

IN THE SUPREME COURT OF TONGA
CRIMINAL JURISDICTION
NEIFAU, VAVA'U REGISTRY

CR 35 to 41 of 2020

REX

-v-

[1]	TONGA WOLFGRAMM	CR 35/19
[2]	SULITOMU'A MUNA	CR 36/19
[3]	CULLEN PONGI	CR 37/19
[4]	HESUATI TOKE	CR 38/19
[5]	MISINALE LAVEMAI	CR 39/19
[6]	'AMINI TOPUI	CR 40/19
[7]	AFEI TAU'AKITANGATA TATAFU	CR 41/19

SENTENCING REMARKS

BEFORE: LORD CHIEF JUSTICE WHITTEN
Appearances: Mr I. Finau for the Prosecution
Mr Tu'utafaiva for Messrs Wolfgramm and Pongi
Mr Pouvalu for Messrs Toke and Topui
Mrs Ebrahim for Messrs Lavemai and Tatafu
Mr Muna in person
Date of sentence: 16 October 2020

THE OFFENDING

1. In September 2018, police received information that there was cannabis being grown at the tax allotment at Holonga, Vava'u amongst a kava plantation grown by the defendants as a church group of growers. After obtaining a search warrant, police attended the tax allotment. There, they found Sulitomu'a Muna, who, upon seeing the police, fled carrying a .22 rifle. He ran across the adjoining allotments

and dropped the rifle in a bush area next to the residence of Luti Wolfgramm and went inside the residence.

2. Police then brought Tonga Wolfgramm to the tax allotment at Holonga where they read him the search warrant and then conducted their search. The tax allotment was divided into blocks for the individual members of the church group. The defendants were assigned blocks 3 to 10. Across those plots, police found a total of 2,665 cannabis plants weighing 99.65 kilograms.
3. Police then executed a search warrant at Luti Wolfgramm's residence where Tonga Wolfgramm lived and which the other Defendants often visited. There they found 13 ziplock plastic bags containing cannabis leaves and 15 small plastic bags containing cannabis seeds. The combined weight of those leaves and seeds was 22.57 grams. Police also found 26 rounds of .22 calibre ammunition. The second to seventh Defendants were later arrested and charged with cultivation of cannabis. When Sulitomu'a Muna was arrested, cannabis leaves were found in his pocket weighing 0.32 grams. Police took him to the bush area where he had dropped the .22 rifle and it was recovered.
4. When interviewed by police, all the Defendants admitted to the offending.
5. On 25 September 2018, the Defendants were brought before Magistrate Tatafu who remanded them in custody until 2 October 2018 to allow the Police to complete their work. However, that work was completed by 28 September 2018 and the Defendants were then released on bail.

DELAY

6. There has been inordinate delay in bringing this matter to a conclusion. That delay has been due in part to the vicissitudes inherent in the Supreme Court being able to conduct circuits to Vava'u only every six months and then for only two weeks per circuit. It is also due in part to the approach the Defendants took to their pleas after having first admitted their offending to police.
7. The matter was first called in the Supreme Court on 20 March 2019. All the Defendants pleaded not guilty. The matter was adjourned to the September 2019 circuit.

8. During the Vava'u call over on 20 September 2019, Justice Niu declared a conflict of interest with one of the Defendants so that the trial could not be heard by His Honour during that circuit. After confirming their not guilty pleas at that circuit, the matter was adjourned to the next circuit in March 2020.
9. On 2 March 2020, the Crown filed an amended indictment charging:
 - (a) all Defendants with one count of cultivation of cannabis weighing 99.65 kgs;
 - (b) Tonga Wolfgramm also with possession of 22.57 grams of cannabis and 26 rounds of .22 ammunition without a licence; and
 - (c) Sulitomu'a Muna also with possession of a .22 rifle without a licence.
10. During the March 2020 circuit before Cato J, the trial was not conducted because of the risk that it would run longer than the time available. The trial was therefore adjourned again to this circuit.
11. During the call over for this circuit on 11 September 2020, counsel's indications suggested an estimated trial duration of five days. However, counsel for the represented Defendants also proposed that a voir dire be conducted on the first day of the trial, and that if that resulted in the records of interview not being excluded, the trial time would likely be reduced significantly. On that basis, the trial was listed to commence on 5 October 2020, the first day of this circuit.

CHANGE OF PLEA

12. On that day, the Defendants were arraigned and, upon which, they all changed their pleas to guilty on all counts. The Prosecutor explained that over the preceding weekend, he was informed by Mrs Ebrahim that her clients (Misinale Lavemai and Afei Tatafu) decided to change their pleas and offered to give evidence for the Crown against their co-accused. That appears to have caused a 'domino effect' with the remaining Defendants also deciding to change their pleas by the morning of the commencement of the trial.
13. The Defendants were then remanded in custody for sentencing today.

MATERIAL ON SENTENCE

14. I have received and considered submissions on sentence filed by the Crown and by counsel for the represented defendants as well as pre-sentence reports for each of the defendants. I have also had regard to a number of character references in favour of some of the Defendants, which all depict those men as endeavouring to reform their lives.
15. I will now summarise the Crown's submissions and comparative sentences. I will incorporate summaries of the defence submissions and relevant information from the pre-sentence reports in the sections dealing with each of the defendants separately below.

CROWN'S SUBMISSIONS

16. The Crown submits the following as aggravating features of the offending:
- (a) the number and weight of cannabis plants the subject of the cultivation count;
 - (b) cannabis, and illicit drugs in general, are an issue for society;
 - (c) the defendants worked in a group to conduct this offending for financial gain;
 - (d) Tonga Wolfgramm was the ringleader who:
 - (i) supplied the cannabis seedlings for cultivation;
 - (ii) supplied the unlicensed rifle for Sulitomu'a Muna to guard the plantation; and
 - (iii) possessed the unlicensed ammunition;
 - (e) Sulitomu'a Muna possessed the unlicensed rifle to guard the cannabis plantation.
17. The Crown submits that mitigating features are that:
- (a) all the Defendants pleaded guilty early; and

- (b) Misinale Lavemai and Afei Tatafu agreed to plead first and give evidence for the Crown.

18. The Crown submits the following as comparable sentences:

- (a) ***Rex v Siliva'ai Huni & ors*** [2018] TOSC 33 (CR 135-136, 139-142/2017)

A ringleader and three other young men tended to and guarded a cannabis plantation containing 3,894 plants, mostly seedlings, weighing 1,698.92 grams. The ringleader also placed an unlicensed firearm at the tax allotment for the purpose of guarding the cannabis. The starting point for the ringleader was set at 5 years. It was then increased to 5 years and 9 months because of the presence of the firearm and ammunition at the plantation. He had a previous conviction for possession of cannabis for which he had received a fully suspended sentence. He pleaded not guilty and persuaded two other co-accused to give evidence that he had nothing to do with the cultivation which Justice Cato did not accept. His Honour did not see any mitigating factors other than that the ringleader's son had a health condition for which 4 months was deducted. The ringleader was also sentenced to 2 years 6 months for possession of the unlicensed firearm and 6 months for possession of unlicensed ammunition to be served concurrently. The starting point for the other defendants was 3 years imprisonment. One pleaded guilty early and was a first offender for which his sentence was reduced to 2 years, the last 9 months of which was suspended on conditions. The remaining two defendants had previous convictions for drugs but for their early guilty plea, their sentences were reduced to 2 years 3 months, with the last 9 months also being suspended on conditions.

- (b) ***Vea v R*** [2004] TOLawRp 28:

Vea was convicted of possession and growing Indian hemp comprising 20 branches, a total of 125 seeds and one joint. While on bail, he was found with another 8 plants and dried branches and leaves. He was sentenced to 9 months for the first possession charge, 2 years for the second and 3 years for growing the marijuana. The last two sentences were to be served concurrently but cumulative on the first making a total of 3 years 9 months. The last 1 year and 9 months were suspended for 2 years. On appeal, the Court of Appeal referred to

the New Zealand Court of Appeal approach to sentencing for cannabis offences in *R v Terewi* [1999] 3 NZ LR 62 in which that Court identified three categories or levels of offending involving possession or cultivation of cannabis:

- (i) small quantities for personal use, for which non-custodial sentences were generally appropriate;
- (ii) small scale commercial purposes, for which a starting point of between two and four years may be appropriate; and
- (iii) large scale growing for commercial purposes, for which a sentence in excess of four years is appropriate.

The New Zealand Court of Appeal also considered that personal circumstances are generally irrelevant when sentencing for drug offending.

The Tongan Court of Appeal also referred at [16] to its decision in *Tuita v R* [1999] Tonga LR 152 where at 156 the Court stated:

“In our view, a conviction for growing any significant amount of marijuana should carry a sentence within the range of three to five years imprisonment. That sentence would not normally be suspended in whole or in part unless there are good reasons relating to rehabilitation, along the lines of the judgment of this Court in R v Misinale (CA 13/99, 23 July 1999). Further we consider that similar sentences should be imposed on persons convicted of possession for supply of amounts of marijuana that indicate a commercial scale operation.”

The Court of Appeal described the quantity of cannabis in that case as denoting a small scale, commercial operation. On that basis and taking into account that Vea was a first offender, the Court considered that the appropriate starting point should have been no more than four years. For his assistance to police and efforts to rehabilitate himself, the Court reduced the starting point to two years and nine months. Vea was then ordered to serve one year and three months of that term in prison with the balance being suspended for two years from release.

(c) ***Sione Kuli Tatu & Priscilla Tatu*** (CR 51-52/2018)

The defendants were married. They pleaded guilty upon arraignment to possession of 0.4 grams of methamphetamine and 5,640.79 grams of cannabis. The husband was sentenced to 2 years and 9 months imprisonment for the cannabis with the final 9 months suspended on conditions. The wife was sentenced to 2 years and 3 months with the final 9 months also suspended on the same conditions.

19. In this case, the Crown submits that:
- (a) it is appropriate to impose custodial sentences;
 - (b) the head sentence is for count 1, cultivation of illicit drugs;
 - (c) for the principle offender, Tonga Wolfgramm, an appropriate starting point is 5 years and 6 months;
 - (d) for Sulitomu'a Muna, an appropriate starting point is 5 years;
 - (e) for the remaining defendants, an appropriate starting point is 4 ½ years imprisonment;
 - (f) at the time of filing, the Crown did not have any records of previous convictions for any of the defendants, but further enquiries were being made;
 - (g) any discounts for mitigation should not exceed 1 ½ years; and
 - (h) all Defendants are eligible for partial suspension of their sentences.

STARTING POINT

20. Pursuant to s.4 of the *Illicit Drugs Control Act*, the maximum penalty for:
- (a) cultivation of 28 grams or more of cannabis is a fine of \$50,000 or imprisonment for 7 years or both; and
 - (b) possession of less than 28 grams, is a fine not exceeding \$5,000 or imprisonment for 1 year or both.

21. Pursuant to s.4(2)(b) of the *Arms and Ammunition Act*, the maximum penalty for possession of unlicensed firearms and ammunition is 5 years imprisonment.
22. Clearly, the cultivation count is the lead offence. It self-evident that none of the comparable sentences provided by the Crown involved anywhere near the weight of the cannabis plants seized in this matter. That would suggest that this case may well involve one of the largest detected hauls of cannabis, by weight, recorded in the Kingdom.
23. In that regard, Mr Tu'utafaiva submitted that the high weight was due to the fact that the police weighed the plants four days after seizure and included branches, stems and roots which were not dried.
24. The current state of the legislation does not differentiate between possession, manufacture, cultivation, supply or use of illicit drugs. In respect of class B drugs, which includes, most prevalently, cannabis, the penalties provided by the Act only distinguish between quantities of less than 28 grams and 28 grams and above. That may be seen as Parliament's intention to differentiate between personal use and commercial purposes. There is no metric provided other than quantity, which in turn is not qualified to distinguish between fresh cannabis plants, dried or any particular parts of them.
25. The decision in *Huni* illustrates how the stage in the growth cycle, rather than the number, of plants, when they are seized, is likely to have a significant bearing on the penalty. That is because penalty is informed, to a large extent, by the weight of the plants when they are seized, rather than the number of plants or parts thereof. In *Huni*, 3,894 plants were seized, but because most were seedlings, they only weighed a total of less than 2 kilograms. Here, even though the number of plants seized was less (2,665), they weighed just under 100 kilograms. It is that weight, among other things, which the court must consider when assessing the seriousness of the offending against the range of sentencing options available to a maximum of seven years imprisonment.
26. In my view, any protest by a defendant about the weight of the cannabis plants he has illegally grown because police seized them at a time when they were approaching maturity and therefore weighed more than when the same number

of plants were only seedlings, is nothing more than an incident of the risks associated with the illegal activity engaged in. When that activity is for commercial purposes, the magnitude of the risk assumed by the offender increases with every day the plants are encouraged to grow, commensurate with the increased profit expected from sales of the larger (and heavier) plants.

27. The task of identifying an appropriate starting point in the instant case is made more difficult by the plethora of previous decisions involving comparatively small weights of cannabis but which attracted sentences within the middle third of the range to seven years. For instance, in *R v Taulua* [2018] TOSC 80, Paulsen LCJ sentenced the defendant to 2 years and 4 months imprisonment for possessing and cultivating less than 1.2kg of cannabis, with the last 15 months suspended on conditions. A further complication lies in endeavouring to reconcile the sentence in *Huni* where the ringleader was sentenced to 5 years 5 months for cultivation of less than 1.7 kg with the sentence in *Tatu* of 2 years 9 months for possession of 5.64 kgs of cannabis with the final 9 months suspended.
28. It is clear, therefore, that the current task cannot be achieved by any simple, mathematical extrapolation of sentences for far lower quantities in other cases.
29. Therefore, in the absence of any previous decisions involving quantities of cannabis proximate to the instant case, the court is left primarily with the guidance provided by the Court of Appeal in *Vea*.
30. There can be no doubt that the offending here does not fall within the first or second categories referred to in *Vea*. None of the submissions suggested otherwise. In Tongan terms, the number and weight of the plants seized is clearly consistent with a large scale operation.
31. I accept that the operation was masterminded by Tonga Wolfgramm. He is and was much older than the other young defendants he recruited to carry out the work of cultivating, maintaining and guarding the large number of plants over the several blocks of land used which were supposed to be for a church growing group. Further, the operation was organised. Tonga Wolfgramm provided the seedlings and other materials necessary for the other defendants to plant and tend the crop. A makeshift camp was established to house some of the younger

defendants who were also responsible for guarding the plants. Wolfgramm brought food to the camp on a regular basis. He also equipped the guards with a firearm and ammunition. From that I infer that he was prepared to order any necessary violence with the firearm had other cannabis thieves (as referred to in the submissions) threatened the crop.

32. Tonga Wolfgramm also controlled the financial side of the operation. It is unfortunate that the Crown has not adduced evidence of the estimated street value of the cannabis seized. That is an important feature in determining the scale and nature of any organised illicit drugs enterprise and would likely have assisted in identification of the appropriate category referred to in *Vea*.
33. However, the submissions of other defendants provide some indication of the financial size of the operation. For instance, through his counsel's submissions, Afei Tatafu admits to having been the 'salesperson' in the team and that sales generated a minimum of \$600 a day, every day. The other defendants were paid \$500 each for their work on a crop harvested prior to the crop the subject of the offending here. From that it may be inferred that Wolfgramm retained the majority of revenue from the operation.
34. Although the defendants have not been charged, and are therefore not being dealt with now, in respect of any previous cultivations or sales, that background volunteered and confirmed by a number of the defendants informs the scale and nature of the operation which produced the cannabis for which the defendants are to be sentenced in these proceedings.
35. Accordingly, on the available information, I am satisfied that the offending here falls within the third category referred to in *Vea*, namely, large scale growing for commercial purposes, for which a sentence in excess of four years is appropriate.
36. A further consideration in assessing the seriousness of the offending for the purposes of setting an appropriate starting point is the effect this quantity of cannabis is likely to have had on the community had it been harvested, processed and sold to others, as intended. It is well known that Tonga is currently in the grips of an alarming war on illicit drugs. The main focus in recent years has been on the marked increase in the importation, production, supply and use of

methamphetamines. Although some in the community may see cannabis as far less insidious than class A drugs such as methamphetamines, and the statutory maximum punishments reflect that difference, all illicit drugs are potentially harmful to those who use them and the broader community which is inevitably and deleteriously affected by those who succumb to drug addiction.

37. For centuries, Tongan society and culture has depended on all members of the community endeavouring, to the best of their individual abilities, to contribute to their society, to provide for and support their families and to set positive examples for each new generation of youth. Like many other societies around the world, Tonga's future, in large part, depends on maintaining and strengthening those positive traditions. Illicit drugs and the personal and widespread damage they cause are anathema to those fundamental societal values. Every time a person gives in to the poisonous allure of the fleeting pleasure deceptively promised by consuming illicit drugs, that person becomes increasingly incapable of looking after themselves in any healthy way, or their immediate family members who may depend on that person. With that, the drug taker becomes a burden on his or her family. The additional strain placed on that family ripples out into increased demands on the wider community, including support agencies such as the churches and health services. The mind altering effects of some drugs and the unrelenting effects of addiction become catalysts for other crimes such as serious assaults, theft and other deception. Eventually, and in some cases, much earlier, when the downward spiral and corrosion of body, mind and spirit approaches or hits rock bottom, law enforcement is engaged with the all too common result of a criminal conviction and, in many cases, imprisonment. The stigma and effects of those tragic outcomes often endure far longer than the term of any sentence.
38. For those reasons, every person must remain vigilant to the scourge of illicit drugs, of any kind, and the risk of often irreparable harm they pose. The courts too must play an important role in ensuring that sentences imposed for involvement with illicit drugs are appropriate to serve the objectives of denunciation and punishment as well as specific and general deterrence. Those punitive elements must also be balanced by consideration of and, where appropriate, implementation of measures to offer incentive and opportunity for

rehabilitation so that a repentant wrongdoer may either immediately or eventually rejoin society as a valued and valuable member of the community.

39. In the case of cannabis, it has been accepted by the lack of differentiation in the legislation, and by tacit adoption of the New Zealand approach, that the penalties for cultivation and possession of the same quantity of cannabis will generally be in the same range. That is certainly understandable where charges of cultivation and possession arise from the one operation by the one person (as in *Taulua*). However, in cases such as the present, I confess to some disquiet at that approach. Cultivation of cannabis, like the chemical manufacture of class A drugs, is the progenitor to subsequent interactions such as trafficking, supply, use and addiction. In other words, without cultivation, there could never be any supply, smoking or addiction to, cannabis. By that causal analysis, I am of the view that cultivation of cannabis, particularly on a large commercial scale, should be viewed with some degree of greater seriousness than mere possession (by someone other than the grower) of a comparable quantity.
40. Accordingly, having regard to the statutory maximum penalty, the weight of the cannabis, the commercial nature and scale of the defendants' operation, the comparable sentences referred to above (so far as they are of assistance), the principles referred to by the Court of Appeal in *Vea*, and the other observations above, I consider that the appropriate base starting point in this case is five years imprisonment. I say 'base' because I propose to adjust that term either up or down according to individual culpability when I turn to consider each defendant's involvement, circumstances and resulting sentence further below.

COMMON ISSUES

41. However, before embarking on that exercise, I wish to address a number of issues, common to most or all of the defendants, that have been raised in the submissions and pre-sentence reports.

Belated guilty pleas

42. It is said on behalf of all the Defendants that they have pleaded guilty either early or at the earliest opportunity. I disagree. As noted above, each of the Defendants

admitted to the offending when interviewed by police. In the ordinary course, that would usually be followed by a guilty plea on arraignment. Here, that did not occur. The Crown case against all the Accused was a strong one. Notwithstanding, and despite their admissions, all the Defendants professed their innocence by pleading not guilty on a number of occasions when this matter has been before the court over the past two years.

43. The reason/s for their change of attitude and belated guilty pleas on the morning of the start of the trial have not been explained. The indication by counsel at the last call over of then wanting a voir dire conducted in relation to the admissibility of those Defendants' records of interview provides some insight into what then must have been considered to be legal defences available to those Defendants. I can only surmise that the assessment of the prospects of success of that course, at least for those advising Misinale Lavemai and Afei Tatafu, changed at the last minute; or, they separately decided not to pursue that potential defence and to 'turn' by indicating their willingness to give evidence for the Crown against their co-accused.
44. In any event, while it may be acknowledged that the Defendants' collective guilty pleas obviated the need for a trial, they left it very late in the overall timeline of these proceedings. For that reason, the weight to be attached to any discount for mitigation cannot be as great as may have been the case had the Defendants truly pleaded guilty at the earliest opportunity.
45. For similar reasons, I do not consider it appropriate to allow Misinale Lavemai and Afei Tatafu any greater discount for their offer to give evidence for the Crown. They too left their offer far too late. Had they pleaded guilty at the first opportunity and then offered to give evidence for the Crown, and had they done so at any trial of the other Defendants, and if their evidence led or contributed to the convictions of any one or more of the other Defendants, then Misinale and Afei could have been entitled to recognition of their co-operation through significant extra discounts.

'Breadwinner' plea

46. A number of the Defendants are described in the submissions and pre-sentence reports as being providers for their families and others. It has been submitted, for that reason, that their sentences should be more lenient, including non-custodial or fully suspended sentences.
47. The Courts have repeatedly stated, most recently in *Rex v PF* [2020] TOSC 30, that the "breadwinner submission" is one that is constantly raised in the courts of the Kingdom but which carries little weight in determining whether a Defendant should be sent to prison. Imprisonment will fall hard on the family the Defendant should be supporting, but this Court has commented more than once that such a factor is not the responsibility of the Court: *Tukuafu v Police* [2001] Tonga LR 151.¹ Such hardship cannot be an overriding mitigating factor in cases where the objective gravity of the offences and the presence of aggravating factors call for a custodial sentence: *Rex v Vake* [2012] TOCA 7.² Further, the fact that the offender is the breadwinner for his family, is not, and is rarely likely ever to be, on its own, a proper reason for suspending a sentence. It may be accepted that, if the respondent goes to prison, the family will suffer. That unfortunately is an all too frequent consequence of criminal offending: *R v Motulalo* [2000] Tonga LR 311 at 314.³
48. For my part, I would echo the sentiments and stance taken by the courts as expressed above in this way. Whenever a 'breadwinner' decides to commit serious crime, he or she must be regarded as doing so in the knowledge that they will:
- (a) usually be harming others (and possibly themselves) in the commission of the crime/s;
 - (b) be exposing themselves, if and when caught and convicted, to a risk of incarceration; and

¹ *Eukalite v Police* [1994] TLR 80 per Ward CJ

² Referred to by Paulsen LCJ in *Rex v Fainga'anuku* [2018] TOSC 16 at [33].

³ Referred to in *Rex v Vake* [2012] TOCA 7 at [20] and *Fainga'anuku* at [32].

(c) in that event, also be sentencing their loved ones, for whom they are responsible, to likely hardship and suffering during any period of incarceration.

49. Any such hardship is not due to the sentence per se which the courts must impose. That is but the result of a decision by the breadwinner to commit serious crime. Even where, as here, the majority of the Defendants joined in the illegal enterprise, reportedly, to make “quick cash” and to “help their families”, their decision to do so by means of known illegal conduct had the effect of gambling with their families’ lives and livelihoods, abrogating their responsibilities to those innocents and breaching their trust. Therein lies the root cause for the avoidable misery for family members which all too often follows the fall of their ‘breadwinner’.

Fines not appropriate

50. A number of submissions and the recommendations by the probation officer for all defendants include that they be fined either alone or as part of conditions of suspension of any prison term. In my view, even though the statutory penalty includes a fine up to \$50,000, to impose any level of fine in this case would not be an appropriate response to the gravity of the offending nor would it adequately serve the necessary sentencing objectives, particularly, deterrence.

51. Firstly, there is no evidence of any single Defendant’s capacity to pay a fine of any specified amount. If a fine alone were an appropriate sentencing option here, the amount would probably be at the upper end of the range, i.e. more than \$25,000.

52. Secondly, there is no evidence that any such fine could be paid within a reasonable time. The submissions descend only to requesting ‘time to pay’. In the usual course, a fine will be required to be paid within a specified period, failing which, a term of imprisonment will be served. Section 26 of the *Criminal Offences Act* limits that period to 3 months. In this case, and in that event, such a short term would be a wholly inadequate result.

53. Thirdly, in cases of large scale commercial production of narcotics, the imposition of a fine runs the risk of being felt by the defendant, and wrongly interpreted by the community, as little more than the cost of doing business. That is not a message the Courts should be sending for criminal conduct such as the present.

Youth

54. At the time of their arrest, Sulitomu'a Muna and Cullen Pongi were 17 years of age. Heuati Toke was only 15.
55. As recently discussed in *Rex v Afeaki* [2020] TOSC 4, an offender's youth, even for serious crimes such as the present, attracts special considerations when determining an appropriate overall sentence.
56. In December 1995, Tonga acceded to the UN Convention on the Rights of the Child. Under the Convention, a child is defined as any person under the age of 18 years. Article 37(b) provides:

"... The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."

57. In 2004, Chief Justice Ward observed that:⁴

"... whilst the accession by a State to a convention indicates its willingness to be bound by the terms of the convention, it will only be enforced by the enactment of necessary domestic legislation.

It is a matter of regret that, despite an apparent time limit of 2 years for compliance imposed by the Convention, Tonga appears to have taken no steps to enact any of the provisions. It can only be hoped that Government will recognise its obligations and enact legislation to bring Tonga into line with international standards of fair and humane treatment of young persons."

58. Some 16 years later, the relevant legislative landscape remains unchanged. Apart from the provisions for criminal liability of children up to the age of 7 and

⁴ *Tone v Police* [2004] TOSC 36

between 7 and 12,⁵ neither the *Criminal Offences Act* nor the two statutes relevant to these proceedings contain any provisions to reflect the proscriptions of the Convention when dealing with persons under the age of 18.

59. In this case, however, I intend to give some effect to the important themes of the Convention through the recognized sentencing tools available, particularly, suspension.

Full suspension not appropriate

60. The submissions and pre-sentence reports also advocate that any sentence of imprisonment be fully suspended, or in the case of Tonga Wolfgramm, that his sentence be either wholly or partly suspended, all on conditions suggested to include a fine (discussed above), probation and/or community service. The reasons for that uniform recommendation include, according to the probation officer: the defendants' remorse, their relatively good records, attempts by some at rehabilitation and that they all present a low risk of reoffending.
61. As outlined above, in *Vea*, the Court of Appeal noted the New Zealand approach that 'personal circumstances are generally irrelevant when sentencing for drug offending'. Given the number of Defendants, the differences in their backgrounds, roles they played, and the young ages of some of them (as mentioned above), I do propose to have some regard to the Defendants' respective personal circumstances, to ensure, among other things, proportionality among their sentences.
62. The Court of Appeal in *Vea* also endorsed its earlier decision in *Tuita* to the effect that a conviction for growing any significant amount of cannabis should carry a sentence within the range of three to five years imprisonment and that sentence should not normally be suspended in whole or in part unless there are good reasons relating to rehabilitation.

⁵ Section 16 of the *Criminal Offences Act*.

63. The considerations relevant to suspension are chiefly those discussed in the oft-cited decision of *Mo'unga v R* [1998] Tonga LR 154 at 157, which may be summarized as:

- (a) a suspended sentence is intended to have a strong deterrent effect;
- (b) if the offender is incapable of responding to a deterrent, it should not be imposed;
- (c) the circumstances in which a suspension of sentence may be appropriate include:
 - (i) where the offender is young, has a previous good record, or has had a long period free of criminal activity;
 - (ii) where the offender is likely to take the opportunity offered by the sentence to rehabilitate himself or herself;
 - (iii) where, despite the gravity of the offence, there is some diminution of culpability through lack of premeditation, the presence of provocation, or coercion by a co-offender; and
 - (iv) where there has been cooperation with the authorities.

64. In *Vake* [2012] TOCA 7, the Court of Appeal also referred to its decision in *Misinale* [1999] TOCA 12 in which it was said that the relevant considerations may also include:

" ... the seriousness of the offending, the need for an effective deterrence, the effect on the complainant, and the personal circumstances of the offender or those dependent on him."

65. I note in relation to the last of those considerations, that the decision in *Misinale* predated *Vea* and others such *Motulalo* [2000] Tonga LR 311. In any event, the considerations on suspension discussed by the Court of Appeal in its various decisions have never been couched as either exhaustive or comprehensive. They are relevant considerations to be taken into account in the overall exercise of the sentencing discretion.

66. Having regard to those principles, the seriousness of the offending and need for effective deterrence, I do not consider that any of the sentences to be imposed

in this case should be fully suspended. However, I do regard that the relevant circumstances of each of the Defendants, which will be discussed separately below, do warrant partial suspension of their sentences.

67. I now turn to consider and determine appropriate sentences for each of the Defendants in the order in which they appear on the indictment.

TONGA WOLFGRAMM

68. Tonga Wolfgramm is currently 43 years of age. He enjoyed a good upbringing. He completed his education to Form 3. Both his parents have since passed away. He is married with three children; the eldest is 13 and youngest is 6 years of age. He also has three children from a previous marriage who now live in New Zealand.

69. His legitimate income was derived from farming. He has a number of allotments in which he is growing kava. Each allotment contains about 8,000 plants. The kava is sold locally and overseas. It is estimated that 8,000 Tongan kava plants will generate about \$290,000. He and his family also grow kape (giant taro) with the kava in two of the allotments. When they are ready for harvest next year, the kape are expected to fetch around \$25,000.00. A further two acres of taro, also due for harvest in October next year, is expected to sell for about \$25,000. Another half-acre containing 600 Tongan tobacco plants is also expected to earn about \$9,000.00. In the face of what can only be regarded, by Tongan standards, as a lucrative farming operation, Tonga's decision to orchestrate and engage in this offending, to make quick and easy money, is all the more bewildering.

70. He started smoking cannabis in 2006 when he separated from his first wife. He usually smokes cannabis when he works in his plantation. Last year, while on bail for these matters, Tonga attempted to stop smoking cannabis by attending and completing the Salvation Army 10 week Alcohol and Drugs Awareness Programme. It is not known whether, having completed the program and joining the Mormon Church, Tonga has remained free of cannabis.

71. Apart from Magistrates Court traffic infringements and possession of homebrew offences, Tonga has no other criminal record.

72. As noted above, Tonga was the ringleader and mastermind of this operation. But for his actions, it is unlikely the others, or most of them, would have engaged in criminal drug-related activity on this scale, if at all. He recruited and corrupted the other much younger Defendants to form their farming group (or 'gang' in the organised criminal drug context) which he fatefully named "Mate moe Mo'ui" meaning "Dead or Alive". He provided all the materials required for the operation, including the firearm and ammunition. He paid the other Defendants and presumably retained all other sales proceeds for himself.
73. For his lead role in the offending, I increase the base starting point to 6 years imprisonment. Unlike in *Huni*, I do not consider it appropriate or necessary to increase the starting point any further on account of the firearm and ammunition. I regard their use as merely one of the hallmarks of the organised crime instigated and coordinated by Tonga Wolfgramm. Those features are already reflected in the overall starting point for him.
74. For his previous good record, original co-operation with police, belated guilty plea and expressed remorse, I reduce the starting sentence by 25% or 18 months, resulting in a sentence of 4 years and 6 months imprisonment.
75. For possession of the 22.57 grams of cannabis, he is sentenced to 9 months imprisonment.
76. For possession of ammunition without a licence, having regard to the fact that he also provided the rifle for the operation with which Sulitomu'a Muna was caught, Tonga Wolfgramm is sentenced to 6 months imprisonment.
77. Both sentences for possession are to be served concurrently with the head sentence for cultivation.
78. On account of his previous good record, attempts at rehabilitation and likely prospects for further rehabilitation upon his release from prison, and the effects this sentence would otherwise have on his family, I will order that the final 18 months of the head sentence (being a further 25%) be suspended, for 2 years from his release, and on conditions which will be set out below.
79. In the result, Tonga Wolfgramm will be required to serve 3 years imprisonment.

SULITOMU'A MUNA

80. Sulitomu'a Muna is described in his pre-sentence report as being 19 years of age. He was therefore 17 at the time of his arrest. He is the eldest of 6 siblings. His parents are divorced. His father lives in Australia. The separation of his parents affected him. He eventually completed Form 3 at school after which he left due to family financial hardship. It is suggested that dropping out of school early, without parental guidance, has contributed to Sulitomu'a falling in with the wrong crowd which resulted in this offending.
81. In recent years, he moved with some friends to Vava'u where he met his paternal grandparents, and with whom he has lived since. He has helped on their farm.
82. He has a daughter. He married her mother in March this year. He did so while on bail awaiting trial in this matter.
83. Sulitomu'a earned legitimate income from growing kava, and from which he has also contributed to his younger siblings' education expenses. After he married, he found employment as a garbage collector with the Vava'u Waste Authority Management earning \$300 per fortnight until he was recently remanded in custody on this matter.
84. He is said to contribute significantly to the operations of his local Mormon church.
85. He is also reported to suffer from an unspecified heart condition for which he takes medication once a month. No medical evidence was presented.
86. Notwithstanding his relatively young age at the time, Sulitomu'a agreed to Tonga Wolfgramm's offer to join the team and grow cannabis among the kava. He knew it was illegal. He spent most of his time guarding the plantation at night with the rifle and ammunition provided by Wolfgramm. Sulitomu'a told the probation officer that he did not know they were unlicensed.
87. Apart from minor Magistrate Court offences, Sulitomu'a has no previous convictions.

88. He too completed the Salvation Army Alcohol and Drugs Awareness Program in 2019.
89. I do not share the Crown's view that Sulitomu'a's sentence should be more severe than Tonga Wolfgramm's other underlings simply because he was the one on guard with the rifle on the day of the police raid. With the exception of one other Defendant, there is no evidence or suggestion that Sulitomu'a did or gained any more from the enterprise than the other more minor offenders who were also enticed by Tonga Wolfgramm to make quick and easy money by growing and guarding the crop.
90. For his lesser part in this operation, I reduce the base starting point to 4 years imprisonment.
91. For his previous good record, initial co-operation with police, belated guilty plea and expressed remorse, I reduce that starting sentence by 25% or 12 months, resulting in a sentence of 3 years imprisonment.
92. For possession of the unlicensed rifle, having regard to the potentially lethal purpose for which it was in his possession, but also the fact that he only had it because Tonga Wolfgramm gave it to him for that purpose, Sulitomu'a Muna is sentenced to 12 months imprisonment to be served concurrently with his sentence for cultivation.
93. On account, particularly, of his youth and his good previous record, attempts at rehabilitation, likely prospects for further rehabilitation upon his release from prison, asserted medical condition, the fact that while he may not have been coerced by him, Sulitomu'a was one of those younger Defendants who were cajoled by Tonga Wolfgramm into joining his criminal gang, and the likely effects this sentence would otherwise have on his family, I order that the final 2 years of the above sentence be suspended, for 2 years from his release, and on conditions which will be set out below.
94. In the result, Sulitomu'a Muna will be required to serve 12 months imprisonment.

CULLEN PONGI

95. Cullen Pongi is 19 years of age. He was 17 at the time of the offending. He is the youngest of 5 children. His parents reside in Nukunuku, Tongatapu and are gainfully employed. He left school during Form 3.
96. Cullen is Tonga Wolfgramm's nephew. His pre-sentence report records that his family life was fine until he began living with his uncle. The two planted kava together in 2017 in Vava'u which produced 600 kgs in 2019 at a then market price of \$100/kg. During that time, Cullen started smoking cannabis when they worked in the plantation.
97. After his arrest and release in 2018, Cullen returned to Tongatapu and lived with his parents. In October 2019, also while awaiting trial on this matter, he married. His wife has since left his family's home.
98. In 2019, he too completed the Salvation Army Drug and Alcohol Awareness Program. Prior to his return to Vava'u to answer this matter, Cullen was employed as a labourer on a squash pumpkin farm, earning \$300 to \$400 per week.
99. Cullen has no previous criminal convictions.
100. He told the probation officer that he understood the illegal nature of his uncles' proposal for the planting of the cannabis and that he willingly joined the gang and helped out by watching over the plants.
101. For his lesser part in this operation, I reduce the base starting point to 4 years imprisonment.
102. For his previous good record, original co-operation with police, belated guilty plea and expressed remorse, I reduce that starting sentence by 25% or 12 months, resulting in a sentence of 3 years imprisonment.
103. On account, particularly, of his youth and his good previous record, attempts at rehabilitation, likely prospects for further rehabilitation upon his release from prison, the fact that while he may not have been coerced by him, Cullen too was one of those younger Defendants who were cajoled by Tonga Wolfgramm into

joining his criminal gang, and the likely effects this sentence may otherwise have on his family, I order that the final 2 years of the above sentence be suspended, for 2 years from his release, and on conditions which will be set out below.

104. In the result, Cullen Pongi will be required to serve 12 months imprisonment.

HESUATI TOKE

105. Heuati Toke is the youngest of the 'Dead or Alive' gang. He is about to turn 18 but was only 15 years of age at the time of arrest. He is the only child of his parents who separated and divorced when he was in primary school. He repeated Form 3 three times before dropping out. His mother re-married and has since had three other children. He has lived between his mother's and one of her older sisters' households. He and 'Amini Topui have been under the care of that aunt.

106. His family's income is derived partly from their plantation. Hesuati has helped with that work. He has also contributed financially to his family from his kava plantation.

107. Heuati has no previous convictions.

108. He too has completed the same Salvation Army program. After his release on bail in late 2018, Heuati joined the Mataika Community Police and has been more involved in his church activities.

109. Heuati's youth made him particularly vulnerable to Tonga Wolfgramm's influence in joining the gang. It is not entirely clear from the material what his role was, but it would appear to be similar to the other two teenage offenders.

110. Therefore, for his lesser part in this operation, I also reduce his base starting point to 4 years imprisonment.

111. For his previous good record, initial co-operation with police, belated guilty plea and expressed remorse, I reduce that starting sentence by 25% or 12 months, resulting in a sentence of 3 years imprisonment.

112. On account, particularly, his youth, and his good previous record, attempts at rehabilitation, likely prospects for further rehabilitation upon his release from prison, the fact that while he may not have been coerced by him, Heuati too was one of those younger Defendants who were cajoled by Tonga Wolfgramm into joining his criminal gang, and the likely effects this sentence may otherwise have on his family, I also order that the final 2 years of the his sentence be suspended, for 2 years from his release, and on conditions which will be set out below.
113. In the result, Heuati Toke will be required to serve 12 months imprisonment.

MISINALE LAVEMAI

114. Misinale Lavemai is 28 years of age. He is the eldest of 5 children. His father left the family 8 years ago, went to Australia and has never returned. Since then, Misinale dropped out of school at Form 5 and assumed responsibility for supporting his mother and his siblings through his kava farm at Mataika and fruit picking overseas. He is unmarried.
115. His mother suffers from 'Essential Hypertension'. She regards Misinale as the only reliable person to take care of her family when she is in hospital. Her second son has indicated that if Misinale is sent to prison, he will quit high school to take care of her and their kava farm. That is a very unfortunate but apt example of the effects on family discussed above in relation to the 'breadwinner' plea.
116. Apart from minor Magistrates Court offences including theft in 2017 for which he was placed on 6 months probation, Misinale does not have any serious previous convictions.
117. Misinale met Tonga Wolfgramm through his close friend, Amini Tapui. He joined the gang in November 2017 where he was introduced to smoking cannabis and drinking alcohol. He too succumbed to the temptation offered by Wolfgramm of 'getting rich' and 'helping his family'. He considered it a 'good investment'.
118. Through their counsel's submissions, Misinale and Afei Tatafu assert that the leaders of the gang were in fact Tonga Wolfgramm and Amini Tapui. That is a serious accusation. It has been not levelled or even alluded to anywhere in the material on sentence, including by the Crown or for Wolfgramm or Tapui. I

therefore consider it unsafe to act solely on the unsworn statements (through submissions on sentence) of those defendants against a co-defendant about such a serious matter.

119. Misinale's role also included planting out and tending his block and guarding the cannabis. The submissions on his behalf include that around August 2018, he, along with the other more minor players, each received \$500 from Tonga Wolfgramm. He was told by Wolfgramm that their next payment would be after the next crop (which was seized) was expected to be harvested in December 2018 and that he would also receive a bonus for guarding the farm between June and September that year.
120. As a demonstration of his remorse, Misinale says that a week before they were arrested, he left the farm by feigning illness to Wolfgramm, in an effort to leave the gang.
121. He too has completed the Salvation Army program and is now an active and devoted youth member of the Mormon Church.
122. Although he was older than the three teenage Defendants at the time, and therefore should have known better, I regard Misinale's level of culpability to be equivalent. He too was one of Tonga Wolfgramm's foot soldiers. I therefore also reduce the base starting point for his sentence to 4 years imprisonment.
123. For his previous good record, initial co-operation with police, belated guilty plea and demonstrated remorse, I reduce that starting sentence by 25% or 12 months, resulting in a sentence of 3 years imprisonment.
124. On account of his good previous record, attempts at rehabilitation, likely prospects for further rehabilitation upon his release from prison, some diminution in culpability due to the influence of Tonga Wolfgramm, and the effects this sentence will otherwise have on his family, I order that the final 18 months of his sentence be suspended, for 2 years from his release, and on conditions which will be set out below.
125. In the result, Misinale Lavemai will be required to serve 18 months imprisonment.

'AMINI TOPUI

126. 'Amini Topui is 26 years of age. He was customarily adopted by Heuati Toke's grandmother who had three daughters. When the grandmother passed away, 'Amini moved around between the families of the three daughters. He otherwise had a satisfactory upbringing. He completed his education to Form 7. He enrolled at USP but was unsuccessful in his first semester subjects and so he dropped out. Thereafter, he returned to Mataika to help on his family's plantation. He also has his own kava plantation through which he contributes financially to his family.
127. Apart from minor Magistrates Court offences, 'Amini does not have any serious previous convictions.
128. He too has completed the Salvation Army program, is a member of Mataika Community Police and has become more involved in his church activities.
129. 'Amini's otherwise good character is said to have changed once he joined the 'farming group'. He too succumbed to the lure of quick money.
130. Apart from the unsworn statements made on behalf of Misinale Lavemai, there is very little in the rest of the material to describe 'Amini's role in the operation in any detail. For the reasons stated above, and for the purposes of this sentence, I am left to proceed on the basis that his involvement, and therefore culpability, was similar to that of the other minor players.
131. Accordingly, the starting point for 'Amini is also reduced to 4 years imprisonment.
132. For his previous good record, initial co-operation with police, belated guilty plea and demonstrated remorse, I reduce that starting sentence by 25% or 12 months, resulting in a sentence of 3 years imprisonment.
133. On account of his good previous record, attempts at rehabilitation, likely prospects for further rehabilitation upon his release from prison, some diminution in culpability due to the influence of Tonga Wolfgramm, and the effects this sentence will otherwise have on his family, I order that the final 18 months of his sentence be suspended, for 2 years from his release, and on conditions which will be set out below.

134. In the result, 'Amini Topui will be required to serve 18 months imprisonment.

AFEI TAU'AKITANGATA TATAFU

135. Finally, and notably, Afei Tatafu presents a different case to the previous five Defendants.

136. He is 23 years of age, the second son of ten children. He quit school at Form 5. He is married with three very young children. He previously worked helping his father on their vegetable farm for which he received a weekly salary. Since he was remanded in custody, Afei's wife, who is said to have known nothing about his involvement in this offending, has been left to perform his duties including working the family plantation. She is yet another casualty of breadwinner crime.

137. According to Mrs Ebrahim's submissions, Afei started smoking cannabis when he was 15 years of age and, as a result, became addicted to it. However, he told the probation officer that he started using alcohol and drugs when he joined the Wolfgramm farming group.

138. Mrs Ebrahims submissions also conveyed that Afei was 'proud' to be a member of the Wolfgramm gang because it meant he could smoke cannabis for free. That appears to have been his main motivation for joining, initially at least.

139. However, as mentioned above, Afei was in fact far more involved in the operation.

140. Mrs Ebrahim's submissions volunteered that Afei's role was as the salesperson. He was responsible for selling cannabis from Tonga Wolfgramm's home at Mataika every day. He was paid \$50 per day. Sales generated a minimum of \$600 a day. He also planted and tended cannabis seedlings provided by Wolfgramm at his block as part of the group's overall plantation, and for which, he also received \$500 around August 2018.

141. The same submissions also identified that this is the second time Afei has been involved in cultivating cannabis. The submissions described that previous offence as "on probation sentencing for three years for possession of cannabis in 2016". He told the probation officer he only had minor convictions in the Magistrates Court.

142. However, late yesterday afternoon, the Prosecutor provided the following record obtained from police here in Vava'u:

- (a) CR 1/2016: Possession of illicit drugs, cannabis - 6 months imprisonment suspended for 2 years;
- (b) CR 2/2016: Cultivation of illicit drugs, cannabis - 6 months imprisonment suspended for 2 years concurrently with CR 1/2016;
- (c) CR 3/2016: Simple Bodily Harm - probation for 1 year; and
- (d) CR 4/2016: Common assault - probation for 1 year concurrently with CR 3/2016.

143. Mrs Ebrahim submitted, no doubt on instructions, that both her clients had attended the Salvation Army Alcohol and Drugs Awareness and Life Skills program, and that they had “shown very positive lifestyle changes especially towards members of their families and friends as well as their community”. That account is belied by the pre-sentence report for Afei in which it is reported that although he has become more active in his church activities since his release on bail in September 2018, he is the only Defendant who has not participated in the Salvation Army program.

144. The above discrepancies in Afei's accounts tend to cast doubt over the genuineness of his professed remorse for the offending (as opposed to being caught for the offending). Similarly, in light of his recent conviction and suspended sentence for cultivation and possession of cannabis, and the fact that the instant offending occurred either during or only shortly after the period of his suspended sentence, I have grave reservations about the reliability of the probation officer's prediction that Afei is unlikely to re-offend in the future.

145. As Mrs Ebrahim put it, Afei's continuing drug lifestyle has been “toxic to his family and to the community”.

146. In my view, if Tonga Wolfgramm's role in the offending could be described at a level of upper management or owner, Afei's additional financial involvement, and gain, in the joint criminal enterprise places him in a category akin to middle

management. For that reason, the starting point for him will only be slightly reduced to 4 years and 6 months imprisonment.

147. By reason of his recent previous convictions for cultivation and possession, I cannot discount Afei's starting point for mitigation by the same proportion as the other Defendants who are without such a relevantly blemished record. However, for his original co-operation with police, belated guilty plea and expressed (albeit doubtful) remorse, his starting point will be reduced by 12 months, resulting in a sentence of 3 years and 6 months imprisonment.

148. On the question of suspension, Mrs Ebrahim relied on a passage from the decision of Niu J in *R v Kaufusi* [2020] TOSC 53 at [21]. In that case, the defendant had a very poor criminal history including a sentence of 6 years for manslaughter in or about 2012. He was before Niu J for sentencing after trial on a cultivation charge. There was some evidence that the defendant had been trying to reform his life and that he was genuinely remorseful. After deciding upon a sentence of two and a half years, his Honour decided to fully suspend it because he considered that if he did not do so, the defendant would lose his job, be separated from his wife and children and be "thrown back to the deep end" with other convicts from whom he had been trying to distance himself. Niu J did not consider that "justice demanded that" result. With respect to his Honour and Mrs Ebrahim, there is a very simple reason (which should have been, but was not, disclosed in her submissions) that reliance on that approach in this case is misplaced: Kaufusi was convicted of cultivation of 17 plants weighing 94.45 grams.

149. I have already expressed reservations about Afei's aptitude for rehabilitation. Of the other *Mo'unga* considerations for suspension, the only ones in his favour are that he is still relatively young; that apart from the 2016 offences, he has not been convicted of any other criminal behaviour before then or since until the instant; and I accept that he too was likely inveigled to a certain extent by Tonga Wolfgramm when he brought Afei into the gang. I also give some small weight to the effects on Afei's family. All up, I am satisfied that he should be afforded some (and possibly his last) opportunity for rehabilitation when he is released. As his case for suspension is clearly not as favourable as the other Defendants, I will

therefore order that the final 15 months of his sentence be suspended, for two years from his release, and on conditions which will be set out below.

150. In the result, Afei Tatafu will be required to serve 2 years and 3 months imprisonment.

RESULT

151. Tonga Wolfgramm:

- (a) you are convicted of:
 - (i) cultivation of cannabis, and sentenced to 4 years and 6 months imprisonment;
 - (ii) possession of cannabis, for which you are sentenced to 9 months imprisonment, to be served concurrently with your sentence for cultivation; and
 - (iii) possession of ammunition without a licence, for which are sentenced to 6 months imprisonment, also to be served concurrently with your sentence for cultivation;
- (b) the final 18 months of the head sentence will be suspended, for 2 years from your release, on the conditions set out below.

152. Sulitomu'a Muna:

- (a) you are convicted of:
 - (i) cultivation of cannabis, and sentenced to 3 years imprisonment; and
 - (ii) possession of a firearm without a licence, for which you are sentenced to 12 months imprisonment to be served concurrently with the sentence for cultivation;
- (b) the final 2 years of the head sentence will be suspended, for 2 years from your release, on the conditions set out below.

153. Cullen Pongi:

- (a) you are convicted of cultivation of cannabis, and sentenced to 3 years imprisonment;
- (b) the final 2 years of that sentence will be suspended, for 2 years from your release, on the conditions set out below.

154. Heuati Toke:

- (a) you are convicted of cultivation of cannabis, and sentenced to 3 years imprisonment;
- (b) the final 2 years of that sentence will be suspended, for 2 years from your release, on the conditions set out below.

155. Misinale Lavemai:

- (a) you are convicted of cultivation of cannabis, and sentenced to 3 years imprisonment;
- (b) the final 18 months of that sentence will be suspended, for 2 years from your release, on the conditions set out below.

156. 'Amini Topui:

- (a) you are convicted of cultivation of cannabis, and sentenced to 3 years imprisonment;
- (b) the final 18 months of that sentence will be suspended, for 2 years from your release, on the conditions set out below.

157. Afei Tau'akitangata Tatafu:

- (a) you are convicted of cultivation of cannabis, and sentenced to 3 years and 6 months imprisonment;
- (b) the final 15 months of that sentence will be suspended, for 2 years from your release, on the conditions set out below.

158. Each of the prisoners is to receive credit for time served on remand.
159. Each of the suspensions of sentence referred to above are subject to conditions that during the respective periods of suspension, each Defendant will be required to:
- (a) not commit any offences punishable by imprisonment;
 - (b) be placed on probation;
 - (c) live where directed by his probation officer;
 - (d) not consume alcohol or illicit drugs; and
 - (e) complete a course, or further course as the case may be, on alcohol and drug awareness as directed by his probation officer.
160. I direct that, during their terms of imprisonment, to the greatest extent practicable, Sulitomu'a Muna, Cullen Pongi and Heuati Toke are to be kept separate from other adult prisoners.
161. Pursuant to s.32 of the *Illicit Drugs Control Act*, the cannabis the subject of counts 1 and 2 is to be destroyed.
162. Pursuant to s.37 of the *Arms and Ammunition Act*, the rifle and ammunition the subject of counts 3 and 4 are forfeited to the Crown.

NEIAFU

16 October 2020



A handwritten signature in blue ink, appearing to read "M. H. Whitten".

M. H. Whitten QC

LORD CHIEF JUSTICE