

PAPUA NEW GUINEA

[IN THE NATIONAL COURT OF JUSTICE]

*CR NOS 4, 5, 8, 10, 11, 13-22, 24-27, 29-32, 34-37, 39-41,
43-46, 48-50, 52-54, 56-61, 63, 65-67, 69-75, 77, 78, 80,
81, 83, 85-89, 91-93, 96-98, 100-110, 112-123, 612 & 1044 OF 2015*

THE STATE

V

**DONI KAKIWI, JACK TUKO, JOHN WAKU,
KANDE KOKI, KINDA YAMESE, LOUIE PETER,
MARTIN USI, MAX DAVID, MAXSON KOPORE,
MERA KIKI, OUA BINARU, PIU GWARO,
SIRRE ITOWO, TAI WAKKE & WANDOKO SOMANDA**

**OF SERENGO VILLAGE, RAI COAST DISTRICT,
MADANG PROVINCE**

AND

**BAKUN MOA, DENMARK KUTS, EDDIE INGEMA,
ENOS AWARE, GIBSON MASILI, IMEX GAOSA,
ISONO KAU, JACOB SISI, JAMES ONIRIO,
JEFFERY RONNY, JOE NICK, KIRORI GERUNGO,
KIRISO WAKE, KOKI KEWA, KUMA TOUKINI,
KUNDOKE PIYE, LOUIMACK AMANI, MAX UTO,
MENANGO KENGKE, MOMORIKE SEPE, NICK ISAHARA,
NOGURO SUA, OKAPA MIMO, OSCAR USI,
PETRUS KOMA, POPPE DUMA, PUE KUPI,
ROBERT BURINGA, SIMON TOWERA, SIMON DUMA,
SIMON MANEWO, TAMSIO VIO, TANUWAMA KEPA,
WAKS AWANDA, WAMBUNA TOSI, WANIX DOWENA,
WESLEY KAISOM, WINSON DOS, YAWENDA BENSON
& YUWOI KOKI**

**OF GOMUMU VILLAGE, RAI COAST DISTRICT,
MADANG PROVINCE**

AND

**AKINU DOWENA, EPPON MATA, JACK MOPI,
JOHN TULI, LAKI MIRAKA, LUCAS PETRUS,
MARCUS KISANGA, MARTIN JOHN, NDOUSI PORURU,
ONIRIO BOMA, PAUL PERAU, POURO BINARU,
REUBEN DAOMBON, SEPI YAMBA YAMESE, STEVEN DAVID,
TEUWI BIAO, TIMITY JOE, TONY YURO,
ORAIYO URAIA MAX, WIKO MURU & YUO GOM**

**OF GOIRO VILLAGE, RAI COAST DISTRICT,
MADANG PROVINCE**

AND

**DONSI KUMBI, ISAAC HUYANGO, KEAO TIRA,
KOKI MARI, KONI TESIO, LOUIE IROA,
OPS GINU, ROBERT ARRE, SAI MEKU,
TIPE OUSI, YAMAKS NONOPA & YAMANGA KIREI**

**OF NININGO VILLAGE, RAI COAST DISTRICT,
MADANG PROVINCE**

AND

**AKEPE TUKO, ENOCH BUARA, JOHNSON KAFEMO,
KAMINDE PIYOMI, NASA TOKO, NASAKE WIKO
& ONI TITUKUN**

**OF NUMBAYA VILLAGE, RAI COAST DISTRICT,
MADANG PROVINCE**

AND

TUKI GOWI & THOMPSON MUNGO

**OF SARANGA VILLAGE, RAI COAST DISTRICT,
MADANG PROVINCE**

MADANG : CANNINGS J

19, 20 JUNE, 6, 19, 20, 24 JULY 2018

Criminal law – sentencing – Criminal Code, Section 299 (wilful murder) – conviction of seven counts of wilful murder after trial – armed offenders marched in a group to a village – seven persons killed – consideration of death penalty.

This is a judgment on sentence for 97 offenders who were each convicted of seven counts of wilful murder after trial. They marched in a group to a village, motivated by concerns about a number of deaths in the area attributed to sorcery. Some suspected sorcerers had taken up residence in that village. On the way to the village some members of the group attacked and killed a bystander. The group proceeded to raid the village and destroyed property including houses and food gardens. Members of the group attacked and killed six village residents: one 20-year-old man, three elderly men and two young boys. Eight of the 97 offenders were found to have directly committed the crime of wilful murder of at least one of the deceased. All of the 97 offenders were convicted of the seven counts of wilful murder under both Section 7 (for aiding and assisting those who directly committed the offences) and Section 8 (for committing offences while prosecuting an unlawful purpose) of the *Criminal Code*. Their personal circumstances were similar.

Held:

- (1) The starting point for sentencing for this sort of wilful murder (worst case scenario, mitigating factors rendered insignificant by gravity of offences, brutal killings, killing of children and elderly persons, multiple killings) is the death sentence.
- (2) Mitigating factors: no prior convictions; some compensation paid to relatives of the deceased; some attempt at reconciliation; cooperation (in most cases) with Police and the Court and the justice system; expression of remorse.
- (3) Aggravating factors: use of lethal weapons, barbaric killings, killing of defenceless persons.
- (4) It was appropriate to sentence the offenders in two categories: (a) the eight offenders found to have directly committed the crime of wilful murder of at least one of the deceased, were sentenced to death; (b) the other 89 offenders were sentenced to life imprisonment.

Cases cited

The following cases are cited in the judgment:

Alois Erebebe & Taros Togote v The State (2011) SC1135
Alois Erebebe & Taros Togote v The State (2013) SC1228
Botchia Hagena, Peter Taul & Tobung Paraide v The State (2017) SC1659
Gimble v The State [1988-89] PNGLR 271
Ignatius Pomoloh v The State (2007) SC834
Irai Thomas v The State (2007) SC867
John Baipu v The State (2005) SC796
Manu Kovi v The State (2005) SC789
Mase v The State [1991] PNGLR 88
Public Prosecutor v Kerua [1985] PNGLR 85
Steven Loke Ume, Charles Patrick Kaona & Greg Wawa Kavoa v The State (2006) SC836
The State v Alphonse Hapot (No 1) (2015) N6455
The State v Alphonse Hapot (No 2) (2016) N6452
The State v Ben Simakot Simbu (No 1) (2004) N2573
The State v Ben Simakot Simbu (No 2) (2004) N2546
The State v Doni Kakiwi & 96 Others (2018) N7067
The State v Eric Naks Lako & Keith Lasi Aira (2016) N6182
The State v Gregory Kiapkot, Martin Bigit, Tobung Paraide, Peter Taul & Botchia Agena (2011) N4381
The State v Kenny Wesley (2011) N4609
The State v Kepak Langa (No 1) (2003) N2461
The State v Kepak Langa (No 2) (2003) N2462
The State v Mark Poroli (2004) N2655
The State v Sedoki Lota & Fred Abenko (2007) N3183

SENTENCE

This was a judgment on sentence for 97 offenders each convicted of seven counts of wilful murder.

Counsel

F K Popeu & D Ambuk for the State
J Morog & D Ephraim for the offenders

CANNINGS J: This is a judgment on sentence for 97 offenders who were each convicted of seven counts of wilful murder after trial. On the morning of Monday 14 April 2014 they marched in a group to Sakiko village, near Ramu town, Madang Province, motivated by concerns about a number of deaths in the area attributed to sorcery.

Some suspected sorcerers had taken up residence at Sakiko. On the way to the village some members of the group attacked and killed a bystander, Sike Wamne, a 35-year-old Jiwaka man who was walking to work at Ramu Sugar.

The group proceeded to raid the village and destroyed property including houses and food gardens. Some members of the group attacked and killed six village residents: one 20-year-old man, three elderly men and two young boys. Those killed were:

- 20-year-old Nick Uria (the deceased the subject of count 2);
- 70-year-old Yambung Nawoya (the deceased the subject of count 3);
- 73-year-old Beramo Tipupu (the deceased the subject of count 4);
- 70-year-old Baupa Dangingayo (the deceased the subject of count 5);
- 3-year-old Nathan Aki (the deceased the subject of count 6);
- 5-year-old Anao Gunumi (the deceased the subject of count 7).

Eight of the 97 offenders were found to have directly committed the crime of wilful murder of at least one of the deceased. All 97 offenders were convicted of the seven counts of wilful murder under both Section 7 (for aiding and assisting those who directly committed the offences) and Section 8 (for commission of crimes committed while prosecuting an unlawful purpose) of the *Criminal Code*.

Further details of the circumstances of the offence are in the judgment on verdict, *The State v Doni Kakiwi & 96 Others* (2018) N7067.

Nine of the 97 offenders escaped from custody after conviction and before sentence. They gave up their right under Section 37(5) of the *Constitution* to be present at their trial. They are sentenced in their absence.

ANTECEDENTS

Each offender has no prior convictions.

ALLOCUTUS

Each of the 88 offenders present at the sentencing hearing made a statement by way of allocutus. Each apologised for what happened, to God, to the Court and/or to their community. Each expressed remorse. Some said it was not their intention to see people killed; they just followed the group. Most sought the mercy of the court and asked for a non-custodial sentence. Many explained their personal circumstances and background, stressing that they had a family to care for and expressing great concern for the welfare and education of their children. Most expressed a willingness and desire to reconcile with the relatives of the deceased, pointing out that substantial compensation has already been paid, and more concerted efforts will be made, if and when they are released from custody, to bring peace back into their community.

PRE-SENTENCE REPORTS

The Madang branch of the Community Based Corrections office prepared a pre-sentence report for each of the 88 offenders present at the sentencing hearing. Most offenders fall within the age range of 18 to 35 years. Most have limited education and are subsistence farmers. They are from various villages within the Naho-Rawa Local-level Government constituency. Their local member of Parliament, Member for Rai Coast Open, Hon Peter Sapia MP, has explained the deep suspicion amongst many in the local community about activities of sorcerers and how these concerns peaked in early 2014, leading to the Sakiko incident.

Peace, surrender and reconciliation meetings and ceremonies, including a major event in Madang on 28 May 2018 conducted in the presence of Mr Sapia, have brought the conflicting parties together. The offenders themselves participated in some of these ceremonies in the period from May 2016 to March 2017 when they were on bail. Compensation has been paid in the sum of K56,000.00 to the relatives of the deceased, Sike Wanne. A further K36,000.00 compensation has been paid to the relatives of the deceased Sakiko residents.

The indication in the pre-sentence reports of concerted efforts being made to bring peace back to the community was complemented by sworn testimony at the sentencing hearing by Pastor Aware Koya of the Evangelical Lutheran

Church. The Pastor's evidence included video recordings, viewed in the courtroom, of elaborate events that took place at various villages in 2016.

Relatives of the deceased Sakiko residents were interviewed. Their attitude to the offenders has been summarised in the pre-sentence reports:

- 20-year-old Nick Uria (the deceased the subject of count 2): his parents regard their late son as a vulnerable child who could not fight back, but they killed him – they have received no compensation and want justice to take its course;
- 70-year-old Yambung Nawoya (the deceased the subject of count 3): his son wants the court to impose the maximum penalty on the offenders;
- 73-year-old Beramo Tipupu (the deceased the subject of count 4): his relatives want the court to impose the maximum penalty on the offenders;
- 70-year-old Baupa Dangingayo (the deceased the subject of count 5); his relatives demand compensation for the innocent old man's death – if compensation is not paid, the problems will only escalate;
- 3-year-old Nathan Aki (the deceased the subject of count 6): his father states that there has been no reconciliation or compensation, so non-custodial sentencing options should no longer be explored;
- 5-year-old Anao Gunumi (the deceased the subject of count 7): his father states that there has been no reconciliation or compensation, so justice must be done for his innocent child who was vulnerable, weak and could not fight back.

The impression gained from the pre-sentence reports is that concerted attempts have been made towards peace and reconciliation. But the process is incomplete. The prevailing sentiment amongst the relatives of the deceased is that the offenders should be punished severely for what they did.

SUBMISSIONS FOR THE OFFENDERS

Mr Morog submitted on behalf of the offenders that despite the horrific nature of the killings, the Court must consider the special circumstances in which the offences were committed. The events took place because of a genuine belief in sorcery. These were not payback killings. The offenders formed a group called

the *Hausman* as it was the consensus amongst a number of villages that drastic action had to be taken to weed out the scourge of sorcery. Too many innocent lives had been lost. So they did what they did.

It was submitted that there are many mitigating factors, which apply to all offenders:

- no prior convictions
- unsophisticated villagers
- families to care for
- heavy reliance by themselves and therefore their families on food-gardening and coffee as a cash crop
- cooperated with Police from the time of their apprehension on the morning of the incident
- compliance with bail conditions
- showed respect for the law
- demonstrated remorse for their actions
- cooperated with their community leaders and Pastors in the surrender and reconciliation process.

The position of the defence is that the offenders ought to be sentenced in two categories: those found to have directly committed an offence, and those not found to have been directly involved in commission of an offence. Those in the first category should receive a sentence of no more than 25 years imprisonment for each offence. Those in the second category should receive no more than 20 years imprisonment for the offence. The one transaction rule should apply as all offences were committed within a single incident in the space of a few hours. The sentences should be made concurrent.

SUBMISSIONS FOR THE STATE

Mr Popeu submitted on behalf of the State that though the offenders might have formed themselves into a group and raided the village and gone on a rampage because of a genuine belief in sorcery, that cannot detract from the fact that seven innocent and vulnerable victims, including three old men and two young boys, were mercilessly killed. There was no evidence that any of the seven victims was suspected of being a sorcerer. The only ‘sins’ of the victims was their inability to escape, because of their age (in the case of the three old men and the two young boys) or their being out-numbered (the 35-year-old victim, Sike Wamne, and the 20-year-old victim, Nick Uria).

The State's position is that the eight offenders found to have directly committed one or more offence of wilful murder should receive the maximum sentence of death in respect of each of the seven offences of which they have been convicted, including those offences for which they have been convicted under Sections 7 and 8 of the *Criminal Code*.

For the other offenders not found to have directly committed any offence, they should be sentenced to death in respect of each of counts 2 to 7 (ie other than for the death of Sike Wamne) and to life imprisonment in respect of count 1.

The State's position was that none of the sentences should be regarded as concurrent.

DECISION MAKING PROCESS

To determine the appropriate penalty I will adopt the following decision making process:

- step 1: what is the maximum penalty?
- step 2: what is a proper starting point?
- step 3: what sentences have been imposed for similar offences?
- step 4: what should the head sentence be?
- step 5: should the pre-sentence period in custody be deducted?
- step 6: should any part of the sentence be suspended?

STEP 1: WHAT IS THE MAXIMUM PENALTY?

The maximum penalty for wilful murder under Section 299 of the *Criminal Code* is death. The court has a discretion whether to impose the maximum by virtue of Section 19(1)(aa) of the *Criminal Code*, which states:

In the construction of this Code, it is to be taken that, except when it is otherwise expressly provided ... a person liable to death may be sentenced to imprisonment for life or for any shorter term.

STEP 2: WHAT IS A PROPER STARTING POINT?

I will apply the sentencing guidelines for wilful murder given by the Supreme Court in the two leading cases: *Manu Kovi v The State* (2005) SC789 and *Steven Ume, Charles Kaona & Greg Kavoa v The State* (2006) SC836.

The Kovi guidelines

In *Kovi* the Supreme Court suggested that wilful murder convictions could be put in four categories of increasing seriousness, as shown in the following table.

SENTENCING GUIDELINES FOR WILFUL MURDER FROM KOVI

No	Description	Details	Tariff
1	Plea – ordinary cases – mitigating factors – no aggravating factors.	No weapons used – little or no pre-meditation or pre-planning – minimum force used – absence of strong intent to kill.	15-20 years
2	Trial or plea – mitigating factors with aggravating factors.	Pre-planned, vicious attack – weapons used – strong desire to kill.	20-30 years
3	Trial or plea – special aggravating factors – mitigating factors reduced in weight or rendered insignificant by gravity of offence.	Brutal killing, killing in cold blood – killing of defenceless or harmless person – dangerous or offensive weapons used – killing accompanied by other serious offence – victim young or old – pre-planned and pre-meditated – strong desire to kill.	Life imprisonment
4	Worst case – trial or plea – special aggravating factors – no extenuating circumstances – no mitigating factors, or mitigating factors rendered completely insignificant by gravity of offence.	[No details provided]	Death

The Ume guidelines

In *Ume* the Supreme Court suggested that a number of different scenarios may warrant the death penalty, eg (1) killing of a child, a young or old person, or a person under some disability needing protection; (2) killing of a person in authority or responsibility in the community providing invaluable community service killed in the course of carrying out their duties or for reasons to do with the performance of their duties; (3) killing of a leader in government or the community, for political reasons; (4) killing of a person in the course of committing other crimes; (5) killing for hire; (6) killing of two or more persons in a single act or series of acts; (7) killing by a prisoner in detention or custody serving a sentence for another serious offence of violence; (8) if the offender has prior conviction(s) for murder.

Applying the guidelines

Under the *Kovi* guidelines, this case falls within the worst case scenario: mitigating factors rendered insignificant by gravity of offences, brutal killings. It is a category 4 case. The starting point is a death sentence.

Under the *Ume* guidelines, the death sentence is also the starting point as two of the eight scenarios apply: (1) killing of a child, a young or old person, or a person under some disability needing protection (two children and three elderly men were amongst the victims), and (6) killing of two or more persons in a single act or series of acts (seven persons were killed in a series of acts).

STEP 3: WHAT SENTENCES HAVE BEEN IMPOSED FOR SIMILAR OFFENCES?

As the State is seeking the death sentence and such a sentence is an appropriate starting point, it is instructive to consider the cases decided in recent years that have resulted in death sentences. The table below, which summarises the relevant cases, is adapted from the judgment in *Re Human Rights of Prisoners Sentenced to Death* (2017) N6939.

**TABLE 1: PRISONERS PRESENTLY UNDER SENTENCE OF DEATH
IN PAPUA NEW GUINEA**

No	Name	Offence(s)	Sentence	Court	Appeal/review status
1.	Kepak Langa	Wilful murder, <i>Criminal Code</i> , s 299(1): one count. The prisoner was convicted on 23 Sep 03, after trial, of the wilful murder of a young man. The prisoner and five others ambushed the deceased and his family as they were driving along a road near Imi village, Enga Province, on 18 Nov 02 (<i>The State v Kepak Langa</i> (No 1) (2003) N2461).	The prisoner was sentenced to death on 26 Sep 03 (<i>The State v Kepak Langa</i> (No 2) (2003) N2462).	National Court, Wabag, Jalina J.	An appeal against conviction and sentence, SCRA No 80 of 2003, was dismissed for want of prosecution by the Supreme Court (Kandakasi J, Hartshorn J, Kassman J) at Waigani on 31 Oct 13.
2.	Ben	Wilful murder,	The prisoner	National	An appeal against

	Simakot Simbu	<p><i>Criminal Code, s 299(1): two counts.</i></p> <p>The prisoner was convicted on 18 Mar 04, after trial, of the wilful murder of a mother and child after he raped the mother in front of the child. He committed the offences at Vanimo, West Sepik Province, on 19 Jul 02 (<i>The State v Ben Simakot Simbu</i> (No 1) (2004) N2573).</p>	<p>was sentenced to death on 26 Mar 04 (<i>The State v Ben Simakot Simbu</i> (No 2) (2004) N2546).</p>	<p>Court, Vanimo, Kandakasi J.</p>	<p>conviction and sentence, SCRA No 23 of 2004, was dismissed for want of prosecution by the Supreme Court (Batari J, David J, Kassman J) at Waigani on 26 Apr 11.</p>
3.	Mark Poroli	<p>Wilful murder, <i>Criminal Code, s 299(1): one count.</i></p> <p>The prisoner was convicted, after pleading guilty, of the wilful murder of a police officer (by shooting him in the head at close range) he believed had shot dead his uncle. He committed the offence at Koroba, Southern Highlands Province, on 17 May 02.</p>	<p>The prisoner was sentenced to death on 25 Aug 04 (<i>The State v Mark Poroli</i> (2004) N2655).</p>	<p>National Court, Mendi, Lenalia J.</p>	<p>An appeal against conviction and sentence, SCRA No 71 of 2004, was dismissed for want of prosecution by the Supreme Court (Gavara-Nanu J, David J, Collier J) at Waigani on 31 Oct 13.</p>
4.	Sedoki Lota	<p>Wilful murder, <i>Criminal Code, s 299(1): one count.</i></p> <p>The prisoner was convicted, after pleading guilty, of the wilful murder (by chopping her with a bushknife) of a woman he believed was a sorcerer</p>	<p>The prisoner was sentenced to death on 1 Oct 07 (<i>The State v Sedoki Lota & Fred Abenko</i> (2007) N3183).</p>	<p>National Court, Alotau, Sevua J.</p>	<p>The prisoner's application to the Supreme Court for review of his conviction and sentence, SC Rev No 15 of 2015, has not yet been heard.</p>

		responsible for the death of his parents. He committed the offence, together with co-offender Fred Abenko (who has since died in custody) at Sigaroi, Milne Bay Province, on 9 Jul 05.			
5.	Tobung Paraide	<p>Wilful murder, <i>Criminal Code</i>, s 299(1): eight counts.</p> <p>The prisoner was convicted, after a joint trial (with four other accused, also convicted) of the wilful murder of eight persons who were travelling on a motorised dinghy from Kokopo, East New Britain Province, to Namatanai, New Ireland Province. The offences were committed on 28 Sep 07 (<i>The State v Gregory Kiapkot, Martin Bigit, Tobung Paraide, Peter Taul & Botchia Agena</i> (2011) N4380).</p>	<p>The prisoner was sentenced to death on 14 Jul 11 (<i>The State v Gregory Kiapkot, Martin Bigit, Tobung Paraide, Peter Taul & Botchia Agena</i> (2011) N4381).</p>	<p>National Court, Kokopo, Sawong J.</p>	<p>The prisoner's appeal against conviction and sentence was dismissed by the Supreme Court (Gavara-Nanu J, Mogish J, Hartshorn J, Kangwia J, Pitpit J) in December 2017 (<i>Botchia Hagen, Peter Taul & Tobung Paraide v The State</i> (2017) SC1659).</p>
6.	Peter Taul	<p>Wilful murder, <i>Criminal Code</i>, s 299(1): eight counts.</p> <p>The prisoner was convicted, after a joint trial (with four other accused, also convicted) of the wilful murder of eight persons who were travelling on a</p>	<p>The prisoner was sentenced to death on 14 Jul 11 (<i>The State v Gregory Kiapkot, Martin Bigit, Tobung Paraide, Peter Taul & Botchia Agena</i></p>	<p>National Court, Kokopo, Sawong J.</p>	<p>The prisoner's appeal against conviction and sentence was dismissed by the Supreme Court (Gavara-Nanu J, Mogish J, Kangwia J, Pitpit J; Hartshorn J dissenting) in December 2017 (<i>Botchia Hagen, Peter Taul & Tobung</i></p>

		<p>motorised dinghy from Kokopo, East New Britain Province, to Namatanai, New Ireland Province. The offences were committed on 28 Sep 07 (<i>The State v Gregory Kiapkot, Martin Bigit, Tobung Paraide, Peter Taul & Botchia Agena</i> (2011) N4380).</p>	(2011) N4381).		<i>Paraide v The State</i> (2017) SC1659).
7.	Botchia Agena	<p>Wilful murder, <i>Criminal Code</i>, s 299(1): eight counts.</p> <p>The prisoner was convicted, after a joint trial (with four other accused, also convicted) of the wilful murder of eight persons who were travelling on a motorised dinghy from Kokopo, East New Britain Province, to Namatanai, New Ireland Province. The offences were committed on 28 Sep 07 (<i>The State v Gregory Kiapkot, Martin Bigit, Tobung Paraide, Peter Taul & Botchia Agena</i> (2011) N4380).</p>	<p>The prisoner was sentenced to death on 14 Jul 11 (<i>The State v Gregory Kiapkot, Martin Bigit, Tobung Paraide, Peter Taul & Botchia Agena</i> (2011) N4381).</p>	National Court, Kokopo, Sawong J.	<p>The prisoner's appeal against conviction and sentence was dismissed by the Supreme Court (Gavara-Nanu J, Mogish J, Kangwia J, Pitpit J; Hartshorn J dissenting) in December 2017 (<i>Botchia Hagen, Peter Taul & Tobung Paraide v The State</i> (2017) SC1659).</p>
8.	Kenny Wesley	<p>Wilful murder, <i>Criminal Code</i>, s 299(1): eight counts.</p> <p>The prisoner was convicted, after trial, (separate to the trial of Gregory Kiapkot</p>	<p>The prisoner was sentenced to death on 1 May 12.</p>	National Court, Kokopo, Maliku AJ.	<p>The prisoner's appeal, SCRA No 7 of 2012, has not yet been heard by the Supreme Court.</p>

		& four others) of the wilful murder of eight persons who were travelling on a motorised dinghy from Kokopo, East New Britain Province, to Namatanai, New Ireland Province. The offences were committed on 28 Sep 07 (<i>The State v Kenny Wesley</i> (2011) N4609).			
9.	Alois Erebebe	<p>Wilful murder, <i>Criminal Code</i>, s 299(1): nine counts.</p> <p>The prisoner was convicted, after a joint trial with one other accused (Taros Togote, also convicted) of the wilful murder of nine persons (five adults who were shot dead and four children who were cut and stabbed with knives) who were travelling on a truck along a road in at Mohuveto, Bena-Bena, Eastern Highlands Province. The offences were committed on 21 Nov 99.</p>	The prisoner was originally sentenced to life imprisonment- but on appeal by the Public Prosecutor against sentence, the sentence of life imprisonment was quashed and replaced on 2 May 13 with the sentence of death (<i>Alois Erebebe & Taros Togote v The State</i> (2013) SC1228).	National Court, Goroka, Batari J.	The prisoner's appeal against conviction was dismissed by the Supreme Court (Cannings J, Kariko J, Kassman J) on 2 Dec 11 (<i>Alois Erebebe & Taros Togote v The State</i> (2011) SC1135). The Public Prosecutor's appeal against sentence was upheld by the Supreme Court (Gavara-Nanu J, Davani J, Hartshorn J, Yagi J, Makail J) on 2 May 13, and the sentence of death was then imposed (<i>Alois Erebebe & Taros Togote v The State</i> (2013) SC1228).
10.	Taros Togote	<p>Wilful murder, <i>Criminal Code</i>, s 299(1): nine counts.</p> <p>The prisoner was convicted, after a joint trial with one other accused (Alois</p>	The prisoner was originally sentenced to life imprisonment- but on appeal by the Public Prosecutor	National Court, Goroka, Batari J.	The prisoner's appeal against conviction was dismissed by the Supreme Court (Cannings J, Kariko J, Kassman J) on 2 Dec 11 (<i>Alois Erebebe & Taros Togote v The</i>

		Erebebe, also convicted) of the wilful murder of nine persons (five adults, shot dead, and four children, cut and stabbed with knives) who were travelling on a truck along a road at Mohuveto, Bena-Bena, Eastern Highlands Province. The offences were committed on 21 Nov 99.	against sentence, the sentence of life imprisonment was quashed and replaced on 2 May 13 with the sentence of death (<i>Alois Erebebe & Taros Togote v The State</i> (2013) SC1228).		<i>State</i> (2011) SC1135). The Public Prosecutor's appeal against sentence was upheld by the Supreme Court (Gavara-Nanu J, Davani J, Hartshorn J, Yagi J, Makail J) on 2 May 13, and the sentence of death was then imposed (<i>Alois Erebebe & Taros Togote v The State</i> (2013) SC1228).
11.	Alphonse Hapot	Wilful murder, <i>Criminal Code</i> , s 299(1): three counts. The prisoner was convicted, after trial, of the wilful murder of a 28-year-old woman and her two daughters, aged 6 years and 12 years (by cutting their necks). The offences were committed on Mal Island, Manus Province, on 20 Jan 13 (<i>The State v Alphonse Hapot</i> (No 1) (2015) N6455).	The prisoner was sentenced to death on 20 Apr 16 (<i>The State v Alphonse Hapot</i> (No 2) (2016) N6452).	National Court, Lorengau, Kirriwom J.	The prisoner's appeal, SCRA No 12 of 2016, has not yet been heard by the Supreme Court.
12.	Keith Lasi Aira	Wilful murder, <i>Criminal Code</i> , s 299(1): four counts. The prisoner was convicted, after pleading guilty, of the wilful murder (by chopping them with a bushknife) of three men and a woman, in the course of an armed	The prisoner was sentenced to death on 12 Feb 16 (<i>The State v Eric Naks Lako & Keith Lasi Aira</i> (2016) N6182).	National Court, Waigani, Salika DCJ.	The prisoner's appeal, SCRA No 4 of 2016, has not yet been heard by the Supreme Court.

	robbery of a bakery. He committed the offences, together with co-offender Eric Naks Lako (who was convicted of the same crimes but given a lesser sentence of 30 years due to his lesser involvement) at Koki, National Capital District.			
--	---	--	--	--

STEP 4: WHAT IS THE HEAD SENTENCE?

Though each offender has been convicted of the same seven offences, this is not an appropriate case for the same sentence to be passed on each offender. There is a view, reflected in cases such as *Gimble v The State* [1988-89] PNGLR 271 that if a group of offenders is convicted of the same offence each member of the group should get the same sentence irrespective of his degree of involvement. That is not a hard-and-fast rule. I prefer the approach taken in cases such as *Ignatius Pomoloh v The State* (2007) SC834: each offender must have their sentence determined by their particular individual circumstances, and this means making an assessment of their degree of participation in the crime. I uphold the defence submission that the offenders ought to be sentenced in two categories:

- (a) those found to have directly committed an offence, and
- (b) those not found to have been directly involved in commission of any offence.

(a) Offenders convicted of directly committing one or more offences

There are eight in this category, identified in the judgment on verdict as follows.

OFFENDERS FOUND TO HAVE DIRECTLY COMMITTED WILFUL MURDER

No	Name of accused	Count and name of deceased
1	Bakun Moa	5 - Baupa Dangingayo – the 70-year-old man killed by being thrown inside his house and the house was set alight – he died by incineration.
2	Enos Aware	3 - Yambung Nawoya – the 70-year-old man was killed by

		being speared in the knee, and cut over large parts of his body – he suffered multiple limb severing – death resulted from an open skull fracture with multiple body mutilation.
3	Imex Gaosa	<p>2 - Nick Uria – the 20-year-old man was shot with a spear in the eye and cut with bushknives – death resulted from an open skull fracture and multiple body mutilation.</p> <p>3 - Yambung Nawoya – the 70-year-old man was killed by being speared in the knee, and cut over large parts of his body – he suffered multiple limb severing – death resulted from an open skull fracture with multiple body mutilation.</p> <p>6 - Nathan Aki – the three-year-old boy was pulled from his mother’s arms and cut in the stomach – death resulted from an open skull fracture.</p>
4	Jeffery Ronny	7 - Anao Gunumi – the five-year-old boy was with his mother as they fled the rampage – he was removed from his mother’s grasp and put on the ground and cut with bushknives – death resulted from multiple skull fractures.
5	Noguro Sua	5 - Baupa Dangingayo – the 70-year-old man killed by being thrown inside his house and the house was set alight – he died by incineration.
6	Simon Duma	<p>2 - Nick Uria – the 20-year-old man was shot with a spear in the eye and cut with bushknives – death resulted from an open skull fracture and multiple body mutilation.</p> <p>3 - Yambung Nawoya – the 70-year-old man was killed by being speared in the knee, and cut over large parts of his body – he suffered multiple limb severing – death resulted from an open skull fracture with multiple body mutilation.</p>
7	Simon Towera	4 - Beramo Tipupu – this 73-year-old man was with his granddaughter trying to escape when five Hausman attacked and cut him with bushknives – he suffered multiple limb severing – death resulted from an open skull fracture with multiple body mutilation.
8	Winson Dos	<p>3 - Yambung Nawoya – the 70-year-old man was killed by being speared in the knee, and cut over large parts of his body – he suffered multiple limb severing – death results from an open skull fracture with multiple body mutilation.</p> <p>7 - Anao Gunumi – the five-year-old boy was with his mother as they fled the rampage – he was removed from</p>

		his mother's grasp and put on the ground and cut with bushknives – death resulted from multiple skull fractures.
--	--	--

Despite the horrific nature of the killings, I endorse the defence counsel's submission that there are mitigating factors that must be taken into account. Those I consider relevant are:

- no prior convictions
- unsophisticated villagers
- families to care for
- heavy reliance by themselves and therefore their families on food-gardening and coffee as a cash crop
- cooperated with Police from the time of their apprehension on the morning of the incident
- compliance with bail conditions
- showed respect for the law
- demonstrated remorse for their actions
- cooperated with their community leaders and Pastors in the surrender and reconciliation process.

The factor I consider irrelevant and inapplicable is the genuine belief of the offenders in sorcery. The reality of that belief is not questioned. The weight to be attached to it depends on the facts of each case (*John Baipu v The State* (2005) SC796, *Irai Thomas v The State* (2007) SC867). It clearly motivated the offenders to form the *Hausman* group and march to Sakiko, armed, with the intention of killing and attacking sorcerers, in order to cleanse the community.

However, there was no evidence that the offenders chose any of the victims because of the belief that the victims were sorcerers. How could the belief in sorcery justify or mitigate the heinous murder of Sike Wamne, an innocent man on his way to work? How could it mitigate or explain the senseless, horrible killings of three-year-old Nathan Aki or five-year-old Anao Gunumi, who were taken from their mothers' arms and killed instantly? Even in the case of the three elderly men, there was no evidence that any of them was targeted because he was a suspected sorcerer. There was no proven connection between the belief in sorcery and what actually happened. So the genuine belief in sorcery is not a mitigating factor. It cannot be regarded as an extenuating circumstance to lessen the gravity of the crimes.

When the facts of this case are compared with the facts in the cases described above in which death sentences have been imposed (including some in which the rights to appeal or review have been exhausted), it cannot be said this case is less serious: the number of deaths, the brutality involved, the vulnerability and age of the victims make this fall into the worst case category.

I consider that the mitigating factors are not sufficiently weighty to make it proper to sentence any of these eight offenders, at least in relation to any offence of wilful murder of which he has been found to have directly committed, other than at the starting point: a death sentence.

For those offences of which they have not been found guilty of directly committing, the lesser penalty of life imprisonment should apply.

As to whether the sentences should be cumulative or concurrent, I apply the principles on sentencing offenders who have committed multiple offenders developed by the Supreme Court in *Public Prosecutor v Kerua* [1985] PNGLR 85 and *Mase v The State* [1991] PNGLR 88:

- where two or more offences are committed in the course of a single transaction all sentences in respect of the offences should be concurrent;
- where the offences are different in character, or in relation to different victims, the sentences should normally be cumulative;
- when a court has arrived at appropriate sentences and decided whether they should be concurrent or cumulative, it must then look at the total sentence to see if it is just and appropriate – if it is not, it must vary one or more sentences to get a just total.

Though in some respects, as urged by the defence counsel, the offences were committed in the course of a single event or incident, I reject the argument that the one transaction rule applies. There were seven different victims. The sentences must be regarded as cumulative. I have considered the totality principle. It has no bearing on the final outcome. Each of the following offenders is sentenced to death:

1. Bakun Moa
2. Enos Aware
3. Imex Gaosa
4. Jeffery Ronny

5. Noguro Sua
6. Simon Duma
7. Simon Towera
8. Winson Dos

(b) Offenders not found to have been directly involved in commission of any offence

There are 89 offenders in this category. They have all been found guilty, like those in category (a), of seven counts of wilful murder under Sections 7 and 8 of the *Criminal Code*. There are valid mitigating factors (identified above) which warrant a sentence other than the death sentence. However, I reject the defence counsel's argument that the mitigating factors warrant a sentence in a term of years. The State proved at the trial that all of them were active members of the group. There was no evidence that any of them did not participate in what happened. It was a massacre in which they were all involved. They must be sentenced accordingly. These offenders are sentenced to life imprisonment for each offence. The one-transaction rule does not apply. The sentences must be treated as cumulative. The totality principle does not warrant anything less.

STEP 5: SHOULD THE PRE-SENTENCE PERIOD IN CUSTODY BE DEDUCTED FROM THE TERM OF IMPRISONMENT?

This is a matter of discretion under Section 3(2) of the *Criminal Justice (Sentences) Act*. It is an important part of the sentencing process to decide whether an offender should have the pre-sentence period in custody (ie the remand period) deducted from the head sentence. It remains important in the present case for an official record to be made in the judgment on sentence of each offender's pre-sentence period in custody, for two reasons. First, the sentences might be altered by virtue of a Supreme Court appeal or review or by an exercise of the power of mercy under Subdivision VI.4.D (*the power of mercy*) of the *Constitution*. If any sentence is altered, the question of the pre-sentence period in custody may arise. Secondly, it might be relevant to determination of the date of eligibility for parole, especially in the case of those prisoners serving a life sentence. The *Parole Act* provides that a detainee who has been sentenced to life imprisonment is eligible for parole after having served not less than ten years imprisonment.

I exercise the discretion in the following way. As for the nine offenders who have escaped from custody they will get no concession on account of their pre-sentence period in custody. They are:

1. Johnson Kafemo
2. Kaminde Piyomi
3. Nasa Toko
4. Ndousi Poruru
5. Nick Isahara
6. Noguro Sua
7. Oni Titukun
8. Reuben Daombon
9. Wiko Muru

Their pre-sentence period in custody is nil.

As for the 88 offenders who have not escaped from custody full account will be taken of their pre-sentence period in custody, which is three years, two months.

STEP 6: SHOULD ANY PART OF THE HEAD SENTENCE BE SUSPENDED?

There is insufficient evidence before the Court to warrant the suspension of any part of the sentences. The process of compensation and reconciliation is not complete. The general attitude of the relatives of the deceased is not conducive to suspension of the sentences.

SENTENCES

The offenders, each having been convicted of seven counts of wilful murder under Section 299(1) of the *Criminal Code*, are sentenced, with no period of suspension applicable in any case, but with the pre-sentence period in custody shown in each case which may be relevant for calculation of dates of eligibility for parole or other lawful purposes, as follows:

No	Offender	Case No	Sentence	Pre-sentence period in custody	Net sentence
1.	Akepe Tuko	CR 17/15	Life imprisonment	3 years, 2 months	Life imprisonment
2.	Akinu Dowena	CR 54/15	Life imprisonment	3 years, 2 months	Life imprisonment
3.	Bakun Moa	CR 106/15	Death	3 years, 2 months	Death
4.	Denmark Kuts	CR 96/15	Life imprisonment	3 years, 2 months	Life imprisonment
5.	Doni Kakiwi	CR 75/15	Life imprisonment	3 years, 2 months	Life imprisonment

6.	Donsi Kumbi	CR 92/15	Life imprisonment	3 years, 2 months	Life imprisonment
7.	Eddie Ingema	CR 67/15	Life imprisonment	3 years, 2 months	Life imprisonment
8.	Enoch Buara	CR 45/15	Life imprisonment	3 years, 2 months	Life imprisonment
9.	Enos Aware	CR 37/15	Death	3 years, 2 months	Death
10.	Eppon Mata	CR 102/15	Life imprisonment	3 years, 2 months	Life imprisonment
11.	Gibson Masili	CR 101/15	Life imprisonment	3 years, 2 months	Life imprisonment
12.	Imex Gaosa	CR 58/15	Death	3 years, 2 months	Death
13.	Isaac Huyango	CR 66/15	Life imprisonment	3 years, 2 months	Life imprisonment
14.	Isono Kau	CR 77/15	Life imprisonment	3 years, 2 months	Life imprisonment
15.	Jack Mopi	CR 107/15	Life imprisonment	3 years, 2 months	Life imprisonment
16.	Jack Tuko	CR 18/15	Life imprisonment	3 years, 2 months	Life imprisonment
17.	Jacob Sisi	CR 123/15	Life imprisonment	3 years, 2 months	Life imprisonment
18.	James Onirio	CR 113/15	Life imprisonment	3 years, 2 months	Life imprisonment
19.	Jeffery Ronny	CR 121/15	Death	3 years, 2 months	Death
20.	Joe Nick	CR 110/15	Life imprisonment	3 years, 2 months	Life imprisonment
21.	John Tuli	CR 19/15	Life imprisonment	3 years, 2 months	Life imprisonment
22.	John Waku	CR 27/15	Life imprisonment	3 years, 2 months	Life imprisonment
23.	Johnson Kafemo	CR 73/15	Life imprisonment	Nil	Life imprisonment
24.	Kaminde Piyomi	CR 119/15	Life imprisonment	Nil	Life imprisonment
25.	Kande Koki	CR 88/15	Life imprisonment	3 years, 2 months	Life imprisonment
26.	Keao Tira	CR 10/15	Life imprisonment	3 years, 2 months	Life imprisonment
27.	Kinda Yamese	CR 31/15	Life imprisonment	3 years, 2 months	Life imprisonment
28.	Kiriso Wake	CR 25/15	Life imprisonment	3 years, 2 months	Life imprisonment
29.	Kirori Gerungo	CR 59/15	Life imprisonment	3 years, 2 months	Life imprisonment

30.	Koki Kewa	CR 83/15	Life imprisonment	3 years, 2 months	Life imprisonment
31.	Koki Mari	CR 100/15	Life imprisonment	3 years, 2 months	Life imprisonment
32.	Koni Tesio	CR 8/15	Life imprisonment	3 years, 2 months	Life imprisonment
33.	Kundoke Piye	CR 118/15	Life imprisonment	3 years, 2 months	Life imprisonment
34.	Laki Miraka	CR 105/15	Life imprisonment	3 years, 2 months	Life imprisonment
35.	Louie Iroa	CR 69/15	Life imprisonment	3 years, 2 months	Life imprisonment
36.	Louie Peter	CR 116/15	Life imprisonment	3 years, 2 months	Life imprisonment
37.	Louimack Amani	CR 34/15	Life imprisonment	3 years, 2 months	Life imprisonment
38.	Lucas Petrus	CR 117/15	Life imprisonment	3 years, 2 months	Life imprisonment
39.	Marcus Kisanga	CR 86/15	Life imprisonment	3 years, 2 months	Life imprisonment
40.	Martin John	CR 72/15	Life imprisonment	3 years, 2 months	Life imprisonment
41.	Martin Usi	CR 21/15	Life imprisonment	3 years, 2 months	Life imprisonment
42.	Max David	CR 50/15	Life imprisonment	3 years, 2 months	Life imprisonment
43.	Max Uraia	CR 1044/15	Life imprisonment	3 years, 2 months	Life imprisonment
44.	Max Uto	CR 22/15	Life imprisonment	3 years, 2 months	Life imprisonment
45.	Maxson Kopore	CR 91/15	Life imprisonment	3 years, 2 months	Life imprisonment
46.	Menango Kengke	CR 78/15	Life imprisonment	3 years, 2 months	Life imprisonment
47.	Mera Kiki	CR 81/15	Life imprisonment	3 years, 2 months	Life imprisonment
48.	Momorike Sepe	CR 122/15	Life imprisonment	3 years, 2 months	Life imprisonment
49.	Nasa Toko	CR 13/15	Life imprisonment	Nil	Life imprisonment
50.	Nasake Wiko	CR 29/15	Life imprisonment	3 years, 2 months	Life imprisonment
51.	Ndousi Poruru	CR 120/15	Life imprisonment	Nil	Life imprisonment
52.	Nick Isahara	CR 70/15	Life imprisonment	Nil	Life imprisonment
53.	Noguro	CR	Death	Nil	Death

	Sua	5/15			
54.	Okapa Mimo	CR 104/15	Life imprisonment	3 years, 2 months	Life imprisonment
55.	Oni Titukun	CR 11/15	Life imprisonment	Nil	Life imprisonment
56.	Onirio Boma	CR 44/15	Life imprisonment	3 years, 2 months	Life imprisonment
57.	Ops Ginu	CR 60/15	Life imprisonment	3 years, 2 months	Life imprisonment
58.	Oscar Usi	CR 20/15	Life imprisonment	3 years, 2 months	Life imprisonment
59.	Oua Binaru	CR 43/15	Life imprisonment	3 years, 2 months	Life imprisonment
60.	Paul Perau	CR 115/15	Life imprisonment	3 years, 2 months	Life imprisonment
61.	Petrus Koma	CR 89/15	Life imprisonment	3 years, 2 months	Life imprisonment
62.	Piu Gwaro	CR 65/15	Life imprisonment	3 years, 2 months	Life imprisonment
63.	Pope Duma	CR 56/15	Life imprisonment	3 years, 2 months	Life imprisonment
64.	Pouro Binaru	CR 41/15	Life imprisonment	3 years, 2 months	Life imprisonment
65.	Pue Kupi	CR 93/15	Life imprisonment	3 years, 2 months	Life imprisonment
66.	Robert Arre	CR 35/15	Life imprisonment	3 years, 2 months	Life imprisonment
67.	Robert Buringa	CR 46/15	Life imprisonment	3 years, 2 months	Life imprisonment
68.	Ruben Daombon	CR 48/15	Life imprisonment	Nil	Life imprisonment
69.	Sai Meku	CR 103/15	Life imprisonment	3 years, 2 months	Life imprisonment
70.	Sepi Yamese	CR 30/15	Life imprisonment	3 years, 2 months	Life imprisonment
71.	Simon Duma	CR 16/15	Death	3 years, 2 months	Death
72.	Simon Towera	CR 57/15	Death	3 years, 2 months	Death
73.	Simon Manewo	CR 98/15	Life imprisonment	3 years, 2 months	Life imprisonment
74.	Sirre Itowo	CR 71/15	Life imprisonment	3 years, 2 months	Life imprisonment
75.	Steven David	CR 49/15	Life imprisonment	3 years, 2 months	Life imprisonment
76.	Tai Wake	CR 26/15	Life imprisonment	3 years, 2 months	Life imprisonment
77.	Tamsi Vio	CR	Life	3 years, 2 months	Life

		24/15	imprisonment		imprisonment
78.	Tanuwama Kepa	CR 80/15	Life imprisonment	3 years, 2 months	Life imprisonment
79.	Teuwi Biao	CR 40/15	Life imprisonment	3 years, 2 months	Life imprisonment
80.	Thompson Mungo	CR 108/15	Life imprisonment	3 years, 2 months	Life imprisonment
81.	Timity Joe	CR 612/15	Life imprisonment	3 years, 2 months	Life imprisonment
82.	Tipe Ousi	CR 114/15	Life imprisonment	3 years, 2 months	Life imprisonment
83.	Tonny Yuro	CR 32/15	Life imprisonment	3 years, 2 months	Life imprisonment
84.	Tuki Gowi	CR 63/15	Life imprisonment	3 years, 2 months	Life imprisonment
85.	Uma Toukini	CR 15/15	Life imprisonment	3 years, 2 months	Life imprisonment
86.	Waks Awanda	CR 36/15	Life imprisonment	3 years, 2 months	Life imprisonment
87.	Wambuna Tosi	CR 14/15	Life imprisonment	3 years, 2 months	Life imprisonment
88.	Wandoko Somanda	CR 4/15	Life imprisonment	3 years, 2 months	Life imprisonment
89.	Wanix Dowena	CR 53/15	Life imprisonment	3 years, 2 months	Life imprisonment
90.	Wesley Kaisom	CR 74/15	Life imprisonment	3 years, 2 months	Life imprisonment
91.	Wiko Muru	CR 109/15	Life imprisonment	Nil	Life imprisonment
92.	Winson Dos	CR 52/15	Death	3 years, 2 months	Death
93.	Yamaks Nonopa	CR 112/15	Life imprisonment	3 years, 2 months	Life imprisonment
94.	Yamanga Kirei	CR 85/15	Life imprisonment	3 years, 2 months	Life imprisonment
95.	Yawenda Benson	CR 39/15	Life imprisonment	3 years, 2 months	Life imprisonment
96.	Yuwoi Koki	CR 87/15	Life imprisonment	3 years, 2 months	Life imprisonment
97.	Yuo Gom	CR 61/15	Life imprisonment	3 years, 2 months	Life imprisonment

Sentenced accordingly.

Lawyer for the State : Public Prosecutor
 Lawyer for the offenders : Public Solicitor