011 found that ‘[t]he majority view was that sorcery must continue to be given legal recognition — with a view to severely punish sorcery practitioners, including those who aid, abet and/or sponsor sorcerers’ (CLRC 2011:52).

Third, addressing the underlying problems that are giving rise to the law and order problems is crucially important, but involves long-term solutions. Appropriate criminal justice responses can potentially provide an important mechanism to stop violence and fear in the short term, although this is heavily qualified by the extremely limited geographical reach of the criminal justice systems across the region and the dysfunctional character of a number of aspects of them. Finally, it is possible that positioning the negative social consequences arising from the belief in sorcery and witchcraft as requiring a regulatory response is one way to stimulate discussions about these issues at community and government levels. In PNG, Vanuatu and Solomon Islands there has been a reluctance to discuss the issues at a government level until very recently, and it has certainly been off the radar for most development and aid partners. Yet this in itself is problematic, as sorcery and witchcraft beliefs give rise to many realities that need to be taken into account in a broad range of development programs. Initiating forums for conversations in which new ideas can be injected can also be a powerful way to stimulate people to question entrenched beliefs and responses. Clearly, however, there is a need to ensure this is done in a way that does not involve what is seen as the imposition of foreign value systems, such as can occur with certain human rights narratives (Merry 2006; see also Evenhuis, Chapter 14 this volume).

So there are several good theoretical reasons for the state criminal justice system to become involved in this area, but also undeniable risks involved in so doing. The balance between these competing considerations will vary in the three countries. Certainly the much reduced levels of violence in Vanuatu and Solomon Islands means there is less justification for state regulation.

Responding to the violence related to sorcery and witchcraft raises a variety of interlinked issues and questions that do not have simple solutions. However, one potential way forward is based on the insight developed by legal pluralists over the past two decades, that despite the positivist claims made by the state, the reality in many postcolonial contexts is that often a number of different systems of legal ordering are at work (Merry 1988:870). Rather than focusing on which of these legal orders has authority, pluralists propose that it is more useful to consider questions of function, such as which forms of ordering or regulation have normative force among particular social groups (Benda-Beckmann 1985;

Forsyth 2009; Griffiths 1986; Twining 2008). Following such an approach, it is clear that in Melanesia many social groups are ordered or regulated by customary or community-level regulatory systems, or by church organisations. In some places other institutions, such as private security firms, are involved as well.

Recognition of this plurality is important for three reasons. First, it provides us with a number of options when we are considering what type of regulation may work best in a particular context, such as with sorcery- and witchcraft-related violence. We are no longer confined to considering state responses; we can also think about a range of non-state actors and institutions, meaning our responses can be more creative and possibly more widely implemented. Second, we need to be aware that focusing a regulatory strategy through just one legal order involves a very high risk that it may be undermined by the other legal orders. For example, creating mandatory jail sentences in state courts may mean that chiefs or local leaders work harder to ensure that such cases stay outside the state criminal justice system. Third, a pluralist approach starts addressing questions of regulatory response by asking about the current reality, rather than starting with assumptions about what ought to be.

Working out in which areas, and how, the state criminal justice system should be involved is extremely complicated. It is likely to require continuing discussions, testing and refinement of different regulatory approaches. The rest of this chapter aims to contribute to this process by highlighting a number of the issues that arise from the perspective of the criminal justice system. In order to ground the issues, it situates them by discussing the PNG *Sorcery Act 1971* and its recent repeal by the PNG government.

## **The *Sorcery Act 1971***

PNG's Sorcery Act dealt with the issue of sorcery and witchcraft in three principal ways. First, it created a series of offences that aimed to indirectly criminalise the practice of sorcery and witchcraft in a variety of ways, including through the creation of offences of purporting to be a sorcerer and possessing implements of forbidden sorcery (Sorcery Act Section 6; see section Sorcery- or witchcraft-related practices as an offence, below). The rationale for so doing was set out in the preamble to the Act:

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 ... 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.

In fact, as discussed below, courts above the village court level rarely used these provisions in practice. Second, the Act created a partial defence for sorcery- and witchcraft-related murder, although this defence has been rarely used and almost never in the past two decades.<sup>7</sup> Third, the Act provided for the offence of falsely accusing another of performing sorcery or being a sorcerer, a provision that was also hardly ever used. The Sorcery Act therefore was for all intents and purposes a fairly defunct piece of legislation.

However, as noted above, in 2013 the widespread publicity given to the deaths of two women accused of witchcraft in PNG drew international and national attention to the problem of sorcery and witchcraft accusation-related violence, and the Sorcery Act was targeted as a contributing factor (Amnesty International 2013b; UNHCR and Refworld 2013). It was argued that the Act legitimised such murders by making sorcery a legally recognised phenomenon,<sup>8</sup> and it was seen as being responsible for the light treatment of perpetrators of sorcery-related violence (Miae 2013a). Prime Minister Peter O’Neill stated that he would repeal the law ‘To stop this nonsense about witchcraft and all the other sorceries that are really barbaric’ (Fox 2013). The government followed the repeal of the Act with the creation of a new provision in the *Criminal Code Act 1974* (Chapter 262). Section 229A of the Criminal Code Act provides that any person who intentionally kills another person on account of an accusation of sorcery is guilty of wilful murder, for which the penalty is death. In other words, a mandatory death penalty.

Apart from the extremely problematic extension of the death penalty,<sup>9</sup> this approach is consistent with that advocated by international non-government organisations such as Amnesty and a number of United Nations Special Rapporteur reports (Amnesty International 2013a; Heyns 2014; Manjoo 2013; UNHRC 2011). It essentially sees the state criminal justice system as being legitimately involved only when the conflicts have led to extreme violence, and as not having a role in managing the underlying conflicts involved. Such a response has the virtue of being straightforward, and consistent with international human rights instruments (minus the death penalty part), but is it likely to curb the violence in PNG?

<sup>7</sup> See *Regina v. KJ* [1973] PNGLR 93 for a discussion of the defence.

<sup>8</sup> Manjoo (2003:15) reports: ‘The Sorcery Act is reportedly rarely used, but some argue that its mere existence helps perpetuate the belief in sorcery as a means of harming or killing another person’.

<sup>9</sup> The death penalty has been technically available in PNG but has not been implemented since 1954. See Amnesty International (2004).

There are several interrelated reasons why this approach is not likely to have much effect. The main problem is that, notwithstanding the government's wish to do away with 'this nonsense', belief in sorcery and witchcraft remains firmly entrenched in PNG,<sup>10</sup> and it is giving rise to ongoing acts of violence and brutality. Moreover, these acts of brutality are often sanctioned by a sizeable proportion of the community and carried out with public approbation. As Father Pat Gesch noted, 'it seems that everyone wants to kill the *sangumas*'.<sup>11</sup> Recent research by Eves and Kelly-Hanku in Goroka, Eastern Highlands Province, found all except for one documented attack were 'sanctioned by most community members, who were unanimous that the community needed cleansing of witches' (Eves and Kelly-Hanku 2014). Given that, for the vast majority of the population the real 'evil' is being committed by the accused sorcerers,<sup>12</sup> it is almost inconceivable that the population will simply accept a government directive that they are to forget 'the nonsense' and to stop attacks on accused sorcerers. In order for the government to enforce this law effectively, in the absence of any other mechanism, it would therefore have to invest a tremendous amount of resources in arresting and prosecuting the perpetrators of the violence (who may often amount to large groups of people).<sup>13</sup> At present, PNG's criminal justice system, with around 5200 police officers (McLeod and Macintyre 2010) and 38 prosecutors<sup>14</sup> for a country of close to 7 million people, simply lacks the capacity.

Moreover, not only does the general population want to 'kill the *sangumas*', but so does much of the police force. In a 2014 documentary a senior officer in Kundiawa police force was reported as stating 'if we get rid of them [the sorcerers] then I think we'll have no ... human rights abuses of anyone'. When he was asked how he proposes to get rid of them, he replied 'we kill them, we just go ahead and kill them' (Aljazeera 2014). Partly as a result of police complicity, there is a widespread perception of impunity with regard to sorcery accusation-related killings. Other factors that currently stop prosecutions from actually being made are a lack of police logistics, personnel and training, the absence of complaints, intimidation of witnesses, bribes paid to police to drop cases, and people being afraid of police retaliation if they complain that cases have not been pursued.<sup>15</sup>

Only preliminary and informal research has so far been carried out to learn the consequences of the new government measures. The overwhelming impression

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10 Manjoo (2013:8) notes: 'The belief in sorcery and witchcraft is widespread across the country, with 90 per cent of the population believing in its existence'.

11 Email to author, 26 June 2014.

12 The CLRC report states, 'During the nationwide consultations, it became obvious that the majority of the people were concerned more about deaths occurring as a result of sorcery' (CLRC 2011:57).

13 See, for example, a recent media report on the arrest of 122 men and 69 juveniles (*Post-Courier* 2014).

14 Office of the Public Prosecutor, personal communication, 15 June 2014.

15 These factors were listed by participants in the Port Moresby workshop in June 2014.

from discussions at the two events in PNG is that the changes have generated widespread confusion for the population at large, and even for key government officials whose duty it is to enforce the law. For the most part, messages about the changes in the law have not filtered down to the local and provincial levels. For example, I met with a senior sergeant in charge of community policing in West New Britain who told me in June 2014 that she had been trying to find out for months now whether or not the Sorcery Act had been repealed, and no one had been able to tell her. Even where there has been awareness of the changes, there is considerable misunderstanding about what these changes entail. Anecdotal evidence suggests that a popular interpretation of the recent changes to the law is that the government has finally realised that it must act to stop sorcerers from their unspeakable acts of violence.

People working in communities in which accusations of sorcery and witchcraft are prevalent report the following questions arising: What is the law in this area? Who has responsibility and authority to do what? If a village has a problem and wants assistance, what forms of assistance are available? For example, Catholic Bishop Bal recently held some workshops in Dirima and Neregaima in Simbu Province to discuss the problems of sorcery- and witchcraft-related violence. He said that people afterwards asked him who they can call upon if there is a case in their village that they want to report, and how they can get law enforcement or mediation teams to come in. They also suggested the need for a mediation team in the area that can move as a group to different places when such incidents arise.<sup>16</sup>

So far I have argued that the problem of sorcery- and witchcraft-accusation violence cannot be simply responded to by treating the belief as 'nonsense' and refusing to engage with it except to prosecute those who murder accused witches and sorcerers. However, it is also clear that the previous approaches under the Sorcery Act were largely ineffectual, as indicated by the fact that they were rarely used. There is a clear tension in this area between trying to achieve the most from the potentially transformative power of the law, and the need to recognise not only the very real limits that the law has in Melanesia in general and particularly in PNG, but also the risks of its powers being misused or giving rise to unanticipated problematic consequences. The question that arises is therefore are there other criminal justice regulatory strategies that can be adopted?

As a possible way of moving forward, I want to look at the three areas addressed under the Sorcery Act, but to consider them in the light of two very different paradigms:

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<sup>16</sup> Interview of Bishop Anton Bal by Father Philip Gibbs, 4 May 2014. Interview kindly shared with the author by Father Gibbs.

- a pluralist paradigm: looking at the different systems of legal ordering (state and non-state) and at their relationships, and at the ways in which they can better support each other
- a holistic paradigm: viewing the criminal justice system as part of a broader regulatory framework and operating in conjunction with a range of other government departments, non-government organisations etc.

Further, while not a new paradigm as such, this chapter focuses on the violence that emerges as a result of an accusation of sorcery or witchcraft against an individual or individuals, rather than on the violence said to have been caused by the sorcerer or witch. It also takes as an aim the breaking of the link between sorcery and witchcraft beliefs and violence, rather than addressing other negative social drivers of the beliefs, such as underdevelopment and poor health outcomes.

## Two paradigms and a new focus

This section will briefly explain the two paradigms and the new focus outlined above. The first suggested paradigm change is to turn from a positivist approach (there is only one legal system and that is the state) to a pluralist approach that recognises a number of different legal orders or systems at work in Melanesia. The second paradigm involves seeing the criminal justice system as part of a larger regulatory response, drawing on Braithwaite's (2006) concept of responsive regulation. This approach responds to the fact that the violence being expressed is symptomatic of a number of social and developmental issues that cannot be adequately addressed in a criminal justice framework. However, the criminal justice system can be viewed as playing several important roles *in conjunction with* a range of other service providers. Braithwaite (2006) argues that responsive regulation has potential for developing countries as it mobilises cheaper forms of social control than state command and control. In essence, it involves the state actively networking with non-state regulators to overcome its lack of capacity.<sup>17</sup> Using this paradigm positions the criminal justice system as part of, and supporting, a wider regulatory strategy. This was the clear direction advocated by participants at the Goroka conference, which was subsequently developed through the workshop in Port Moresby in June 2014 into a national action strategy. In the national strategy, the criminal justice system as a whole is tasked with two areas (legal and protection) of a five-pillared strategy that also includes advocacy and communication, health, care and counselling, and research (Forsyth 2014).

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<sup>17</sup> The application of the principles of responsive regulation to the problem of sorcery is an ongoing research interest for the author but for reasons of space not elaborated further here.

Finally, the focus on breaking the link between sorcery and witchcraft accusations and violence has been developed through the planning stages of, and discussions at, the conferences and workshop outlined in the introduction. It takes into account the pride in, and dependence upon, 'good' magic, such as for gardening, healing and other positive contributions to social life, and makes it clear that this is not the subject of regulatory control. Focusing on breaking the link between the accusation and the violence arguably provides a helpful focus for regulatory interventions, which otherwise could go off in a number of directions. It also aims to create some conceptual separation between the beliefs themselves, and the turn to violence. As such, it is a pragmatic response to the enormity of the challenge of transforming belief systems, and allows for the viewpoint that such transformations may be unnecessary, and indeed could be problematic in a range of ways. The focus on stopping violence is possibly also the easiest message to communicate to people at the grassroots level. However, it must be acknowledged that this focus is likely to require considerable public awareness and advocacy, as the reality is that for most of the population it is the violence committed by sorcerers that needs to be overcome. The separation between the beliefs themselves and violent responses is therefore a highly permeable one.

I turn now to the three main ways in which the Sorcery Act attempted to regulate sorcery and witchcraft, to see if viewing these areas through the two paradigms and with this new focus can suggest different courses of action.

## **Sorcery- or witchcraft-related practices as an offence**

The first issue is whether or not any form of sorcery or witchcraft practice should be criminalised by the state legal system. I deal with this issue first because it is the most difficult, and also because the other issues discussed come back to it in one way or another. At first blush it seems that this issue can be avoided if the focus is on breaking the link between sorcery and witchcraft accusations and violence. However, taking such a narrow interpretation ignores the reality that the vast majority of the population believes that sorcerers and witches *do* need to be dealt with in some way. If a community is told that they are not to engage in violence against people they believe are sorcerers and witches, then their legitimate response is likely to be: well then, how will this problem (of the harm caused by the sorcerer or the witch) be dealt with?<sup>18</sup> The state is obliged to provide an answer to this question if it is to have strong

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18 Although Clara Bal (Chapter 16 this volume) suggests that a community can decide not to turn to sorcery as an explanation for misfortune if the decision is taken as a community to do so.

grounds in directing people not to have recourse to violent responses. This was indirectly recognised by Justice Toliken in *State v. Latuve* [2013] PGNC 207, a case where the accused murdered a reputed sorcerer, who was widely suspected of having been responsible for the deaths of some 34 people in the village, the most recent of whom was the accused's brother. In sentencing the accused to 20 years imprisonment, the judge stated '[w]e live in a society where the law rules supreme. The state has institutions such as the police and the courts where people can take their grievances to for the lawful and just resolution of disputes'. At the moment, however, many in PNG are asking exactly where they *can* take such grievances. To rely on a rationale such as Justice Toliken advocates, the state is obliged to create such forums.

So we find ourselves back in the conundrum discussed in the first section, whereby the most likely consequence of non-state involvement is the community taking responsibility for the response. While in many areas of PNG, Vanuatu and Solomon Islands, the community response can be non-violent and restorative, in some places and in certain circumstances the response can be one of horrifying violence. Therefore, even with the focus on breaking the link between sorcery accusations and violence, this issue has to be addressed. First I will discuss how this issue has historically been addressed, and then consider how changing the paradigm can change the range of responses that are open.

As outlined above, the Sorcery Act criminalised certain types of sorcery and witchcraft practices, and similar provisions can be found in the legislation of most countries in the South Pacific islands region. The wording of the offences differs, and represents perhaps different approaches to overcoming issues of proof that are always going to be problematic for such cases:

#### PNG Sorcery Act

##### 6. SORCERY GENERALLY.

- (1) This section does not apply in cases where the sorcery involved is innocent sorcery only.
- (2) A person who, directly or indirectly, pretends to be, holds himself out to be, or professes to be a sorcerer is guilty of an offence.
- (3) A person who influences or attempts to influence the acts of another person by the use or threatened use of the powers or services of a sorcerer as such is guilty of an offence.

Penalty: On conviction on indictment—imprisonment for a term not exceeding two years.

On summary conviction—imprisonment for a term not exceeding one year.

Solomon Islands Penal Code Act

SORCERY

190. 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.

Vanuatu Penal Code Act

WITCHCRAFT

151. No person shall practise witchcraft or sorcery with intent to cause harm or detriment to any other person.

Penalty: Imprisonment for 2 years.

The reason for this is that while traditionally there are ways of ‘proving’ witchcraft and sorcery, the types of methods used — divinations, tracings, torture, dreams and so forth — all fall short of the standard required in state courts.<sup>19</sup> As a result, in most cases the wordings of the offences avoid the need to prove causation (that witchcraft or sorcery actually occurred) and rely on physical elements that can be proven, such as holding oneself out to be a sorcerer, or having in possession an item that a class of people would believe to be an implement of sorcery.<sup>20</sup>

So provisions can be worded in such a way that they capture at least certain types of problematic behaviour related to sorcery- and witchcraft-related beliefs, such as people who threaten to cause harm to others through sorcery, or those who profit from it by accepting payments to cause someone harm through sorcery. These types of formulations can be agnostic about the issue of whether or not witchcraft or sorcery practices have any actual effect. Rather, they target people who deliberately manipulate other people’s fears of sorcery or witchcraft

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<sup>19</sup> These are discussed in this volume by Stewart (Chapter 10) and Keenan (Chapter 11).

<sup>20</sup> However, the current wording in Vanuatu’s provisions is problematic; see Forsyth (2006). For an extended discussion of the problems sorcery and witchcraft pose for questions of causation see Aleck (1990).

for malevolent and/or pecuniary reasons. And there is considerable anecdotal evidence that such people do exist, and that such threats are made on a regular basis, causing considerable fear in the targeted individuals.

For example, in *State v. Parara* (National Court 2008) a man was convicted after trial of the offence under Section 6(3) of the Sorcery Act: influencing the acts of another person by threatened use of the powers of a sorcerer. He told the victim, in whose family there had been a number of deaths, including the recent death of his son, that if the victim gave him a chicken, he could put a stop to the deaths in his family; thereby issuing a threat that if the complainant did not comply, there would be further deaths. The victim attempted to comply with the accused's demands by providing the accused with a pig; and because his actions were influenced by the offender's threat, the offender was convicted. Another example was reported in the *Post-Courier* in 2013 whereby a man was found guilty of practising sorcery at the Angoram market for a particular candidate who was contesting the by-election. The accused was apprehended by police, who found in his possession implements such as oil in small containers, tree bark and other substances in a Murik basket. During formal questioning he admitted being in possession of the implements and further admitted that he was assisting a particular candidate to win the by-election. He was sentenced by the Wewak District Court to 12 months imprisonment at the Boram jail (Nicholas 2013).

However, as noted above, the fact is there have been very few such prosecutions for sorcery or witchcraft practices in the higher state courts (see Auka et al., Chapter 13 and Evenhuis, Chapter 14 this volume), and the record is not clear in regard to the village courts, which is an area that needs considerably more research.<sup>21</sup> This leads to the conclusion that, in addition to problems of proof, there are other difficulties with using state courts to prosecute such matters. This includes problems of police and the general public being afraid of becoming involved in such cases for fear that they will become a target of sorcery and witchcraft; the physical difficulties in accessing state courts, particularly in the highlands of PNG; and a reluctance of prosecutors to bring such matters before the courts.

I now turn to considering whether looking at these issues through the two new paradigms can point a way out of this somewhat intractable problem. There are two possible options, which are not mutually exclusive.

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21 The village courts secretariat reported at the Goroka conference that out of 35,000 cases reported and dealt with by the village courts since 2009, 700 were cases of sorcery. However, these figures were stated to be incomplete. Goddard notes that cases of sorcery are often not recorded as such by the village courts, which complicates the matter further. The reason for this is said to be 'a tacit concern to keep from officialdom any mention of a practice that the inconspicuous communities served by the court feared would bring them to the attention of the police or other intrusive authorities' (Goddard 2009:196; see also Goddard 1996).

The first option is to create a series of offences that cover the same sort of offences as the repealed Sorcery Act, but to embed this response within a broader, complementary, regulatory framework. The types of offences involving sorcery and witchcraft that can be dealt with in state courts in accordance with the rules of evidence are those involving threats of use of sorcery and witchcraft to cause harm, holding oneself out to be a sorcerer or witch with intention to cause harm, obtaining a financial advantage through use of sorcery- and witchcraft-related threats, and possessing implements known to be associated with sorcery with intention to cause harm. Having such provisions in the criminal justice system responds to the argument that the state should attempt to regulate people who overtly threaten others or who profit from others' beliefs in sorcery and witchcraft. However, it is likely that such laws will only be able to be used in a small number of cases, due to the generally surreptitious way in which sorcery is engaged with. There is also the larger problem of the lack of functionality of much of PNG's criminal justice system, meaning that there is a fundamental lack of capacity to implement the law. The undeniable reality of lack of capacity, which has contributed to the past ineffectuality of the law, may be met by complementing these new laws with a range of other regulatory initiatives, such as awareness-raising in villages about the criminalisation of such offences, training of police and prosecutors and paralegals about how to use the provisions, development of witness protection programs, capacity building for community leaders to start to break down environments of fear, and making reliable connections between community leaders and state criminal justice personnel. In other words, the limited state capacity may be supported by a broader regulatory response that engages the work of civil society advocates, church organisations, and international non-government organisations.

The second option is for the state to support and/or develop non-state channels (or hybrid structures such as village courts) in which accusations of sorcery and witchcraft can be vocalised and dealt with in a non-violent manner. Rules of evidence are not a constraint in such forums, meaning in particular that the discussions will not be artificially limited by state rules of relevance. The idea here would be to use existing institutions wherever possible as this would be an opportunity to build their capacity, and would also leverage important local legitimacy into the exercise. The village courts are one such obvious institution in PNG, and their *Manual 2004* already provides that they may deal with:

Sorcery, including: practising or pretending to practice sorcery; or threatening any person with sorcery practiced by another; or procuring or attempting to procure a person to practice or pretend to practice, or to assist in, sorcery; or the possession of implements or charms used in practicing sorcery; or paying or offering to pay a person to perform acts of sorcery. (Goddard 2009:283)

In Vanuatu these institutions would include *nakamals* and possibly land tribunals (see McDonnell, Chapter 8 this volume) and in Solomon Islands, the local courts. The aim would be to further develop or strengthen mechanisms that would allow for accusations of sorcery and witchcraft to be discussed as early as possible before they escalate into violence, and to provide forums in which everyone has a chance to safely discuss their concerns and formulate a resolution. For example, it may involve community mediation in which the mediators (who may be local leaders, pastors or village court officials) deal in an open-minded way with witchcraft and sorcery allegations by asking the community to consider alternative explanations for the 'trigger' event giving rise to the accusations (e.g. obtaining doctors' certificates that clearly state the cause of death, and police accident reports). As Philip Gibbs's (Chapter 17) and Clara Bal's (Chapter 16) research suggests, and as is testified by those involved in the Human Rights Defenders Network,<sup>22</sup> in many cases of sorcery-related violence there is a proportion of the community who are uneasy with the violent response, but lack the leadership or support to stand up against it. Empowering individuals who are prepared to take a stand in a variety of ways, including by supporting them with information about the law, the importance of human rights, and relevant Christian doctrine, is crucial given the absence of the state in many communities. Consideration may also be given as to how to restore relations between the parties once accusations have been made and the matter resolved (such as reconciliation ceremonies, public apologies, prayer and, where appropriate, compensation).

One example of such a mechanism is the Catholic Church's five-point plan, discussed by Philip Gibbs (Chapter 17 this volume). Of course, such an approach means it is likely that a community may conclude that a person has indeed engaged in witchcraft or sorcery, and this raises questions about what sorts of responses will then be not only acceptable, but also avert violence in both the short and long term. Some options to be explored may involve exorcisms as discussed by John Himugu (Chapter 5 this volume), payments of compensation, prayer, exclusion from the sacraments or other aspects of community life, voluntary or involuntary temporary or permanent banishment, or other pragmatic responses.<sup>23</sup> While some of these options are unappealing from a human rights perspective, they are arguably preferable to the type of torture and murder that is occurring on a regular basis in parts of PNG.

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22 <https://www.facebook.com/HighlandsWomenHumanRightsDefendersMovement>.

23 For example, it was reported in the *Post-Courier* in June 2014 that two women who had been accused of sorcery following the collapse of a young girl had been rescued by Defence Force soldiers from being tortured and nearly killed. However, after rescuing the women the joint security forces then observed the women perform a ritual to restore the young girl's heart and bring her back to life (Poiya 2014). This may have been a pragmatic decision on behalf of the security forces to restore peace in the community, or it may have reflected their shared beliefs that the women did have supernatural powers.

Another problem is that it may sometimes be difficult for community leaders such as village court officials to deal with these cases because of their closeness to the community, and also fears for their own safety. This was a point made by a spokesperson for the village court secretariat at the Goroka conference, and suggests that support from the district-level courts and police will often be crucial in backing up local initiatives.

A further point is that, given the gendered nature of many pockets of sorcery-related violence, any forum that deals with sorcery would need to specifically address issues of equal treatment for women, and work towards encouraging active participation by women, both as users of the system and also as administrators of it. However, considerable research is needed to determine how this may work in practice. Initially it is likely to hinge substantially upon the quality of local leadership that exists in particular locations. The types of questions that need to be explored include what the state criminal justice system can do to support such local leadership and conflict-management structures, and what can be done to build such structures where they do not currently exist. Examples include clear referral pathways, police providing security at community meetings, and paralegal training programs for community leaders. Another suggestion is to develop a network of external mediators who could be invited into communities by the community leaders to assist them in working through the issues and arriving at non-violent solutions. Outsiders can act as circuit-breakers to cycles of fear and violence, and this would be a way to empower those community members who do not support violence. External mediators could also connect the community into broader support networks, such as those that offer counselling and also the criminal justice system if that becomes necessary. Although the capacity of the state to create such a network is limited, this may be a role that could be filled at least on a temporary basis by a non-government organisation or even a church organisation.<sup>24</sup>

Another important avenue of inquiry is which mechanisms are currently successful at a local level to deal with these issues in non-violent ways, and whether and how they can be imported into new locations that have a history of violent responses. It is of relevance that in both Vanuatu and Solomon Islands, where the belief in sorcery and witchcraft is also very strong, there is much less recourse to violence than in PNG, and this is likely to be in large part attributable to the non-violent community-level mechanisms in use.<sup>25</sup>

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<sup>24</sup> The Melanesian Brotherhood performs this role to an extent in Solomon Islands.

<sup>25</sup> For a description of the non-violent mechanisms used by the *kastom* system in Vanuatu, see Forsyth (2009).

## Sorcery or witchcraft beliefs as a defence

The next major issue is whether a belief in sorcery or witchcraft should ever operate as a defence or mitigating factor in the commission of an offence such as homicide or assault. A defence is something that removes or excuses criminal liability, meaning that a person is either found not guilty (for a complete defence) or found guilty of a lesser crime (for a partial defence). A mitigating factor reduces a person's sentence but does not diminish their criminal responsibility.

The Sorcery Act (Section 20) provided a special partial defence for sorcery- and witchcraft-related killings, extending the doctrine of provocation to make it available where the act of sorcery provoked the attack. However, this defence has been used extremely rarely, in part because of the difficult requirement to show that the defendant acted 'in the heat of passion', as such killings are often planned.<sup>26</sup>

Independently of the Sorcery Act, the judiciary in PNG had until about a decade ago a tradition of taking belief in sorcery into account as a significant mitigating factor in sentencing, often reducing the sentence by up to a third. However, since around 2002 this tradition has been largely suspended and judges have been imposing heavier and heavier sentences. In 2002, in *State v. Boat Yokum & Ors.* (Unreported National Court Judgment – 2002) the judge stated:

A strong punitive and deterrent sentence is required to punish the offenders and to send a clear message to their own community; who apparently seem to think that it is alright to kill a sorcerer or a reputed sorcerer for that matter; that it is wrong to kill another person including a sorcerer, reputed or not, and that they will be punished by the Courts, if they do.

This trend has continued. For example, in *State v. Wilson Okore* (2009), Justice Kirriwom imposed a penalty of 50 years imprisonment as a deterrent, noting that recently sorcery-related killings have escalated.<sup>27</sup>

The next question is whether a belief in sorcery *should* ever be a defence or a mitigating feature. A crucial starting point is whether or not to accept that a defendant may have a genuine belief that the victim has caused another harm or death through sorcery, or whether it is always to be regarded as a pretext or cover for other motivating factors. My analysis proceeds on the basis that it can be a genuine belief at times, and a pretext at other times, and it is therefore up

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<sup>26</sup> However, see Justice Narokobi's treatment of this requirement in *State v. Gesie and Guluwe* [1980] PGNC 20.

<sup>27</sup> A number of sorcery-related murder cases in 2012 and 2013 have also involved judges stressing the need for long prison terms to send deterrent messages. See *State v. Mesuno* [2012] PGNC 80; *State v. Naba* [2013] PGNC 115; *State v. Latuve* [2013] PGNC 207.

to the courts to determine whether there is a genuine belief in any given case. In cases where it is used as a pretext there is no possible justification for it to be either a defence or a mitigating factor; on the contrary, it should be treated as an aggravating factor, which is how the courts are treating it at present.

However, the issue is perhaps less clear if the belief is accepted as genuine. In *State v. Mathias* [2011] PGNC 228 the court identified three types of sorcery killings. First, the prisoner kills because a family member, a close relative or a close friend has died. Second, the prisoner kills not only because a family member, a relative or a close friend has died but also because he is believed or rumoured to be at risk of being killed soon through sorcery. He kills to stop himself being killed. Third, the prisoner kills because of his belief in sorcery generally without any real threat to him, his family, relatives or friends. I will add a fourth category, where a person kills on the orders of a customary leader under a sense of customary obligation to do as commanded.

Clearly these different situations raise slightly different arguments. The case for a defence is certainly strongest where the person kills in the firm belief that this is the only way to stop being killed. It may be argued that not taking such beliefs into account, when they are truly the motivating factor, means that the criminal law is not adequately reflecting the cultural basis of the society it is regulating, and thus risks being seen as illegitimate and a foreign imposition, and unfair and overly harsh in individual cases.

On the other hand it can be argued — and this is the prevailing view of the judiciary — that the law must disregard the belief in all of these situations from a public policy perspective, as it may be seen as tantamount to encouraging vigilantism, payback killings, and giving a licence to attack suspected sorcerers. This approach would argue that citizens today are far more educated than in the past and are well aware of the limits of customary responses and that payback killings are unlawful in any context.

Finally, it is important to stress again the interrelation between the different questions under discussion. Thus the question about the availability of a defence for genuine cases of belief in sorcery and witchcraft in state courts is related to the provision of a mechanism to manage concerns about the use of sorcery and witchcraft. If a state is going to adopt the position that a genuine belief in sorcery will not be a defence or a mitigating factor, then to be fair it is obliged to point to a process or an institution that can provide real assistance to a person who is either tormented by fear that they will be subjected to an attack of sorcery, or filled with rage that a person they love has been killed by what they consider to have been sorcery. In other words, if the state is to say 'don't take the law into your own hands', then this needs to be matched by the providing or indicating of an alternative course of action.

## Punishment for sorcery and witchcraft accusation-related violence

Turning now to the issue of punishment and deterrence, the above discussion has demonstrated that the claim that the Sorcery Act in PNG is responsible for 'light' treatment of sorcery- and witchcraft-related attacks by state courts is for the most part misplaced (Amnesty International 2004; CLRC 2011:58). What is clear, however, is that the imposition by courts of heavier and heavier sentences will not necessarily have any deterrent effect, or even impinge upon the public awareness, as is shown by the apparent lack of public appreciation of the fact that judges have been steadily imposing stiffer and stiffer penalties in such cases for the past 10 years. In the recent case of *State v. Latuve* [2013] PGNC 207, Acting Justice Toliken stated: 'Sorcery-belief induced killings have not diminished. If anything killings have become more horrendous as seen from recent public torture and killings such as the much publicized killing of a young mother in Mt. Hagen who was burned to death with a tyre around her neck'.

One of the areas this flags for further research is to ask what specific and general deterrent effects are produced in the Melanesian context by long jail terms — or by other sentences such as the death penalty laws. This is a pertinent question in relation to sorcery- and witchcraft-related killings, but also more broadly, and there is little to no data available on which to make any informed assessment. In discussing the new death penalty laws in PNG, Archbishop Young stated:

The one thing missing from the debate was any evidence whatsoever that the death penalty will deter violent crime. This argument was repeated over and over again without any credible evidence in support. This is because there is none. My own conversations with men and women who have committed violent crime indicate that they are not thinking beyond the release of their anger or passion. Most either expect to get away with it (and usually do) or simply don't care about the consequences. Criminologists know that it is not the severity of punishment that deters crime but its certainty. Until Papua New Guinea can detect, arrest, convict, and successfully imprison offenders for the duration of their sentence, prospective criminals will assume that they have a good chance of getting away with it. (Social Concerns Notes 2013)

To add a restorative justice dimension to this discussion, a new way to frame discussions about deterrence may be to concentrate less on heavier sentences, and more on *effective* sentences. This can be done by having regard to the types of sentencing practices that are used by non-state local and customary mechanisms, such as public shaming, public apologies, compensation payments, and restorative payments such as requirements to rebuild someone's house, or

supply food, or cover medical costs. This would facilitate the development of sentences that act both as deterrents and also on repairing the harm that has been done to the victim and restoring relationships in communities. Such solutions are likely to be able to be developed more meaningfully at a community level, but may require support from the state to ensure that they are enforced. A restorative justice approach also allows us to consider questions about what happens after a state court has dealt with a matter — how can victims and offenders be reintegrated back into communities? This requires local-level conflict management to work in cooperation with the state criminal justice system to try to prevent another cycle of violence, given the tensions likely to exist as described by Gibbs (Chapter 17 this volume).

## **Accusations of witchcraft or sorcery as criminal offences**

The final issue to discuss is whether or not the state should provide for an offence of alleging or falsely accusing a person of being a witch or of performing sorcery. As with sorcery belief-induced murders, there are a number of types of sorcery-related accusations that must be considered. We can view these in three conceptual categories, although in reality they blur into each other. The first is where the accusation is used as a weapon in the context of a dispute, or an attempt to get land or power, or through jealousy, in circumstances where there is no genuine belief that the person really engaged in sorcery or witchcraft (ABC News 2014; Oxfam International PNG 2010:10). The second is where the person making the accusation is genuinely frightened and believes that the accused person is causing others misfortune, but in fact this belief is a mistaken one and there are alternative explanations for what has occurred. The third is where individuals actually are practising what they consider to be sorcery and intending to cause someone harm, influence events (e.g. an election), extract money from people, or scare people. It is important to think about these different categories as they all need to be approached in different ways. In the first two cases we need to think about regulating the accuser's behaviour, and in the third case the focus should be on the accused's behaviour.

As discussed above, the Sorcery Act provided for the offences of falsely accusing another of performing sorcery or of being a sorcerer. However, these provisions were used in only a handful of cases. It may be that because of the way the provisions were worded proof that the accusation of sorcery was false was required, and prosecutors and police may have been unsure of how to do this.

Despite the non-use of these provisions in the Sorcery Act, there have been numerous calls for the state to criminalise the making of false accusations of

sorcery in recent times. For example, in 2013 the chairman of the Churches Medical Council of PNG called for the government to create a law that punished a person for accusing others of practising sorcery. He observed that women and elderly people were the main targets in sorcery-alleged killings (Miae 2013b). Those calling for such laws argue that allegations of sorcery are key triggers of social unrest and disorder throughout Melanesia. Criminalising the making of such an allegation for malicious purposes may cause people to think twice before making such allegations, and may stop such disorder from eventuating. These offences may also be used by the innocent to protect themselves and to clear their names. The Gor Community Base Laws discussed by Clara Bal (Chapter 16 this volume) demonstrates that the community in her study considered that stopping sorcery-related accusations was key in stopping the violence that results.

However, there are a number of arguments against having such laws. It could be argued that these allegations could be dealt with using the general laws of defamation and criminal defamation and do not require specific provisions. A counter response is that because a defence to defamation is that the defamatory statement was in fact true, this may require the court to adjudicate upon the question of whether or not the accused was really engaging in sorcery, the evidential problems with which have been outlined above. Moreover, as court proceedings work slowly, they are unlikely to be an adequate response to the incendiary social effects of sorcery and witchcraft allegations. A further problem may be that criminalising the making of accusations may make the accusations more covert and hence more difficult to engage with early, thus undermining the mediation/conflict resolution approach outlined above. There is also the problem that these laws have been ineffective in the past, again demonstrating the profound problems of lack of implementation and enforcement capacity in the criminal justice system.

I now turn to consider whether viewing this issue through the new approach outlined above is of assistance. One possible way to overcome at least some of the problems just described that springs from the proposed focus on breaking the link between accusation and violence is to have a provision that criminalises *incitement to violence* on the basis of sorcery-related accusations, rather than the accusations themselves. This would not stop community leaders from being able to discuss sorcery accusations publicly, but it would provide a clear message about the need to deal with the accusations in a non-violent manner. Ideally this could be complemented by other parts of a comprehensive regulatory strategy, such as the provision by health workers of explanations of causes of sickness and deaths (see Cox and Phillips, Chapter 2 this volume).

Further, if we adopt a pluralist approach it can also be considered whether there are appropriate non-state mechanisms that could work on stopping sorcery

accusations from being made, such as church interventions or local community governance mechanisms like the Gor Community Base Laws. It is probable that those at the community or village level are far more likely to be able to distinguish between accusations based on malicious intent and those made through genuine fear, and they could adopt different strategies to deal with the different types of accusations. For the first type, it may be of use to refer to the prospect of being charged with a criminal offence if the accuser does not retract their accusation and apologise. Village courts are particularly well placed in this regard. This again illustrates the need to improve communications and referral mechanisms between community-level conflict management structures and the state, which again raises the critical problem of lack of state capacity.

## Conclusion

In conclusion I want to step back slightly from the detailed discussions above and try to contextualise the issues within a broader jurisprudential framework. Although this chapter has dealt with specific questions, it also raises important questions relevant to the development of Melanesian legal systems generally. Some of these include: What role should customary norms and customary institutions play in the state criminal justice system? How can human rights be effectively incorporated into Melanesian regulatory systems in ways that are considered legitimate by the population as a whole? How can regulatory systems best deal with the limited reach of the state and the richness of local governance mechanisms, where such local mechanisms still have effective influence? Is the supposedly rational basis of Western legal systems appropriate in all contexts in Melanesia? These issues are bound up in the ongoing conversations about how to create new and unique jurisprudence that reflects Melanesian culture and beliefs and recognises customary norms and practices, which was a dream at independence and continues to be important among some parts of the community and those in the justice system (Narokobi 1986:215; Ntuny 1995:7).<sup>28</sup> There are also important criminological questions that sorcery- and witchcraft-related practices and beliefs raise, such as: What will be a deterrent to the types of attacks on women accused of sorcery that have been on the rise in PNG? Do heavier penalties have any effect? The criminal law can be an effective instrument to deal with social deviance in some contexts, but it is highly dependent upon the state having the capacity to implement and enforce it properly. In the absence of this capacity, the law itself and the institutions tasked with enforcing it can become as cruel and unjust as the behaviour it is trying to regulate. In recognition of these problems, this chapter has tried

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28 The continuing interest in this is shown by the *Underlying Law Act 2000* (PNG) and the ongoing CLRC inquiry into the underlying law.

to identify ways in which the criminal justice system can intervene before accusations of sorcery and witchcraft lead to law and order problems, as well as assisting it in its role of punishing wrongdoers.

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