

**PUBLIC PROSECUTOR**

- v -

**JANSEN FRAZER WELEGTABIT**

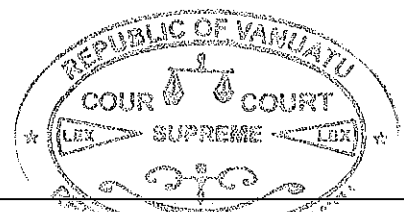
*Mr Damien Boe for Public Prosecutor  
Mr Henzler Vira for Defendant*

**SENTENCE**

1. Jansen Frazer Welegtabit, this is your sentence. You are charged with one count of acts of indecency without consent and two counts of sexual intercourse without consent. On 22 September 2015, you were found guilty and convicted of these offences after a week trial commencing 28 August 2015 and ending on 4 September 2015.
2. The facts upon which you were found guilty and convicted are contained in the judgment on verdict delivered on 22 September 2015. There is no need to go through them in great detail. They can be summarised as follow:-
3. The complainant is your daughter. She is your first child with your wife. The complainant had two children with her husband of Ambae. The complainant and her husband lived in Santo. On 21 December 2012, the complainant was at Gaua with her two children. She was occupying a room at your house at Navito village.
4. On 21 December 2012, in the morning, she was still in bed as she was sleeping late after spending the Christmas carole nights with her friends. On the morning of 21 December 2012, you entered in her room, you touched her breast. She was awoken. She recognised you. You touched her vagina. You showed her pornographic movies which were in your mobile phone at the time.



5. She threw her legs to your chest. In her own expression, she said she kicked you on your chest. You fell down. She ran outside. You followed her outside. You gave her an amount of Vatu 1000 and told her not to tell anybody of what you did to her. She did not accept what you have done to her. She returned your money of VT1000 by putting it back into your handbag. She felt bad. She followed the road to the garden and met her mother (your wife) and she and her mother came back home but she did not tell her mother of what you did to her that day.
  
6. On 27<sup>th</sup> April 2013, at about 10.00PM, the complainant left her two children in the room. She went to see her boyfriend that night. She said she and her boyfriend had sex. She was then on her way back home. In the meantime, the youngest of her children was awoken and cried. The complainant's mother found out that the complainant was not in the room with her children. She asked her other daughter to accompany her. They both were looking for the complainant. But they followed a different road. The complainant's brother also was looking for the complainant. He met the complainant on the road. He slapped her and followed her on the road to the home. The complainant and her brother arrived at the road near Mormon church, they saw you there on the road. You were standing. You held the complainant's hands. You told the complainant's brother to go and tell your wife that the complainant's was found. You then pulled the complainant near the head of a burao tree. You assaulted her. You removed her cloths and you forced her to have sexual intercourse with you without her consent. She was weak as she had sex with her boyfriend. But then you forcefully had sex with her also that night. After the incident of 27 April 2015, the complainant ran away from your home where she lived. She went and lived with one Kamuel Vavak and his wife at Tolo village.
  
7. On 25<sup>th</sup> June 2013, you phoned her with your mobile phone. You told her to come to the garden to meet her mother and you. On the same day, she came to the garden. It was quite. She did not see her mother. You were alone in the garden. You had a bush sharp knife with you. You threatened her with the knife. You pointed the knife to her to go to a bushy area. She asked you of what she was going to do in the bush. You cut a head of banana with the knife and directed her to go to the bushy area. She cried. You forced her for sex. She refused. Yu threatened her. She was struggling. You removed her cloths. You



put your knife close to you. You had sex with her without her consent.

8. The offence of act of indecency without consent is prohibited and sanctioned by section 98A of Penal Code Act. It provided:

*“Act of Indecency without consent.*

*98A. A person must not commit an act of indecency on, or in the presence of another person:*

*(a) without that person’s consent; or*

*(b) with that person’s consent if the consent is obtained:*

...

*Penalty: Imprisonment for 7 years”*

9. The offence of sexual intercourse without consent is defined under section 90 and prohibited and sanctioned under section 91 of Penal Code Act.

10. Section 90 say:

*“Sexual intercourse without consent.*

*90. Any person who has sexual intercourse with another person:*

*(a) without that person’s consent; or*

*(b) with that person’s consent if the consent is obtained:*

*(i) by force; or*

*(ii) by means of threats of intimidation of any kind; or*

*(iii) by fear of bodily harm; or*

*(iv) ...*

*(v) ...*

*(vi) ...*

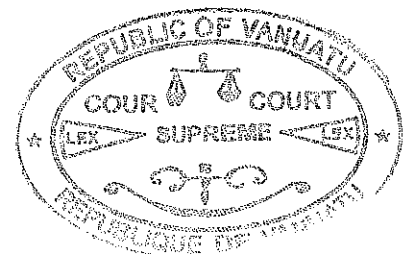
*(vii) ...*

*Commits the offence of sexual intercourse without consent.”*

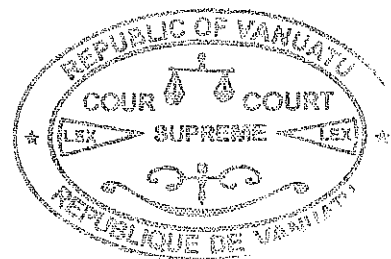
*“Punishment of sexual intercourse without consent.*

*91. No person shall commit sexual intercourse without consent.*

*Penalty: Imprisonment for life.”*

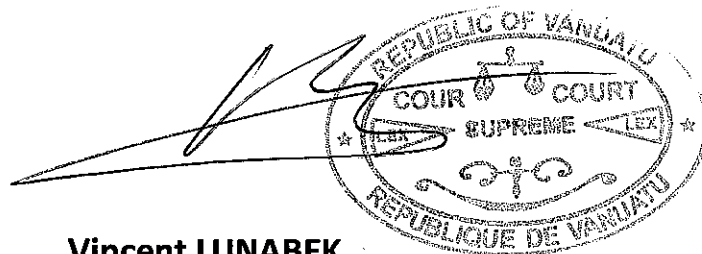


11. The offences of sexual intercourse without consent and acts of indecency, without consent are serious offences. Their seriousness are reflected by the maximum penalt imposed by law of life imprisonment and 7 years imprisonment respectively.
12. When I consider your sentencing, I take into account of the totality of your offending. I note that you were convicted of one count of acts of indecency without consent and two counts of sexual intercourse without consent. The offendings are of sexual type nature. I consider that the most serious type of offending is the sexual intercourse without consent, occurring on 25 June 2015 in the garden by force and use of the bush knife to threaten the complainant.
13. I consider and apply the following guideline judgments: *Public Prosecutor –v- August [2000] VUSC 78*, *Public Prosecutor –v- Scott [2002] VUCA 15*; *Morris Ben –v- Public Prosecutor [1993] VUCA 3*; *Talivo –v- Public Prosecutor [1996]*, *Public Prosecutor –v- Bae [2003] VUCA 14* and *Obed –v- Public Prosecutor [2004] 24*.
14. In the present case, the nature and seriousness of the offending are aggravated by the following features:
  - (1) There is some degree of planning and premeditation;
  - (2) There is a serious breach of trust – you are her father. She trusted you. She looked upon you for her own love and safety. You have breached that trust. She felt that your home which was a safe home was no longer safe for her. She has to run away from your home and find an alternative home. She moved to her step parents home at Tolo village.
  - (3) Violence is used over and above the force necessary to commit sexual intercourse without consent.
  - (4) Use of knife as a weapon to frightened the victim
  - (5) Repetition of sexual offendings
  - (6) Unprotected sex
15. I consider a sentence between 8-9 years imprisonment as a starting point sentence for the totality of the offending. I accept a starting point sentence of 9 years imprisonment in this case including the aggravating features before mitigation.



16. The pre-sentence report dated 12 October 2015, reveals that you show no remorse to your offending or to your victim (daughter). You have no insight to the seriousness of your offending.
17. You are a first time offender and you cooperate with the police during the investigation. You were remanded on 26 June 2014 to 04 July 2014. You have served a pre-custodial period of less than a month. I round it up to a month pre-custodial period to be taken in your credit. I also note a period of delay from the commission of the offences from 2012 and 2013 and you were dealt with in 2015. I allow a period of 12 months for the delay taken before your trial, convictions and sentences as part of mitigating factors in your favour. I give you also another 3 months allowance for the fact that you are a first time offender, your good standing prior to your offending and your own hardworking for your community and family. You have a total allowance of 16 months deduction in your favour.
18. On balance, your end sentence is 7 years and 8 months imprisonment on counts 1 and 3 of sexual intercourse without consent, contrary to s.91 of Penal Code. You are sentenced to 3 years imprisonment for the offence of acts of indecency, contrary to s.98A of Penal Code Act. Your sentences are to be served concurrently with each other. This means that you will serve your sentences together at once making a total sentence of 7 years and 8 months Imprisonment. This sentence is to be served with immediate effect.
19. You have 14 days to appeal this sentence if you are unsatisfied with it.

**DATED at Port Vila, this 20<sup>th</sup> day of October 2015**



**Vincent LUNABEK**  
**Chief Justice**