

AN ANALYSIS OF THE 2021 ELECTORAL DECISIONS OF THE SAMOAN COURTS

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The 2021 General Elections in Samoa were a historic event that saw the defeat of the Human Rights Protection Party (HRPP), the political party that had political dominance for almost four decades in Samoa, by the newcomer political party Fa'atuatua i le Samoa ua Tasi (FAST) Party. The constitutional dilemma which followed the elections was caused by a number of factors: the former Government's refusal to concede, deliberate political tactics to gain a majority and delay the convening of the Legislative Assembly, and certain constitutional actors' refusal to carry out their constitutional duties.

The paper critically analyses the decisions of the Samoan courts relating to the validity of the marquee swearing-in ceremony and electoral offences and customary practices. This paper concludes by emphasising the significant role played by the Samoan judiciary during the constitutional crisis.

Les élections législatives de 2021 aux Samoa ont été un tournant historique dans l'histoire institutionnelle de cet Etat du Pacifique. En effet, elles ont consacré la victoire du Parti 'Fa'atuatua i le Samoa ua Tasi' (FAST) sur le Parti 'Human Rights Protection Party' (HRPP) qui avait dominé la scène politique pendant près de quatre décennies aux Samoa. La transition du pouvoir constitutionnel qui a suivi les élections ne s'est néanmoins pas déroulée sans difficulté car elle s'est accompagnée de la résistance systématique de l'ancien gouvernement de reconnaître le résultat des élections de tactiques dilatoires pour tenter d'obtenir une majorité au Parlement, de retarder la convocation de l'Assemblée législative ou encore du refus de quelques membres éminents des institutions locales de respecter leurs devoirs constitutionnels.

L'auteur analyse la portée des décisions des juridictions samoanes qui ont été amenées à se prononcer sur la validité de la cérémonie de prestation de serment du nouveau premier ministre, cérémonie qui s'est déroulée sous un chapiteau en dehors du Parlement, mais aussi sur les infractions électorales constatées et sur l'absence de respect des pratiques coutumières.

Cet article souligne, en conclusion, le rôle déterminant joué par le pouvoir judiciaire samoan pendant cette crise constitutionnelle.

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I INTRODUCTION

The 2021 General Elections in Samoa were a historic event that saw the defeat of the Human Rights Protection Party (HRPP), the political party that had held political dominance for almost four decades in Samoa, by the newcomer political party Fa'atuatua i le Samoa ua Tasi (FAST) Party. The constitutional dilemma which followed the elections was caused by a number of factors: the former Government's refusal to concede, deliberate political tactics to delay the convening of the Legislative Assembly, and certain constitutional actors' refusal to carry out their constitutional duties.

The decisions of the Samoan Courts on election matters were criticised by the HRPP and its followers as unfair and unlawful. Several attempts to recuse Samoan judges from presiding over election matters (including one made by the former Attorney-General) were unsuccessful. Formal complaints regarding the Chief Justice's understanding of custom and his ability to perform his constitutional duties were lodged with the Judicial Services Commission.¹ Petitions calling for the resignation of the Chief Justice and other judges were also circulating on social media.

Although there are many issues surrounding the 2021 General Elections, this paper aims to analyse the decisions of the Samoan Courts in relation to the two main areas of criticism: the validity of the "marquee" swearing-in ceremony and electoral offences and customary practices. Part II of this paper provides relevant background on the development of the Samoan legal system. Part III discusses the events of the 2021 General Elections and the litigation that ensued following the announcement of the official results. Part IV discusses the Court of Appeal decision relating to the validity of the marquee swearing-in ceremony that occurred on 24 May 2021. Part V discusses the decisions of the Supreme Court relating to customary gifts and electoral offences. Part VI deals with the aftermath of the constitutional crisis.

II BACKGROUND

A Traditional Pre-Colonial Governance

Prior to the arrival of the Western colonisers, *tu ma aganuu fa'aSamoa* (Samoan customs and traditions) governed the lives of the Samoan people. Traditional authorities governed in a decentralised system in accordance with *fa'aSamoa* and the *fa'amatai* system.² *Matai* titles, which are controlled by the *aiga potopoto*, are ranked according to an established traditional hierarchy; some *matai* titles are a derivation of other *matai* titles. *Matai* titles are bestowed by the *aiga potopoto* upon individuals who have genealogical connections to the titles and/or who have rendered *tautua* to the *aiga* (family) and *nu'u* (village). However, some *matai* have claimed that nowadays *matai* titles may be "bought" with

1 Dominic Godfrey "Samoa's HRPP renews moves against Chief Justice" *RNZ* (online ed, Wellington, 16 July 2021).

2 The term "*fa'aSamoa*" is defined as the "Samoan way of life" while the term "*fa'amatai*" (lit translation: way of the *matai*) refers to the "social organisation of *matai* titles." See AF Le Tagaloa "The Samoan culture and government" in R Crocombe, U Neemia, A Ravuvu and W von Busch (eds) *Culture and Democracy in the South Pacific* (USP Institute of Pacific Studies, Suva, 1992) 117-138.

money.³ The *fa'amatai* system is democratic in nature; families are represented at the village or *nu'u* level by the *matai* in their *aiga*. *Matai* titles are linked to the governance of customary land, which constitutes 80% of the total land area in Samoa.

B Colonisation

The arrival of Christianity in Samoa was followed shortly after by the imperialists: Great Britain, Germany and the United States of America. Following a period of foreigner-fuelled internal strife amongst the Samoan leaders as to who would be the sovereign ruler of Samoa, Samoa was officially colonised in 1900. Under the Berlin Treaty of 1899, Great Britain agreed to relinquish its interest in Samoa. Germany took the western islands of Samoa while the United States took the Tutuila and Manu'a Islands. The foreign powers brought with them their own legal systems and laws. After the outbreak of World War I, New Zealand seized Western Samoa from Germany. Western Samoa was placed under the mandate of New Zealand by the League of Nations in 1919. In 1946, this mandate was replaced by a trusteeship under the administration of New Zealand.

C The Samoan Constitution

Samoa was the first Pacific island country to gain independence from its colonial powers in 1962. When the Constitution of Samoa was being drafted, Samoan leaders were adamant that Samoan customs and traditions were to be respected and that the future independent state have "a system of government based on what was good from outside mingled with what was good in the customs of the Samoan people".⁴ As a result, indigenous Samoan custom and traditions and Western democratic principles are interwoven within the Constitution of Samoa.

There are several instances in the Constitution which recognise Samoan custom and traditions. First, the Preamble of the Constitution states that Samoa is a country that is founded on God and Samoan custom. Second, the position of *O le Ao o le Malo* or the Head of State, holds cultural significance in Samoa. Since independence, the position of Head of State has been held by males who hold *tamaaiga* titles. Further, upon independence, *matai* suffrage was part of the constitutional system, despite the insistence of the United Nations that there should be universal suffrage. The *matai* suffrage was replaced with universal suffrage in the 1990s, but Samoan electoral law still requires that individuals hold registered *matai* titles to be eligible to stand in national elections. The Land and Titles Courts, which now exists separately from the civil and criminal courts, have exclusive jurisdiction to determine Samoan *matai* and customary land matters.⁵ Finally, all Samoan courts may consider Samoan custom and tradition when determining matters before it.⁶

3 See Levi Tavita "The dilemma of power relations in Samoa: A study of cultural hegemony in a developing democracy" (PhD Dissertation, University of Canterbury, 2021) at 203.

4 Lauofo Meti *Making the Samoan Constitution* (National University of Samoa, Apia, 2002) at 44.

5 Constitution of the Independent State of Samoa, arts 104A–104B. The controversial Acts (the Constitutional Amendment Act 2020, the Judicature Act 2020, and Land and Titles Act 2020) that were passed on 15 December 2020 changed the structure of the Samoan judicial system by separating the land and titles court structure from the civil and criminal courts structure.

6 Constitution of the Independent State of Samoa, art 71.

D The Government of Samoa

The Constitution of Samoa establishes the Executive, Legislative and Judicial branches of Government. The separation of powers, which recognises the importance of the independence of the three branches of Government, is entrenched in the laws of Samoa.

The Executive is tasked with the daily management of the Government. The Constitution provides that the power of the Executive is vested in the Head of State.⁷ The Executive consists of the Prime Minister and eight to fourteen Members of Parliament appointed as Cabinet Ministers.⁸ In addition, there is also an Executive Council which consists of the Head of State, the Prime Minister and Cabinet Ministers.⁹

The Parliament of Samoa is the law-making body of the Government and consists of the Head of State and the elected members of the Legislative Assembly.¹⁰ There are 51 seats in the Legislative Assembly.¹¹ In 2013, the Parliament of Samoa amended the Constitution to include a provision to increase women's participation in politics. Article 44(1A) of the Constitution requires that a minimum of ten percent of the members of the Legislative Assembly be women. Clause (1) of the Article further specified that the number of seats to be held by women was "for the avoidance of doubt" was "presently 5".

The Judiciary of Samoa is responsible for interpreting and applying the law. Following the 2020 constitutional amendments, the Judiciary of Samoa consists of two independent structures: the Civil and Criminal Courts and the Land and Titles Courts.¹² The Civil and Criminal Courts structure consists of the Court of Appeal, the Supreme Court and the District Court. The Court of Appeal is the highest appellate court of Samoa and its decisions are final. The Chief Justice is the Head of the Bench of the Civil and Criminal Courts. The Judiciary of Samoa consists entirely of judges of Samoan descent.¹³

7 Constitution of the Independent State of Samoa, art 31.

8 Constitution of the Independent State of Samoa, art 32.

9 Constitution of the Independent State of Samoa, art 39.

10 Constitution of the Independent State of Samoa, arts 42-43.

11 Constitution of the Independent State of Samoa, art 44 (1).

12 Constitution of the Independent State of Samoa, Part IV and Part IX.

13 As of September 2021, permanent Justices of the Supreme Court are Chief Justice Satiu Simativa Perese, Justice Vui Clarence Nelson, Justice Niava Mata Tuatagaloa, Justice Fepuleai Ameperosa Roma, Justice Leilani Tuala-Warren and Leiatuaalesa Daryl Clarke (who at the time of the 2021 elections was on study leave). Justice Lesatele Rapi Vaai, a retired Supreme Court Justice, was hired for a twelve-month period in November 2020. Foreign judges may be appointed by the Judicial Services Commission on an ad hoc basis. In August 2021, five judges from New Zealand were appointed as acting judges for a two-year term.

Chief Justice Satiu Simativa Perese was appointed by the HRPP Government in March 2020 following the retirement of former Chief Justice Patu Tiava'asu'e Falafatu Sapolu in April 2019.¹⁴

III THE 2021 GENERAL ELECTIONS

A The Human Rights Protection Party (HRPP)

The HRPP, which was founded in 1979, had dominated politics in Samoa since gaining power in 1982. The political stability and economic development in Samoa since the 1980s has largely been attributed to the HRPP.¹⁵ Former Prime Minister Tuilaepa Sailele Malielegaoi, Samoa's longest serving Prime Minister, led the HRPP since 1998. The HRPP-led Government has been strongly criticised for one party politics, passing controversial laws without proper consultation, and of systemic corruption.¹⁶

The amendments to the electoral constituencies and the introduction of three controversial 2020 Bills (the Constitution Amendment Bill 2020, the Land and Titles Amendment Bill 2020 and the Judicature Bill 2020) in March 2020 by then Prime Minister, Tuilaepa Sailele Malielegaoi, created rifts within the HRPP. The most significant change in the controversial Bills involved the Land and Titles Court, which has the exclusive jurisdiction to preside over matters pertaining to customary *matai* titles and customary land rights. The Bills, which were passed in December 2020, made the Land and Titles Court an autonomous structure with its own appellate division and removed the Supreme Court's right to review decisions of the Land and Titles Court. These amendments were strongly opposed both locally and internationally. Critics argued that the poorly-drafted amendments would "undermine judicial independence and the rule of law" and have "significant implications for human rights".¹⁷

When several HRPP members expressed their dissent against the controversial amendments to the electoral constituencies and the structure of the judiciary, former Prime Minister Tuilaepa called for their resignation. La'auliolumalietoa Polataivao Schmidt, a former Speaker and Cabinet Minister under the HRPP Government, resigned from the HRPP in June 2020. Leatinu'u Wayne Fong resigned from the HRPP in July 2020. In September 2020, Fiame Naomi Mataafa resigned from Cabinet as Deputy Prime Minister.

14 Former Prime Minister Tuilaepa noted that Chief Justice Perese had been appointed by God; see *Samoa Observer* "The 'secret whisper', Chief Justice Satiu and Judges letter to the Government" *Samoa Observer* (online ed, Apia, 14 May 2021); *Samoa Observer* "Samoa Observer: The nation's chief justice – a gift from above" *Asia Pacific Report* (online ed, Apia, 5 July 2021).

15 Asofou Soo "More than 20 Years of Political Stability in Samoa under the Human Rights Protection Party" in S Firth (ed) *Globalisation and Governance in the Pacific Islands* (ANU E Press, Canberra, 2006) 349 at 349.

16 See Afamasaga Toleafoa "One Party State: The Samoan Experience" in Hegarty and Tryon (eds) *Politics, Development and Security in Oceania* (ANU E Press, Canberra, 2013) 69-76; Beatrice Tabangora "Ua se vaa tu matagi: The Revival of Criminal Libel in Samoa" (2018) *CLJP* 39-52; Iati Iati "Samoa's Price for 25 Years of Political Stability" (2013) 48 *JPH* 443-463.

17 Fiona Ey "Samoa's constitutional crisis: Undermining rule of law" (8 May 2020) *The Interpreter* <<https://www.lowyinstitute.org/the-interpreter/samoa-s-constitutional-crisis-undermining-rule-law>>; Malama Meleisea and Penelope Schoeffel "Culture, constitution and controversy in Samoa" (23 June 2020) *The Interpreter* <<https://www.lowyinstitute.org/the-interpreter/culture-constitution-and-controversy-samoa>>.

B The Fa'atuatua i le Atua Samoa ua Tasi (FAST) Party

The FAST Party was founded by La'auliolemalietoa Polataivao Schmidt in July 2020.¹⁸ In March 2021, Fiamē Naomi Mataafa was named the leader of the FAST Party. The FAST Party has publicly criticised the aforementioned controversial legislation that was passed in December 2020. The nation's increasing foreign debt, dependence on foreign aid and diplomatic ties with China were a particular focus of the FAST campaign - namely the influx of Chinese businesses in Samoa and several Chinese Government-funded development projects (which included a multi-million dollar wharf in Vaiusu Bay).¹⁹

During its election campaign, the FAST Party identified five priority areas for its government: human development, sustainable economy, secure environment, trusted governance and public works and infrastructure.²⁰ Notable election promises from the FAST Party included promises to review and/or repeal the controversial laws relating to land, the taxing of church ministers, the 2020 constitutional amendments and the criteria for determining citizenship for non-Samoans, impose a two term limit for the position of the Prime Minister, grant a one million tala development fund to each Samoan constituency, and advocate that Samoan citizens living overseas be allowed to vote in Samoan elections.²¹

The FAST Party garnered strong support both within Samoa and amongst the Samoan diaspora.

C The 2021 General Elections

General elections in Samoa are held every five years. The 2021 General Elections were held in April 2021. Following amendments in 2019, the number of seats in Parliament was increased to 51 seats.²² Of the 51 seats, three were uncontested in the 2021 General Elections.²³ Following the elections, the Office of the Electoral Commissioner (the OEC) declared that of the 51 seats of Parliament, 25 had been won by the HRPP, 25 had been won by the FAST Party and one had been won by an Independent candidate, Tuala Iosefo Ponifasio. Of the 51 seats, five seats had been won outright by female candidates. Article 52 of the Constitution requires Parliament to convene 45 days after the

18 Samoa Global News "Faatuatua i le Atua Samoa ua Tasi FAST Political Party is Born" *Samoa Global News* (online ed, Apia, 30 July 2021).

19 Lucy Craymer "New Samoan Government could shift relations with China, diluting Beijing's influence in the Pacific" *Stuff NZ* (online ed, Wellington, 26 May 2021); Larissa Stunkel "Samoa: China's Pacific Cross-Roads Moment" (3 June 2021) Institute for Security & Development Policy <<https://isdp.eu/samoa-chinas-pacific-cross-roads-moment/>>. Samoa Observer "The deficiencies of the Vaiusu Wharf project" *Samoa Observer* (online ed, Apia, 3 February 2021).

20 FAST Party Pre-Election Manifesto available in Sapeer Mayron "The F.A.S.T. Party Manifesto" *Samoa Observer* (online ed, Apia, 29 March 2021).

21 Ibid.

22 Constitution of the Independent State of Samoa, art 44 (1).

23 The three uncontested seats were: Lepa (Former Prime Minister Tuilaepa Sailele Malielegaoi), Lotofaga (Prime Minister Fiamē Naomi Mataafa) and Faleata 3 (Lealailepule Rimoni Aiāfi).

general elections. Compliance with this constitutional provision ensures that a functioning government is in place to conduct important business, particularly that of passing an annual budget.

On 20 April 2021, the Office of the Electoral Commission announced that the constitutional requirement requiring a minimum of ten percent of the women in Parliament had not been met.²⁴ That same night, an election warrant was issued by the Head of State, appointing a female candidate from HRPP, Aliimalemanu Moti Momoemausu Alofa Tuuau, as an additional Member of Parliament for her constituency.²⁵ The additional member brought the HRPP's total number of seats to 26.

On 21 April 2021, the sole Independent candidate, Tuala Iosefo Ponifasio, announced that he would be joining the FAST Party. This announcement brought the total number of seats for the FAST Party to 26 and triggered a political deadlock. Due to the lack of a constitutional procedure to address a hung Parliament and strict electoral laws in Samoa, which prevented party defections, the two political parties were left to negotiate. Unfortunately, the parties were unable to reach an acceptable solution and turned to the Judiciary for guidance.²⁶

D Election Litigation

Following the events of 21 April 2021, a slew of court cases was brought before the Supreme Court. In addition to the cases brought by the FAST Party regarding the activation of art 44(1A), a total of twenty-eight election petitions and twenty-seven counter-petitions were filed with the Supreme Court.

On 4 May 2021, the Head of State expressed his opinion that the impasse would only be resolved by fresh elections. He later declared the first election results void and ordered fresh elections under s 52 of the Electoral Act 2019.²⁷ The FAST Party sought a decision from the Supreme Court to determine the validity of the Head of State's declaration. On 17 May 2021, the Supreme Court held that the Head of State did not have the power to declare the April 2021 General Election results void and call for a new election.²⁸ The Supreme Court declared that the April 2021 General Election results were still valid and reminded the Head of State of his constitutional obligation to convene Parliament under art 52 of the Constitution.²⁹

On 20 May 2021, the Head of State issued a Proclamation that the official opening of the 17th Parliament of Samoa was to be held on 24 May 2021 in accordance with art 52 of the Constitution. However, on 22 May 2021, the Head of State issued another Proclamation suspending his 20 May 2021 Proclamation for "reasons that [he] would make known in due course". To date, no reasons have been provided for this decision.

24 Constitution of the Independent State of Samoa, art 44 (1A); Renate Rivers "HRPP secures majority with extra seat" *Samoa Observer* (online ed, Apia, 20 April 2021).

25 Head of State of the Independent State of Samoa Election Warrant (20 April 2021).

26 Under ss 140 (1) and 141 of the Electoral Act 2019, the seat of a candidate who runs under the banner of a political party and subsequently resigns is deemed vacant and subject to a by-election.

27 Head of State of the Independent State of Samoa Election Writ (4 April 2021).

28 *FAST Party & Ors v Attorney-General & Ors* [2021] WSSC 24.

29 Above n 28.

On 23 May 2021, the Supreme Court proceeded to hear an urgent application from the FAST Party regarding the validity of the Head of State's 22 May 2021 Proclamation. The matter was heard in chambers on a *Pickwick* basis.³⁰ Proceedings may be conducted on a *Pickwick* basis if the Court is satisfied that the matter is time-sensitive and requires urgent redress to prevent irreparable and uncompensatable damage.³¹ The Court stated that it was necessary to hear the urgent application because art 52 of the Constitution required that Parliament convene 45 days after the General Election; the expiration of the 45 day period was on Monday, 24 May 2021. During this proceeding, the Attorney-General (who acted on behalf of the Government and the Head of State) elected to leave the proceedings and not respond to the application. The Attorney-General later released a Press Statement, maintaining that she had not been duly served with the required paperwork and that she had not been afforded a chance to prepare submissions or receive instructions from her clients.³² The Court stated that the Attorney-General's decision to leave was a missed opportunity for the Attorney-General to hear the application and assist the Court with submissions on behalf of her clients. The Supreme Court held that the Head of State's 22 May 2021 Proclamation was inconsistent with the Constitution.

E The Marquee Parliament

On 24 May 2021, elected officials of the FAST Party, members of the judiciary and of the police force, *tamaaiga* and *matai* and members of the public, presented at the *Malae o Tiafau* to find the doors of the *Fale Fono* (Parliament Chambers) locked. It was later confirmed that Leaupepe Toleafoa Fa'afisi, who was the former Speaker of Parliament, issued a public notice on 23 May 2021 that Parliament would not convene per the Head of State's 22 May 2021 Proclamation. Further, the Speaker ordered the Clerk of the Legislative Assembly to cease preparations for the swearing-in, lock the *Fale Fono* and deliver the keys to his private residence.³³ The Clerk, after informing the FAST Party of the Speaker's orders, returned home.

The historical events which unfolded in the evening of the 24 May 2021 were the first of their kind in Samoan history. In the absence of the Head of State, the Deputy Head of State, the Clerk of the Legislative Assembly and the Chief Justice, Prime Minister-elect Fiame Naomi Mataafa moved a motion to appoint counsel for the FAST Party, Brenda Heather Latu as the Acting Clerk of the Parliament. Following this, Papali'i Li'o Taeu Masipa'u Papali'i was elected and sworn in as the Speaker, the remaining FAST members were also sworn in, Fiame Naomi Mataafa was elected Prime Minister and named her Cabinet. The Oaths of the Speaker, Prime Minister, Cabinet and the other Members of Parliament were administered by George Latu, a notary public.

30 *FAST Party & Ors v Attorney-General & Ors* [2021] WSSC 25; See *Pickwick International Inc. Ltd v Multiple Sounds Distributors Ltd* [1972] 3 All ER 384.

31 *FAST Party & Ors v Attorney-General & Ors* [2021] WSSC 25 at [10]-[11].

32 Joyetter Feagaimali'i "A.G. explains walking out of Sunday court hearing" *Samoa Observer* (24 May 2021).

33 The Court of Appeal ruled that the former Speaker had no authority to issue such a notice: *Attorney-General v Latu* [2021] WSCA 6 at [23]; Matai'a Lanuola Tusani Ah Tong "Former Speaker calls off parliament meeting" *Samoa Observer* (online ed, Apia, 23 May 2021).

F The Aftermath of the Marquee Parliament

The events of 24 May 2021 resulted in further litigation. On 2 June 2021, the Court of Appeal made three decisions. In the first decision, the Court of Appeal denied an application for the recusal of the Chief Justice from hearing appeals on the grounds that the applicant, Aliiemalemanu Moti Momoemausu Alofa Tuuau, had failed to prove any bias (actual or perceived).³⁴ The Court of Appeal rejected the proposition that the Chief Justice was biased and unable to perform his duties due to he and Prime Minister Fiame Naomi Mataafa sharing a fourth generation relationship.³⁵ Second, the Court of Appeal dismissed Aliiemalemanu's application for the appointment of a foreign judge 'in the interests of justice'.³⁶ Finally, the Court of Appeal held that in order to satisfy the requirements of art 44 (1) of the Constitution, six members of the Legislative Assembly needed to be women. The Court of Appeal further ordered that the constitutional provision would only be activated for the appointment of any additional female members after all of the electoral petitions had been heard and the by-elections had taken place.³⁷ As such, the Election Warrant appointing Aliiemalemanu was held void.

Confusion ensued following the 2 June 2021 decision as both parties provided different interpretations of the Court of Appeal's judgment. The FAST Party stated that the Court of Appeal's decision confirmed their majority and thus, their position as the new Government. Prime Minister Tuilaepa, who was supported by the Head of State, stated that Parliament would only be convened once the 10% female requirement was satisfied and the electoral petitions were heard and the by-elections had taken place. Prime Minister Tuilaepa also maintained that the HRPP continued to hold 26 seats. Until such time, the Prime Minister argued that he and the HRPP would remain in power as the caretaker Government. Prime Minister Fiame Mataafa and the FAST Party, on the other hand, argued that Parliament must be convened as it was clear that the FAST Party held the majority following the 2 June 2021 decision.

On 28 June 2021, two significant judgments were released. First, the Court of Appeal clarified its 2 June 2021 judgment.³⁸ The Court of Appeal clarified that it did not state that the Parliament could not be convened until the 10 percent minimum of women members was met. Instead, it noted that the constitutional provision would be activated only after the by-elections had been held and that it was

34 The Office of the Attorney-General had also released a press statement questioning the integrity of the Judiciary. This statement was later recalled by the Attorney-General who stated that the statement was unauthorised and was an "unfortunate situation"; Radio NZ "Samoa: Attorney-general applies to have justices thrown out" *Radio New Zealand* (online ed, Wellington, 27 May 2021).

35 *Electoral Commissioner v FAST Party* [2021] WSCA 4.

36 *Electoral Commissioner & Anor v FAST Party & Anor* [2021] WSCA 3.

37 *Electoral Commissioner & Anor v FAST Party & Anor* [2021] WSCA 3; New Zealand-based Samoan legal scholar, Fuimaono Dylan Asafo, maintains that the decision of the Court of the Appeal in *Electoral Commissioner & Anor v Fast Party & Anor* [2021] WSCA 3 was incorrect and an "unfortunate case of judicial overreach"; see Fuimaono Dylan Asafo "Asafo: A critique of the Samoan Court of Appeal's decision – an unfortunate case of judicial overreach" *Radio NZ* (3 June 2021).

38 *Electoral Commissioner & Anor v FAST Party & Anor* [2021] WSCA 3.

certain that the minimum of six women was not met. It further clarified that following its decision on 2 June 2021, the FAST Party held 26 seats and HRPP held 25 and ordered that the failure to comply with the decision would amount to a contempt of court.

The Supreme Court, in its 28 June 2021 judgment, held that the ad hoc swearing-in ceremony that took place on 24 May 2021 was unconstitutional and unlawful. However, the Supreme Court ordered that the Head of State's 20 May 2021 Proclamation was valid and that the relevant actors must convene Parliament within seven days of the judgment. The Supreme Court further ordered that if the relevant actors refused to comply with its orders, it would amount to a contempt of court and cause the Court to consider whether the doctrine of necessity needed to be applied to validate the swearing-in ceremony.

On 4 July 2021, the Head of State declared that Parliament would convene on 2 August 2021. The Head of State admonished the Supreme Court, stating that the Court had –

no jurisdiction to order the convening of Parliament, as only I, the Head of State of ... Samoa, have the POWERS to appoint a time and place for the meeting of the Legislative Assembly.

The Head of State further added that the Supreme Court showed "flagrant disregard, and disrespect, of the powers of the position of the Head of State".³⁹

IV THE VALIDITY OF THE MARQUEE SWEARING-IN CEREMONY

The Court of Appeal of Samoa considered two main issues in its decision dated 23 July 2021: (1) Whether the swearing in ceremony held on 24 May 2021 was constitutional and (2) in the event that the swearing-in ceremony was deemed unconstitutional, whether the doctrine of necessity applied to validate the swearing-in ceremony.⁴⁰ The second issue was not considered by the Court. Criticism of the Supreme Court and Court of Appeal decisions has suggested that the Chief Justice and the Judiciary have used the Common Law doctrine of necessity to validate the swearing-in. These criticisms are incorrect. The Supreme Court discussed the doctrine but did not apply it. The Court of Appeal did not consider/apply the doctrine of necessity. In its decision, the Court overturned the Supreme Court's finding that the marquee swearing-in ceremony was unlawful, and instead found that it met the constitutional requirements for convening Parliament.

It is clear that the judiciary of Samoa took the steps necessary to ensure that the rule of law was upheld, despite efforts by constitutional government actors and former members of the judiciary to threaten and undermine its constitutional authority. There is no evidence that the decisions of the

39 Head of State of the Independent State of Samoa Proclamation (4 July 2021).

40 *Attorney-General v Latu* [2021] WSCA 6.

Samoa courts were made arbitrarily.⁴¹ The fact that all of the electoral matters were heard and decided by a bench consisting of two or three Supreme Court justices demonstrated the great care with which these decisions were made. The fact that all of the Supreme Court judges are Samoan *matai* also lent cultural weight and ensured that Samoan custom and traditions would be considered properly by the Courts. The Samoan Courts, exercising great patience and optimism, gave the "relevant actors" every opportunity to fulfil their constitutional obligations. It is unfortunate that the actors refused to do so.

The Court of Appeal decision drew criticism for disrespecting the constitutional office, powers and rights of the Head of State and the *tamaaiga* title which he holds.

The Constitution provides for the Heads of State (at independence) or Head of State; this position holds cultural significance and dignity in Samoa. Since independence, the position of Head of State has only been held by men who hold *tamaaiga* titles.⁴² Following intense debate, the Samoan forefathers agreed that only *tamaaiga* would be eligible to be appointed as the Head of State or to the Council of Deputies.⁴³ Tuimalealiifano Va'aletoa Sualauvi II was appointed Head of State in 2017 for five-year term. He replaced Tui Atua Tupua Tamasese Efi, the first sole Head of State, who held the position for ten years following the death of Malietoa Tanumafili II in 2007.

The Constitution of Samoa provides limited powers to the Head of State. Article 26 provides that the Head of State may act only on the advice of Cabinet, the Prime Minister or the appropriate Minister, except when otherwise provided for by the Constitution. There are very few instances where the Head of State may act at his own discretion such as naming the Prime Minister, calling for meetings of the Executive Council, and exercising emergency powers.⁴⁴ Powles noted the peculiarity of the Samoan Constitution in this respect, stating that:⁴⁵

...it was not thought wise in a new and comparatively untried parliamentary democracy, to leave unspecified the various circumstances in which the Head of State could or could not act to his own discretion.

41 Fuimaono Dylan Asafo criticised the decisions of the Court of Appeal in *Electoral Commissioner & Anor v Fast Party & Anor* [2021] WSCA 3 as being an "unfortunate case of judicial overreach" and the Supreme Court in *Attorney-General v Latu* [2021] WSSC 31 as "imbalanced and incomplete". See Fuimaono Dylan Asafo "Asafo: A critique of the Samoan Court of Appeal's decision – an unfortunate case of judicial overreach" *Radio NZ* (online ed, Wellington, 3 June 2021) and Fuimaono Dylan Asafo "The Samoa Supreme Court's Final Warning" *Radio NZ* (online ed, Wellington, 30 June 2021).

42 *Tama'aiga*, also known as *tama-a-aiga* (lit translation: sons of families), titles are prominent *matai* titles within the Samoan *fa'amatai* (chiefly) system. The Tupua Tamasese, Malietoa, Mata'afa and Tuimaleali'ifano titles are *tama'aiga* titles. Holders of *tama'aiga* titles have held influential positions in Samoan politics. See Morgan Tuimaleali'ifano "Titular Disputes and National Leadership in Samoa" (1998) 33 JPH 91 at 92.

43 There is currently one member of the Council of Deputies: Le Mamea Ropati. He is considered to be Deputy Head of State. Le Mamea Ropati also refused to attend the swearing-in ceremony which took place on 24 May 2021.

44 Constitution of the Independent State of Samoa 1960 (Samoa), arts 44 (1), 39 and 105.

45 Guy Powles "Constitution Making in Western Samoa" (1961) 22 IJPS 179 at 190.

The drafters of the Constitution incorporated these unwritten conventions into the specific provisions pertaining to powers of the Head of State. Laufo Meti wrote that the forefathers of Samoa noted that the success of the independent state depended on the Prime Minister and the Head of State cooperating in accordance with the rules; he further wrote that if either party "disregarded the rules, there would undoubtedly be a breakdown in the system" – regrettably, 59 years after independence, the breakdown described by Laufo Meti eventuated.⁴⁶

There are no provisions in the Constitution that grant the powers the Head of State purported to have in his 4 July 2021 Proclamation. The controversial constitutional power that permits the Head of State convene Parliament under art 52 was held by the Court of Appeal to be subject to a condition: that the Head of State convene Parliament within 45 days of the General Elections.⁴⁷ After the 45 day period, the Head of State is considered *functus officio* and may no longer exercise this power.⁴⁸

To say that the Samoan judiciary has shown disrespect and disregard for the Head of State is incorrect. From the outset, the Samoan judiciary painstakingly endeavoured to show due respect to the Head of State. In *Fast & Ors v Attorney-General & Ors*, the Court, in the beginning of its judgment stated:

...we do not consider that the the HOS has acted in anything other than what he believes to be the best outcome for his beloved Samoa. There is no basis for any suggestion that the HOS acted with malevolence. Nothing in this Judgment should be construed as being critical of the HOS.

This was further noted by the Court in *FAST Party & Ors v Attorney-General & Ors* [2021] WSSC 25, where the Court did "not make any criticism of the Head of State, or attribute to him any malevolence". In its decisions, the Court was clear that they were only critical of the poor advice rendered to, and the representation of, the Head of State.

A notable change in the tone of the Court of Appeal can be found in the 23 July 2021 decision, where it stated:⁴⁹

The HOS powers are primarily ceremonial and administrative... The Head of State's Proclamation and assertion of his power on 4th July 2021 marks...behaviour which is out of line with the functions of that high office under the Constitution. The Head of State's assertion that the Supreme Court has no jurisdiction to order the convening of Parliament is misconceived. The Office of the Head of State derives its powers exclusively from the Constitution...we have found, the Head of State has shown a basic lack of understanding of his Constitutional role and ... of the role of the Supreme Court and the scope of the Court's powers under the Constitution.

These parts of the Court of Appeal's decision may be considered culturally offensive given that Samoan customary principles deem it disrespectful to question, challenge or criticise chiefs and by

46 Laufo Meti *Samoa: The Making of the Constitution* (National University of Samoa, Apia, 2002) at 94.

47 Constitution of the Independent State of Samoa, art 52; *Attorney-General v Latu* [2021] WSCA 6.

48 Constitution of the Independent State of Samoa, art 52; *Attorney-General v Latu* [2021] WSCA 6.

49 *Attorney-General v Latu* [2021] WSCA 6 at [109-10].

extension, the Government.⁵⁰ However, the Court of Appeal, albeit in strongly worded and reprimanding terms, simply affirmed the actual status afforded to the office of the Head of State by the Constitution of Samoa; for all intents and purposes, the office of the Head of State is a ceremonial, administrative and consultative office.

Nevertheless, this does not diminish the importance of the dignified Office of the Head of State. It is indisputable that the Office Head of State (and the *tamaaiga* who holds the position) is an important constitutional office. Vaai notes that *tamaaiga* do not "possess governmental powers over village affairs ... her/his influence is significant for consultative and ceremonial purposes. The powers remaining in these titles are ... now largely ceremonial in nature."⁵¹ However he acknowledged that *tamaaiga* titles were "nevertheless influential and perform reconciliatory roles" both in their traditional polities but also in the nation of Samoa. Due to the status of the *tamaaiga* titles within the *fa'amatai* system, the holders of the titles command respect within Samoan society; it is out of this respect for the *tamaaiga* that the Samoan people would defer to the decisions made by Head of State.⁵² In the past, discontent with the decisions of the Head of State never escalated past public criticism in the media.⁵³ Indeed, Heads of State have played significant roles in maintaining peace and stability during turbulent political times in Samoa such as the Prime Minister saga of 1982 (which saw three Prime Ministers named within one year).⁵⁴

Considering that the HRPP Government, when justifying the controversial constitutional amendments in 2020, disrespectfully suggested that the Samoan forefathers (which included four *tamaaiga*) did not "understand the foreign concepts" that were inserted by overseas advisors when the constitution was being debated, to call for the respect of *tamaaiga* only when it is politically convenient is an insult to Samoan custom and traditions.⁵⁵

V ELECTORAL PETITIONS: ELECTORAL OFFENCES AND CUSTOMARY PRACTICES

A Recognition of Customary Practices in the Electoral Act

Electoral law is found in the Electoral Act 2019. Elements of *fa'aSamoa* have been incorporated into the Electoral Act. Persons interested in standing in the general elections must have a registered *matai* title and render *monotaga* to their village for a consecutive period of three years before they are

50 Malama Meleisea "Governance, development and leadership in Polynesia: a micro-study from Samoa" in Huffer and So'o (eds) *Governance in Samoa: Pulega i Samoa* (Asia Pacific Press, Canberra, 2000) at 193.

51 Saleimoa Vaai *Samoa Faamatai and the Rule of Law* (National University of Samoa, Apia, 1999) at 31.

52 Asofou Soo "More than 20 Years of Political Stability in Samoa under the Human Rights Protection Party" in S Firth (ed) *Globalisation and Governance in the Pacific Islands* (ANU E Press, Canberra, 2006) 349 at 352.

53 Above n 52.

54 Above n 52, at 360.

55 Radio NZ "Samoa's former head of state blasts PM over Constitution comments" (3 May 2020).

eligible to be a candidate under the Electoral Act 2019.⁵⁶ Further, the Electoral Act recognises the practice of cultural gift presentation of *o'o ma momoli* but provides limitations on when candidates may present. They may only be presented by candidates within the two years after the declaration of official election results.⁵⁷

B Electoral Offences

The Act stipulates two categories of electoral offences that can be committed by candidates: "corrupt practices" and "illegal practices". "Corrupt practices" include personation, bribery, treating and undue influence to gain political favour.⁵⁸ Under s 100 (2) of the Electoral Act 2019, it is illegal for a candidate to, directly or indirectly, in person or through another, give food, beverages to any voters at a ceremony or activity during the period of election.⁵⁹ The petitioner bears the onus of proving their allegations beyond reasonable doubt.⁶⁰ The Court must be satisfied beyond reasonable doubt that the candidate committed a corrupt or illegal practice. If the successful candidate is found guilty of an electoral offence, their seat is declared vacant and is subject to a by-election.

C 2021 Electoral Petitions

Following the April 2021 elections, a total of 28 election petitions and 27 counter petitions were filed. Only 11 of the petitions proceeded to trial while the remaining 17 petitions were withdrawn. In four of the 11 petitions that proceeded to trial, the successful candidates were found guilty of election offences. As a result, the election results for those seats were voided and the seats are subject to by-election.⁶¹ In addition, three other candidates who won their seats in the election resigned.⁶² In total, there will be seven by-elections; notably, all seven seats were won by HRPP candidates in the April

56 Electoral Act 2019, s 8 (5) defines '*monotaga*' as "compulsory service, assistance or contribution (such as, contribution in form of cash, kind or goods) rendered for customary, traditional or religious activities, events, function or similar purposes pursuant to the customs of a particular village".

57 *O'o ma momoli* presentations (which involves the presentation of money, food or cultural gifts) were usually reserved for special occasions, such as the welcoming of a new village church *faifeau* (reverend/pastor) or the bestowal of paramount *matai* titles; see Aleni Sofara "The Fa'aSamoa and the Election Laws" (2019) 9 JSS at 60.

58 Electoral Act 2019, s 94 (1).

59 The Period of Election for the 2021 General Elections occurred from 10 March 2021 – 10 April 2021. An exception contained under s 100 (4) of the Electoral Act 2019, also recognises important customary obligations during funerals. Money, food, beverages or other valuable items given or obtained during a funeral during the election time does not constitute an illegal act.

60 *Salele v Sua* [2021] WSSC 29 at [11].

61 The affected Constituencies were Aana Alofi No 2, Aleipata Itupa i Lalo, Falealili No 2 and Sagaga No 2.

62 Leota Tima Leavai (Falealupo) and None Teo Lomialagi Niumata (Safata No 2) resigned and indicated that they would not contest the by-elections. Tuisa Tulimasealii Tasi Patea (Sagaga No 4) resigned but indicated that he would contest the by-election.

2021 General Elections.⁶³ Critics have argued that the Samoan courts were biased in deciding the electoral petitions, particularly those involving Samoan customary practices. Critics have argued that the members of the HRPP and other political parties have been found guilty of electoral offences for giving small sums of money while excusing large sums of money given by the FAST Party during its Roadshow campaign to constituencies as traditional customary practices.

The issue of giving during election times is not by any means a new issue. The Parliament of Samoa has made numerous attempts to address this problem since Independence.⁶⁴ The issue stems from the fact that giving is an integral part of *tu ma aga* (custom and traditions) *fa'aSamoa*. The *fa'aSamoa* is renowned for its emphasis on *tautua* (service) and hospitality and its reciprocal nature; the latter is encapsulated in the Samoan customary saying: "*e tali le fa'aaloalo i le fa'aaloalo*" (respect is paid with respect). When a *malo* (guest) is hosted by a village or constituency, it is expected in Samoan custom that the *malo*, in turn, pay respect to and thank the hosts by presenting gifts of money, food or other cultural goods. It is not uncommon in Samoa (and the wider Pacific island region) for constituents to request assistance from their elected candidates; in these situations, it would go against cultural convention to deny assistance to a person in need.

The decisions of the courts on the 2021 electoral petitions establish guidelines on customary practices that constitute corrupt practices.⁶⁵ When considering whether a candidate's actions constitutes a "corrupt practice", the Court will take into consideration the circumstances regarding the giving, such as the amount of money given, the purpose for which money is given, whether the amount is disproportionate and the timing of the gift. The Court has held that it was culturally appropriate to give money in response to:⁶⁶

- being hosted by a village or constituency;
- receiving a traditional *ava* ceremony; and/or
- a request for financial assistance or donations from a village/church organisation or individual.

According to the courts, these are not considered as corrupt practices because corrupt intentions cannot be inferred in those circumstances. Other gifts of money that were considered culturally appropriate were gifts given by the village *matai* to a village minister who had completed his first year of service to the village.⁶⁷

However, when a candidate (who was a leader of a political party) spoke of the elections, the need for the change in Government, Government debt and his party's willingness to form an alliance, during a Sunday *toona'i* (luncheon) following a church service, the Court found that the action was done with

63 At the time of writing, the number of confirmed seats from the April 2021 General Elections following the hearing of election petitions was: 26 for the FAST Party and 18 for the HRPP.

64 Aleni Sofara "The Fa'aSamoa and the Election Laws" (2019) 9 JSS 58-63.

65 Section 100 of the Electoral Act clearly stipulates that any gift of money, food, beverages or any other valuable during the election time is an illegal practice.

66 *Salele v Sua* [2021] WSSC 29; *Tafili v Peti* [2021] WSSC 30; *Moala v Sio* [2021] WSSC 40; *Mua v Malolo* [2021] WSSC 35.

67 *Moala v Sio* [2021] WSSC 40.

corrupt intentions.⁶⁸ Additionally, the Court found a gift of \$10,000 WST for a village "morning tea" was given with corrupt intentions as the amount was disproportionate to the purpose stated and, at the time of the gift, the members had already eaten the morning tea that had been prepared.⁶⁹

One major issue remains unaddressed in Samoa: the fact that culturally appropriate gifts, even when given with the noblest of intentions, have the potential to induce/influence voters to vote for a particular candidate. If the giving of a culturally appropriate gift produces a corrupt result, arguably, it goes against the intention of Parliament to prevent such results. The issue stems, not from the Court's interpretation and application of the law, but from the law itself. Undoubtedly, any suggestion to ban entirely the cultural gifts of money during election times would be considered inconsistent with *tu ma aganuu* and meet with intense opposition. Perhaps in the near future, cultural expectations and mindsets will change and be more accepting of the proposition.⁷⁰ This is clearly an area of the electoral law that must be reviewed by the Parliament of Samoa.

VI THE AFTERMATH OF THE 2021 CONSTITUTIONAL CRISIS

The constitutional crisis, which resulted from a combination of the former Government's refusal to concede following the General Elections, government and constitutional officers ignoring/refusing their constitutional duties and lawful orders of the Court, was – respectfully it is submitted – entirely avoidable. It is regrettable that the relevant parties failed to act in accordance with the rule of law and democratic principles in a time when they were needed the most.

The FAST Government is now recognised as the legitimate Government of Samoa. Following the Court of Appeal decision and the Head of State's recognition of the FAST Government, the caretaker HRPP Government quickly moved out of the Government buildings. Prime Minister Fiame Naomi Mata'afa and the newly-installed Government received congratulatory messages from diplomatic and development partners soon after the 23 July 2021 Court of Appeal decision.

However, the damage caused by the political drama and the constitutional crisis has clearly been done. The country largely remains divided on the election issues. The rifts caused by the political crisis can be seen in all levels and aspects of Samoan society: the Government, the public service, the churches, the traditional authorities and even within individual families.⁷¹ Although the HRPP begrudgingly complied with the Court of Appeal decision, it and its supporters continue to reject the decisions of the Courts, stating that the decisions had plunged the country into "the law of the jungle"

68 The Court held that the candidate's choice to return the *lafo* (monetary gift of \$360 WST) he had received to the church was an acceptable customary practice; see *Salele v Sua* [2021] WSSC 29.

69 *Ah Him v Seiuli* [2021] WSSC 27.

70 Sina Retzlaff "2021 General Elections to Change Mindsets of both Candidates and Voters in Samoa" *Samoa Global News* (online ed, Apia, 4 May 2021).

71 The FAST Government has been criticised for the subsequent termination/resignation of the Chief Executive Officers for the Ministry of Women, Community and Social Development, the Ministry of Finance, the Ministry of Police, the Office of the Attorney-General and of the Office of the Clerk of the Legislative Assembly.

and maintaining that the swearing-in that took place on 24 May 2021 was unconstitutional, unlawful and treasonous.⁷²

Tensions rose again after the Speaker of the House, Papali'i Lio Masipau, refused the request of the HRPP to be sworn-in during the first official sitting of Parliament on 14 September 2021. The Speaker refused to swear-in members of the HRPP on the grounds that the party had, on numerous previous occasions, refused to acknowledge the FAST Government and its swearing-in on 24 May 2021.⁷³ In addition to this, the Speaker ordered the Police to secure Parliament grounds to prevent the unsworn HRPP members from entering the *Tiafau*. The decision of the Speaker was controversial considering that Parliament (which at the time consisted of only the FAST Government) was convening to discuss the 2021/2022 budget, as well as amendments to the Electoral Act.⁷⁴

This decision triggered a three-day protest by the HRPP and its supporters. The HRPP members and party supporters led a procession from the HRPP headquarters to the *Malae o Tiafau*. During this time, the Head of State and Deputy Head of State, as well as members of the Council of Churches appealed to the FAST Government to allow the HRPP members to be sworn in. The Archbishop of the Catholic Church also performed a traditional *ifoga* (traditional reconciliation ceremony) in front of the Government building on behalf of the HRPP and to implore the FAST Government to end the crisis.⁷⁵

The four-month-long constitutional crisis finally came to an end on 16 September 2021 when the Supreme Court declared that the Speaker of the House was obliged to swear-in the eighteen HRPP members.⁷⁶ The HRPP leaders were officially sworn in on 17 September 2021.

Samoa now awaits the results in the seven by-elections. It will be interesting to see whether it will be necessary to activate art 44(1) of the Constitution to include additional women members to meet the minimum requirement of six females. In addition, contempt and criminal cases will soon be heard by the courts.

72 Fuimaono Dylan Asafo "Opinion: How can Tuila'epa be held accountable for undermining judiciary" *Radio NZ* (online ed, Wellington, 18 August 2021); Lagipoiva Cherelle Jackson "Accusations of treason as Samoan MPs hold swearing-in ceremony outside parliament and declare new PM" *The Guardian* (online ed, 24 May 2021).

73 Letter from Papali'i Lio Masipau (Speaker of the House) to Tuilaepa Dr. Sailele Malielegaoi (Leader of the HRPP) regarding the Parliament Meeting of 14 September 2021 and the Swearing-In (13 September 2021). Samoa Global News "Speaker Refuses HRPP Request for Head of State Swearing In" *Samoa Global News* (online ed, 2 September 2021).

74 Appropriation Bill 2021/2022 and Electoral Amendment Bill (no. 2) 2021.

75 There is contention regarding the intention behind the Archbishop's *ifoga*.

76 Joyetter Feagaimaali'i "Samoa Supreme Court rules in favour of HRPP" *Radio NZ* (online ed, 16 September 2021).

VII CONCLUSION

Samoa has long been considered a "beacon of democracy and political stability in the Pacific".⁷⁷ It is indisputable that the nation of Samoa enjoyed a long term of political stability and significant economic and social development under the leadership of Prime Minister Tuilaepa and the HRPP. Many thanks are owed to former Prime Minister Tuilaepa for his many years of service as the leader of the country. Former Prime Minister Tuilaepa and the re-elected HRPP members will no doubt present a formidable opposition to Prime Minister Fiame Naomi Mataafa and the FAST Government: the fact that Samoa now has a strong opposition party is the silver lining of the 2021 constitutional crisis.

Congratulations are owed to the new Prime Minister Fiame Naomi Mataafa, the first Samoan woman to be Prime Minister, and the FAST Party on their victory in the 2021 elections. The patience and understanding of the Samoan people throughout the 2021 constitutional crisis also cannot go unmentioned. The values of *fa'aSamoa* and the Christian values of the Samoan people prevented the crisis from escalating to violence and ensured that peace was maintained.

Nevertheless, the 2021 General Elections and the subsequent constitutional crisis are a stark reminder of the fragility of Pacific democracies and the need for robust and independent judiciaries. When political will is able to usurp the rule of law and plunge the country into deep constitutional crisis, it is the role of the judiciary to ensure that democracy and the rule of law is upheld. The Judiciary of Samoa admirably upheld its constitutional duties despite continuous efforts to reject or undermine its decisions by the former caretaker Government, constitutional bodies and former members of the Judiciary.

Now that the constitutional crisis is over, it is hoped that both parties will be able to set aside their political differences and work together for the benefit of the Samoan people.

⁷⁷ Fiona Ey "Samoa is experiencing a bloodless coup. The Pacific's most stable democracy is in trouble" *The Guardian* (14 May 2021).