



PRESS STATEMENT

Apia, 29 July 2020 – *Disentangling beliefs about freedom of opinion/ expression*

The right to freedom of opinion and freedom of expression/speech are important rights for us all. They are fundamental to human existence in a free society because they enable people as social beings to relate and to communicate with one another. They guarantee to every person freedom to exchange information, debate ideas and express opinions. These could be exchanges on political issues, private or public affairs, discussions on human rights, general wellbeing or whatever else people may choose to address. The content or manner in which expressions are publicized by individuals can however be offensive and harmful to others.

The right of free speech is guaranteed to every Samoan citizen under our Constitution (Article 13 (1) (a)). It is also well established in international law: Universal Declaration on Human Rights (Article 19) and the International Convention on Civil and Political Rights (ICCPR) (Articles 19 (1) and (2)) of which Samoa has ratified.

Valuable as it is for Samoans to enjoy full freedom of expression, it cannot be denied that some of our people have been greatly distressed by postings in social media directed at them and their families.

The Prime Minister declared recently during an interview that the Government is seriously looking into temporarily banning Facebook for a specific period leading up to the general elections in 2021. This is not the first time the Prime Minister has spoken of banning Facebook for what he has come to view as improper or unprincipled use of social media. A Samoa Observer article 31/3/2018 reported that the possibility of completely banning Facebook was, at that time, under consideration.

The Prime Minister attributes the Government's revisiting of a possible Facebook ban to suggestions from members of the public. The concern arises supposedly, from unabated use of Facebook by faceless users to incite hate, to insult, bully, and to make false and defamatory remarks about public figures that also impact upon their families and loved ones.

What is the freedom of expression?

It is your right to seek, receive or impart information or ideas of any kind, either orally, in writing or in print, in the form of art, or through any other media of your choice.

What is the freedom of opinion?

It is your right to hold an opinion, change an opinion whenever and for whatever reason you freely choose.

What is Hate Speech?

Any kind of communication in speech, writing or behavior, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are i.e. based on their religion, ethnicity, nationality, race, color, descent, gender or other identity factor.

Freedom of speech, while the most cherished, is probably the most misunderstood of the personal freedoms. The problem is that some people believe or want to believe that freedom of speech is having ***'the right to say whatever I like, about whoever and whatever I like, however I like, whenever I like'***. This is a serious misconception. **No fundamental freedom is absolute.** The enjoyment of any personal freedom in a civilized society is limited by the rights of others to enjoy their own personal freedoms. Fundamental rights are in tandem always with a fundamental responsibility not to infringe upon the legitimate rights of others.

Every individual in an open, peace loving society has to be free to express his ideas, or to explain any view he may hold to inform, edify or entertain fellow citizens. On the other hand, no one should be free to use abusive or insulting language to harass or distress another, much less to excite hostility against him, or to bring him into contempt. In the nature of things then, it is necessary to subject freedom of speech to restrictions that are reasonable and consistent with the needs of a free democratic society. Such **restrictions need to be carefully thought out and expressed clearly in law.**

Examples

Accusing a politician or anyone else expressly or by innuendo of stealing or having an affair without any proof is NOT a legitimate exercise of free speech.

Exchanging views with people on a family wedding, planning projects or on a topical public issue is exercising freedom of speech.

A good example of free speech in exchanging views is this: "I don't think it's a good policy because I don't believe in rights of children"

An example of the misuse of free speech is this: "I don't think your ideas are good, I think you are stupid and I do not want to hear your views again."

"Hate Speech" is something with which some countries around the world are struggling to cope with. Dark motivation intrinsic to this phenomenon needs no explanation. The particular contexts, in which hate speech has emerged as a problem in countries that have acted to

counter it, are not areas of evident concern in Samoa at the present time. The dimensions and the realities of malevolent speech which may be considered problematic within our shores are manifestly different.

The term is not defined under international law and definitions under national laws vary. Generally 'hate speech' is, "any kind of communication in speech, writing or behavior, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, color, descent, gender or other identity factor".¹

Hate speech as a form of attack is a menace to democratic values, social stability and peace. When left unchecked it can generate violence. It is for this reason that some countries have taken legislative measures to address it in particular areas of concern.

To ban Facebook in Samoa, even for a short time because of malevolent speech, is an extremely grave step to contemplate. The Government, in no uncertain terms, would be curtailing in a very telling way the ability of the people of Samoa to speak and to communicate freely. Moreover, the people of Samoa as a whole would be deprived of a fundamental entitlement because of supposedly, malevolent activity pursued by a few via Facebook.

Overkill is criticism that a ban would justifiably attract as the people of Samoa in its entirety would be drastically affected. In addition, no one doubts malevolent activity via social media by persons unknown to be politically motivated, with consequential impact upon individuals as collateral damage. It is reasonable to regard the contemplated counter of a Facebook ban to be also for political ends, more so than for human rights considerations. Frustrating as it must be to be dogged by political foes that are enabled by Facebook to exist without faces, the **curtailment in a massive way of a democratic country's freedom of speech to advance political ends is wrong.**

It is important for Government to establish sound legal frameworks on hate speech which hold perpetrators accountable, uphold human dignity, protect marginalized groups, while still balancing the right to freedom of expression.

Short of curtailment, appropriate restrictions may be imposed on freedom of speech and expression to combat intolerance, discrimination and incitement to hatred. ICCPR Article 19 (3) provides that restrictions to freedom of expression must be provided by law and are necessary (a) for respect for the rights or reputations of others; and (b) for the protection of national security or public order, or of public health or morals.

¹ <https://www.ohchr.org/EN/NewsEvents/Pages/HatespeechSyrian.aspx>

The Human Rights Committee noted that the restrictions/exceptions under Article 19 (3) are narrowly defined and the burden is on the Government to justify the restriction. Any restriction must meet the following 3 conditions:²

1. **Legality:** restriction must be provided by law, precise, public and transparent and appropriate notice given to those whose speech is being regulated,
2. **Legitimacy:** restriction must be justified one or more of the interests define in Article 19(3) of ICCPR and
3. **Necessity and proportionality:** Government must demonstrate that the restriction is necessary to protect a legitimate interest and to be the least restrictive means to achieve the purported aim. This is referred to as the “Strict Tests” – restrictions must be applied only for the purposes for which they were prescribed and must be directly related to the specific need on which they are established.

Samoa’s *Constitution* (Article 13 (2)), provides that the right to freedom of speech and expression, through law, is limited or restricted in the interests of national security, friendly relations with other States, or public order or morals, for protecting the privileges of the Legislative Assembly, for preventing the disclosure of information received in confidence, or for preventing contempt of Court, defamation or incitement to any offence. We see these limitations in our *Crimes Act 2013* where it is an offence to incite hostility (Section 41). Persons found guilty are given a prison sentence of not more than 2 years. It is a crime to publish false information with intention to harm another person’s reputation. If a person is found guilty the penalty is either a fine (not more than 175 penalty units), or imprisonment for not more than 3 months.

Government has an obligation to prohibit hate speech and incitement, defamation and the restrictions can be justified if it is to protect specific public interest or the rights and reputations of others. However, any restrictions on freedom of speech and freedom of expression must be set out in laws and must be clear and concise so everyone can understand them.³ Governments must also be able to demonstrate the need for them and that they must be proportionate. It has to be supported by safeguards to stop the abuse of these restrictions and incorporate a proper appeals process. Restrictions that do not comply with these conditions violate freedom of expression.

Why do some countries regulate hate speech?

Human Dignity . . . is precisely what hate speech laws are designed to protect-not dignity in the sense of any particular level of honor or esteem (or self-esteem), but dignity in the sense of a person’s basic entitlement to be regarded as a member of society in good standing, as someone whose membership of a minority group does not disqualify him or her from ordinary social interaction. That is what hate speech attacks, and that is what laws suppressing hate speech aim to protect - *Professor Jeremy Waldron, author of The Harm of Hate Speech.*

² <https://www.refworld.org/docid/4ed34b562.html>

³ https://www.ohchr.org/Documents/Issues/Opinion/A_74_486.pdf

It is important to note that addressing hate speech does not mean limiting or prohibiting freedom of speech. It means keeping hate speech from escalating into something more dangerous, particularly incitement to discrimination, hostility and violence, which is prohibited under international law.

The Ombudsman Office also believes that combating hate speech cannot simply be left to the law to address. Such problems call for the combined effort of EVERYONE – parents, schools, religious leaders, policymakers, journalists and the general public to address the main drivers of hate speech so that the fundamental freedoms of our society are upheld.

CHECKS AND BALANCES

Specifics

Any restriction should be as specific as possible. It would be wrong to ban an entire website because of a problem with one page

National security and public order

These terms must be precisely defined in law to prevent them being used as excuses for excessive restrictions.

Morals

This is a very subjective area, but any restrictions must not be based on a single tradition or religion and must not discriminate against anyone living in a particular country.

Rights and reputations of others

Public officials should tolerate more criticism than private individuals. So defamation laws that stop legitimate criticism of a government or public official, violate the right to free speech.

Blasphemy

Protecting abstract concepts, religious beliefs or other beliefs or the sensibilities of people that believe them is not grounds for restricting freedom of speech.

Media and journalists

Journalists and bloggers face particular risks because of the work they do. Countries therefore have a responsibility to protect their right to freedom of speech. Restrictions on Newspapers, TV stations, etc. can affect everyone's right to freedom of expression.

Whistleblowers

Government should never bring criminal proceedings against anyone who reveals information about human rights abuses.

*****ENDS*****