

REVISITING CRIMINAL LIBEL IN SAMOA

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The offence of criminal libel was repealed in Samoa following the enactment of the Crimes Act 2013. However, in 2017, the Parliament of Samoa introduced criminal defamation as a new offence of false statements causing harm to a person's reputation. Since then, two individuals have been prosecuted under the new offence. This paper critically analyses the first two decisions regarding the new offence and discusses how these cases have contributed to the development of the law on criminal libel in Samoa.

Le délit de diffamation a été supprimé aux Samoa à la suite de la promulgation du Crimes Act 2013.

Cependant, en 2017, le Parlement de l'État indépendant des Samoa a réintroduit sous la nouvelle dénomination de fausses déclarations portant atteinte à la réputation d'une personne, ce délit dans sa législation pénale.

Depuis 2017, deux justiciables ont été poursuivis en application de cette nouvelle disposition. Cet article analyse de manière critique ces deux décisions et examine leur contribution dans le développement de la notion de diffamation au Samoa.

I INTRODUCTION

The offence of criminal libel was introduced during the New Zealand administration of Samoa, through the Samoa Act 1921. Criminal libel was retained in the Crimes Ordinance 1961 upon independence.¹ Following the recommendations made by the Samoa Law Reform Commission in its review of the Crimes Ordinance

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1 See Beatrice Tabangcora "Ua Se Va'a Tu Matagi: The Revival of Criminal Libel in Samoa" (2018) CJLP 39-52; Samoa Act 1921 (New Zealand), ss 153 and 215; Crimes Ordinance 1961 (Samoa), s 84.

1961, the Parliament of Samoa repealed the offence of criminal libel.² However, in 2017, criminal libel was reintroduced as a new offence under the Crimes Act 2013:³

117A False statement causing harm to a person's reputation

- (1) A person commits an offence who publishes by any means information:
 - (a) about another person;
 - (b) that is false;
 - (c) with the intention to cause harm to that person's reputation.
- (2) It is a defence under this section if the information published is true.
- (3) A person who commits a crime under this section is liable on conviction to a fine not exceeding 175 penalty units or imprisonment for a term not exceeding 3 months.

This decision to reintroduce criminal libel was criticised at the local and regional level, particularly on its impact on freedom of speech and the media. Other criticisms levelled at the new offence were: (1) the lack of public consultation prior to reintroducing the offence; (2) the offence was unnecessary as the civil action for defamation could serve the same purpose (ie vindication, punishment, deterrence) through remedies; (3) the offence was impractical, as it would not solve the issues that it sought to address (which at the time were created by anonymous bloggers) and (4) the scope of the offence was uncertain.⁴

II CASE LAW

The first two prosecutions under s 117A of the Crimes Act were *Police v Paulo*⁵ and *Police v Tiumalu*.⁶ All matters relating to the offence of false statement under s 117A of the Crimes Act 2013 will, at the first instance, fall within the jurisdiction of the District Court.

2 Samoa Law Reform Commission Crimes Ordinance 1961 (SLRC Rep 01/10, 2010) at 64; The previous offence under the Crimes Ordinance 1961 did not purport to codify the common law offence of criminal libel but instead, placed statutory limitations on it. Tabangcora, above n 1 at 46, contended that it was statutory limitations on the offence, and not the common law offence itself that was repealed.

3 Crimes Act 2013 (Samoa), s 117A.

4 Tabangcora, above n 1, 48-50.

5 *Police v Paulo* [2019] WSDC 3.

6 *Police v Tiumalu* [2022] WSDC 5.

A Police v Paulo

Paulo was the first case to be prosecuted under the new offence of false statement causing harm to a person's reputation. The defendant, Malele Paulo, was a Samoan entertainer and social media personality. Paulo, who is better known by his stage name, King Faipopo, gained popularity for his social media commentary on Samoan politics. He was particularly critical of the former HRPP Government led by former Prime Minister Tuilaepa Dr Sailele Malielegaoi and often voiced his discontent through his personal social media profiles. The defendant resided in Australia and was arrested and charged when he arrived in Samoa to attend his mother's funeral.

Paulo was initially charged with fourteen counts of making a false statement with the intention of causing harm to the former Prime Minister's reputation. However, these charges were withdrawn by the prosecution and substituted with one charge which involved a video that Paulo had uploaded onto his Facebook page whilst on bail in Samoa. In the video, Paulo referred to the former Prime Minister as a liar, a fraudster, and a murderer and other insulting names. The defendant pleaded guilty and was sentenced to seven weeks imprisonment.⁷ In addition to imprisonment, the defendant was ordered to remove the defamatory material from his social media.

Given that this was a sentencing decision, there was little opportunity for Judge Alalatoa Rosella Viane Papalii to elaborate on the substantive law of the offence. However, her Honour made several general observations on the law of criminal libel.

1 Justifying the reintroduction of criminal libel

First, Papalii J justified the reintroduction of criminal libel by: (1) emphasising the importance of reputation in the Samoan culture and (2) stressing the issue of accessibility. Judge Papalii agreed with the sentiments of Moran J in *Malifa v Sapolu* that:⁸

The value of a person's reputation is very high indeed, especially in Samoa where authority and respect for authority is deeply ingrained in Samoan culture... To so defame a man as to seriously lower him in the estimation of his fellows is to deal a severe blow to his pride and dignity, to undermine his authority and standing, to offend his family and even insult his village.

She further noted that the criminal law provides an avenue for redress for members of the public who do not have the financial means to pursue civil suits for

⁷ *Police v Paulo*, above n 5, at [142].

⁸ *Malifa v Sapolu* [1999] WSSC 47.

defamation.⁹ Judge Papalii also commented that other democratic countries continue to criminalise libel and cited with approval several passages from Canada on the necessity of criminalising libel. For these reasons, Papalii J disagreed with the suggestion that the civil action for defamation could sufficiently address harms to reputation.¹⁰

In *Police v Tiumalu*, which is discussed more fully in section B, Schuster J agreed generally with Papalii J's sentiments. However, His Honour noted that: (1) not every case involving harm to a reputation through defamation would invoke criminal libel, (2) criminal libel was open to abuse and manipulation like other legislation and often, to the detriment of the underprivileged and (3) it was not "necessary that criminal libel law be made the ultimate reliance or first stop against all defamatory complaints".¹¹

2 Freedom of Speech

Judge Papalii also commented on the impact of the decision on freedom of speech. Freedom of speech is a limited right protected in art 13 (1) of the Constitution of Samoa.¹² In *Malifa v Sapolu*, the Court found that while the offence of criminal libel infringed on the right to free speech, it was a reasonable restriction under art 13 (2) of the Constitution. These sentiments were echoed by Papalii J who held, in this case, that the defendant's actions "crossed the line of freedom of expression" and was one of "vilification or character assassination".¹³

Judge Schuster in *Police v Tiumalu*, commented that:¹⁴

there is a fine balance between the freedom to express an opinion that may be critical and offensive on the one hand and may be defamatory and/or malicious on the other.

He further noted that there may be exceptional circumstances where "verification of alleged abuse of public office warrant protection of public outcry which characterize vilification and character assassination as freedom of speech".¹⁵ It is clear from Schuster J's comments in *Tiumalu*, that criminal libel should only be invoked in the most serious of circumstances.

9 *Police v Paulo*, above n 5, at [103].

10 Ibid.

11 *Police v Tiumalu* [2022] WSDC 5 at [57], [59].

12 Constitution of the Independent State of Samoa 1960, art 13(1).

13 *Police v Paulo*, above n 5, at [57].

14 *Police v Tiumalu*, above n 11 at [57].

15 *Police v Tiumalu*, above n 11 at [78].

3 Penalties

One final observation made by Papalii J was on the penalty for the offence.¹⁶ Although not explicitly stated, the learned judge's comments seem to suggest that the penalty for the offence is low in comparison to other countries such as Canada and Australia.

In Samoa, a person found guilty under S 117A is liable for a term of imprisonment of up to three months or a fine of 175 penalty units (\$17,500 Samoan tala). Under s 300 of the Criminal Code of Canada, a person found guilty of publishing information that they know to be false is liable for up to five years of imprisonment.¹⁷ In Australia, the penalties for criminal libel vary amongst states. In Queensland, criminal defamation carries a maximum penalty of three years imprisonment.¹⁸ In New South Wales, criminal defamation also carries a maximum penalty of three years imprisonment and/or a fine of up to \$110,000 AUD.¹⁹ Similar penalties exist in other states, except for Western Australia, which in addition to a maximum penalty of three years imprisonment also provides for a summary conviction of up to 12 months imprisonment or a fine of \$12,000 AUD.²⁰

Other Pacific Island jurisdictions such as Tonga and Vanuatu also have criminal defamation provisions. In Vanuatu, a person found liable for criminal libel or criminal slander is liable upon conviction for a term of imprisonment of up to three years.²¹ Interestingly, Tonga's criminal defamation provisions have different penalties depending on the person(s) defamed.²² However, in Tonga, a person found guilty of the offence receives a financial penalty. Imprisonment is only ordered as a penalty if the convicted person defaults on the payment of the fine.²³

Judge Papalii, in passing, noted that reforming the law rests with Parliament and suggested that it was "pressing" for Parliament to review the penalties given the

¹⁶ *Police v Paulo*, above n 5, at [129].

¹⁷ Criminal Code 1985 (Canada), s 300.

¹⁸ Criminal Code 1899 (Qld) (Australia), s 365.

¹⁹ Crimes (Sentencing Procedure) Act 1999 (NSW) (Australia), s 15.

²⁰ Criminal Code Act Compilation Act 1913 (WA) (Australia), s 345 (1).

²¹ Penal Code [Cap 135] (Vanuatu), ss 120(3) and 121(3).

²² Defamation Act [Cap 5.02] (Tonga), ss 3, 5 and 6.

²³ Ibid.

increase in "online defamation...cyberbullying and harassment" and the need for stronger deterrence of this type of behaviour.²⁴

B Police v Tiumalu²⁵

Police v Tiumalu was the second prosecution of the reintroduced offence. This matter was heard by Judge Mata'utia Raymond Schuster in the District Court of Samoa. Here, the defendant, Tiumalumatau Lemalu Fetu was charged with one count of making a false statement causing harm to a person's reputation under s 117 A of the Crimes Act 2013. The prosecution alleged that the defendant committed the offence during a sermon that was aired on social media on 24 September 2021, when he referred to members of the Faatuatua i le Atua Samoa ua Tasi (FAST) Party as "arrogant" and "prideful" and suggested that the members of the FAST Party were only in Government because of the unconstitutional decisions of the Samoan courts.²⁶ The complaint was brought on behalf of the FAST Party by its Secretary, Vaaaoao Sula Alofipo. Like the defendant in *Paulo*, Tiumalu, a Samoan who resided in Australia, was charged soon after travelling to Samoa to attend a church conference.

Tiumalu pleaded not guilty to the charge. This provided an opportunity for Schuster J to discuss and clarify the law on the new offence.

I A person publishes by any means information

The first issue dealt with by the Court was a matter of jurisdiction which relied on the definition of the term: "publish". The defendant's counsel argued that the offence had not been committed as the act of recording and uploading the video happened whilst Tiumalu was in Sydney, Australia and not in Samoa.²⁷ Defence counsel contended that the term "publish" contained in s 117 A of the Crimes Act 2013, should be interpreted narrowly as "published in Samoa". Judge Schuster rejected this proposition and held that "the offence was completed in Samoa once

24 *Police v Paulo*, above n 5, at [129].

25 *Police v Tiumalu* [2022] WSDC 5.

26 The statement made by the defendant in *Police v Tiumalu* was made in the Samoan language and reads as follows: "O le mea lena o le **faasausili, faamaualuga**, sausaunoa e vaavaai i luga o le lagi, matuai pei a ua oo a ina tusi le lima ia na ua tou nonofa mai iina ae matou, ae ua le mafaufau how did they get there, faafefea na oo i le itu le la? E na o le Atua a la foi tou silafia ma tatou iloa. **Ana le uia e le faamasinoga se auala e le tusa ma le faavae e le oo i o.** O lona uiga na o i auala le sao, auala piopio ao le atunuu e faavae i le Atua Samoa. E tasi le faavae o Samoa mai i le fia Sefulu tausaga lea laa oo i le 60 o manuia i le Atua le tama, le Atua le Alo, le Atua le Agaga Paia". The texts in bold are the segments that were translated above.

27 *Police v Tiumalu*, above n 25 at [9].

the published information was made accessible, downloaded and comprehended by ...any ...person in Samoa".²⁸

As such, a person cannot escape liability for the offence on the grounds that they did not commit the act of uploading the information in Samoa.

2 The published information is about another person

The second issue before the Court was the definition of the term "person". In this case, the charge specified that the "person" injured by the defendant's statement was the FAST Party (a legal entity). The prosecution relied on the Acts Interpretation Act 2015 definition of person which is not limited to natural persons but "includes a corporation sole, or a body of persons, whether corporate or unincorporated".²⁹ Defence counsel argued that the term "person" should be interpreted narrowly to mean a "natural person", as a wider interpretation of the term would be inconsistent with the intention of the Crimes Act 2013 and the right to freedom of speech, as protected by art 13 of the Constitution.³⁰

Judge Schuster agreed with the interpretation of the term "person" as submitted by the prosecution and held that the FAST Party was a legal person having been granted legal personality by law.³¹ According to Schuster J, it would be "absurd to suggest that a legal person (which...include[s] a political party) whether duly registered or not as an organisation would be immune to harsh and defamatory criticisms merely because it is not a natural person" and rejected the arguments that the wider interpretation would be inconsistent with the intention of the Crimes Act and the Constitution.³² As a result, political parties and other groups (whether corporate or unincorporated) may be complainants in criminal defamation cases.

It is concerning that a political party, who at the time of the decision was the Government of the day, is considered a "person" for the purpose of criminal defamation cases. By recognising these entities as a "person" under s 117 A of the Crimes Act 2013, there is an increased risk that criminal defamation may be used to censor political criticism. In England, public authorities were barred from bringing civil defamation claims in *Derbyshire CC v Times Newspaper Ltd* because:³³

28 *Police v Tiumalu*, above n 11 at [26].

29 Acts Interpretation Act 2015 (Samoa), s 3.

30 *Police v Tiumalu*, above n 11 at [34] – [37].

31 *Police v Tiumalu*, above n 11 at [36].

32 *Ibid.*

33 *Derbyshire CC v Times Newspapers Ltd* [1993] AC 534 at [547].

[i]t is of the highest possible importance that a democratically elected governmental body, or indeed any governmental body, should be open to uninhibited public criticism. The threat of a civil action for defamation must inevitably have an inhibiting effect on freedom of speech.

Lord Keith in *Derbyshire* also cited with approval, the sentiments of Lord Bridge of Harwich in *Hector v Attorney-General of Antigua and Barbuda*:³⁴

[i]n a free democratic society it is almost too obvious to need stating that those who hold office in government and who are responsible for public administration must always be open to criticism. Any attempt to stifle such criticism amounts to political censorship of the most insidious and objectionable kind.

Soon after the decision in *Derbyshire*, the English court in *Goldsmith v Bhoyrul*³⁵ held that the same principle applied to democratically electable political parties. As such, political parties are also unable to bring civil defamation claims in England.

Respectfully, it would be worth considering in future cases whether the same principles, which bar public authorities and political parties from bringing civil defamation actions should apply to criminal defamation cases in Samoa. This should not be taken as an argument to bar individual politicians or public servants from making a defamation claim as these individuals have reputations that are protected by the law. A restricted interpretation of "person" would not prohibit affected individuals from lodging a complaint under s 117 A of the Crimes Act 2013.

3 The published information is false

Previously, the onus was on a defendant to prove the truth of the publication. Further, the criminal libel provision in the Crimes Ordinance 1961 stated that truth was not a defence unless the defendant could prove that the statement made was for the public benefit.

However, under the new offence, the onus is now clearly on the prosecution to prove that the information published by the defendant was false.³⁶ The truth is now an absolute and unconditional defence to the new offence. In practice, the prosecution would have to provide a counterexample that would disprove the false statement. However, Schuster J held that in addition to providing a counterexample, the prosecution must also "prove that the defendant was aware of a state of affairs

³⁴ *Hector v Attorney General of Antigua and Barbuda* [1990] AC 312 at [308].

³⁵ *Goldsmith v Bhoyrul* [1998] QB 459.

³⁶ Crimes Act 2013 (Samoa), s 117A (1)(b); *Police v Tiumalu*, above n 11 at [75].

that was contrary to what he believed to be the case".³⁷ Therefore, to satisfy this element, the prosecution must:³⁸

- (1) Provide a counterexample to disprove the false statement;
- (2) Prove that the defendant knew that there was a counterexample; and
- (3) Prove that the defendant, nevertheless, intended to publish the information knowing it to contradict the counterexample.

In addition, it was held that even if the prosecution were able to disprove the defendant's statement, the defendant could rely upon the defence of mistaken and honest belief.³⁹ Judge Schuster justified the imposition of this high threshold by stating:

the State must approach with caution [restrictions imposed to protect reputations] so as not to undermine public confidence in the pursuit of truth in a democratic society especially where public officials are called to be held accountable.

While the high threshold set for this element is a welcome restriction on the scope of the offence, it presents a practical difficulty for the prosecution, particularly if the statement contains an opinion, as opposed to a fact. Generally, mere opinions are not actionable under civil defamation unless the opinion had some factual foundation. The prosecution is required to prove the fact upon which the opinion had been based was false. As such, the initial charge in *Tiumalu*, which alleged that members of the FAST Party were "arrogant" and "prideful" would be incredibly difficult to disprove, given the subjective nature of opinions.

In *Tiumalu*, the prosecution narrowed the charge down to the defendant's suggestion that the FAST Party was only in Government because of the unconstitutional decisions of the Samoan Courts.⁴⁰ To successfully discharge its burden regarding this element, the prosecution would have needed to prove that:

- (1) The FAST Party (and its members) were the democratically elected and legitimate Government;
- (2) The defendant knew that the FAST Party (and its members) were the democratically elected and legitimate Government; and

³⁷ *Police v Tiumalu*, above n 11 at [79].

³⁸ *Police v Tiumalu*, above n 11 at [75] – [76].

³⁹ *Police v Tiumalu*, above n 11 at [82].

⁴⁰ The specific statement was: "Ana le uia e le faamasinoga se auala e le tusa ma le faavae e le oo i o. O lona uiga na o i auala le sao, auala piopio ao le atunuu e faavae i le Atua Samoa."

- (3) The defendant, nevertheless, intended to publish the information knowing it to contradict the fact that the FAST Party had been democratically elected.

Two electoral decisions were mentioned in evidence: *FAST Party v Attorney General*⁴¹ decided on 23 May 2021 and *Attorney-General v Latu*⁴² decided on 28 June 2021. In the former decision, the Supreme Court held that the Head of State's Proclamation to postpone the swearing-in ceremony was invalid. In the latter decision, the Supreme Court held that the swearing-in that was held on the Malae o Tiafau on 24 June 2021 was unconstitutional.⁴³ Defence counsel contended that the defendant, at the time of making the statements concerned, had been referring to the later decision of *Attorney-General v Latu*.⁴⁴

Here, Schuster J held that the prosecution had failed to prove that the statement made by the defendant was false. The Judge's decision was premised on the fact that, at the time of the General Elections, many electoral matters were decided by the Supreme Court and Court of Appeal.

4 *Intention to cause harm to a person's reputation*

The final element to be proven by the prosecution is that the person who published the statement intended to cause harm to another person's reputation. In addition to the mens rea discussed above, it can be argued that intention includes recklessness.

In *Tiumalu*, Schuster J adopted the definition of "harm" as defined by Moran J in *Malifa v Sapolu*.⁴⁵ "To harm" a person's reputation is to:⁴⁶

lower the complainant in the estimation of right-thinking members of society generally or cause him to be shunned or avoided or expose him to hatred, contempt or ridicule, or convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business.

41 *FAST Party v Attorney General* [2021] WSSC 25.

42 *Attorney-General v Latu* [2021] WSSC 31.

43 *Malae o Tiafau* refers to the field of grass in front of the *Fale Fono* (Parliament House). On 24 May 2022, after finding the doors of the Parliament locked, the members of the FAST Party erected a marquee on the *Malae o Tiafau* and conducted a swearing-in ceremony that afternoon. The decision of the Supreme Court in *Attorney General v Latu* [2021] WSSC 31 was later overturned by the Court of Appeal in *Attorney General v Latu* [2021] WSCA 6.

44 *Attorney-General v Latu*, above n 42.

45 *Police v Tiumalu*, above n 11 at [82] citing Moran J in *Malifa v Sapolu* [1999] WSSC 47.

46 *Ibid.*

The protection of the criminal law, through criminal libel, would be invoked only when the matter involved serious and not trivial vilification of reputation. In *Malifa v Sapolu*, the Court considered this matter as a preliminary issue. In *Tiumalu*, Schuster J found it necessary to determine this matter on trial, given that it was the first time that the substantive law on the offence was discussed.⁴⁷ When determining whether a matter was "serious" enough to warrant the intervention of criminal law, the following factors would be considered:⁴⁸

- (i) There must be a clear prima facie case
- (ii) Only the most serious, grave or gross attacks on reputation
- (iii) Allegation of criminal conduct of the complainant
- (iv) Eminent (public) position of the complainant
- (v) The nature of the publication
- (vi) The nature of the article itself
- (vii) Express malice (absence in belief of the truth is conclusive evidence of malice).

After considering whether the matter was serious, a court must then ask itself "whether the public interest require [sic] the intervention of the state by instituting criminal proceedings instead of a private case between individual's [sic]".⁴⁹

Here, Schuster J found that the published information was not trivial, taking into consideration the importance of reputation in Samoan culture and society, as noted in previous decisions. However, he did not deem the matter serious enough to "invoke the intervention of criminal law" even if the "unwarranted and unfounded criticisms may bring shame, embarrassment and general ostracism that may even bring about its demise".⁵⁰

Judge Schuster held that the prosecution had failed to prove, beyond reasonable doubt, the elements of the offence and acquitted the defendant.

III CONCLUSION

In *Paulo* and *Tiumalu*, both Papalii J and Schuster J were faced with the unenviable task of defining the scope of the new offence. *Paulo* will be useful precedent in future sentencing for this offence. *Tiumalu* will be a useful precedent for future prosecutions under the new offence. Justice Schuster's careful consideration in this judgment has clarified some of the uncertainties that arose at

47 *Police v Tiumalu*, above n 11 at [107].

48 *Police v Tiumalu*, above n 11 at [83].

49 *Police v Tiumalu*, above n 11 at [83].

50 *Police v Tiumalu*, above n 11 at [107].

the time of enactment. It is clear, from *Tiumalu*, that only cases involving serious or grave harm to a person's reputation will be deemed sufficient to invoke the intervention of the criminal law. In addition, there is also a high threshold to be met by the prosecution when proving that published information was false.

Despite this, there remain several issues with the offence. First, the Court's wide interpretation of the term "person" to include political parties is not in line with countries like the United Kingdom, which bars public authorities and political parties from suing for defamation. It is peculiar that a political party can seek redress under the criminal law (which is generally understood to be of a higher threshold) but not under civil law. Adopting a narrow interpretation of the term "person", would not disadvantage affected individuals such as politicians or Government employees who may claim in their individual capacity.

Second, the potential for abuse of the offence remains, one of the justifications for reintroducing the offence was to ensure protection from harms against the reputation, particularly for those who are disadvantaged within society. A criminal libel offence would, theoretically allow disadvantaged individuals, who could not bring a civil defamation suit, the opportunity to seek redress under the criminal law for any harm suffered. However, since the reintroduction of criminal libel, most complainants have been politicians and political parties.⁵¹ Nowadays, it is common to hear Samoan politicians threaten each other with a criminal libel complaint. With the increasing number of criminal libel complaints, the cost of prosecuting individuals is borne by the public. While it is accepted that other developed democratic nations such as Australia, Canada and European countries have criminal libel offences enforced in their countries, prosecution under those provisions are relatively rare.⁵² Given Samoa's state as a developing nation, it is worrisome that a significant amount of resources may be used to prosecute under this offence.

Finally, the offence will continue to have a chilling impact on freedom of expression. The offence of criminal libel is accepted, by the Samoan courts, as a reasonable restriction of the right to freedom of expression. However, the fear of

51 Joyetter Feagaimaali'i "Tuilaepa unsure of criminal libel case status" *Samoa Observer* (online ed, Apia, 29 August 2021); Sialai Sarafina Sanerivi "Former Justice chief files criminal libel complaint" *Samoa Observer* (online ed, Apia, 3 August 2021); Matai'a Lanuola Tusani Ah-Tong "Ex-policeman charged for criminal libel released on bail" *Samoa Observer* (online ed, Apia, 12 April 2021); Matai'a Lanuola Tusani Ah-Tong "Private prosecutor takes on party complaint" *Samoa Observer* (online ed, Apia, 26 October 2022).

52 In the case of Canada, see Dylan J Williams "If You Do Not Have Anything Nice to Say: *Charter* Issues with the Offence of Defamatory Libel (Section 301)" (2020) 181 *Manitoba Law Journal* 181-207. For Australia, see Craig Burgess "Criminal Defamation in Australia: Time to Go or Stay?" (2013) 20(1) Murdoch University Law Review 1-21.

prosecution may discourage or prevent individuals from engaging in genuine political discourse, both in Samoa and abroad. The defendants in *Paulo* and *Tiumalu* came to Samoa for personal reasons and were charged upon arriving. Another Samoan woman who normally resides in the United States of America, was also charged under s 117A of the Crimes Act, upon arrival in Samoa, for making false statements with the intention to cause harm to the FAST Party, the complainant.⁵³ Samoans living overseas must be mindful when communicating via the internet and social media, as a criminal charge may be awaiting them at the airport on their next visit to Samoa.

Given the popularity of the offence amongst politicians, it is unlikely that the new offence will be repealed any time soon. Nevertheless, the restrictions on the scope of the offence as outlined in *Tiumalu*, provide a welcome safeguard against potential misuse of the offence. The decisions in Samoa are not only useful guides for future cases in Samoa, but for other countries in the Pacific, like Vanuatu, which have recently passed criminal defamation provisions.

53 Mata'i'a Lanuola Tusani Ah-Tong "Private prosecutor takes on party complaint" above n 51.

