IN THE SUPREME COURT OF SAMOA

Malielegaoi & Anor v Speaker of the Legislative Assembly [2022] WSSC 35 (30 August 2022)

Case name:	Malielegaoi & Anor v Speaker of the Legislative Assembly
Citation:	[2022] WSSC 35
Decision date:	30 August 2022
Parties:	**HONOURABLE TUILAEPA LUPESOLIAI DR SAILELE MALIELEGAOI (**First Applicant) & **HONOURABLE LEALAILEPULE RIMONI AIAFI** (Second Applicant) v **SPEAKER OF THE LEGISLATIVE ASSEMBLY ON BEHALF OF THE LEGISLATIVE ASSEMBLY** (Respondent) & **SAMOA LAW SOCIETY** (Amicus Curiae).
Hearing date(s):	10 August 2022
File number(s):	MISC 108/22
Jurisdiction:	CIVIL
Place of delivery:	Supreme Court of Samoa, Mulinuu
Judge(s):	Chief Justice Satiu Simativa Perese Senior Justice Vui Clarence Nelson Justice Tafaoimalo Leilani Tuala-Warren
On appeal from:	
Order:	**For the foregoing reasons, the Court finds:** **(a) The Assembly resolved to approve the Committee's report with respect to liability and penalty. We consider the Court has jurisdicition to scrutinise all these intramural decisions of the Assembly pursuant to its express duty under the Constitution to declare "any existing law...which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void."** **(b) The relevant law in this case concerns Parliament's disciplinary rules arising under the Legislative Assembly Powers and Privileges Ordinance 1960, Parliament's Standing Orders, and the customs of the Assembly, and their application. We find these disciplinary rules and practice do not give the persons who are the**

subject of adverse recommendations by the Privileges and Ethics Committee, the opportunity to be heard as to penalty before the Assembly. This is a failure which breaches a fundamental plank of the rules of fairness that are secured in Article 9(1) of the Constitution – the right to be heard.

(c) The Assembly's resolution as to the Applicants' liability for the contempt of Parliament, was not itself directly challenged, and so there is no reason for this Court to consider much less disturb that finding.

(d) There was a strongly run argument that the suspension was indeterminate. We hold the suspensions are not indeterminate and do not engage the principles and rights in Article 44 of the Constitution. On the facts, we consider that even had we found the suspension to have been indeterminate and therefore in breach of Article 44, this did not necessarily mean that liabilty was not properly made out.

(e) However, we consider the treatment of both of the Applicants rights to natural justice with respect to penalty were inconsistent with their rights preserved under Article 9(1) of the Constitution. We accordingly declare that the part of the Assembly's motion which purports to suspend the Applicants is void as at the date of the declaration in this judgment. It may be that the Assembly may wish to revisit the penalty aspect, consistently with the Constitution, but that is entirely a matter for that body. However, as at the date of this decision, there is no lawful impediment in the way of the Applicants resuming their duties as members.

(f) Costs are to lie where they fall. This is another significant public interest case.

Representation:	A M Leung Wai and P Lithgow for First and Second Applicants T B Heather-Latu, M G Latu and B Keith for Respondent A Su'a and Hon. C Finlayson QC as (Amicus Curiae)
Catchwords:	*General Elections – Parliament – contempt of Parliament – contempt of Court – Parliamentary privilege.*
Words and phrases:	*"Suspension of Members of Parliament" – "legitimacy of suspension" – "Principle of non-*

intervention" – "breach of privilege".

Legislation cited:

Constitution of the Independent State of Samoa 1960, Articles 2; 4; 9(1); 10; 13; 15; 44; 45; 46; 47; 53; 62; 70; 111;
Government Proceedings Act 1964;
Legislative Assembly Powers and Privileges Ordinance 1960, s. 21(4);
Standing Orders of the Parliament of Samoa (2021), r. 178; 180(2); 181(1); 181(2); 185; 186; 187(4);
Supreme Court (Civil Procedure) Rules 1980, rules 182; 192;
The Declaratory Judgments Act 1988.

Cases cited:

Ah Chong v Legislative Assembly [1996] WSSC 3;
Ah Chong v Legislative Assembly [1996] WSCA 2;
Barton v Taylor (1886) 11 AC 197;
Erskine May*, Parliamentary Practice* (25th Ed, 2019);
Fa'atuatua i Le Atua ua Tasi (FAST) Incorporated v Malielegaoi [2022] WSSC 7;
House of Commons Committee of Standards, *Review of fairness and natural justice in the House's standards system*, (Sixth report of session 2021-22, 1 March 2022);
Human Rights Protection Party (HRPP) Inc v Masipa'u [2021] WSSC 79;
Kalauni v Jackson [1996] NUCA 1;
Mary Harris and David Wilson (editors) *McGee Parliamentary Practice in New Zealand* (4th ed, Oratia Books, Auckland, 2017);
Parliament of Samoa, (4 May 2022) Hansard (translated);
Parliament of Samoa, (24 May 2022) Hansard (translated);
Phillip, A. Joseph, *Joseph on Constitutional and Administrative Law* (5th ed, Thomson Reuters New Zealand, Wellington, 2021);
R (Miller) v The Prime Minister and others [2019] UKSC 41.

Summary of decision:

IN THE SUPREME COURT OF SAMOA
HELD AT MULINUU

IN THE MATTER OF:

Articles 4, 10, 13, 15, 44, 45, 46, 47, & 62 of the Constitution of the Independent State of Samoa

IN THE MATTER OF:

Rule 182 & 192 of the Supreme Court (Civil Procedure) Rules 1980, The Declaratory Judgments Act 1988 and the Government Proceedings Act 1964

IN THE MATTER OF:

The Legislative Assembly Powers & Privileges Ordinance 1960.

BETWEEN:

HONOURABLE TUILAEPA LUPESOLIAI DR SAILELE MALIELEGAOI

First Applicant

A N D:

HONOURABLE LEALAILEPULE RIMONI AIAFI

Second Applicant

A N D:

SPEAKER OF THE LEGISLATIVE ASSEMBLY ON BEHALF OF THE LEGISLATIVE ASSEMBLY

Respondent

A N D:

SAMOA LAW SOCIETY

Amicus Curiae

Coram: Chief Justice Satiu Simativa Perese
Senior Justice Vui Clarence Nelson
Justice Tafaoimalo Leilani Tuala-Warren

Counsel: A M Leung Wai and P Lithgow for First and Second Applicants
T B Heather-Latu, M G Latu and B Keith for Respondent
A Su'a and Hon. C Finlayson QC as (Amicus Curiae)

Submissions: 10 August 2022
Judgment: 30 August 2022

JUDGMENT OF THE COURT

INTRODUCTION

1. The April 2021 General Election in Samoa produced a result few if any could have confidently predicted. History has now recorded the regrettably many ugly scenes and events that followed. Harsh words were spoken, which included unfounded accusations and unprecedented attacks directed by the First and Second Applicant members of the Assembly of Samoa ("the Assembly") and their supporters at the Judiciary. These attacks became the subject of contempt of Court proceedings in the Supreme Court, alleging amongst other things that the statements scandalised the Court and the members of the Judiciary, and thereby undermined the rule of Law in Samoa.

2. With respect to the mana of Parliament and its members, the Executive Government did not move to reclaim the dignity of the Assembly until 28 April 2022, many months after the offensive statements were made. This is

when the Deputy Prime Minister filed a complaint alleging breach of Parliamentary Privilege with the Speaker.

3. A member of the Assembly may be reprimanded or suspended for contempt of Parliament. On 24 May 2022 the Assembly voted to suspend the two Applicants, the Honourable Tuilaepa Lupesoliai Dr Sailele Malielegaoi ("the Hon Tuilaepa"), and the Honourable Lealailepule Rimoni Aiafi ("the Hon Lealailepule") "*se'i iai se aso*", or as referred to in the English version of Hansard - "until such time" ('the suspension'). The vote followed an inquiry, and a report and recommendations of the Parliament's Privileges and Ethics Committee ("the Committee"). The Hon Tuilaepa and the Hon Lealailepule remain suspended as at the date of this Judgment; they have now come to the Court for a remedy.

4. This case concerns the legitimacy of the suspension and whether the Supreme Court has jurisdiction to interfere with the Assembly's decision. These issues raise the question of the relationship between the Court and the Assembly and the separation of powers between the Legislative and Judicial branches of the State. It is clearly a matter of sensitivity and importance.

5. We begin by setting out the factual background which is largely undisputed.

BACKGROUND FACTS

6. The complaint to the Speaker was filed by Deputy Prime Minister the Hon. Tuala Tevaga Iosefo Ponifasio ("Hon. Deputy Prime Minister"), a lawyer in his own right. In his complaint, the Hon. Deputy Prime Minister relies on findings made in the Supreme Court in *Fa'atuatua i Le Atua ua tasi (FAST) Incorporated v Malielegaoi*:[1] ("the SC contempt decision"), particularly in paragraphs 59-62, 85-89.

7. It is unecessary for us to emphasise what was said in the SC contempt decision because many of the allegations concern contempt of Court, but there are one of two statements in the decision which appear to us to be relevant in this proceeding. These statements appear to reflect the gravamen of the Hon. Deputy Prime Minister's concerns about members of the Assembly and the FAST party being denigrated and insulted; an undermining of the rule of law; conduct unbecoming and conduct which brought shame and embarassment on the institution of Parliament, which has reflected negatively on the honour and dignity of all members of Parliament, the status and dignity of Parliament, and the undermining of public support and respect for the role of an MP as well as the institution of Parliament.

8. Their Honours Fisher and Asher JJ in the SC contempt decision held:

> 60. We set out some of the most egregiously denigrating and insulting extracts from these statements:
>
> (a) Public statement made on 28 July by [Hon Tuilaepa]:

[1] [2022] WSSC 7.

"But the power of FAST and the Judiciary have been combined. So we only come in and go under... come in and go under as the decisions favour that side."

(b) Statement of [Hon Tuilaepa] in panel discussion on 'Good Morning Samoa' on 30 July 2021:

"Is this what Fiame and La'auli want? The Chief Justice comes and becomes King of Samoa? These are very shameful."

(c) Statements in panel interview broadcast on TV1 and other media on 30 July 2021:

"Major things have occurred. Act of treason against the Head of State. I can also say acts of treason against Parliament."

...

"It can be said that the leadership of FAST and the Judiciary are colluding. So where is justice? Justice is achieved through your being independent. You don't favour any side. And if you know you are closely related to someone, you resign."

(d) Public statements in a live-streamed broadcast from Petesa on 1 August 2021:

"What has happened is that our government is facing an act of treason from the judiciary."

...

...

"It must be clear that is treason."

...

"Where they used a swearing in already ruled unlawful and unconstitutional and of no effect by the Supreme Court. That is what is known as a 'coup d'état'. But this coup is usually carried out by the military, countries with armies such as Fiji. But this coup is carried out by the judiciary."

(e) Public statements in a live-streamed programme on 5 August 2021:

...

61. These statements, which are the most extreme of those pleaded, plainly express contempt for the Court. By accusing the Court of being in collusion with the FAST Party, and by using insulting words such as "treason" and "tricks" to describe judges, the first respondent undermined public confidence in the independence, integrity, and

impartiality of the judiciary. In undermining the authority of the Judges, he undermined the rule of law.

62. Accordingly, we find the first respondent to be in contempt of Court in making the statements referred to.

63. In these proceedings the first respondent does not seek in any way to defend these statements or suggest there was any truth in them. He unreservedly withdraws them and apologises to this Court and its Judges for making the statements, and for any loss of confidence in the Courts of Samoa caused by his statements. The statement is welcome and appreciated.

9. The First Respondent in the SC contempt proceeding, the First Applicant in this proceeding, did not challenge the statements and indeed admitted making the public statements and he subsequently and unreservedly withdrew them.

10. In relation to the Second Applicant who was the Fifth Respondent in the SC contempt decision, the Court referred to the following at paragraph 86:

(a) Statements in a live streamed broadcast on 25 July 2021 by the Fifth Respondent:

"... the truth is, it is a coup that they staged. It's a coup. Judiciary coup. What they did was a coup."

(b) Statements in a live streamed panel by the Fifth Respondent shown on TV1 and other platforms on 1 August 2021:

"[The] CJ and these [other two Judges in *Latu (CA)*] are cursed."

...
"The Constitution was not loosely written. What's happening now is that this Chief Justice has come; he is a son and he has usurped his father."

...
"The Chief Justice and these two: They move around but they are already cursed. The Chief Justice and these two. They move around but they are already cursed. If they do not apologise, lower themselves and leave the chair, we will not forgo of these as well".

...
"The truth is it was a coup by the Judiciary that brought in an Unconstitutional government."

...
"The Chief Justice is afraid, he should be afraid because he is doing crooked things."

(c) Statement made by the fifth respondent on a march organised by the HRPP on 2 August 2021:

"Chief Justice something is going to happen to you. You are cursed for not respecting the Constitution."

(d) Statement made by the fifth respondent on a livestream panel interview shown on TV1 and other platforms on 15 August:

"Had it not been for the crooked decision by the Chief Justice, the couple would have been imprisoned..."

(e) Statements made by the fifth respondent on a livestream panel interview shown on TV1 and other platforms on 18 August:

"... all these people should be jailed. So what decision the Chief Justice will come up with? Because if he confirms the Supreme Court decision, all these people will be jailed. For what? Treason."

...
"But if not, it means he is coming to kill us."

...
"It is here that we know and believe that these were crookedly done. These were not done honestly."

...
"No one... only HRPP. These people [the judiciary and FAST] have come together to defeat HRPP. Defeat Tuilaepa. Yes."

87. In his subsequent statement annexed as Appendix F the fifth respondent does not seek to defend these statements or suggest there was any truth in them. He unreservedly withdraws them.

88. These statements of the fifth respondent, which are the most extreme of those pleaded, plainly express contempt for the Court. As we have said in relation to the First Respondent, by accusing the Court of being in collusion with the FAST Party, and by using insulting words such as "coup", "cursed" and "crooked" to describe the judges, the fifth respondent inevitably undermined public confidence in the independence, integrity, and impartiality of the judiciary. He even stated that the Chief Justice "...was coming to kill us". In so undermining the authority of the Court, he undermined the rule of law.

89. Accordingly, we find the fifth respondent to have been in contempt of Court in making the statements alleged.

11. Given the finality of the findings made against the Fifth Respondent, we note for the purposes of this proceeding that the Hon Lealailepule did not seek to defend his statements or suggest there was any truth in them and he subsequently unreservedly withdrew them.

12. Given its relevance, we attach a copy of The Hon. Deputy Prime Minister's complaint, dated 28 April 2022, to this Judgment and mark it with the letter "A". It is apparent that it has drawn on the SC Contempt proceeding judgment.

13. On 29 April 2022, the Hon. Speaker reported the receipt of the complaint to Parliament, as he was required to do under Standing Orders ("S.O.") 180(2) and 181(1).

14. The Applicants were served and in turn they provided a joint statement on the afternoon of 29 April 2022; it was a 2 page response. The First and Second Applicants also signed and filed a 3 page document dated 2 May 2022 entitled "Detailed response to complaint by Hon. Deputy Prime Minister".

15. The First and Second Applicant's detailed response relied on three grounds, which, respectfully, are succinctly set out in the response in three short points:

    (i) The Supreme Court had already ruled on the subject matter of the complaint.

    (ii) The complaint is contrary to the terms of the Harmony Agreement between the two political parties.

    (iii) The nature of the complaints are not matters of privilege and therefore do not attract Standing Orders 178, 185 and 186.

16. We set out the grounds of objection raised in this Court below in paragraphs [31] and [32].

17. On 4 May 2022, the Hon. Speaker announced that in his view the complaint raised a matter of privilege and he referred the complaint to the Committee pursuant to Standing Order 181. The Committee's terms of reference were also settled on 4 May 2022. The relevant English version of Hansard records as follows:[2]

> Therefore, after considering this matter I am reporting this matter before the Assembly as the decision has been reached as follows; Parliamentary privilege has been breached on this matter.
>
> Therefore, in accordance to Standing Orders 181(2), this matter will be referred to the Privileges and Ethics Committee for consideration and report back to the Assembly the next sitting day.
>
> The guidelines for the investigation of the Privilege and Ethics Committee include;
>
> 1. Consider whether it breached any privileges of the Legislative Assembly in this matter;
>
> 2. Consider whether an Offense was committed towards the Parliament;
>
> 3. Consider whether it breached any provisions of the Legislative Assembly Powers and Privileges Ordinance 1960;

[2] *Parliament of Samoa*, (4 May 2022) Hansard (translated), pp. 1563-1564.[2]

4. Consider punishment towards a Member that commits an offence on this matter;

5. Consider performing legal action accordingly when a Member breaches any privileges in Parliament;

6. To provide an appropriate recommendation on this matter (sic);

7. For the Special Inquiry Committee to report back in the next Parliament Sitting.

18. There were 9 members of the Committee, and their first meeting was convened on 5 May 2022. The Committee was chaired by a Government Minister, the Hon Valasi Luapitofanua Togamasaga Tafito Selesele ("the Chair"). Of the remaining members, four were from the Government and three from the Opposition.

19. At this stage the next Parliamentary sitting was scheduled for 17 May 2022. The First Applicant wrote to the Hon Speaker on 5 May 2022 and advised he was leaving Samoa on 8 May 2022 to travel to a World Rugby meeting in Europe, returning 15 May 2022, and that he would be unable to attend the 17 May 2022 sitting.

20. On 12 May 2022 the Chair wrote to the Hon. Speaker asking for an extension of time within which to report back to the Assembly. In his letter he notes that five working days was a "*very short period of time given to complete the inquiry*".

21. The work of the Committee on 12 May 2022 also involved a meeting with the Second Applicant the Hon Lealailepule. The Court was not provided with a transcript of the matters discussed. We simply note that the content of the discussion has not been raised by the Applicants as an issue in this proceeding.

22. In relation to the request for an extension of time, the Clerk of the Legislative Assembly ("the Clerk") in a letter dated 13 May 2022 responded to the request for more time. The Clerk advised the Chair the Hon. Speaker had rejected the request for an extension and asked the Committee to adhere to the due date of 17 May 2022.

23. On 13 May 2022, the Committee wrote to the Hon Tuilaepa inviting him to meet on 16 May 2022 at 11am in Meeting Room Number 1 at the Tofilau Eti Alesana Parliamentary Building in Mulinuu. The purpose of the meeting was to enable Hon. Tuilaepa to clarify and highlight "*all critical areas stated in your joint written response*". We note that neither the initial response nor the detailed response covered the question of penalty. As far as the Applicants were concerned, they submitted there was no unresolved issue to be determined by the Committee because of the Harmony Agreement that both sides signed to settle the litigation in Court. These disputes were the contempt proceeding, and a series of private prosecutions for corruption against the Hon Prime Minister, and two other senior members of the Government. In other

words, the Applicants still considered that liability for contempt of Parliament was a contested issue.

24. On 16 May 2022 a member of the Hon Tuilaepa's family advised the Committee that the flight plan for the Hon Tuilaepa's return on 15 May 2022 had been altered due to Covid restrictions and he was unable to return to Samoa until Sunday 29 May 2022, and then he would need to undergo the 1 week isolation and quarantine protocol. The writer asked for the Chair and the Committee to postpone the meeting to a date after the Hon Tuilaepa's return and completion of the quarantine requirements.

25. On receipt of the news of the travel delay, the Chair spoke with the Hon Speaker on 17 May 2022. A new report back to Parliament date of 24 May was arrived at, and a new meeting was scheduled with the Hon Tuilaepa for Friday 20 May 2022 by way of an audio visual virtual platform.

26. The virtual meeting was held and it lasted just over 2 hours. There is no transcript of the meeting in evidence, if indeed one exists. As with Hon Lealailepule no issue has been raised in this proceeding with respect to the terms of the meeting.

27. The Committee finalised their report on 22 and 23 May 2022, and reported back to the Assembly on 24 May 2022.

WHAT DID THE COMMITTEE RECOMMEND TO PARLIAMENT?

28. The Chair of the Committee proposed:[3]

> On behalf of the Privileges and Ethics Committee, I as Chairperson, rise to say Mr Speaker, with respect I move a motion that, *The Assembly approve the Report of the Privileges and Ethics Committee on the Official Complaint by the Deputy Prime Minister against the members for the Electoral Constituencies of Lepa and Faleata No.3, as well as the responses of the members of Lepa and Faleata No.3 on the Inquiry, together with our Findings and Recommendations.*
>
> *Seconded by the Minister of Agriculture and Fisheries, Minister of Works, Transport and Infrastructure and the Minister of Commerce, Industry and Labour.*
>
> *Motion approved.*

29. The Assembly debated the Motion following which Hansard notes the Motion was approved and the Committee's report was approved.[4]

30. The Committee's report found, amongst other matters:[5]

(i) Parliamentary Privileges had been breached;

[3] *Parliament of Samoa*, (24 May 2022) Hansard (translated), p. 1635.
[4] ibid., p. 1698.
[5] ibid., pp. 1637, 1638.

(ii) Contempt of Parliament had been affected and committed;

(iii) Recommended the Applicants be suspended until such a time;

(iv) The Applicants were not eligible to any salary or allowance.

THE APPLICANTS' CHALLENGES

31. The Applicants' Amended Notice of Motion for Declaratory Orders and/or coercive orders and Judicial Review, dated 24 June 2022 seeks:

1. Declaratory orders that the decision of the Speaker and the Legislative Assembly issued on 24 May 2022 to suspend indefinitely the Applicants as Members of the Parliament:

   a. is illegal and unlawful as being contrary to the Constitution and laws of Samoa; or

   b. be declared void or invalid.

AND/OR ALTERNATIVELY

2. Coercive Orders to:

   a. Void or quash the suspension of the Applicants; and

   b. Re-instate the Applicants as full Members of Parliament to attend and participate at the proceedings of Parliament.

3. Such further orders that the Court deems necessary or the Court deems within the interests of justice

AND

4. Costs to these proceedings.

32. The grounds advanced in support of the orders sought are as follows:

(A) The penalty imposed upon the Applicants of indefinite suspension is unconstitutional and unlawful;

(B) The Legislative Assembly breached the principles of natural justice in respect of the First Applicant as he was not afforded the opportunity to be heard on the issue of penalty before penalty was imposed (procedural impropriety);

(C) The Applicants did not breach any privilege or ethics and nor were they in contempt of Parliament;

(D) The Speaker erred in law when:

(i) he referred the complaint of breach of privilege against the Applicants to the Privileges and Ethics Committee when such complaint lacked legal basis (illegality);

(ii) he appointed Hon. Valasi L. T. T. Selesele to be the Chair of the Privileges and Ethics Committee when such was not allowed since Hon. Valasi was the Leader of the House's representative and therefore could not be appointed Chair of the Committee (procedural impropriety);

(E) The privileges and Ethics Committee acted illegally due to the following factors:

(i) The Committee was improperly constituted since it was Chaired by the representative of the Leader of the House;

(ii) The complaint was a complaint for breach of privilege but was wrongly treated as breach of ethics and contempt of Parliament;

(iii) The Committee erroneously recommended to Parliament penalties that applied to ethics and contempt of Parliament;

(iv) The Committee erroneously recommended to Parliament penalties that applied to contempt of Parliament when the complaint was for breach of privilege.

(F) The Applicants are being deprived from participating and representing their electoral constituencies when Parliament convenes, particularly during this juncture where the budget is to be discussed and debated; and

(G) The Court has jurisdiction to issue the Orders sought.

THE RESPONDENT'S OPPOSITION

33. The Hon Speaker opposes the making of the orders sought, and he protests the Court's jurisdiction to hear the motion or grant relief. The Hon Speaker submits the Applicants' claim has no basis in law; and/or the Supreme Court is barred by parliamentary privilege which affords the Assembly its exclusive authority to control its own procedures. Furthermore, the Hon Speaker submits the making of the orders sought would usurp the doctrine of comity and the separation of powers.

34. The Respondents also plead that whilst it is clear the Court has no jurisdiction to grant the remedies of declaratory and coercive relief, that in so far as the Applicants rely on the Constitution, the Constitution also upholds the authority of the Assembly to exercise its own exclusive control over its affairs.

35. The Hon Speaker also proposes as a ground of objection that it is well within the Applicants power and control to take appropriate remedial actions to address the gravamen of the suspension. It became clear through the course of submissions on behalf of the Hon Speaker that those appropriate remedial actions would include an acceptance of the Assembly's authority, a sincere and genuine apology which reflected the gravity of the statements and their effect on the reputation of the Assembly, and the members personally.

THE AMICUS

36. In this matter the Court was greatly assisted by the involvment of the Samoa Law Society and their Senior Counsel the Hon. Christopher Finlayson QC. In the time honoured tradition of an amicus curiae, Mr Finlayson steered a path of neutrality. We obtained great assistance from Mr Finlayson's submissions as we will refer further in our discussion below.

THE ISSUES

37. The issues for resolution can be articulated as follows:

1. Is the Legislative Assembly's disciplinary process exclusively a matter that must be left to the judgment of the Legislative Assembly?

2. If the process is subject to Constitutional challenge, then what Constitutional provision is the process inconsistent with?

3. If the suspension is either unconstitutional or unlawful, should the Court exercise its discretion to make a declaration in this case?

Is the Legislative Assembly's disciplinary process only for the judgment of the Legislative Assembly?

38. This issue raises two sub issues:

(i) what is the nature of the process undertaken by the Assembly?

(ii) is such a process amenable to judicial scrutiny?

39. Before undertaking this analysis, it is important to refer to the relevant legislative framework.

40. We start with the supreme law. The privileges, immunities and powers of the Assembly are as provided for in Article 62 of the Constitution:

> 62. Privileges of Legislative Assembly - The privileges, immunities and powers of the Legislative Assembly, of the committees thereof and of Members of Parliament may be determined by Act:
>
> **PROVIDED THAT** no such privilege or power may extend to the imposition of a fine or to committal to prison for contempt or otherwise, unless provision is made by Act for the trial and punishment of the person concerned by the Supreme Court.

41. Intepreting this provision, it was held in *Ah Chong v Legislative Assembly* [1996] WSSC 3 ("*Ah Chong (SC)"*), that Samoa does not have an Act which determines the Assembly's privileges, immunities and powers. There is of course the Legislative Assembly Powers and Privileges Ordinance 1960 ("the Ordinance"). However, it is clear from the long title of that Ordinance that it is only intended to declare and define certain powers, privilege and immunities of the Assembly. In other words, the Ordinance is not the conclusive exhaustive and codified determination of all the powers, privileges, and immunities of the members of the Assembly, that appears to be envisaged in Art. 62. The long title of the Ordinance reads as follows:

> **AN ORDINANCE** to declare and define certain powers, privileges, and immunities of the Legislative Assembly of Samoa and of the Speaker, members, and committees of such Assembly and to regulate the conduct of members and other persons in connection with the proceedings thereof.

42. The Ordinance provides important fundamental privileges for members with respect to their speeches or debates in the House or a committee of the House, and in relation to their writing contained in reports to the House or Committee, or in other matters the member introduces into the House. There is also an immunity from imprisonment or restraint. These immunities are treated as matters of privilege.

43. The Applicants quite correctly state that the privileges that are referred to in the Ordinance are not relevant to the issues they face. That argument however does not assist the Applicants case. We take the opportunity to provide guidance with respect to what is meant by the term privilege.

What does the concept of privilege mean?

44. Erskine May defines Parliamentary Privilege in the following terms:[6]

> "Parliamentary privilege is the sum of certain rights enjoyed by each House collectively as a constituent part of the High Court of Parliament; and by Members of the House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. **Some privileges rest solely on the law and custom of Parliament, while others have been defined in statute**.
>
> Certain rights and immunities such as freedom from arrest or freedom of speech are exercised primarily by individual Members of each House. **They exist in order to allow Members of each House to contribute effectively to the discharge of the functions of their House. Other rights and immunities, such as the power to punish for contempt and the power to regulate its own constitution, belong primarily to each House as a collective body, for the protection of its Members and the vindication of its own authority**

[6] Erskine May, *Parliamentary Practice*, (25th Ed, 2019), paragraph 12.1

> **and dignity.** Fundamentally, however, it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by Members. **The Speaker has ruled that parliamentary privilege is absolute**."
>
> (emphasis added)

45. The Rt Hon Sir Ernest Ryder, former Senior President of Tribunals for the United Kingdom and Lord Justice of Appeal explained the meaning of Privilege in this way:[7]

> 7) Privilege is part of the common law. It is the private law that is applicable only to Parliament and which is administered by Parliament as a court. To a limited but important extent it is codified in statute: freedom of speech in Parliament is guaranteed by Article IX of the Bill of Rights 1689 and the Claim of Right Act 1689 in Scotland. Its development since the Middle Ages can be discerned in the Resolutions and Standing Orders of each House and rulings by the Speakers of each House which are the demonstrations of its authority as precedent. It is as much a part of the law as any decision made in the superior courts although I acknowledge that a Resolution of the House is binding only on Parliament. Its purpose is inherent in and vital to the functioning of a democratically elected legislature as a sovereign body; it is integral to the constitutional role of Parliament.
>
> 8) Privilege includes the common law principle of 'exclusive cognisance' (or exclusive jurisdiction) by which Parliament has absolute control over the regulation of its own internal affairs. What was asserted in the seventeenth century as the freedom of the legislature from encroachment by the monarch is in the contemporary context a freedom from encroachment by the courts and/or the Executive, that is Her Majesty's Ministers in Government. The existence of Privilege is no mere tradition or passing fancy; it is a claim of right that enables legislators like judges to discharge their constitutional responsibilities without fear of interference or improper pressure. The existence of Privilege is not susceptible of challenge in the courts or by the Executive.

46. These powerful principles derived from years of careful development in the distinguished law Courts of England, in our view, are relevant to defining the relationship or the '*va tapuia*' between the Assembly and Parliament of Samoa and the Courts.

47. Distinguished commentator Professor Joseph in his work on Constitutional Law describes privileges as follows:[8]

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[7] House of Commons Committee on Standards, *Review of fairness and natural justice in the House's standards system* (Sixth report of session 2021-22, 1 March 2022) at Appendix 1 paragraphs 7 and 8.

> All privileges are, in truth, the corporate privileges of Parliament. They fall into two categories. The first category exists primarily to enforce Parliament's collective authority. Examples include: the power of the House to punish for contempt, the right of the House to be sole judge of its own proceedings, and the right of the House to regulate its own composition. The second category exists primarily to facilitate the work of Parliament but which also consequently benefits members themselves. Examples include members' freedom of speech in debates, immunity from arrest in civil process during the period within 40 days of the begining and end of each parliamentary session, and freedom from being served with legal process in the Parliamentary precincts.

48. The Court of Appeal in *Ah Chong v Legislative Assembly* [1996] WSCA 2 ("*Ah Chong CA*") did not refer to rights or privilege, but to the principle of non-intervention:

> **The Principle of Non-Intervention**
>
> There is a well-settled principle that what is said or done within the walls of a legislative assembly cannot be questioned in the Courts. It is recognised that the respective constitutional roles of the Courts and Parliament normally require the Courts to refrain from intervening in Parliamentary proceedings. Conflicts between the judicial and legislative organs of the State are to be avoided as far as possible. Generally speaking, a body such as the Legislative Assembly of Western Samoa is left free to regulate and determine its own internal procedure from time to time.
>
> This principle is accepted in all comparable jurisdictions....
>
> Of course, like all principles this one has its limits and they are not always easily discernible. One limit must be that a written constitution such as that of Western Samoa may place upon the Courts some duty of scrutinising Parliamentary proceedings for alleged breaches of constitutional requirements. Thus, while normally it is for a legislative assembly to determine the effect of its own orders and to depart from them if the Assembly sees fit, a Constitution may displace that presumption by making compliance with the standing orders a condition of the validity of the legislation or, no doubt, of the validity of other steps taken by the assembly But we agree with McLelland J. in Namoi Shire Council v. Attorney-General for New South Wales [1980] 2 N.S.W.L.R. 639, 645, that the Court would lean against such an interpretation, an approach also to be seen as suggested by the Niue Court of Appeal in the judgment already cited. In the present case Sapolu C.J. would have required 'irresistible clarity'. Possibly, in our respectful opinion, that puts the test a little high, but certainly any real ambiguity would be resolved in favour of non-intervention.

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[8] Phillip A. Joseph, *Joseph on Constitutional and Administrative Law* (5th ed, Thomson Reuters New Zealand, Wellington, 2021) at 14.2.1.

(emphasis added)

49. Respectfully, it appears to us the principle of non-intervention and the rights and privileges of Parliament are two sides of the same coin, concerned with the separation of powers. There is in fact one significant difference - Parliamentry Privilege is absolute; as noted above in the passage from the learned authors in Erskin May, which draws on Blackstone in *Commentaries on the Laws of England*, 17th ed. (1830), vol 1, p.165, referred to by Sapolu CJ in the *Ah Chong* (SC):

> 'the whole of the law and custom of Parliament has its original from this one maxim, that whatever matter arises concerning either House of Parliament, ought to be exercised, discussed, and adjudged in that House to which it relates, and not elsewhere.'

50. However, the absolutism does not appear to apply in Samoa. The Court of Appeal in *Ah Chong* held that the Constitution of Samoa imposes a duty on the Court to scrutinize Parliamentary proceedings for alleged breaches of constitutional requirements. A similar approach appears to be developing in England, where the United Kingdom's Supreme Court in *R (Miller) v The Prime Minister and others*,[9] considered whether the Courts could look into the lawfulness of advice which had been given by the Prime Minister to Her Majesty the Queen to prorogue Parliament. The Court held:[10]

> 39. Although the United Kingdom does not have a single document entitled "The Constitution", it nevertheless possesses a Constitution, established over the course of our history by common law, statutes, conventions and practice. Since it has not been codified, it has developed pragmatically, and remains sufficiently flexible to be capable of further development. Nevertheless, it includes numerous principles of law, which are enforceable by the courts in the same way as other legal principles. In giving them effect, the courts have the responsibility of upholding the values and principles of our constitution and making them effective. **It is their particular responsibility to determine the legal limits of the powers conferred on each branch of government, and to decide whether any exercise of power has transgressed those limits.** The courts cannot shirk that responsibility merely on the ground that the question raised is political in tone or context.
>
> (emphasis added)

51. The austerity of the Blackstone definition of Parliamentary privilege has also come under review in another Pacific jurisdiction - the Niue Court of Appeal. In *Kalauni v Jackson*,[11] the Niue Court of Appeal considered an appeal as to whether three members of the Niue Legislative Assembly had vacated their seats. The Court of Appeal held:

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[9] [2019] UKSC 41.
[10] ibid., at para 39.
[11] [1996] NUCA 1 (comprising of Casey, Hilliter and Keith JJA).

> Furthermore, they are asserting their rights to act as members of the Assembly, their responsibilities to their constituents, and the rights of their constituents in all respects under the Constitution and the electoral law. **The rights they claim relate not simply to the internal workings of the Assembly or its Constitution or to actions taken by the Assembly to discipline members on some internal matter. Rather the rights they assert are rights under the general law of Niue and rights, moreover, of the highest importance in a democratic society.** Furthermore, the action they are challenging is an action taken by an official of the executive government under the general law of Niue: that action with these serious, public consequences does not fall within the area traditionally protected by parliamentary privilege.
>
> The line between the areas of parliamentary privilege and public right and responsibility is recognised in the cases. For instance the Supreme Court of Zimbabwe, in a judgment delivered by Dumbutshena CJ with the concurrence of the other four members of the Court, held that it could not review the decision of the House of Assembly to suspend Ian Smith for one year. On the other hand, it could, and did, order the recommencement of his salary and allowances. While the former was a matter within the privilege of the House, the latter penalty which took away statutory entitlements was not available to the House under the Constitution and relevant legislation, *Smith v Mutasa* [1990] LRC (Const) 87. Somewhat similarly in the United States Supreme Court, while ruling that no proceedings could be brought against the Speaker John McCormack and other members of the House because of the Speech and Debate Clause (the equivalent of Article 9(1) of the Bill of Rights), reinstated Adam Clayton Powell Jnr after the House of Representatives had voted to exclude him and to declare his seat vacant; in so voting, the House had moved outside its area of exclusive authority, *Powell v McCormack* [1969] USSC 154; (1969) 395 US 486.
>
> It is true of course that the details of constitutions differ. There may for instance be more room for Court review where a Constitution prescribes in greater detail matters relating to law making or membership. But **the cases all recognise that a line must be drawn between those matters which are intramural and which must be left to the judgment of the legislative bodies and those which engage the public law of the land and rights and duties arising under it.**
>
> (emphasis added)

52. The *Kauluni* decison was referred to with approval in *Ah Chong* CA.

53. In *Human Rights Protection Party (HRPP) Inc v Masipa'u* [2021] WSSC 79, this Court held that the Hon Speaker's refusal to swear in duly elected Opposition members of the Assembly was not a matter of privilege but a frustration of the Constitutional purpose of democratic government. The

Court held, consistent with the *Ah Chong* CA, that the principle of non-intervention may not cover decisions that are inconsistent with the Constitution.

The different types of statutory privilege

54. As discussed earlier, the Ordinance sets out in a non-exhaustive way certain statutory privileges. These are summarised as follows:

1.Immunity from civil or criminal proceedings in respect of any speech or debate in the Assembly ro committee, or any words written in a report to the Assembly or committee: s.3(a),(b);

2.Immunity from imprisonment or restraint in certain circumstances; s.4.

3.With respect to the holding of hearings, the Assembly has the following privileges:

a. The power to order the attendance of a witness; s.5. and issue summons to attend; s.6. and to issue a warrant to compel attendance; s.7;

b. Power to examine witnesses on oath; s.8;

c. Power to convict and punish a witness for giving false evidence; s.11.

d. Power to convict and punish a witness who fails to attend or refuses to answer a lawful question; s. 12, or fabricates evidence; s.13.

4. The Assembly has powers with respect to the conduct of strangers – Part 3, which includes the power to arrest any person who breaches the Act, without an order of a Judge of the Supreme Court; s. 17.

5. The Assembly is also given powers to regulate the conduct of Members with respect to bribes offered to members (s. 20) and concerning contempt of Parliament (s. 21).

6. Other powers and privileges relate to the treatment of evidence of the Assembly's proceedings (Part 5), and how proceedings are published (Part 6).

7. Part 7 of the Ordinance sets out the ubiquitous statutory catch all section - Miscellaneous matters. This part includes a statutory enlargement of the Speakers powers to also encompass powers under the Samoa Amendment Act 1957 (NZ) and the Standing Orders. Further, the Speaker and his or her officer are given the privilege of immunity in respect of the exercise of any power conferred on or vested in him or her under the Ordinance, or the Standing Orders of the Samoa Amendment Act 1957 (s.31).

55. The Ordinance's reference to the Standing Orders provides an opportunuty to bring into the discussion the Standing Orders of the Parliament of Samoa (amended as at March 2021) ("S.O."), made under the authority of the Constitution: Article 53 provides:

> **Standing Orders** - Subject to the provisions of the Constitution, the Legislative Assembly may make, amend and repeal Standing Orders regulating its procedure.

56. There are two important principles set out in S.O. 1 and 2 which we consider relevant:

> **1. Rights of the Legislative Assembly not restricted:**
>
> Nothing provided for in these Standing Orders shall diminish or restrict or be deemed in any way to reduce or restrict the rights, privileges, immunities and powers held or enjoyed by the Legislative Assembly or the upholding and exercise thereof.
>
> **2. In cases not provided for Speaker to decide:**
>
> In all cases not provided for in these Standing Orders the Speaker shall decide guided by the rules and usages and relevant practices of the House of Representatives of New Zealand and other Westminster Parliaments in force, in so far as the same can be applied to the proceedings of this Legislative Assembly.

57. The first, S.O. 1, appears an important re-statement of the principle of non intervention in so far as the scope of the S.O. are concerned.

58. The second, S.O. 2, however allows the Assembly to be guided by the rules and usages and relevant practices of the New Zealand Parliament and other Westminster Parliaments. In this regard we refer to McGee Parliamentary practice in New Zealand, and the following types of privilege which are recognised in New Zealand:[12]

> Fredom of speech
>
> Freedom of debate
>
> Exclusive control of the House's own proceedings;
>
> Control of reports of the House's proceedings
>
> Control of the parliamentary precinct.
>
> Control of access to the sittings of the House;
>
> Power to inquire

[12] Mary Harris and David Wilson (editors) *McGee Parliamentary Practice in New Zealand* (4th ed, Oratia Books, Auckland, 2017) at 711.

Power to obtain evidence;

Power to administer oaths;

Power to delegate;

Power to punish for contempt;

Power to discipline members;

Power to fine;

Power to arrest;

Exemption from jury service

Exemption from liability for communicating parliamentary proceedings

Freedom from arrest

Exemption from attending court as witness

Right to have civil proceedings adjourned

Exemption from service of legal process;

Power to determine the qualification to sit and vote in the House;

Freedom of access to the Governer-General;

Right to a favourable construction of the House's proceedings.

59. In summary we note the privileges of Parliament are found in both statute – the Ordinance, and in the Assembly's own customs. Samoa is able to call on the customs of other jurisdictions as described above. In this case it is clear the Parliament has a privilege to punish its members for contempt and to discipline its members. We reject the Applicants submission that there was no issue of privilege capable of being referred to the Committee. Respectfully, the uncontested statements made by both the Applicants, and described in the SC contempt proceeding as insulting and which "undermined public confidence in the independence, integrity, and impartiality of the judiciary" and therefore the rule of law, are matters that can properly be considered by the Committee; in particular the effect of the statements on Parliament itself.

60. The scope and relevance of the Harmony Agreement was clearly a matter for the Committee and House's consideration and does not act as an ouster of the Assembly's right to inquire.

What is contempt of Parliament?

61. The Learned Authors in McGee suggest there is no formal legal definition of a contempt and that ultimately, the House is the judge of whether a set of circumsmtances constitutes a contempt.[13]

62. The New Zealand Parliament's experience has been to list twenty five examples of acts or omissions that might constitute contempts in their S.O; the list is illustrative rather than exhaustive and does not limit the general definition of contempt in New Zealand.

63. Samoa's S.O. by comparison lists nineteen examples of acts or omissions in S.O. 186; these examples are illustrative rather than exhaustive. We note the reference in S.O. 186 to S.O. 188, however, S.O. 188 in the the copy of the S.O. provided refers to a different topic. It appears likely that the reference in S.O. 186 is to S.O. 185 in which it appears the Assembly has attempted to define 'Contempt of Parliament' in line with Erskine May's authoritive treatise on parliamentary law and practice in the United Kingdom.[14] Our S.O. provide:

> **185. Contempt of Parliament:**
>
> Parliament may treat as a contempt any act or omission which:
>
> (a) obstructs or hinders Parliament in performance of its function;
>
> (b) interferes with, resist or obstructs any member or offer of Parliament in the discharge of the members or officers duty; or
>
> (c) has a tendency, directly or indirectly, to produce such a result.

64. New Zealand Parliament has also adopted a similar definition. McGee also suggests the prevailing approach in New Zealand is as follows:[15]

> The House decides case by case whether a particular act or omission directly or indirectly obstructs or impedes the House, or one of its members or officers, in the performance of their functions. Deciding whether or not the House should intervene to punish for contempt entails an exercise of judgment and discretion. The Standing Orders provide that the House may take into account the conduct of any person taking part in parliamentary proceedings, and the nature of any action taken against any person because he or she participated in parliamentary proceedings

[13] Joseph, *Joseph on Constitutional and Administrative Law* at 763.
[14] ibid.
[15] ibid., at 764

What is the relationship between a breach of privilege and a contempt of Parliament?

65. The Applicants submit there is a difference between a breach of privilege and a contempt of Parliament. Their central concern is that what started out in this case as alleged breaches of privilege, were treated and punished as contempts. The argument appears to be underpinned by a concern about illegality.

66. Respectfully, the argument is misconceived. As discussed earlier, privilege is the sum of all rights enjoyed by Parliament without which Parliament could not function. Some of those rights are set out in Statute – the Ordinance; and others arise by Parliament's law and custom. As noted by Professor Joseph, contempt of Court is a Parliamentary privilege that primarily exists to enforce Parliament's authority.

67. Samoa's Legislative Assembly has over the decades asserted its right to discipline members of Parliament as part of its custom and law. It is undoubtedly a privilege that has not previously been of challenge in this Court.

68. We consider the distinction sought to be drawn by the Applicants to be without merit. Although Parliament may declare conduct to be a contempt without any antecedent inquiry,[16] the S.O. provide for a deliberative process into Parliaments privileges, which privileges can sensibly be understood to mean the privileges that arise by way of Statute or in accordance with Parliament's law and custom, enjoyed by Parliament without which Parliament could not function.

DISCUSSION

69. The Applicants Amended Notice of Motion for Declaratory Orders and/or coercive orders and judicial review, dated 24 June 2022, raised various grounds in support of the making of declaratory and/or in the alternative coercive orders. We consider these below.

Is the penalty of an indefinite suspension unconstitutional and unlawful?

70. This is the nub of this claim, that the indefinite suspension appears to be proxy for expulsion. Mr Finlayson submitted:[17]

> It should also be borne in mind that the members in question are Opposition members. They have a duty to oppose the Government of the day no matter how controversial, distasteful, or objectionable their opposition may be. If they go beyond the bounds of propriety, the Legislative Assembly can act. In a parliamentary democracy, however, opposition is necessary and fundamental. To remove members for an indefinite period could be said to go against these important principles such that the court can intervene. The critical issue is whether

[16] *Standing Orders of the Parliament of Samoa* (2021) Rule 186.
[17] Hon. Christopher Finlayson QC. Amicus Curiae, Submissions on behalf of the Samoa Law Society, dated 8 August 2022, at para 20.

suspension for an indefinite time is more than the necessity of punishment for contempt requires and whether it could in the future lead to excess or abuse. Suspension cannot be a proxy for expulsion.

71. We agree with Mr Finlayson's analysis that in a parliamentary democracy, the role of opposition members is necessary and fundamental. We would add that this role is implicit in the Constitutuion.

72. The present case on the other hand involves matters of privilege. There is an trail of evidence that appears to show compliance with the processes and procedures set out in both the Ordinance and the S.O. involving the Committee and the rules of natural justice. All this looks to be an intramural disciplinary process.

73. However, the Court of Appeal's decision in *Ah Chong*, held that the principle of non-intervention, like all principles, has limits which are not always easily discernible. Further that this Court has a duty to scrutinize Parliamentary proceedings for alleged breaches of constitutional requirements. We agree with the Court of Appeal's determination which we are bound to follow as the basis for the Court having jurisdiction in this matter.

74. In principle therefore we respectfully reject the Hon. Speaker's protest to the jurisdiction of this Court to hear the Applicant's Motion or to grant relief, and grounds 1 and 2 of his Notice of Opposition to the Applicants Motion for declaratory order and/or coercive orders and judicial review, dated 18 July 2022. The grounds of the Hon. Speaker's opposition are founded on the law of parliamentary privilege in jurisdictions without a Constitution that obliges the Court to declare void any existing law and any law which is inconsistent with the Constitution.

75. We consider that a suspension may be scrutinised as against the principles and provisions of the Constitution, to assess whether the process leading to suspension, or indeed the suspension itself is void for inconsistency. This duty arises under Article 2 and it provides:

> **2. The Supreme Law - (1)** This Constitution shall be the supreme law of Samoa.
>
> **(2)** Any existing law and any law passed after the date of coming into force of this Constitution which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.

76. The Constitution and Parliament's S.O. are part of the "Law being in force in Samoa" as provided in Article 111.

77. Furthermore, there is Article 70:

> **70. Jurisdiction of the Supreme Court - (1)** Except for Part
>
> IX Land and Titles Court and the laws administered thereunder,
>
> the Supreme Court shall:

have such original, appellate and, revisional jurisdiction; and

possess and exercise all the jurisdiction, power, and authority, which may be necessary to administer the laws of Samoa.

78. The Applicants concern is that the suspension is indeterminate and in breach of Article 44. The Respondents to the contrary deny the suspension is indeterminate, and most of Article 44 does not create rights enforceable by the applicants, and therefore the provisions of the Constitution are not engaged. We see no reason to read down the rights created in Article 44 concerning membership. These Applicants are seeking to enforce constitutional principles of government and simply because the rights are not personal, as they are in Part II of the Constitution, does not mean they are therefore unenforecable. The rights in Article 44 refer to the rights of villages to be represented in the House, which is responsible for making the laws of Samoa.

79. We consider that a suspension which is indeterminate may be open to challenge as being unconstitutional.

80. We agree with Mr Leung Wai that an indeterminate suspension may really be a proxy for expulsion, and would offend Article 44(1) of the Constitution. As Mr Finlayson submitted, such suspensions may lead to abuse and excess. There is no evidence before us however that the suspension in the instant case is a mask for an expulsion. Indeed the evidence we discuss below suggests the complete opposite. The suspension appears to have been intended to focus on encouraging good behaviour, and it was not given a specific time limit so that once the contempt had been purged, the relevant party could take his seat.

Is the suspension indeterminate?

81. Indeterminate means something which is not definitely or precisely determined or fixed. For convenience we set out the relevant penalty provision:[18]

> **(4)** Where any member is guilty of contempt of the Assembly, the Assembly may, by resolution, reprimand such member or suspend him from the service of the Assembly for such period as it may determine.

82. The Assembly's resolution provides for the senior members of Parliament to be punished for their contempt of Parliament by the penalty of suspension "until such time" (in the English version of the Committee's report, and Hansard). The Applicants submit the Assembly had to have suspended the Applicants for a determined period, a period which is definite for the suspension to be compliant with the relevant penalty. Counsel for the Applicants written submissions referred and relied on *Barton v Taylor*,[19] as

[18] *Legislative Assembly Powers and Privileges Ordinance 1960*, s. 21(4), which has been reproduced in Standing Order 187(4).
[19] (1886) 11 AC 197 pages 203-207.

authority for the proposition that a member cannot be suspended for an indefinite period.[20]

83. Respectfully, the English translation of the phrase "until such time" seems to suggest an open-ended suspension which looks indeterminate in length because the period of suspension seems cryptic - until such time as what?

84. On this critical, but difficult issue, we are obliged to Hon Finlayson for his assistance. First, he placed before us various definitions of the word "period", and he submitted:

> 18. Is an indefinite period a period? The Oxford Dictionary provides that it can either be "a definite portion or division of time" and "an indefinite position, spell or interval of time." With respect, not all that helpful. The Merriam Webster dictionary defines a period as "the completion of a cycle, a series of events or a single action," which suggests a definite period.

85. Then he discussed time-honoured tradition in Parliament that to purge oneself of a contempt required to offer an appropriate apology for the statements made or the behaviour at issue and during the hearing. Mr Finlayson suggested the Court might consider the suspension as not being indeterminate because of a subtlety conveyed in the language of the motion. The phrase until such a time, could reasonably be construed as conveying to the Applicants a suspension of limited duration because as senior members of the House they could reasonably be understood to know what is implicitly expected from them and what they needed to do to bring an end to the suspension.

86. The Chair, Hon Valasi Selesele, seemingly suggested a similar reasoning when he was challenged on the apparent lack of certainty around the period of suspension. He said this:[21]

> Mr Speaker it is so pleasing to hear the Members farsightedness but matters of this nature are brought into this House to be deliberated and decided by the dignity of Parliament. But this is the decision that has been made, therefore a question to member who keep on opposing, what penalty do you want to impose on these members? **I now tell you is the whole Parliamentary term or rather until they behave?** The Member is one of the most senior members of Parliament however he is still not well versed with the penalties provided in the Standing Orders which is to suspend and reprimand. What do those words mean? **The suspension has no time limit. It is just suspended**, but it seems like you are protesting and not acknowledging it.
>
> The work of the Committee ended when the Report was tabled and it is now under the authority of Parliament. Recommendations are brought for the consideration of respectable members and we have the

[20] Peter Lithgow/Ming C Leung Wai, Submissions of Counsel on behalf of applicants, dated 4 August 2022, para 27.
[21] *Parliament of Samoa*, (24 May 2022) Hansard (translated), pp. 1642, 1643.

> authority to make the final decision. I am trying to elaborate on this issue for the benefit of the public listening in. There are two penalties provided under the Standing Orders, reprimand and suspend, **the suspension therefore has no timeframe**.
>
> It is not confidential information now because **the Committee did consider the 30 months, 24 months and 18 months.** The members of the Committee did consider all those issues in its deliberations in case you might have thought that it was the other way round. **So in my belief, the Committee did have that view in mind and if however, they behave what is there to stop them from returning next week? But if they do not own up and realize their mistakes I request to leave it as it is.** Mr Speaker that is the clarification of the issue so as not to mislead anyone listening in…….
>
> This matter was not easy in the deliberation of Committee and all the pros and cons were considered. I wish to remind the members and Mr Speaker to an incident that arose in 1990, where one of the members alleged the Prime Minister of committing theft. A motion was moved to bring evidence there was none to prove so he was suspended for 12 months, but it was only a statement. That is one of the matters looked into by the Committee during its review so for your information, it is not new like how the member interpreted, and if however, some of the members feel the same, then every season has its own harvest. To elaborate more the penalty was decided by the Committee but it is not how we interpret it nevertheless I myself believe it is a humble decision. Blessed day.
>
> Emphasis added

87. Later the Hon Valasi Selesele said:[22]

> There were other measures that we had considered, like 30 or 24 months but **the real intention is that if the member for Faleata behaves, why should he continue to be suspended?** Or the fact that if that does happen, he will again turn on the social media and say otherwise.
>
> Emphasis added

88. The reference to the need to "behave" and its prevalence in the nature of the suspension if not reasonably understood by experienced Parliamentarians before these speeches, would have been abundantly clear afterwards and it remains so. And that is in fact what appears to have happened in that session of Parliament.

89. When he was on his feet, the Hon Lealailepule said:[23]

[22] ibid., at 1644.
[23] ibid., at 1689.

> There is one objective for the statements made by respects of this Parliament, it is to maintain the dignity of the Parliament of Samoa, to maintain the honour.

90. Later:[24]

> If you want us to apologise again, I apologise on behalf of myself and the Leader, I apologize.

91. And:[25]

> …. I humbly apologise to our Parliament, on behalf of the Hon Leader.

92. It is difficult to assess the genuineness of these apologies on paper. The Hon Lealailepule provided what seems to be a genuine apology to the Court in the Contempt proceedings. But, there-in lies the nub of the issue. It is for Parliament not the Court to decide whether the apology made in the House was sufficient for the purposes of the contempt of Parliament.

93. This Court should generally refrain from making value judgments for the Assembly as to what kind or level of apology would purge the contempt. Parliament best understands its own integrity.

94. However, we say for completeness that had the suspension been indeterminate, then it would receive close scrutiny as to its consistency with the Constitution. The Applicants make a strong argument that an indeterminate period of suspension may have the effect of undermining the rights of the Applicants to serve their constituents as they were elected to do; and it also undermines the electors rights in all respects under the Constitution, such as those preserved in Articles 42 and 43, which provide for the establishment of a Parliament to make laws for Samoa, and Art 44 which guarantees that the Assembly shall consist of one member elected for each of 51 electoral constituencies comprised of villages or sub villages.

The role of custom

95. Article 71 of the Constitution allows the Court, subject to its provisions, to take into account custom. We note the Hon Valasi Selesele used the Samoan language when he introduced the P & E Committee's report and recommendations to the Assembly. The relevant Samoan language version of the phrase in the Report and Hansard is "*se'i i ai se aso*". In the Samoan custom, this saying may generally mean in a village fono or village council chiefs and orators' environment that a decision concerning a penalty imposed by the village leaders stands until such time as proper apologies are tendered and there is reconciliation between the parties in dispute.

96. But we refrain from deferring to our own experiences as matai to explain the cultural significance of certain cultural practices. What is meant by a cultural phrase should be dealt with by express pleadings and evidence. That has not

[24] ibid., at 1690
[25] ibid.

been done in this case. As Courts, around the Pacific region in particular, search for cohesion between culture and law, our Court needs to guard against delivering ad hoc interpretations and decisions.

97. In 2021, the Supreme Court encountered during the many hearings of post-General Election electoral petitions that there were wide ranging definitions of cultural practices for what had been, up till then, seemingly generally accepted practices such as *fa'aāloaloga* and *monotaga*. The salutary lesson from those cases suggests that where Article 71 of the Constitution is sought to be relied on, then it should be properly pleaded and particularised. Furthermore, sufficient evidence should be placed before the Court in support of the meaning contended for by the party.

Did the Legislative Assembly breach the First Applicant's rights to natural justice?

98. The second main ground which the Applicants raise is that the Hon Tuilaepa argues he was denied the opportunity to be heard in relation to penalty. There is no dispute that he was not able to attend the sitting of the Assembly on 24 May 2022 because he was undergoing the mandatory isolation period for returning residents, following his trip to attend a World Rugby meeting in Europe.

99. The Hon Tuilaepa explains:[26]

> 10. When Parliament met on 24th May 2022, I was in home isolation after having just returned from overseas. I do not understand why Parliament did not defer to the following week the discussions of the P & E Committee's findings and recommendations given my absence. Deferring discussions of such type of reports had been allowed in the past by convention. From my 40 years plus as a Parliamentarian, the opportunity has always been afforded to the accused to appear in person before select committees and Parliament if the matter personally affects them....
>
> 11. Since I was not able to be present at Parliament on 24th May, I therefore could not express my views regarding the report and to be heard as to penalty.
>
> 12. The complaint against us was about breach of privilege. However, the findings of the P & E Committee related to *breach of ethics* and *contempt of Parliament*. As a result, the committee wrongly recommended the penalty applicable to contempt of Parliament which eventually was the penalty that Parliament imposed on us. If I was present in Parliament, I would have pointed out these discrepancies, as well as other matters in my defence.

[26] Affidavit in support of first applicant: Tuilaepa Lupesoliai Dr Sailele Malielegaoi, dated 30 May 2022.

What is natural justice?

100. The learned Professor Joseph succintly puts the matter this way:[27]

> Natural justice is but fairness writ large and juridically. The duty to act fairly (or simply fairness) may substitute as a reference for natural justice. They are alternative descriptions for a single but flexible concept whose content is "always contextual".
>
> **...**
>
> Determing the requirements of natural justice is a holistic experience. The courts will look at the matter "in the round" to determine whether the process was fair....A leading authority encapsulated the holism that characterises natural justice: The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. The courts are concerned with not only the "actuality" but also the "perception": decisions must be reached "justly and fairly", and be seen to be so.

101. In our view, the Assembly is required to act in accordance with the principles of natural justice, because the Assembly, as is the Court, is concerned with not just the actuality of its intramural activities but also its perception.

102. Article 9(1) of the Constitution applies to the Assembly, and the Assembly is required to give effect to a person's rights to a fair trial. This will necessarily mean the right to be heard, and the right to be tried by a fair and impartial tribunal of fact. Although the Hon. Tuilaepa does no more than refer to Parliamentary practice during his 40 years of service, we accept that generally Parliament has afforded "accused" persons the right to know the case against them and to be heard.

103. The obligation under Article 9(1) of the Constitution is determinative of the standards the Assembly must meet. However, and notwithstanding Article 9(1), or perhaps because of it, we note that Parliament has adopted the principles of natural justice rules in the S.O. For example, S.O. 177 establishes rules concerning the appointment of the members of the Privileges and Ethics Committee to allay concerns about bias; S.O. 180 expressly requires the person raising the complaint to serve the complaint on the member about whom the complaint is made; and S.O. 180 also prohibits the Speaker from reporting the matter to the Assembly without informing the affected member of his or her intention to so do. In our view Part XXXV of the S.O. has many other examples of the principle of natural justice being wound into the Assembly's processes. But is there a right to be heard as to penalty?

104. In this case, both the Applicants were given the chance to provide responses and appear before the Committee. They took their opportunities; the Hon

[27] Joseph, *Joseph on Constitutional and Administrative Law* at 25.1.

Lealailepule met with the Committee in person, and the Hon Tuilaepa by an audio visual platform. Although the Hon Tuilaepa says in his affidavit that he would have preferred to speak in person to the Committee, circumstances prevented such an option. However, the Hon Tuilaepa through his counsel conceded that he had been afforded natural justice at the virtual meeting with the Committee. What he complains about is that he was not given the chance to address the Assembly on penalty when the Assembly met whilst he was in isolation.

105. At face value the Applicant's concern about not being heard by the decision maker is compelling. It is a fundamental premise of a just and fair decision that the right to be heard extends to the right to be heard as to penalty by the person or body charged with making the decision.

106. Our review of Hansard suggests the report was discussed at some length in a general debate on 24 May 2022, but we did not discern any attempt by the Hon Speaker to give either of the Applicants the right to address the Assembly on the question of penalty. Clearly the suspension of senior opposition members is a matter of grave concern, and whilst it is perfectly acceptable to ask a committee of the Assembly to make recommendations as to penalty, it is an axiom of the principles of Administrative Law that the decision maker is required to make an independent decision and not rubber stamp the recommendation. The issue of penalty involves the contempt itself and the need to reclaim Parliament's dignity, but it is also a decision involving matters of high politics, such as to what extent the Harmony Agreement settled the Contempt of Court and any potential Contempt of Parliament issue. It was an issue raised at the very outset, when the complaint was first served on the Applicants. This Court is not suited to make calls on the merits of the argument and what view the Assembly should reasonably have come to. However, the weight of authority supports the Court requiring Parliament to abide by its Constitutional duties to have given the Applicants the right to be heard as to penalty. If it is not a process to which the Parliament is familiar, then it should become familiar with the obligation to hear from the "accused" not just in relation to the substantive charge itself, but also the penalty.

107. We are concerned about the optics of what happened and whether the interests of justice were served. The Applicants defence of their positions was evident at the very start of the process. Both Applicants provided responses to the complaints within days of the complaint being advised; they first provided a general defence and then a more detailed document which provided further analysis. The Hon Tuilaepa also advised the Hon Speaker of his movements in that he was being asked to attend an international meeting in Europe on behalf of the Samoa Rugby Union. The Hon Tuilaepa's return to Samoa from his committments was unavoidably delayed through no fault of his own. To compound matters, on 24 May 2022, in accordance with the State of Emergency rules, he had to undergo the isolation requirement for travellers. There is no unwillingness on the part of the Applicants to participate in the inquiry in a timely way.

108. Yet the Assembly, despite requests from the Opposition to adjourn the discussion until the Hon Tuilaepa was out of mandatory isolation, nevertheless

pushed on with its determination to discuss the Committee's report on 24 May 2022. We do not understand the reluctance to adjourn for a week given that the serious matters complained about had occured many months before.

109. We consider the Hon Tuilaepa's Article 9(1) rights to be heard as to penalty by the decision maker were breached. Although the pleading of breach of natural justice is made only with respect to the Hon Tuilaepa, we consider that it should also apply to the Hon Lealaipule. It is difficult to discern how the respondents could be prejudiced by such an amendment. Indeed while the Hon Lealailepule was physically present and took part in the general debate, it is clear from our reading of his responses that he may have needed further time to prepare an adequate response on the issue of penalty.

110. We stress that we do not express a view on the merits of the defence of either Applicant to the charge of contempt and what they might say in relation to penalty. We are only concerned with the question of process. Whether the Hon. Tuilaepa, of considerable political and parliamentary experience and skill, would have been able to use his 10 minutes of debate to persuade his colleagues to not suspend him is not a matter for this Court. He was entitled to be heard, and he was not.

Error of law and Illegality

111. Given the answer we have given as to breach of natural justice, we do not consider it necessary to offer views on these grounds. Save to note we see these grounds as standard judicial review type challenges. We would need to be persuaded that the general principles of judicial review can limit the principle of non-intervention.

Decision

112. For the foregoing reasons, the Court finds:

(a) The Assembly resolved to approve the Committee's report with respect to liability and penalty. We consider the Court has jurisdicition to scrutinise all these intramural decisions of the Assembly pursuant to its express duty under the Constitution to declare "*any existing law...which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void."*

(b) The relevant law in this case concerns Parliament's disciplinary rules arising under the Legislative Assembly Powers and Privileges Ordinance 1960, Parliament's Standing Orders, and the customs of the Assembly, and their application. We find these disciplinary rules and practice do not give the persons who are the subject of adverse recommendations by the Privileges and Ethics Committee, the opportunity to be heard as to penalty before the Assembly. This is a failure which breaches a fundamental plank of the rules of fairness that are secured in Article 9(1) of the Constitution – the right to be heard.

(c) The Assembly's resolution as to the Applicants' liability for the contempt of Parliament, was not itself directly challenged, and so there is no reason for this Court to consider much less disturb that finding.

(d) There was a strongly run argument that the suspension was indeterminate. We hold the suspensions are not indeterminate and do not engage the principles and rights in Article 44 of the Constitution. On the facts, we consider that even had we found the suspension to have been indeterminate and therefore in breach of Article 44, this did not necessarily mean that liabilty was not properly made out.

(e) However, we consider the treatment of both of the Applicants rights to natural justice with respect to penalty were inconsistent with their rights preserved under Article 9(1) of the Constitution. We accordingly declare that the part of the Assembly's motion which purports to suspend the Applicants is void as at the date of the declaration in this judgment. It may be that the Assembly may wish to revisit the penalty aspect, consistently with the Constitution, but that is entirely a matter for that body. However, as at the date of this decision, there is no lawful impediment in the way of the Applicants resuming their duties as members.

(f) Costs are to lie where they fall. This is another significant public interest case.

CHIEF JUSTICE SATIU SIMATIVA PERESE
SENIOR JUSTICE VUI CLARENCE NELSON
JUSTICE TAFAOIMALO LEILANI TUALA-WARREN

"A"

@ 4:20pm

28 April 2022

The Honourable Speaker of the Legislative Assembly
Office of the Legislative Assembly
TI'AFAU

Honourable Speaker,

Complaint made under Standing Order 178 against:

1. **Hon. Tuilaepa Sailele Malielegaoi; Member of Parliament for Lepa**
2. **Hon. Lealailepule Rimoni Aiafi: Member of Parliament for Faleata No 4**

For breaches of Parliamentary Privileges and Contempt of Parliament

Background

1. I am the Member of Parliament for the electoral constitutency of Gaga'emauga No. 1 and was elected at the General Elections (which were held on 9 April 2022) and am the Deputy Prime Minister and Minister of Customs and Revenue.

2. In accordance with Standing Orders **'S.O' 178**, I wish to formally raise matters of privilege with you, in your Esteemed role as Speaker of the Legislative Assembly, in relation to the behavior, conduct and actions (including the public statements), of two sitting (Members of this Legislative Assembly, namely: Hon Tuilaepa Sailele Malielegaoi: the former Prime Minister, and now Leader of the Opposition, as well as Hon. Lealailepule Rimoni Aiafi: a former Associate Minister, (which I will describe as 'the Two MP's) during the Constitutional differences between the HRPP and FAST political parties in 2021, which were being heard, were eventually decided by Samoa's highest Courts.

3. Some of these actions and public statements were the subject of complaints of Contempt of Court filed in the Supreme Court by the Honorable Prime Minister as well as the FAST Political Party, against a number of individuals but, in particular included the two MP's who were subsequently found Guilty of Contempt of Court, and a third Member of Parliament: Hon Fonotoe Lauofo Pierre, who was found Not Guilty. A local solicitor, Maiava Visekota Peteru, was also found Guilty.

4. The decision of the Supreme Court is in: **FAST Party, Mataafa v Malielegaoi and others [2022] 23 March 2022 (Justice Robert Fisher QC & Justice Raynor Asher QC).** I attach a copy of the decision as Attachment 1

This is Annexure "B" mentioned and referred to in the affidavit of Lealelagale R Angi dated this 30th day of May 20 22 at Apia Samoa

Luaipou Ann Matalasi
Barrister and Solicitor
Supreme Court of Samoa

Breach of Parliamentary Privileges

5. I consider that the two MP's have committed numerous breaches of Parliamentary Privileges in a number of respects, namely:

   a. That they have been found Guilty of Contempt of Court by the Supreme Court on 23 March 2022, as sitting and current Members of Parliament for their conduct and comments made in 2021, which were found to have 'scandalized' the Court by denigrating and insulting the Courts, as well as the Judiciary, including the Honorable Chief Justice and other Justices of the Supreme Court, and thereby undermined public confidence in the Justice system; and
   b. That they have been found in the decision of the Supreme Court, to have also made comments and statements which denigrate and insult the Legislative Assembly of Samoa by suggesting or inferring that the new Government is in some way illegitimate, arising by a 'coup d'etat' by the Judiciary, and is described as being 'unconstitutional' which in my respectful view undermines the status,authority and dignity of the Legislative Assembly;
   c. That they have been found in the decision of the Supreme Court, to have also made comments and statements which denigrate and insult other Members of Parliament;
   d. That they have been found in the decision of the Supreme Court, to have also made comments and statements which denigrate and insult another registered Political party : namely the FAST Party;
   e. That they have been found in the decision of the Supreme Court, to have also made comments and statements which have undermined the rule of law;
   f. That this behavior and conduct (including statements made) by the two MP's during 2021, and the subject of factual findings by the Supreme Court, are undignified, inappropriate and falling below the standards of the conduct and behavior which are to be expected of Members of the Legislative Assembly of Samoa, but in particular such long standing and senior members, and in one case the former Prime Minister of the country;
   g. That the behavior and conduct (including statements made) by the two MP's during 2021, have brought shame and embarrassment upon the institution of Parliament, as well as the Members of Parliament, past and present;
   h. That the behavior and conduct (including statements made) by the two MP's during 2021, have undermined public support and respect for the role of MP as well as the institution of Parliament, which needs to be addressed by Parliament and if possible restored.

6. Some examples of the statements which have been directed at Parliament, other MP's and the FAST Party by the two MP's in the court decision include the following:

Hon Tuilaepa

'..,major things have occurred. Acts of treason against the Head of State. I can also say, acts of treason against Parliament.' [30 July 2021] paragraph 60(c)'[1].

'..,what has happened is that our government is facing an act of treason from the Judiciary [1 August 2021]'.[2]

'where they used a swearing in already ruled unlawful and unconstitutional and of no effect by the Supreme Court. That is what is known as a 'coup d'etat'. But this coup is usually carried out by the military, countries with armies such as Fiji. But this coup is carried out by the Judiciary' [1 August 2021].[3]

Hon Lealailepule

'...the truth is, it is a coup that they staged – it's a coup. Judiciary coup. What they did was a coup'.[4]

'..the truth us it was a coup by the Judiciary that brought in an unconstitutional government. [25 July 2021]'[5]

'No one..only HRPP. These people [Judiciary and FAST] have come together to defeat HRPP. Defeat Tuilaepa. Yes [1 August 2021]'[6]

Hon Tuilaepa

'But the power of FAST and the Judiciary have been combined. So we only come and go under...come in and go under as the decisions favour that side. [28 July 2021]'.[7]

Hon Lealailepule

'...all these people should be jailed. So what decision the Chief Justice will come up with?. Because if he confirms the Supreme Court decision, all these people will be jailed. For what?. Treason?.[18 August 2021].'[8]

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[1] FAST, Mata'afa v Malielegaoi and Others [2022] 23 March 2022-paragraph 60 (c)

[2] FAST v Malielegaoi – paragraph 60 (d)

[3] FAST v Malielegaoi – paragraph 60 (d)

[4] FAST v Malielegaoi paragraph 86 (a)

[5] FAST v Malielegaoi – paragraph 86 (b)

[6] FAST v Malielegaoi – paragraph 86(e)

[7] FAST v. Malielegaoi – paragraph 59(a)

[8] FAST v. Malielegaoi – paragraph 86(e)

Particulars of Breach of Parliamentary Privileges & Contempt of Parliament

7. That the swearing in of Parliament, the Speaker, the Prime Minister and all associated appointments on 24 May 2021 was declared valid and the Government were entitled to take power on that day, and were authorized by the Court of Appeal in AG v Latu [2021] WSSC 31 (23 July 2021) to take power on the day of the appeal decision.

8. That the Speaker of the Legislative Assembly had, and laid claim to, all Parliamentary Privileges under **SO 11** from 24 May 2021 onwards, and during which the two MP's appear to have breached a number of those privileges:

    a) Acted contrary to the terms of the Parliamentary Oath of Allegiance;
    b) Acted contrary to the terms of the Code of Parliamentary Ethics in **SO 15** in respect of failing to act or maintain ..,'the highest standards of ethical behavior to protect and maintain the integrity of Parliament and to make every endeavor to uphold the principles of the Constitution..,' and in particular :
        a. Fail to uphold the contents of the Oath of Allegiance- Principle (1);
        b. Fail to have Respect for the laws of Samoa (2);
        c. Fail to have Respect for all persons (3);
        d. Fail to act in accordance with the public interest (4);

    c) May have committed Contempts of Parliament under **SO 186**, namely :
        a. Breaching one of the privileges of Parliament by failing to maintain the dignity and integrity of Parliament - Example (a).;
        b. Reflecting on the character or conduct of the Assembly by stating that the Government of the day is in some way questionable or illegitimate or the result of dishonest collusion between the FAST Party and the Courts- Example (j)
        c. Reflecting on the character or conduct of other MP's, namely the elected Members of Parliament who are members of the FAST Party, and now form Government, and making derogatory and offensive comments about their characters, motives and actions - Example (j);
    d) May have committed a Contempt of Parliament by their statements and actions which have been the subject of factual findings by the Supreme Court, but which is also conduct unbecoming of an MP and reflects negatively on the honour and dignity of all Members of Parliament;
    e) May have committed a Contempt of Parliament by their statements and actions which have been confirmed by the Supreme Court, which has undermined the status and dignity of Parliament;
    f) May have committed a Contempt of Parliament by their statements and actions which have been confirmed by the Supreme Court, which has

undermined the status and dignity of all three arms of Government : the Executive, the Legislative and the Judiciary;

g) May have committed a Contempt of Parliament having been found Guilty of the serious criminal offence of Contempt of Court, yet have failed to give consideration of, or priority to, maintaining the honour and dignity of Parliament and the Government of Samoa, by voluntarily resigning from their Parliamentary seats as atonement and in apology for the actions they have taken and comments they have made.

9. Accordingly I lodge this formal complaint under Standing Order 178, and respectfully invite you to consider that the actions and behavior of the Hon.Tuilaepa and Hon. Lealailepule have raised questions of Parliamentary Privilege and should now be referred to a Privileges and Ethics Committee convened and appointed under **SO177.**

I await your response in due course and offer my sincere compliments to you and your Office

Yours Sincerely,

Hon. Tuala Tevaga Iosefo Ponifasio
DEPUTY PRIME MINISTER
MINISTER OF CUSTOMS & REVENUE

cc: Honourable Prime Minister