

UA SE VA'A TU MATAGI: THE REVIVAL OF CRIMINAL LIBEL IN SAMOA

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'Swift, like a canoe before the wind' - Samoan proverb

In 2013, the offence of criminal (defamatory) libel was repealed by the Parliament of Samoa. Four years later, Parliament reintroduced criminal libel into Samoan law. The reintroduction of criminal libel in Samoa was prompted by the rising popularity of anonymous bloggers who have posted allegations of corruption, misconduct and other serious crimes against prominent public figures. This paper critically analyses criminal libel in Samoa and the legal issues and implications that criminal libel has for freedom of speech and press. This paper concludes that while the new provision for criminal libel is less oppressive than the repealed provision, the reintroduction of criminal libel is impractical and unnecessary.

Quatre ans après avoir supprimé en 2013 le délit pénal de diffamation, le Parlement l'a de nouveau réintroduit dans le droit samoan par le vote du 'Crimes Amendment Act 2017'.

La justification généralement avancée pour ce revirement était la nécessité d'endiguer le phénomène grandissant de la publication anonyme sur les réseaux sociaux de messages dénonçant la corruption ou les agissements frauduleux d'importants acteurs de la vie politique du royaume.

Cet article analyse les conséquences de la réintroduction du délit de diffamation en 2017 dans le droit pénal des Samoa notamment pour la presse et plus généralement pour la liberté d'expression.

L'auteur fait observer que si ces nouvelles dispositions pénales sont certes moins sévères que celles en vigueur avant 2013, elles n'en restent pas moins délicates déjà mettre en œuvre compte tenu du développement des réseaux sociaux de telle sorte qu'au bout du compte elles risquent d'être tout bonnement inutiles.

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I INTRODUCTION

In 2013, the Parliament of Samoa repealed the offence of defamatory (criminal) libel with the enactment of the Crimes Act. Four years later, in 2017, criminal libel was reintroduced in the Crimes Amendment Act. The decision to reintroduce criminal libel coincided with the rise of anonymous bloggers who have posted allegations of corruption, misconduct and serious crimes against prominent public figures in Samoa on social media.

This paper analyses the offence of criminal libel and its implications on Samoan society. Part II provides a discussion on the development of criminal libel in England and New Zealand. Part III of this paper focuses on the history of criminal libel in Samoa, from the introduction of the offence to its repeal in 2013. Part IV analyses the provision in the Crimes Amendment Act. It elaborates on the Government's rationale for reintroducing criminal libel, compares the new offence to the one that was repealed and discusses the legal issues and implications that this new law has for Samoan society.

II THE DEVELOPMENT OF CRIMINAL LIBEL LAW

A England

The development of the law of libel in England was prompted by the introduction of the printing press. Before the introduction of the Caxton printing press to Westminster in 1476, libel was relatively insignificant because only a minute number of the population was literate.¹ The art of printing became increasingly popular throughout the 16th century, changing the way that ideas were disseminated.² This alarmed the two most powerful entities in England at the time: the Church and the State. Both entities created oppressive measures in an attempt to regulate the printed word and exercise control over the press.³ The measures proved to be unsuccessful in suppressing public opinion as new forms of printing, which targeted the wider population, were introduced. The laws that existed at the time, which were treason and the civil action for defamation, were inadequate and made apparent the need for another form of regulation.⁴ This prompted the development of the law of libel and subsequently, criminal libel.

1 Van Vech Veeder "The History and Theory of the Law of Defamation" (1903) 3 Colum L Rev 546 at 561.

2 Above n 1.

3 Above n 1, at 562.

4 Ibid.

The origins of the offence of criminal libel can be traced to the statutory offence of *scandalum magnatum* enacted in 1275.⁵ *Scandalum magnatum*, which means the slander of magnates, was described as a 'political weapon' used to 'prevent the loss of public confidence in the government' and the 'essence' of criminal libel.⁶ This statute was used by the Star Chamber as the basis for the formation of criminal libel law.⁷ There were three types of criminal libel developed: blasphemous, seditious and defamatory. The Court of Star Chamber:⁸

regarded with the deepest suspicion the printed word in general, and anything which looked like criticism of the established institutions of Church or State in particulate a publication of which the Star Chamber disapproved would be punished as either blasphemous or else as a seditious libel. At the same time, the Star Chamber was anxious to suppress dueling. To this end it would punish defamatory libels on private citizens who had suffered insult thereby, in the hope that this remedy would be more attractive to the person insulted than the issue of a challenge to fight.

Criminal libel was a common law offence developed to mainly "publish libels which weakened confidence in "the good governance of the realm"...directly threatened state security, which were likely to cause private disorder or a breach of the peace".⁹

Criminal libel developed distinct features from civil libel. Libel, which is categorized as one of the two torts of defamation, is defined as "defamation in permanent form".¹⁰ Defamation is a tort that protects reputation, therefore:¹¹

a person who communicates to a third party a matter which is untrue and likely in the course of things substantially to damage the reputation of a third person is, on the face of it, guilty of a legal wrong.

5 Slanderous Reports Act 1275 (UK); Law Commission *Criminal Libel* (UKLC WP84, 1982) at 10; The *Criminal Libel* report was cited by the Supreme Court of Samoa in *Malifa v Sapolu* [1999] WSSC 47 at [19].

6 Law Commission *Criminal Libel*, above n 5, at 11.

7 Ibid.

8 JR Spencer "Criminal Libel – A Skeleton in the Cupboard" (1977) Crim LR 383 as cited in *Malifa v Sapolu*, above n 5.

9 Law Commission *Criminal Libel*, above n 5, at 13.

10 A Speker and F McMahon "Defamation" in Michael A Jones and Anthony M Dugdale (eds) *Clerk & Lindsell on Torts* (Thomson Reuters (Legal) Ltd, London, 2015) 1531 at 1537.

11 Above n 10, at 1532.

The major distinction between civil and criminal libel was its nature and purpose. The nature of civil libel was compensatory and was concerned with addressing the damage done to a person's reputation. On the other hand, the nature of criminal libel was punitive and was concerned with punishing those who published libel. In criminal libel:¹²

it did not matter whether the person libeled was alive or dead. Secondly, it did not matter that the libel had been published only to the victim. Finally, truth was not a defence.

Furthermore, criminal proceedings were reserved for libels that were of such grave seriousness that the State had to intervene.¹³

The common law offence of criminal libel was never codified but remained "a creature of the common law".¹⁴ In 1843, statutory limitations were placed on criminal libel with the enactment of the Libel Act.¹⁵ In November 2009, the offence of criminal libel was repealed in England by s 73 of the Coroners and Justice Act:¹⁶

Abolition of common law libel offences etc.

The following offences under the common law of England and Wales and the common law of Northern Ireland are abolished –

- (a) the offences of sedition and seditious libel;
- (b) the offence of defamatory libel;
- (c) the offence of obscene libel.

B New Zealand

Criminal libel in New Zealand was influenced by English law. However, the provision for criminal libel in New Zealand differed from the provision in England. In New Zealand, the statutory provision codified the offence of criminal libel instead of placing statutory limitations on a common law offence.¹⁷ Defamatory libel in New Zealand was defined in s 231 as:¹⁸

12 Law Commission *Criminal Libel*, above n 5, at 13-14.

13 *Gleaves v Deakin* [1980] AC 477.

14 *Malifa v Sapolu*, above n 5.

15 Libel Act 1843 (UK).

16 Coroners and Justice Act 2009 (UK), s 73.

17 Crimes Act 1908, ss 231–235.

18 Crimes Act 1908.

a matter published, without legal justification or excuse, either designed to insult any person or likely to injure his reputation by exposing him to hatred, contempt or ridicule, or likely to injure him in his profession or trade, whether such matter be expressed by words, written or printed, or legibly marked on any substance, or by any object signifying such matter otherwise than by words, and whether expressed directly or by insinuation or irony.

Sections 232 to 235 provide the different principles for defamatory libel such as: the definition of "publish", the requirement that leave be given by a judge before prosecution and the non-availability of truth as a defence unless proven to have been for the benefit of the public.¹⁹

When the Parliament of New Zealand enacted the Crimes Act 1961 it repealed the Crimes Act 1908. The provision for criminal libel was retained under Part 9 of the Crimes Act 1961.²⁰ In February 1993, the offence of criminal libel in New Zealand was repealed with the enactment of the Defamation Act in 1992.²¹ Since criminal libel was a statutory offence, this meant that the repeal was absolute.

III CRIMINAL LIBEL IN SAMOA

A Introduction

Prior to the arrival of Europeans to Samoa in the 19th century, customs and traditions governed Samoan society. With the Europeans came Christianity, colonisation and the legal systems of their home countries. In 1899, Western Samoa was colonised by Germany. Fifteen years later in 1914, in the infancy of World War I, the German governor in Samoa surrendered to New Zealand forces.²² In 1920, the League of Nations placed Samoa under the administration of New Zealand.²³

19 Crimes Act 1908, ss 232–235.

20 Crimes Act 1961, ss 211–216.

21 Defamation Act 1992, s 56 (2).

22 "New Zealand in Samoa: Colonial administration" (July 2014) Ministry for Culture and Heritage <<https://nzhistory.govt.nz/politics/samoa/colonial-administration>>.

23 Malama Meleisea *Lagaga: A Short History of Western Samoa* (University of the South Pacific Press, Suva, 1987) at 125.

On 1 December 1921, the Parliament of New Zealand enacted the Samoa Act to provide a new system of government and law for Samoa.²⁴ The Samoa Act introduced the offence of defamatory libel to Samoa in s 153:²⁵

- (1) Every one who publishes a defamatory libel is liable to six months imprisonment.
- (2) To publish a defamatory libel means to do any act which confers upon the person defamed a right of action for damages for libel.
- (3) In a prosecution under this section the burden of proof shall be determined by the same rules as in an action for damages for libel.
- (4) In a prosecution under this section it shall be no defence that the libel is true unless the publication thereof was for the public benefit.

The provision for criminal libel in the Samoa Act reflected the principles in the criminal libel provisions of the Crimes Act 1908 of New Zealand and English common law. Section 153 of the Samoa Act provided the principles, burden of proof and penalty for the offence. English common law principles retained in the offence included the non-availability of truth as a defence and the requirement that leave be given before instigating prosecution.²⁶

On 1 January 1962, Samoa gained independence from New Zealand. On the same day, the Crimes Ordinance 1961 came into force. Section 84 of the Crimes Ordinance was a duplicate of s 153 of the Samoa Act.²⁷ There are two explanations as to why criminal libel was retained in the Crimes Ordinance. In *Alesana v Samoa Observer Company Ltd*, Bisson J noted, "Samoa has retained the offence of criminal libel, which New Zealand has not, showing the importance in Samoan society attached to reputation".²⁸ Furthermore, at the time the Crimes Ordinance had been enacted, neither New Zealand nor England had repealed criminal libel.

Criminal libel was often used by politicians to threaten the media but was rarely used.²⁹ From 1962 to 2013, only one case of criminal libel was prosecuted in Samoa: *Malifa v Sapolu*.³⁰ This case involved a former Prime Minister, the late Tofilau

24 Samoa Act 1921, s 153.

25 Ibid.

26 Samoa Act 1921, ss 153 and 215.

27 Crimes Ordinance 1961 (Samoa), s 84.

28 *Alesana v Samoa Observer Company Ltd* [1998] WSSC 1.

29 "Samoa Prime Minister uses 53-year-old law to threaten parliamentary journalists" *Global Journalist* (online ed, 27 June 2013).

30 *Malifa v Sapolu*, above n 5 at [4].

Alesana Eti and a prominent local newspaper agency, the *Samoa Observer*.³¹ On 6 June 1997, a defamatory letter to the editor was published in the *Samoa Observer*.³² The letter, which had been authored by a Samoan who was living in New Zealand, was:³³

... allegorical in style. It recorded the author's dream in which the then Prime Minister...was vilified as a man so base a debilitated that when he died the ground in which his dead body was buried would be so barren that even the Samoan tobacco would not grow in it.

On the basis of this letter, Prime Minister Tofilau instigated a private prosecution for criminal libel against the *Samoa Observer*.

There are several decisions of the same name preceding the 1999 decision. These decisions concerned various interlocutory applications. The applications covered jurisdictional matters, questions as to whether the letter was serious enough to warrant the application of criminal libel and the constitutionality of the offence.³⁴ The proceedings were stayed following the death of Prime Minister Tofilau and the substantive provision of criminal libel was not discussed.

B Crimes Act 2013

In 2010, the Samoa Law Reform Commission reviewed the Crimes Ordinance. In its report, the Commission recommended that the offence of criminal libel be repealed and "[i]nstead, reliance should be placed on civil laws of defamation. This is consistent with the increasing recognition...of freedom of speech, including speech that may be politically unpopular".³⁵ Parliament accepted the recommendation of the Commission. On 1 May 2013, the Crimes Act came into force, repealing the Crimes Ordinance 1961.³⁶

However, the question remains as to whether the Crimes Act actually 'repealed' the offence of criminal libel in Samoa. The provision for criminal libel in the Samoa Act and the Crimes Ordinance reflected the English approach as it did not codify

31 Ibid.

32 Ibid.

33 Ibid.

34 *Malifa v Sapolu* [1998] WSSC 2; *Malifa v Sapolu* [1998] WSCA 1; *Malifa v Sapolu* [1998] WSCA 5; *Malifa v Sapolu* [1998] WSSC 21.

35 Samoa Law Reform Commission *Crimes Ordinance 1961* (SLRC Rep 01/10, 2010) at 64.

36 Crimes Act 2013 (Samoa).

criminal libel but instead set statutory limitations on the offence. Justice Moran affirmed this in *Malifa v Sapolu*:³⁷

The Crimes Ordinance 1961 does not purport to codify the law of criminal or defamatory libel. Indeed s 84 does not create the offence of defamatory libel...The offence of criminal or defamatory libel is and remains a creature of the common law. Section 84 no more creates a new offence than did s 5 [of the] Libel Act 1843 (UK).

The Crimes Act did not contain a provision similar to s 73 of the Coroners and Justice Act of the United Kingdom but merely omitted criminal libel. Theoretically this means that criminal libel, as a common law offence, was not repealed. Instead, it was the statutory limitations on the offence that were repealed. However, it is apparent that the understanding of the legislators, legislative drafters and the media in Samoa was that the offence had been repealed.³⁸

IV REINTRODUCTION OF CRIMINAL LIBEL IN SAMOA

A Crimes Amendment Act 2017

Since 2016 prominent public figures in Samoa have been the subject of criticism by anonymous bloggers. Apart from criticising laws such as the Land Titles Registration Act 2008 and the Government's decision to tax offerings made by congregations to their pastors, the anonymous bloggers have made serious allegations against these public figures ranging from serious crimes such as murder and assault, to corruption, the mismanagement of public funds, nepotism, and personal issues such as extramarital affairs. The anonymous bloggers have gained wide popularity amongst Samoans residing in Samoa and overseas. One page in particular entitled *O Le Palemia* had, at one point, over 21,000 followers on Facebook alone.³⁹

37 *Malifa v Sapolu*, above n 5 at [18].

38 Defamation Act 1992 (Samoa), s 17; "Govt brings back Criminal Libel law in hunt for 'Ghost writers'" *Samoa Observer* (online ed, Samoa, 2 November 2017); "Ghost Writers to be Prosecuted" *Samoa Planet* (online ed, Samoa, 2 November 2017); Joyetter Feagaimaali'i-Luamanu "Govt's criminal libel move 'serious concern'" *Samoa Observer* (online ed, Samoa, 20 November 2017); Joyetter Luamanu "Parliament brings back Criminal Libel" *Samoa Observer* (online ed, Samoa, 19 December 2017); Mata'afa Keni Lesa "Criminal Libel, Ole Palemia and corruption in high places" *Samoa Observer* (online ed, Samoa, 21 December 2017).

39 *O Le Palemia* translates as "The Prime Minister". At 11 April 2018, the *O Le Palemia* Facebook page had over 21,000 followers. However, this page was removed by Facebook after being reported for abuse by some members of the public. Another Facebook page has been set up named *OLP OLE Palemia* available at <www.facebook.com/olppalemia>. As of 18 June 2018, *OLP OLE Palemia* has over 8,000 followers.

In an effort to crack down on the anonymous bloggers, the Crimes Amendment Bill was tabled at Parliament on 19 December 2017.⁴⁰ This Bill amended the Crimes Act 2013 and introduced a new offence entitled 'False statement causing harm to a person's reputation'.⁴¹ The rationale for this law was to: (1) address the damage done to a person's reputation by false publications and (2) to enable members of the public, who did not have the financial means to commence a civil action, to access these proceedings.⁴² Prime Minister Tuilaepa Sailele Malielegaoi, stated that the law would "regulate troublemakers and those who are publishing libelous statements on social media" and that "the government must create safeguards from these types of people who cause trouble".⁴³ The Prime Minister was credited as being instrumental in the reintroduction of criminal libel. Leaupepe Toleafoa Fa'afisi, the Speaker of Parliament, noted that the reintroduction of the law had been "expedited" because the issues it dealt with were of an "urgent nature".⁴⁴ In less than an hour, the Bill passed through the first, second and third readings.⁴⁵ On 21 December 2017, the Crimes Amendment Act 2017 commenced.

Section 117A of the Crimes Amendment Act reads:⁴⁶

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 intentions 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 three (3) months.

40 (19 December 2017) Samoa PD; Crimes Amendment Act 2017 (Samoa).

41 Crimes Amendment Act 2017, above n 40, s 117A.

42 Explanatory Memorandum for the Criminal Amendment Bill 2017 (Samoa).

43 Tina Mata'afa-Tufele "Criminal Libel law to "regulate troublemakers" says PM" *Samoa Planet* (online ed, Samoa, 18 December 2017).

44 Joyetter Luamanu "Parliament brings back Criminal Libel", above n 38.

45 Ibid.

46 Above n 40.

The new offence is likened to 'defamatory libel'. There are several key differences between the offence of criminal libel in the Crimes Ordinance and the new offence in the Crimes Amendment Act. Firstly, the new offence codifies criminal libel instead of placing statutory limitations on a common law offence. Section 117A (1) of the Act establishes four elements for the new offence: (1) a person publishes information by any means, (2) about another person, (3) that is false and (4) intends to cause harm to another person's reputation.⁴⁷ While common law would be used to elaborate on these elements, it is more concise than s 84 (2) of the Crimes Ordinance.⁴⁸ Secondly, s 84 (3) of the Crimes Ordinance provided that the standard of proof for criminal libel was the civil standard of the balance of probabilities.⁴⁹ The new provision does not specify a standard of proof which means that the criminal standard of beyond reasonable doubt applies to the new offence. Thirdly, the truth is a defence. This is less oppressive than s 84 (4) of the Crimes Ordinance which provided that the truth was only a defence if the publication was for public benefit.⁵⁰ Finally, the punishment has changed. The maximum imprisonment time has been lowered to three months and a fine has been introduced.⁵¹ The introduction of a fine for criminal libel is an improvement because it imposes a limit on how much a person may be fined, whereas damages in a civil action are awarded at the discretion of the judge.

B Issues with the New Offence

The new criminal libel law is problematic for several reasons. Firstly, there was no public consultation regarding the new law.⁵² Prime Minister Tuilaepa has defended the lack of public consultation by stating that the law is simply being "reintroduced" and does not require public consultation.⁵³ However it is submitted, with respect, that there should have been public consultations. Although the

47 Crimes Amendment Act 2017, above n 40, s 117A(1).

48 Crimes Ordinance 1961, s 84.

49 Crimes Ordinance 1961; Crimes Amendment Act 2017, above n 40, s 117A.

50 Crimes Ordinance 1961; Crimes Amendment Act 2017, above n 40, s 117A (2).

51 Crimes Amendment Act 2017, above n 40, s 117A (3).

52 "Samoa's got an anti-freedom of speech libel law Donald Trump would love" *Pacific Islands Times* (online ed, Guam, 7 January 2018); "Govt criticized for 'lack of consultation' on Criminal Libel" *Samoa Observer* (online ed, Samoa, 8 January 2018); Pacific Freedom Forum "Samoa urged to consult the public on the revival of criminal libel law" *IFEX* (online ed, 8 January 2018); "Samoa govt criticized for lack of consultation on criminal libel" *Radio New Zealand* (online ed, Wellington, 9 January 2018).

53 Joyetter Feagaimaali'i-Luamanu "PM scoffs at call for Criminal Libel consultation" *Samoa Observer* (online ed, Samoa, 17 January 2018).

provision is somewhat similar to s 84 of the Crimes Ordinance, it is an entirely new offence. The public should have been given the opportunity to give their views on the new offence. Public consultations are an integral part of the work conducted by the Samoa Law Reform Commission. However, the Law Reform Commission can only undertake research and consultations on a certain issue when it receives a reference from Parliament or the Office of the Attorney-General.⁵⁴

Secondly, the civil action for defamation serves the same purpose as the new offence. Defamation addresses the damage done to a person's reputation, which is what Parliament intended the new offence do.⁵⁵ In a civil proceeding for defamation, the truth is a defence. The penalties for both the civil action and the new offence are similar. When a person wins a civil action for defamation they can be awarded damages; under the new offence a person can be fined.⁵⁶ The only difference between the outcome for civil and criminal libel is the limit that the new offence places on the fine penalty and the possibility of incarceration. Furthermore, a person who brings a complaint to the Police under the new offence is not precluded from also instigating a civil suit against the person they have made a complaint against. Therefore, the new offence is redundant.

Thirdly, the law is impractical. The anonymous bloggers targeted prominent public figures in Samoa. Introducing this offence will not address the issue of the anonymous bloggers, who cannot be prosecuted unless their identities are known.⁵⁷ Parliament's second rationale for introducing the offence was to enable Samoans, who did not have the money to commence a civil action, to sue for the damage done to their reputation by a false publication.⁵⁸ However the offence provides that anyone, including individuals who are financially able to bring a civil suit, can bring a complaint to the Police. The cost of prosecuting anyone for criminal libel will be borne by the public. In 1998, similar circumstances arose where millions of Samoan tala from public funds were used to pay for the legal fees of then Prime Minister Tofilau Eti Alesana and other Members of Parliament. When Parliament convened to hear the proposal for the approval of legal fees, Tuiatua Tupua Tamasese Efi, who

54 Law Reform Commission Act 2008 (Samoa), s 6 (b) and s 7 (2)(a).

55 Explanatory Memo for Criminal Amendment Bill, above n 42.

56 Crimes Amendment Act 2017, above n 40, s 117A(3) and the Fines (Review and Amendment) Act 1998 s 4, a person can be fined up to \$17,500 WST (approx \$9,200 NZD).

57 There is also the issue as to whether they can still be prosecuted if they reside overseas.

58 Explanatory Memo for Criminal Amendment Bill, above n 42.

was then the Leader of the Opposition party and now the former Head of State of Samoa, stated:⁵⁹

The Prime Minister and other government officials will keep on suing them [the *Samoa Observer*] for defamation knowing well they do not have to part with a cent of their own.

In retrospect, Tuiatua Tupua Tamasese Efi's sentiments, could well be applied to the new offence of criminal libel.

The final issue with the new offence is its undefined parameters. Is the Police obligated to prosecute every single complaint brought to it under the new offence, no matter how trivial the matter is? As criminal libel developed in England, the judiciary placed limitations on the scope of the offence by confining it to cases of "grave seriousness".⁶⁰ This was confirmed by the Supreme Court of Samoa in *Malifa v Sapolu*. Whether Samoa will follow this direction with the new offence in the future remains unknown.

C Implications for Samoan Society

Criminal libel has several implications for Samoan society, particularly on freedom of speech and press. Criminal libel infringes on freedom of speech. Freedom of speech is a limited right entrenched in art 13(1) of the Constitution of Samoa.⁶¹ The Constitution recognises that the State has the power to impose reasonable restrictions on this right for several purposes; defamation is recognised as one of the purposes.⁶² The issue of freedom of speech was discussed in *Malifa v Sapolu*. Moran J took into consideration the importance of reputation in Samoan culture and society and found that while criminal libel does infringe on freedom of speech, the infringement was justified as a reasonable restriction under art 13 (2).

The second concern about this law is its impact on the media. The reintroduction of the law has been heavily criticized at a local and regional level.⁶³ Mata'afa Keni Lesa, who is the editor of the *Samoa Observer*, has argued that the true aim behind

59 Savea Sanoa Malifa "Samoa: The *Observer* and threats to media freedom" (2010) 16 (2) Pacific Journalism Review 37 at 42.

60 *Malifa v Sapolu*, above n5, at [19].

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

62 Constitution, above n 61, art 13(2).

63 Mata'afa Keni Lesa "Criminal Libel, Ole Palemia and corruption in high places", above n 38; "Samoa's got an anti-freedom of speech libel law Donald Trump would love" *Pacific Islands Times*, above n 52; Pacific Freedom Forum "Samoa urged to consult the public on the revival of criminal libel law", above n 52; Mong Palatino "In 2017, Samoa's Parliament Made Libel a Crime. How Will This Affect Bloggers and Social Media?" *Global Voices Advox* (online ed, 13 January 2018).

reintroducing criminal libel is "to cripple the legitimate media who exist to be the watchdog and challenge the establishment".⁶⁴ Another concern voiced by the media is that news organisations may be forced to reveal the identities of their sources if prosecuted with this offence.⁶⁵ However under s 10 of the Newspapers and Printers Act, journalists cannot be compelled to reveal the identity of their sources in a criminal proceeding unless the Court finds that public interest outweighs the potential adverse effects on the source.⁶⁶

The reintroduction of the law is a setback for media in Samoa. However, the Samoan media will have to adapt internal policies within their organisations to ensure that diligence is taken to report matters responsibly.⁶⁷ The media must not be intimidated by the law but remain vigilant in its role as the watchdog of the people.⁶⁸

V RECENT DEVELOPMENTS IN SAMOA

The reintroduction of criminal libel has not seemed to satisfy Government officials in addressing the issue of the anonymous bloggers. In March 2018, Prime Minister Tuilaepa threatened to ban Facebook in Samoa stating that:⁶⁹

[t]he Government will do what it takes to settle this matter once and for all, even if it means banning Facebook. Most government have banned Facebook, and we have been holding back because of the positive impact of social media...the country is in turmoil due to these unfounded allegations.

To date, the Prime Minister Tuilaepa has accused several people of being the anonymous bloggers behind the *O Le Palemia* page. Individuals living in Samoa and overseas, members of the Samoan media, lawyers and Olo Fiti Va'ai, the sole Opposition Member in Parliament, have been accused of being the anonymous

64 Mata'afa Keni Lesa "When PM Tuilaepa and HRPP can't stop thinking about Ole Palemia" *Samoa Observer* (online ed, Samoa, 2 December 2017).

65 Crimes Amendment Act 2017, above n 40, s 117A(2); "Samoa PM keen on media divulging sources" *Radio New Zealand* (online ed, Wellington, 10 January 2018); Neal Conan "Pacific News Minute: Samoa Reinstates Criminal Libel Law that Critics Say Will Cripple the Media" *Hawaii Public Radio* (online ed, Honolulu, 10 January 2018).

66 Newspapers and Printers Act 1993 (Samoa), s 10(1).

67 Tina Mata'afa-Tufele "Journalism expert discusses impact of Samoa Criminal Libel Law" *Samoa Planet* (online ed, Samoa, 10 January 2018).

68 Ibid.

69 Joyetter Luamanu, "PM threatens to ban Facebook" *Samoa Observer* (online ed, Samoa, 31 March 2018); Joyetter Feagaimaali'i "Group advises Government against Facebook ban" *Samoa Observer* (online ed, Samoa, 14 April 2018).

bloggers.⁷⁰ In April 2017, a woman accused of being the anonymous blogger was detained by the Police for several days.⁷¹ On 13 June 2018, *Talamua Media* reported that the Prime Minister had revealed the identities of the two people (Samoans living in Australia and the USA) behind the *O Le Palemia* page; on the same day, the article was retracted.⁷² It has been further reported that the Police have filed charges against the suspects behind the *O Le Palemia* page.⁷³

However, the new offence may prove to be a double-edged sword for the Government. It may not only be the bloggers that will be charged with the new offence. The individuals accused of being the bloggers have threatened to bring complaints, under the new offence, against Prime Minister Tuilaepa for the "unfounded" allegations against them which have harmed their reputation.⁷⁴ Time can only tell what the future of criminal libel in Samoa holds.

VI CONCLUSION

In conclusion, the history of criminal libel in Samoa can be traced to its colonial history with New Zealand. The influence of English common law is also apparent in the previous criminal libel provisions in Samoa. The new provision of criminal libel in Samoa is less oppressive than the provision in the Crimes Ordinance that was repealed. However, criminal libel has implications for freedom of speech and media. Nonetheless, in its haste to revive the offence of criminal libel, the Parliament of Samoa ultimately passed a law that created an offence that is both unnecessary and impractical.

70 Mata'afa Keni Lesa "PM threatened with legal action over OLP claim" *Samoa Observer* (online ed, Samoa, 15 June 2018); Joyetter Feagaimaali'i-Luamanu "See you in Court, PM Tuilaepa told" *Samoa Observer* (online ed, Samoa, 22 March 2018).

71 In this case, the woman had been charged under s 219 of the Crimes Act 2013, which is the offence of "Harassment utilizing means of electronic communication"; Ilia L Likou "Lawyer says wrong woman arrested in Police hunt" *Samoa Observer* (online ed, Samoa, 19 April 2017); Ilia L Likou "Accused woman breaks her silence" *Samoa Observer* (online ed, Samoa, 23 April 2017).

72 Lagi Keresoma "O Le Palemia ghost writers identities revealed" *Talamua Media* (online ed, Samoa, 13 June 2018); There have been conflicting reports as to why the article has been retracted. The *Samoa Observer* reports that *Talamua Media* has issued apologies to the two people named while the *Samoa Planet* reports that the article was retracted due to pending criminal investigations against the named individuals.

73 Mata'afa Keni Lesa "PM threatened with legal action over OLP claim", above n 70; "Samoa PM says police file charges against OLP bloggers" *Radio New Zealand* (online ed, Wellington, 15 June 2018).

74 Mata'afa Keni Lesa "PM threatened with legal action over OLP claim", above n 70; Joyetter Feagaimaali'i-Luamanu "See you in Court, PM Tuilaepa told", above n 70.