



Tonga

CONSTITUTION OF TONGA

Chapter 01.01

2016 Revised Edition



CONSTITUTION OF TONGA

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CONSTITUTION OF TONGA

THE CONSTITUTION OF TONGA¹

Granted by His Majesty King George Tupou I on the fourth day of November One thousand eight hundred and seventy-five and since amended in accordance with the law on divers dates mentioned in the endnotes to this revised edition.

PART I - DECLARATION OF RIGHTS

1 Declaration of freedom

Since it appears to be the will of God that man should be free as He has made all men of one blood therefore shall the people of Tonga and all who sojourn or may sojourn in this Kingdom be free for ever. And all men may use their lives and persons and time to acquire and possess property and to dispose of their labour and the fruit of their hands and to use their own property as they will.

2 Slavery prohibited

No person shall serve another against his will except he be undergoing punishment by law and any slave who may escape from a foreign country to Tonga (unless he be escaping from justice being guilty of homicide or theft or any great crime or involved in debt) shall be free from the moment he sets foot on Tongan soil for no person shall be in servitude under the protection of the flag of Tonga.²

3 Conditions under which foreign labourers may be introduced

Whoever may wish to bring persons from other islands to work for him may make an agreement with them for the number of years they will work for him and a copy

of the written agreement he makes with them shall be deposited in the Public Offices stating the amount of payment they shall receive the period they shall work and a promise to take them back to their own land. And the Government shall cause such contract to be carried out both on behalf of those who engage and those who are engaged. And such persons being so introduced shall be subject to the laws of the land and shall pay the same Customs duties as all the people in the Kingdom and taxes as shall be ordained by the King and his Cabinet.³

4 Same law for all classes

There shall be but one law in Tonga for chiefs and commoners for non-Tongans and Tongans. No laws shall be enacted for one class and not for another class but the law shall be the same for all the people of this land.⁴

5 Freedom of Worship

All men are free to practise their religion and to worship God as they may deem fit in accordance with the dictates of their own worship consciences and to assemble for religious service in such places as they may appoint. But it shall not be lawful to use this freedom to commit evil and licentious acts or under the name of worship to do what is contrary to the law and peace of the land.

6 Sabbath Day to be kept holy

The Sabbath Day shall be kept holy in Tonga and no person shall practise his trade or profession or conduct any commercial undertaking on the Sabbath Day except according to law; and any agreement made or witnessed on that day shall be null and void and of no legal effect.⁵

7 Freedom of the press

- (1) 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.⁶
- (2) It shall be lawful, in addition to the exceptions set out in sub-clause (1), to enact such laws as are considered necessary or expedient in the public interest, national security, public order, morality, cultural traditions of the Kingdom, or privileges of the Legislative Assembly and to provide for contempt of Court and the commission of any offence.⁷
- (3) It shall be lawful to enact laws to regulate the operation of any media.⁸

8 Freedom of petition

All people shall be free to send letters or petitions to the King or Legislative Assembly and to meet and consult concerning matters about which they think it right to petition the King or Legislative Assembly to pass or repeal enactments provided that they meet peaceably without arms and without disorder.

9 Habeas Corpus

The law of the writ of Habeas Corpus shall apply to all people and it shall never be suspended excepting in the case of war or rebellion in the land when it shall be lawful for the King to suspend it.

10 Accused must be tried

No one shall be punished because of any offence he may have committed until he has been sentenced according to law before a Court having jurisdiction in the case.⁹

11 Procedure on indictment

No one shall be tried or summoned to appear before any court or punished for failing to appear unless he have first received a written indictment (except in cases of impeachment or for offences within the jurisdiction of the magistrate or for contempt of court while the court is sitting). Such written indictment shall clearly state the offence charged against him and the grounds for the charge. And at his trial the witnesses against him shall be brought face to face with him (except according to law) and he shall hear their evidence and shall be allowed to question them and to bring forward any witness of his own and to make his own statement regarding the charge preferred against him. But whoever shall be indicted for any offence if he shall so elect shall be tried by jury and this law shall never be repealed. And all claims for large amounts shall be decided by a jury and the Legislative Assembly shall determine what shall be the amount of claim that may be decided without a jury.¹⁰

12 Accused cannot be tried twice

No one shall be tried again for any offence for which he has already been tried whether he was acquitted or convicted except in cases where the accused shall confess after having been acquitted by the Court and when there is sufficient evidence to prove the truth of his confession.

13 Charge cannot be altered¹¹

No one shall be tried on any charge but that which appears in the indictment, summons or warrant for which he is being brought to trial:

Save and except that —

- (a) where the complete commission of the offence charged is not proved but the evidence establishes an attempt to commit that offence the accused may be convicted of this attempt and punished accordingly; and
- (b) where an attempt to commit an offence is charged but the evidence establishes the commission of the full offence the accused may be convicted of the attempt; and
- (c) on the trial of any person for embezzlement or fraudulent conversion the jury shall be at liberty to find such person not guilty of embezzlement or fraudulent conversion but guilty of theft and on the trial of any person for theft the jury shall be at liberty to find such person guilty of embezzlement or fraudulent conversion.
- (d) any Act may provide that a person charged with an offence may be convicted of another offence (not being a more serious offence) arising out of the same circumstances.

14 Trial to be fair

No one shall be intimidated into giving evidence against himself nor shall the life or property or liberty of anyone be taken away except according to law.

15 Court to be unbiased

It shall not be lawful for any judge or magistrate to adjudicate or for any jurymen to sit in any case in which one of his relations is concerned either as a plaintiff, defendant or witness: Nor shall any judge or magistrate sit in any case which concerns himself: Nor shall any judge or magistrate or jurymen on any pretence receive any present or money or anything else from anyone who is about to be tried nor from any of the defendant's friends but all judges magistrates and jurymen shall be entirely free and shall in no case whatever be interested or biased on the discharge of their duties.

16 Premises cannot be searched without warrant

It shall not be lawful for anyone to enter forcibly the houses or premises of another or to search for anything or to take anything the property of another except according to law: And should any person lose any property and believe it to be concealed in any place whether house or premises it shall be lawful for him to make an affidavit before a magistrate that he believes it to be concealed in that place and he shall describe particularly the property so concealed and the place in which he believes it to be concealed and the magistrate shall issue a search warrant to the police to search for the property according to the affidavit so made.¹²

17 Government to be impartial

The King shall reign on behalf of all his people and not so as to enrich or benefit any one man or any one family or any one class but without partiality for the good of all the people of his Kingdom.¹³

18 Taxation - Compensation to be paid for property taken

All the people have the right to expect that the Government will protect their life liberty and property and therefore it is right for all the people to support and contribute to the Government according to law. And if at any time there should be a war in the land and the Government should take the property of anyone the Government shall pay the fair value of such property to the owner. And if the Legislature shall resolve to take from any person or persons their premises or a part of their premises or their houses for the purpose of making Government roads or other work of benefit to the Government the Government shall pay the fair value.¹⁴

19 Expenditure to be voted¹⁵

No money shall be paid out of the Treasury nor borrowed nor debts contracted by the Government but by the prior vote of the Legislative Assembly, except in the following cases:

- (i) Where an Act duly passed by the Legislative Assembly gives power to pay out money or borrow or contract debts, then money may be paid out, or borrowing carried out or debts contracted in terms of that Act; and
- (ii) In cases of war or rebellion or dangerous epidemic or a similar emergency, then it may be done by the Minister for Finance with the consent of Cabinet, and the King shall at once convoke the Legislative Assembly and the Minister for Finance shall state the grounds for the expenditure and the amount.

20 Retrospective laws

It shall not be lawful to enact any retrospective laws in so far as they may curtail or take away or affect rights or privileges existing at the time of the passing of such laws.¹⁶

21 Army subject to civil law

Every soldier shall be subject to the laws of the land whether he belong to the Guards, the Artillery or to the Militia in accordance with the twenty-second clause and any soldier who breaks the law of the land shall be tried in the courts as any other person. And it shall not be lawful for any officer to quarter any soldier upon

the premises of anyone except in time of war and then only as may be resolved by the Legislative Assembly.

22 Guards and Militia

It shall be lawful for the King to command any taxpayer to join the militia for the purpose of instruction or for parade on public occasions should he think fit and also in time of war to call out all those capable of bearing arms and to make orders and regulations for their control and provisioning.¹⁷

23 Disabilities of convict

No person having been convicted of a criminal offence and sentenced to imprisonment for more than two years, shall hold any office under the Government whether of emolument or honour nor shall he be qualified to vote for nor to be elected a representative of the Legislative Assembly unless he has received from the King a pardon together with a declaration that he is freed from the disabilities to which he would otherwise be subject under the provisions of this clause:

Provided that the operation of this clause shall be suspended in any case until the expiration of 42 days after the date of the conviction; and in cases where notice of appeal or leave to appeal is given within 42 days after the date of conviction, until the determination of the appeal; and if the conviction is quashed on appeal or the sentence reduced to no more than 2 years imprisonment then this clause shall not have effect.¹⁸

24 Public officer not to engage in trade

It shall not be lawful for anyone holding any office under the Government whether of emolument or otherwise to hold any appointment from another Government without first obtaining permission from Cabinet. And it shall not be lawful for anyone holding an office of emolument under the Government to engage in trade or work for anyone else, except with the prior consent of Cabinet.¹⁹

25 *(Repealed by Act 28 of 1978)*

26 *(Repealed by Act 28 of 1978)*

27 Age of maturity

No person may succeed to any tofi'a or any title until he has attained the age of twenty one years, save for members of the Royal Family who shall be deemed to have attained maturity at eighteen years of age.²⁰

28 Qualifications for jurors

Every Tongan who has arrived at the age of 21 years and can read and write and is not disabled by the twenty third clause of this Constitution shall be liable to serve on juries and the names of all those who are liable to serve shall be published once every year and anyone who neglects to serve shall be punished as shall be enacted by the Legislature. Ministers of the Crown and the Governors, Members of the Legislative Assembly, Judges and Magistrates, heads of Government Departments or Ministries, law practitioners, members of the police force and of the armed forces of Tonga, officers of the Supreme Court, of the Magistrates Courts or of any prison, ministers of religion, persons of unsound mind or persons incapable of serving by reason of blindness, deafness or any other permanent physical infirmity shall be exempt from serving on juries.²¹

29 Naturalization

Any foreigner after he has resided in the Kingdom for the space of five years or more may with the consent of the King take the oath of allegiance and he may be granted a Certificate of Naturalization and all naturalized subjects shall have the same rights and privileges as native born subjects of Tonga with the exception that they shall not be entitled to the rights of hereditary tax allotments or town allotments.²²

29A Law may declare specific naturalization²³

- (1) Notwithstanding clause 29 of this Constitution it shall be lawful for the King and the Legislative Assembly to enact specific laws declaring any persons whether or not they have ever resided in Tonga to be or to have become naturalized subjects of Tonga from any date. All persons who are declared to be naturalized subjects of Tonga by any such legislation shall have, and shall be deemed to have had from the effective dates of their naturalizations, the same rights and privileges as other foreigners becoming naturalized subjects of Tonga by the grant to them of Certificates of Naturalization.
- (2) For the avoidance of doubt, Clause 20 of this Constitution shall not apply to any laws enacted in pursuance of sub-clause (1).

PART II - FORM OF GOVERNMENT

30 Form of Government

The form of government for this Kingdom is a Constitutional Monarchy under His Majesty King Tupou VI and his successors.²⁴

31 Government²⁵

The Government of this Kingdom is divided into three Bodies—

- 1st. The Cabinet;
- 2nd. The Legislative Assembly;
- 3rd. The Judiciary.

31A Attorney General²⁶

- (1) The King in Privy Council, after receiving advice from the Judicial Appointments and Discipline Panel, shall appoint an Attorney General, who shall:
 - (a) be the principal legal advisor to Cabinet and Government;
 - (b) be in charge of all criminal proceedings on behalf of the Crown; and
 - (c) perform any other functions and duties required under law.
- (2) The Attorney General shall, unless otherwise provided by law, have complete discretion to exercise his legal powers and duties, independently without any interference whatsoever from any person or authority.
- (3) The Attorney General shall be a person who is qualified to be a Judge of the Supreme Court and he shall, subject to any contractual arrangements, hold office during good behaviour.
- (4) The King in Privy Council, after receiving advice from the Judicial Appointments and Discipline Panel, shall determine the terms of appointment of the Attorney General, and shall have the power to dismiss him.
- (5) In the event of a vacancy in the office of the Attorney General, and pending the appointment of an Attorney General under sub-clause (1), the King in Privy Council may appoint a suitably qualified person to be Attorney General ad interim, to hold office until a substantive appointment has been made. Any such appointee shall have all the powers and privileges and perform all the duties of Attorney General as set forth in this clause.²⁷

32 Succession to the Throne

The right and title of King George Tupou I to the Crown and the Throne of this Kingdom were confirmed by the Constitution of 1875 and it was further declared in the said Constitution that the succession to the Crown and Throne should devolve upon David Uga and then upon Wellington Gu and then upon them begotten by him in marriage and if at any time there be no heirs of Wellington Gu the Crown and Throne shall descend in accordance with the following law of succession:

It shall be lawful only for those born in marriage to succeed.

The succession shall be to the eldest male child and the heirs of his body but if he should have no children to the second male child and the heirs of his body and so on until all the male line shall be ended.

Should there be no male child the eldest female child shall succeed and the heirs of her body and if she should have no children it shall descend to the second female child and the heirs of her body until the female line is ended.

And if there shall be none of this line of David Uga lawful descendants by marriage to succeed to the Crown of Tonga it shall descend to William Tungi and his lawful heirs begotten by him in marriage and to their heirs begotten by them.

And if there should be no lawful heir the King shall appoint his heir if the House of Nobles consent to it (the representatives of the people having no voice in the matter) and he shall be publicly declared heir to the Crown during the King's life.

Should there be no heir to the Crown or successor who has been so publicly proclaimed the Prime Minister or in his absence the Cabinet ministers shall convoke the nobles of the Legislative Assembly (the representatives of the people having no voice in the matter) and when they meet the House of Nobles shall choose by ballot some one of the chiefs whom they wish to succeed as King. And he shall succeed as the first of a new dynasty and he and the heirs of his body born in marriage shall possess the Crown according to law.

And in the event of there being none to succeed according to this law the Prime Minister or in his absence the Cabinet ministers shall again convoke the nobles of the Legislative Assembly in accordance with this law and they shall choose one to succeed to the Throne as the first of a new dynasty and so on according to this law for ever.

33 Heir Apparent may not choose consort

- (1) It shall not be lawful for any member of the Royal Family who is likely to succeed to the throne to marry any person without the consent of the King. And if any person should thus marry the marriage shall not be considered legal²⁸ and it shall be lawful for the King to cancel the right of such person and his heirs to succeed to the Crown of Tonga.²⁹ And the next person in succession to him who so marries shall be declared the heir and the offender shall be regarded as dead.
- (2) The expression “any member of the Royal Family who is likely to succeed to the throne” in the last preceding sub-clause shall be construed to include all persons born in lawful marriage and related by descent either lineally or collaterally to the King but not more than twenty times removed from the King.³⁰

34 Coronation oath

The following oath shall be taken by those who shall succeed to the throne—

“I solemnly swear before Almighty God to keep in its integrity the Constitution of Tonga and to govern in conformity with the laws thereof.”

35 Idiot not to succeed

No person shall succeed to the Crown of Tonga who has been found guilty of an offence punishable by imprisonment for more than two years or who is insane or imbecile.³¹

36 King commands forces

The King is the Commander-in-Chief of the armed forces of Tonga. He shall appoint all officers and make such regulations for the training and control of the forces as he may think best for the welfare of the country but it shall not be lawful for the King to make war without the consent of the Legislative Assembly.³²

37 King may grant pardons

It shall be lawful for the King in Privy Council to grant a Royal Pardon to any person for a breach of law (including any person who has been convicted of a breach of law) except in cases of impeachment.³³

38 King's relations with Parliament

The King may convoke the Legislative Assembly at any time and may dissolve it at his pleasure and command that new representatives of the nobles and people be elected to enter the Assembly. But it shall not be lawful for the Kingdom to remain without a meeting of the Assembly for a longer period than one year. The Assembly shall always meet at Nuku'alofa and at no other place except in time of war.³⁴

39 Treaties

It shall be lawful for the King to make treaties with Foreign States provided that such treaties shall be in accordance with the laws of the Kingdom. The King may appoint his representatives to other nations according to the custom of nations.³⁵

40 Foreign ministers

The King shall receive Foreign Ministers and may address the Legislative Assembly in writing regarding the affairs of the Kingdom and matters which he may wish to bring before the Assembly for deliberation.

41 King's powers – Signature to Acts

The King is the Sovereign of all the Chiefs and all the people. The person of the King is sacred. He reigns the country but ministers are responsible. All Acts that have passed the Legislative Assembly must bear the King's signature before they become law.³⁶

42 Prince Regent

Should the King die before his heir is eighteen years of age a Prince Regent shall be appointed in accordance with the forty-third clause.

43 Prince Regent, how appointed

Should the King wish to travel abroad it shall be lawful for him to appoint a Prince Regent who shall administer the affairs of the Kingdom during his absence. And if the King should die whilst his heir is not yet arrived at the age of eighteen years and he has not declared in his will his wishes regarding a Prince Regent during his heir's minority the Prime Minister of the Cabinet shall at once convoke the Legislative Assembly and they shall choose by ballot a Prince Regent who shall administer the affairs of the Kingdom in the name of the King until the heir shall have attained his majority (but the representatives of the people shall have no voice in such election).

44 King may confer titles

It is the King's prerogative to give titles of honour and to confer honourable distinctions but it shall not be lawful for him to deprive anyone who has an hereditary title of his title such as chiefs of hereditary lands and nobles of the Legislative Assembly who possess hereditary lands except in cases of treason. And if anyone shall be tried and found guilty of treason the King shall appoint a member of that family to succeed to the name and inheritance of the guilty person.

45 Coinage

It is the prerogative of the King with the advice of his Cabinet to decree the coinage which shall be legal tender in this Kingdom and to make regulations for the coining of money.

46 Martial law

In the event of civil war or war with a foreign state it shall be lawful for the King to proclaim martial law over any part or over the whole of the country.

47 National flag

The Flag of Tonga (the flag of King George) shall never be altered but shall always be the flag of this Kingdom and the present Royal Ensign shall always be the ensign of the Royal Family of Tonga.

48 Royal property

The lands of the King and the property of the King are his to dispose of as he pleases. The Government shall not touch them nor shall they be liable for any Government debt. But the houses built for him by the Government and any inheritances which may be given to him as King shall descend to his successors as the property and inheritance of the Royal line.

49 King exempt from action

It shall not be lawful to sue the King in any court for a debt without the consent of the Cabinet.

PRIVY COUNCIL**50 Constitution and powers of Privy Council³⁷**

- (1) The King shall appoint a Privy Council to provide him with advice. The Privy Council shall be composed of such people whom the King shall see fit to call to his Council.
- (2) If any case shall be heard in the Land Court relating to the determination of hereditary estates and titles, it shall be lawful for either party thereto to appeal to the King in Privy Council which shall determine how the appeal shall proceed and the judgment of the King in Privy Council shall be final.
- (3) Privy Council may by Order in Council regulate its own procedures.

THE PRIME MINISTER**50A The Prime Minister³⁸**

- (1) The King shall appoint from amongst the elected representatives a Prime Minister who is recommended by the Legislative Assembly in accordance with the procedure set out in the Schedule to, or clause 50B of, this Constitution.
- (2) The Prime Minister shall hold office until –
 - (a) another Prime Minister is appointed in accordance with this Constitution;

- (b) his appointment is revoked under clause 50B;
 - (c) he dies, resigns, or his appointment is revoked after he ceases to be an elected representative for any reason other than the dissolution of the Legislative Assembly; or
 - (d) he becomes ineligible to hold the office in accordance with this Constitution or any other law.
- (3) The Prime Minister shall regularly and as required report to the King upon matters that have arisen with the government and upon the state of the country.

50B Votes of No Confidence³⁹

- (1) If the Legislative Assembly passes a motion described as a “Vote of no confidence in the Prime Minister” in accordance with this clause, then upon delivery of that resolution to the King by the Speaker, the Prime Minister and all Ministers shall be deemed to have resigned and their appointments revoked.
- (2) A vote of no confidence in the Prime Minister –
- (a) shall not be moved unless at least 5 working days’ notice of the intention to move such a motion has been given to the Speaker; and
 - (b) shall be of no effect if made within 18 months after a general election has been held, nor within 6 months before the date by which an election shall be held in accordance with clause 77(1), or within 12 months after the date on which the last such motion was voted upon in the Legislative Assembly.
- (3) If within 48 hours of the revocation of the appointment of the Prime Minister and all Ministers in accordance with sub-clause (1) following a vote of no confidence in the Prime Minister, the Legislative Assembly passes a motion that recommends the appointment of another elected representative as Prime Minister, then upon delivery of that resolution to the King by the Speaker, the King shall appoint the person so nominated as the Prime Minister.
- (4) If no recommendation is delivered to him in accordance with sub-clause (3) following a vote of no confidence in the Prime Minister, the King shall –
- (a) dissolve the Legislative Assembly and command that a general election be held on a date not more than 90 days thereafter;
 - (b) appoint as interim Prime Minister the elected representative who the King considers best able to lead an interim government, who shall not be the Prime Minister in respect of whom a motion of no confidence was passed in the Legislative Assembly, until a Prime Minister is appointed after the general election; and

- (c) in consultation with the interim Prime Minister, appoint interim Ministers to hold office until Ministers are appointed after the general election.

CABINET

51 Function, constitution and powers of Cabinet⁴⁰

- (1) The executive authority of the Kingdom shall vest in the Cabinet, which shall be collectively responsible to the Legislative Assembly for the executive functions of the Government.
- (2) The Cabinet shall consist of the Prime Minister and such other Ministers who are nominated by the Prime Minister and appointed by the King:
Provided that –
 - (a) the Prime Minister may nominate as Cabinet Ministers not more than 4 persons who are not elected representatives;
 - (b) the Prime Minister and Cabinet shall be fewer in number than half of the number of elected members of the Legislative Assembly excluding the Speaker.
- (3) A Minister shall retain his position as Minister until –
 - (a) his appointment is revoked by the King on the recommendation of the Prime Minister or in accordance with clause 50B;
 - (b) he dies, resigns or is dismissed from office following impeachment under clause 75; or
 - (c) he becomes ineligible to hold the office in accordance with this Constitution or any other law:

PROVIDED THAT: Following a general election, and when appointed under clause 50B(4)(c), Ministers shall be and remain as caretaker Ministers until their appointments are revoked or continued on the recommendation of the newly appointed Prime Minister; and during such period caretaker Ministers shall not incur any unusual or unnecessary expenditure without the written approval of the caretaker Minister for Finance.

- (4) The Prime Minister may assign and re-assign ministries to and amongst the Cabinet Ministers.
- (5) Each Minister shall draw up an annual report to the Legislative Assembly advising of the activities and plans of his ministry and if the Legislative Assembly shall wish to know anything concerning the ministry of any Minister he shall answer all questions put to him by the Legislative Assembly and report everything in connection with his ministry.
- (6) A Minister who is not an elected representative shall sit and vote in the Legislative Assembly and shall, unless otherwise provided in any Act, have

all the rights, duties and responsibilities of an elected representative except that he shall not be entitled to vote in any vote of no confidence in the Prime Minister under clause 50B.

- (7) The term “executive authority” in sub-clause (1) excludes all powers vested in the King or the King in Council, whether by this Constitution, or any Act of the Legislative Assembly, any subordinate legislation, and Royal Prerogatives.

52 Duties of Ministers

Each member of the Cabinet shall have an office in Nuku'alofa the capital of the Kingdom and he shall satisfy himself that all the subordinates in his department faithfully perform their duties. And the Government shall build or rent offices suitable for the work of each minister

53 Minister for Finance to report to Parliament

When the Legislative Assembly shall meet the Treasurer shall present to the Legislative Assembly on behalf of the Cabinet an account of all moneys which have been received and expended during the current year or since the last meeting of the Assembly and the nature of the receipts and expenditure.⁴¹

54 Governors – how appointed

The King shall appoint Governors to Ha'apai and Vava'u on the advice of the Prime Minister.⁴²

55 Powers of Governors

It shall not be lawful for a Governor to enact any law but he shall be responsible that the law is enforced in his district.⁴³

THE LEGISLATIVE ASSEMBLY

56 Power of Legislative Assembly

The King and the Legislative Assembly shall have power to enact laws, and the representatives of the nobles and the representatives of the people shall sit as one House. When the Legislative Assembly shall have agreed upon any Bill which has been read and voted for by a majority three times it shall be presented to the King for his sanction and after receiving his sanction and signature it shall become law upon publication. Votes shall be given by raising the hand or by standing up in division or by saying “Aye” or “No”.⁴⁴

57 Title.

The Legislative Assembly shall be called the Legislative Assembly of Tonga.

58 Sessions

The Legislative Assembly shall meet at least once in every twelve calendar months but it shall be lawful to summon the same at any time.⁴⁵

59 Composition of Legislative Assembly⁴⁶

- (1) The Legislative Assembly shall be composed of –
 - (a) the representatives of the nobles;
 - (b) the representatives of the people; and
 - (c) all members of the Cabinet.
- (2) Cabinet Ministers who are elected representatives shall, unless dismissed after impeachment under clause 75, remain as members of the Legislative Assembly and representatives in their respective electoral constituency during their appointment as Minister.

60 Representative members

There shall be elected by the nobles of the Kingdom from their number nine nobles as representatives of the nobles and there shall be elected by electors duly qualified seventeen representatives of the people. The Legislative Assembly shall determine the boundaries of electoral districts for the election of representatives of the nobles and shall establish an independent Commission to determine the boundaries of the electoral constituencies for the election of representatives of the people:

Provided that the constituency boundaries for the general election of 2010 shall be based on the recommendations of the Royal Constituency Boundaries Commission as approved by the Legislative Assembly.⁴⁷

61 Speaker⁴⁸

- (1) The King shall, within 5 days after the appointment of a Prime Minister in accordance with clause 50A following a general election, appoint one of the elected representatives of the nobles on the recommendation of the Legislative Assembly, to be the Speaker of the Legislative Assembly.
- (2) The Speaker shall remain in office until –
 - (a) the King appoints an Interim Speaker following the next general election in accordance with subsection (8) of the Schedule to this Constitution;
 - (b) his appointment is revoked under sub-clause (3); or

- (c) he dies, resigns or his appointment is revoked after he ceases to be an elected representative of the nobles for any reason other than the dissolution of the Legislative Assembly.
- (3) If the Prime Minister, with the approval of at least half of the members of the Legislative Assembly, recommends to the King that the Speaker be removed from office, the King shall revoke the Speaker's appointment and appoint a new Speaker on the recommendation of the Legislative Assembly.
- (4) The King shall appoint a Speaker within 7 days of the occurrence of a vacancy.

62 Rules of procedure⁴⁹

- (1) The Legislative Assembly shall make its own rules of procedure for the conduct of its meetings.
- (2) Any member of the Legislative Assembly may, in accordance with its rules of procedure –
 - (a) introduce a Bill in the Assembly;
 - (b) propose a motion for debate in the Assembly; or
 - (c) present a petition to the Assembly,and it shall be dealt with in accordance with the Assembly's rules of procedure.

63 Qualification of nobles

- (1) No person shall succeed to the position of a noble who is insane or imbecile or who is disabled by the twenty-third clause.
- (2) Every noble shall be competent to vote in an election for representatives of the nobles and to sit in the Assembly if chosen according to law.

64 Qualification of electors

Every Tongan subject of twenty-one years of age or more who is not a noble, is not insane or imbecile and is not disabled by the twenty-third clause shall, if registered as an elector, be entitled to vote in an election for representatives of the people to the Legislative Assembly and on the day appointed for election shall be exempt from summons for debt. A person resident outside of Tonga who is qualified to be an elector may vote at an election only if he is registered as an elector and present in Tonga for the election.⁵⁰

65 Qualification of representatives

Representatives of the people shall be chosen by ballot and any person who is qualified to be an elector may nominate as a candidate and be chosen as a representative for the electoral constituency in which he is registered, save that no person may be chosen against whom an order has been made in any court in the Kingdom for the payment of a specific sum of money the whole or any part of which remains outstanding or if ordered to pay by instalments the whole or any part of such instalments remain outstanding on the day on which such person submits his nomination paper to the Returning Officer:

Provided that a person resident outside of Tonga who is qualified to be an elector will qualify as a candidate only if he is present in Tonga for a period of 3 months within the 6 months before the relevant election.⁵¹

66 Threats and bribery

Any person elected as a representative who shall be proved to the satisfaction of the Assembly to have used threats or offered bribes for the purpose of persuading any person to vote for him shall be unseated by the Assembly.

67 Privilege of nobles

It shall be lawful for only the nobles of the Legislative Assembly to discuss or vote upon laws relating to the King or the Royal Family or the titles and inheritances of the nobles and after any such bill has been passed three times by a majority of the nobles of the Legislative Assembly it shall be submitted to the King for his sanction.⁵²

68 King's veto precludes discussion

Should the King withhold his sanction from any law passed by the Legislative Assembly and submitted to him for approval it shall be unlawful for the Legislative Assembly again to discuss such law until the following session.

69 Quorum

It shall be lawful for the Legislative Assembly to pass judgment upon its members for their acts or conduct as members of the Legislative Assembly and although all the members may not be present it shall be lawful for the Legislative Assembly to discuss and pass laws and transact business should one-half of its members be present but should there be less than one-half present the Legislative Assembly shall stand adjourned to another day and if at such adjourned meeting there should be still less than half the members present it shall be lawful for the King or the Speaker of the Assembly to command the presence of all the members and if any fail to attend

on such command it shall be lawful to inflict punishment for such disobedience such punishment to be determined by the Legislative Assembly.⁵³

70 Offences against the Assembly⁵⁴

- (1) Any person who —
- (a) acts disrespectfully in the presence of the Legislative Assembly;
 - (b) by any act or omission, interferes with, obstructs or impedes the Legislative Assembly in the performance of its function;
 - (c) interferes with, obstructs or impedes any member or officer of the Legislative Assembly in the discharge of his duty;
 - (d) defames the Legislative Assembly;
 - (e) threatens any member or his property; or
 - (f) rescues a person whose arrest has been ordered by the Legislative Assembly,

may, by resolution of the Legislative Assembly, be imprisoned for any period not exceeding thirty days and if he is a member of the Assembly he may be suspended from the Assembly for up to thirty days in substitution for or in addition to any other penalty.⁵⁵

- (2)
- (a) A penalty of imprisonment imposed in accordance with this clause is not affected by a prorogation, the dissolution or expiration of the Legislative Assembly.
 - (b) A resolution of the Legislative Assembly ordering the imprisonment of a person in accordance with this clause may provide for the discharge of the person from imprisonment.
 - (c) Notwithstanding the power to imprison under sub-clause (1) the Legislative Assembly may impose a fine —
 - (i) not exceeding \$5,000, in the case of a natural person; or
 - (ii) not exceeding \$50,000, in the case of a corporation,for an offence against the Legislative Assembly determined by the Assembly to have been committed by that person under this clause.
 - (d) It shall not be lawful to both imprison and fine a person for an offence under this clause.
 - (e) The Legislative Assembly may give such directions and authorise the issue of such warrants as are necessary or convenient for carrying this clause into effect.

71 Noble may be deprived of his seat

Should any representative of the nobles be deprived of his seat another noble shall be elected to succeed to his seat in the Legislative Assembly but his title and hereditary estates shall not be confiscated except for treason or sedition.⁵⁶

72 Journal

A journal of the proceedings of the Legislative Assembly shall be kept and the votes of each member present for and against every motion or resolution shall be recorded in the journal.⁵⁷

73 Immunity from arrest

The members of the Legislative Assembly shall be free from arrest and judgment whilst it is sitting except for indictable offences and no member of the House shall be liable for anything he may have said or published in the Legislative Assembly.⁵⁸

74 Resignation

Any representative of the nobles or of the people who may wish to resign his seat in the Legislative Assembly may tender his resignation in writing to the Speaker and his connection with the Legislative Assembly shall cease when he tenders his resignation.⁵⁹

75 Impeachment

(1) It shall be lawful for a member of the Legislative Assembly, of his own volition or as the result of a written complaint made to him by any Tongan subject, to move the Assembly, in accordance with the rules of procedure, for the impeachment of any Minister or representative of the nobles or of the people for any of the following offences—

Breach of the laws or the resolutions of the Legislative Assembly, maladministration, incompetency, destruction or embezzlement of Government property, or the performance of acts which may lead to difficulties between this and another country.⁶⁰

- (2) The impeached person shall be given a copy of the accusation in writing seven days before the day of the trial.
- (3) The trial shall be conducted in accordance with the eleventh clause and the Lord Chief Justice shall preside.⁶¹
- (4) After the witnesses have been heard the impeached person shall withdraw and the Assembly shall consider their decision and upon a decision being made he shall be brought before the Assembly and the decision announced to him. If he be found guilty it shall be lawful to dismiss him from office but if acquitted

it shall not be lawful to impeach him again on the same charge as is provided in the twelfth clause.

76 Bye-elections

Upon the death or resignation of any representative of the nobles or of the people and when a member is deprived of his seat after impeachment, the Speaker shall immediately command that the nobles or the electors of the district which he represented shall elect a representative in his place. But the Legislative Assembly shall have the power to sit and act although its number be not complete.⁶²

77 General elections⁶³

- (1) Elections shall ordinarily be held for all the representatives of the nobles and the people every four years, and if not earlier dissolved the Legislative Assembly shall stand dissolved at the expiration of four years from the date of the last general election.
- (2) It shall be lawful for the King, at his pleasure, to dissolve the Legislative Assembly at any time and command that new elections be held.
- (3) If the Legislative Assembly is dissolved by the King or by the operation of sub-clause (1), the King shall, after consultation with the Speaker of the Legislative Assembly, fix a date for a general election.

78 Assembly to assess taxation

The Legislative Assembly shall assess the amount of taxes to be paid by the people and the customs duties and fees for trading licences and shall pass the estimates of expenditure for the Public Service in accordance with the nineteenth clause. And upon the report of the Minister of Finance upon the expenditure and revenue received during the year succeeding the last meeting of the Assembly the Legislative Assembly shall determine the estimates for the expenditure of the Government until the next meeting of the Legislative Assembly. And the ministers shall be guided by the estimates of public expenditure so authorized by the Legislative Assembly.

79 Amendments to Constitution

It shall be lawful for the Legislative Assembly to discuss amendments to the Constitution provided that such amendments shall not affect the law of liberty the succession to the Throne and the titles and hereditary estates of the nobles. And if the Legislative Assembly wish to amend any clause of the Constitution such amendment shall after it has passed the Legislative Assembly three times be submitted to the King and if His Majesty and the Cabinet are unanimously in favour of the amendment it shall be lawful for the King to assent and when signed by the King it shall become law.⁶⁴

80 Enacting formula

The formula for enacting laws shall be “Be it enacted by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:”.

81 Laws to cover but one subject

To avoid confusion in the making of laws every law shall embrace but one subject which shall be expressed by its title.

82 Constitution is supreme law

This Constitution is the supreme law of the Kingdom and if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void.⁶⁵

83 Oaths of Councillors and Representatives

The following oath shall be taken by the members of the Privy Council:

“I solemnly swear before God that I will be truly loyal to His Majesty King Tupou VI the rightful King of Tonga and that I will keep righteously and perfectly the Constitution of Tonga and assist to the end of my power and ability in all things in connection with the Privy Council”.

The following oath shall be taken by the ministers:

“I solemnly swear before God that I will be truly loyal to His Majesty King Tupou VI the rightful King of Tonga and that I will keep righteously and perfectly the Constitution of Tonga and discharge the duties of my department to the end of my ability for the benefit of the King and his Government”.

The following oath shall be taken by the nobles and representatives of the people:

“I solemnly swear before God that I will be truly loyal to His Majesty King Tupou VI the rightful King of Tonga and that I will righteously and perfectly conform to and keep the Constitution of Tonga and zealously discharge my duties as a member of the Legislative Assembly”.

The members of the Privy Council shall sign their names to the oath and read it in the presence of the King. The ministers, the nobles and representatives of the people shall sign their names to the oath and read it in the presence of the Legislative Assembly.⁶⁶

THE JUDICIARY

83A Rule of Law and Judicial Independence

The existing underlying constitutional principles of the Rule of Law and Judicial Independence shall always be maintained.⁶⁷

83B The Lord Chancellor⁶⁸

- (1) The King in Privy Council, after receiving advice from the Judicial Appointments and Discipline Panel, shall appoint a Lord Chancellor who shall have primary responsibility for –
 - (a) the administration of the courts;
 - (b) all matters related to the Judiciary and its independence;
 - (c) the maintenance of the rule of law; and
 - (d) such related matters as are specified in this Constitution or any other Act.
- (2) The Lord Chancellor shall, unless otherwise provided by law, have complete discretion to exercise his functions, powers and duties, independently without any interference whatsoever from any person or authority.
- (3) The Lord Chancellor may, with the consent of the King in Privy Council, make regulations for the following purposes –
 - (a) to establish an age at which the Attorney General, a Judge, a Magistrate and the Lord Chancellor shall retire from office;
 - (b) to regulate a judicial pension scheme;
 - (c) to provide for administrative arrangements for and related to the Office of the Lord Chancellor.
- (4) The Lord Chancellor shall be a person who is qualified to be a Judge of the Supreme Court and he shall, subject to any contractual arrangements, hold office during good behaviour.
- (5) The King in Privy Council, after receiving advice from the Judicial Appointments and Discipline Panel, shall determine the terms of appointment of the Lord Chancellor, and shall have the power to dismiss him.
- (6) In the event of a vacancy in the office of the Lord Chancellor, and pending the appointment of a Lord Chancellor under sub-clause (1), the King in Privy Council may appoint a suitably qualified person to be Lord Chancellor ad interim, to hold office only until a substantive appointment has been made. Any such appointee shall have all the powers and privileges and perform all the duties of the Lord Chancellor as set forth in this clause and the Lord Chancellor ad interim shall also be the Chairman of the Judicial Appointments and Discipline Panel constituted under clause 83C.⁶⁹

83C Judicial Appointments and Discipline Panel⁷⁰

- (1) There is hereby established, as a Committee of the Privy Council, a Judicial Appointments and Discipline Panel comprising –
 - (a) the Lord Chancellor, who shall be the Chairman;
 - (b) the Lord Chief Justice;
 - (c) the Attorney General; and
 - (d) the Law Lords, being such persons versed in the law as the King from time to time shall so appoint.
- (2) The Judicial Appointments and Discipline Panel shall recommend to the King in Privy Council –
 - (a) the appointment of eminently qualified persons to the Judiciary, and as Lord Chancellor and to any other office that the King requires;
 - (b) the disciplining of members of the Judiciary;
 - (c) the dismissal of members of the Judiciary for bad behaviour through gross misconduct or repeated breaches of the Code of Judicial Conduct;
 - (d) the remuneration and terms of service of members of the Judiciary;
 - (e) a Judicial Pensions Scheme;
 - (f) a Code of Judicial Conduct; and
 - (g) the appointment of assessors to the Panel of Land Court Assessors.
- (3) At any meeting of the Judicial Appointments and Discipline Panel the quorum shall be three, namely the Lord Chancellor (or anyone appointed to act as Lord Chancellor ad interim); one of the Lord Chief Justice or the Attorney General (or anyone appointed to act as Attorney General ad interim); and not less than one of the Law Lords.⁷¹

84 The Courts⁷²

- (1) The judicial power of the Kingdom shall be vested in the superior courts of the Kingdom (namely the Court of Appeal, the Supreme Court, and the Land Court) and a subordinate court namely the Magistrate's Court.
- (2) The Judiciary of the Kingdom shall comprise –
 - (a) the Lord President of the Court of Appeal and Judges of the Court of Appeal;
 - (b) the Lord Chief Justice, who shall be the professional Head of the Judiciary, and Judges of the Supreme Court;
 - (c) the Lord President of the Land Court and Judges of the Land Court; and
 - (d) the Chief Magistrate and the Magistrates.

85 The Court of Appeal⁷³

- (1) The Court of Appeal shall consist of the Lord President of the Court of Appeal and of such other judges as may be appointed from time to time by the King with the consent of Privy Council, after receiving advice from the Judicial Appointments and Discipline Panel:

Provided that no person shall be appointed unless—

- (a) he holds, or has held, high judicial office; or
 - (b)
 - (i) he is qualified to practise as an advocate in a court in some part of Her Britannic Majesty's dominions having unlimited jurisdiction in civil or criminal matters; and
 - (ii) he has been qualified so to practise for not less than ten years.
- (2) The King in Privy Council, after receiving advice from the Judicial Appointments and Discipline Panel, shall determine the terms of appointment of the Judges of the Court of Appeal and may dismiss them.

86 The Supreme Court⁷⁴

- (1) The Supreme Court shall consist of the Lord Chief Justice, who shall be the professional Head of the Judiciary, and such other judges as may be appointed from time to time by the King in Privy Council, after receiving advice from the Judicial Appointments and Discipline Panel:

Provided that no person shall be appointed unless —

- (a) he holds, or has held, high judicial office; or
 - (b)
 - (i) he is qualified to practise as an advocate in a court in some part of the Commonwealth having unlimited jurisdiction in civil or criminal matters; and
 - (ii) he has been qualified so to practise for not less than ten years.
- (2) The King in Privy Council, after receiving advice from the Judicial Appointments and Discipline Panel, shall determine the terms of appointment of the Lord Chief Justice and Judges of the Supreme Court, and may dismiss them.

86A The Land Court⁷⁵

- (1) The Land Court shall consist of a Lord President and other Judges, assisted by assessors, as may be appointed from time to time by the King with the consent of Privy Council, after receiving advice from the Judicial Appointments and Discipline Panel.

- (2) The King in Privy Council, after receiving advice from the Judicial Appointments and Discipline Panel, shall determine the terms of appointment of the Lord President and Judges of the Land Court and may dismiss them.

87 Judges to hold office during good behaviour⁷⁶

The judges, subject to any contractual arrangements, shall hold office during good behaviour:

Provided that it shall be lawful to appoint Judges of the Supreme Court and Court of Appeal for limited periods, or for the purposes of a particular sitting of the Supreme Court or Court of Appeal, or of particular proceedings to come before the Court, on such terms as may be approved by the King in Privy Council.

88 Acting Judge

- (1) It shall be lawful for the King in Privy Council, after receiving advice from the Judicial Appointments and Discipline Panel, at any time during the illness or absence of any judge, or for any other temporary purpose to appoint an acting judge for the period during which the judge is ill or absent or for the period necessary to effect the temporary purpose.⁷⁷
- (2) An acting judge shall have the jurisdiction and powers of, and may exercise all the authorities which are vested in or may be exercised by a judge and shall be paid such salary as may be determined by the King in Privy Council, after receiving advice from the Judicial Appointments and Discipline Panel.⁷⁸

89 Powers

The judges shall have power to direct the form of indictments to control the procedure of the lower courts, and to make rules of procedure.

90 Jurisdiction of Supreme Court

The Supreme Court shall have jurisdiction in all cases in Law and Equity arising under the Constitution and Laws of the Kingdom (except cases concerning titles to land which shall be determined by a Land Court subject to an appeal to the Privy Council in matters relating to hereditary estates and titles or to the Court of Appeal in other land matters) and in all matters concerning Treaties with Foreign States and Ministers and Consuls and in all cases affecting Public Ministers and Consuls and all Maritime Cases.⁷⁹

91 Appeals from Supreme Court

- (1) Subject to the provisions of any Act of the Legislative Assembly relating to appeals to the Court of Appeal, a party to any proceedings in the Supreme

Court or Land Court (excepting matters relating to the determination of hereditary estates and titles) who is aggrieved by a decision given in those proceedings by that Court, or a judge thereof, sitting in first instance, may appeal to the Court of Appeal against such decision.⁸⁰

- (2) Except as may be provided by any Act of the Legislative Assembly, or by rules in respect of limited classes of appeals, no appeal shall be finally determined by less than three members of the Court of Appeal.⁸¹

92 Jurisdiction of Court of Appeal

The Court of Appeal shall have exclusive power and jurisdiction to hear and determine all appeals which by virtue of this Constitution or of any Act of the Legislative Assembly lie from the Supreme Court or Land Court (excepting matters relating to the determination of hereditary estates and titles) or any judge thereof and shall have such further or other jurisdiction as may be conferred upon it by any such Act.⁸²

93 *(Repealed by Act 23 of 1990)*

94 Judge may not hear appeal from own decision

It shall not be lawful for any judge to sit or adjudicate upon an appeal from any decision which he may have given.

95 Oath of Judge

The Lord Chief Justice and any other judge shall take the following oath:

“I swear in the presence of God that I will be loyal to His Majesty King Tupou VI the lawful King of Tonga and that I will perform truly and with impartiality my duties as a judge in accordance with the Constitution and the Laws of the Kingdom”.

The judge shall read and sign this oath in the presence of the Cabinet:

Provided that a Lord Chief Justice or any other judge, who is not a Tongan subject, shall take the following oath in lieu of the foregoing oath:

“I swear in the presence of God that I will perform truly and with impartiality my duties as a judge in accordance with the Constitution and the Laws of the Kingdom .⁸³

96 Court fees

The Legislature shall determine the fees payable to the various courts. The Registrar of the Supreme Court shall keep the court records.

97 Judge not to receive fine

It shall not be lawful for any judicial officer to receive any portion of a fine paid by any person convicted of an offence or for the Government to allot prisoners to serve any judicial officer, police officer, juror, or any other person as payment for duties discharged by them.

98 *(Repealed by Act 23 of 1990)***99 Trial by jury**

Any person committed for trial before the Supreme Court on a charge of having committed any criminal offence shall if he shall so elect be tried by a jury; and whenever any issue of fact is raised in any civil action triable in the Supreme Court any party to such action may claim the right of trial by jury; and the law of trial by jury shall never be repealed.⁸⁴

100 Form of verdict

It is the duty of the jury in criminal cases to pronounce whether the person accused is guilty or not guilty according to the evidence given before the Court. In civil cases the jury shall give judgment for payment or compensation as the case may be and according to the merits of the case.

101 Judge to direct jury

In civil and criminal cases the judge shall direct the jury upon the law bearing upon the case and assist them in arriving at a just decision upon the case before them. The judge shall have power to refuse to admit evidence which he may deem to be irrelevant or improper.

102 Lord Chief Justice to report upon criminal statistics

The Lord Chief Justice shall report once a year to the King upon the administration of justice and the criminal statistics of the country and upon any amendments in the law which he may recommend. And the King shall lay this report before the Assembly at its next meeting in the same manner as the reports of the ministers.

103 Powers of Magistrates

The Legislature shall determine the time and place for holding the Courts and shall limit the powers of the magistrates in criminal and civil matters and shall determine what cases shall be committed for trial to the Supreme Court.

103A Relief for breach of Constitution

The remedy for breach of any provisions of the Constitution shall be declaratory relief and shall not affect any award of damages under any other law.⁸⁵

PART III - THE LAND**104 Land vested in Crown – sale prohibited**

All the land is the property of the King and he may at pleasure grant to the nobles and titular chiefs or matabules one or more estates to become their hereditary estates. It is hereby declared by this Constitution that it shall not be lawful for anyone at any time hereafter whether he be the King or any one of the chiefs or the people of this country to sell any land whatever in the Kingdom of Tonga but they may lease it only in accordance with this Constitution and mortgage it in accordance with the Land Act. And this declaration shall become a covenant binding on the King and chiefs of this Kingdom for themselves and their heirs and successors for ever.⁸⁶

105 Terms of leases

The Cabinet shall determine the terms for which leases shall be granted but no lease shall be granted for any longer period than ninety-nine years without the consent of His Majesty in Council and the Cabinet shall determine the amount of rent for all Government lands.⁸⁷

106 Form of deed

The forms of deed transfer and permit which shall from time to time be sanctioned by His Majesty in Privy Council are hereby appointed to be the forms according to which all deeds of leases transfers and permits shall be made.⁸⁸

107 Existing leases respected

This Constitution shall not affect any leases which have been granted by the Government or any leases which have been promised whether leases of land in the interior or of town allotments. Such leases will be recognised by the Government but this exception shall not refer to any leases which may be granted after the granting of this Constitution.

108 Church lands not to be sub-let without permission

No leases of any town site shall in future be granted to any religious body for any purpose unless there are thirty adults, male and female, of such church in that town,

and it shall not be lawful for any religious body to use such leased lands for other than religious purposes or to sub-let to any person without the prior consent of Cabinet, and upon satisfactory proof before a Court that any such land has been sub-let without consent, such land shall revert to the person from whom the land was leased, or to his successor in title as the case may be.⁸⁹

109 Beach frontage

All the beach frontage of this Kingdom belongs to the Crown from 15.24 metres above high-water mark and it shall be lawful for the Government to lease any portion of the beach frontage for erecting a store, jetty or wharf and the Minister of Lands with the consent of the Cabinet shall have power to grant such lease.⁹⁰

110 Registrations of deeds

All leases unless signed by the King himself shall be signed by the Minister of Lands and sealed with the seal of his office and countersigned by one of the Cabinet ministers who shall affix the seal of his office and no lease or transfer will be considered valid or recognised by the Government unless registered in the office of the Minister of Lands.

111 Law of succession⁹¹

The following is the law of succession to hereditary estates and titles:

Children lawfully born in wedlock only may inherit and the eldest male child shall succeed and the heirs of his body but if he have no descendants then the second male child and the heirs of his body and so on until all the male line is ended. Should there be no male child the eldest female child shall succeed and the heirs of her body and if she should have no descendants the second female child and the heirs of her body and so on until the female line is ended. And failing direct heirs the property shall revert to the eldest brother of the owner of the property beginning with the eldest and his heirs in succession to the youngest and their heirs in accordance with the law of inheritance. And if the brothers have no descendants it shall descend to the eldest sister and the female line as provided in the case of the male line. And if these should have no descendants and there should be no legitimate heir it shall revert to the Crown in accordance with the one hundred and twelfth clause. But should a female be next in succession to the title of a noble or of an hereditary chief the next male heir shall inherit the title and estates. But should such female afterwards have a legitimate male issue the title and estates shall revert to the male issue of the female upon the death of the male in possession of the estate:

Provided that the female that is the heir shall occupy the town allotment and the plantation lands appertaining to such title but the hereditary estates that is the lands occupied by the people shall be held by the inheritor of the title.

Whereas by Tongan custom provision has always been made that an adopted child might succeed to the estates and titles of his adoptive father now therefore it is decreed that upon the death of the holder of an estate or title who has inherited such estate or title by virtue of his blood descent from such adopted child the estate and title shall revert to the descendant by blood of the original holder of the estate and title in accordance with the provisions of this clause and should there be alive no such descendant by blood the provisions of the one hundred and twelfth clause shall apply.

And whereas by Tongan custom the noble Niukapu forms part of the 'Ulutolu line, now therefore it is decreed that in the event the holder of the estate and title of Niukapu is not a descendant by blood of the original Niukapu before 1875, such estate and title shall revert at the death of such holder to a descendant by blood of the Niukapu line.⁹²

112 Estate without heirs to revert to the Crown

Should there be no legitimate heirs to an estate such estate shall revert to the King. But the King may confer the title and estate upon any other person and the person so appointed and his heirs shall possess such title and estates for ever.

113 Right to allotments

Tongan male subjects by birth of or over the age of 16 years may be granted town allotments and tax allotments out of estates granted in pursuance of this Constitution with the consent of or upon consultation with the estate holder and out of the lands of the Crown, by the Minister of Lands. Such allotments shall be hereditary and shall be of such size and at an annual rent as may be determined by law. A widow shall have the right to succeed according to law, to her deceased husband's tax and town allotments.⁹³

114 No lease etc. without consent

No lease, sub-lease, transfer of a lease or of a sub-lease shall be granted—

- (a) without the prior consent of Cabinet where the term is ninety-nine years, or less, or
- (b) without the prior consent of Privy Council where the term is over ninety-nine years:

Provided that no consent shall be granted to a lease by a widow of the land of her deceased husband.⁹⁴

115 Citation

This Constitution may be cited as the Act of Constitution of Tonga.

SCHEDULE

Procedure for Appointing a Prime Minister⁹⁵

(clause 50A)

- (1) The Legislative Assembly shall recommend the appointment of a Prime Minister as follows –
- (a) within 10 days from the return of the writs of election after a general election has taken place, the Interim Speaker appointed under subsection (8) of this Schedule shall invite all elected representatives to submit to him their nominations for Prime Minister Designate, to be duly seconded by 2 other elected representatives and to be received by the Interim Speaker within 14 days from the return of the writs of election; and no representative who has proposed or seconded a candidate may propose or second any other;
 - (b) within 3 days after the last date for receipt of nominations for Prime Minister Designate, the Interim Speaker shall convene a meeting of all the elected representatives of the people and of the nobles for the purpose of deciding who they shall recommend for appointment as Prime Minister Designate:

Provided that the failure of any representative to attend any meeting, for whatever reason, shall not affect the validity of proceedings under this section;
 - (c) the representatives so convened shall consider who they want to recommend for appointment as Prime Minister Designate, and at that meeting every representative present will have the right to speak on his own behalf or that of another candidate, and they shall vote thereon by secret ballot and if one candidate receives more than half of the votes, the Interim Speaker shall report to the King that the duly elected representatives recommend the appointment of that person as Prime Minister Designate;
 - (d) if no single candidate is elected under paragraph (c) then the Interim Speaker shall 2 days after that meeting convene another meeting at which the candidate(s) who received the least votes shall be eliminated and the representatives shall (without speeches) vote by secret ballot for their choice amongst the remaining candidates, and if one candidate receives more than half of the votes then the Interim Speaker shall report to the King that the duly elected representatives recommend the appointment of that person as Prime Minister Designate;
 - (e) if no single candidate is elected under paragraph (d) then the Interim Speaker shall 2 days after that meeting convene another meeting and the procedure under paragraph (d) shall be likewise repeated, at 2 days intervals if necessary, until one candidate receives more than half of the

votes cast; and the Interim Speaker shall report to the King that the duly elected representatives recommend the appointment of that person as Prime Minister Designate.

- (2) If the representatives fail to make a recommendation to the King in accordance with the procedure in subsection (1) of this Schedule, the King may extend any of the times specified and may authorise the Interim Speaker to vary such procedure to enable a recommendation to be made.
- (3) Upon receipt by the King from the Interim Speaker of the recommendation of the elected representatives under subsection (1) of this Schedule, the Lord Chamberlain shall then summon the Prime Minister Designate to be appointed by the King.
- (4) The Prime Minister shall take his oath of office before the Legislative Assembly at its first sitting.
- (5) The Legislative Assembly shall also recommend the appointment of a Prime Minister following a vote of no confidence, in the manner provided in clause 50B of this Constitution.
- (6) In the event of any other vacancy occurring in the office of Prime Minister, except following a vote of no confidence, the procedure specified in this Schedule shall be followed to enable the King to appoint a Prime Minister on the recommendation of the Legislative Assembly, but in such case the Speaker shall perform the role of the Interim Speaker specified in this Schedule.
- (7) Any dispute arising out of or in connection with the calling or conduct of any meeting under this Schedule or the election or recommendation of the Prime Minister under this Schedule shall be determined by the Interim Speaker in consultation with the King.
- (8) For the purposes of this Schedule, the King shall within 7 days of the declaration of the result of a general election, appoint a person who was not a candidate at the general election to be the Interim Speaker of the Assembly, and such person shall hold office as Interim Speaker until a Speaker is next appointed under clause 61 of this Constitution.

ENDNOTES

¹1988 Revised Edition, Chapter 2- Acts 35 of 1912, 1 of 1914, 25 of 1916, 10 of 1918, 19 of 1927, 7 of 1933, 25 of 1942, 15 of 1951, 15 of 1953, 14 of 1955, 13 of 1966, 7 of 1967, 3 of 1971, 8 of 1972, 14 of 1972, 13 of 1973, 11 of 1974, 3 of 1976, 8 of 1978, 28 of 1978, 17 of 1981, 18 of 1981, 13 of 1982, 17 of 1982, 25 of 1984 -

Amendments after 1988

Amending Acts	Commencement Dates
Act 13 of 1966	1 July 1990
Act 12 of 1990	8 August 1990
Act 23 of 1990	18 July 1990
Act 1 of 1991	22 February 1991
Act 16 of 1997	29 October 1997
Act 11 of 1999	11 August 1999
Act 18 of 1999	3 November 1999
Act 17 of 2003	21 November 2003
Act 9 of 2006	3 January 2007
Act 2 of 2009	29 June 2009
Act 14 of 2010	6 May 2010
Act 20 of 2010	24 November 2010
Act 39 of 2010	24 September 2010
Act 1 of 2011	16 March 2011
Act 3 of 2013	3 May 2013

² Amended by Act 23 of 1990

³ Law 35 of 1912, Act 10 of 1918, Amended by Act 3 of 1976

⁴ Amended by Act 3 of 1976

⁵ Substituted by Act 3 of 1971

⁶ Amended by Act 23 of 1990

⁷ Inserted by Act 17 of 2003 but NB parts of clause 7(2) were held by the Chief Justice in Taione v Kingdom of Tonga [2005] TLR 67 to be void and in that judgment the Chief Justice concluded that it must read – “(2) It shall be lawful, in addition to the exceptions set out in sub-clause (1), to enact such laws as are considered necessary in national security, public order, morality, privileges of the Legislative Assembly and to provide for contempt of Court.”

⁸ Inserted by Act 17 of 2003 the Chief Justice in Taione v Kingdom of Tonga [2005] TLR 67 concluded “Clause 7(3) of the Constitution is not inconsistent with the entrenching provisions of Clauses 7 and 79 of the Constitution and so is valid, provided that it must be read as subject to the implied term that laws can only be made under it if they are necessary in terms of a pressing social need, and provided they are no more than proportionate to the legitimate aim being pursued and do not involve prior restraint of freedom of expression, except in cases of clear and present danger.”

⁹ Amended by Act 8 of 1972

¹⁰ Act 25 of 1942; Amended by Acts 13 of 1982 and 9 of 2006

¹¹ Inserted by Act 10 of 1918, Amended by Acts 18 of 1981 and 23 of 1990

¹² Amended by Act 7 of 1967

¹³ Amended by Act 20 of 2010

¹⁴ Act 19 of 1927

¹⁵ Substituted by Act 14 of 1972 and Amended by Act 20 of 2010

¹⁶ Act 35 of 1912

¹⁷ Amended by Act 20 of 2010

¹⁸ Amended by Acts 8 of 1961 and 3 of 2013

¹⁹ Substituted by Act 20 of 2010

²⁰ Substituted by Act 28 of 1978

²¹ Substituted by Act 23 of 1990

²² Act 35 of 1912, Amended by Acts 28 of 1978 and 1 of 1991

²³ Inserted by Act 1 of 1991

²⁴ Substituted and renumbered by Act 20 of 2010

²⁵ Amended and renumbered by Act 20 of 2010

²⁶ Inserted by Act 20 of 2010 and Amended by Act 39 of 2010

²⁷ Inserted by Act 1 of 2011

²⁸ See G 12/69 and Act 4 of 1970 relating to Her Highness Princess Mele Siuilikutapu

See G 133/80 and Act 7 of 1980 relating to Hon. Fatafehi ‘Alaivahamama‘o Tuku‘aho

²⁹ See the Proclamation made on 7 November 1980 at G 165/1980 (also at page S-2 of Cap 2 in the 1988 Revised Edition) which provides —

“**TAUFA‘AHAU TUPOU IV**, by the Grace of God, King of the Kingdom of Tonga, to all to whom these presents shall come, Greetings:

WHEREAS Clause 33 of the Act of Constitution of Tonga provides that —

“It shall not be lawful for any member of the Royal Family who is likely to succeed to the Throne to marry any person without the consent of the King. And if any person should thus marry the marriage shall not be considered legal and it shall be lawful for the King to cancel the right of such person and his heirs to succeed to the Crown of Tonga.”

AND WHEREAS His Royal Highness Prince Fatafehi ‘Alaivahamama‘o Tuku‘aho the second son of His Majesty who is likely to succeed to the Throne married in the State of Hawaii on the 21st day of July 1980 without the consent of His Majesty the King:

NOW THEREFORE, I, TAUFA‘AHAU TUPOU IV, King of the Kingdom of Tonga, in exercise of my powers under the Act of Constitution of Tonga, **DO HEREBY NOTIFY AND PROCLAIM that I CANCEL** the rights of His Royal Highness Prince Fatafehi ‘Alaivahamama‘o Tuku‘aho and his heirs to succeed to the Crown of Tonga.

WHEREOF let all men take notice and govern themselves accordingly.”

- ³⁰ Inserted by Act 3 of 1971
- ³¹ Amended by Act 23 of 1990
- ³² Amended by Act 23 of 1990
- ³³ Substituted by Act 20 of 2010
- ³⁴ Law No. 1 of 1914
- ³⁵ Amended by Act 20 of 2010
- ³⁶ Amended by Act 20 of 2010
- ³⁷ Substituted by Act 20 of 2010
- ³⁸ Inserted by Act 20 of 2010
- ³⁹ Inserted by Act 20 of 2010
- ⁴⁰ Substituted by Act 20 of 2010
- ⁴¹ Amended by Act 20 of 2010
- ⁴² Substituted by Act 20 of 2010
- ⁴³ Amended by Act 20 of 2010
- ⁴⁴ Law 1 of 1914
- ⁴⁵ Law 1 of 1914
- ⁴⁶ Substituted by Act 20 of 2010
- ⁴⁷ Substituted by Act 14 of 2010
- ⁴⁸ Substituted by Act 20 of 2010
- ⁴⁹ Substituted by Act 20 of 2010
- ⁵⁰ Substituted by Act 14 of 2010
- ⁵¹ Substituted by Act 14 of 2010
- ⁵² Law 1 of 1914
- ⁵³ Law 1 of 1914
- ⁵⁴ Substituted by Act 18 of 1999
- ⁵⁵ Amended by Act 20 of 2010
- ⁵⁶ Substituted by Act 20 of 2010
- ⁵⁷ Law 1 of 1914
- ⁵⁸ Law 1 of 1914
- ⁵⁹ Law 1 of 1914
- ⁶⁰ Law 1 of 1914
- ⁶¹ Substituted by Act 20 of 2010

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- ⁶² Law 1 of 1914, Amended by Act 20 of 2010
- ⁶³ Substituted by Act 20 of 2010
- ⁶⁴ Amended by Act 20 of 2010
- ⁶⁵ Substituted by Act 23 of 1990
- ⁶⁶ Amended by Act 20 of 2010
- ⁶⁷ Inserted by Act 39 of 2010
- ⁶⁸ Inserted by Act 39 of 2010
- ⁶⁹ Inserted by Act 1 of 2011
- ⁷⁰ Inserted by Act 39 of 2010
- ⁷¹ Inserted by Act 1 of 2011
- ⁷² Substituted by Act 39 of 2010
- ⁷³ Inserted by Act 13 of 1966 and Amended by Acts 20 of 2010 and 39 of 2010
- ⁷⁴ Substituted by Act 20 of 2010 and Amended by Act 39 of 2010
- ⁷⁵ Inserted by Act 39 of 2010
- ⁷⁶ Substituted by Act 20 of 2010
- ⁷⁷ Amended by Acts 20 of 2010 and 39 of 2010
- ⁷⁸ Added by Act 14 of 1955 and Amended by Act 39 of 2010
- ⁷⁹ Law 25 of 1916; Act 25 of 1942; Amended by Act 12 of 1990
- ⁸⁰ Amended by Act 12 of 1990
- ⁸¹ Added by Act 13 of 1966
- ⁸² Added by Act 13 of 1966; Amended by Act 12 of 1990
- ⁸³ Added by Act 13 of 1966
- ⁸⁴ Act 10 of 1918; Act 7 of 1933; Act 25 of 1942; Amended by Acts 25 of 1984 and 9 of 2006
- ⁸⁵ Inserted by Act 17 of 2003 but NB clause 103A was held by the Chief Justice in *Taione v Kingdom of Tonga* [2005] TLR 67 to be void to the extent that it is inconsistent with the law of liberty in the Constitution and any consequent rights
- ⁸⁶ Amended by Act 3 of 1976
- ⁸⁷ Amended by Act 11 of 1974
- ⁸⁸ Law 25 of 1916; Amended by Act 17 of 1981
- ⁸⁹ Substituted by Act 13 of 1973
- ⁹⁰ Amended by Act 23 of 1990
- ⁹¹ Added by Act 15 of 1953; Amended by Act 3 of 1976
- ⁹² Inserted by Act 11 of 1999
- ⁹³ Substituted by Act 16 of 1997
- ⁹⁴ Substituted by Act 17 of 1981
- ⁹⁵ Inserted by Act 20 of 2010