IN THE DISTRICT COURT OF NAURU
[CRIMINAL JURISDICTION]

Criminal Case No. 2 of 2003

The Republic v Beston Qubbadi, Abbas al Sayed Madhi, Ahmad al Jizzi, Mohammad al Shammary, Jassim al Budari, Tariq Tawfiq, Mohammad al Zirjawi, Abuzar al Salim, Ahmad al Janabi, Mohammad Sager, Jassim al Bohassan, Ahmad al Musawi, Abbas Ansari, Dilshad Ako, Odai Mamarah and Safaa al Saedi

Criminal Case No. 3 of 2003

The Republic v Wasan Tariq

Criminal Case No. 4 of 2003

The Republic v Tawana Ako

JUDGMENT

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1. The accused are all asylum seekers seeking refuge in Australia and other countries from their countries of origin. They are of different ethnic backgrounds and religious sect of the Islamic faith. They are part of over 1000 asylum seekers brought to Nauru since 2001 under an arrangement between the Governments of Australia and Nauru. The arrangement is known as the "Pacific Solution". They came under a special visa arrangement so that their claim for asylum would be processed on Nauru before being accepted in another country. Some of them came in late 2001. Others arrived in Nauru in late 2002 from another processing centre on Manus Island in Papua New Guinea.

2. The accused speak different languages and dialects and in the course of the hearing of the three cases the Court utilised the services of three interpreters in the Arabic, Farsi and Kurdish language.

3. The accused were brought before the Court under circumstances that could not be described as peaceful as the Court will later reveal. Those circumstances caused problems to the Nauruan and Australian authorities including international organisations involved in the "Pacific Solution".

4. In Nauru they are detained at two camps especially set up for the purpose of processing their status. The accused lived in the camp known as "stateside" (herein stateside). The court visited the camp on 16 September 2003.

The stateside camp

5. Stateside is a makeshift camp that could easily be dismantled when it is no longer required. The camp is located in the District of Meneng at the site of the erstwhile residence of the Head of State of Nauru. Hence, the name "stateside".

6. The layout and position of the buildings are as set out in Exhibits P10 and P11. The area that is described as a "no go zone" (herein NGZ) is not a large area. It is bounded by three gate entrances, wire fencing, by the office of the International Office for Migration

(herein IOM) and Chubb gatehouse and other buildings nearby. All are in close vicinity of each other. The NGZ is an area that camp residents pass through after they had been given permission to exit and on return to camp. This is the area where the riot is alleged to have taken place. A group of up to one hundred people would almost fill up the area with little space left.

7. The mosque and the computer and women's centre are makeshift buildings. They are some distance from the NGZ. The longhouses that accommodate the camp residents are also some distance from the gate and the NGZ. The other buildings including the restaurant, TV room and shower and rest rooms are as shown in Exhibits P 10 and P 11. The TV room has direct satellite feed for residents to watch television programmes. At the time of the court's visit, most of the longhouses are empty and the walls have been taken away. There is only one longhouse left to accommodate the remaining residents. Most of the residents have left the camp.

The Incident

8. The unfortunate incident leading to the accused to be brought before the Court and charged can be gleaned from the evidence of PW 4 and PW 5.

9. PW 4 Chubb officer Ken Vidler testified that the Chubb officers at the camp are the first point of contact for the asylum seekers. He was on duty on the day of the incident and was at the Chubb gatehouse when a group of women started protesting in the NGZ. The women were protesting about going to Australia to join their husbands. This was about 10 am. The women then moved to the Australian Protective Service (herein APS) office located outside the camp and continued protesting. At that point some men and children moved to the NGZ and watched the women. By lunch time some of the women moved into camp including some of the men in the NGZ for lunch. The situation at that time was quiet. The women's protest was passive. Mr. Vidler also deposed that there was a line of APS officers standing at ease watching the women protesters.

10. According to PW 4, unfortunately, a female IOM officer came out of the medical clinic and argued with the men in the NGZ. They were arguing in the language of the asylum seekers. He was within earshot but did not understand what was said between them. They had a heated argument, she provoked them and retreated to the clinic. The men ran after her to the clinic and began yelling, throwing stones and smashing windows. He was not able to identify the asylum seekers. They were agitated and angry. Some women joined the men. He then evacuated Eurest, IOM and Chubb personnel towards the APS office

which is about 50 metres away from the main gate. He stated that there were damages to the clinic's windows and curtains. The APS then moved the residents back into the camp through the main gate. Then the incident really started. When things quieten down he saw Insp. Brown enter the camp and talk to the people in the NGZ. On Brown's return he learned from him that the asylum seekers do not want the IOM in the camp.

11. PW 5 Insp. Brown is the APS commanding officer at the scene of the incident. He holds the rank of inspector and has been in that position for three years. He is an experienced and well trained officer in rioting and crowd control. Exhibits P 3 to P 8 inclusive testifies to his qualifications. He deposed that the APS assists and advises the Nauru Police Force (herein NPF). The APS officers are sworn into the NPF as "reserve officers". He has given evidence in similar cases before. He said on arrival at the camp he also saw a group of women demonstrating peacefully outside the Chubb gatehouse. He then left for the NPF station to inform the NPF of the situation. On his return he saw the women had moved to the APS office outside the camp and continued to demonstrate passively. He said the women had now breached the conditions of their confinement in camp since there was no permission given to leave camp. But it was decided not to do anything about it.

12. He identified the accused in Criminal Case No. 3 of 2003 (herein Case No. 3) to be among the women protesters. At around lunch time some of them entered camp for lunch and others stayed behind near the United Nations High Commission for Refugees (herein UNHCR) building outside the camp. Later male residents started to congregate in the NGZ. He ordered the APS to put on their riot gear. At this time some of the female residents moved towards the medical clinic then he heard the breaking of glass.

13. When he heard broken window glasses coming from the clinic he and another APS officer then moved to the clinic to make a risk assessment. He peered through the window of the clinic and saw Dr. Marwan Naoum in a state of shock. At the same time a group of men started running towards the clinic. He identified Jassim al Budari, Mohammad Sager and Abbas Ansari among the group of men. When the clinic was attacked he ordered the riot team to move the residents back into camp and to halt at the gate and hold the line. There were seven men in the riot team. Then the riot began in earnest. The riot team was attacked with sticks and rocks. The gate was slammed ferociously. The gate was locked at the time the riot started by an unknown resident. The APS officers were then joined by eight NPF officers in riot gear at the gate to contain the rioters in case they break out of camp.

14. At this time IOM, Chubb and other non residents were being evacuated. Slingshots were used to send stones at the riot team and at people further away from the main gate. A slingshot was tendered in evidence as Exhibit P 16. Whilst the attack on the riot team was taking place asylum seekers were on a rampage of damaging buildings in the camp. The buildings damaged were IOM office, Chubb gatehouse, music room, computer room, women's room and a meeting room. A fire truck was then called in and PW 5 then ordered the NPF riot team to place their shield over the top of the APS riot team. He also said that children and male residents were supplying rocks to the rioters. Whilst giving orders he was hit by a rock and suffered a cut to his left forehead. He had a cap on that day. He fell down on one knee and his sunglasses also fell off. He retreated upon being hit and saw blood coming over his left eye. APS # 1320 told him that he saw the person who threw the rock at him. The witness tendered in evidence the cap he wore on that day. It had a mark on the left front visor and corresponds to the area of his injured forehead. The cap is received in evidence as Exhibit P 17. The witness showed the court a permanent scar on his forehead where he was hit. PW 5 ordered the riot team to disengage when the rioters used fire extinguishers. Some rock throwing continued at this time as well as attacks on the buildings. He then made an assessment to apply therapeutic rapport with the residents to establish communications and trust. When he entered

camp to communicate with the residents the accused Abbas al Sayed Mahdi moved to speak to him with the aid of an interpreter. He told the court he went into the NGZ by himself and convinced them to return to their quarters in the camp.

15. No arrest was made on that day. It was a month later that charges were laid and the accused brought before the Court.

Investigation and Charges

16. Insp. Francis Amram, PW 10, testified that he was the investigating officer in charge of the case. He deposed that he interviewed the accused on 8 January 2003. He did so, on the basis of a list of names given to him by IOM and APS. He conducted the interview with the assistance of an interpreter/translator. He warned and caution them when he took their statement. He did not, however, charge the accused. The DPP's office laid the charges. The charges in Criminal Case No. 2 of 2003 (herein Case No. 2) were laid on 23 January 2003 when the accused were first brought before the District Court following investigation. On that day the Prosecution asked the Court to remand the accused in prison since the camp is not being properly administered by the IOM and the situation in the camp is volatile. Police investigation had completed by then. The accused sought bail and was granted.

17. On 17 February 2003, the accused were taken from camp and detained in prison at the Nauru Prison. The detention of the accused was brought to the Court's attention by Defence Counsel on 26 February 2003. The Court was informed by the Prosecution that the accused were not detained in prison but were being held at a processing centre in the women's cell in the Nauru prison precincts. The detention was to stop them from violating the terms of their special visa conditions. The Court asked for evidence that the women's cell at the prison is a processing centre under the Pacific Solution. The Prosecution could only provide the special visa issued to the accused on 29 January 2003. For reasons not disclosed to the Court the accused were locked up without proper authority or explanation. The Court then released the accused. No charges on the alleged breach of visa conditions were laid in Court against the accused.

18. On 26 February 2003, the Prosecution withdrew four of the original five charges filed in Case No. 2 and filed twenty three new charges. Some of the charges were consolidated by the Court to avoid duplicity. The Defence Counsel then informed the Court that a writ had been filed in the Supreme Court to quash the proceedings before the District Court. The proceedings before the Court however continued to the trial stage.

19. Charges were also filed in Case No. 3 and in Criminal Case No.

4 of 2003 (herein Case No. 4) in Court on 26 February 2003. In the course of the hearing the matter, three of the accused were discharged in Case No. 2. Further, some serious charges were withdrawn in Case Nos. 2, 3 and 4 at the end of the Prosecution's case.

20. The accused are charged with several offences under the Criminal Code Act of Queensland 1899 (First Schedule), as adopted in Nauru, (herein the Code), arising out of the incident at stateside camp. In Case No. 2 all the accused pleaded not guilty to the following charges:

1. Riotous Assembly: c/s 63 of the Code
2. Going Armed as to Cause Fear: c/s 69 of the Code.
3. Forcible Detainer: c/s 71 of the Code.
4. Affray: c/s 72 of the Code.
5. Threatening Violence: c/s 75(2) of the Code.
6. Common Assault: c/s 335 of the Code
7. Serious Assault: c/s 340 of the Code.
8. Malicious Injury: c/s 469 of the Code
9. Conspiracy: c/s 543(6) of the Code.

21. The accused in Case No. 3 pleaded not guilty to the following charges:

1. Riotous Assembly: c/s 63 of the Code.
2. Forcible Detainer: c/s 71 of the Code.

3. Threatening Violence: c/s 75(2) of the Code.

4. Malicious Injury: c/s 469 of the Code.

5. Conspiracy: c/s 543(6) of the Code.

22. The accused in Case No. 4 pleaded not guilty to the following charges:

1. Riotous Assembly: c/s 63 of the Code

2. Going Armed as to Cause Fear: c/s 69 of the Code.

3. Forcible Detainer: c/s 71 of the Code.

4. Affray: c/s 72 of the Code.

5. Threatening Violence: c/s 75(2) of the Code.

6. Unlawful Wounding: c/s 323(1) of the Code.

7. Common Assault: c/s 335 of the Code

8. Assault Occasioning Bodily Harm: c/s 339 of the Code.

9. Serious Assault: c/s 340 of the Code.

10. Malicious Injury: c/s 469 of the Code

11. Conspiracy: c/s 543(6) of the Code.

23. All the accused in the three cases agreed that all the charges against them should be tried by the Court together.

The Evidence

24. At this point it would be useful to look at the evidence produced in Court.

25. PW1 Ibrahim Zakholy told the court that he was on duty at the camp on the day of the incident. He is a community liaison officer. He speaks the Arabic language and interprets for the camp residents. He had good rapport with them. He deposed that he is in constant contact with the asylum seekers. When he came on duty on 24 December 2002, he saw a group of women yelling and screaming for freedom. The women were in the NGZ of the camp. He walked past them to get to the IOM office in the camp. He came out later to inform the asylum seekers that a shopping trip is being organised. After the bus carrying the shoppers left he returned to his office. The protest continued. At 11.30 am when he came out of the office and he saw the women try to stop a water truck leaving the camp. He and a colleague unsuccessfully tried to get the children away from the NGZ. It was at this stage that he was getting concerned. He then went to the clinic and contacted his superior. There were four other people in the clinic. He deposed that an angry crowd had moved to the clinic and that a woman broke a window of the clinic but he did not identify her. His superior arrived and after conferring he was told to enter the camp to assess the situation. PW 1 was joined by another liaison officer. He was threatened by the crowd and he left with the other officer as he was frightened. He kept watching the gate as he conferred with his superior. He then said that he saw a group of men armed with iron bars, sticks and stones head to the clinic and started to smash the

clinic and throw stones. They were agitated and angry. He was at this time one hundred metres from the clinic. He did not identify the person attacking the clinic. He was not cross examined by the accused.

26. PW 2 Dr. Marwan Naoum is a migration health officer employed by the IOM and works at the camp's medical clinic. He holds a medical degree from the Faculty of Medicine at the Jordan University and has been practising medicine for twelve years. He deposed that he was in the medical clinic working during the incident and had heard noises coming from the direction of the camp. He saw people heading to the APS office. Then he heard rocks landing on the clinic's roof People came and smashed the clinic but he did not see them as they did not enter the clinic. Chubb officers evacuated the clinic and he left the clinic and the camp at that time. He came back later. On his return he treated Insp. Brown for a cut on his head. He also treated another APS officer for a similar injury. He made a report on the APS officers. He said that he stitched the wounds. The reports are tendered in evidence as Exhibits P 1 and P 2. The reports indicate clearly that the APS officers required their wounds to be stitched. He compiled the medical reports from notes taken after examining the officers. He also gave evidence that the clinic's windows and equipment was damaged. He was crossed examined on the medical reports but nothing of

substance was revealed.

27. PW 3 Insp. Norio Tebouwa is the commander of the NPF on the day of the incident. He deposed that he was on duty on the day when he was called to an emergency at the stateside camp by radio. On his arrival he saw a commotion. There was a crowd at the gate to the camp. There was shouting and throwing of stones by people inside the camp. About five APS officers were at the gate and about twenty people were inside the camp. He observed some people damaging the Chubb gatehouse which is inside the camp. The people were asylum seekers. He saw Insp. Brown and an APS female officer injured. A fire truck was ordered in by Insp. Detageouwa to shoot water on the rioters. The truck sustained damages to its windscreen from stones thrown at it. The APS riot team moved back from the gate when the rioters used fire extinguishers. In cross-examination, he said he was thirty metres from the gate observing the commotion. He could not recall seeing any women at the gate. He could not recall talking to the asylum seekers that day. He had heard some people behind him saying do not throw stones but he did not see any person throw stones from behind him. He also said he could not recall going into the camp on that day.

28. PW 4 and PW 5 evidence in chief has been referred to in paragraphs 9 to 14.

29. PW 4 Vidler in cross examination told the Court that there was no violence during the women's demonstration. The violence began about 1.35 pm. He recalled the time because the 2.00 pm Chubb shift was coming on. He deposed that the asylum seekers' anger and frustration was directed at the IOM and not at anyone in general. The whole incident lasted about 2 hours. He re-entered the camp at about 3.30 pm. This witness is impressive.

30. Under cross examination, PW 5 Brown confirmed that all APS officers were sworn in as "reserve officers" of the NPF. He stated that this is part of the Agreement between the Governments of Nauru and Australia. However, he could not produce the document evidencing this fact when asked by the Defence Counsel Mr. Ruben Kun. He further deposed that the riot team was placed at the main gate to contain and control the situation. Otherwise the APS would lose control should the rioters leave the camp. Containment, evacuation and control were the principles applied to manage the incident. The residents were confined to camp including the NGZ. The APS did not intend to enter camp even though they had the means to enter. He estimated 70 to 90 residents were in the NGZ at the time. He could not identify persons using objects to hit the APS riot team. He further stated that the accused were in the camp when the search warrant was executed on 10 February 2003. He did not comment when asked

whether inquisitive locals were in the vicinity of the incident. Brown is an able and experienced witness.

31. PW 6 APS officer #1320 deposed that he responded to a call to the stateside camp when contacted. He corroborated the evidence of the previous witnesses about the protest, the exchange between the IOM employee and the male residents, the attack on the clinic, the damages to the fire truck and the riot. He tendered a photograph of the damaged window of the medical clinic that he took after the riot. This is Exhibit P 18. He named Abbas al Sayed Madhi and Jassim al Budari to have attacked the medical clinic with rocks. At the time the residents were being moved into camp he saw Abuzar al Salim with a red object in his hand that he dropped when ordered to do so before running back into the camp. He deposed that Insp. Brown, APS officers # 5601, #2329 and he formed a line behind the riot team when the team took its position at the gate. Shortly after the riot began he was hit on the head by a rock and was ordered to withdraw. He moved back 15 metres from the gate. APS officers #5601 and #2329 also moved back with him. He named Tawana Ako and Abuzar al Salim to be in the group attacking the APS riot team. He also testified that Tariq Tawfiq and Tawana Ako damaged the rock wall near the main gate and damaged windows to buildings nearby. He saw Brown hit by a rock thrown by Tawana Ako. He tendered in evidence as Exhibit P

19 a photograph of Insp. Brown after he was hit by a rock. He also tendered in evidence photographs of damages to the meeting room (Exhibit P 20), Chubb gatehouse (Exhibit P 21), medical clinic (Exhibit P 22) and the NGZ (Exhibit P 23). These exhibits are clear evidence of the damages to the buildings and the injury to Insp. Brown.

32. In cross-examination, PW 6 deposed that he did not mingle with the accused before the incident. He did so after and then came to know their names. He said that some women attacked the clinic but did not know who they were. Most were near a tree next to the UNHCR building. This building is numbered 13 in Exhibit P11. He stated that the violence was ferocious and he had no time to don safety gear. He was hit within 5 minutes of the riot starting. He further deposed that he saw the attacks on the building from 15 metres to the main gate and his vision was not affected by the injury he received. He said he did not see the rock that hit him. He also deposed that there were about 130 people in the area of the riot. He was never challenged by the accused whom he identified in the riot. The accused in Case No. 4 did not challenge the witness's evidence on the injured Insp. Brown.

33. PW 7 APS officer #5601 also gave evidence of identification as well as corroborating the evidence of the other witnesses. He came to Nauru in November 2002. He said that he saw 6 to 8 women in conversation with an IOM officer named Emile. This contradicts the

evidence of PW 1. From 30 metres he observed the exchange between an IOM female employee and the male residents. He could not identify the men. His view was blocked. When the residents were moved into camp the NPF arrived and joined the APS riot team at the gate. He was standing 10 metres behind them. He named Abbas Ansari, Jassim al Budari and Dilshad Ako as persons attacking the APS and NPF riot teams. He also gave evidence of the use fire extinguishers and disengagement of the riot team. He saw an injured PW 6 but did not see how he was injured. Next he said Insp. Norio Tebouwa, PW 3, ordered in the fire truck. This contradicts PW 3's testimony that Insp. Detageouwa ordered the fire truck to move in and spray water on the rioters. He also saw Insp. Brown injured and went down on his knees and got up and withdrew out of range. He said that Insp. Brown and Insp. Tebouwa entered the camp after an uneasy truce. Again this contradicts the evidence of PW 4 and PW 5.

34. Under cross examination he stated that the APS regularly enter the camp and got to know the residents. This contradicts the evidence of PW 6. He stated there were over 100 people at the time of the incident. He said the people he named are those he recognised. In court, when asked to identify some of the residents he named Abbas Ansari, Jassim al Bohassan and Jassim al Budari as rioters. He said when he saw Abbas Ansari he was without a beard. He stated

that the APS has records and photographs of these accused.

He also averred in cross examination that there were residents in the camp controlling the rioters and their action assisted in controlling the situation. He further said that the riot shields are made of clear plastic material and one can see through it. He said there was enough space for him to look through the shield at what was happening. The riot shields referred by the witness were not produced in Court and the Court has no way of verifying the statement of PW 7.

35. He was not challenge on his identification evidence nor were matters put to him that would establish the defendants' story. There are some contradictions in his testimony with other Prosecution witnesses. This may be due to the time period between the incident and the trial and his recollection may have waned.

36. PW 8 APS officer #2329 also deposed that she arrived on Nauru in December 2002 to assist the NPF. She was ordered to attend an incident at stateside camp on 24 December 2002. She arrived at the camp at 11.45 am and join a line of APS officers. When the riot began she escorted two women into camp by a side gate and joined the APS line behind the riot team. She said all the people in Court were involved in the riot. Some stood out but did not say in what way. She named Tawana Ako, Tariq Tawfiq, Beston Qubbadi, Mohammad al

Shammary and Jassim al Bohassan. She noticed APS officer #1320 injured and told him to move back. PW 8 felt her shoulder becoming hot and saw blood on her shoulder. PW 8 also deposed to the use of the fire truck and the damages sustained and the use of the fire extinguishers. She told the Court that when the riot ceased Insp. Brown and Insp. Tebouwa entered the camp and spoke with Al Sayed Mahdi. This contradicts with the testimony of PW 4, PW 5 and PW 6.

37. PW 8 said in cross examination that the supporting line used the riot team's shields and bodies to protect themselves from the rocks thrown at them. She said she was bending forward and looking but she did not duck. She deposed that there were 70 people at the gate in the NGZ but not all are involved. The NGZ is an area that is 3 metres wider than the Court room. She stated that the APS team stood down at 2.30 pm. She also stated in cross examination that the negotiations between Insp. Brown and the residents took 2 to 3 hours. The witness also averred that the incident lasted 2 or 3 hours then later said she could not say what is the period of time from the attack on the medical clinic to the negotiations. She said it's almost forever. She was not challenge on her evidence of identification of the accused she named. Her poor recollections of the duration of the incident may have been affected by the time between the incident and the trial in Court.

38. PW 9 Brian Curran, who works for Eurest was called to give

evidence of the damage to the buildings on the day of the incident. He tendered a Report (Exhibit P 24) that showed an estimate of $72,000 worth of damage. He deposed that the damages were extensive. The Report was made two months after the incident but the damages were inspected on the 24th December 2002. This corroborates the testimony of PW 4 who deposed that after the incident he and others entered the camp and inspected the damages. The cross examination did not reveal any real point of substance.

39. The evidence of PW 10 had already been referred to in paragraph 16. In cross-examination he was rather hesitant in his response to questions. He told the Court that he took leave during investigation of the matter instead of being taken off it.

40. The Defence called to the witness stand several of the accused in Case No. 2. The defendant in Case No. 3 also gave evidence and the defendant in Case No. 4 was not called to give evidence. The accused also call other witnesses to corroborate their story.

41. DW 1 Abbas al Sayed Mahdi is from Iraq and deposed that he approached Ibrahim Zakholy when the women were demonstrating and asked why he would not assist the women. He told the Court that Ibrahim was abusive to the women. When Ibrahim made fun of him he decided to take photographs of the scene. He said that after lunch he

then prepared for prayers. At the mosque praying were the accused Mohammad al Shammary, Jassim al Budari, Odai Mamarah, Aqeel al Shammary, Abbas al Irani, Abbas Ansari, Assad al Timimi, Ahmad al Jizzi, Ahmad al Janabi, Jassim al Bohassan and Safaa al Saedi. As the Imam of the Shiite sect he led the prayers. During prayer he heard noises but did not stop to pray. After prayer ended he went to the NGZ with the others in the mosque to appease the rioters. By the time they reach the NGZ the riot had stopped. He then talked with Insp. Brown who entered camp to communicate with the residents. The talks were conducted through an interpreter who had retuned to Iraq. Thereafter the people dispersed from the NGZ to their quarters. He said that Brown appreciated his intervention and considered him a dear friend. He said Chubb and Eurest returned to their positions but IOM did not. Three days later Ibrahim returned with another IOM officer and the NPF. Ibrahim told the residents that IOM services were being withdrawn from stateside and people should move to the other camp at topside if they want the services of IOM. He said a majority of the people moved but some stayed behind. He told the Court that Brown saw him on 28 December 2002 and asked as friend to intervene for IOM to return to camp. At first he refused and then agreed. APS had run the camp when IOM withdrew. Next he mentioned a TV documentary on which he was interviewed. That caused his relationship with Brown to turn sour.

42. In cross-examination he said that PW 7 APS officer #5601 is not acquainted with the asylum seekers and does not know them. The accused said he met the APS officer after the incident. The APS do not enter the camp and the residents deal with the IOM. He testified that there about one hundred people at the incident but a lesser number were involved in the riot. He acted as a spokesman for the rioters through an interpreter. He further deposed when challenged that he was not rioting and for him to go to the riot with a pair of scissors and use it against the APS riot team is not realistic. He said the fighting had stopped when he reached the NGZ but that APS was still trying to enter camp. This runs counter to the evidence of PW 5 and others and was not put forward in cross examination of the Prosecution witnesses. He deposed that after 27 December 2002, Chubb and Eurest left the camp and APS took over. There were no services for a month. There was no supply of food except that in the camp store. To allow the children to have more food the adults took only one meal a day. The food run out a month later. Then the residents received 2 kilos of rice from the APS. The sick did not get medical attention because medical services had completely stopped. He told the court that an IOM doctor refused to see a sick resident and to provide information on sick residents to the local health authorities when requested. He was questioned at length but denied being in the riot.

43. DW 2 is the accused Tariq Tawfiq, a Palestinian and the Imam of the Sunni sect. He corroborated the evidence of DW 1 about praying in the mosque, the noises heard and the efforts to calm the rioters. The UN had accepted him as a refugee and does not know whether this case will have a bearing on his refugee status.

44. Under a lengthy cross examination, DW 2 denied participating in the riot and stuck with the explanation of praying in the mosque at the time. He deposed that he may have been charged because of verbal arguments with the APS officer # 1320 after the incident. He said he had a beard at the time. He shaved later. He claimed that his right arm is crooked and could not use it to hit or throw anything. He said that there is a mistake in identifying him taking part in the riot.

45. DW 3 the accused Jassim al Budari is from Iraq. He arrived in Nauru in October 2001. His evidence also corroborated the other defence witness on his whereabouts that day. He said he was surprised at being charged. He explained that his refusal to move to topside camp and talking with a TV journalist may have been the reasons for the charges brought against him. He said that he met Brown after the incident. He also corroborated the evidence of DW 1 on the state of the camp after 27 December 2002 when the IOM withdrew from the camp and the TV documentary. He told the Court he left Iraq to escape from Saddam Hussein. He is concerned at recent

events in Iraq and has problems recalling lots of things.

46. In cross examination he stated he did not see the riot and denied taking part. In re-examination he stated that APS has little to do with them.

47. We now come to the evidence of DW 4 Jassim al Bohassan. A single man in his mid-thirties. He also claimed to be praying at the mosque during the riot. He deposed that the scene of the riot still haunts him and he imagines an army attacking the camp. The APS were dressed ready as if to go into combat. In cross examination he deposed that the noon and sunset prayers are said with other persons. He said that the witnesses who saw him in the riot were mistaken. He said PW 7 came a month before the incident and do not know all the accused. He deposed that the APS/NPF had shields and were attacking and pushing the gate. He denied he was rioting.

48. DW 5 Dilshad Ako is another accused. He told the Court that he is a Kurd and hails from northern Iraq. He is a father of three and a grandfather as well. His family is with him. The defendant in Case No. 4 is his eldest son. He had been on Manus Island prior to arrival on Nauru in late 2002. He testified that he had been working attending to plants and trees inside and outside the camp on the day of the riot. He had seen the women protesting. He saw his wife with the women

and she informed him that she was there to get the children to the school. On learning the reasons for the women's gathering he continued his work until lunch time. After taking his lunch he went to have a rest in his room. He was resting in his room when he heard someone was about to suffocate. He got up and went to look for his children. He went to a big tree near the camp restaurant. He saw his younger son with his arm in a sling. He could not recall which arm. He then saw his wife and a teacher and went and stood next to them watching the commotion. He did not go near the gate. He said Abbas Ansari did not have a beard at the time. The Prosecution witnesses' observations are wrong. He said those behind the APS/NPF riot team could not see past them because they are big persons. He denied involvement in the riot.

49. In cross-examination, he said PW 7 had mistakenly identified him. He has no contacts with PW 7. He also said that his son, the accused in Case No. 4, was taking photographs on the day of the riot. He denied that he was rioting on that day. The accused deposed that he was with his wife and never went near the gate where the riot was taking place. The only time he went near the gate was in the morning to tend to the trees and plants outside the camp.

50. Next comes DW 6 Wasan Tariq the accused in Case No. 3. She

is a young mother of two young children who had not seen their father, who is in Australia, since 1998. She deposed that she had joined the women's protest in the morning. The women talked to Ibrahim about their situation. He ignored and cursed them. As the incident began she returned to the camp with her children and went to her room. Her brother came and told to stay in her room. She said everything finished at 2.10 pm. She left her room at about 4.00 pm later that day. In cross examination, she denied that she was rioting and she did not damage any window at the medical clinic.

51. The accused Mohammad Sager is DW 7 and came to Nauru from Manus Island in September 2002. He deposed that he was mistaken for another person of a similar name. PW 5 only mentioned his name but could not identify him. He was praying in his room when he heard noises from the main gate. This was about 1.40 pm. He left his room to calm the people but soon left when the fire truck shot water at the crowd by the gate. The water was heavy. He returned to his room at about 1.55 pm

52. In cross examination, he told the court that he keeps to himself and he went to calm the people because they are his kinsmen and are in an exceptional situation.

53. DW 8 Beston Qubbadi is one of the accused. He testified that on

that day he did not go to pray in the mosque. He prayed in his room After praying he left his room and saw a child running and heard him cry "they came they came". The child was also crying. He asked two friends to go with him to see what is happening. By the time they reach the scene of the riot everything had stopped.

54. In cross examination he deposed that he had seen APS officers eat in the camp's restaurant before 24th December 2002. He also said Ibrahim of IOM eats at the camp restaurant. He denied being involved in the riot.

55. DW 9 Abbas Ansari is from Iran and is single. He also came to Nauru from Manus. He deposed that he was at the mosque praying during the riot. He went to his room after prayers and got his camera to take photographs. He took five of the area outside the camp and tendered only three in evidence. These are Exhibits D 1, D 2 and D 3. In cross examination, he told the Court Insp. Brown was mistaken when Brown named him in Court as one of the rioters. He also denied rioting.

56. The defence called DW 10 Ruzzaq al Timimi to testify on their behalf. He had seen the women protesting before lunch. After lunch he went to see what has happened to the women. At this time the women were outside near the APS office. He sought and obtained

permission to leave camp and persuade the women to return to camp. Only two came back with him to camp. One of them is the accused in Case No. 3. Shouting and screaming was going on at the same time. On his way back into camp he was hit by a stone and moved away.

57. He deposed in cross examination that a group of men came from the mosque to talk to the rioters and calm them down. He said he did not know all the accused since his arrival four months earlier.

58. DW 11 Dr. Mirapros Cassanova Bacreza a psychiatric doctor working for IOM gave evidence on behalf of the defendant in Case No. 4. She deposed that she is a doctor specialising in psychiatry since 1990. She stated that she holds a degree in psychology and in medicine and has practiced medicine since 1985 after graduation. She told the Court that life in a refugee camp is never easy. She had worked previously with asylum seekers in camps in the Philippines for four years before coming to Nauru in December 2002. She had previously worked for UNHCR and the IOM.

59. She worked at stateside camp looking after the mental health of the residents. The accused Tawana Ako is one of her patients. She told the court that Tawana suffers from a mental problem of conversional disorder. She classified him in the seizure class. This is epilepsy triggered by emotional and psychological factors. He suffers

from depression as well. Both his conditions are life threatening. His mental health is of concern.

60. In a very lengthy and detailed cross-examination on aspects of mental health she stated that she had last seen Tawana on the 19th and 20th December 2002, prior to the incident taking place. Tawana had a seizure on the 19th December and was referred to her. Tawana was sedated and kept in the psychiatric ward overnight. She was not in a position to know the state of his mental health at the time of the riot as she did not see him on the day of the incident. She went to stateside camp since she had heard of the riot and wanted to check on the staff and patient at the psychiatric ward and saw the commotion on her arrival. She saw Insp. Brown and assisted the doctor who treated him. She did not return to the camp until April 2003 when IOM resumed services to the camp.

61. DW 12 Mohannand al Mazani gave evidence on behalf of the accused. He corroborated the accused story of praying at the mosque during the riot.

62. In cross examination, he stated that he did not see any damage to the computer room and the IOM medical clinic. He was at the gate area for seven minutes and did not see anyone taking photographs. He does not impress the Court in the witness box.

63. Finally, we come to DW 13 Hassan al Jussani a resident of stateside camp who gave evidence for the accused. He testified that he went to the school when he heard noises whilst watching television. People were coming out to see what is happening. This was 1.40pm. He said that thirty minutes later he saw the accused Abbas al Sayed Mahdi, Jassim al Bohassan, Jassim al Budari, Mohammad al Jizzi, al Janabi, Abuzar al Salim, Mohammad Sager, Tariq Tawfiq, Mohammad al Shammary came out from the mosque and head to the NGZ. They went past him at the school. Then things became quiet and people dispersed. He left for his room and on the way met Beston, Kamal, and Salaam.

64. He said in cross-examination that he could not recall the TV show he was watching. He stated that he went from the restaurant to the school. He had no difficulty with estimating the distance from the gate to the school because of the long distance. Yet he could not estimate the distance between the school and the computer room. He claimed he did not see damages to the computer room and the music room. He did not see any rioters damaging buildings in the camp. He also deposed to the withdrawal of IOM services and movement of people to the topside camp. The witness is not impressive in the box when he gave evidence. He appears selective in his recollections and made contradictory statements.

The Facts

65. Mr. Kun in his submission accepted the evidence of the disturbance at stateside on 24th December 2002. He also accepted that Insp. Brown and APS officer #1320 were injured as a result of the riot. He also accepted the evidence of the damages to the buildings.

66. I find as established fact the following matters:

1. A riot involving about one hundred people took place on 24th December 2002 at the stateside camp at the main gate and in and around the NGZ.
2. Several people were injured during the riot including Insp. Robert Brown and APS officer #1320 who were attended to by a doctor and needed sutures to their injuries.
3. That a number of buildings sustained damage during the riot including the IOM medical clinic, the Chubb gatehouse, the computer room and equipment, and other items in these offices. The damage to the property in the camp was about $72,000 and are extensive.
4. A fire truck used during the riot to disperse the rioters with water also sustained damages.
5. That the APS riot team contained the riot by keeping the rioting residents inside the gate and the residents kept the APS

riot team from entering the camp by locking the gate leading to the camp. The APS had no intention to enter the camp but to contain and control the riot.

6. An IOM female employee had heated argument with several male residents who stormed after her to the medical clinic and started attacking the clinic before being escorted back into camp.

Cause of the Incident

67. It is not clear what started the whole incident that turned into a riot. It was unfortunate, as one witness puts it, that the IOM female employee argued heatedly with the male residents because when she retreated they ran after her towards the clinic and commenced to attack the clinic. Following which the APS riot team moved in and herded the residents back into camp. Thereafter as one witness deposed the riot began in earnest. It is not clear whether this is the actual cause of the riot but it certainly contributed to the riot that was to follow. The action and behaviour of the IOM employee towards the camp residents just prior to the riot may been have the cause of the riot. It certainly precipitated and escalated a peaceful demonstration into a riotous situation on 24 December 2002.

The Issues

68. Defence Counsel, Mr. Ruben Kun, took issue with the Prosecution on the allegations that the accused were responsible for the riot, the injuries inflicted on people and the damages to the buildings. Defence Counsel also submitted that the Prosecution witnesses mistakenly identified the accused Abbas al Sayed Mahdi, Tariq Tawfiq, Jassim al Bohassan, Jassim al Budari, Dilshad Ako, Abbas Ansari, Mohammad Sager, Mohammad al Shammary, Abuzar al Salim and Tawana Ako, given the prevailing nature of the incident.

69. In support of the submission Defence Counsel referred to the evidence of the accused that they were in the mosque or in their room praying. In the case of the accused Dilshad Ako he was with his wife and a lady teacher watching the incident. The accused in Case No. 3 was in her room and praying. The accused in Case No. 4, Tawana Ako was said to be taking photographs of the riot.

70. The Prosecution submitted that the accused accepted the evidence of the its witnesses by its failure to cross examine the witnesses.

71. The Court will consider first the defence of alibi.

The Alibi

72. The accused put forward in their testimony the defence of alibi. The essence of the Defence case is that the accused were not at the riot but were at the mosque or in their rooms praying or resting. This evidence of alibi was not put to the prosecution witnesses in cross examination. The accused and the witnesses called on their behalf were exact and precise on the times when prayer started and ended. DW 13 also corroborated the evidence of the accused. He gave evidence of seeing the accused move from the mosque to the gate area. The Court regarded DW 13 as an unreliable witness and discounts his evidence. No witness was called on behalf of Dilshad Ako to corroborate his explanation. Mohammad Sager had no corroboration for his whereabouts and Beston Qubaddi's story is corroborated by the unreliable evidence of DW 13.

73. The accused in Case No. 3 testified she was in her room at the time of the riot. DW 10 testified on her behalf that he went outside the camp prior to the riot to urge the protesting women to return to camp. Only two of the women returned to camp with him including the accused. He did not testify that the accused went to her room with her children as she deposed in her evidence. In the case of this accused, unlike the accused in Case Nos. 2 and 4, there is no clear evidence from the Prosecution witnesses that she was rioting and the inference

on the evidence before the Court is that she was not at the scene of the riot. There is some doubt on the evidence that she was rioting.

74. Tawana Ako, the accused in the Case No. 4, was seen taking photographs. This evidence came from the testimony of DW 6 under cross-examination.

75. The evidence of alibi was not tested in Court against the Prosecution witnesses. This part of the accused evidence appears to be an after thought. It cannot stand and the Court rejects the evidence of alibi put forward by the accused Abbas al Sayed Mahdi, Tariq Tawfiq, Jassim al Bohassan, Jassim al Budari, Dilshad Ako, Beston Qubbadi, Abbas Ansari, Mohammad Sager, Mohammad al Shammary, Abuzar al Salim in Case No. 2 and Tawana Ako in Case No. 4.

76. The Court considers that the defence of alibi was not put forward to deliberately mislead the Court but in the genuine belief that it affords an explanation of the accused case. The fact that it was not put to the Prosecution witnesses in cross-examination is probably due to an oversight by learned Counsel. Whatever the reason, the Court does not consider the matter to be of a major concern.

77. The Defence submission that the Prosecution witnesses were mistaken in their identity of the accused will be considered together

with the learned Public Prosecutor Mr. Lionel Aingimea's submission of failure to cross examine on the issue of identity.

Failure to cross examine

78. The Prosecution raised the issue that the accused failed to cross examine on the evidence of identification. The Prosecutions evidence of identification is given by PW 5, PW 6, PW 7 and PW 8. During the course of the trial the Court found that the accused did not cross examine the Prosecution witnesses on their evidence of identification.

79. Mr. Kun did not challenge or put to the witnesses that they had made a mistake of identifying the accused. He led some evidence from his own witnesses that the Prosecution witnesses may have mistakenly identified them as the witnesses do not enter camp nor associate with the accused. There is also no cross examination by the Defence on factors such as deficiencies of sight and hearing, prevailing conditions of weather and light, familiarity with the accused and proximity to the incident, factors that might render the quality of the evidence of identification weak.

80. The failure to cross examine on this issue technically amounts to an acceptance of a witness's statements on examination in chief. The effect of failing to cross examine a witness on a critical issue is not to allow the accused to impugn the unchallenged evidence of the

Prosecution's witnesses in closing address by Counsel even though the accused gave evidence that the witnesses had mistakenly identified them. Defence Counsel cannot impugn the identification evidence in his closing address.

81. It also significant that the accused did not put to the Prosecution witnesses the defence of alibi. The Court had already considered the defence of alibi and rejected it. The effect of the rejected alibi is to confirm the evidence of identification.

82. Consequently, the Court rejects the submission made by Defence Counsel on behalf of the accused to impugn the evidence of the Prosecution witnesses. The Court, therefore, finds that the accused Abbas al Sayed Mahdi, Tariq Tawfiq, Jassim al Bohassan, Jassim al Budari, Dilshad Ako, Abuzar al Salim, Beston Qubbadi, Abbas Ansari, Mohammad Sager, Mohammad al Shammary in Case No. 2 and Tawana Ako in Case No. 4 were clearly identified participating in the riot.

83. The Court now turns to the offences to consider whether on the evidence before it they have been proved beyond all reasonable doubt by the Prosecution. It will begin with Case No. 2 and will consider it together with Case No. 4 in respect of the charges laid in both cases except the charges of unlawful wounding and assault occasioning

bodily harm in Case No. 4. The Case No. 3 will be considered separately.

Criminal Case No. 2

Riotously Assembled

84. Under section 63 of the Code "any person who takes part in a riot is guilty of a misdemeanour and is liable to imprisonment with hard labour for three years". It is read with section 61 of the Code which defines unlawful assembly. There is no stage between unlawful assembly and riot under the Code. The offence of unlawful assembly involved the co-existent ingredients of the *actus reus* of being or coming together with the *mens rea* involved in the intention of fulfilling a common purpose in such a manner as to endanger public peace. *R v Jones, Tomlinson, Warren, O'Shea, Carpenter and Llywarch* (1974) 59 Cr App R 120. The element of riot is that three or more people unlawfully assembled and breached the peace with intent to effect a common cause.

85. The Prosecution submitted that the accused named by its witnesses rioted on 24 December 2002. The Court has rejected the defence of alibi. The accused did not challenge the evidence of identification of their participation in the riot.

86. The Court has concluded that there was a riot taking place on 24 December 2002. The Prosecution witnesses identified the accused named in paragraph 82 to have taken part in the riot. The other accused in Case No. 2, namely Ahmad al Jizzi, Ahmad al Musawi Safaa al Saedi, Odai Mammarah, Ahmad al Janabi and Mohammad al Zirjawi were not clearly identified to have participated in the riot. Therefore the reference to the accused under this charge is not a reference to these persons.

87. The Court concedes that people may be taken to intend the consequences of their acts. The accused in Case Nos. 2 and 4 must be taken to intend the consequences of their act. The evidence is clear that the disturbance on 24 December 2002 is the consequence of the riotous behaviour of the accused. The damages inflicted on property in and outside the camp is clear and unequivocal evidence of intent to riot. The use of slingshots, sticks, metal bars, rocks, scissors and fire extinguishers are further evidence of intent. The noise and yelling is further evidence of mens rea. The evidence given by the Prosecution witness clearly established the accused committed the offence of riotous assembly.

88. The Court finds that the elements of the offence of riotously assembled is proved beyond doubt against the accused Abbas al Sayed Mahdi, Tariq Tawfiq, Jassim al Bohassan, Jassim al Budari,

Dilshad Ako, Abuzar al Salim, Beston Qubbadi, Abbas Ansari, Mohammad Sager Mohammad al Shammary in Case No. 2 and Tawana Ako in Case No. 4. The Court accordingly finds these accused guilty as charged of Riotous Assembly contrary to section 63 of the Code.

89. The offence of riotously assembled charged against Ahmad al Jizzi, Ahmad al Musawi, Safaa al Saedi, Odai Mammarah, Ahmad al Janabi and Mohammad al Zirjawi is not proven beyond doubt by the Prosecution as there is no evidence to place them in the riot. Accordingly, the Court finds that these accused are not guilty and are acquitted of the offence of Riotously Assembled under section 63 of the Code.

90. The other offences charged against Ahmad al Jizzi, Ahmad al Musawi, Safaa al Saedi, Odai Mammarah, Ahmad al Janabi and Mohammad al Zirjawi arose out of the continuous transaction of riotous assembly on 24 December 2002. The charges were not preferred on any other basis. herefore, having acquitted them of the first offence of riotously assembled the Court also finds that the accused are not guilty and are acquitted of the charges under count:

2. Going Armed as to Cause Terror c/s 69 of the Code.
3. Forcible Detainer c/s 71 of the Code.
4. Affray c/s 72 of the Code.

5. Threatening Violence c/s 75(2) of the Code.

6. Common Assault c/s 335 of the Code.

7. Serious Assault c/s 340 of the Code.

8. Malicious injury c/s 469 of the Code.

9. Conspiracy c/s 543(6) of the Code.

91. The accused in Case No. 2, Abbas al Sayed Mahdi, Tariq Tawfiq, Jassim al Bohassan, Jassim al Budari, Dilshad Ako, Abuzar al Salim, Beston Qubbadi, Abbas Ansari, Mohammad Sager, Mohammad al Shammary and in Case No. 4 Tawana Ako faces further charges as outlined early in this judgment. Henceforth, the word "accused" refers to these accused for the sake of repeating their nes.

Going Armed In Public as to Cause Terror

92. The accused are also charged with Going Armed as to Cause Fear under section 69 of the Code. The proper wording of the charge is going armed as to cause Terror as set out in section 69 of the Code. The elements of the offence are:

a) going armed in public

b) without lawful occasion

c) in a manner as to cause terror to any person.

93. The Prosecution submitted that the words "in public" is defined in the Interpretation Act 1971, as a place the public is entitled to

enter whether by payment or otherwise. The learned Public Prosecutor was referring to the definition of "public place" in section 2(1) of the Act. On that submission the Court has to consider whether the words "going armed in public" comes within the statutory definition of public place. The word "in public" is an imprecise term. It is uncertain and must be limited by the context in which it is used. The Court is not aware of any legal authority that can give those words a precise meaning. Certainly, Counsels have not drawn any authority to the Court's attention except the Interpretation Act. The term "going armed in public" is to be defined in the policy context of section 69 of the Code. The Court considers that the term must refer to the notion of *"a place"* because of the use of the words "going armed" and in this respect the definition in the Interpretation Act of "public place" applies in determining the meaning of the words "going armed in public" in section 69 of the Code. The learned Public Prosecutor placed emphasis on the words "or otherwise" in section 2 of the Act to support his contention that personnel working in the camp are allowed to enter the camp by means other than payment and therefore brings the camp and its immediate surroundings within the statutory definition of a public place. The Court begs to differ. Those words refer to the method of entering not the public nature of the place. It contemplates that where the public is given access it may made be through the payment of money or free of charge.

94. There is clear evidence that stateside camp is a very restricted area to the general public. There is also clear evidence that the area immediately next to the camp is a security area under the strict control of the APS. This is where the medical clinic is located.

95. In the Court's view, the two areas or places do not come within the definition of public place in section 2(1) of the Interpretation Act 1971. The Court therefore finds that the offence of going armed in public in a manner as to cause terror under section 69 is not made out. The evidence does not prove the public place ingredient of the offence.

96. It is not necessary to consider and rule on the second submission of the Public Prosecutor that the riot cause terror in light of the Court's conclusion on where the offence took place. It makes the observation, however, that riotous behaviour can cause terror.

97. The Court, accordingly, finds the accused in Case Nos. 2 and 4 not guilty and are acquitted of the charge of Going Armed as to Cause Terror.

Forcible Detainer

98. The accused are further charged with the offence of Forcible

Detainer under section 71 of the Code. The section reads:

> "Any person who, being in actual possession of land without any colour of right, holds possession of it in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace against a person entitled by law to possession of the land is guilty of a misdemeanour..."

99. This offence depends on the facts of each case, in particular the degree of barricading, the time and effort spent on it and the effects of barricading.

100. The Public Prosecutor submitted that the period of the forcible detainer is during the riot. That is a period about 2 hours. The submission is novel.

101. The camp is already fenced in and the gates guarded for safety and security reasons. There is no evidence to show any barricading efforts on the part of the accused nor the degree of barricading, if any, and the time and effort to barricade other than to lock the gate. There is evidence that the accused perceived that the APS were going to enter the camp and attack them and others inside the camp. A mistaken perception in view of the expressed intention of the APS not to enter camp even though it had the means to do it. It should not be forgotten that the APS, Eurest and Chubb entered the camp after the

riot. IOM did not and three days later informed the residents to move to the other camp at topside as its services would no longer be offered at the stateside. In other words IOM had abandoned its administrative rights over the stateside camp.

102. A forcible detainer has to be substantive in nature. It must carry an air of permanency to the barricading of the land. The efforts to barricade would indicate the substance and permanence of a detainer. Two hours is insufficient. Other evidence do not point to the substance and permanence of the detainer. Rather, it is the opposite.

103. The Public Prosecutor's novel submission has no merit and is rejected. The Court finds that the offence is not established. Therefore, it finds the accused are not guilty and are accordingly acquitted of the charge of Forcible Detainer.

Affray

104. The accused are further charge with Affray under section 72 of the Code. The section provides that:

> "Any person who takes part in a fight in a public highway or takes part in a fight of such a nature as to alarm the public in any other place to which the public have access is guilty....."

The essential ingredient is that the fight must be on a public highway or is in a place to which the public has access.

105. The Public Prosecutor submitted that the fight on the sad day is sufficiently alarming that personnel working in the camp had to be evacuated.

106. Before considering the submission, the Court would like to recall its discussion on public place under the offence of Going Armed as to Cause Terror. As noted above, the camp and the immediate area outside it are not public places. Under Affray the essential ingredient of public highway or a place to which the public has access has not been proven by the Prosecution and the Court so holds.

107. Turning to the submission by learned Public Prosecutor, the Court does not need to make a decision on it in light of the above finding on where the Affray took place.

108. Therefore, the offence of Affray is not proven beyond doubt and the accused in Case Nos. 2 and 4 are found not guilty by the Court and are acquitted of the offence.

Threatening Violence

109. The accused are also charge with threatening violence under section 75(2) of the Code. The subsection reads as follows:

> "Any person who .... with intent to alarm any person in a dwelling house, discharges loaded firearms or commits any

other breach of the peace is guilty of a misdemeanour, and is liable to imprisonment with hard labour for one year".

110. The Prosecution contended that the operative part of section 75(2) of the Code is the third limb. That is to say the accused "with intent to alarm ..... committed a breach of the peace". It is further contended that by rioting the accused had committed a breach of the peace. That aspect of the offence is well established. Rioting is a breach of the peace.

111. However, an essential ingredient in the offence is intent. The Court considers that intent under this offence is subjective. The intention of the accused can be deduced from their act of rioting. The use of rocks thrown, the use of slingshots, the use of metal sticks, the shouting and screaming, and the attacks of buildings are alarming. Such behaviour can and do alarm innocent persons not taking part in the riot. A riot by its own nature is intended to alarm people. A riot is a violent threat. There can no other conclusion of a riot but to make threats with violence.

112. The Court finds that the Prosecution has established the offence of Threatening Violence as charged and finds the accused in Case Nos. 2 and 4 guilty as charged.

Common assault

113. The charge of common assault is under section 335 of the Code. The Public Prosecutor asserted that the use of sticks, metal poles, rocks and fire extinguishers on the APS/NPF riot team constitutes the offence of common assault.

114. Section 245 of the Code defines assault. The actual physical use of force to strike a person is certainly an assault. But it is by no means the only way to assault people. Putting fear into a person can constitute an assault.

115. In a continuous transaction such as that on 24 December 2002 there will be other offences committed. Common assault would be one of these offences. When people are rioting there will be a cause for fear. The evidence has already been discussed when the Court considered the previous offences above. There is evidence that PW 5 and PW 6 were hit by rocks during the riot. There is the unchallenged evidence of PW 1 that he was threatened and left the camp for fear of his life. These are clear evidence of assaults. The use of the fire extinguishers is evidence of assault.

116. The APS and NPF officers who were called in to contain and control the riot could not be expected not to fear for their own safety and life. Soldiers on the war front fear for their lives. So would a police

officer in a dangerous situation in the line of duties. The Defence Counsel in cross examination made the point that PW 5 and PW 6 did not wear protective gear and as a result were injured in the riot. But that is irrelevant to the charge of common assault. There is clear and unchallenged evidence that the accused in Case No. 4 threw a rock that hit PW 4 Insp. Brown.

117. The Court, therefore, finds that all the accused in Case Nos. 2 and 4 did assault the APS and NPF officers and are guilty of the offence of common assault. The Court further finds that the accused in Case No. 4 assaulted APS Insp. Brown and is guilty of the offence as charged..

Serious assault

118. The offence of serious assault is also preferred against the accused under section 340 of the Code. The charge did not specify which sub-section of section 340 is relied upon by the Prosecution.

119. Mr. Aingimea submitted to the Court that the relevant part of section 340 is sub-section 2. Mr. Kun submitted that the charge is defective since it fails to clearly define the particular offence under section 340 of the Code and the Prosecution could not amend the charge during the closing address in the trial.

120. Section 340 subsection 2 of the Code provides that

"any person who assaults .... police officer while acting in the execution of his duty is guilty of a misdemeanour".

121. The Rules for framing charges are set out in section 93 of the Criminal Procedure Act 1972. The Act provides in section 93(a)(ii) that the statement of offence shall contain the section in the Code defining the offence. In the particulars of the offence, it shall describe persons in a reasonably sufficient manner to identify them. Section 93(d) of the 1972 Act. The description of the act complained of shall be sufficient to indicate with reasonable clarity. Section 93(f) of the 1972 Act.

122. The Court considered the submissions carefully and perused the charge in the complaint filed on 26 February 2002. It found that the charge referred only to section 340 of the Code and did not specify which subsection the accused are being charged with under the section. In this respect the charge did not comply with section 93(a)(ii) of the 1972 Act. The particulars of the charge, however, clearly described the persons alleged to have been offended as APS officers acting in the course of their duties as police officers and the act complained of is also reasonably clear to the Court to be an assault within the terms of section 340(2) of the Code. In the circumstances, there cannot be any objection as to the form and substance of the charge as put forward by Defence Counsel. The Prosecution would be

better advised to follow the Rules of framing charges in future so as to avoid objections to charges laid before the Court in any criminal proceedings.

123. The issue that the Court must decide on is whether the APS officers alleged to have been assaulted are police officers as contemplated in section 340(2) of the Code. The Court noted that Defence Counsel did not make submissions on the issue. Nevertheless, it is an issue that must be decided by the Court.

124. There is ample evidence of assault but unlike common assault the essential element is the assaulting of a police officer in the execution of his duty which makes the offence a serious assault. It is deposed by the Prosecution witnesses that APS officers are sworn members of the NPF as reserve officers. In cross examination PW 5 told the Court that he was sworn in as a reserve officer of the NPF by the then Director of Police Junior Dowiyogo in September 2001. When asked to produce the document swearing him in as a reserve officer with the NPF he said he could not produce it. He further deposed in cross examination that all officers of the APS are sworn in as reserve officers with the NPF as part of the Agreement between Nauru and Australia. The other APS officers who gave evidence did not provide evidence of their status with the NPF. PW 3 Insp. Tebouwa and PW 10

Insp. Amram, both of the NPF, did not give supporting evidence that the APS officers are reserve officers of the NPF as deposed by Insp. Brown. Brown also deposed that the role of the APS officers in Nauru is as advisers to the NPF. The Court could not rely on the sole evidence of PW 5 on this issue.

125. The Agreement between Nauru and Australia referred to by PW 5 is not produced in Court. The oath of office for a reserve officer in the NPF is not produced as well. As far as the Court is concerned, and on the evidence before it, the APS officers are not "reserve officers" of the Nauru Police Force. Therefore, they are not police officers within the meaning of section 340(2) of the Code.

126. As a result, the Court finds that the charge of serious assault is not proven by the Prosecution. Consequently, the accused in Case Nos. 2 and 4 are not guilty and are acquitted of the offence of Serious Assault.

Malicious Injury

127. The accused are also charged with the offence of Malicious Injury to Property under section 469 of the Code. The property that the accused were alleged to have damaged were the IOM medical clinic, IOM office, IOM computer room, IOM camera, IOM refrigerator, and a fire truck.

128. Section 469 of the Code provides that:

"any person who wilfully or unlawfully destroys or damages any property is guilty of offence which, unless otherwise stated, is a misdemeanour" .... (emphasis added).

129. The Public Prosecutor submitted that the wilful aspect of the offence implies intent and this could be deduced from the damages themselves. Proof of ownership of property is not essential under section 469 of the Code. Mr. Kun conceded that there is damage to property but submitted that the damages were not inflicted by the accused. He also submitted that there is no evidence of wilful damage.

130. The evidence of who inflicted damages on property at the stateside camp was given by the Prosecution witnesses. PW 5 deposed that he saw Jassim al Bohassan, Mohammad Sager and Abbas Ansari inflict damage on the medical clinic. He also deposed that Tariq Tawfiq used a metal object to smash the Chubb office. PW 6 stated that Jassim al Budari and Abbas al Sayed Mahdi threw rocks at the medical clinic. He also stated that Tariq Tawfiq and Tawana Ako were damaging buildings. Tariq Tawfiq was damaging the Chubb office. Tawana Ako is said to have damaged the stone wall near the gate. Their evidence is not contradicted or challenged in cross examination.

131. It is clear on the evidence that Jassim al Bohassan, Mohammad

Sager and Abbas Ansari did damage the medical clinic. The manner of their damage is not explained clearly to the Court. The evidence that Jassim al Budari and Abbas al Sayed Mahdi threw rocks at the clinic did not clearly establish that as a result the clinic was damaged. The Chubb building is not listed in the particulars of the offence as one of the property damaged during the riot. The evidence of its damage by Tariq Tawfiq is given by both PW 5 and PW 6.

132. In the Court's view it is necessary that evidence is placed before it on how the damage to property is inflicted in order to determine whether it is done in a wilful manner. Therefore it is necessary to look at other evidence to ascertain the nature of the damage done. In this respect the Court looked at Exhibits P 20, P 21, P 22 and P 23. These are photographs taken by PW 6 straight after the incident. They are clear evidence that the damages are extensive. The Report on the damages tendered in evidence by PW 9, which is Exhibit P 24 estimated the damages caused to be about $72,000. The Court considers that the damage is substantive in monetary terms. Therefore the manner in which the property is damaged must be wilful. It could not be said by any measure that it was done lawfully because the Exhibits show that there were debris scattered everywhere at the scene of the riot. The damage to the fire truck also points to the wilful nature of the offence.

133. In the circumstances, the Court concludes that the offence is established beyond doubt against the accused in Case No. 2, namely, Jassim al Bohassan, Mohammad Sager, Abbas Ansari, Abbas al Sayed Mahdi and Tariq Tawfiq. Accordingly, the Court finds these accused guilty of Malicious Injury to Property.

134. The accused Tawana Ako also damaged property during the riot and the Court finds the accused in Case No. 4 guilty of Malicious Injury to Property.

135. Now we come to final charge against the accused that ties it to the first charge of Riotously Assembled.

Conspiracy

136. The final charge laid against the accused is conspiracy to effect an unlawful purpose contrary to section 543(6) of the Code.

137. There is no necessity to find intent in criminal conspiracy. It is not an element of the offence under section 543 of the Code. A conspiracy exists in the *agreement* between two or more persons to do an unlawful act or to do a lawful act by unlawful means. *Mulchay v The Queen* (1868) L.R. 3 H.L. 396. Conspiracy to do an unlawful act is established when several people get together, whether they are known to each other or not, to put into effect an unlawful purpose.

138. The Public Prosecutor submitted that the accused acted together to effect the unlawful purpose of riotous behaviour. Counsel for the Defence submitted that there is no evidence that the accused came together to do something.

139. The evidence which the Court had reviewed in the course of this judgment clearly establishes the offence of conspiracy. The accused acted together in the riot. They may have known or not know each other but that is not necessary to prove. By acting together they are in agreement to give effect to a riot which is an unlawful act under the Code.

140. The Court, therefore, finds all the accused in Case Nos. 2 and 4 guilty of Conspiracy under section 543 of the Code.

141. The Court now turns to consider Case No. 3

Criminal Case No 3 of 2003

142. The accused in Case No. 3 is charged with riotously assembled. Public Prosecutor Mr. Lionel Aingimea invited the Court to conclude that Wasan Tariq, rioted because she was near the gate. He did not, however, submit at what particular moment was she at the gate.

143. In order to rule on the submission the Court has to consider the evidence against her. The Prosecution witnesses deposed that she was

part of the peaceful women's demonstration. The riot had not commenced at that stage. It commenced at the time of the attack on the clinic. There is no clear evidence that she took part in that attack nor that she participated throughout the course of the unhappy events of the day. The accused had explained that as the riot started she had left the gate to the camp for her room. DW 10 deposed that Wasan Tariq was one of two women who came back into the camp with him at the he went to urge the women to return to camp. He was returning to camp when the riot began. In the absence of any clear evidence of rioting on the part of the accused the Court could not make a finding as submitted by the Prosecution.

144. The Court, therefore, finds that the charge against the accused Wasan Tariq is not proven beyond doubt and finds her not guilty and she is acquitted of Riotous Assembly.

145. The Court further finds the other offences charged against the accused Wasan Tariq arose from the continuing transaction of rioting at which she was not present. Consequently, the Court finds her not guilty and acquits her of the charges under the count of:

2. Forcible detainer c/s 71 of the Code.
3. Threatening violence c/s 75(2) of the Code.
4. Malicious injury c/s 469 of the Code.
5. Conspiracy c/s 542(6) of the Code.

Criminal Case No. 4 of 2003

146. The Court has already decided on the charges against the accused Tawana Ako under counts 1, 2, 3, 4, 5, 6, 7, 10 and 11, in the course of giving its decision in Case No. 2 and it is not necessary to repeat them here.

147. The Court now finally turns to consider the two remaining charges against the accused Tawana Ako. The accused is charged with Unlawful Wounding under section 323(1) of the Code and with Assault Occasioning Bodily Harm under section 339 of the Code.

Unlawful Wounding

148. Section 323(1) of the Code provides that:

> "any person who unlawfully wounds another person ...... is guilty of a misdemeanour".

Intention is an essential ingredient of the offence.

149. In his submission the learned Public Prosecutor contended that the act of throwing the stone becomes unlawful when the wounding occurred. In support of that submission the Public Prosecutor referred the Court to Volume 11 of *Halsbury's Laws of England* 4th Edition at pages 637 – 638 as to the test of intention under the offence of unlawful wounding. With respect, this reference does not state the law

in Nauru. The Supreme Court has ruled on the proper test for intention under the offence in *Kirabuke v The Republic* [1969-1982] Nauru Law Reports Part D 31. Thompson CJ said at pages 33 – 34,

> "Mr. Berriman has submitted the appellant must be taken to have foreseen the natural consequences of his act and to have intended them. That is an over-simplification of the matter. The proper test of intent is subjective and, although the consequences of a man's act are evidence from which his intention may be deduced, they cannot be taken in isolation but must be considered together with any other evidence of what he intended".

That is the law in Nauru and not as submitted by the Prosecution.

150. The accused is alleged to have unlawfully wounded one Insp. Brown of the APS. PW 6 deposed that the accused threw the rock that hit and felled Insp. Brown. Evidence is also received by the Court that Brown was treated by Dr. Marwan after the riot and five stitches without anaesthetics were applied to the injury. Exhibits P 1 and P 19 attested to the injury and the medical treatment received. The Exhibits are evidence of the wound and not of intent. There is no other evidence from which intention could be attributed to the accused.

151. The onus is on the Prosecution to prove intent. It has failed to establish the offence and its submission must fail.

152. Therefore, the Court finds that the offence is not established beyond all reasonable doubt and accordingly the accused Tawana Ako is not guilty and is acquitted of the offence of Unlawful Wounding.

Assault Occasioning Bodily Harm

153. The second charge against the accused is assault occasioning bodily harm under section 339 of the Code. The accused is alleged to have assaulted and occasioned bodily harm on Insp. Brown of the APS.

154. The evidence in support of this offence is that referred to in support of the charge of unlawful wounding. This evidence has already been canvassed at length by the Court. Unlike the offence of unlawful assault, the offence provided under section 339 of the Code has only the element of bodily harm caused by an assault . Intent is not an element.

155. "Bodily harm" is defined in section 1of the Code as bodily injury interfering with health and comfort.

156. There is clear evidence of assault. In this case a rock was

thrown by the accused and it hit Insp. Brown the result of which Brown received injury to the left forehead and required medical attention. There can be no doubt that Insp. Brown's health and comfort that day is interfered with by the unfortunate incident. Perhaps if he had been properly attired in riot gear, as Defence Counsel Kun suggested in cross examination, he would not have been hurt or injured. But that is beside the point. It is certainly uncomfortable to be hit by rock and more so when the doctor sutured the wound without anaesthetic.

157. The Court, therefore, finds the offence under section 339 of the Code well established on the evidence placed before it and finds the accused Tawana Ako guilty of the offence as charged.

158. The Court now calls on the accused to make submissions regarding any mitigating circumstances and on the question of sentence, and evidence may be led if they so desire before the Court pass any sentence on those accused in Case Nos. 2 on the charges that have been proved against them.

The Court also calls on the accused in Case No. 4 to do like wise on those charges that have been proven against him.

Leo D. Keke
Presiding Magistrate
30 September 2003

ORDER ON SENTENCE

159. This is a most rare and unusual case to come before the District Court in its history. Before the Court pass sentence it is considered necessary to refer to the policies, principles and law in Nauru and the mitigating circumstances on sentence.

160. The sentence to be imposed on a defendant is in the discretion of the Court. Sentencing involves application of principles concerning protection of society, retribution, deterrence and reformation. The essence of punishment should strike a balance between them. The sentence passed must be commensurate or proportionate to the offence and of the offender. The circumstances of the offence must be the determinant factor. *Baumer v R* (1988) 166 CLR 51.The protection of society is the ultimate object of criminal law and all purposes of punishment may be subsumed ender this single head. *Lovelock v R* (1978) 19 ALR 327; *R v Doyle* [1975] VR 754; *R v Kane* [1974]VR 759; *Veen v R [No. 2]* 164 CLR 465.

161. In the English case of *R v Yont* [1967] Crim.L.R 546, the Court of Appeal (Lord Diplock L.J., Brabin and Waller JJ); a case concerning the arrest of a United States citizen smuggling Indian hemp and arrested en-route in England, concluded rightly that there was no reason why he should be supported and cared for in England when his offence was directed against the United States.

162. Sir Gaven Donne C.J., in the Criminal Appeal Nos. 1, 2, 3, 4 and 5 of 1998 (unreported) made the following observations; "sentencing policies and the quantum of any sentence must relate to the culture of the country, its degree of development, its penal policy and the prevalence of crime therein. Consequently, it is more appropriate for reference to made to local decisions". The charges in those criminal appeals were similar to the charges here and the Defendants were fined. In *DPP v Dominic Fritz* [1969-1982] NLR Part D 107. Thompson C.J., set out the principles of sentencing in Nauru. At Page 109, he said;

> "when a person commits an offence he renders himself liable to the maximum sentence, which Courts could impose for it. Some offences are less serious than others and sentences range from the most lenient to the maximum possible are prima facie appropriate according to the seriousness or otherwise of the particular offence. In that way the Court assess what is the maximum sentence which might properly be imposed on an offender for a particular offence. But then the Courts have to consider the personal circumstances of the particular offender in order to be able to decide whether that sentence or a lesser is appropriate. By 'appropriate' I mean just to the offender and just to society and most likely to serve the purpose or purposes for which it is imposed. There are many factors to sentence in particular cases".
>
> He went to say "it is proper for Courts to take those factors into consideration and give them such weight as they think appropriate, notwithstanding that the effect will be that a fine is imposed for an offence as serious as a similar one for which another person has been sent to prison".

163. Section 19 of the Code as amended by the Criminal Code

Amendment Act 1971, provides guidance to this Court in matters of punishment under the Code. The offences in Case Nos. 2 and 4 are of a summary and serious nature. The general principles of sentencing set out in the Supreme Court Cases referred to and the guidance under the Code, including the cases from other common law jurisdiction applies in considering the appropriate sentence to be imposed on the defendants.

164. Mr. Kun in mitigation submitted that the defendants are asylum seekers brought to Nauru under the Pacific Solution. They had left their own countries in search of freedom. They did not come to Nauru on their own free will. The Australian government in agreement with the Nauru government had brought the defendants to Nauru to process their applications for asylum. They were persecuted in their own countries and had to leave their families for their own safety and that of their families. They lost close members of their families to the brutal regime of Saddam Hussein in Iraq. In the case of Dilshad Ako and Beston Qubbadi, both Kurds from northern Iraq, the ethnic cleansing of their people is brutal under Saddam Hussein. The situation is so intolerable that they braved elements unknown to them such as the open seas to seek freedom from oppression. But their incarceration at the stateside camp is equivalent to imprisonment as stated by the accused in their statements to the Court in mitigation.

The circumstances leading to the incident on 24 December 2002 were brought about by the anxiety and frustration of the defendants in their applications for asylum being rejected by the UN, Australian and international organisation and authorities. Other circumstances of mitigation, includes the attitude of IOM and IOM personnel towards the defendants. After the incident IOM withdrew services to the camp until April 2003. In the meantime the defendants and other residents of the camp suffered through no provision of food, medical and other services. There is evidence before the Court that living in a refugee camp is not easy. Mental problems are encountered in such camps. Residents of such camps are restricted in their movements. There is also the unlawful detention of the defendants in the women's prison in February 2003. These are "extra judicial" punishment.

165. The Court noted the testimony of Mr. Vidler, PW 4, who deposed that the anger and frustration of the defendants was directed against the IOM and no one else. The Court also noted the heated exchange between the IOM female employee and the asylum seekers just before the attack on the clinic commenced. The Court further noted the allegations by the defendants that the IOM manager at the camp on the day of the riot was abusive and non-cooperative to the asylum seekers.

166. As noted, these are very rare cases and unusual and do not

represent the norm of cases brought before it. The principles of sentencing as outlined above would normally apply. However, not every case is the same as others and the nature of the offence, the circumstances in which the offence took place, the totality of the incident and the situation of each accused must be considered in imposing a sentence that balances the interest of the society and the defendants.

167. It is submitted to the Court that since their arrival in Nauru, the defendants have behaved very well and they have not been brought to the notice of the authorities until now. They are in transit in Nauru to another country and posed no threat to the Nauruan community.

168. Mr. Kun and Mr. Kaierua submitted on behalf of the defendants that a custodial sentence is not appropriate in the particular circumstances of the case. The Court is urged to consider that the period of the incarceration of the accused at the stateside camp is in itself imprisonment. The conditions of the camp do not befit human beings such as the defendants and other asylum seekers. It is further implored on the Court that a fine would not be appropriate because the defendants have no means to pay any fine imposed by the Court. There is no evidence of previous convictions placed before the Court. The Court therefore considers the defendants as first offenders. The nature of the case is such that the ordinary principles of sentencing

would not be appropriate to be applied in sentencing the defendants.

169. Special principles must be applied in the two cases even though the nature of the principal offence of riot is such that it would attract a sentence of imprisonment. The special circumstances of the individual defendants include the background to their incarceration on Nauru, the seemingly impossible future some of them face and the family ties that have been cut by events beyond their control. The special principles to be applied must those enshrined in Part II of the Constitution of Nauru. The basic human rights and freedom guaranteed under the Constitution.

170. The Defendants are in transit. Their anger on the day is not vented against the Nauruan community even though a crime under the Code is against society. Certainly, their behaviour during excursions into the community has been excellent. Therefore, the element of threat to society does not exist. The chances of the offences occurring again are minimal in light of the transient nature of the Defendants' stay on Nauru.

171. Further, the Defendants have given evidence in mitigation and have shown remorse and asked for leniency and mercy. The Court has certainly observed their demeanour in the course of the trial. In giving evidence they are very honest and accept the verdict handed down by

the Court. These are further matters the Court has considered in sentencing the defendants.

172. A custodial sentence is certainly not appropriate in these particular cases. Like the case of *R v Yont* referred to above, there is no reason for the defendants to be supported and cared for by the Government of Nauru. The offence was not directed at the Nauruan authorities and the Nauruan society. It is directed at IOM. They have suffered under the "extra judicial" punishment mentioned earlier.

173. Mr. Kun has submitted that the Defendants have no means to pay a fine and it would not be appropriate as well. Since a custodial sentence and a fine are not appropriate as submitted, the Court need to consider other sentences as appropriate in the circumstances of these cases.

174. In light of the foregoing, **I sentence the Defendants in Case No. 2 namely, Abbas al Sayed Mahdi, Tariq Tawfiq, Jassim al Bohassan, Jassim al Budari, Dilshad Ako, Abuzar al Salim, Beston Qubbadi, Abbas Ansari, Mohammad Sager and Mohammad al Shammary** as follows:

Charge 1. Riotously Assembled

You are convicted of the charge and discharged upon entering on your own recognizances without surety in the sum of fined $500 each

and you are to keep the peace and be of good behaviour for a period of twelve months.

Charge 5. Threatening Violence

You are convicted of the charge and discharged upon entering on your own recognizances without surety in the sum of $100 each and you are to keep the peace and be of good behaviour for a period of twelve months.

Charge 6. Common Assault

You are convicted of the charge and discharged upon entering on your own recognizances without surety in the sum of $100 each and you are to keep the peace and be of good behaviour for a period of twelve months.

I sentence the Defendants in Case No. 2 namely Jassim al Bohassan, Mohammad Sager, Abbas Ansari and Abbas al Sayed Mahdi and Tariq Tawfiq as follows on:

Charge 8. Malicious Injury to Property

You are convicted of the charge and discharged upon entering on own your recognizances without surety in the sum of $500 each and you are to keep the peace and be of good behaviour for a period of twelve months.

I sentence the Defendants in Case No. 2 namely, Abbas al Sayed Mahdi, Tariq Tawfiq, Jassim al Bohassan, Jassim al Budari,

Dilshad Ako, Abuzar al Salim, Beston Qubbadi, Abbas Ansari, Mohammad Sager and Mohammad al Shammary as follows on:

Charge 9. Conspiracy

You are convicted of the charge and discharged upon entering on your

own recognizances without surety in the sum of $100 each and you are to keep the peace and be of good behaviour for a period of twelve months.

The sentences are to run concurrently.

The Defendant **Tawana Ako in Criminal Case No. 4 is sentenced** as follows:

Charge 1. Riotously Assembled

You are convicted of the charge and discharged upon entering on your own recognizance without surety in the sum of $500 and you are to keep the peace and be of good behaviour for a period of twelve months.

Charge 5. Threatening Violence

You are convicted of the charge and discharged upon entering on your own recognizance without surety in the sum of $100 and you are to keep the peace and be of good behaviour for a period of twelve months.

Charge 7. Common Assault

You are convicted of the charge and discharged upon entering on your own recognizance without surety in the sum of $100 and you are to keep the peace and be of good behaviour for a period of twelve months.

Charge 8. Assault Occasioning Bodily Harm

You are convicted of the charge and discharged upon entering on your own recognizance without surety in the sum of $100 and you are to keep the peace and be of good behaviour for a period of twelve months.

Charge10. Malicious Injury to Property

You are convicted of the charge and discharged upon entering on your own recognizance without surety in the sum of $500 and you are to keep the peace and be of good behaviour for a period of twelve months.

Charge 11. Conspiracy

You are convicted of the charge and discharged upon entering on your own recognizance without surety in the sum of $100 and you are to keep the peace and be of good behaviour for a period of twelve months.

The recognizances are to run concurrently.

The recognizances imposed will be forfeited by any of the accused in the event that they breached the peace and are not of good behaviour within twelve months. The defendants are discharged accordingly. Before leaving each defendant must sign the recognizances in the presence of the Presiding Magistrate. The Clerk is to attend to the preparation of the recognizances. The defendants are free to leave Nauru under the terms of the "Pacific Solution".

Leo D. Keke
Presiding Magistrate

2 October 2003