

Free speech

6. The sword of Damocles in the South Pacific: Two media regulatory case studies

ABSTRACT

Constitutional guarantees of free speech and media freedom are well established 'on paper' in most South Pacific nations. How these guarantees are interpreted is constantly a source of tension between politicians, media practitioners and constitutional advocates. Recent attempts by two countries in the region, Fiji and Tonga, to introduce draconian legislation have been partially successful, provoking international condemnation. In February 2003, a series of five bans on the Auckland-published *Taimi 'o Tonga* newspaper led to conflict between the island kingdom's Supreme Court and the Privy Council. This eventually provoked controversial constitutional changes that were adopted on October 16 in spite of unprecedented protests. These changes, in the form of the *Media Operators Act 2003*, *Newspaper Act 2003* and *Act of Constitution of Tonga (Amendment) Act 2003*, are expected to effectively ban the paper for good and, according to some legal analysts, may end the rule of law. In Fiji, a draft *Media Council of Fiji Bill* was made public in May 2003 and submissions were invited. However, the proposed law stirred a strong reaction from the media and civil society groups as being 'unconstitutional'. This article examines and analyses the debate over self-regulation and public accountability of the media versus state control in the South Pacific.

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Introduction

AT THE Auckland launch of the first South Pacific book on political journalism, a newspaper publisher accused royal authorities of persecuting dissidents and independent news media. Publisher Kalafi Moala, once unjustly and illegally jailed for contempt of Parliament in the kingdom of Tonga, had a gloomy message about the future of media freedom in the Pacific. In his book, *Island Kingdom Strikes Back*, Moala said that the Tongan establishment had viewed a Supreme Court judgment freeing him and two fellow political detainees from their Parliament-ordered imprisonment as a 'New Zealand conspiracy' (Moala, 2002: 218). Their imprisonment for reporting impending impeachment proceedings against the country's justice minister became a *cause célèbre* among journalists and civil rights advocates in the Pacific

By the end of 2002, Moala and his fellow detainees had been awarded a total of US\$26,000 in a damages court case against the crown for being jailed unconstitutionally. Moala was awarded nearly US\$8000 by the Supreme Court while pro-democracy MP and publisher 'Akilisi Pohiva and former deputy editor Filokalafi 'Akau'ola were awarded US\$9000 each. The three had filed a case against the Government and Police Minister Clive Edwards for wrongful imprisonment over their month-long jail term in October 1996. The lawsuit judgment in December 2002 was celebrated as a victory for press freedom in the Pacific (Robie, 2003a).

However, less than four months after the judgment, the Tongan Government imposed the first of five bans on Moala's Auckland-based, twice-weekly newspaper *Taimi 'o Tonga*. When this did not succeed in gagging the paper, at least for its audience in Tonga, the Government proposed constitutional changes threatening a draconian impact on media freedom in the region.

Until now, constitutional guarantees of free speech and media freedom have been well established in most South Pacific nations. But how these guarantees are interpreted is constantly a source of tension between politicians, media practitioners and constitutional advocates. Recent attempts by the Cook Islands, Fiji, Papua New Guinea, Samoa and Tonga and Fiji to gag the media have raised serious concern. Sustained attempts in both Fiji and Tonga, in particular, to introduce harsh legislation restricting the media have provoked international condemnation. In February 2003, the series of bans on *Taimi 'o Tonga* also led to conflict between the island kingdom's Supreme Court and the Privy Council.

Planned constitutional changes in Tonga led to unprecedented protests in the capital of Nuku'alofa on 5 October 2003. Between 8000 and 10,000 people demonstrated against constitutional changes giving more powers to the King, Taufa'ahau Tupou IV, and compromising the guarantee of press freedom under clause 7 of the Constitution. In a country where protest is rare, this was by far the largest demonstration since 1500 people marched in 1991 against the sale of Tongan citizenship to non-Tongans (Thousands march on Tongan Parliament, 2003). Nevertheless the controversial changes were ushered in on October 16 with a 16-11 vote in the Legislative Assembly. The *Media Operators Act 2003*, *Newspaper Act 2003* and *Act of Constitution of Tonga (Amendment) Act 2003* were expected to effectively outlaw *Taimi 'o Tonga* and – according to some legal analysts – could end the rule of law itself. (A judicial review is being sought.) After royal assent, it was announced on 6 February 2004 that six publications had been granted a licence under the new media operators law – and, unsurprisingly, *Taimi* was not among them.

In Fiji, relations between the media and Government following George Speight's attempted coup in May 2000 have also frequently been strained. In May 2003, a draft *Media Council of Fiji Bill* was made public and submissions invited. The Government's stated aim of consultation was greeted sceptically with a widespread view that the real objective was to muzzle the media. The proposed law stirred a strong reaction from news media organisations and civil society groups as being 'draconian' and 'unconstitutional'. At the time of writing this draft legislation had been temporarily shelved.

This article analyses the debate over self-regulation and public accountability of the Pacific news media versus state control. Historically, culturally and socio-politically, Fiji and Tonga are closely linked while retaining major differences at the crossroads of Polynesia and Melanesia. The island states are useful case study indicators for the region. The article concludes that both Fiji and Tonga need a change of culture committed to open government and transparency within the media if democracy is to flourish.

The authoritarian press model and the Pacific

Both Fiji and Tonga have constitutionally guaranteed freedom of speech with media provisions. Fiji has one of the strongest free media industries in the Pacific, whereas Tonga's media is largely controlled by the churches and the state, with a notable exception being the Lali Media Group, publisher of *Taimi 'o Tonga*. Fiji also has a seven-year-old, self-regulatory Fiji Media Council

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(Robie, 2003b) while Tonga has only recently moved to establish a fledgling one (Moala, 2000; Pohiva, 2002; Sperber, 2003: 68). Neither country has any professional journalists union although both do have industry bodies – such as the Fiji Islands Media Association (FIMA) and the Tonga News Association (TNA) – affiliated to the Suva-based Pacific Islands News Association (PINA), the largest regional media organisation. PINA and the other major regional body, Pacific Islands Broadcasting Association (PIBA), are currently pursuing an elusive merger.

Fiji Islands, with a population of 840,000 (52 per cent indigenous Fijian; 44 percent Indo-Fijian), has:

- Three national daily newspapers (including Sunday editions) – *The Fiji Times* (owned by a Rupert Murdoch subsidiary), *Fiji Sun* and *Daily Post*;

- One national bimonthly newspaper, *The Review*;

- One regional monthly news magazine, *Islands Business*.

- One national television station (Fiji Television) broadcasting one free-to-air channel and two pay subscription channels;

- A national public radio network (Radio Fiji), which includes AM and FM services and a station broadcasting in English, Fijian and Hindi; and

- A private radio network (Communications Fiji Ltd), which operates FM stations broadcasting in English, Fijian and Hindi;

- Two vernacular weekly newspapers;

- A community television broadcaster (based near Nadi) and several Christian broadcasters;

- A regional news agency, Pacnews, previously based in Vanuatu.

Tonga, with a population of 105,000, has:

- One national state-owned weekly newspaper (*Ko'e Kalonika Tonga – The Tonga Chronicle*);

- One independent twice weekly newspaper, *Taimi 'o Tonga*. (Published in Auckland and distributed in Australia, New Zealand, Tonga and the United States, *Taimi* also had a local editor and office in the capital of Nuku'alofa. The Lali Group also publishes Auckland-based community newspapers distributed in the Cook Islands, Samoa and the Auckland Indian community.)

- One weekly newspaper (*Tonga Star*);

- One bi-monthly news magazine (*Matangi Tonga*, owned by Vava'u Press Ltd);

- One fortnightly political newspaper supporting Tonga's pro-democracy movement (*Ko'e Kele'a*);
- One state-owned broadcaster (Tonga Broadcasting Commission) operates both Radio Tonga A3Z and TV A3Z Tonga, the latter being established in 2001 with New Zealand Government funding;
- One state-owned television channel (TV Tonga);
- One Christian television network (Oceania Broadcasting Network);
- Several church-based publications, some of them with significant political influence; and
- Three FM music stations.

Most Pacific Islands news media have their broadcast and publishing roots in a colonial era when authoritarian regimes controlled information. Although Tonga retained its independence, the kingdom's media was shaped by a rigid view of the press adopted by 17th and 18th century Europe. This is comparable to the *authoritarian* state press system analysed by Frederick S. Siebert et al (1963). While Siebert's 'four theories' (authoritarian, libertarian, the Soviet, and social responsibility) model has been widely accepted as a basis of studying the relationship between mass media and government, it is also viewed as rather dated and inflexible by many critics (McQuail, 1991; Pearson, 2004: 39; Skjerdal, 1993). The theories were later expanded by other commentators to include further models, such as development journalism and democratic-participant (Hester, 1987; Knight, 1998; MacBride, 1989; Maslog, 1992; Masterton, 1996; Merrill, 1991; Loo, 1994). According to Terje S. Skerjald in a critical evaluation of Siebert's authoritarian category, this tendency is especially easy to recognise in pre-democratic societies such as Tonga, where the Government consists of a 'very limited and small ruling-class':

The basic assumption of the authoritarian system is that the Government is infallible. Media professionals are therefore not allowed to have any independence within the media organisation. Also foreign media are subordinate to the established authority, in that all imported media products are controlled by the state (p 1).

In the context of the monarchy in Tonga, the news media clearly operates under the conditions of authoritarianism. As David Fickling pointed out in a *Guardian* account of what he described as 'the world's last autocracy':

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Its 85-year-old King Taufa'ahau Tupou IV runs an administration peopled by his cronies: twelve of Tonga's 30 Parliamentarians are directly appointed by him, and a further nine are nominated by [the Privy Council] of 33 hereditary nobles (Fickling, 2003).

Six out of nine MPs elected by Tonga's 58,000 ordinary voters support the Human Rights and Democracy Movement (HRDM), a group committed to bringing democracy to the kingdom. However, they count for little compared with the 21 representatives of the power elite.

Authoritarianism remains strong in the South Pacific with undercurrents at all levels of the political process, even in countries such as Fiji that are commonly regarded as having a 'free press'. Politicians frequently speak out on how the media ought to be 'responsible', i.e. they either self-censor for the benefit of the government of the day, or propagandise on its behalf. Independent reporting and questioning by the media are often seen by politicians as tantamount to sedition. Thus politicians are often tempted to impose gagging or licensing laws. Recognising this state of affairs, the Australian Government announced in late 2003 that it would put more emphasis on training Pacific politicians, senior bureaucrats and Government information officers on the role of the media in democracy under its new \$2 million Pacific media project (\$2 million Ausaid project, 2003).

Underscoring parallels with the South Pacific, Teodoro C. Benigno, press secretary for former President Corazon C. Aquino in the Philippines, likened the relationship between the state and the media in developing nations to 'scorpions in a bottle':

They can fight, they can be locked up in bitter battle, but neither can bite the other. The moment this happens, both die (Benigno, 1996: 9).

By this, he meant that if the news media went too far in criticising any government, and resorted to 'mean, vile, licentious and irresponsible reporting', then the government that the constitution sought to protect would perish. At this point 'democracy goes, and we shall presumably have a military dictatorship' (p 10). Fiji has already had two such dictatorships, and was perilously close to a third in mid-2000 with Speight's rebellion. This view is shared by one of Papua New Guinea's finest journalists, the former editor of *The National*, Frank Senge Kolma, who has argued that if journalism in the

Pacific is ‘too vigorous’, it jeopardises the stability of governments.

In Papua New Guinea and similar young nations where the political and economic structure is not so resilient and issues are centred around individuals, knocking down the prime minister can easily bring on anarchy (Kolma, 1992: 16).

On the other hand, argued Benigno, the Government could also go too far in condemning or cracking down on the media; ‘The Government can use its vast powers to silence criticism by closing down radio and television stations, and bearing down on newspapers and other publications. [If] it does this, democracy disappears’ (Benigno, 1996: 10).

Professor ‘I Futa Helu has argued that the law can be quite deficient over censorship where it relates to the question of moral goodness and evil. Censorship, he argues, is ‘invariably the replacing of the good by the bad’. He says that

Because [Western] liberal culture has not made any worthwhile impact on Pacific Islands societies, media will have to fight alone against the bigotry and discrimination of traditional privilege and cultural vested interests. Yet news media have already made history all over the world by exposing corruption and professional dereliction leading to their termination and redress. Thus the news media are only responsible to the twin gods of full, available information and truth. And that is the reason why no social institution can have absolute authority over it (Helu, 1995: 3).

Some of the ills of the Pacific media can be blamed on lack of professionalism, training and qualifications – a frequent theme of politicians and one of the crucial issues that has led to Fiji’s draft media legislation. Research has shown, for example, that 49 per cent of journalists in Fiji have no formal training or qualifications in journalism (Robie, 2003c: 338). Canterbury University researcher Paul O’Connell suggested that a natural consequence of such low levels of education and resourcing is a low awareness of the role of media in a democracy; ‘The media is not merely a conduit for news, there are further ethical judgments for the media to make about credibility, newsworthiness, balance and responsibility, decisions that individuals lacking necessary education and experience may not be equipped to make’ (O’Connell, 2001).

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Outgoing University of the South Pacific journalism coordinator Dev Nadkarni is more concerned with the media industry taking on a more proactive role in ‘modernising with both technology and quality’ journalism.

Media industry leaders may scoff at these suggestions or see them as threats ... But they would do well to consider one recent development: the Fiji Government’s single most cogently argued reason to push for the proposed Media Bill was the lack of accurate and professional reporting — which, indeed, is the Achilles heel of all the region’s media.

Fiji’s media industry has openly acknowledged this and underscored the need for skill-based training. A human resource development plan for the region’s media needs to be drawn up (Nadkarni, 2003a).

Publisher Kalafi Moala has been a strong advocate for more transparency by Government and a move to a constitutional monarchy with real democracy in the kingdom of Tonga for the 15 years that he has been publishing *Taimi ‘o Tonga*. Until *Taimi* began publishing in 1989, Tonga did not have an independent newspaper. *Taimi* quickly found a niche, outstripping the Government-owned rival, *Kalonikali Tonga*. Since its launch, the newspaper has scored an array of impressive scoops: including exposing the passport sales scandal, recording the abuse of the national trust fund set up with passport money; and revealing that HRDM leader MP ‘Akilisi Pohiva was being spied on by Tongan police. The Tongan Government has responded vindictively to these exposes (Robie, 2003a, 1996).

Most of the charges against the newspaper are as antiquated as Tonga’s ‘gossiping laws’ (Fickling, 2003). In 1996, seven months before being jailed for contempt of Parliament, Filo ‘Aka’uola, then deputy editor, was given an 18-month suspended prison sentence for ‘provoking a civil servant to anger’ after the newspaper published two letters criticising Police Minister Edwards.

Besides the wrongful jailing for contempt, Moala has faced a host of libel cases with the main objective of financially crippling the publishing company, Lali Media. In 1997, Moala was stripped of residency rights in Tonga — effectively removing his Tongan citizenship. He retains United States citizenship but lives in Auckland, New Zealand. One of the reasons he lives there is that in Tonga he was ‘never quite sure if the police would knock on his door and haul him away about something he had published’ (Garner, 2003).

Moala has advised authorities not to continue harassing ‘those who are

raising a critical voice in the country' (Robie, 2003d). He says the monarchy does not tolerate criticism and scrutiny, and the country will not move forward without full democracy. Failure to change could force the Tongan people to 'rise up'. His book tells the tale of *Taimi's* struggle for commercial and media independence. The Tongan establishment was 'stung' by Chief Justice Nigel Hampton's ruling to free the detainees. He wrote:

Rumours abounded in Nuku'alofa that his ruling was the result of a New Zealand 'conspiracy' aimed to get us out [of jail]. The judge was a New Zealander, much of the protest against our imprisonment had come from New Zealand, and I was a New Zealand resident (Moala, 2003: 208).

When the three men were finally set free on 14 October 1996, Moala recalled weeping with elation.

Tears were running down my face. They were tears of joy and rage, anger at the unjust treatment we had suffered at the hands of Tonga's Legislative Assembly. After all the political turbulence associated with our 'trial' and imprisonment, the country's top judge had declared our jailing unconstitutional and unlawful (ibid.: 217).

Case study one: Constitutional upheaval in Tonga

In June 2003, Tonga appeared to partially return to the 19th century when its original Constitution was created. The Tongan Government published a bill with the intent of allowing it to restrict free speech and remove rulings by Tonga's monarchy and Parliament from the jurisdiction of the Supreme Court. This was the final salvo after five separate attempts at banning *Taimi* since late February had collapsed in the courts. The regional news magazine *Islands Business* noted in an editorial:

The bill is the latest broadside fired by the Government against the New Zealand-produced and foreign-owned *Times of Tonga*. The newspaper ... has badly embarrassed the Government with stories of incompetency [sic], corruption and follies, some attributed one way or another to Tonga's monarchy.

It also published private correspondence from Princess Pilolevu, said to be currently the power behind the throne of King Taufa'ahau Tupou,

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obtained by the newspaper from a Tongan resident of New Zealand, with whom she once had a relationship ...

Local resentment, no doubt fanned by copies of the banned newspaper secretly brought into the country, will generate more support for the pro-democracy movement and hasten the arrival of the day when Tonga's entrenched traditional, but now anachronistic, rulers will have to accept the inevitable and allow reforms that will usher in democracy and, with it, a faster pace of progress for their country (We say, 2003).

The crucial amended section of the Constitution was the 'free speech' clause 7, which previously read:

It shall be lawful for all people to speak, write and print their opinions and no law shall ever be enacted to restrict this liberty. There shall be freedom of speech and of the press for ever but nothing in this clause shall be held to outweigh the law of defamation, official secrets or the laws for the protection of the King and the Royal Family.

The new clause 7 states:

7(1) All the persons of the Kingdom has [sic] the right to freedom of speech and expression. No one shall exercise this right to infringe upon the rights of others and the cultural traditions of the Kingdom, or to violate public law and order and national security.

7(2) The Legislative Assembly may by law impose on the rights conferred by clause (1) such prohibition or restrictions as it considers necessary or expedient in the public interest, national security, public order and morality, for the protection of the King and the Royal Family, cultural traditions of the Kingdom, privileges of Parliament or to provide against contempt of Court, defamation or incitement to any offence.

7(3) The regime of the media shall be determined by law.

According to Dr Rodney Harrison, QC, in an analysis of the implications of the constitutional changes, the 'near complete abolition of the present Constitutionally guaranteed rights of freedom of expression and media freedom, which would be achieved by the proposed clause 7(1), is further compounded by the proposed clause 7(2)'. This means that the Constitutional guarantee could be overridden by ordinary legislation on any basis the Legislative Assembly

considered ‘necessary or expedient’ (Harrison, 2003). Harrison also argued that a proposed amendment to clause 56A would ‘effectively put an end to the rule of law’ in Tonga. The courts would no longer be able to adjudicate and pass judgment on the constitutional legality of laws.

The moves to change the Constitution met hostile criticism both abroad and at home, culminating in the kingdom’s largest demonstration. Protests were lodged by groups as diverse as the New York-based Committee to Protect Journalists; the Commonwealth Press Union; the International Federation of Journalists; New Zealand Foreign Affairs Minister Phil Goff; *The New Zealand Herald*; the Pacific Islands Media Association (PIMA); and the Paris-based Reporters Sans Frontières (RSF). According to the *New Zealand Herald*, the Government’s motives were ‘utterly transparent’:

Quite simply, it recognises that its inner workings and irregularities would not survive continued exposure in the pages of the *Taimi*. ... Deprived of information and insight, the people of Tonga will become increasingly disillusioned with the royal family. The strangling of the *Taimi* will not obliterate the stirrings of democracy; it will simply push them along a different, potentially more destructive, path. History shows this impulse can be accommodated by shrewd monarchies, but can never be denied (Sad outlook for Pacific democracy, 13 February 2004).

The Government dismissed the condemnation as being largely misinformed and ‘unethical’ and put a lot of energy into a public relations campaign to bolster its credibility. Among its defenders were cabinet Chief Secretary ‘Eseta Fusitu’a, who is also the kingdom’s Newspaper Registrar. She wrote articles for magazines and other media explaining her Government’s case when the first dozen newspaper licences were granted under the new law (see Table 12):

It is unfortunate that most of the ‘objective’ critiquing of Tonga’s newspaper laws and licensing requirements from abroad, including those of well-known media groups, are in fact based on very sketchy knowledge of the laws themselves ... How can anyone critique a newspaper that they have not read? How can anyone critique English or Chinese newspapers if they do not understand English or Chinese at all? (Fusitu’a, 2004).

Table 1: Publications licensed under Tonga's *Media Operators Act 2003*

<i>Newspaper</i>	<i>Date licensed</i>	<i>Owners</i>	<i>Language</i>	<i>Frequency</i>
1. <i>Taumu'a Lelei</i>	6 Feb 2004	Catholic Church	Tongan	Monthly
2. <i>Tonga Chronicle</i>	6 Feb 2004	Tongan Govt	Tongan/Eng.	Weekly
3. <i>'Ofa-ki-Tonga</i>	6 Feb 2004	Tokaikolo Church	Tongan	Monthly
4. <i>Tohi Fanongonongo</i>	6 Feb 2004	Wesleyan Church	Tongan	Monthly
5. <i>Lali Buzz</i>	6 Feb 2004	Community newsletter	English	—
6. <i>Tonga Star</i>	6 Feb 2004	Sangster Saulala	Tongan	Weekly
7. Untitled ¹	16 Feb 2004	Friendly Islands Bookshop	Unspecified	Unspecified
8. Untitled ¹	16 Feb 2004	Church of Jesus Christ of Latter Day Saints	Unspecified	Unspecified
9. <i>Talak</i> ²	16 Feb 2004	Vula News Co. Ltd	Tongan	Weekly
10. <i>Kele'a</i> ³	28 March 2004	HRDM	Tongan	Fortnightly
11. <i>Tongan Woman</i>	28 March 2004	Lali Media Group	Tongan	Monthly
12. <i>Matangi Tonga</i>	31 March 2004	Vava'u Press Ltd	Tongan/Eng.	Bimonthly

Note: ¹ Licensed but no actual publication; ² new publication published by a Lali Media group company; ³ licensing was originally refused when Po'oi Pohiva was listed as editor, but the paper was subsequently granted a licence when former Radio Tonga general manager Tavaki Fusimalohi was put forward as editor.

Nevertheless, *Matangi Tonga* magazine, whose licensing was delayed for more than two months while the part-owner, New Zealander Mary Fonua, took out Tongan citizenship, said it was under no illusions about the real purpose of issuing licences. Anybody doubting that the Government was using its licensing powers to 'bully' the press, commented publisher and co-owner Pesi Fonua, ought to take note of what happened on 28 March 2004 (Newspaper Registrar rebukes editors, 2004): Three licensed publications, *Taumu'a Lelei*, *Talaki*, and the *Tonga Star*, were summoned by Fusitu'a and harangued about an interview over a planned judicial review of the constitutional changes.

During UNESCO's Media Freedom Day address on 3 May 2004, Justice Minister 'Aisea Taumoepeau admitted that the Tongan Government had adopted sections of the media laws of Singapore. He said that if the media laws had worked well for Singapore, 'then there is no reason why it should not be beneficial for Tonga' (Singapore's media law for Tonga, 2004).

Case study two: 'Draconian' statutory media council in Fiji

In Fiji, freedom of the press is guaranteed under Section 30 of the *Constitution Amendment Act 1997*:

30 (1) Every person has the right to freedom of speech and expression, including:

- (a) freedom to seek, receive and impart information and ideas; and
- (b) freedom of the press and other media.

Since the mid-1990s, three Fiji Governments (led by Sitiveni Rabuka, Mahendra Chaudhry and the incumbent, Laisenia Qarase) have all pledged media reforms, including the introduction of Freedom of Information legislation. Although draft legislation has been drafted and revised at various stages, no Government has yet delivered on the promises. Within the media industry there has been some ‘justifiable nervousness on the part of executives that the legislation may introduce some attempt at control, particularly as at times politicians have hinted at licensing’ (aLI, 2003; Robie, 2003b: 171). But there has been little debate on cross-ownership issues. In the late-1990s, the Thomson Foundation, an independent Wales-based media training agency founded by Lord Thomson of Fleet in 1962, played a crucial advisory role for the post-coup Rabuka Government. The arrival of Thomson Foundation consultants Kenneth Morgan and John Prescott Thomas in Fiji on 15 September 1996 for a two-week visit to research the republic’s legislation that impacted on the media occurred at a critical time. It was shortly after a report of the Fiji Constitution Review Commission, *Towards a United Future*, had been published.

Morgan and Thomas concluded that they had approached their mission with ‘genuinely open minds’, and with no plan to impose ‘inappropriate foreign solutions’ to Fiji’s problems (Morgan & Thomas, 1996: 5). Certain, unspecified aspects of media legislation in Britain were discarded, as were practices in some South-East Asian countries that were ‘sometimes suggested to us as models [but] seemed incompatible with Fiji’s Constitution and with stated Government policy’. Morgan and Thomas were convinced that what was needed were systems and mechanisms expressly designed for Fiji’s circumstances. They also noted:

While responsible governments and politicians and a responsible press should share a common aim — the best interests of their society — their roles are different. In a healthy democratic society, the relationship between politicians and a free press is, quite properly, likely to be wary, questioning and sceptical, rather than close, cosy and adulatory (Morgan & Thomas, 1996).

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Many proposals were made in the Thomson report about issues such as legislation, the state of media training, broadcasting, print media and the role of the self-regulating Fiji Media Council. The Thomson report recommended cooperation between the media industry employers, the Fiji Islands Media Association (FIMA), the Pacific Islands News Association (PINA), the Fiji Journalists Association (FJA), the University of the South Pacific Journalism Programme (USP) and the Fiji Journalism Institute under the umbrella of the then fledgling Fiji Media Council. Their joint purpose was to develop an 'integrated approach' to structured on-the-job and in-house training, backed by part-time or block release courses. The report also recommended that the Media Council be formed out of the News Council that had been established, due to the 'apparent ineffectiveness' of the former Press Council. This body would be funded by media industry members. It was also recommended (p 18) that an equal number of 'broadly representative' lay members be appointed to the council. There was no mention of a tripartite system (including journalists), the model used as the basis of both the Australian and NZ press councils.

Perhaps one of the most important recommendations of this section of the report was a suggestion for the core content for Fiji's various codes of ethics and programme standards to be combined into a single code. In January 1998, the Thomson Report recommendations were accepted in principle and the Media Council embarked on developing a General Media Code of Ethics and Practice. However, during Chaudhry's Labour-led Coalition Government, the media faced sustained criticism of its professionalism and standards, climaxing with an extraordinary speech when launching the new ethics code in November 1999. The Prime Minister bitterly attacked individual journalists over alleged breaches (Chaudhry, 1999). The tension between Chaudhry and the media, particularly *The Fiji Times* and Fiji Television, continued until the Government was deposed in the attempted coup of May 2000.

Former *Review* editor Shailendra Singh, in an article profiling the state of news media reform, assessed three years of criticism of media standards. He argued that by not taking heed of the grievances about standards and lack of training, the media in Fiji could 'become its own worst enemy'.

One area Government is clearly sceptical about is self-regulation through the Fiji Media Council ... Even the [Thomson Report] authors admitted that a system allowing the media to be judge and jury at its own trial was far from perfect (Singh, 2002: 6).

Noting that in seven years it was still a ‘point of contention’ whether the Media Council had lived up to expectations in the Thomson Report, Singh was later compelled to condemn the draft *Media Council of Fiji Bill* as being a ‘mockery of the Fourth Estate’ (2003). Ironically, Information Minister Simone Kaitani made the proposed legislation public on Media Freedom Day, 3 May 2003. The draft law immediately encountered a storm of protest from media proprietors, non-government organisations, opposition parties, some trade unions and the Fiji Council of Churches over the ‘draconian’ attempt to gag the media (Fiji Media Bill called draconian, 2003). The bill drew criticism from the three daily newspapers – *The Fiji Times*, *Fiji Sun* and *Daily Post*, the self-regulating Fiji Media Council itself, Opposition Leader Mick Beddoes, the Fiji Labour Party, the University of the South Pacific’s Journalism Programme, Fiji Media Watch and the Citizens’ Constitutional Forum (CCF).

Although public submissions were called for, no copies of the bill were circulated in the two major vernacular languages of the country (Fijian and Hindi), and thus few people attended the hearings (What women say, 2003). The CCF called for a major shake-up of the Media Council’s representative balance, proposing that all seven members representing the public should be nominated by civil society groups, the churches, the legal profession and the tertiary education sector¹ (CCF, n.d.).

Fiji Times publisher Tony Yianni condemned misleading Government advertising claims that the bill had been based on Thomson Report recommendations. He cited the report as saying that the ‘most appropriate system for Fiji is for the regulation to be applied by an independent non-government body’ (*Fiji Times* slams ‘misleading’ state media law advertisement, 2003). Yianni added: ‘That means in layman’s terms: “The Government must back off from regulating the media”.’ In his submission, Yianni said that if the Government dropped the draft law, ‘Everyone wins’ (Yianni et al, 2003). However, some commentators such as media lawyer Richard Naidu, a former leading journalist, saw the draft bill as ‘not so much sinister as plain amateurish’ (Naidu, 2003):

It managed to make the Government repressive without achieving any measure of real control over the media. So who is thinking out there?

Fundamentally, the draft legislation takes the existing self-regulating Media Council and turns it into a statutory body, with the state appointing a majority

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of its members. Secondly, it also takes the existing Media Code of Ethics and makes this, in effect, a regulation – a subsidiary law – which must be followed. The Minister of Information and Media Relations can arbitrarily change this by himself without going back to Parliament. For example, he could, ‘at the stroke of the pen’ (ibid.), declare it to be unethical to criticise Government ministers in news reports.

Conclusion

Although there are some differences in the cultural and socio-political conditions of the two Pacific countries, the effects of both the constitutional changes in Tonga and the draft media legislation in Fiji are likely to have similar chilling repercussions for media freedom. They are perceived as a sword of Damocles in the South Pacific. In the case of Tonga, the new clause 7 has effectively overturned the constitutional guarantee of a free press and the new clause 56A is a direct attack on the existing constitutional position of the law courts. The intended effect of clause 56A is to nullify the role of the courts in constitutional rulings since there would no longer be any agency with the power and authority under the Constitution to adjudicate. This would effectively ‘put an end to the rule of law in Tonga’ (Harrison, 2003: 4). It would also be difficult to see any self-respecting judges being prepared to remain in office under such a regime.²

This ‘ill-thought out provision appears to be a knee-jerk reaction to the rejection by the Chief Justice’ of the Crown’s repeated arguments claiming that the courts are precluded from undertaking a judicial review of the cabinet and Privy Council in their unconstitutional and unlawful bans against *Taimi ‘o Tonga* (ibid.). According to Harrison, who has been an advocate over Tongan constitutional matters for more than 15 years, the changes amount to ‘an effective overturning of the current constitutional regime’.

While the implications of the draft media legislation in Fiji, if passed into law, may be less spectacular than the Tongan situation, such an Act would still have a serious gagging effect. The draft bill is reported to be in a temporary state of limbo (Nadkarni, 2003b). The spirited ‘no bill’ campaign that started in May 2003 has receded in recent months even though the Attorney-General had clearly stated that the bill would be tabled in Parliament at an early opportunity.

Perhaps one way to address this threat is for the media to make a much better job of its self-regulation regime. This is something that has not been

achieved in the past eight years. A strong, well-trained, technologically modern media in the Pacific is in 'everyone's interest', according to Nadkarni (2003b). Now is the time for the region's media to stand up united, do some soul-searching and put forward a strategy based on unity of purpose.

However, what is also vitally needed in both Fiji and Tonga is a change of culture committed to open government and transparency within the media. As Fiji strives to rescue national development after the political upheaval of the past four years, it is important to consider the empowering right to information. According to a Commonwealth human rights report, secrecy and constraints on the free flow of information in Fiji and the South Pacific have resulted in a culture of closed government (Rodrigues, 2003). This has led to the 'development agenda being sidetracked, democracy being undermined and, most distressingly, upheaval and conflict' (ibid.: 7).

Notes

¹The CCF formula for public representation on the Media Council: Civil society – one (Forum of Non-Government Organisations); Christians – two (Fiji Council of Churches and Assemblies of Christian Churches); Hindus – one (Sanatan Dharm Pratinidhi Sabha and the Arya Samaj); Muslims – one (Fiji Muslim League); legal profession – one (Fiji Law Society); and tertiary education – one (a committee of tertiary institutions chaired by the University of the South Pacific vice-chancellor) (CCF Submission, n.d.).

²Tonga's Chief Justice Gordon Ward has since resigned midway through his 10-year contract to become President of the Fiji Court of Appeal from July 2004 (Justice Ward heads to Fiji, 2004).

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