

**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

Criminal
Case No. 24/2567 SC/CRML

PUBLIC PROSECUTOR
v
FRANCIS TOA

Date: 26 September 2025
Before: Justice V.M. Trief
In Attendance: Public Prosecutor – Ms J. Tete
Defendant – Ms B. Taleo

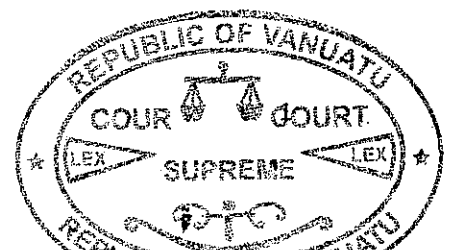
SENTENCE

A. Introduction

1. Mr Francis Toa, you appear for sentence having pleaded guilty to unlawful sexual intercourse with a child under 13 years of age contrary to subs. 97(1) of the *Penal Code* [CAP. 135]. You are convicted on your own plea and the admitted facts.

B. Facts

2. At the time of the offending, the complainant was 12 years and 2 months old.
3. On 23 December 2023, the complainant and her family, including you, were having a barbecue at Beleru area on Santo. A dispute arose between you and the other family members there, and you left the barbecue site. You took your alcohol with you and walked home, then on to your neighbour Larry Bue's house. You, Larry and another man Laurence Tari were drinking at Larry's house when the 12-year-old complainant arrived and said that she was looking for her mother's JBL speaker.
4. Larry then asked the complainant for sex. You and Laurence left, but then met the complainant on the road and she told you that she was still looking for her mother's JBL



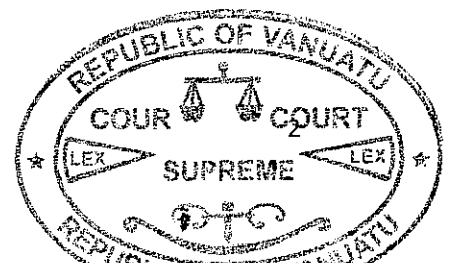
speaker. Laurence asked her to have sex with her, and they did, while you waited for them. When they finished, you asked the complainant for sex. You removed your trousers, knelt down and pushed your penis into the complainant's vagina but because you were drunk, you could not have an erection. You then removed your penis, stood up and told the complainant to get up and leave. She left with Laurence Tari.

C. Sentence Start Point

5. The sentence start point is assessed having regard to the offending, its aggravating and mitigating features, and the maximum sentence set by Parliament.
6. The maximum sentence for unlawful sexual intercourse contrary to subs. 97(1) of the *Penal Code* is life imprisonment.
7. The aggravating factors of the offending include the following:
 - The 41-year age differential;
 - The psychological effect on the victim; and
 - Loss of dignity of the victim.
8. The mitigating factor of the offending is that the offending consisted of a "one-off" penetration of the vagina. Because you were drunk, you could not have an erection hence you removed your penis from the complainant's vagina and told her to get up and leave.
9. Taking all matters into account, the sentence start point adopted is 4 years 3 months imprisonment. This is a lower starting point than both the Prosecution and defence counsel submitted, however, I consider that is the appropriate starting point taking into account the opportunistic nature of the offending (which your intoxication explains to some extent) and that it was a "one-off" penetration of the vagina followed by your removing your penis from the complainant's vagina because you were drunk and could not have an erection.

D. Personal Factors

10. Fifteen percent (9 months) is deducted from the sentence start point for your guilty plea which you only entered after this matter had already been set down for trial and several times for *voir dire* hearing.
11. You are 54 years old, from Ambae. You are married and have 4 children. You live on Santo on your farm while your wife is currently on Ambae taking care of your grandchildren. You make a living from planting and selling kava and crops, and support your family from your farming and sales. You have no prior convictions. You have a



good relationship with your family and community. You are willing to perform custom reconciliation, although I note that it is custom compensation which the Court is to take into account in sentencing: see s. 39 of the *Penal Code*. You are remorseful. I deduct a further ten percent (6 months) from the sentence start point for your personal factors.

12. You served time in custody from 5 April 2024 to 1 May 2024 – effectively 2 months imprisonment. Accordingly, a further 2 months is deducted from the sentence start point.

E. End Sentence

13. The end sentence is 2 years 10 months imprisonment. The sentence is imposed to denounce this criminal conduct against young girls and against the values of society, as a general and specific deterrence, and to hold you accountable for your criminal conduct.
14. The Court has a discretion under s. 57 of the *Penal Code* to suspend all or part of the sentence where it is not appropriate to make an offender suffer immediate imprisonment “... (i) in view of the circumstances; and (ii) in particular the nature of the crime; and (iii) the character of the offender.”
15. This was offending of a sexual nature which counts against suspension of the sentences however it was at the lower end of the scale being a “one-off” penetration of the vagina followed by your removing your penis from the complainant’s vagina because you were drunk and could not have an erection. Your family responsibilities, your prior clean record and prospects for rehabilitation favour suspension of the sentences. I consider therefore that it is not appropriate to make you suffer immediate imprisonment. Accordingly, the sentence is suspended for 2 years on the condition that you commit no further offence within that period. You are warned that if you are convicted of any offence in the next 2 years, that you will be taken into custody and serve your sentences of imprisonment imposed today as well as the penalty imposed for the further offending.
16. In addition, you are to complete 60 hours of community work within the next 12 months.
17. You have 14 days to appeal against the sentence.

**DATED at Port Vila this 26th day of September, 2025
BY THE COURT**


Justice Viran Molisa Trief

