

"Threats to media freedom in the South Pacific"

By Savea Sano Malifa.

Good afternoon. I bring you greetings from Samoa. Before I begin I want to say thank you to the University of Queensland for inviting me to speak at this conference, and to UNESCO for making my participation possible.

I've been asked to speak on "Threats to Media Freedom and Freedom of Information in the South Pacific," which is something all of us at the Samoa Observer, as some of you are probably well aware, know very much about. We have been through some grueling challenges over the last 20 years or so, but we don't believe it's a good idea dwelling in the past, or holding grudges against anyone, or pointing a finger at any group of people.

We believe in going forward, and in this paper, the issues I shall be discussing are meant only to be used as lessons to learn from, in the hope that those snags do not recur, so that we become much more tolerant and wiser because of them.

The Samoa Observer was founded in a cookhouse in a village near Apia in August 1978. Almost right away it struck problems. The government of Prime Minister Tupuola Efi did not like the idea of this new newspaper publicly revealing all these things that had never been revealed before.

But Tupuola was an understanding man and a very tolerant one too. It was his cabinet ministers who were doing things they shouldn't be doing, and Tupuola got the blame. He is now Samoa's Head of State, and his name has changed to Tui Atua Tupua Tamasese Efi.

Anyway, when the paper completed its first year of operation, and we were planning its first birthday party, we invited Tupuola to deliver the keynote address. At first he was reluctant, but later he accepted.

Happy Birthday

This is what he said: I suppose I can get away by saying: 'Happy birthday and I wish you well. I would like to say a little more.

The Observer was launched one year ago by way of indulging the (whims) of a somewhat querulous reporter who believed that he could do it better on his own.

It was a brave effort because striking out on newspaper business in Apia has not by and large brought good fortune, let alone spiritual and mental fulfillment. There was a tendency, therefore, for people to say when the first issue appeared on the streets of Apia: 'Very good for a start but can the effort be sustained? One year later I will have to acknowledge, even if a little grudgingly, that the Observer has become an established feature of the Apia scenery.

Tupuola goes on:

It is, one year later, better patronised by business and even by patrons, who ironically, the Observer spends most of its time rubbishing. The last reason why I say it is heading happily towards the status of a survivor is that the editor seems, again on the face of it, well able to indulge his idiosyncrasies, even to the point where he feels he can thumb his nose at politicians, bureaucrats, their values and their cocktail parties, and still manage to retain his contacts, 'deep throat' and all.

And he ends:

Nevertheless, I look forward to another year of being, on turns, lifted, prodded, annoyed, misrepresented – which reminds me that the headings 'Pm wants CJ out' and "Appealing to PM" is time wasting' do not represent fair reporting.

With all that, I hasten to say, I wish the Observer many happy birthdays.

Long confrontation

That was August 1979. Two years later, public servants went on strike seeking better wages, but Tupuola did not grant the request. He believed the opposition Human Rights Protection Party (HRPP) was behind the strike so he refused to listen. As a result, the confrontation dragged on for 13 weeks, which was when the HRPP launched a vote of no confidence against Tupuola in Parliament. The vote was carried and Tupuola was no longer PM.

The HRPP became the new government, and some years later the Samoa Observer struck worse problems. They included threats to kill from a cabinet minister, physical assault by the minister's brothers,

a “suspicious fire” that completely destroyed the paper’s printing plant, web presses and newsprint supplies, editorial and adverting offices.

Soon afterwards the lawsuits from the PM and his cabinet ministers began, all because of our love of press freedom and freedom of information in the Pacific. But then these are the things that all of us who work as journalists in this part of the world, know very much about.

They’ve been around us for a long time, and I don’t think they are going to go away any time soon. I say this because as long as our politicians refuse to totally accept, and respect, modern-day democracy, these threats are going to remain with us for sometime yet.

We know and accept, that like any other of freedom, media freedom is not absolute, which is why we also accept that laws must be instituted, to prevent and discourage media owners, editors and journalists, from abusing this freedom.

Quick to sue

The problem however is that, whereas these laws are made by politicians to protect themselves, and members of the public from a critical media, there are no laws to protect media owners, editors and journalists, from angry politicians. Besides, whereas politicians are quick to sue editors saying they’ve been defamed by them, all that editors can ever do is try to defend themselves.

And to get an idea as to why these threats from politicians are continuing to be a tenacious enemy of media freedom and the free flow of information, we have to go way back to those pre-independence days, when modern-day democracy was unheard of in our part of the world.

In those days, all island nations had their own forms of democracy, driven by their respective cultures and inherent customs. In Samoa for instance, pre-independence democracy was dictated by the fa’asamoa or the Samoan way of life, which was where the matai or chief of the family made all the decisions.

The reasoning though is sound enough. Since the matai is chosen unanimously by the extended family, based on his ability to adequately provide for that family, for his kindness and his wisdom, his decisions are also the rules by which the family is governed in peace and unity. In other words, the matai is respected, and his decisions are obeyed without question.

Then along came political independence accompanied by modern-day democracy and everything changed. Now driven by foreign-influenced Constitutions which give much emphasis on such alien terms as human rights, freedom of expression, freedom of the press, freedom of religion, and whatnot, which are themselves inalienable human values that at the same time diminishes the matai’s culturally-inherited authority, since under this new form of governance, the non-matai is now just as human and important as the matai himself, modern-day democracy becomes a threat to the old system, and it is now looked upon with skepticism and even contempt.

In Samoan politics, what’s important is that most of the members of parliament are matai. Of its 49 MPs, 47 are matai, and the other two are elected from “individual voters,” or those with mixed ancestry. Which means the laws parliament makes are predominantly made by matai, since they make up the majority in the House.

And since matai are so used to being obeyed without question by their families, they think of their roles in Parliament as extensions of their family and village roles, so that now as politicians, they also do not want their decisions questioned, especially by the media which to them is a foreign concept that’s both irrelevant and potentially dangerous.

Common good

And that’s where problems start. What they have to accept though is that as their countries’ political leaders, they are now occupying much more responsible positions where the whole country, not just their immediate families, is dependent on them. Which means that this time, they have no option but to give up their personal ambitions and devote more of their energies into working together for the common good, not just for that of their own families.

They also have to realize that despite their differing views, both the government and the opposition must sit down in a compromising way and work together to solve tough problems, in order to arrive at meaningful solutions that benefit everyone.

They have to agree that although compromise may sound bad, it is essentially good. Because with it great achievements are possible. And yet so far, that is not working in some parliaments of the Pacific. There is still senseless bickering between the government and the opposition, so that basic public services such

education, health, electricity, roads, living conditions in the villages are in general, very much substandard.

In Samoa, where the Constitution can be changed by a two-thirds majority of Parliament, the government has been holding defiantly onto that majority over the last twenty years by using public resources under its control to achieve that purpose, so that compromising has been impossible and even negligible.

Which means that while the government has been enjoying that majority, it has also been quite liberal in changing the Constitution to maintain its supremacy, while at the same time making new laws, one of which amounts to a deliberate threat on media freedom and freedom of information.

Called Printers and Publishers Act 1992, this law directs publishers and editors to reveal their sources of information to government leaders – PM, cabinet ministers, MPs, heads of government departments – who claim they have been defamed by the media, mainly newspapers.

Previously however, only the court had the authority to do this. Although other democratic countries have laws similar to this one, we believe they do not have this particular requirement in them. So that when the Publishers and Printers Act was passed, Samoa ceased to be democratic in the modern sense of the word.

Frighten sources

Since it seems clear this law was designed to frighten sources from revealing information about political corruption to the media, it effectively undermines media freedom and freedom of information. What's interesting though is that only newspapers are singled out as a target for this law, not TV and radio. Why? We don't know.

When that law was passed however a lawsuit by the Prime Minister against the Samoa Observer, claiming he had been defamed by it, was already with the court. It was a private claim. And yet in parliament, an amount of \$783,000 was proposed and approved to pay for the prime minister's legal fees. Later, another amount of \$400,000 was also approved for the same purpose since the first one was not enough.

And as if to justify using public funds to pay for the PM's legal fees, the government announced inside Parliament that all the legal fees to be incurred by public figures who pursue defamation claims against newspapers, would also be paid for by public funds. Meantime, the newspaper has had to pay its own legal fees amounting to hundreds of thousands of tala.

Now the question arises: Is that a threat to press freedom and freedom of information? You tell us what you think.

Anyway that was in May 1998. And only one man stood up in Parliament when those funds were approved and said yes, that was not only a threat to press freedom, but a breach of press freedom and freedom of information as well.

That man was the Leader of the Opposition, Tuiatua Tupua Tamasese. He told Parliament: "This decision breaches freedom of speech guaranteed in the Constitution. The Prime Minister does not worry about money because the government is paying.

"However the 'Observer' is bound to be hurt financially whether it wins or not, since it is paying for its own legal fees. And if this is what will be happening to newspapers, their freedom to express themselves as required by the constitution cannot be protected."

Many lawsuits

Tuiatua added: "The Prime Minister and other government officials will keep on suing them for defamation knowing well they do not have to part with a cent of their own."

Tuiatua was right. Soon afterwards, the PM sued the paper again, and so did two of his cabinet ministers, all at about the same time. This time they sought between \$200,000 and \$250,000 in damages.

However almost two years later, the PM and one of the ministers withdrew their lawsuits without explanation. In other words, their intentions were to intimidate, frighten, and discourage alleged government corruption from being exposed. And the third plaintiff, his own claim still in court, was jailed in 1999 for plotting the murder of another cabinet minister. He is still in jail today.

But then as if that was not enough, the PM later used the British law of criminal libel which carries the penalty of six months in jail against the Observer. And yet it was an ancient law meant to quell rebellion and treason in Great Britain's colonies around the world. We believe that neither New Zealand nor Canada or Australia has this law in their law books. However it was being used in Samoa in an attempt to put the editor behind bars.

And so, as we can now see, governments in the Pacific are quite capable of using any old law to stifle press freedom and freedom of information in their countries. In Samoa, not only is the government constitutionally able to make any new law it wants, it is also financially able to use foreign lawyers and judges to carry out its desires legally.

In the case of the late PM suing the newspaper for defamation a few times, his legal fees were paid for by public taxes, and so were the expenses of lawyers from aboard he'd hired to represent him, as well as for the expenses of the judges who presided in those cases.

Troubling admission

At the start of the PM's defamation action against the Observer in 1998, he declined to give evidence. In response, Justice Bisson, a New Zealander, admitted this was the first time in his knowledge that a plaintiff suing for defamation had refused to appear in court to explain how he had been defamed. It was a troubling admission but then he allowed the trial to go ahead anyway.

Later when Bisson delivered his judgment on 16 September 1998, he said he did not take into account that the Prime Minister's case was being funded by the Samoan government. He then denied the PM's full claim of \$600,000 for his legal costs and awarded just \$75,000 instead.

And on the PM's claim of damages for \$400,000, Bisson said he took into account that the plaintiff was only 12.5 percent successful, and awarded him \$50,000. What about the other 87.5 per cent? Isn't defamation either 100% successful or there is no defamation at all? Anyway, by then the government – with Parliament's endorsement – had \$1.18 million allocated for the PM's legal costs and legal fees. And then on 3 October 1998, a notice seeking payment of a total of \$125,000 in judgment and costs awarded to the PM was filed in the Supreme Court. It said the full amount must be paid within three weeks or the plaintiff "will petition the Supreme Court for an order to wind up the Samoa Observer Company Limited."

Two days later, another notice saying an "interest of 8 per cent per annum" had been added, was received. It also said failure to comply could lead to "bankruptcy proceedings taken against you." By this time, the manner in which these legal proceedings had been handled clearly showed it was an attempt to bankrupt the newspaper. First, the PM sued for defamation, then he arranged for an overseas Queen's Counsel to defend him, later the government hired an overseas judge to hear the case, and then armed with its two thirds majority in Parliament, the government got that substantial sum of money approved for the PM's legal fees, later when the hearing began, the PM refused to give evidence, and yet he was supposed to explain how he had been defamed, which was also when he would have to be cross-examined, and then the judge appeared shocked but he allowed the trial to go ahead anyway, then afterwards when he delivered his ruling, he said "had the PM elected to open and give evidence in the usual way in support of his case, there would have been a substantial saving in time and expense."

Criminal libel

At the time however, the PM's claim of criminal libel was still pending. And then he passed away and everything changed. The court matters – including the criminal libel charge – were discontinued, the threat to institute bankruptcy proceedings was not heard of again, life returned to near normal. But did the PM have to die for justice to be finally made? And did the threats to media freedom and freedom of information in the Pacific stop then?

No, they did not. A few years ago in Honiara, Solomon Islands, editor John Lamani was in his Solomon Star newspaper office when armed soldiers – or were they police officers? – walked inside, and at gunpoint, demanded that the editor handed over a large sum of money; they then revealed their orders were from a cabinet minister. Later the money was handed over.

Just over a year ago in Suva, Fiji Sun editor Russell Hunter was woken up in the middle of the night by soldiers, they said he was wanted at the barracks for questioning, and he was taken away by force. Back in his house his frightened wife and their young girls remained in confusion not knowing what was happening, but then instead of taking him to the Suva barracks, Hunter was driven across the country to Nadi where he was led inside a passenger aircraft and deported to Australia. Hunter is now working for the Samoa Observer as its development editor.

And then you ask: What kind of people would do this sort of thing as if it was quite normal? Don't they have families of their own, wives, children? Sad to say, we're living in what has been lovingly described as a free and peaceful Pacific, and yet where is that freedom and that peace?

Samoa is not free. Despite glowing reports it is free, deep inside it is not. It is a country sobbing day and night under the rubble of suppressed freedom. Even the Church, which is supposed to be the Pinnacle of freedom, is not free. Perhaps those church leaders who are so involved in politics should become politicians themselves, and let the rest go free.

Fiji, similarly, is far from free. Bainimarama talks freedom but acts suffering. He wants corruption cleaned up, but then he also wants the media shackled, so that they are unable to do the cleaning up. Solomon Islands is not free, nor is Papua New Guinea, despite what their government supporters are saying. The only freedom in the Pacific is poverty. How then can the media be free in a place where there is no freedom?

Dictator accusation

Today, it is interesting to see that Samoa's prime minister, Tuilaepa Sailele Malielegaoi, is having a go at Fiji's strongman Frank Bainimarama accusing him of being a dictator.

He's troubled that Bainimarama has recently announced the introduction of a decree to control the Fijian media, and another one to legally protect him and his soldiers, in case they are accused of wrongdoing. Now Tuilaepa, who has been looking for ways over recent weeks to attack Bainimarama for reasons we are not sure about, simply could not hold back.

"If anything," he said recently, "the decrees are an admission of guilt. They cannot face the consequences of what they've done to their country, so they cloak themselves in immunity decrees."

He advised that "democratic governments that want to tackle institutional corruption need a free, strong and robust media."

Now that sounds good to the ear.

And he went on: "You know, Bainimarama's regime came to power to address presumed corruption in government. So if anything, they should strengthen the media, and give them the freedom to do their work. Not try to strangle them to death."

Words into action

Wonderful! And so, perhaps Tuilaepa should now turn those words of his into action, and remove all the restrictive policies threatening to stifle media freedom and freedom of information in his own country. He can start by repealing the Publishers and Printers Act 1992, declare defunct the policy allowing public funds to be used for the legal fees incurred by government leaders suing newspapers for defamation, and chuck out the ancient British law of criminal libel from Samoa's law books. That would be a big improvement.

And then to really convince he intends to make Samoa's media "free, strong and robust" so that they can help him and his government "tackle institutional corruption," all he has to do is introduce an Official Information Act in his country. That will surely endear him to the leaders of the free world who are just tired of having to deal with small time dictators, and only then can he successfully achieve what he's striving so hard for.

And when all that is done, he can sit down then and tell himself that unlike Frank (Bainimarama), he has noble ideals driving him forward. That way, media freedom and freedom of information in the Pacific are finally assured, and he's the man who has made that happen.

But today, celebrating World Press Freedom Day one more time reassures that we all need media freedom. In a world where political wars are continuing to gobble up the world's resources, many developing countries are impoverished, so that people dying there from starvation and malnutrition is commonplace. And as brutal dictatorships are causing many to suffer in silence, so that they are deprived of their pride and dignity, media freedom should remain the sustaining lifeblood of democracy.

Therefore as journalists, we should never neglect our role as watchdogs of our governments, since the moment we do the little freedom we're enjoying today is likely to be taken away from us.

Soifua.