

KINGDOM OF TONGA

Two Journalists and a Parliamentarian jailed over media criticism of Government Minister

Two newspaper editors and a Peoples' Representatives member of Parliament have been imprisoned in Tonga for their role in peaceful public criticism of the Minister of Justice. Amnesty International is concerned about the detention for 30 days on 19 September 1996 by the Legislative Assembly of the Kingdom of Tonga, of a Member of the Assembly, Mr 'Akilisi Pohiva, and two journalists of the *Times of Tonga*, Mr Filokalafi 'Akau'ola and Mr Kalafi Moala. While the two journalists remain in the island state's main prison, Mr Pohiva, leader of the Pro-Democracy Committee, has been transferred from prison to the National Hospital following an asthma attack.

The three men were questioned on 19 September 1996 in a public session of the Legislative Assembly, charged under Article 70 of the Tongan Constitution of 1875 with "Libelling the Legislative Assembly" after the weekly *Taimi 'o Tonga (Times of Tonga)* newspaper published the text of an impeachment motion against the Minister of Justice before it was tabled in Parliament. It was formally submitted to the House several hours after its publication in the newspaper on the morning of 4 September. Mr Pohiva reportedly later admitted to having leaked the motion to the newspaper.

After a lengthy debate, the Legislative Assembly on 19 September voted that three men were "guilty of contempt of the House" and imposed a 30 day prison term. The three have no right of appeal. An application by the two journalists to have a writ of Habeas Corpus issued by the Tongan Supreme Court was refused on 25 September by Acting Chief Justice John Lewis on the grounds that

"Parliament is entitled to absolute privilege over its internal proceedings and in that sense it is properly entitled to determine what words or actions will amount to contempt and the action which it should (subject to the provisions of clause 70 [of the Constitution]) impose upon a person whom it finds to have committed contempt of the House."

Article 70 of the Constitution provides for the imprisonment for 30 days of anyone found guilty of either (1) speaking or acting disrespectfully in the presence of the Legislative Assembly, or (2) publishing any libel on the Legislative Assembly, or threatening any member or his property. According to the Tongan Government, Judge Lewis confirmed that the prisoners "neither spoke or acted disrespectfully in the presence of the Legislative Assembly."

The Tongan Government explained to Amnesty International that Mr 'Akilisi Pohiva was imprisoned for providing "libellous information" to the *Times of Tonga* for publication. The two journalists were imprisoned because they "falsely reported that Parliament was impeaching the

Minister for Justice" at a time when none of the procedures for an impeachment under Tongan law had been completed. According to the Government, the

"Tonga Times had breached the right of the House and of the Minister of Justice, to be reported correctly about. Secondly, it also violated the right of the public to receive correct information from the product which they had bought."

On 25 September, the Legislative Assembly voted to accept the tabling of the impeachment motion which, according to the Government's explanation of the procedures, means that "there is a case to answer". The main reason for the impeachment motion was that the Minister of Justice allegedly attended the Atlanta Olympics and received his allowances during the visit without formal permission of the Legislative Assembly. The Assembly comprises the King, the nine appointed Ministers of Cabinet, nine Nobles elected by their peers, and nine Peoples' Representatives elected by the adult citizens of Tonga.

Amnesty International believes that the three men have been imprisoned as a result of their peaceful exercise of the right to freedom of expression, guaranteed by Article 19 of the Universal Declaration of Human Rights and protected by Article 19 of the International Covenant on Civil and Political Rights. The organization notes that Article 7 of the Tongan Constitution of 1875 states

"It shall be lawful for all people to speak write and print their own 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 slander or the laws for the protection of the King and the Royal Family."

Amnesty International considers 'Akilisi Pohiva, Filokalafi 'Akau'ola and Kalafi Moala to be prisoners of conscience, a term the organization uses to describe people who are in any form of detention by reason of their political, religious or other conscientiously held beliefs, provided that they have not used or advocated violence. In a letter to His Majesty, King Taufa 'Ahau Tupou IV, Amnesty International on 23 September urged the Tongan head of State to exercise his powers to lift the detention orders for 'Akilisi Pohiva, Filokalafi 'Akau'ola and Kalafi Moala immediately and unconditionally. The organization also asked for information on the reasons for the imprisonment.

On 1 October 1996 the Prime Minister of Tonga announced that Parliament would rise early this year on 3 October 1996 as most ministers would be overseas from 7 October. He also reportedly explained the decision by suggesting that there was not much business before the House. This decision has been regarded as highly unusual in Tonga, and political observers expect that Parliament will not reopen until 1997.