IN THE SUPREME COURT OF NAURU
AT YAREN
[CRIMINAL JURISDICTION]

Criminal Case No. 08 of 2024

BETWEEN: THE REPUBLIC

PROSECUTION

TERINAN ARUNA ERI

ACCUSED

BEFORE: Keteca J

Date of Sentencing Hearing: 06th October 2025

Date of Sentence 21st November 2025

Catchwords: Indecent Act in Relation to a Child under 16 years old contrary to Section 117 of the Crimes Act 2016. **(the Act)**

Appearances:

Counsel for the Prosecution: **A. Driu**
Counsel for the Accused: **R. Tagivakatini**

SENTENCE

BACKGROUND

1. The accused was found guilty of two Counts of indecent acts in relation to a child under 16 years old- Contrary to Section 117(1)(a)(b)(c) of the Act.
2. On the facts, at paragraph [36] of my judgment, I said:

'I have found that the accused intentionally tried to insert his penis into the anuses of PW4 and PW5. They still had their panties on. There was no penetration.'

3. The victims were 5 and 7 years old respectively.

SUBMISSIONS BY THE STATE

Pre-Sentence Custody

4. The accused has been in custody since 07th August 2024. Section 282A of the Act provides that this remand period shall not be considered for offences under Part 7. The accused wishes to be deported to Kiribati.

Victim Impact Statement

5. Both victims recounted what happened to them. They both wish to carry on with their lives.

Aggravating Factors

6. The DPP refers to the tender ages of the victims and the age disparity between them and the accused who is 42 years old. There is a serious breach of trust as the accused was the partner of the victim's grandmother. The victims referred to the accused as 'grandpa.' He used his position of influence and control 'to exert his sexual urges on the victims.' The offending took place in the victim's home where they 'were supposed to feel safe and secure.'

Mitigating Factors

7. The accused has been in remand since August 24. He has no criminal records.

Sentencing Principles

8. The DPP referred to the following provisions of the Act:
   i. Section 277- Kinds of sentences;
   ii. Section 278- Purposes of sentencing;
   iii. Section 279- General sentencing considerations;
   iv. Section 280- Sentencing Considerations- imprisonment.

Sentencing Tariff

9. The DPP submits the following cases:
   i. *R v Jioji Gucake*, Criminal Case No. 16 of 2024 (26th September 2025)-For 2 counts of the same offence of indecent acts in relation to a child under 16 years old contrary to Section 117 of the Act, the accused (step father of the 15 year old victim) was sentenced to 15 years imprisonment, with a minimum of 10 years imprisonment before being eligible for parole or probation;
   ii. *R v Jude Victorio Mwareow*, Criminal Case No. 4 of 2024 (06th August 2025)-the 39-year-old accused who was the neighbour of the 13-year-old victim was convicted on 2 counts of the same offence as here. He was sentenced to 15 years imprisonment with 10 years to be served.
   iii. *R v Branlem Kam,* Criminal Case No. 5 of 2024 (17 December 2024) – the accused was convicted on 1 count of 'rape of a child under 16 years' contrary to Section 116 of the Act and 3 counts of 'indecent acts in relation to a child under 16 years old. The 27-year-old accused was the stepfather of the 9-year-old victim. The accused was sentenced to life imprisonment for rape and 15 years for the 3 counts of indecent

act. He was to serve a minimum of 20 years before being eligible for parole or probation.

iv. *R v Xavier Namaduk*, Criminal Case No. 24 of 2021 (04th October 2024)- The 39-year-old accused was convicted on 2 counts of 'indecent acts in relation to a child under 16 years old. The victim was 12. The accused was sentenced to 15 years imprisonment and 10 years to be served before being eligible for parole or probation.

v. *R v Tomwell Raidinen*, Criminal Case No. 3 of 2022 (22 March 2024)- The 28-year-old accused took the 12-year-old victim to his home, kissed her, applied oil on his penis and tried to penetrate her vagina. There was no penetration. The accused was sentenced to 30 years imprisonment with 10 years to be served before being eligible for parole or probation.

vi. *R v Donman Togaran*, Criminal Case No.1 of 2020 (22 September 2022)- The accused pleaded guilty to 1 count of 'indecent act in relation to a child under 16 years old. The 13-year-old victim was the accused's step daughter. The accused was sentenced to 30 years imprisonment with 10 years to be served before parole or probation.

Maximum Penalty

10. The DPP refers to the Nauru Court of Appeal (NCA) decision in *Vision Bidimini Engar* v R, Criminal Appeal No. 7 of 2024 (04th September 2015) and submits that it is inevitable for this court to award the maximum of 30 years imprisonment in the present case. In light of this NCA decision in the *Vision case*, Counsel now appreciates the 30 years imprisonment terms that my brother Judge A/CJ Khan had awarded in the *R v Tomwell Raiden* and *R v Donman Togaran* cases in paragraphs [9] (v) and (vi) above. Counsel referred in particular to paragraphs [18-21] of NCA the judgment.

11. Counsel concludes that I must impose the maximum sentence of 30 years imprisonment with 10 years to be served before parole or probation.

SUBMISSIONS FOR THE ACCUSED

12. Counsel considered the relevant provisions of the Act on Sentencing and submits that the most relevant local case is *R v Namaduk* mentioned above. In the Namaduk case, the accused was the partner of the victim's aunt. For the present case, the accused was the partner of the victim's grandmother.
13. Counsel did not consider the State's contention that based on the NCA decision in the *Vision Bidimini Engar v R*, Criminal Appeal No. 7 of 2024 (04th September 2015) case, 'it is inevitable that I award the maximum of 30 years imprisonment term here.
14. Counsel concludes that I should award a 15 years imprisonment term with a non- parole period of 10 years imprisonment.

CONSIDERATION

15. Considering the provisions in the Act relating to Sentencing and the relevant case law, I convict the accused accordingly on both counts. In *R v Jioji Gucake*, Criminal Case No. 16 of 2024 (26th September 2025)-, I said-

10. ' I remind myself that I must give reasons for the sentence I will pass- *WO (a child) v Western Australia* (2005) 153 A Crim R 352 (WA CA) (at 354[7] and *R v Thomson* [2000] NSWCCA 309; (2000) 49 NSWLR 383; 115 A Crim R 104

(CCA) per Spigelman CJ at 394-395; 113-114 [42]-[44]. I referred to the above judgments in *Republic v Randolph* [2025] NRSC 32; Criminal Case 09 of 2024 (17 July 2025).

11. As part of my reasons, I refer to Section 278(b) of the Act that a purpose of a sentence is to *'prevent crime by deterring the offender and other people from committing similar offences.'* In ***R v Radich*** [1954] NZLR 86 (CA) the court said (at 87):

"We should say at once that this last argument omits one of ***the main purposes of punishment, which is to protect the public from the commission of such crimes by making it clear to the offender and to other persons with similar impulses that, if they yield to them, they will meet with severe punishment.*** *In all civilized countries, in all ages, that has been the main purpose of punishment, and it still continues so. The fact that punishment does not entirely prevent all similar crimes should not obscure the cogent fact that the fear of severe punishment does, and will, prevent the commission of many that would have been committed if it was thought that the offender could escape without punishment, or with only a light punishment.'*

12. The Court added: *"If a court is* ***weakly merciful****, and does not impose a sentence commensurate with the seriousness of the crime,* ***it fails in its duty*** *to see that the sentences are such as to operate as a powerful factor* ***to prevent the commission of such offences****. On the other hand, justice and humanity both require that the previous character and conduct, and probable future life and conduct of the individual offender, and the effect of the sentence on these, should also be given the most careful consideration, although this factor is necessarily subsidiary to the main considerations that determine the appropriate amount of punishment."*

13. Section 278 (c) (to protect the community from the offender) and Section 278 (d) (to promote the rehabilitation of the offender) may be considered together. In ***Yardley v Betts*** (1979) 22 SASR 108; 1 A Crim R 329 (CCA) the Court said (at 112; 333):

'The protection of the community is also contributed to by the successful rehabilitation of the offenders. This aspect of sentencing should never be lost sight of and it assumes particular importance ***in the case of first offenders and others who have not developed settled criminal habits.*** *If a sentence has the effect of turning an offender towards a criminal way of life, the protection of the community is to that extent impaired. If the sentence induces or assists an offender to avoid offending in the future, the protection of the community is to that extent enhanced.'*

16. Taking the above into account and noting the prevalence of this offence in this jurisdiction, an imprisonment term is appropriate here.
17. How long should the accused be imprisoned for? Based on the NCA decision in *the Vision Bidimini Engar v R case,* and as submitted by the DPP, is it inevitable that I must award the maximum penalty of 30 years imprisonment term here? In her submissions, the DPP quoted the following paragraphs [18-21] of the *NCA Vision Engar* judgment:

[18.] As to whether, in the present case, the Supreme Court had any discretion not to impose the maximum penalty for the offence of life imprisonment, ***we concur with the***

respondent's submission that the maximum penalty under s.116(1)(a)(b) of the Crimes Act is a mandatory life imprisonment with a mandatory minimum term of 15 years before a prisoner is eligible for parole or probation*. The penalty fixes a "yardstick" with a mandatory maximum (ceiling) and a mandatory minimum sentence (floor) within which a sentencing judge has a discretion to which the sentencing principles are to be applied.*

[19.] It is in this regard that we affirm the approach and observations of the Supreme Court in Republic v Harris, supra at [7] to [10] in relation to meaning of maximum and minimum sentences. Republic v Harris was the first case in Nauru that dealt with the maximum and minimum sentences. There the prisoner pleaded guilty to a charge of causing a child under 16 years old to engage in sexual activity contrary to s.118(1)(a)(b)(c)(iii) of the Crimes Act, the maximum penalty of which was life imprisonment with at least 15 years to be served before being eligible for parole or probation similar to the penalty regime under s.116(1)(a)(b) of the Crimes Act. A sentence of life imprisonment with a minimum term of 15 years to be served without any parole or probation was imposed. At the time of the offence, the complainant was 11 years old and the prisoner was her first cousin., their mothers being siblings.

[20] *The observations above highlight the following salient points:*

1. Legislatures do not enact maximum available sentences as mere formalities;

2. Judges need sentencing yardsticks;

3. Statutory maximum and statutory minimum penalties are the ceiling and floor respectively within which the sentencing judge has a sentencing discretion to which sentencing principles are to be applied;

4. Careful attention to maximum penalties will almost always be required because:

(a) the legislature has legislated for them;
(b) they invite comparison between the worst possible case and the case before court at the time; and
(c) they do provide, taken and balanced with all other relevant factors, a yardstick.

[21]. *We therefore disagree with the appellant's submission that the imposition of the maximum penalty is discretionary. Having found the appellant guilty of both counts of rape under s.116(1)(a)(b) of the Crimes Act, the Supreme Court was required by law to impose the maximum penalty of life imprisonment as the legislature had legislated for it. That was acknowledged and appreciated at [38] of the judgment where the Supreme Court stated:*

Considering the totality of the above, and the prevalence of this offence in this jurisdiction which led to the increase in the penalty by the legislature. I believe that I must impose the maximum penalty here.'

18. It is to be noted that the present case deals with the conviction of the accused on 2 Counts of 'Indecent Acts in relation to a child under 16 years old Contrary to: Section 117(1)(a)(b)(c) of the Act. The *NCA Vision Engar* case dealt with an accused person convicted on 2 Counts of Rape of a child under 16 years old – Contrary to Section 116 (1)(a)(b) of the Act. Both offences fall within Part 7 of the Act and titled- Sexual Offences. For Rape of a child under Section 116, sexual intercourse, as defined under Section 8 is an element. Consent is not an issue for this offence. For indecent acts in relation to a child under Section 117, the relevant conduct is the 'intentional touching of the victim, the touching is indecent and the accused is reckless about that fact. **The penalties are different.** The way the penalties are drafted in the Act, are also different.
19. For Rape of a child under Section 116- it reads:
    Penalty: life imprisonment of which imprisonment term at least 15 years to be served without any parole or probation.

    For Indecent acts in relation to child under 16 years old under Section 117- it reads:

    Penalty: **a maximum term** of 30 years imprisonment, of which imprisonment term **at least one third** to be served without any parole or probation.

20. I note that for Rape under Section 116, there is **only one penalty**- it is 'life imprisonment. For 'Indecent acts against a child under Section 117- it states- **' a maximum term of 30 years imprisonment.'** I hold that had it been the intention of the legislature that 30 years imprisonment was a mandatory sentence, like the ' life imprisonment' for Rape,' the legislature would not have used the words-**' a maximum sentence of..'** Further, ' **a maximum sentence of'** suggests that there can be a sentence less than the maximum. For Rape under Section 116, the minimum term to be served without any probation or parole is fixed as- 'at least 15 years to be served.'

21. For 'Indecent acts against children under Section 117, the legislators have used the words-' **at least one third** to be served without any parole or probation.' The use of the words 'at least one third' means that the head sentence is not a mandatory 30 years imprisonment as suggested by the DPP. Rather, it means that the sentence may be less than the maximum term of 30 years. I hold that a judge may award a sentence less than 30 years imprisonment for a Section 117 offence. Having selected a head sentence, which can be less than 30 years, one third of that sentence is to be served without parole or probation. I further hold that if it was the intention of the legislature to make 30 years imprisonment as a mandatory term, the provision would have read 'at least 10 years to be served; instead of ' at least **one third** to be served.'
22. I note all the cases submitted by both Counsels in this case. Those cases suggest the appropriate 'tariff' on the penalty for this type of offence. In *Yardley v Betts* (1979) 22 SASR 108; 1 A Crim R 329 (at 114; 335): King CJ said:
    ' *The courts endeavour to observe fairness and equality between persons sentenced for similar types of crime. This endeavour often leads to general acceptance of a*

range of penalties, sometimes called a tariff, considered to be appropriate for crimes of a particular kind.'

23. I also note my remarks in *R v Jude Victorio Mwareow*, which were aptly quoted by the DPP- *'The accused is a first offender. He has not yet 'developed settled criminal habits.'... Parliament has exercised its jus dare role in providing very harsh sentences for those convicted of sexual offences against children. This court is not 'weakly merciful.' I have made it clear in the past and I do so again here- would be offenders who have certain sexual impulses against children, be warned- if you yield to such impulses and you are convicted, you will be incarcerated for a very long time. To paraphrase what I said in Republic v Kam [2024] NRSC 39; Criminal Case 05 of 2024 (17 December 2024)- This message should be declared aloud from the rooftops and pinnacles throughout Nauru. Accused persons who are convicted for sexual offences against children will be punished severely. The sentence will reflect Nauru society's condemnation of such obnoxious and immoral criminal conduct. It also represents a symbolic, collective statement, as legislated by parliament, that when you sexually assault a child, be prepared to spend many Christmases and your birthdays behind bars.*

24. One final point. There is a disturbing trend in cases of this nature coming before this court where the perpetrators are foreign nationals, establishing relationships with Nauruan women and then preying on young Nauruan girls. In the pre-sentence report, the accused has indicated his wish to return to Kiribati. That issue is one for the executive to consider.
25. Further, time maybe opportune that discussions and dialogue be entered into on the subject of keeping a Register for Sexual Offenders Against Children. This is a practice in some jurisdictions in the Pacific and the intent is to keep track of such offenders in the community after they have served their time as guests of the State.

CONCLUSION

26. Terinan Aruna Eri, you are sentenced as follows:
    i. Count 1- 15 years imprisonment;
    ii. Count 2- 15 years imprisonment;
    iii. The sentences are concurrent to each other and you will serve a minimum of 10 years imprisonment before you are eligible for parole or probation.

DATED this 21st day of November 2025

Kiniviliame T. Keteca

Judge

SUPREME COURT OF NAURU