

**THE CONSTITUTION OF
THE INDEPENDENT STATE OF WESTERN SAMOA**

ANALYSIS

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IN THE HOLY NAME OF GOD, THE ALMIGHTY, THE EVER LOVING

WHEREAS sovereignty over the Universe belongs to the Omnipresent God alone, and the authority to be exercised by the people of Western Samoa within the limits prescribed by His commandments is a sacred heritage;

WHEREAS the Leaders of Western Samoa have declared that Western Samoa should be an Independent State based on Christian principles and Samoan custom and tradition;

AND WHEREAS the Constitutional Convention, representing the people of Western Samoa, has resolved to frame a Constitution for the Independent State of Western Samoa;

WHEREIN the State should exercise its powers and authority through the chosen representatives of the people;

WHEREIN should be secured to all the people their fundamental rights;

WHEREIN the impartial administration of justice should be fully maintained;

AND WHEREIN the integrity of Western Samoa, its independence, and all its rights should be safeguarded;

NOW THEREFORE, we the people of Western Samoa in our Constitutional Convention, this 28th day of October 1960, do hereby adopt, enact, and give to ourselves this Constitution.

Tupua Tamasese, C.B.E. (Fautua).
Malietoa Tanumafili II, C.B.E. (Fautua).
Fiame Mataafa Faumuina Mulinu'u II, C.B.E. (Prime Minister, M.L.A., Lotofaga).
Tuimaleali'ifano S. II (Tama Aiga).
Anapu Solofa (M.L.A. Safata).
Amoa Tausilia L (M.L.A. Aleipata-Itupa i lalo).
Aiono Urima (M.L.A. Aana Alofi No. 1)
Asiata Lagolago (M.L.A. Satupaitea-Alataua).
Iuli Veni (M.L.A. Anoama'a East).
Ufagalilo Fa'atafa (M.L.A. Faasaleleaga No.3).
Ulualofoaiga Talamaivao V. (M.L.A. Vaa-o-Fonoti).Ulumalautea Papali'i F. (M.L.A. Vaimauga East).
Usu To'avalu (M.L.A. Alataua West).
Faalava'au Galu (M.L.A. Samatau/Falelatai).
Fatialofa M. FaiMalö (M.L.A. Lepä).
Fenunuti Tauafua (M.L.A. Lefaga-Falease'ela).
Luamanuvae Eti Alesana (M.L.A. Faasaleleaga No. 1).
Leasi Avaula (M.L.A. Gagaifomauga No.3).
Leiataua S (M.L.A. Aiga-i-le-tai).
Lesatele Rapi (M.L.A. Vaisigano No.2).
Luafatasaga Su'e Taule'alo (M.L.A. Sagaga-Le Usoga).
Lutatua Mata'ese (M.L.A. Sagaga-Le-Falefa)
Matai'a Europa (M.L.A. Faleata East).
Maposua SeiLalä (M.L.A. Palauli-Le Falefa).
Papali'i Pesamino (M.L.A. Faasaleleaga No.2).
Peseta Seko J. S. (M.L.A. Gagaiofomauga No. 1).
Pilia'e Leilua Iuliano (M.L.A. Aana Alofi No.2)
Pulepule M (M.L.A. Anoama'a West).
Saipaia U (M.L.A. Aana Alofi No.3).
Sagapolutele Posë (M.L.A. Aleipata-Itupa i luga).
Seiuli Tolova'a Iakopo (M.L.A. Faleata West).
Seuamuli Etimani (M.L.A. Gaga'emauga No.3).
Soifuä Solia Gese (M.L.A. Falealupo).
Tualualei M (M.L.A. Palauli).

Tuatagaloa Leutele Satele Te'o Simaile (M.L.A. Falealili).
Toomata Lilomaiava T (M.L.A. Salega).
Tevaga Paletasala (M.L.A. Gaga'emauga No. 1).
Tofaeono Muliaga (M.L.A. Vaimauga West).
Toloafa Lafaele (M.L.A. Si'umu).
Tufuga Fatu Lemana (M.L.A. Vaisigano No. 1).
Tugaga Isa'aka (M.L.A. Gagaifomauga No.2)
Tuala Tiaina (M.L.A. Gaga'emauga No.2).
Tuatö Poto (M.L.A. Palauli West).
Vui Fale (M.L.A. Faasaleleaga No.4).
G. F. D. Betham (M.L.A. Apia).Hans J. Keil (M.L.A. Apia).F. C. F. Nelson (M.L.A. Apia).Eugene F. Paul (M.L.A. Apia).
Leilua P. Plowman (M.L.A. Apia).
Ale Pusi (A.S.M. Faleata West).
A'e'au Taulupo'o (A.S.M. Falealupo).
Asiata Tulelei (A.S.M. Satupaitea-Alataua).
Aiolupotea Mana'ia (A.S.M. Alataua West).
Auali'itia Faa'ole'ole (A.S.M. Gaga'emauga No. 1).
Asi Falana'ipupu Ulu Filiva'a (A.S.M. Vaimauga West).
Afamasaga Maua II (A.S.M. Aana Alofi No. 3).
Auelua Filipino (A.S.M. Lepä).
Auelua Tagoa'i Tufi (A.S.M. Lepä).
One Sofai (A.S.M. Gagaifomauga No. 3).
Ugapo Tauaneai (A.S.M. Aana Alofi No.2).
Umaga Pa'u (A.S.M. Aana Alofi No.2).
Ulugia Fa'alua (A.S.M. Faleata West).
Fafai Tuivale (A.S.M. Sagaga-Le-Usoga).
Fata M (A.S.M. Sagaga-Le-Usoga).
Fonoti Faagalu (A.S.M. Falealili).
Fuimaono Faafete (A.S.M. Falealili).
Faamoe Sasi (A.S.M. Gaga'emauga No. 3).
Fao Isaia (A.S.M. Vaisigano No. 1).
Fesola'i Pio (A.S.M. Aana Alofi No. 1).
Faletufuga Asiasi (A.S.M. Faasaleleaga No.2).
Fuiono Alefosio (A.S.M. Falealupo).

Fasavalu Faali'i (A.S.M. Salega).
Feiloaivao Pa'u Peter (A.S.M. Aana Alofi No. 3)
Fiu Tanielu (A.S.M. Gagaifomauga No.3).
Faanana Fenika (A.S.M. Satupaitea-Alataua).
Fiso Faamotu L (A.S.M. Lotofaga).
Faiumu A (A.S.M. Palauli West).Fiso Fusi (A.S.M. Palauli).Fui Eli Seuamuli (A.S.M. Gagaifomauga No. 2).Fuataga Penita (A.S.M. Aleipata-Itupa i luga).Faoasau Ausage (A.S.M. Vaimauga East).
Fui Tauaivale (A.S.M. Lefaga Falease'ela).
Faolotoi M (A.S.M. Lepä).
Faliuila T (A.S.M. Aleipata-Itupa i lalo).
Gasü Taatua (A.S.M. Satupaitea-Alataua).
Leleua Peni (A.S.M. Faleata East).
Leapai Sefo (A.S.M. Sagaga-Le-Usoga).
Leota lakopo (A.S.M. Gaga'emauga No. 3).
Leaupepe Aifualaa (A.S.M. Aana Alofi No. 1).
Leiataua Pöai (A.S.M. Aiga-i-le-tai).
Levaa Fofoa (A.S.M. Aiga-i-le-tai).
Li'omatefili T (A.S.M. Si'umu).
Leausa Foe (A.S.M. Vaa-o-Fonoti).
Leota Leuma (A.S.M. Anoama'a West).
Luafalealo Pesa (A.S.M. Anoama'a West).
Lavea Lalä S (A.S.M. Gagaifomauga No. 1).
Lealuga Vaaiga (A.S.M. Vaisigano No. 2).
Lagaaia Faamaga (A.S.M. Palauli).
Leiataatimu P (A.S.M. Sagaga-Le Falefa).
Luatuanuu Tolai (A.S.M. Sagaga-Le Falefa).
Lauago M. Tofu (A.S.M. Gaga'emauga No. 2).
Leniu Fanene (A.S.M. Vaimauga West).
A. Le-Mamea Matatumua, O.B.E (A.S.M. Lefaga-Falease'ela).
Moeono Alai'a K (A.S.M. Anoama'a East).
Moala Maugatai Limutau Asueru (A.S.M. Anoama'a East).
Magele Tagaileono Ate (A.S.M. Faasaleleaga No. 1).
Matai'a Tavale (A.S.M. Gaga'emauga No. 3).
Masoe Pele (A.S.M. Vaisigano No. 1).

Mata'utia Ueni (A.S.M. Palauli-Le Falefa).
Matalë Tuugafala (A.S.M. Palauli West).
Malaitai Lautaimi (A.S.M. Gagaifomauga No. 2).
Mata'utia Fetau (A.S.M. Aleipata-Itupa i halo).
Matai'a Si'utaulalova'a (A.S.M. Faleata West).
Manö Togamau (A.S.M. Si'umu).
Moalele Mau'afu (A.S.M. Faasaleleaga No. 2).
Mata'u Fiaali'i (A.S.M. Vaisigano No. 2).
Mausii Sefo (A.S.M. Palauli-Le Falefa).
Muagututi'a Tautau (A.S.M. Lotofaga).
Matafeo Siatu (A.S.M. Faasaleleaga No. 4).
Mulitalo Faleniu (A.S.M. Faasaleleaga No. 4).
Nonoa Aleli F. (A.S.M. Anoama'a East).
Polataivao Luni (A.S.M. Gagaifomauga No. 3).
Paitomaleifi Siaki (A.S.M. Falealili).
Pini F (A.S.M. Faasaleleaga No. 3)
Pa'u Titö (A.S.M. Samatau/Falelatai).
Peseta Tavai (A.S.M. Faasaleleaga No. 4).
Soalaupule Sale (A.S.M. Safata).
Seumanu Saleilua (A.S.M. Faasaleleaga No. 1).
Savusa Faavela (A.S.M. Vaa-o-Fonoti).
Segi Lafa. (A.S.M. Faasaleleaga No. 3)
Solia Sikuka (A.S.M. Falealupo).
Seinafolava Sofara (A.S.M. Lotofaga).
Safuneitunga Meatuai (A.S.M. Gagaifomauga No. 2).
Semau Peleseuma (A.S.M. Gaga'emauga No. 2).Seuala Meauli (A.S.M. Aleipata-Itupa i luga).Saumalu Tui (A.S.M. Aleipata-Itupa i luga).
Taala Ioelu (A.S.M. Faleata East).
Taimalie Meapelo (A.S.M. Aana Alofi No. 2).
Tuiä Iosefa (A.S.M. Safata).
Tofilau Moeloa (A.S.M. Faasalelaga No. 1).
Tapu Atonio Fidow (A.S.M. Vaisigano No. 1).
Tapusoa Peni II (A.S.M. Gagaifomauga No. 1).
Tapuai Kuka. (A.S.M. Salega).
To'ala Mulifusi (A.S.M. Palauli-Le Falefa).

Tuai'aufa'i Fuifui (A.S.M. Alataua West).
Tuala Osooso (A.S.M. Gaga'emauga No. 1).
Tofa Peleti (A.S.M. Faasaleleaga No. 3).
Telea Fasi (A.S.M. Sagaga-Le Falefa).
Tauvalaau Lua (A.S.M. Aana Alofi No. 3).
Tuala Siaki (A.S.M. Lefaga/Faleaseela).
Tataivaatele Ioane (A.S.M. Aleipata-Itupa i lalo).
Tuaautoto'a Iefata (A.S.M. Aana Alofi No. 1).
Taupaü Semu (A.S.M. Aiga-i-le-tai).
Tuimalatü Suli (A.S.M. Vaa-o-Fonoti).
Tagaloa Tuala Siasia (A.S.M. Anoamaa West).
Tuilagi Pa'ö (A.S.M. Faasaleleaga No. 2).
Timu Kolio (A.S.M. Gagaifomauga No. 1).
Tuisalega E (A.S.M. Salega).
Tanuvasa Taotafa (A.S.M. Alataua West).
Toluono Lama (A.S.M. Palauli).
Tuala Milo (A.S.M. Gaga'emauga No. 1).
Tevaga Matafa (A.S.M. Gaga'emauga No. 2).
Toomalatai Fiso (A.S.M. Vaimaug West).
Tuiletufuga Tualai (A.S.M. Vaimauga West).
Tuli'aupupu Muliaga S (A.S.M. Vaimauga East).
Vaitagutu S (A.S.M. Faleata East).
W. F. Betham (A.E.M. Apia).
O. R. Crichton (A.E.M. Apia).
A M. Gurau (A.E.M. Apia).

PART I
THE INDEPENDENT STATE OF WESTERN SAMOA
AND ITS SUPREME LAW

1. Name and description

(1) The Independent State of Western Samoa (hereinafter referred to as Western Samoa) shall be free and sovereign.

(2) Western Samoa shall comprise the islands of Upolu, Savai'i, Manöno and Apolima in the South Pacific Ocean, together with all other islands adjacent thereto and lying between the 13th and 15th degrees of south latitude and the 171st and 173rd degrees of longitude west of Greenwich:

2. The Supreme Law

(1) This Constitution shall be the supreme law of Western Samoa.

(2) Any existing law and any law passed after the date of coming into force of this Constitution which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.

PART II FUNDAMENTAL RIGHTS

3. Definition of the State

In this Part, unless the context otherwise requires, "the State" includes the Head of State, Cabinet, Parliament and all local and other authorities established under any law.

4. Remedies for enforcement of rights

(1) Any person may apply to the Supreme Court by appropriate proceedings to enforce the rights conferred under the provisions of this Part.

(2) The Supreme Court shall have power to make all such orders as may be necessary and appropriate to secure to the applicant the enjoyment of any of the rights conferred under the provisions of this Part.

5. Right to life

(1) No person shall be deprived of his life intentionally, except in the execution of a sentence of a court following his conviction of an offence for which this penalty is provided by Act.

(2) Deprivation of life shall not be regarded as having been inflicted in contravention of the provisions of this Article when it results from the use of force to such extent and in such circumstances as are prescribed by law and as are reasonably justifiable-

(a) In defence of any person from violence; or

(b) In order to effect an arrest or to prevent the escape of a person detained, if the person who is being arrested or who is escaping is believed on reasonable grounds to be in possession of a firearm; or

(c) For the purpose of suppressing a riot, insurrection or mutiny.

6. Right to personal liberty

(1) No person shall be deprived of his personal liberty except in accordance with law.

(2) Where complaint is made to the Supreme Court that a person is being unlawfully detained, the Court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the Court and shall release him.

(3) Every person who is arrested shall be informed promptly of the grounds of his arrest and of any charge against him and shall be allowed to consult a legal practitioner of his own choice without delay.

(4) Every person who is arrested or otherwise detained shall be produced before a Judge of the Supreme Court, some other judicial officer, the Registrar of the Supreme Court or of any subordinate Court or any Deputy Registrar of the Supreme Court or of any subordinate Court from time to time approved in writing for this purpose by the Registrar of the Supreme Court (hereinafter collectively referred to as "remanding officers") within a period of 24 hours (excluding the time of any necessary journey), and no such person shall be detained beyond that period without the authority of one of the remanding officers.

Clause (4) was substituted for the original clause (4) (as amended by s.2 of the Constitution Amendment Act (No. 2) 1963) by s. 2 of the Constitution Amendment Act 1965.

7. Freedom from inhuman treatment

No person shall be subjected to torture or to inhuman or degrading treatment or punishment.

8. Freedom from forced labour

(1) No person shall be required to perform forced or compulsory labour.

(2) For the purposes of this Article, the term "forced or compulsory labour" shall not include-

(a) Any work required to be done in consequence of a sentence of a court; or

(b) Any service of a military character or, in the case of conscientious objectors, service exacted instead of compulsory military service; or

(c) Any service exacted in case of an emergency or calamity threatening the life or well-being of the community; or

(d) Any work or service which is required by Samoan custom or which forms part of normal civic obligations.

9. Right to a fair trial

(1) In the determination of his civil rights and obligations or of any charge against him for any offence, every person is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established under the law. Judgment shall be pronounced in public, but the public and representatives of news service may be excluded from all or part of the trial in the interests of morals, public order or national security, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

(2) Nothing in clause (1) shall invalidate any law by reason only that it confers upon a tribunal, Minister or other authority power to determine questions arising in the administration of any law that affect or may affect the civil rights of any person.

(3) Every person charged with an offence shall be presumed innocent until proved guilty according to law.

(4) Every person charged with an offence has the following minimum rights:

(a) To be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) To have adequate time and facilities for the preparation of his defence;

(c) To defend himself in person or through legal assistance of his own choosing and, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) To examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) To have the free assistance of an interpreter, if any doubt exists as to whether he can understand or speak the language used in court.

(5) No person accused of any offence shall be compelled to be a witness against himself.

10. Rights concerning criminal law

(1) No person shall be convicted of an offence other than an offence defined by law.

(2) No person shall be held guilty of any offence on account of any act or omission which did not constitute an offence at the time when it was committed; nor shall a heavier penalty be imposed than the one that was applicable at the time that the offence was committed.

(3) No person who has been tried for any offence shall, after conviction or acquittal, again be tried for that offence except-

(a) Where a retrial is ordered or conducted by a court or judicial officer exercising a jurisdiction superior to that under which that person was acquitted or convicted; or

(b) In the case of a conviction entered in a trial conducted by a Judge or Judges of the Supreme Court, where a retrial is ordered by a Judge of that Court on an application made within 14 days of that conviction.

11. Freedom of religion

(1) Every person has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others, and, in public or private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Nothing in clause (1) shall affect the operation of any existing law or prevent the State from making any law in so far as that existing law or the law so made imposes reasonable restrictions on the exercise of the right conferred under the provisions of that clause in the interests of national security or of public order' health or morals, or for protecting the rights and freedom of others, including their rights and freedom to observe and practise their religion without the unsolicited interference of members of other religions.

12. Rights concerning religious instruction

(1) No person attending any educational institution shall be required to receive religious instruction or take part in any religious ceremony or attend religious worship, if that instruction, ceremony or worship relates to a religion other than his own.

(2) Every religious community or denomination shall have the right to establish and maintain educational institutions of its own choice and to provide therein religious instruction for pupils of that community or denomination.

(3) Nothing in clause (2) shall prevent the State from making any law requiring the inspection of educational institutions and the maintenance therein of standards in keeping with the general educational level in Western Samoa.

13. Rights regarding freedom of speech, assembly, association, movement and residence

(1) All citizens of Western Samoa shall have the right-

(a) To freedom of speech and expression; and

(b) To assemble peaceably and without arms; and

(c) To form associations or unions; and

(d) To move freely throughout Western Samoa and to reside in any part thereof.

(2) Nothing in subclause (a) of clause (1) shall affect the operation of any existing law or prevent the State from making any law in so far as that existing law or the law so made imposes reasonable restrictions on the exercise of the right conferred under the provisions of that subclause 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.

(3) Nothing in subclauses (b) or (c) of clause (1) shall affect the operation of any existing law or prevent the State from making any law in so far as that existing law or the law so made imposes reasonable restrictions on the exercise of either or both of the rights conferred under the provisions of those subclauses in the interests of national security or public order, health or morals.

(4) Nothing in subclause (d) of clause (1) shall affect the operation of any existing law or prevent the State from making any law in so far as that existing law or the law so made imposes reasonable restrictions on the exercise of the right conferred under the provisions of that subclause in the interests of national security, the economic well-being of Western

Samoa, or public order, health or morals, for detaining persons of unsound mind, for preventing any offence, for the arrest and trial of persons charged with offences, or for punishing offenders.

14. Rights regarding property

(1) No property shall be taken possession of compulsorily, and no right over or interest in any property shall be acquired compulsorily, except under the law which, of itself or when read with any other law,-

(a) Requires the payment within a reasonable time of adequate compensation therefor, and

(b) Gives to any person claiming that compensation a right of access, for the determination of his interest in the property and the amount of compensation, to the Supreme Court; and

(c) Gives to any party to proceedings in the Supreme Court relating to such a claim the same rights of appeal as are accorded generally to parties to civil proceedings in that Court sitting as a court of original jurisdiction.

(2) Nothing in this Article shall be construed as affecting any general law-

(a) For the imposition or enforcement of any tax, rate or duty; or

(b) For the imposition of penalties or forfeitures for breach of the law, whether under civil process or after conviction of an offence; or

(c) Relating to leases, tenancies, mortgages, charges, bills of sale, or any other rights or obligations arising out of contracts; or

(d) Relating to the vesting and administration of the property of persons adjudged bankrupt or otherwise declared insolvent, of infants or persons suffering under some physical or mental disability, of deceased persons, and of companies, other corporate bodies and unincorporated societies in the course of being wound up: or

- (e) Relating to the execution of judgments or orders of courts; or
- (f) Providing for the taking of possession of property which is in a dangerous state or is injurious to the health of human beings, plants or animals; or
- (g) Relating to trusts and trustees; or
- (h) Relating to the limitation of actions; or
- (i) Relating to property vested in statutory corporations; or
- (j) Relating to the temporary taking of possession of property for the purposes of any examination, investigation; or
- (k) Providing for the carrying out of work on land for the purpose of soil conservation or for the protection of water catchment areas.

15. Freedom from discriminatory legislation

- (1) All persons are equal before the law and entitled to equal protection under the law.
- (2) Except as expressly authorised under the provisions of this Constitution, no law and no executive or administrative action of the State shall, either expressly or in its practical application, subject any person or persons to any disability or restriction or confer on any person or persons any privilege or advantage on grounds only of descent, sex, language, religion, political or other opinion, social origin, place of birth, family status, or any of them.
- (3) Nothing in this Article shall-
 - (a) Prevent the prescription of qualifications for the service of Western Samoa or the service of a body corporate directly established under the law; or

(b) Prevent the making of any provision for the protection or advancement of women or children or of any socially or educationally retarded class of persons.

(4) Nothing in this Article shall affect the operation of any existing law or the maintenance by the State of any executive or administrative practice being observed on Independence Day:

Provided that the State shall direct its policy towards the progressive removal of any disability or restriction which has been imposed on any of the grounds referred to in clause (2) and of any privilege or advantage which has been conferred on any of those grounds.

PART III THE HEAD OF STATE

16. O le Ao o le Malö

There shall be a Head of State of Western Samoa to be known as O le Ao o le Malö.

17. Tupua Tamasese Mea'ole and Malietoa Tanumafili II

(1) Notwithstanding anything to the contrary contained in this Part and subject to the provisions of this Article, Tupua Tamasese Mea'ole and Malietoa Tanumafili II shall on Independence Day assume jointly the office of Head of State. They shall be known jointly as O Ao o le Malö and severally as O le Ao o le Malö.

(2) On the death on or after Independence Day of either of the persons named in clause (1), the survivor shall continue to hold the office of Head of State.

(3) In the event of the death before Independence Day of either of the persons named in clause (1), the survivor shall on Independence Day assume the office of Head of State.

(4) The provisions of this Part, except the provisions of Articles 18 and 19, shall apply to each of Tupua Tamasese Mea'ole or Malietoa Tanumafili II as a joint holder or as sole holder of the office of Head of State, as the case may be.

(5) On the death, resignation or removal from office of both the persons named in clause (1) or of the survivor of either of them, this Article shall cease to be in force.

18. Election of Head of State

(1) The Head of State shall be elected by the Legislative Assembly under the provisions of the First Schedule.

(2) A person shall not be qualified to be elected to the office of Head of State-

(a) If he is not a person qualified to be elected as a Member of Parliament; or

(b) If he does not possess such other qualifications as the Legislative Assembly may determine from time to time by resolution; or

(c) If he has previously been removed from the office of Head of State under the provisions of clause (2) of Article 21.

(3) The validity of the election of the Head of State shall not be contested in any court.

19. Term of office of Head of State

(1) Subject to the provisions of Articles 17 and 21, the Head of State shall hold office for a term of 5 years from the date on which he assumes the functions of his office:

Provided that, notwithstanding the expiry of his term, he shall continue to hold office until his successor assumes the functions of his office or for a period of 3 months, whichever is the shorter period.

(2) Subject to the provisions of this Constitution, a person who holds, or who has held, office as Head of State, shall be eligible for re-election to that office.

(3) An election to fill a vacancy in the office of Head of State caused by the death, resignation or removal of the Head of State or by the expiry of the term of his office shall be held under the provisions of the First Schedule, and, subject to the provisions of this

Constitution, the person elected to that office shall hold office for a term of 5 years from the date on which he assumes the functions of his office.

20. Disabilities of Head of State

The Head of State shall not hold any other office of profit or any other position carrying the right to remuneration for the rendering of services, or engage in any occupation for reward outside the functions of his office; but nothing in this clause shall prevent him from holding the pule over any customary land, from holding any freehold land or other private property, or from disposing of the produce of any customary or freehold land.

21. Resignation and removal from office

(1) The Head of State may resign his office by writing under his hand addressed to the Prime Minister, who shall forthwith advise the Speaker of the Legislative Assembly of that resignation.

(2) The Head of State may be removed from office by the Legislative Assembly on the ground of misbehaviour or of infirmity of body or mind.

(3) No proposal for the removal from office of the Head of State under the provisions of clause (2) shall be effective unless-

(a) Notice of motion setting out the grounds for the proposed removal has been given in writing and signed by not less than one-fourth of the total number of Members of Parliament (including vacancies); and

(b) A period of at least 14 days has elapsed between that notice and the debate on the motion; and

(c) The motion has been agreed to by not less than two-thirds of the total number of Members of Parliament (including vacancies).

(4) A resolution carried under the provisions of clause (3) shall have the effect of removing the Head of State from his office as from the date on which the resolution is so carried.

22. Salary of Head of State

The salary of the Head of State shall be determined by Act and shall be charged on the Treasury Fund, and that salary shall not be diminished during the period of office of the Head of State, unless as part of a general reduction of salaries applied proportionately to all persons whose salaries are determined by Act.

23. Absence or incapacity

(1) While any vacancy exists in the office of Head of State or during the absence from Western Samoa of the Head of State, the Council of Deputies shall perform the functions of the office of Head of State.

(2) Whenever the Chief Justice declares in writing that he is satisfied by evidence, which shall include, where possible, the evidence of the wife and of at least 2 physicians, that the Head of State is by reason of infirmity of body or mind incapable for the time being of performing his functions as Head of State, or that he is satisfied by evidence that the Head of State is for some definite cause not available for the performance of those functions, then, until it is declared in like manner that the Head of State has so far recovered his health as to warrant his resumption of the functions of the office of Head of State or has become available for the performance thereof, as the case may be, those functions shall be performed by the Council of Deputies.

24. Special provisions as to absence or incapacity

While Tupua Tamasese Mea'ole and Malietoa Tanumafili II hold jointly the office of Head of State, the following provisions shall apply:

(a) During any period for which one joint holder of office is absent from Western Samoa or is incapable of, or not available for, the performance of his functions as Head of State, the other joint holder shall perform those functions;

(b) During any period for which neither of the joint holders is able to perform the functions of the office of Head of State, whether by reason of absence from Western

Samoa, incapacity or unavailability, the Council of Deputies shall perform those functions;

(c) For the purposes of this Article, the Chief Justice shall determine, under the provisions of clause (2) of Article 23, the period during which a joint holder is incapable of, or not available for, the performance of his functions as Head of State.

25. Council of Deputies

(1) There shall be a Council of Deputies, which shall consist of one, 2 or 3 persons elected by the Legislative Assembly:

Provided that, if the Assembly shall not have elected a Council of Deputies, the Chief Justice shall assume the functions of the Council.

In clause (1) the words "one, 2 or" were substituted for the words "not more than" by s. 3 of the Constitution Amendment Act (No. 2) 1963.

(2) A person shall not be qualified to be elected as, or to continue to be, a member of the Council of Deputies unless he is qualified to be elected as Head of State under the provisions of Article 18.

(3) An election of members of the Council of Deputies shall be held as soon as possible after each election of a Head of State:

Provided that, while the provisions of Article 17 are in force, an election of members of the Council of Deputies shall be held as soon as possible after Independence Day and, thereafter, at intervals of not less than 4 years and 9 months and not more than 5 years and 3 months.

(4) If at any time the number of members of the Council of Deputies is less than 3, the Legislative Assembly may elect as a member of the Council a person qualified to be elected under the provisions of clause (2), and any person so elected shall hold office until the next ensuing election held under the provisions of clause (3).

(5) Subject to the provisions of clause (2), a member of the Council of Deputies shall be eligible for re-election.

(6) A member of the Council of Deputies may resign his office by writing under his hand addressed to the Prime Minister, who shall forthwith advise the Speaker of the Legislative Assembly of that resignation.

(7) The Legislative Assembly may, on a motion carried by not less than two-thirds of the total number of Members of Parliament (including vacancies), remove from office a member of the Council of Deputies on the ground of stated misbehaviour or of infirmity of body or mind.

(8) The salaries of members of the Council of Deputies shall be determined by Act and shall be charged on the Treasury Fund, but an Act may provide that no such salary shall be payable to such a member for any period for which he is a full-time salaried employee of the Government. The salaries of such members shall not be diminished during their period of office, unless as part of a general reduction of salaries applied proportionately to all persons whose salaries are determined by Act.

Clause (8) amended by s. 2 of the Constitution Amendment Act 1969.

(9) A member of the Council of Deputies shall not be qualified to be elected as a Member of Parliament:

Provided that the provisions of this clause shall not disqualify a member of the Council from being elected to the office of Head of State.

(10) The Council of Deputies shall determine which of its members shall, from time to time, preside over the Council.

(11) Subject to the provisions of this Constitution, the Council of Deputies may regulate its procedure in such manner as it thinks fit.

26. Head of State to act on advice

(1) Except as otherwise provided in this Constitution, the Head of State in the performance of his functions shall act on the advice of Cabinet, the Prime Minister or the appropriate Minister, as the case may be.

(2) If Cabinet, the Prime Minister or an appropriate Minister tenders advice to the Head of State as to the performance of any function of the Head of State and, if the Head of State does not, within 7 days after the date on which the tendering of that advice comes to the notice of the Secretary to the Head of State, accept that advice or take some other action in relation thereto which he is entitled to take under the provisions of this Constitution or of any Act, the Head of State shall be deemed to have accepted that advice; and an instrument under the hand of the Secretary to Cabinet, acting on the instruction of the Prime Minister, to that effect shall operate as the performance of the function concerned in accordance with that advice.

27. Information for Head of State

It shall be the duty of the Prime Minister-

(a) To arrange for the circulation to the Head of State of copies of the agenda and minutes of Cabinet and of all other papers laid before Cabinet at the time when they are circulated to Ministers; and

(b) To furnish such information relating to the administration of the affairs of Western Samoa and proposals for legislation as the Head of State may call for.

28. Oath of Office

The Head of State and each member of the Council of Deputies shall, before assuming the functions of his office, take and subscribe before the Chief Justice an oath in the form set out in the Third Schedule.

29. Public Seal

The Head of State shall keep and use the Public Seal of Western Samoa.

30. Secretary to Head of State

There shall be a Secretary to the Head of State.

PART IV THE EXECUTIVE

31. Executive power

(1) The executive power of Western Samoa shall vest in the Head of State and shall be exercised by him under the provisions of this Constitution.

(2) Nothing in clause (1) shall prevent Parliament from conferring by Act functions on authorities other than the Head of State.

32. Cabinet

(1) There shall be a Cabinet of Ministers, who shall have the general direction and control of the executive government of Western Samoa and shall be collectively responsible therefor to Parliament.

(2) Cabinet shall be appointed as follows:

(a) The Head of State shall appoint as Prime Minister to preside over Cabinet a Member of Parliament who commands the confidence of a majority of the Members of Parliament;

(b) The Head of State shall, acting on the advice of the Prime Minister, appoint not fewer than eight nor more than twelve other Members of Parliament to be Ministers;

(c) If an appointment is to be made while the Legislative Assembly is dissolved, a person who was a Member of Parliament immediately before the Assembly was last dissolved may be appointed to be Prime Minister or a Minister;

(d) Appointments under the provisions of this clause shall be made by the Head of State by instrument under the Public Seal;

(e) The Head of State shall, acting on the advice of the Prime Minister, appoint another Member or Members of Parliament to be a Minister or Ministers as soon as possible after the number of Ministers falls below the number appointed pursuant to subclause (b) of this clause by reason of the office of any Minister or Ministers becoming vacant, so that the number of Ministers (in addition to the Prime Minister) shall be restored to the number appointed pursuant to subclause (b) of this clause as soon as possible.

Subclause (e) was added to clause (2) by s. 4 of the Constitution Amendment Act (No. 2) 1963.

Subclauses (a) and (e) were amended by s.2 of the Constitution Amendment Act 1991.

33. Vacation of office

(1) The appointment of the Prime Minister who is in office at the commencement of the first session of the Legislative Assembly following a dissolution thereof shall be terminated by the Head of State on the seventh day of that session if the Prime Minister has not sooner resigned.

(2) The appointment of the Prime Minister shall also be terminated by the Head of State-

(a) If the Prime Minister ceases to be a Member of Parliament for any reason other than a dissolution of the Legislative Assembly; or

(b) If the Legislative Assembly passes a motion in express words of no confidence in Cabinet or if Cabinet is defeated on any question or issue which the Prime Minister has declared to be a question or issue of confidence:

Provided that, if after the passing of such a motion or after that defeat the Prime Minister so requests, the Head of State may dissolve the Legislative Assembly instead of terminating the appointment of the Prime Minister; or

(c) If the Prime Minister resigns his office by writing under his hand addressed to the Head of State; or

(d) If the Prime Minister is absent from Western Samoa without written permission given by the Head of State, acting in his discretion.

(3) The office of any other Minister shall become vacant-

(a) If the appointment of the Prime Minister has been terminated under the provisions of clause (1) or clause (2); or

(b) If the appointment of the Minister to that office is revoked by the Head of State, acting on the advice of the Prime Minister, by instrument under the Public Seal; or

(c) If the Minister ceases to be a Member of Parliament for any reason other than a dissolution of the Legislative Assembly; or

(d) If the Minister resigns his office by writing under his hand addressed to the Head of State; or

(e) If the Minister is absent from Western Samoa without written permission given by the Head of State, acting on the advice of the Prime Minister.

(4) Whenever, by reason of illness or of absence from Western Samoa with the written permission of the Head of State, the Prime Minister is temporarily prevented from performing, in Western Samoa, the functions of his office, the Head of State may, by instrument under the Public Seal, appoint another Minister to perform those functions until such time as the Prime Minister is capable of again performing them or has vacated his office.

(5) The power conferred on the Head of State under the provisions of clause (4) shall be exercised by the Head of State, acting in his discretion, if in his opinion it is impracticable to obtain the advice of the Prime Minister by reason of the illness or absence of the Prime

Minister and, in any other case, shall be exercised by the Head of State, acting on the advice of the Prime Minister.

(6) The Head of State, acting on the advice of the Prime Minister, may by instrument under the Public Seal-

(a) Declare a Minister to be by reason of illness temporarily incapable of performing his functions as a Minister; or

(b) Suspend a Minister during the period of any investigation or inquiry into the conduct of that Minister.

(7) Any Minister in respect of whom action has been taken under the provisions of clause (6) shall not perform any of the functions of his office or sit in or otherwise take part in the proceedings of Cabinet until the Head of State, acting on the advice of the Prime Minister, has revoked the aforesaid instrument under the Public Seal.

34. Official oath

Every Minister shall, before assuming the functions of his office, take and subscribe before the Head of State an oath in the form set out in the Third Schedule.

35. Assignment of responsibilities to Ministers

(1) The Prime Minister may, by direction in writing under his hand,-

(a) Charge any Minister with the responsibility for any department or subject; and

(b) Revoke or vary any direction given under the provisions of this clause.

(2) The Prime Minister may retain in his charge any department or subject.

36. Summoning of Cabinet

Cabinet shall be summoned only by the Prime Minister or, in his absence, by such Minister as the Prime Minister shall appoint in that behalf.

37. Cabinet procedure

(1) Subject to the provisions of this Constitution, Cabinet may regulate its procedure (including the fixing of a quorum) in such manner as it thinks fit.

(2) There shall be a Secretary to Cabinet.

(3) Cabinet shall not be disqualified for the transaction of business by reason of any vacancy in the number of its members, and any proceedings of Cabinet shall be valid notwithstanding that some person who was not entitled to do so sat or voted in Cabinet or otherwise took part in the proceedings.

(4) It shall be the duty of the Prime Minister, if the Head of State so requires, to submit for the consideration of Cabinet any matter on which a decision has been taken by a Minister (including the Prime Minister) but which has not been considered by Cabinet.

(5) A decision of Cabinet shall be recorded in minutes which shall, under the hand of the Secretary to Cabinet, be communicated to the Secretary to the Head of State within 24 hours of the making of the decision.

(6) A decision of Cabinet shall not take effect except under the provisions of Article 38.

38. When decisions of Cabinet are to take effect

(1) A decision of Cabinet shall take effect-

(a) On its approval by the Head of State, acting in his discretion; or

(b) On the expiry of 4 days after the date of the decision, unless a meeting of the Executive Council is sooner held under the provisions of Article 40; or

(c) If the issue involved in the decision is, in the opinion of a majority of Ministers present and voting at the meeting at which the decision is taken, of extreme urgency, on the expiry of one day after the date of the decision, unless a meeting of the Executive Council is sooner held under the provisions of Article 40; or

(d) Under the provisions of Article 40.

(2) For the purposes of subclauses (b) and (c) of clause (1), the date of a decision of Cabinet shall be the date on which the minutes in which the decision is recorded are communicated to the Secretary to the Head of State under the provisions of clause (5) of Article 37.

(3) An instrument under the hand of the Secretary to Cabinet certifying that a decision of Cabinet has taken effect shall be conclusive evidence that that decision has taken effect.

39. Executive Council

(1) There shall be an Executive Council of Western Samoa, which shall consist of:

(a) The Head of State;

(b) The Prime Minister and Ministers holding office under the provisions of Articles 32 and 33.

(2) Subject to the provisions of this Constitution, the Executive Council may regulate its procedure (including the fixing of a quorum) in such manner as it thinks fit.

(3) The Secretary to Cabinet shall be Clerk of the Executive Council.

40. Consideration of Cabinet decisions by Executive Council

(1) The Head of State, acting in his discretion, or the Prime Minister may summon a meeting of the Executive Council to consider any decision recorded in the minutes of a Cabinet meeting.

(2) If at a meeting of the Executive Council thus summoned the Head of State supports the decision concerned, that decision shall take effect as a decision of Cabinet.

(3) If at a meeting of the Executive Council thus summoned the Head of State opposes the decision concerned or requests any amendment thereto, Cabinet shall thereupon be summoned under the provisions of Article 36 and requested to reconsider that decision.

(4) If Cabinet after that reconsideration reaffirms its original decision or accepts the amendment requested by the Head of State, the original decision or the decision as so amended, as the case may be, shall forthwith take effect as a decision of Cabinet.

(5) If Cabinet after that reconsideration adopts a decision which incorporates an amendment to its original decision, other than an amendment requested by the Head of State under the provisions of clause (3), the decision as so amended shall operate as a new decision of Cabinet to which the provisions of clauses (5) and (6) of Article 37 shall apply.

41. Attorney-General

(1) The Head of State, acting on the advice of the Prime Minister, shall appoint an Attorney-General, who shall be a person qualified to be a Judge of the Supreme Court.

(2) The Attorney-General shall advise on legal matters referred to him by the Head of State, Cabinet, the Prime Minister or a Minister and shall have power, exercisable in his discretion, to institute, conduct or discontinue any proceedings for an offence alleged to have been committed.

(3) The Attorney-General shall have a right of audience in, and shall take precedence over any other person appearing before, any court or tribunal.

(4) The powers of the Attorney-General may be exercised by him in person or by officers subordinate to him, acting under and in accordance with his general or special instructions.

(5) The Attorney-General shall hold office for such term or terms and under such conditions as may be determined by the Head of State, acting on the advice of the Prime Minister.

**PART V
PARLIAMENT**

42. Parliament

There shall be a Parliament of Western Samoa, which shall consist of the Head of State and the Legislative Assembly.

43. Power to make laws

Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of Western Samoa and laws having effect outside as well as within Western Samoa.

44. Members of the Legislative Assembly

(1) The Legislative Assembly shall consist of:

(a) One member elected for each of 41 territorial constituencies having such names and boundaries and including such villages or sub-villages or villages and sub-villages as are prescribed from time to time by Act;

(aa) Six additional members being one additional member elected for each of such 6 of those territorial constituencies as are prescribed from time to time by Act;

(b) Members elected by those persons whose names appear on the individual voters' roll.

Subclauses (a) and (aa) of clause (1) were substituted for the original subclause (a) by s. 2 of the Constitution Amendment Act 1963.

Subclause (aa) was further substituted by s.2 of the Constitution Amendment Act (No. 2) 1991.

(2) The number of members to be elected under the provisions of subclause (b) of clause (1) shall be determined under the provisions of the Second Schedule.

(3) Subject to the provisions of this Constitution, the mode of electing members of the Legislative Assembly, the terms and conditions of their membership, the qualifications of electors, and the manner in which the roll for each territorial constituency and the individual voters' roll shall be established and kept shall be prescribed by law.

(4) Members of the Legislative Assembly shall be known as Members of Parliament.

45. Qualifications for membership

(1) Any person shall be qualified to be elected as a Member of Parliament who-

(a) Is a citizen of Western Samoa; and

(b) Is not disqualified under the provisions of this Constitution or of any Act.

(2) If any person other than a person qualified under the provisions of clause (1) is elected as a Member of Parliament, the election of that person shall be void.

46. Tenure of office of members

(1) Every Member of Parliament shall cease to be a Member at the next dissolution of the Legislative Assembly after he has been elected or previously thereto if his seat becomes vacant under the provisions of clause (2).

(2) The seat of a Member of Parliament shall become vacant-

(a) Upon his death; or

(b) If he resigns his seat by writing under his hand addressed to the Speaker; or

(c) If he ceases to be a citizen of Western Samoa; or

(d) If he becomes disqualified under the provisions of this Constitution or of any Act.

47. Decisions on questions as to membership

All questions that may arise as to the right of any person to be or to remain a Member of Parliament shall be referred to and determined by the Supreme Court.

48. Filling vacancies

Whenever the seat of a Member of Parliament becomes vacant under the provisions of clause (2) of Article 46, the Speaker shall, by writing under his hand, report that vacancy to the Head of State, and the vacancy shall be filled by election in the manner provided by law.

49. Election of Speaker

(1) The Legislative Assembly shall, immediately when it first meets after a general election and as soon as possible after any vacancy occurs in the office of Speaker otherwise than by reason of a dissolution of the Assembly, elect a Member of Parliament to be Speaker of the Legislative Assembly.

(2) The Speaker, upon being elected and before assuming the functions of his office, shall take and subscribe before the Head of State an Oath of Allegiance in the form set out in the Third Schedule.

(3) The Speaker may at any time resign his office by writing under his hand addressed to the Clerk of the Legislative Assembly and shall vacate his office-

(a) If he ceases to be a Member of Parliament; or

(b) If he is appointed to be a Minister.

50. The Deputy Speaker

(1) The Legislative Assembly may elect a Member of Parliament, not being a Minister, to be Deputy Speaker.

(2) The Deputy Speaker may at any time resign his office by writing under his hand addressed to the Clerk of the Legislative Assembly and shall vacate his office-

(a) If he ceases to be a Member of Parliament; or

(b) If he is appointed to be a Minister; or

(c) If he is elected to be Speaker.

(3) Subject to the provisions of this Constitution, the functions conferred under the provisions of this Constitution upon the Speaker shall, if there is no person holding the office of Speaker or if the Speaker is absent from Western Samoa or is otherwise unable to perform those functions, be performed by the Deputy Speaker.

51. Clerk of the Legislative Assembly

There shall be a Clerk of the Legislative Assembly.

52. Meetings of the Legislative Assembly

The Legislative Assembly shall meet at such times and at such places as the Head of State appoints from time to time in that behalf by notice published in the *Western Samoa Gazette* and recorded in the *Savali*:

Provided that the Assembly shall meet not later than 45 days after the holding of a general election and at least once in every year thereafter, so that a period of 12 months shall not intervene between the last sitting of the Assembly in one session and the first sitting thereof in the next session.

53. Standing Orders

Subject to the provisions of this Constitution, the Legislative Assembly may make, amend and repeal Standing Orders regulating its procedure.

54. Languages

(1) All debates and discussions in the Legislative Assembly shall be conducted in the Samoan language and the English language.

(2) The Minutes and the debates of the Legislative Assembly, every bill introduced therein, every paper presented thereto and all minutes of proceedings, minutes of evidence, and reports of committees of the Assembly shall be in the Samoan language and the English language.

55. Presiding over Legislative Assembly

The Speaker, or in his absence the Deputy Speaker, shall preside over sittings of the Legislative Assembly. In the absence from any sitting of both the Speaker and the Deputy Speaker, the Members of Parliament present shall choose one of their number (not being a Minister) to preside over that sitting.

56. Proceedings are valid

The Legislative Assembly shall not be disqualified for the transaction of business by reason of any vacancy among the Members of Parliament, including any vacancy not filled at a general election, and any proceedings therein shall be valid notwithstanding that some person who was not entitled to do so sat or voted in the Assembly or otherwise took part in the proceedings.

57. Quorum

No business shall be transacted at any sitting of the Legislative Assembly if objection is taken by any Member of Parliament present that the number of Members present is (besides the Speaker or other Member presiding) fewer than one-half of the total number of Members of Parliament (excluding vacancies).

58. Voting

(1) Except as otherwise provided in this Constitution, every question before the Legislative Assembly shall be decided by a majority of the votes of the Members of Parliament present.

(2) The Speaker, or the Deputy Speaker or any other Member of Parliament while presiding over a sitting of the Legislative Assembly in the absence of the Speaker, shall not have a deliberative vote but, in the case of an equality of votes, shall have a casting vote.

59. Introduction of bills, etc., into Legislative Assembly

Subject to the provisions of this Part and of the Standing Orders of the Legislative Assembly, any Member of Parliament may introduce any bill or propose any motion for debate in the Assembly or present any petition to the Assembly, and the same shall be considered and disposed of under the provisions of the Standing Orders:

Provided that, except upon the recommendation or with the consent of the Head of State, the Assembly shall not proceed upon any bill which, in the opinion of the Speaker, the Deputy Speaker or other Member of Parliament presiding, would dispose of or charge the Treasury Fund or any other public fund or account, or revoke or alter any disposition thereof or charge thereon, or impose, alter or repeal any tax, rate or duty.

60. Bills assented to become Acts of Parliament

(1) No bill shall become a law until the Head of State has given his assent thereto.

(2) Whenever a bill which has been passed by the Legislative Assembly is presented to the Head of State for his assent, he shall, acting on the advice of the Prime Minister, declare that he assents to the bill or that he refuses his assent to the bill.

(3) A law assented to by the Head of State as herein provided shall be known as an Act of Parliament and shall come into force either on the day on which it is assented to, or on any date (whether earlier or later than the date on which it is assented to) specified in that behalf in the Act.

61. Oath of allegiance

Except for the purpose of enabling this Article to be complied with and for the election of a Speaker, no Member of Parliament shall sit or vote in the Legislative Assembly until he

shall have taken and subscribed before the Assembly an Oath of Allegiance in the form set out in the Third Schedule.

62. Privileges of Legislative Assembly

The privileges, immunities and powers of the Legislative Assembly, of the committees thereof and of Members of Parliament may be determined by Act:

Provided that no such privilege or power may extend to the imposition of a fine or to committal to prison for contempt or otherwise, unless provision is made by Act for the trial and punishment of the person concerned by the Supreme Court.

63. Prorogation and dissolution of Legislative Assembly

(1) The Head of State may at any time, by notice published in the *Western Samoa Gazette*, prorogue the Legislative Assembly.

(2) If, at any time, the office of Prime Minister is vacant, the Head of State shall, by notice published in the *Western Samoa Gazette*, dissolve the Legislative Assembly as soon as he is satisfied, acting in his discretion, that a reasonable period has elapsed since that office was last vacated and that there is no Member of Parliament likely to command the confidence of a majority of the Members.

(3) The Head of State may at any time, by notice published in the *Western Samoa Gazette*, dissolve the Legislative Assembly, if he is advised by the Prime Minister to do so, but shall not be obliged to act in this respect in accordance with the advice of the Prime Minister unless he is satisfied, acting in his discretion, that, in tendering that advice, the Prime Minister commands the confidence of a majority of the Members of Parliament.

(4) The Head of State shall dissolve the Legislative Assembly at the expiry of 5 years from the date of the last preceding general election, if it has not been sooner dissolved.

Clause (4) was amended by s.2 of the Constitution Amendment Act (No. 3) 1991.

64. General elections

There shall be a general election of the Legislative Assembly at such time within 3 months after every dissolution of the Assembly as the Head of State appoints by notice in the *Western Samoa Gazette*.

PART VI THE JUDICIARY

65. Constitution of the Supreme Court

- (1) There shall be a Supreme Court of Western Samoa, which shall be a superior court of record and shall consist of a Chief Justice and such number of other Judges as may be determined by Act.
- (2) The Chief Justice of the Supreme Court shall be appointed by the Head of State, acting on the advice of the Prime Minister.
- (3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless-
 - (a) He possesses such qualifications as the Head of State, acting on the advice of the Judicial Service Commission, may prescribe; and
 - (b) He has been in practice as a barrister in Western Samoa, or in an approved country, or partly in the one and partly in the other, for a period of, or periods amounting in the aggregate to, not less than 8 years.
- (4) In computing, for the purposes of subclause (b) of clause (3), the period or periods during which any person has been in practice as a barrister, any period or periods during which he has held judicial office in a court of superior or subordinate jurisdiction in Western Samoa or an approved country shall be included.
- (5) For the purposes of this Article or of clause (4) of Article 75 or of both of them, the Head of State, acting on the advice of the Judicial Service Commission, may designate as an approved country any country which, in the opinion of the Commission, has a legal system similar to that existing in Western Samoa.

66. Powers of Judges of the Supreme Court

Each Judge of the Supreme Court or any 2 or more Judges may, in any part of Western Samoa and at any time or place, exercise all the powers of the Supreme Court.

67. Oath of office

Every Judge of the Supreme Court shall, before assuming the functions of his office, take and subscribe before the Head of State an oath in the form set out in the Third Schedule.

68. Tenure of office

(1) Except in the case of an appointment made under the provisions of clause (2), a Judge of the Supreme Court shall hold office until he reaches the age of 62 years:

Provided that the Head of State, acting (in the case of the Chief Justice) on the advice of the Prime Minister or (in the case of any other Judge of the Supreme Court) on the advice of the Judicial Service Commission, may extend the period of office of a Judge who has reached the age of 62 years.

(2) Any person of any age who is not a citizen of Western Samoa and who is qualified for appointment under the provisions of clause (3) of Article 65 may be appointed to hold office as a Judge of the Supreme Court for a term of years.

(3) Nothing done by a Judge of the Supreme Court in the performance of his functions shall be deemed to be invalid by reason only that he has reached the age at which he is required by this Article to retire or that his term of office has expired, as the case may be.

(4) A Judge of the Supreme Court may resign his office by writing under his hand addressed to the Head of State.

(5) A Judge of the Supreme Court shall not be removed from office, except by the Head of State on an address of the Legislative Assembly carried by not less than two-thirds of the

total number of Members of Parliament (including vacancies), praying for his removal from office on the ground of stated misbehaviour or of infirmity of body or mind.

(6) The Head of State, acting (in the case of the Chief Justice) on the advice of the Prime Minister or (in the case of any other Judge of the Supreme Court) on the advice of the Judicial Service Commission, may at any time when the Legislative Assembly is not meeting suspend a Judge of the Supreme Court from his office, and such suspension, unless previously revoked, shall continue in force until the end of the next ensuing session and no longer.

69. Salaries of Judges of the Supreme Court

The salaries of Judges of the Supreme Court to whom clause (1) of Article 68 applies shall be determined by Act and shall be charged on the Treasury Fund. The salaries of such Judges shall not be diminished during their period of office, unless as part of a general reduction of salaries applied proportionately to all persons whose salaries are determined by Act.

70. Acting Chief Justice

(1) While any vacancy exists in the office of Chief Justice or during any absence from Western Samoa of the Chief Justice, the senior Judge of the Supreme Court shall have authority to act as Chief Justice and to perform the functions of the office of Chief Justice.

(2) Wherever by reason of illness or any cause other than absence from Western Samoa the Chief Justice is unable to perform the functions of the office of Chief Justice, the Head of State, acting on the advice of the Prime Minister, may authorise the senior Judge of the Supreme Court to act as Chief Justice until the Chief Justice resumes those functions, and, during that period, to perform those functions.

(3) The authority conferred on the Acting Chief Justice under the provisions of this Article shall not include power to preside over the Court of Appeal unless he is qualified by virtue of his seniority to preside thereover under the provisions of clause (3) of Article 75.

71. Acting Judge of the Supreme Court

(1) If the office of any Judge of the Supreme Court (other than the Chief Justice) is vacant or if any such Judge is unable to perform the functions of his office, the Head of State, acting on the advice of the Judicial Service Commission, may appoint a person qualified under the provisions of clause (3) of Article 65 to be temporarily a Judge of the Supreme Court:

Provided that a person may be so appointed notwithstanding that he has attained the age of 62 years.

(2) Any person appointed under the provisions of clause (1) to be temporarily a Judge of the Supreme Court shall hold office for the period of his appointment or, if no such period is specified, until his appointment is revoked by the Head of State, acting on the advice of the Judicial Service Commission:

Provided that he may at any time resign his office by writing under his hand addressed to the Head of State.

72. Judicial Service Commission

(1) There shall be a Judicial Service Commission, which shall consist of:

(a) The Chief Justice, as President;

(b) The Attorney-General or, if for any reason the Attorney-General is unable to act, the Chairman of the Public Service Commission;

(c) A person nominated from time to time by the Minister of Justice.

(2) No business shall be transacted by the Judicial Service Commission unless 3 members are present, and all questions proposed for decision by the Commission shall be decided by a majority of the votes of those members.

(3) The power of appointing, promoting and transferring any judicial officer, other than the Chief Justice, and of dismissing any judicial officer, other than a Judge of the Supreme

Court, is hereby vested in the Head of State, acting on the advice of the Judicial Service Commission.

73. Jurisdiction of the Supreme Court

(1) The Supreme Court shall have such original, appellate and revisional jurisdiction as may be provided by Act.

(2) Without prejudice to any appellate or revisional jurisdiction of the Supreme Court, where in any proceedings before another court (except the Court of Appeal) a question arises as to the interpretation or effect of any provision of this Constitution, the Supreme Court may, on the application of any party to the proceedings, determine that question and either dispose of the case or remit it to that other court to be disposed of in accordance with the determination.

(3) The Head of State, acting on the advice of the Prime Minister, may refer to the Supreme Court for its opinion any question as to the interpretation or effect of any provision of this Constitution which has arisen or appears likely to arise, and the Court shall pronounce its opinion on any question so referred to it.

74. Subordinate courts

There shall be such subordinate courts possessing such jurisdiction and powers as may be provided by Act.

75. Constitution of Court of Appeal

(1) There shall be a Court of Appeal of Western Samoa, which shall be a superior court of record.

(2) Subject to the provisions of this Part, the Judges of the Court of Appeal shall be:

(a) The Chief Justice and the other Judges of the Supreme Court;

(b) Such persons, possessing the qualifications prescribed under the provisions of clause (3) of Article 65, as may be appointed from time to time by the Head of State, acting on the advice of the Judicial Service Commission.

(3) The Chief Justice shall be President of the Court of Appeal, but, in his absence, the senior Judge of the Court present at the appeal or, if the Judges so present are of the same seniority, a Judge designated by the Chief Justice shall preside.

(4) Judges of the Court of Appeal shall take seniority according to the respective dates of their first appointment as Judges of a superior court in Western Samoa or in any approved country.

(5) An appointment under the provisions of subclause (b) of clause (2) shall be for a period of time or for the trial or hearing of particular causes or matters, as may be specified in the instrument of appointment.

76. Number of Judges

(1) Any 3 Judges of the Court of Appeal may exercise all the powers of the Court:

Provided that the Court may have its judgment delivered by any one of its members who is also a Judge of the Supreme Court, and if there is no such member then through the Registrar of the Court of Appeal.

The proviso to clause (1) was substituted for the original proviso by s. 3 of the Constitution Amendment Act 196S.

(2) The judgment of the Court of Appeal shall be in accordance with the opinion of the majority of the Judges present.

77. Judges not to sit on appeals from own decisions

A Judge of the Court of Appeal shall not sit on the hearing of an appeal from any decision made by him or by a court on which he sat as a member.

78. Oath of office

Any person appointed under the provisions of subclause (b) of clause (2) of Article 75 to be a Judge of the Court of Appeal shall, on first appointment, take and subscribe before the Head of State an oath in the form set out in the Third Schedule.

79. General jurisdiction of Court of Appeal

Subject to the provisions of this Constitution, the Court of Appeal shall have jurisdiction to hear and determine such appeals (including proceedings removed by order of the Supreme Court to the Court of Appeal) as may be provided by Act.

80. Jurisdiction on constitutional questions

(1) An appeal shall lie to the Court of Appeal from any decision of the Supreme Court in any proceeding, if the Supreme Court certifies that the case involves a substantial question of law as to the interpretation or effect of any provision of this Constitution.

(2) Where the Supreme Court has refused to give such a certificate, the Court of Appeal may, if it is satisfied that the case involves a substantial question of law as to the interpretation or effect of any provision of this Constitution, grant special leave to appeal from that decision.

(3) Where such a certificate is given or such leave is granted, any party in the case may appeal to the Court of Appeal on the ground that any such question as aforesaid has been wrongly decided and, with the leave of that Court, on any other ground.

81. Jurisdiction in respect of fundamental rights

An appeal shall lie to the Court of Appeal from any decision of the Supreme Court in any proceedings under the provisions of Article 4.

82. Definition of "decision"

In Articles 77, 80, 81 and 119, "decision" includes judgment, decree, order, writ, declaration, conviction, sentence, opinion or other determination.

PART VII THE PUBLIC SERVICE

83. Interpretation

The "Public Service" means the service of Western Samoa; but does not include service remunerated by way of fees or commission only, honorary service, or service in any of the following capacities, namely as-

- (a) Head of State; or
- (b) A member of the Council of Deputies; or
- (c) Prime Minister or a Minister; or
- (d) Speaker or Deputy Speaker; or
- (e) A Member of Parliament; or
- (f) A Judge of the Supreme Court or any other judicial officer; or
- (g) Attorney-General; or
- (h) Controller and Chief Auditor; or
- (i) A member of the Public Service Commission who is not an employee of the Public Service at the time of his appointment to be a member of the Public Service Commission; or
- (j) An officer of police or an officer of prisons; or
- (k) A member of any uniformed branch of any defence force; or

(l) A Pulenu'u; or

(m) The Clerk of the Legislative Assembly, and the other officers and employees of the Legislative Assembly.

In para (k) the word "or" was added, and para (l) was added. by s. 3 of the Constitution Amendment Act 1969.

In para (1) the word "or" was added, and para (m) was added, by s.2 (a) and (b) respectively of the Constitution Amendment Act 1975

84. Public Service Commission

(1) There shall be a Public Service Commission of Western Samoa, which shall consist of not more than 3 persons appointed by the Head of State, acting on the advice of the Prime Minister.

(2) The Head of State, acting on the advice of the Prime Minister, shall appoint one of the members of the Public Service Commission to be Chairman.

(3) No person shall be appointed to be or shall remain a member of the Public Service Commission-

(a) If he is not or ceases to be a citizen of Western Samoa: or

(b) If he is or becomes a Member of Parliament.

(4) No member of the Public Service Commission shall hold concurrently any other office in the Public Service.

(5) The powers of the Public Service Commission shall not be affected by any vacancy in the number of its members, and any proceedings of the Commission shall be valid notwithstanding that some person who was not entitled to do so took part in those proceedings.

85. Term of office

(1) A member of the Public Service Commission shall be appointed to hold office for a term of not more than 3 years but shall be eligible for reappointment.

(2) A member of the Public Service Commission may at any time resign his office by writing under his hand addressed to the Prime Minister but shall not be removed from office except on the like grounds and in the like manner as a Judge of the Supreme Court.

(3) The Head of State, acting on the advice of the Prime Minister, may at any time when the Legislative Assembly is not meeting suspend a member of the Public Service Commission from his office, and such suspension, unless previously revoked, shall continue in force until the end of the next ensuing session and no longer.

86. Salaries

The salaries of members of the Public Service Commission shall be determined by the Head of State, acting on the advice of the Prime Minister.

87. Functions of the Commission

(1) Subject to the provisions of clause (3), the Public Service Commission shall be responsible for the appointment, promotion, transfer, termination of appointment, dismissal and disciplinary control of the Public Service and shall have such other functions as may be provided by Act.

(2) In the performance of its functions, the Public Service Commission shall have regard to the general policy of Cabinet relating to the Public Service, and shall give effect to any decision of Cabinet defining that policy conveyed to the Commission in writing by the Prime Minister.

(3) An Act of Parliament may designate as a special post any post of head of department or any post of a corresponding grade; and the Head of State, acting on the advice of Cabinet after Cabinet has consulted the Public Service Commission, shall be responsible, in respect

of any post so designated, for appointments, gradings, salaries, promotions, transfers, retirements, terminations of appointments, dismissals and discipline.

Clause (3) was amended by s. 4 of the Constitution Amendment Act 1969.

88. Procedure and Annual Report

(1) Subject to the provisions of this Constitution and of any law, the Public Service Commission may-

(a) Regulate its procedure (including the fixing of a quorum) in such manner as it thinks fit; and

(b) Delegate any of its functions to any of its members or to any person or persons.

(2) The Commission shall make an annual report on its activities to the Head of State, who shall cause a copy of that report to be laid before the Legislative Assembly.

89. Public Service Board of Appeal

(1) There shall be a Public Service Board of Appeal, which shall consist of:

(a) The Chief Justice or a judicial officer nominated by the Chief Justice;

(b) One person appointed by, and holding office at the pleasure of, the Head of State, acting on the advice of the Prime Minister;

(c) One person, being an officer of the Public Service, elected by the officers of the Public Service and holding office for a term not exceeding 3 years.

(2) The Chief Justice or the person nominated by the Chief Justice shall be Chairman of the Public Service Board of Appeal.

(3) An Act of Parliament may-

(a) Prescribe the manner of election of the person to be elected under the provisions of subclause (c) of clause (1);

(b) Provide for the appointment of deputies to act for members of the Public Service Board of Appeal appointed under the provisions of subclauses (b) and (c) of clause (1);

(c) Prescribe the jurisdiction of the Board of Appeal to hear and determine appeals from decisions of the Public Service Commission.

PART VIII FINANCE

90. Public funds

There shall be a Treasury Fund and such other public funds or accounts as may be provided by Act.

91. Restriction on taxation

No taxation shall be imposed except by Parliament.

92. Public revenue

All taxes and other revenues and money raised or received by Western Samoa shall be paid into the Treasury Fund unless required or permitted by Act to be paid into any other public fund or account.

93. Payment out of public funds

No money shall be issued out of the Treasury Fund or any other public fund or account except in pursuance of a warrant under the hand of the Head of State.

94. Appropriation of expenditure

(1) The Minister responsible for finance shall, in respect of every financial year, cause to be laid before the Legislative Assembly a statement of the estimated receipts and expenditure for that year, and, unless Parliament in respect of any year otherwise provides, that statement shall be so laid before the commencement of that year.

(2) The proposals for all expenditure contained in the estimates (other than statutory expenditure) shall be submitted to the vote of the Legislative Assembly by means of an Appropriation Bill.

(3) If, in respect of any financial year, it is found-

(a) That any expenditure is incurred or is likely to be incurred upon any service which is in excess of the sum provided for that service by the Appropriation Act relating to that year; or

(b) That any expenditure (other than statutory expenditure) is incurred or is likely to be incurred upon any service not provided for by the Appropriation Act relating to that year,

the Minister responsible for finance shall cause to be laid before the Legislative Assembly supplementary estimates in respect of that expenditure, and the proposals for expenditure therein contained shall be submitted to the vote of the Assembly by means of a Supplementary Appropriation Bill.

(4) Statutory expenditure, which shall not be submitted to the vote of the Legislative Assembly under the provisions of this Article, means-

(a) The expenditure charged on the Treasury Fund under the provisions of Articles 22, 25, 69, and 98; and

(b) Such other expenditure as may by Act be charged upon the Treasury Fund or any other public fund or account and in such Act be expressly stated to be statutory expenditure.

(5) The Legislative Assembly may approve or refuse its approval to any proposal for expenditure contained in an Appropriation or Supplementary Appropriation Bill, but may not increase the amount or alter the destination of any proposed expenditure.

95. Expenditure in anticipation of appropriation

If an Appropriation Bill has not become law by the first day of the financial year to which it relates, the Minister responsible for finance may, with the prior approval of Cabinet, authorise such expenditure (not otherwise authorised by Act) as he may consider essential for the continuance of any services, until an Appropriation Bill becomes law:

Provided that the expenditure so authorised shall not exceed the amount of any unexpended balance of the vote in the Appropriation law for the preceding year together with an amount equal to one-fourth of that vote.

96. Unauthorised expenditure

Where, during the period between the passing of the Appropriation Act for any financial year and the end of that year, it is desirable that money should be expended in excess of or without the appropriation of the Legislative Assembly, Cabinet or, to the extent that Cabinet so authorises, the Minister responsible for finance may authorise the expenditure of such sums as are considered necessary:

Provided that the total amount of all sums issued and paid under the provisions of this Article shall not exceed one percent of the total amount of all sums appropriated by the Appropriation Act for that year.

97. Controller and Chief Auditor

(1) There shall be a Controller and Chief Auditor, who shall be appointed by the Head of State, acting on the advice of the Prime Minister.

(2) A person who has held the office of Controller and Chief Auditor shall not be eligible for appointment to any other office in the service of Western Samoa within a period of 3 years of his having ceased to hold the office of Controller and Chief Auditor.

(3) The Controller and Chief Auditor shall hold office until he reaches the age of 60 years.

Provided that the Legislative Assembly may by resolution extend the period of office of a Controller and Chief Auditor who has reached the age of 60 years.

(4) The Controller and Chief Auditor may at any time resign his office by writing under his hand addressed to the Prime Minister but shall not be removed from office except on the like grounds and in the like manner as a Judge of the Supreme Court

(5) The Head of State, acting on the advice of the Prime Minister, may at any time when the Legislative Assembly is not meeting suspend the Controller and Chief Auditor from his office, and such suspension, unless previously revoked, shall continue in force until the end of the next ensuing session and no longer.

98. Salary of Controller and Chief Auditor

The salary of the Controller and Chief Auditor shall be determined by Act and shall be charged on the Treasury Fund, and that salary shall not be diminished during the period of office of the Controller and Chief Auditor, unless as part of a general reduction of salaries applied proportionately to all persons whose salaries are determined by Act.

99. Audit of accounts

(1) The Controller and Chief Auditor shall audit the Treasury Fund, such other public funds or accounts as may be established, the accounts of all Departments and offices of executive government and the accounts of such other public, statutory or local authorities and bodies as may be provided by Act.

(2) The Controller and Chief Auditor shall report at least once annually to the Legislative Assembly on the performance of his functions under this Article and shall in his report draw attention to any irregularities in the accounts audited by him.

PART IX LAND AND TITLES

100. Matai titles

A Matai title shall be held in accordance with Samoan custom and usage and with the law relating to Samoan custom and usage.

101. Land in Western Samoa

- (1) All land in Western Samoa is customary land, freehold land or public land.
- (2) Customary land means land held from Western Samoa in accordance with Samoan custom and usage and with the law relating to Samoan custom and usage.
- (3) Freehold land means land held from Western Samoa for an estate in fee simple.
- (4) Public land means land vested in Western Samoa being land that is free from customary title and from any estate in fee simple.

102. No alienation of customary land

It shall not be lawful or competent for any person to make any alienation or disposition of customary land or of any interest in customary land, whether by way of sale, mortgage or otherwise howsoever, nor shall customary land or any interest therein be capable of being taken in execution or be assets for the payment of the debts of any person on his decease or insolvency:

Provided that an Act of Parliament may authorise-

- (a) The granting of a lease or licence of any customary land or of any interest therein;
- (b) The taking of any customary land or any interest therein for public purposes.

103. Land and Titles Court

There shall be a Land and Titles Court with such composition and with such jurisdiction in relation to Matai titles and customary land as may be provided by Act.

104. Land below high-water mark

(1) Subject to the provisions of any Act, all land lying below the line of high-water mark shall be public land.

(2) For the purposes of this Article, the term "high-water mark" means the line of median high tide between the spring and neap tides.

PART X EMERGENCY POWERS

105. Proclamation of Emergency

(1) If the Head of State is satisfied, acting in his discretion after consultation with Cabinet, that a grave emergency exists whereby the security or economic life of Western Samoa or of any part thereof is threatened, whether by war, external aggression, internal disturbance or natural catastrophe, he may by proclamation (hereinafter referred to as a Proclamation of Emergency) declare that a state of emergency exists.

(2) A Proclamation of Emergency shall remain in force for a period of 30 days, if not sooner revoked, but the provisions of this clause shall not preclude the issue of a further Proclamation before the expiry of the period for which the immediately preceding Proclamation is in force.

(3) If the Legislative Assembly is meeting at the time the Proclamation of Emergency is made, the Proclamation shall forthwith be laid before the Assembly.

(4) If the Legislative Assembly is not meeting at the time the Proclamation of Emergency is made, the Head of State shall appoint a time for the Assembly to meet which time shall be as soon as the Head of State, acting in his discretion, considers that conditions make it practicable, and the Proclamation shall forthwith be laid before the Assembly:

Provided that, if not less than one-half of the total number of Members of Parliament (excluding vacancies) by notice in writing to the Head of State require that a time for the meeting of the Assembly be appointed for the purposes of this clause, the Head of State shall appoint such a time which shall be not later than 7 days after the date of receipt of that notice.

106. Emergency Orders

(1) When a Proclamation of Emergency has been made and so long as it remains in force, the Head of State may from time to time make such Orders (hereinafter referred to as Emergency Orders) as appear to him to be necessary and expedient for securing the public safety, the defence of Western Samoa and the efficient prosecution of any war in which Western Samoa may be engaged, for maintaining public order and the supplies and services essential to the life of the community, and generally for safeguarding the interests and maintaining the welfare of the community.

(2) Emergency Orders may empower or provide for empowering such authorities, persons or classes of persons as may be specified in the Orders to make regulations, rules or by-laws for any of the purposes for which Emergency Orders are authorised under the provisions of this Article to be made, and may contain such incidental and supplementary provisions as appear to the Head of State to be necessary or expedient for making effective the powers conferred under the provisions of clause (1).

(3) Every Emergency Order, if otherwise valid, shall have effect notwithstanding anything contained in Part II.

(4) No provision of any Emergency Order, and no regulation rule or by-law duly made under the provisions of any such Order, shall be invalid because it deals with any matter already provided for under any law or because of any inconsistency with any such law.

107. Orders to be laid before Legislative Assembly

(1) If the Legislative Assembly is meeting at the time an Emergency Order is made under the provisions of Article 106, the Order shall forthwith be laid before the Assembly; and, if

the Assembly is not then meeting, the Order shall be laid before the Assembly as soon as the next meeting thereof commences.

(2) When an emergency Order has been laid before the Legislative Assembly under the provisions of clause (1), a notice of motion, signed by 6 Members of Parliament and made within 10 days of the day the Order was laid before the Assembly praying that the Order be revoked shall be debated in the Assembly at the first convenient opportunity within 4 sitting days next after the day on which notice of motion was given and if the Assembly resolves that the Order be revoked, it shall cease to be in force.

(3) All Emergency Orders made under the provisions of Article 106, if not sooner revoked, shall expire on the date on which the Proclamation of Emergency ceases to be in force or where more than one such Proclamation is made in respect of the emergency, when the last of those Proclamations ceases to be in force.

(4) The revocation or expiry of an Emergency Order shall not affect the previous operation thereof, the validity of anything done or omitted to be done thereunder, or any offence committed or any penalty or punishment incurred.

108. Restriction on detention

(1) For the purposes of this Article, there shall be an advisory board, which shall consist of-

(a) A Chairman appointed by the Head of State from among the persons who are or have been Judges of the Supreme Court or are qualified to be Judges of the Supreme Court;

(b) Two other members appointed by the Head of State, acting in his discretion after consultation with the Chief Justice.

(2) Where an Emergency Order made under the provisions of Article 106 authorises the detention of any person-

(a) Any person detained under the provisions of that Order shall, as soon as possible, be informed of the grounds for his detention and, subject to the provisions

of clause (3), of the allegations of fact on which it is based, and be given an opportunity of making representations to the advisory board against his detention; and

(b) No person shall be detained under the provisions of that Order for a period exceeding 3 months unless the advisory board has considered any representations made by him under the provisions of subclause (a) and has reported, before the expiry of that period, that there is in its opinion sufficient cause for the detention.

(3) This Article shall not require any authority or person who is authorised to detain any person under any Emergency Order made under the provisions of Article 106 to disclose facts whose disclosure would in its or his opinion be against the national interest.

PART XI GENERAL AND MISCELLANEOUS

109. Amendment of Constitution

(1) Any of the provisions of this Constitution may be amended or repealed by Act, and new provisions may be inserted in this Constitution by Act, if a bill for any such purpose is supported at its third reading by the votes of not less than two-thirds of the total number of Members of Parliament (including vacancies) and if not fewer than 90 days elapse between the second and third readings of that bill:

Provided that no bill amending, repealing or adding to the provisions of Article 102 or the provisions of this proviso shall be submitted to the Head of State for assent until it has been submitted to a poll of the electors on the rolls for the territorial constituencies established under the provisions of Article 44 and unless it has been supported by two-thirds of the valid votes cast in such a poll.

(2) A certificate under the hand of the Speaker that a bill has been passed under the provisions of clause (1) shall be conclusive and shall not be questioned in any court.

110. Power of pardon

(1) The Head of State shall have power to grant pardons, reprieves and respites, and to remit, suspend or commute any sentence passed by any court, tribunal or authority established under the law.

(2) In the exercise of the powers conferred upon him under the provisions of clause (1), the Head of State shall act in his discretion after consultation with such Minister as the Prime Minister shall designate from time to time.

111. Interpretation

(1) In this Constitution, unless it is otherwise provided or the context otherwise requires,-

"Act" or "Act of Parliament" means an Act of the Parliament of Western Samoa; and includes any Ordinance of the Legislative Assembly of the Trust Territory constituted under the provisions of the Samoa Amendment Act 1957;

"Cabinet" means the Cabinet of Ministers;

"Chief Justice" means the Chief Justice of the Supreme Court of Western Samoa;

"Court of Appeal" means the Court of Appeal of Western Samoa;

"Employee of the Public Service" means a person employed in the Public Service;

"Existing law" means any law in force in the Trust Territory of Western Samoa or any part thereof immediately before Independence Day;

"Head of State" means the Head of State of Western Samoa;

"High Court" means the High Court of Western Samoa constituted under the provisions of the Samoa Act 1921;

"Independence Day" means the day on which this Constitution comes into force under the provisions of Article 113;

"Judicial officer" means the holder of any judicial office, but does not include an employee of the Public Service who exercises all or any of the functions of a judicial office;

"Law" means any law for the time being in force in Western Samoa; and includes this Constitution, any Act of Parliament and any proclamation, regulation, order, bylaw or other act of authority made thereunder, the English common law and equity for the time being in so far as they are not excluded by any other law in force in Western Samoa, and any custom or usage which has acquired the force of law in Western Samoa or any part thereof under the provisions of any Act or under a judgment of a Court of competent jurisdiction;

"Legislative Assembly" means the Legislative Assembly constituted under the provisions of Article 44;

"Legislative Assembly of the Trust Territory" means the Legislative Assembly constituted under the provisions of the Samoa Amendment Act 1957 and in being immediately before Independence Day;

"Minister" includes the Prime Minister;

"Office of profit" means any office in the service of Western Samoa carrying the right to salary, and includes any office declared by Act to be an office of profit;

"Officer of the Public Service" means an employee of the Public Service other than a person employed in a temporary capacity or on probation;

"Parliament" means the Parliament of Western Samoa;

"Proclamation" means a proclamation made by the Head of State under his hand and the Public Seal of Western Samoa and published in the Western Samoa Gazette;

"Property" includes real and personal property, any estate or interest in any real or personal property, any debt, any thing in action, and any other right or interest;

"Public Seal" means the Public Seal of Western Samoa;

"Public Service Commission" means the Public Service Commission of Western Samoa;

"Salary" includes salary or wages, allowances, superannuation rights, free or subsidised housing, free or subsidised transport, and other privileges capable of being valued in money;

"Service of Western Samoa" means service in any capacity of Western Samoa; and includes service in any of the capacities named in subclauses (a) to (k) inclusive of Article 83, but not service in respect of the Western Samoa Trust Estates Corporation;

"Speaker" means the Speaker of the Legislative Assembly;

"Supreme Court" means the Supreme Court of Western Samoa;

"Western Samoa Trust Estates Corporations" means the corporation constituted under that name on Independence Day.

(2) Where in this Constitution reference is made to the Samoa Act 1921 or to any amendment to that Act, that reference shall be construed as a reference to the Act of the Parliament of New Zealand bearing the short title "the Samoa Act 1921" or to the relevant amendment thereto, including any amendment to that Act of the Parliament of New Zealand or that relevant amendment.

(3) Unless the context otherwise requires, where in this Constitution reference is made to a specified Part, Article or Schedule, that reference shall be construed as a reference to that Part or Article of, or that Schedule to, this Constitution; and, where reference is made to a specified clause, subclause or paragraph, that reference shall be construed as a reference to that clause of the Article, that subclause of the clause, or that paragraph of the subclause in which the reference occurs.

(4) Where under the provisions of this Constitution a person is required to take and subscribe an oath, he shall be permitted, if he so desires, to comply with that requirement by taking and subscribing an affirmation.

(5) Where in this Constitution reference is made to the functions of any office, that reference shall, unless the context otherwise requires, be construed as a reference to the functions of that office and to any powers and authorities that may lawfully be exercised by, and any duties that may be required to be performed by, the holder of that office.

(6) Where in this Constitution reference is made to any officer by the term designating his office, that reference shall, unless the context otherwise requires, be construed as a reference to the officer for the time being lawfully performing the functions of that office.

(7) Where this Constitution confers any power to make any appointment to any office, the person or authority having power to make the appointment shall, unless the context otherwise requires, have power, exercisable in a like manner,-

(a) To direct that a person other than the person appointed shall, during any period that the person appointed is unable to perform the functions of his office owing to absence or inability to act from illness or any other cause, perform the functions of that office;

(b) To appoint another person substantively to an office notwithstanding that there is a substantive holder thereof, when that substantive holder is on leave of absence pending relinquishment of his office;

(c) To direct that a person shall perform the functions of that office when no person has been appointed thereto, either until a contrary direction shall be given by the person or authority having power to make the appointment or until a person shall have been appointed substantively thereto, whichever shall be the earlier.

112. Authoritative texts

The Samoan and English texts of this Constitution are equally authoritative but, in case of difference, the English text shall prevail.

113. Coming into force

This Constitution shall come into force on the day approved by the General Assembly of the United Nations as the date of the termination of the Trusteeship Agreement for the Territory of Western Samoa approved by the General Assembly on 13 December 1946.

PART XII TRANSITIONAL

114. Existing law to continue

Subject to the provisions of this Constitution-

(a) The existing law shall, until repealed by Act, continue in force on and after Independence Day; and

(b) All rights, obligations and liabilities arising under the existing law shall continue to exist on and after Independence Day and shall be recognised, exercised and enforced accordingly; and

(c) Proceedings in respect of offences committed against the existing law may be instituted on and after Independence Day in that Court, established under the provisions of this Constitution, having the appropriate jurisdiction, and offenders shall be liable to the punishments provided by the existing law.

115. Functions of Council of State

Where the existing law confers any function on the Council of State of Western Samoa constituted under the provisions of the Samoa Amendment Act 1959, that function shall be performed by the Head of State, and where any such function is to be performed by the Council of State, acting by and with the advice of the Executive Council, that function shall be performed by the Head of State, acting by and with the advice of Cabinet.

116. Tenure of office of Ministers

Any person holding office as Prime Minister or as a Minister immediately before Independence Day shall be deemed to have been duly appointed thereto under the provisions of Part IV.

117. First Legislative Assembly

(1) The Legislative Assembly of the Trust Territory shall continue in being on and after Independence Day as the Legislative Assembly, and the members of the Legislative Assembly of the Trust Territory shall be deemed to have been duly elected as Members of Parliament under the provisions of this Constitution.

(2) The Speaker and the Deputy Speaker of the Legislative Assembly of the Trust Territory who are in office immediately before Independence Day shall be deemed to have been duly elected as Speaker and Deputy Speaker, respectively, under the provisions of this Constitution.

(3) The first session of the Legislative Assembly shall commence within 3 months of Independence Day.

(4) For the purposes of the provisions of clause (4) of Article 63, the general election at which the Legislative Assembly of the Trust Territory was elected shall be the date of the last preceding election in respect of the Legislative Assembly in being on and after Independence Day.

(5) Subject to the provisions of this Constitution, the Standing Orders of the Legislative Assembly of the Trust Territory in force immediately before Independence Day shall be the Standing Orders of the Legislative Assembly, and they may be amended, repealed or added to under the provisions of Article 53.

(6) If the seat of a Member of Parliament becomes vacant before the date of the first general election to be held after Independence Day, that vacancy shall be filled under the law in force immediately before Independence Day in relation to the filling of vacancies in the membership of the Legislative Assembly of the Trust Territory.

118. Existing Judges

Subject to the provisions of this Constitution, a person holding office as a Judge of the High Court immediately before Independence Day shall, on and after that day, hold the office of Judge of the Supreme Court on the same terms and conditions as were applicable to him immediately before Independence Day.

119. Existing legal proceedings

(1) All legal proceedings pending in the High Court immediately before Independence Day shall, on and after that day, stand transferred to, and be deemed to be pending for determination before, that court, established under the provisions of this Constitution, having the appropriate jurisdiction.

(2) All appeals from the High Court which immediately before Independence Day lay to, or were pending in, any court having jurisdiction to hear such appeals shall, on and after that day, lie to or stand transferred to, and be deemed to be pending for determination before, the Court of Appeal.

(3) Any decision of the High Court or of any court having jurisdiction to hear appeals from the High Court shall have the same force and effect as if it had been delivered or made by the Supreme Court or the Court of Appeal, respectively.

120. Existing officers to continue in office

Subject to the provisions of this Constitution-

(a) A person who, immediately before Independence Day, holds the office of Attorney-General or of a member of the Public Service Commission shall, on and after that day, hold the corresponding office established under the provisions of this Constitution on the same terms and conditions as were applicable to him immediately before Independence Day; and

(b) A person who, immediately before Independence Day, is an employee of the Western Samoan Public Service referred to in the Samoa Amendment Act 1949 shall on and after that day, hold the like employment in the Public Service.

121. Laws not brought into force before Independence Day

Where any Ordinance was enacted or made by the Legislative Assembly of the Trust Territory and the coming into force of that Ordinance was suspended, that Ordinance may, on or after Independence Day, come into force on the date specified therein or as may be specified by any authority empowered to bring it into force; and, in such case, the Ordinance shall, on and after that date, take effect as an Act or Parliament.

122. Adaptation of existing law

Where in the existing law reference is made to Her Majesty the Queen in right of the Trust Territory of Western Samoa, to the Crown in right of the Trust Territory of Western Samoa, to the Trust Territory of Western Samoa, to Western Samoa, or to Samoa, that reference shall unless the context otherwise requires, be construed as a reference to Western Samoa.

123. Vesting of property

(1) All property which immediately before Independence Day is vested in Her Majesty the Queen in right of the Trust Territory of Western Samoa or in the Crown in right of the Trust Territory of Western Samoa shall, on Independence Day, vest in Western Samoa.

(2) Subject to the provisions of clause (3), land which immediately before Independence Day is, under the provisions of the Samoa Act 1921, Samoan land, European land or Crown land shall, on and after Independence Day, be held, under the provisions of this Constitution, as customary land, freehold land or public land, respectively.

(3) All land in Western Samoa which immediately before Independence Day is vested in the Crown in right of the Government of New Zealand shall, on Independence Day, become freehold land held by Her Majesty the Queen in right of the Government of New Zealand for an estate in fee simple.

124. Transitional amendments to Constitution

No amendments to the provisions of this Constitution shall be made before Parliament is constituted under the provisions of Part V, except such as the Legislative Assembly of the Trust Territory may make by Ordinance to remove any difficulties in the transition from the constitutional arrangements in force immediately before Independence Day to those provided for in this Constitution; and any Ordinance made under the provisions of this Article shall, unless sooner repealed, cease to be in force at the expiry of a period of 9 months beginning with the day on which the Legislative Assembly first meets.

SCHEDULES

FIRST SCHEDULE

Article 18

ELECTION OF THE HEAD OF STATE

1. (1) Not less than 60 days before the expiry of the term of office of a Head of State, the Speaker shall give notice in writing of the date on which the impending vacancy will occur to each Member of Parliament and in that notice appoint a day, being a day not less than 30 nor more than 35 days (excluding the date of the vacancy) before the date of the vacancy, for the nomination of candidates for election as Head of State.

(2) In the event of a vacancy occurring in the office of Head of State, otherwise than through the expiry of the term of office of a Head of State, the Speaker shall, as soon as possible thereafter, give notice in writing of that vacancy to each Member of Parliament and in that notice appoint a day, being a day not less than 30 nor more than 35 days (excluding the date of the vacancy) after the date of the vacancy, for the nomination of candidates for election as Head of State.

2. (1) If, at any time after the Speaker has given notice under the provisions of Article 1, not fewer than 10 Members of Parliament make a request in writing to the Head of State or the Council of Deputies, as the case may be, advising the Head of State or the Council of Deputies, as the case may be, that they wish to move to appoint a day for the nomination of candidates later than that appointed by the Speaker, the Head of State or the Council of

Deputies, as the case may be, shall forthwith appoint a day, which shall be as soon as possible, for a meeting of the Legislative Assembly.

(2) At a meeting appointed under the provisions of clause (1), the Legislative Assembly may by resolution appoint a day for the nomination of candidates later than that appointed by the Speaker.

3. No person shall be deemed to be a candidate for election as Head of State unless nominated as follows: a nomination paper, signed by at least 2 Members of Parliament and by the candidate in token of his assent to the nomination shall be delivered to the Clerk of the Legislative Assembly after the Speaker has given notice under the provisions of Article 1 and before noon on the day appointed for the nomination of candidates.

4. (1) As soon as possible after the time appointed for the nomination of candidates, the Clerk of the Legislative Assembly shall inform each Member of Parliament in writing of the nominations received.

(2) If only one candidate is nominated, he shall be deemed to be elected, and the Clerk of the Legislative Assembly shall, at the time he informs Members of Parliament of that nomination, issue under his hand a public notice declaring the candidate concerned to be duly elected. The Clerk of the Assembly shall forthwith cause that notice to be published in the *Western Samoa Gazette*.

5. (1) If more than one candidate is nominated, the Head of State or the Council of Deputies, as the case may be, shall appoint a day, being a day not more than 30 days (excluding the day appointed for the nomination of candidates) after the day appointed for the nomination of candidates, for the Legislative Assembly to meet to consider the nominations.

(2) On the day so appointed for a meeting of the Legislative Assembly, the Assembly shall proceed to an election of the Head of State.

6. (1) In the election of the Head of State, the Speaker shall conduct a ballot in which each Member of Parliament present shall cast a vote for one of the candidates nominated for election.

(2) No candidate shall be elected unless he obtains an absolute majority of the votes of those Members of Parliament present and voting.

(3) If no candidate obtains an absolute majority of votes in the first ballot further ballots shall be held to the number of not more than 2, in an attempt to find a candidate who can obtain an absolute majority. If no candidate obtains an absolute majority after the holding of the third ballot, the candidate with the lowest number of votes in the third ballot shall be eliminated, and a fourth ballot shall be taken. If necessary, further ballots shall be held, after the elimination before each of those ballots of the candidate who received the lowest number of votes in the preceding ballot, until one candidate receives an absolute majority.

(4) When a candidate receives the required majority, the Speaker shall declare him to be duly elected, and the Clerk of the Legislative Assembly shall forthwith issue under his hand a public notice to that effect and cause that notice to be published in the *Western Samoa Gazette*.

SECOND SCHEDULE

Article 44

MEMBERS OF PARLIAMENT TO BE ELECTED BY PERSONS WHOSE NAMES APPEAR ON THE INDIVIDUAL VOTERS' ROLL

1. Within 3 years of Independence Day and at intervals of not less than 5 and not more than 6 years thereafter, the Head of State shall appoint the Registrar of Electors as an Electoral Commissioner to determine the number of Members of Parliament to be elected by the persons whose names appear on the individual voters' roll.

The words "3 years" were substituted for the words "one year" by s. 5 of the Constitution Amendment Act (No. 2) 1963.

2. The number of Members of Parliament to be elected by the persons whose names appear on the individual voters' roll shall bear, as nearly as possible, the same relationship to the number of persons deemed to be represented by those Members as the number of Members of Parliament to be elected by territorial constituencies bears to the number of persons deemed to be represented by those Members.

3. In making a determination under the provisions of Articles 1 and 2, the Electoral Commissioner shall give effect to the following provisions:

(a) The number of persons deemed to be represented by the Members of Parliament to be elected by the persons whose names appear on the individual voters' roll shall be calculated by multiplying by 3 the number of persons whose names appear on the individual voters' roll as at 31 December in the year preceding the year of the appointment of the Electoral Commissioner;

(b) The Electoral Commissioner shall-

(i) Ascertain the official estimate of the population of Western Samoa (prepared under the authority of Cabinet) as at 31 December aforesaid; and

(ii) Estimate the number of persons included in the aforesaid estimate of population who are not citizens of Western Samoa;

(c) The number of persons deemed to be represented by Members of Parliament to be elected by territorial constituencies shall be calculated by deducting from the aforesaid estimate of population-

(i) The number of persons deemed to be represented by the Members to be elected by the persons whose names appear on the individual voters' roll, and

(ii) The number of persons who are not citizens of Western Samoa, estimated as aforesaid.

4. The Electoral Commissioner, in determining the number of Members of Parliament to be elected by the persons whose names appear on the individual voters' roll, shall regard as one any fraction thereof.

5. (1) The Electoral Commissioner shall report to the Head of State the determination he has made under the provisions of this Schedule.

(2) On receipt of the report of the Electoral Commissioner, the Head of State shall forthwith cause the same to be published in the *Western Samoa Gazette*, and, within a period of 14 days from the date of that publication, objections may be submitted to the Electoral Commissioner. The Commissioner shall hear any such objections in public and, as soon as possible after the expiry of the period of 14 days, either confirm to the Head of State his previous determination or submit to him a revised determination.

6. Upon receipt of such confirmation or revised determination, the Head of State shall forthwith, by Proclamation, declare the number of Members of Parliament to be elected by the persons whose names appear on the individual voters' roll.

**THIRD SCHEDULE
FORMS OF OATH**

Article 28

1. Oath of Head of State

I,....., swear by Almighty God that I will uphold the dignity of the office of Head of State, and will justly and faithfully carry out my duties in the administration of the Independent State of Western Samoa in accordance with the Constitution and the law. So help me God.

Article 28

2. Oath of Members of the Council of Deputies

I,....., swear by Almighty God that I will well and truly serve the Independent State of Western Samoa and will justly and faithfully carry out my duties as a member of the Council of Deputies in accordance with the Constitution and the law. So help me God.

Article 34

3. Oath of the Prime Minister and other Ministers

I,....., being chosen and accepted as Prime Minister [a Minister] and member of Cabinet, swear by Almighty God that I will to the best of my judgment, at all times when thereto required, freely give my counsel and advice to the Head of State, for the good management of the affairs of the Independent State of Western Samoa, and that I will not directly or indirectly reveal such matters as shall be debated in

Cabinet and Committee and in Executive Council and committed to my secrecy, but that I will in all things be a true and faithful Prime Minister [Minister]. So help me God.

Articles 49 and 61

4. Oath of allegiance to be taken and subscribed by the Speaker and Members of Parliament

I,....., swear by Almighty God that I will be faithful and bear true allegiance to the Independent State of Western Samoa, and that I will justly and faithfully carry out my duties as a Member of the Parliament of Western Samoa. So help me God.

Articles 67 and 78

5. Judicial oath to be taken by Judges of the Supreme Court and Court of Appeal

I,....., swear by Almighty God that I will well and truly serve the Independent State of Western Samoa in accordance with the Constitution and the law; and I will do right to all manner of people, without fear or favour, affection or ill will. So help me God.
