

PUBLIC PROSECUTOR

- v -

**IAVILU TESS, TAO TESS, IAUKOLE TESS, NOEL MOUKERA,
NOKLAM TESS, IOKAIM TARIK, SAMUEL NASAMAL, PHILIP
TESS, DAVID KASSU, WIWAN IAWIAP, MANH BOB, EZEKIEL
SAM, MOICH KASSU, LOICK JIMMY, PAUL LALA, IAVIS TESS**

Coram: Chief Justice Vincent Lunabek

Counsel: Mr Tristan Karae for the Public Prosecutor
Mr Henzler Vira for the Defendant

Date of pleas: 25 August 2011

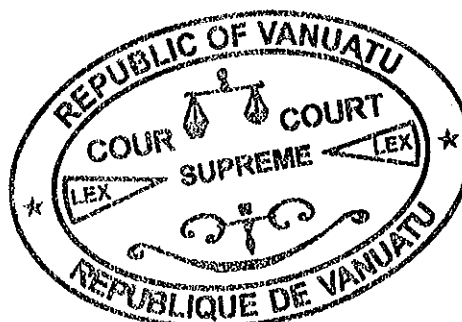
Date of sentence: 26 August 2011

JUDGMENT

This is the sentence of the following above named 16 Defendants: IAVILU TESS, TAO TESS, IAUKOLE TESS, NOEL MOUKERA, NOKLAM TESS, IOKAIM TARIK, SAMUEL NASAMAL, PHILIP TESS, DAVID KASSU, WIWAN IAWIAP, MANH BOB, EZEKIEL SAM, MOICH KASSU, LOICK JIMMY, PAUL LALA, IAVIS TESS.

Each of the 16 above-named Defendants is charged with following offences:

- One count of Unlawful Assembly, contrary to section 69 of the Penal Code Act (count 1);
- One count of Riots, contrary to section 70 of the Penal Code Act (count 2); and
- One count of Intentional Assault, contrary to section 107(b) of the Penal Code Act (count 3).



Each of the 16 Defendants entered guilty pleas to Unlawful Assembly (in count 1); to Riot, contrary to section 70 of the Penal Code Act (in count 2); and Intentional Assault, contrary to section 107(b) of the Penal Code Act (in count 3).

Unlawful assembly and riot are defined under section 68 of the Penal Code Act. Section 68 provides:

"68.(1) When three or more persons assembled with intent to commit an offence, or, being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause nearby persons reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace, they are an unlawful assembly.

(2) It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with common purpose in such a manner as aforesaid.

(3) When an unlawful assembly has begun to execute the purpose for which it assembled by a breach of the peace and to the terror of the public, the assembly is called a riot."

Unlawful Assembly is prohibited under section 69 of the Penal Code Act. It provides:

"No person shall take part in an unlawful assembly.

Penalty: Imprisonment for 3 years."

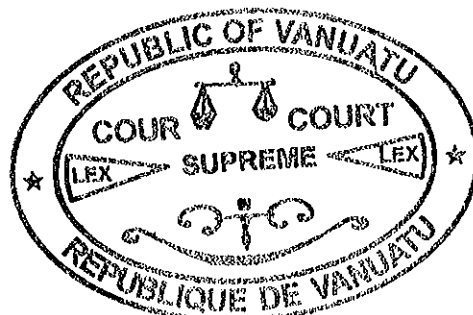
Section 70

"No person shall take part in a riot.

Penalty: Imprisonment for 10 years."

Intentional assault is prohibited under s.107 of the Penal Code Act. Subsection (c) is the prohibited provision in count 3 of the information.

Section 107(c) says:



"No person shall commit intentional assault on the body of another person.

Penalty: (b) if damage of a temporary nature is caused, imprisonment for 1 year."

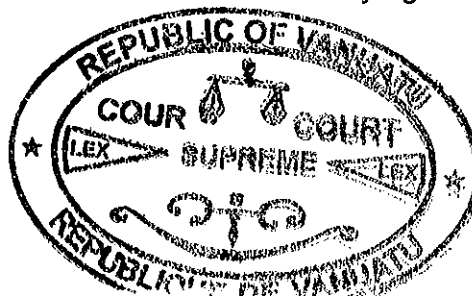
In this case, the brief facts are provided by the prosecution. They are accepted by the Defence lawyer on behalf of each of the 16 Defendants and they are not disputed by the Defendants. They are set out as follows:

On or about the 28th of April 2010 the complainant Chief Dan Jimmy of Lounamilo Village lodged a complaint on the same day at the Isangel Police station regarding an incident that occurred around 6:30 am in the morning.

The complainant stated that on the 28th of April 2010 in the early hours of the morning the defendants came to the complainants' village holding, knives, axes, wood and stones. The complainant stated that there were more than a hundred people at the time, during the assault but he could only recognize the above defendants. The defendants went from houses to houses assaulting 7 of the victims. Some of the victims suffered serious lacerations and injuries and some had suffered only minor injuries. During the course of the assault the villagers of Lounamilo were shocked and were frightened by the actions of the defendants as they did not know why the defendants acted in such a riotous manner.

The defendants began their assault on the main road where they block of vehicles coming in and out of the village and assault one of the victims Joel Tao who was heading out of the village to get fuel at Lenakel. The victim was driving down the road when the defendants stopped the victim and assaulted the victim by punching the victim while the victim was still in the vehicle. The defendants then pulled the victim out from the vehicle and continued assaulting the victim. According to the medical reports the victim Joel Tao suffered lacerations to the upper lips and pains to the abdomen.

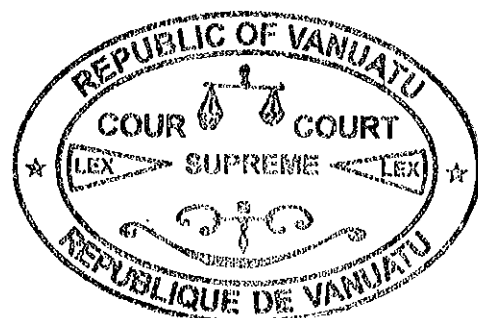
After the first assault the defendants moved into the village and they began further assaulting the villagers. One of the victims Nisak Fred who had just got out of bed, came outside of the house and the defendant Tao Tess grabbed hold of the victim and punched the victim on the face and the defendants were also carrying wood and



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stones to which they assaulted the victim with. According to the medical reports Mr. Nisak Fred suffered lacerations to the left eye required 3 stitches, swollen face, bruised lips, and also suffered pains to the abdomen. The victim Tao Numake was at home and saw the defendant Samuel Nasamal holding on to an axe and threatened to cut the victim neck. The defendant lavilu Tess punched the victim on the abdomen and the victim fell to the ground and the other defendants stood around the victim and started kicking the victim. According to the medical report the victim suffered swollen lips, tenderness to the right side of the body and chest, tender swelling to the skull. Another victim who was assaulted was Jeremie Tom. Jeremie was at home when the defendants came and punched him on the abdomen causing him to fall and while on the ground the other defendants started kicking him. The medical report showed that the Jeremie Tom suffered swollen upper and lower lips and tenderness to the right and left side of the abdomen. Another victim Gideon Taman was returning from the gardens when the defendants assaulted him. He suffered swollen right and left sides of the neck and tenderness to the neck. Another victim that was assaulted was Kawisel Numake; he was at home when he saw that the defendants were assaulting his brothers. He was still standing there when the defendants were throwing wood and stone at him and the defendant David Kassu came up to him and assaulted him with a knife causing injury to his elbow. Kawisel Numake suffered a deep cut to the elbow requiring 4 stitches, swelling of the right wrist and ankle. The defendants also assaulted Tapawag Charlie; Tapawag Charlie was at home when the defendants assaulted him by wiping him with a piece of wood which caused him to fall on the ground. He suffered bruises to the forehead, tenderness to the left and right abdomen and a swollen left shoulder. Between the 21st-25th of May 2011 following their investigations/information, the police arrested the defendants and brought them to Isangel Police Station where they were cautioned and interviewed regarding the allegations laid against them.

In considering your respective sentences, I take into account of the submissions of the prosecution and submissions of your lawyer on behalf of each and all of you. I also take note of the oral report provided by the Probation Officer to assist the Court in your respective sentencing.



In sentencing each and all of you, you must understand that you cannot break the laws to do justice to your own. If you have good reasons for complaints, you must put your complaints to the police at Isangel, Tanna. You cannot make justice to yourself by breaking the laws in the name of your customs and traditional practices.

Unlawful assembly, riots and intentional assault are serious offences as reflected by the maximum penalties imposed by law for such offences.

In this case, your respective offendings and the circumstances of your respective offendings are aggravated by the following factors:

1. There is a high degree of planning and pre-mediation.
2. This was a criminal enterprise by a group of men.
3. Serious injuries sustained by the victims during the assault.
4. The frightening experience that the people of Lounamilo went through during the course of the assault.

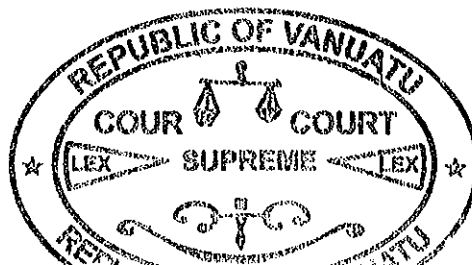
I sentence each and all of you to 2 years imprisonment as a starting point for the offence of unlawful assembly, contrary to section to s.69 of the Penal Code Act.

I sentence each and all of you to 4 years imprisonment as a starting point for the offence of riot, contrary to section 70 of the Penal Code Act.

I sentence each and all of you to 11 months imprisonment as a starting point for the offence of intentional assault, contrary to section 107(b) of the Penal Code Act.

The oral report of the Probation Officer shows the following in respect to each and all of you:

lavis Tess – you are 43 years of age. You are from Lenepen village, Middle Bush. You are married and you have 4 children and 1 of your children attends secondary school. You are a farmer and you sell food at the market to earn money to support your family. You have responsibility to organize working party for the community. You explained



your action by saying that you group together and followed the suspicion that the other group stole your cattle bulluk after you organized 8 meetings with the other group to sort out these differences. You are a first time offender. You plead guilty at the first opportunity given to you.

Tao Tess – you are 36 years of age. You are from Lenepen village. You are married with 8 children attending primary school. You are a farmer. You explained you planned together to go and attack the other group after you had 8 meetings with them to try to sort out the differences but without success.

Iaukole Tess – you are 26 years of age. You are from Lenepen village. You are married with 2 children. You are a farmer. You sell food at the market to support your family. You provided the same explanation of the offending like the others. You are a first time offender.

Noklam Tess – 36 years old. You are from Lenepen. You are married with 3 children attending school. You are a gardener. You sell food at the market. You are a first time offender. You provide the same reasons for the offending.

Noel Moukera – you are 43 years of age. You are from Lamak village, Middle Bush area. You are married with 4 children attending primary school. You are a subsistence farmer. You give the same reasons for your offending. You are a first time offender.

Iokaim Tarick – you are 40 years of age. You are from Lenepen village. You are married with 5 children attending primary school. You are a subsistence farmer. You are a first time offender. You provide the same reasons for the offending.

Samuel Nasamal – you are 25 years of age. You are from Lenatuan village, Middle Bush area. You are married with 1 child boy of 8 months. You are a subsistence farmer. You are responsible for working with the chief of your village to organize working party. You are not a first time offender as you are just sentenced to imprisonment for cultivating cannabis by the Court today.

Philip Tess – you are 23 years of age. You are from Lenepen village. You are married with 2 children. You are a subsistence farmer. You are a first time offender. You give the same reasons for the offending.

David Kassu – you are 43 years of age. You are from Lenepen village. You are married with 2 children attending primary school. You are a gardener. You sell food at the market. You are first time offender. You give the same reasons for your offending



like others.

Weiwan lawiap – you are 37 years old. You are from Lenepen village. You are married with 1 child. You are a farmer. You are a first time offender. You give same reasons like others for offending.

Manh Bob – you are 24 years of age. You are from Lenepen village. You are married with 3 children. You are a gardener. You sell food at the market. You are a first time offender. You give same reasons for the offending like others.

Ezekiel Sam – you are 22 years of age. You are from Lenaken village. You are married. Your wife is 6 months pregnant. You are a farmer. You are a first time offender. You provide the same reasons for the offending like others.

Moih Kassu – you are 26 years of age. You are from Lenepen village. You are married with 2 children. You are a gardener. You are a first time offender. You provide the same reasons for the offending.

Loick Jimmy – you are 22 years of age. You are from Lenepen village. You are married and your wife is 7 months pregnant. You are a farmer. Sometime you work to assist the Chief in the community. You are a first time offender. You provide same reasons for the offending like others.

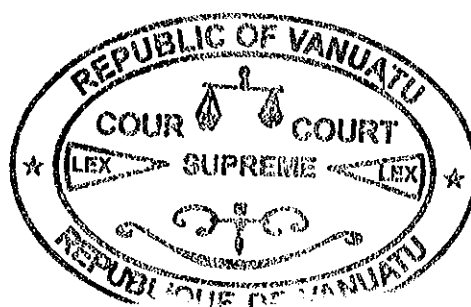
Paul lala – you are 29 years of age. You are from Lowehau village, Middle Bush area. You are married. Your wife is 5 months pregnant. You are a farmer. You are a first time offender. You provide same reasons for offending.

Javis Tess – you are 36 years of age. You are from Lenaken village. You are married with 6 children. You are a gardener. From time to time you do market. You are a first time offender. You provided same reasons for the offending.

In mitigation, you have all pleaded guilty to offences of unlawful assembly, contrary to section 69 of the Penal Code Act; Riots, contrary to section 70 of the Penal Code Act; and intentional assault, contrary to section 107(b) of the Penal Code Act.

I reduce your sentence of 2 years to 15 months imprisonment for unlawful assembly, contrary to section 69.

I reduce your sentence of 4 years imprisonment to 2 years imprisonment for riots, contrary to section 70 of the Penal Code Act.



I reduce your sentence of 11 months imprisonment to 8 months imprisonment for intentional assault, contrary to section 107(b) of the Penal Code Act.

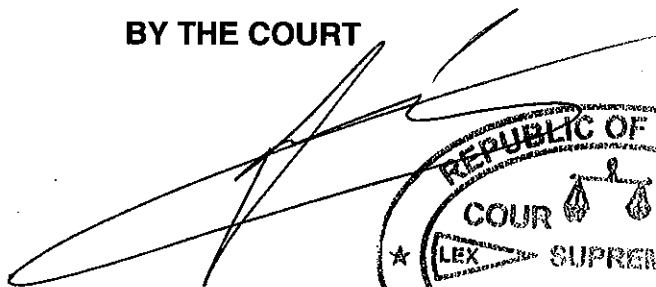
All above sentences shall run concurrently. This means that each and all of you are sentenced to 2 years imprisonment and I suspend it for a period of 2 years.

In addition, I order that each and all of the 16 above-named Defendants shall perform 100 hours of community work.

Each and all of you (16 Defendants) have 14 days to appeal your sentence if you are not happy with it.

DATED at Isangel, Tanna this 26th day of August 2011

BY THE COURT



**Vincent LUNABEK
Chief Justice**

