‘We didn’t get a fair trial’

COMMENTARY: Kalali Moala

DESPITE the fact that we were given an opportunity to address the Parliament and our (Moala and Akau’ola) legal representative was permitted to pose questions relating to the legality of the proceeding, I already felt that we would be found guilty, based on the statements and arguments made by the members of Parliament.

One of the major questions I raised was: How could I and my colleagues expect a fair trial/hearing from a group, the majority of whom I have evidence to prove, hate the Taimi ‘o Tonga, newspaper, and especially me as its editor.

If Parliament felt that it had the legal authority to pass judgement on this issue then it was absolutely necessary for Parliament to then separate itself from the witness, the prosecutors and especially those members of Parliament who had already publicly declared that we were guilty.

In any case this historical ‘trial’ conducted by the Tongan Parliament proves the following:

1. It is possible for Parliament convert itself into a court of law despite the fact that the majority of its members are not equipped or educated to deal with legal issues and matters to be able to guarantee a fair trial.
2. It is possible for Parliament to haul by force any member of the public before it, put the person on ‘trial’ and send the person to jail.
3. No one who questions the Government can expect to get a fair ‘trial’ in Parliament because 21 of its 30 members are most likely to vote on the side of the Government because their allegiance is with the Government.
4. The vote in Parliament on whether one is guilty or not is not guided by some superior legal principles but is based on personal inclinations — e.g. how one felt at that time; how one regarded the persons charged; how the Crown Prince or other senior members of Parliament voted and its effect on other members of Parliament and various other reasons.
5. It is not appropriate/correct for Parliament to put on trial a person who is not one of its members.
6. Akikutai Pohiva was not permitted to be in Parliament when the debate and vote was being conducted yet the Minister for Justice who instigated the case against us was allowed to participate in the debate and even in the vote. Where is the fair trial?
Moala said it was also true that the motion had been registered and placed in the deputy speaker’s files so had been already in the parliamentary process. “This newspaper only reported that the petition had been submitted, the allegations of the petition, and who were the MPs who had signed it.”

Amnesty International declared the three prisoners of conscience—a term the organisation uses to describe people who are in any form of detention because of their political, religious or other conscientiously held beliefs—provided that they have not used or advocated violence. In a letter on September 23 to the King, Amnesty International urged the Tongan head of state to exercise his powers to lift the detention orders “immediately and unconditionally.”

Amnesty said it believed the three men had 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 organisation noted that Clause 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 forever but nothing in this clause shall be held to oust or abridge the law of slander or the laws for the protection of the King and the royal family.” But the Tongan government reacted bitterly to the flood of international criticism about the jailings, claiming that the men had set themselves up to be “martyrs” and accusing press freedom and other organisations of waging a campaign of “media terrorism” against the kingdom.

Acting Chief Secretary Esota Fusiata’a said the government had received a series of “incorrect, unjust, biased and malicious” press condemnation following the jailings and called on protesting media organisations to publish the “facts.” In a “background” statement defending government actions, he accused the incident of being an act of “freedom of the press, not the right of the public to be informed about matters of public interest.” She said the issues were “the right of the House and the Minister for Justice to be reported truthfully, and the right of the people to correct information” in a newspaper.

Both of these are fundamental human rights, and are the elementary demands of the principles of natural justice. Both rights, however, were violated by Moala’s, ‘Akau’ola and Pohiva, and are still being violated by many overseas organisations and media services.

Despite this most regrettable reality, of media terrorism against Tonga, we are still hopeful that reputable media services will one day ask for the facts, and will one day publish them.