

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 274.

Sorcery.

GENERAL ANNOTATION.

ADMINISTRATION.

As at 13 February 1976 (the date of gazettal of the most comprehensive allocation of responsibilities to Ministers and Departments at about the effective date), the administration of this Chapter was not vested specifically in any Minister. It seem, therefore, that under Constitution, Section 148(2), the Prime Minister was politically responsible.

This Chapter does not refer to "the Minister", "the Departmental Head" or "the Department".

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 274.

Sorcery Act.

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Sorcery

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 274.

Sorcery Act.

Being an Act to prevent and punish evil practices of sorcery and other similar evil practices, and for other purposes relating to such practices.

PREAMBLE.

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

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

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

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

- (a) their conduct may not be morally (and should not be legally) blameworthy; or
- (b) actions that would ordinarily be regarded as customary offences may, in traditional social groups, be regarded as excusable or capable of being compensated for.

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

PART I.—PRELIMINARY.

1. Interpretation.

(1) In this Act, unless the contrary intention appears—

“act of sorcery” means any act (including a traditional ceremony or ritual) that is intended to bring, or that purports to be able or to be adapted to bring, powers of sorcery into action, or to make them possible or carry them into effect;

“forbidden sorcery” means sorcery other than innocent sorcery;

“harmful result” includes fear, intimidation or injury in mind, body or property;

“implement of sorcery” means any thing that—

- (a) is designed or intended for use in acts of sorcery generally, or in a particular act or class of acts of sorcery; or

- (b) has, by some ceremony, ritual or act (including an act of sorcery), been adapted for use in acts of sorcery generally, or in a particular act or class of acts of sorcery;

"innocent sorcery" means sorcery of a kind referred to in Schedule 1;

"social group" includes a family, an extended family, a lineage, a kinship group, a descent group and a local group or community;

"sorcerer" means a person who—

- (a) claims to have powers of sorcery; or
 (b) directly or indirectly pretends to have, holds himself out to have or professes to have, powers of sorcery;

"sorcery" includes (without limiting the generality of that expression) what is known, in various languages and parts of the country, as witchcraft, magic, enchantment, *puri puri*, *mura mura dikana*, *vada*, *mea mea*, *sanguma* or *malira*, whether or not connected with or related to the supernatural.

(2) A reference in this Act to custom shall be read as a reference to the relevant custom of the social group or groups concerned.

(3) A reference in this Act to proceedings brought by virtue of this Act shall be read as a reference to proceedings in which reliance is placed, for the purpose of bringing the proceedings, on any provision of this Act, to the extent that the provision or its application is in question in the proceedings.

2. References to social groups.

(1) A reference in this Act to a social group shall, in its application to any matter before a court under this Act, be read as a reference to the social group or groups that, in the opinion of the court, is or are of the most relevance.

(2) In this Act, a reference to a social group includes a reference to any settled community, or a part of that community, whether it is a traditional community or is composed of members of different traditional or other social groups.

(3) This Act does not prevent a person being regarded as a member of more than one social group or community.

PART II.—PRINCIPLES, APPLICATION AND EFFECT OF ACT.

3. Preamble as statement of objects and principles.

Norwithstanding anything in any other law or rule of statutory construction, in the interpretation and application of this Act the provisions of the Preamble shall be taken fully into account in all cases, and each provision of this Act shall be read and construed as being intended to give effect to those provisions.

4. Innocent making of certain implements of sorcery.

(1) Subsection (2) does not apply where—

- (a) to the knowledge of the person relying on that subsection, the implement of sorcery concerned was made or adapted for use in a particular act of forbidden sorcery; or
 (b) the implement of sorcery concerned was intended to be used in an act of forbidden sorcery.

(2) Notwithstanding this Act, the mere making of an implement of sorcery (including the adaptation of a thing so as to be an implement of sorcery) is not an act of sorcery, nor is a person who claims to have the power to make an implement of sorcery a sorcerer by virtue only of his claiming that power, if the implement is designed, intended or adapted for use both in acts of innocent sorcery and in acts of forbidden sorcery, depending on the use made of it in any given set of circumstances.

(3) The burden of proof that Subsection (2) applies in relation to an implement of sorcery is on the person relying on that subsection.

5. Existence and effectiveness of powers of sorcery.

Even though this Act may speak as if powers of sorcery really exist (which is necessary if the law is to deal adequately with all the legal problems of sorcery and the traditional belief in the powers of sorcerers), nevertheless nothing in this Act recognizes the existence or effectiveness of powers of sorcery in any factual sense except only for the purpose of, and of proceedings under or by virtue of, this Act, or denies the existence or effectiveness of such powers.

PART III.—OFFENCES, ETC., IN RELATION TO SORCERY.

Division 1.—Offences.

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.

7. Criminal acts of sorcery.

A person who—

(a) does any act of forbidden sorcery; or

(b) aids, abets, counsels or procures, or by act or omission is in any way knowingly concerned in or party to, the doing of any such act,

is guilty of an offence.

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

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

8. Attempting to commit offence by means of sorcery.

(1) If an act of sorcery is intended to produce or purports to produce any unlawful result, the person doing the act is guilty of an attempt to produce that result and is punishable accordingly.

(2) Notwithstanding anything in any other law, the fact that the unlawful result did in fact follow the act of sorcery does not prevent a charge of an attempted offence being

brought under Subsection (1), but nothing in this section affects the operation of Section 20.

9. Administering sorcerous substances, etc.

(1) This section does not apply where the act of sorcery involved is an act of innocent sorcery only.

(2) A person who unlawfully administers to another person or to an animal—

(a) any substance that has been subjected to an act of sorcery; or

(b) any substance in the course of or in fulfilment of an act of sorcery,

is guilty of an offence.

Penalty: Imprisonment for a term not exceeding eight years.

10. False report of sorcery, etc.

(1) This section does not apply in cases where the sorcery involved or allegedly involved is innocent sorcery only.

(2) The *Defamation Act* does not apply to or in relation to an offence against Subsection (3) or (4).

(3) A person who (except in the course of, or for the purpose of the institution of, legal proceedings or in any other case in which such an accusation or threat is privileged or excused by law) falsely accuses, to a third person, or threatens to accuse another person of—

(a) being or of having been a sorcerer; or

(b) performing or having performed an act of sorcery; or

(c) having been concerned in or a party to an act of sorcery,

is guilty of an offence.

(4) A person who spreads a false report that another person—

(a) is a sorcerer or performs or has performed an act of sorcery; or

(b) is or has been concerned in, or a party to, an act of sorcery,

is guilty of an offence.

Penalty: Imprisonment for a term not exceeding one year.

11. Possession of implement of forbidden sorcery.

A person who, without lawful excuse (proof of which is on him), has in his possession an implement—

(a) made or adapted for use in a particular act of forbidden sorcery; or

(b) intended for use in an act of forbidden sorcery,

is guilty of an offence.

Penalty: Imprisonment for a term not exceeding one year.

Division 2.—Forfeiture and Reparations.

12. Forfeiture of profits of sorcery.

(1) Where a person—

(a) is convicted of an offence against this Act; or

(b) is convicted, by virtue of this Act, of an offence, the court that convicts him may order any money or other thing that has been paid or given to him in consideration of the performance of an act of forbidden sorcery to be forfeited to the State and, subject to Section 14—

(c) the money shall be paid into the Consolidated Revenue Fund; or
 (d) the other thing may be dealt with in such manner as the Head of State, acting on advice, directs, as the case may be.

(2) If the convicted person is no longer in possession of the money or thing, the amount of the money or the value of the thing, as assessed by the court, is a debt due to the State and the court may make an order for its payment.

13. Forfeiture of implement of sorcery.

(1) Where a person—
 (a) is convicted of an offence against this Act; or
 (b) is convicted, by virtue of this Act, of an offence,
 the court that convicts him may order any implement of sorcery owned by him or in his possession or under his control to be forfeited to the State.

(2) A court may at any time order any implement of sorcery that can be used in an act of forbidden sorcery to be forfeited to the State.

(3) An implement of sorcery forfeited to the State under this section shall be dealt with in such manner as the Head of State, acting on advice, directs.

14. Reparations.

(1) Where a person is convicted of an offence involving an act of sorcery, the court that convicts him may order him to make such compensation as the court thinks proper to—
 (a) any person at whom the act of sorcery was directed; or
 (b) the social group to which any person at whom the sorcery was directed belongs or belonged at the time of the act.

(2) An order under Subsection (1) may be made at the time of conviction or sentence, or if the court thinks it proper to do so at a later date, and the court may in any event—

(a) admit further evidence, after conviction or sentence, in relation to the question of compensation; and
 (b) adjourn the matter in order to enable the parties to reach agreement on the compensation to be made,

and may make such further or other order as it thinks proper.

(3) An order under this section may include an order that any money that has been or is liable to be forfeited to the State under Section 12(1), or any amount that is recovered or recoverable by the State under Section 12(2), be paid as part or all of the compensation.

PART IV.—DEFENCES ARISING OUT OF ACTS OF SORCERY.

15. Special defence in relation to charges of adultery.

(1) In this section, "charge of adultery" means a charge of an offence against—
 (a) Section 17 of the *Native Regulation (Papua)*; or

(b) Section 14 of the *Native Administration Regulation (T.N.G.)*, or against any corresponding or analogous provision of any other law.

(2) It is a defence to a charge of adultery that an act of sorcery had been performed, without the consent (express or implied) of the accused person, of such a nature as to be generally believed, in the social groups of which the husband and the wife are respectively members, to have the effect—

- (a) of inducing the accused person to have the sexual intercourse in question; and
- (b) by custom, to excuse the act of intercourse in all the circumstances of the case.

(3) The burden of proof of a defence under Subsection (2) is on the accused person, and that burden need not be discharged beyond reasonable doubt.

(4) Subject to Subsection (5), the circumstances referred to in Subsection (2) include any circumstance (including any customary compensatory or conciliatory arrangement) that arose before the act of adultery, or that arose, or that the court dealing with the matter is satisfied will arise, after the act.

(5) The circumstances referred to in Subsection (2) do not include any act, matter or thing that—

- (a) constitutes, or is an ingredient of, an offence committed by or on behalf of the accused person against any other law; or
- (b) is repugnant to the general principles of humanity or is not in the public interest; or
- (c) is, in the opinion of the court dealing with the matter, improper to be taken into account.

16. Sorcery as provocation.

(1) An act of sorcery may amount to a wrongful act or insult within the meaning of Section 266 of the Criminal Code.

(2) It is immaterial that the act of sorcery—

- (a) did not occur in the presence of the person allegedly provoked; or
- (b) was directed at some person other than the person allegedly provoked.

(3) The likely effect of an act of sorcery relied on by virtue of this section shall be judged by reference, amongst other things, to the traditional beliefs of any social group of which the person provoked is a member.

(4) A defence provided by this section is in addition to and not in derogation of any defence that is—

- (a) available by reason of any effect attributable, under any other law, to the act involved; or
- (b) otherwise available to an accused person.

PART V.—PROCEDURE, EVIDENCE, ETC.

17. Evidentiary effect of possession of implement of sorcery.

(1) For the purpose of any proceedings under or by virtue of this Act, evidence that a person has at any time owned or had in his possession or under his control, otherwise than in an official capacity or in a capacity not implying or suggesting the possession of powers

of sorcery, an implement of sorcery is evidence that he has been at all relevant times a sorcerer.

(2) The burden of proof of a matter referred to in Subsection (1) is on the person alleging it.

(3) The provisions of Subsection (1) are in addition to and not in derogation of the other provisions of this Act.

18. Evidence, proof, etc.

Schedule 2 applies to and in relation to proceedings brought under, or by virtue of, this Act.

19. Saving of Customs Recognition Act.

Except so far as this Act expressly provides to the contrary, this Act does not affect the operation of the *Customs Recognition Act*¹.

PART VI.—MISCELLANEOUS.

20. Preservation of rights and liabilities under other laws, etc.

Except where the contrary intention appears, nothing in this Act takes away from any person any defence, right or liability, whether civil or criminal—

- (a) that is or has been available, acquired or incurred; or
- (b) that will or may be available, acquired or incurred,

to or by him under any other law, but nothing in this section shall be deemed to show a contrary intention within the meaning of the *Interpretation Act* or to affect Section 16 of the Criminal Code, or any other similar law.

21. Regulations.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

SCHEDULES.

SCHEDULE 1.

Sec. 1(1).

DEFINITION OF INNOCENT SORCERY.

Sch. 1.1. For the purposes of this Act, innocent sorcery is sorcery that—

- (a) is protective or curative only, or is not intended to produce, and does not purport to be calculated or able or adapted to produce, any harmful or unlawful result, or to exert any harmful, unlawful or undue influence on any person; and

¹ See, also, Constitution, Section Sch. 2.1.

(b) is generally regarded in the social groups of which—

- (i) the accused person; and
- (ii) the person at whom the act was directed; and
- (iii) the person whose conduct was intended to be influenced,

are respectively members as being, by custom, legitimate or harmless and not offensive in all the circumstances of the case.

Sch. 1.2. Subject to Section Sch. 1.3 the circumstances referred to in Section Sch. 1.1. include any circumstance (including the courtship of an unmarried person by an unmarried person, betrothal, marriage, the fact that the act of sorcery was intended only to counteract or nullify the effect of a previous act of sorcery or any customary compensatory or conciliatory arrangement) that arose before the act of sorcery, or that arose, or that the court dealing with the matter is satisfied will arise, after the act.

Sch. 1.3. The circumstances referred to in Section Sch. 1.1 do not include—

- (a) any act, matter or thing that constitutes, or is an ingredient of, an offence committed by or on behalf of the accused person against any other law; or
- (b) any act, matter or thing that is repugnant to the general principles of humanity or is not in the public interest; or
- (c) any other act, matter or thing that, in the opinion of the court dealing with the matter, is improper to be taken into account.

Sch. 1.4. For the purposes only of Section Sch. 1.3(b) and (c), an act of sorcery shall not, simply as such, be deemed to be not in the public interest or improper to be taken into account.

Sch. 1.5. For the purpose of allowing any circumstance referred to in Section Sch. 1.1. to arise, if the court dealing with the matter considers it proper and in the interests of justice and the amicable settlement of social or personal disputes or differences to do so the court may by order adjourn the hearing of the matter for such period and on such terms and conditions (including the entering by any person into a recognizance for any purpose connected with the matter) as the court thinks proper.

SCHEDULE 2.

Sec. 18.

EVIDENCE, PROOF, ETC.

Sch. 2.1. (1) Evidence that—

- (a) an act is, in the social group to which the doer of the act belongs, believed to be an act of sorcery; and
- (b) a person believed that—
 - (i) the act was directed at him or at some other person; or
 - (ii) his conduct or the conduct of some other person was intended to be influenced by or as a result of the act,

is evidence that the act is an act of sorcery within the meaning of this Act and that the doer of the act knew it to be an act of sorcery.

(2) Where in a prosecution for an offence against this Act there is evidence of a general belief in the social group to which the doer of the act belongs that an act is an act of sorcery, the doer of the act shall, in the absence of evidence to the contrary, be presumed to have intended the act to be an act of sorcery.

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Sch. 2.2. If in a prosecution for an offence against or in reliance on Section 8 the accused person is proved to have done an act of sorcery then—

(a) it is immaterial that the thing done was incapable of causing, or was not adapted to the fulfilment of, the result intended, if either—

(i) the accused person; or

(ii) the person at whom the act was directed; or

(iii) any person whose conduct was intended to be influenced,

believed that it was capable of producing the intended result or some similar result, and in the case of a person referred to in Subparagraph (ii) or (iii) the belief was known to the accused person; and

(b) until the contrary is proved, both the belief and the knowledge referred to in Paragraph (a) shall be presumed on the part of the accused person.

Sch. 2.3. (1) In considering for the purposes of this Act the question of the existence or effect of a traditional belief or of its being generally held in a social group, a court—

(a) is not bound to observe strict legal procedures or to apply technical rules of evidence; but

(b) shall—

(i) admit and consider such relevant information as is available (including hearsay and expressions of opinion); and

(ii) otherwise inform itself as it sees fit.

(2) For the purposes of deciding a question referred to in Subsection (1), a court—

(a) may refer to books, treatises, reports or other works of reference, or statements by Local Government Councils or committees of Local Government Councils, as to any custom (whether published or not), and may accept any matter or thing stated in them as evidence on the question; and

(b) may of its own motion call such evidence or require the opinions of such persons as it thinks fit,

but this section does not limit the discretion of the court in obtaining evidence or information for itself on the question.

Sch. 2.4. The burden of proof that an act of sorcery is an act of innocent sorcery is on the person alleging it.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

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Sorcery.

APPENDIX.

SOURCE OF THE SORCERY ACT.

Part A.—Previous Legislation.

Sorcery Act 1971 (No. 22 of 1971).

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference. ¹	Section, etc., in Revised Edition.	Previous Reference. ¹
1	4	17	21
2	5	18	22
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6	10	Schedule 1—	First Schedule—
7	11	Sch. 1.1	Para. 1
8	12	Sch. 1.2	Para. 2
9	13	Sch. 1.3	Para. 3
10	14	Sch. 1.4	Para. 4
11	15	Sch. 1.5	Para. 5
12	16	Schedule 2—	Second Schedule—
13	17	Sch. 2.1	Para. 1
14	18	Sch. 2.2	Para. 2
15	19	Sch. 2.3	Para. 3
16	20	Sch. 2.4	Para. 4

¹ Unless otherwise indicated, references are to the Act set out in Part A.

