

PUBLIC PROSECUTOR

V

**JACOB TOVORVOR
MARIE TOVORVOR**

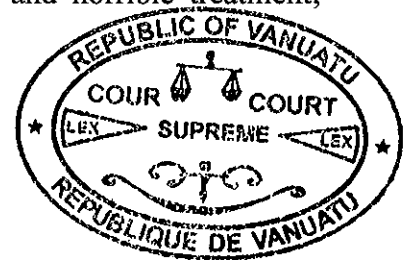
Hearing: 8 March 2013

Before: Justice Robert Spear

Appearances: Losana Matariki for the Prosecution
Jacob Kausiama for the Defendant - Jacob Tovorvor
Christina Thyna for the Defendant - Marie Tovorvor

SENTENCE

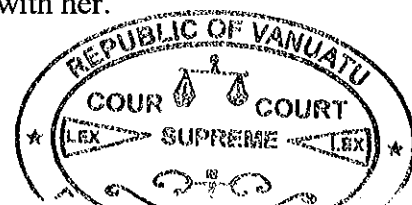
1. Jacob Tovorvor and Marie Tovorvor, you are to be sentenced on convictions entered on 6 separate indictments. In short, you are to be sentenced on 7 separate counts of having sexual intercourse without consent. There are 6 victims. In respect of one of the victims, the offending was repeated for a second discrete time resulting in a second charge of sexual intercourse without consent.
2. This offending happened over 2011 through to 2012; a period of 14 months. During that time you targeted young relatives, young girls of between 11 and 14 years of age. On occasions, those young girls were staying in your home. On other occasions, the young girls were visiting you or had been encouraged to visit your home. Each of those young girls was a relative of yours and came from a nearby village. As such, while they were with you, they were each entitled to expect that their safety, their well-being, could be safely entrusted in to your care. Sadly, you both failed them, you subjected them to quite disgusting and horrible treatment; particularly for your sexual gratification, Jacob Tovorvor.



3. I will detail the sentencing in a minute but it can perhaps easily be described as depraved predatory conduct of the most serious kind involving shocking breaches of trust. The sentence that must be imposed on the two of you must denounce this offending in a very clear and emphatic in the hope that it might deter others from offending in a sexual way against the young and vulnerable members of our community. The sentence must express society's outrage at your conduct.
4. I will deal with the facts of the offending in chronological order as the offending arose. There is some slight uncertainty in respect of when some of the offences are placed on a chronological basis but that will be identified in this decision. In each case, the complainant will simply be referred to by the criminal file number that relates to the charges against her.
5. I have six separate files on you and I have six separate sets of indictments and submissions. This has not made it that easy to work through. Be that as it may, I acknowledge now that neither of you dispute the summaries of facts that have been presented in each of the six cases and which describe your offending. This is with one qualification relating to you, Marie Tovorvor, and the pressure that you felt under to participate in this offending. I will return to that in due course.

Complainant 140

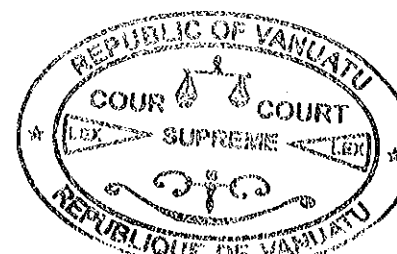
6. The offending relating to this complainant occurred in Easter 2011. The complainant was 12 years of age at that time. She was in class 5 at her local primary school. During the Easter holidays in 2011, the complainant was invited to spend the weekend with you at your home village on Erromango. One night, Marie Tovorvor, you invited the complainant to go fishing with you and your husband. You engineered an occasion which left the complainant alone with Jacob Tovorvor.
7. Jacob Tovorvor, when you were alone with the complainant, you took out your penis and made her hold it with a leaf. The complainant tried to ran away but you held on tightly to her. You removed all her clothes, laid her down on the sand, took off your own clothes and started touching her indecently. You performed oral sex on her and eventually you raped her by committing full sexual intercourse with her.



8. When the two of you (that is the complainant and you, Jacob Tovorvor) returned to your home, the complainant went to bed. While she was in bed, she heard you Marie Tovorvor call out to her and tell her that she was come and massage your stomach. She did not come voluntarily so Marie Tovorvor you pulled the complainant into the bedroom that you shared with Jacob Tovorvor. You held onto the complainant and made her sit down on your husband's penis forcing it in to her vagina. Eventually, the complainant was able to extricate herself but you Marie Tovorvor expressed your anger at the complainant not doing exactly what your husband wanted and you ordered her to leave your village. Early the next morning the complainant went back to her home village.

Complainant 144

9. This complainant was then an 11 year old girl in class 3 at her local primary school. You are related to her. It would appear during a school holiday in 2011 (which holiday is not exactly known), the complainant followed the two of you and your children back to your home village and to your home. The complainant was to stay overnight with you. At some stage during the night, you Marie Tovorvor woke her up and told her to follow you to the toilet. After that you then said that she should follow you to your marital bedroom. As she entered the bedroom, she saw you Jacob Tovorvor lying on the bed naked. Marie Tovorvor, you then told her to take off her panties and to watch you and your husband have sexual intercourse.
10. After a while you stopped having sexual intercourse with your husband and ordered the complainant to get on to the bed and to lie down. Jacob Tovorvor, you then performed oral sex on the complainant. Marie Tovorvor, you then told the complainant to sit on top of your husband and the complainant did so and at the same time you forced his penis into the complainant's vagina and he had full sexual intercourse with her. The summary of facts (which you accept) states that you Marie Tovorvor stood on the side of the bed watching and instructing the complainant what to do - no doubt to assist your husband's sexual excitement.



Complainant 141

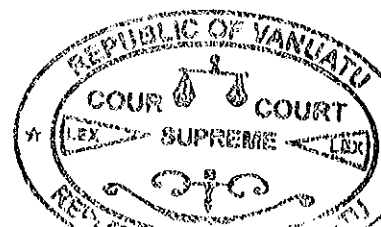
11. This complainant is a 14 year old girl who was also a class 3 student at the same primary school as the previous complainant. You are relatives of that young girl. Sometime in about May 2011, the complainant was asked by you Marie Tovorvor to follow you to your house as you wanted the complainant to massage your back. When you entered the house, the complainant noticed that there was a large mosquito net spread over the bed. Marie Tovorvor you went under the mosquito net, lifted it up, and the complainant then saw Jacob Tovorvor lying on the bed naked. Again, much the same pattern of offending occurred with you Marie Tovorvor pulling the complainant onto the bed. In this case, you put the complainant's hand onto your husband's penis and had her masturbate him. You told her to sit on your husband's penis but she refused. She was then required to remain while the two of you had sexual intercourse in front of her.

12. A few evenings later, you pulled the complainant into your house, told her to take off her kali and again she found Jacob Tovorvor lying on the bed naked. Marie Tovorvor, you told her to sit on Jacob Tovorvor's penis and you held her to make sure that that happened. The complainant was also made to perform oral sex on Jacob Tovorvor by you Marie Tovorvor and after she had finished Marie Tovorvor you then performed oral sex on Jacob Tovorvor with the complainant watching. You then proceeded to have full sexual intercourse with him in front of the complainant.

Complainant 142

13. This complainant was then a girl between 13 and 14 years of age. There are two separate charges of sexual intercourse without consent.

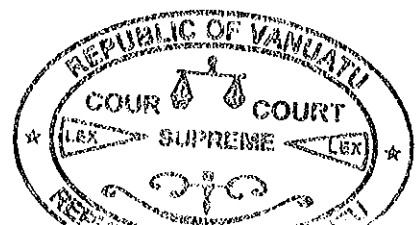
14. The first occurred in May 2011 at your home and the second in May 2012 again at your home. This young girl was again a relative of yours. She was a year 5 student at the same Primary school as the previous complainants.



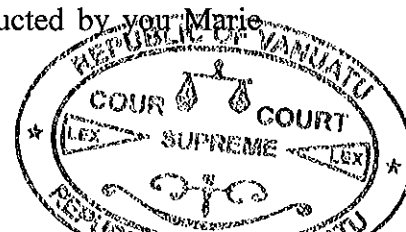
15. On the first occasion in 2011, Marie Tovorvor you told the complainant to go to see Jacob Tovorvor and massage his stomach. You then showed the complainant how to do that but again instructed her to progress by massaging his penis to the point where you had her masturbating him. The complainant took off as she did not want to do this. The following night, however, Marie Tovorvor you collected the complainant and told her to go and massage Jacob Tovorvor who was lying at that time on his bed naked. Again, you showed the complainant how to massage by holding on to your husband's penis and moving it up and down effectively masturbating him. You then made the complainant get on top of your husband and you pushed his penis into her vagina. You held her tightly and prevented her from getting off him. This only stopped because the complainant was feeling great pain and was crying. She was warned not to tell anyone of what happened.
16. About one year later, the complainant was woken up by you Marie Tovorvor and told to come with you into the garden. When the two of you got to the garden, Jacob Tovorvor was there waiting. Marie Tovorvor, you then directed the complainant to go to Jacob Tovorvor and to have sexual intercourse with him. Jacob Tovorvor you took off her clothes and had sexual intercourse with her while Marie Tovorvor you stood there watching.

Complainant 139

17. This complainant was 13 years of age when you offended against in December 2011. She again is related to the two of you. She attends the same primary school as an year 4 student as to the previous complainants. Sometime in December 2011, the complainant followed her cousins, your children, to your home village to spend the night with your family. The intention was for her to return to her home the following day. After dinner, Jacob Tovorvor you left the house calling on Marie Tovorvor to follow you. Shortly thereafter, Marie Tovorvor you came back in to the nakamal and sat next to the complainant. You told the complainant to go to Jacob Tovorvor so that he could put some cream in her hair to get rid of nits and lice. The complainant thought that she must have lice in her hair and so she went to your bedroom.



18. However, when she entered your bedroom, Jacob Tovorvor you told the complainant to take off all her clothes before you could start the "hair treatment". The complainant did not want to take off her clothes and you Jacob Tovorvor then called for Marie Tovorvor to tell the complainant to take off her clothes.
19. Marie Tovorvor, you then forced the complainant to take off all her clothes. While she was doing this, Jacob Tovorvor you then indulged yourself in some emotional blackmail as a means of exerting control over the complainant. You told the complainant that you had worked hard to pay for the airfares for her father and little sister to go to Port Vila for medical treatment with the underlying suggestion that there was a debt owed to you by the complainant's family. Furthermore, Jacob Tovorvor you threatened the complainant that if she did not take off her clothes, you would beat her up and also beat up Marie Tovorvor. The complainant, a young 13 year old, took this threat seriously and became frightened that she would be beaten up by you. She took off all her clothes.
20. When she was naked, Jacob Tovorvor you then rubbed cream over her body and particularly over her breasts and around her genitalia. You then told her to go and lie down with you on the bed.
21. Marie Tovorvor, you then assisted your husband by forcing the complainant to go and join your husband on the bed. By this time, Jacob Tovorvor you were lying down on the bed and you were fully naked. Again, threats were made to the complainant along the lines that if the complainant did not do what you Jacob Tovorvor wanted her to do, you would require her father to pay back all the money that you had given to him.
22. Jacob Tovorvor, you then called on Marie Tovorvor to join you on the bed to show the complainant how sexual intercourse took place. The two of you then had sexual intercourse in front of the complainant before Marie Tovorvor you got off your husband and told the complainant that it was her turn. The complainant was then forced to sit on Jacob Tovorvor's penis and this occurred with the assistance of Marie Tovorvor who held on tight to the complainant and forced her down on to Jacob Tovorvor's penis. Later, the complainant was then instructed by you Marie



Tovorvor to lay down on her stomach with her genitalia on top of your husband's face while he performed oral sex on her.

23. The following day, an attempt was made to continue this sexual abuse but fortunately it did not progress any further as the complainant indicated that she was feeling a great deal of pain in the area of her genitalia.

Complainant 138

24. The sixth and final set of offences occurred in May 2012. This complainant was 14 years of age at that time. She again resides in the same village as the other complainants and is related to the two of you. In May 2012, this complainant was to spend 2 weeks of the school holidays with you at your home village; which is essentially owned by the two of you.
25. One night, when the complainant was fast asleep with your children, Marie Tovorvor you woke her up and told her that she had to go in to see your husband so that he could put some cream in her hair to kill nits and lice. She did as she was told.
26. Jacob Tovorvor, you told her to take off her clothes but she refused and started to cry. Jacob Tovorvor, you then told Marie Tovorvor to take the complainant outside as you did not want the others in the house to be woken. This happened and when outside, Marie Tovorvor you told the complainant to go down to the beach with you. When you were there, Jacob Tovorvor turned up and Marie Tovorvor you left the complainant with your husband.
27. Jacob Tovorvor, you came up to the complainant, you took off your trousers and you told the complainant to tie a leaf around your penis. She did not want to do this and ran back to the house. She eventually went back to sleep. Marie Tovorvor you woke her up short time later and told her to go to see her husband in the bedroom. You showed her an injured hand and said that this injury had been caused by Jacob Tovorvor who had "stoned" her for failing to make the complainant do what Jacob Tovorvor wanted.



28. Marie Tovorvor, you then pulled the complainant into your bedroom, you took off her clothes and you pulled her onto the bed. You made her sit on top of your husband's penis and you forced his penis in to her vagina. What then occurred was in line with what had happened with other complainants with you Jacob Tovorvor having full sexual intercourse with the complainant. It concluded with Marie Tovorvor also having sexual intercourse with Jacob Tovorvor while the complainant was made to stay and watch.
29. The following night, the complainant was again approached by you Marie Tovorvor and told to go to see Jacob Tovorvor in your bedroom. The complainant refused to do so. She ran away the next day back to her home village.

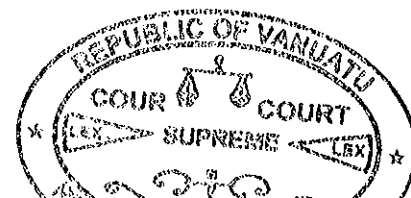
Generally

30. I have dealt with the facts far more extensively than I would normally do. That is not for any other reason but to identify exactly the horrifying extent of this offending. It is very difficult to contemplate the extent of damage that the two of you have done to six young girls all of whom are related to you.
31. Counsel have addressed the aggravating features to this offending and they are with respect obvious. These were young girls and of course you are much older being 43 and 42 years respectively. This was repeat if not serial offending in respect of different complainants and in each case the complainants were related to you which amounts to a shocking abuse of trust. There can be no excuse for such offending.
32. Counsel have assisted me with detailed sentencing submissions. They accept without question that the only sentence that can be imposed upon the two of you is one of imprisonment.
33. The leading case in this respect is the *Public Prosecutor v. Scott*¹ in which the Court of Appeal identifies a starting point of 8 years imprisonment for cases of sexual intercourse without consent where the offender is in a position of responsibility towards the victim. Counsel for both the prosecution and the defence accept that that is an appropriate starting point to be taken for each of the offences.

¹ [2002] VUCA 29; CA 02-02 (24 October 2002)



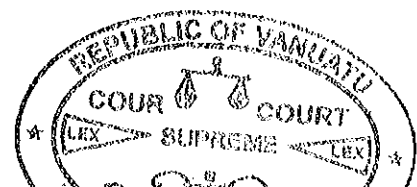
34. The Court of Appeal in *Scott* went further and said, “*at the top of the scale comes the defendant who has committed the offence of rape upon a number of different women or girls. He represents more than ordinary danger and a sentence of 15 years or more may be appropriate. This is offending that carries with it a maximum of life imprisonment*”.
35. The prosecution does not seek that sentence of life imprisonment and indeed it would be inappropriate to consider it for a “first offender” without appropriate notice having been given by the prosecution that that would be their sentencing submission.
36. So, a starting point of at least 15 years is required in this case. What is also necessary is that the sentence be commensurate with your individual roles in this offending.
37. When the matter was first before me following your pleas of guilty, I spent some time considering the appropriate sentencing approach for you Marie Tovorvor. The various summaries of facts that had been presented by the prosecution and which were admitted to be accurate by you (through your counsel) indicated a willing involvement by you in these sorry affairs. I was left with the preliminary view that you should be sentenced at the same level of culpability as your husband; that is, that you should be held equally culpable to your husband. However, the pre-sentence report records an explanation given by you.
38. You told the probation officer that you had been forced by your husband to commit all the offences charged and said that he had threatened to kill you if you did not do what he said. You claimed that your husband beat you very badly in front of your children. You say that you loved your husband and your children and you were concerned for them and for your own safety. You said that you felt alone although you knew that you should try to get help. However, you were in fear of reporting this to a chief as you expected that you would get found out by your husband as having told on him. You did not feel that there was anywhere for you to go to seek help and voice your concerns.



39. Now, of course, that is easy to say but the question is whether it indeed reflected the reality of what was part and parcel of your relationship with your husband. When this matter was first raised on 8 February 2013, Ms Matariki for the prosecution indicated that she did not accept your statement that you had been forced to behave in this way because you were scared to disobey your husband and fearful of being beaten. That left a significant sentencing issue to be resolved. It was certainly a significant issue and it appeared that it would require a disputed facts hearing to resolve it.
40. However, this development meant that the two of you then had to have separate legal representation and time was taken for that to be arranged. The case came back before me that afternoon by which time Mr Kausiama had commenced to act for Jacob Tovorvor. There was no impediment to Ms Kalwatman continuing to act for Marie Tovorvor.
41. In the course of the conference that took place that afternoon, Mrs Matariki informed me that she had had time to reflect on the issue. She felt able to concede formally that the statement made by you Marie Tovorvor to the Probation Officer, and as recorded in the pre-sentence report, would not now be disputed and that this should be taken into account when Marie Tovorvor's sentence was assessed. That obviated the need for disputed facts hearing and, of course, it is a matter of sentencing significance to which I will return soon.

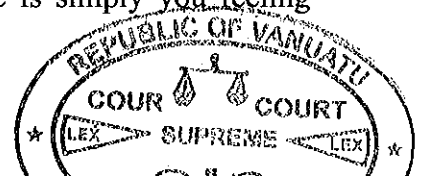
Jacob Tovorvor

42. Jacob Tovorvor you are 43 years of age. You have been residing at Hokor village on Erromango with your wife. You have 7 children. It would appear that you live under the authority of a chief from the village in which the complainants reside. The Probation Officer reports that, by all other accounts, you are well regarded in your community.
43. Your chief urged the Court, through the probation officer, to consider a community service for your offending which shows how far out of step he is with what is and should be considered as right and wrong. It suggests that Marie Tovorvor, you may



not have been exaggerating matters when you suggested that a complaint to your chief would not be well received and might well get back to your husband.

44. Jacob Tovorvor, you are in good health and you have no previous convictions. By way of explanation for your offending, you told the probation officer that you think you must have been possessed by a custom curse. I reject that entirely. The Probation Officer did as well. He correctly identified the principal contributing factor to your offending as your inability to control your sexual feelings. You told the Probation Officer that you were sorry for what you had done. That you were remorseful. I have difficulty accepting that.
45. You committed serious sexual abuse on six young female relatives over a 14 month period. This was not a one-off occasion that could perhaps be explained as a momentary lapse of control and out-of-character. It was a pattern of conduct that you repeated time and time again. You had clearly no regard at all for those young girls treating them as simple devices to assist your sexual desire. You have demonstrated no empathy at all for the harm that you have done each of them. Your offending was callous in the extreme and the fact that you used your wife to some extent as an instrument of your evil purposes simply aggravates your position.
46. I accept for sentencing purposes that, if I was to deal with any of these charges independently, I would adopt a starting point of 8 to 9 years imprisonment, perhaps 10 years in one or two of the cases involving the youngest complainants. However, I have not one but six separate victims of your offending. It is necessary for the Court to consider the totality of the offending and impose a sentence that reflects that totality. It is not a case of simply adding up 8 or 9 years in respect of each of the six separate offences but to consider a sentence that reflects the totality of your offending.
47. In my view, the appropriate offending end point here for you Jacob Tovorvor is one of 20 years imprisonment.
48. I have been unable to identify any mitigating circumstances in relation to personal characteristics. I consider that your expression of remorse is simply you feeling



sorry for the position that you are in and perhaps also feeling sorry for the trouble that you have caused to your immediate family. There is nothing in the pre-sentence report that strikes me as being a sincere expression of your remorse for the harm that you have done to these young victims. There is no indication that you have any empathy for them.

49. However, to your credit you pleaded guilty at the first reasonable opportunity and indeed you admitted this offending when approached by the police. You are entitled to full credit for that.
50. You have no previous convictions but that is not a matter that should be taken in mitigation. Certainly, previous convictions, particularly for offending of a similar nature, can aggravate an offenders' position for sentencing purposes. However, to allow credit for an absence of previous convictions would simply be to double count that particular sentencing factor. It is a neutral sentencing factor and I make that comment because it applies to both of you.
51. So for you, Jacob Tovorvor, having regard to an offending end point of 20 years for the totality of the offending, I allow you 7 years for your early guilty plea which results in an end sentence of 13 years imprisonment. In my view that is an appropriate sentence for offending at this level.
52. The sentence will be imposed in this way.
 - a. Taking criminal charge 138 as the lead charge, you are sentenced to 13 years imprisonment on that charge.
 - b. On criminal charges 139, 140, 141, 142 and 144, the sentence imposed on each of the charges is 8 years imprisonment.
 - c. The sentences are of course concurrent and they will be deemed to have commenced on 4 December 2012 to reflect the time that you have been in custody on remand.



Marie Tovorvor

53. Marie Tovorvor, the acceptance by the prosecutor that you were forced to participate by your husband requires a significant sentencing reduction from the position reached with your husband. But for that concession, you would also have received a sentence of 13 years imprisonment.
54. The pressure that you were under has now been recognised and must be reflected in the sentence. I cannot help but observe, however, that your involvement appeared to have been both willing and extensive and far more than reluctantly dragging a poor young girl to your husband. The fact that you showed the complainants how to masturbate your husband, that you forced them to undress, and that you lifted them up and forced them on to your husband's erect penis points to a level of active involvement beyond that just of a reluctant and fearful assistant.
55. You are a mature woman of 42 years and a mother indeed of 7 children. Yet you effectively stood by and allowed this horrible offending to be carried out on one young girl after another; all relatives of yours. I am sure that you could have done something to ensure that young female relatives did not come to stay.
56. You cannot escape a sentence of imprisonment today for this offending. You must take some responsibility for not calling for help - for not going to the police or doing something that prevented yet another young niece being brutalised by your husband. Adulthood often requires responsible conduct beyond that which could be expected of young people. Here, you had a responsibility to those young girls while they are in your house and you failed them.
57. However, I appreciate that, on your island and in your village, your husband's word would to an extent have been law within your family and that it would have been difficult for you to have refused to do what he wanted you to do. I accept that you had to balance whether your life could continue with your husband and children or whether you placed that all at risk by going to the police and calling for help. While it might have been very difficult for you, the only responsible step as an adult was to



call for help if you felt that you could not stop your husband's offending yourself. This offending was able to continue to the extent it did because you did nothing to stop it.

58. For these reasons, I am not prepared to treat you as someone without blame and indeed I consider that your inaction here is reprehensible.
59. I adopted an offending end point of 20 years imprisonment for your husband. I reduce that to 8 years imprisonment for the reasons I have just mentioned. I allow you a full one third credit for your guilty plea which brings me to a sentencing calculation of just over 5 years imprisonment. In my view, 5 years imprisonment is the appropriate sentence for you.
60. That sentence will be imposed in this way.
- a. Taking case number 138 as the lead charge here, and having regard to the totality of the offending, I impose on you a sentence of 5 years imprisonment
 - b. On criminal cases 139, 140, 141, 142 and 144, you are sentenced to 2 years imprisonment.
 - c. The sentences are all concurrent and they will be deemed to have commenced on 4 December 2012 to reflect the time that you have been in custody on remand.

Conclusion

61. Each of you has 14 days to appeal this sentence if you do not accept it.

BY THE COURT

