



*Tonga*

# **ACT OF CONSTITUTION OF TONGA**

**1988 Revised Edition**





# ACT OF CONSTITUTION OF TONGA

## Arrangement of Clauses

### Clause

<b>PART I - DECLARATION OF RIGHTS</b>		<b>7</b>
1	Declaration of freedom .....	7
2	Slavery prohibited.....	8
3	Conditions under which foreign labourers may be introduced .....	8
4	Same law for all classes .....	8
5	Freedom of Worship .....	8
6	Sabbath Day to be kept holy .....	8
7	Freedom of the press.....	9
8	Freedom of petition.....	9
9	Habeas Corpus .....	9
10	Accused must be tried.....	9
11	Procedure on indictment .....	9
12	Accused cannot be tried twice .....	10
13	Charge cannot be altered.....	10
14	Trial to be fair .....	10
15	Court to be unbiased .....	10
16	Premises cannot be searched without warrant .....	11
17	Government to be impartial .....	11
18	Taxation - Compensation to be paid for property taken .....	11
19	Expenditure to be voted .....	11
20	Retrospective laws .....	12
21	Army subject to civil law .....	12
22	Guards and Militia .....	12
23	Disabilities of convict .....	12

24 Public officer not to engage in trade .....13  
 25 Repealed (*Act 28 of 1978.*).....13  
 26 Repealed (*Act 28 of 1978.*).....13  
 27 Age of maturity .....13  
 28 Qualifications for jurors .....13  
 29 Naturalization.....13

**PART II - FORM OF GOVERNMENT 14**

30 Government.....14  
 31 Form of Government.....14  
 32 Succession to the Throne.....14  
 33 Heir Apparent may not choose consort .....15  
 34 Coronation oath.....15  
 35 Idiot not to succeed .....15  
 36 King commands forces.....16  
 37 King may pardon convicts.....16  
 38 King’s relations with Parliament.....16  
 39 Treaties .....16  
 40 Foreign ministers.....16  
 41 King’s powers – Signature to Acts .....17  
 42 Prince Regent .....17  
 43 Prince Regent, how appointed.....17  
 44 King may confer titles .....17  
 45 Coinage .....17  
 46 Martial law .....17  
 47 National flag.....18  
 48 Royal property.....18  
 49 King exempt from action.....18

**PRIVY COUNCIL..... 18**

50 Constitution and powers of Privy Council .....18

**CABINET ..... 19**

51 Constitution and powers of Cabinet .....19  
 52 Duties of ministers .....19  
 53 Treasurer to report to Parliament.....19  
 54 Governors – how appointed .....19  
 55 Powers of Governors.....20

**THE LEGISLATIVE ASSEMBLY .....20**

56 Power of Legislative Assembly.....20  
 57 Title. ....20  
 58 Sessions .....20  
 59 Composition .....20  
 60 Representative members .....20

61	Speaker.....	21
62	Rules of procedure .....	21
63	Qualification of nobles.....	21
64	Qualification of electors.....	21
65	Qualification of representatives .....	21
66	Threats and bribery .....	22
67	Privilege of nobles .....	22
68	King's veto precludes discussion .....	22
69	Quorum .....	22
70	Contempt of Assembly punishable .....	22
71	Noble may be deprived of his seat.....	23
72	Journal.....	23
73	Immunity from arrest .....	23
74	Resignation .....	23
75	Impeachment.....	23
76	Bye-elections .....	24
77	General elections.....	24
78	Assembly to assess taxation.....	24
79	Amendments to Constitution .....	24
80	Enacting formula.....	25
81	Laws to cover but one subject.....	25
82	Chief Justice may suspend laws.....	25
83	Oaths of Councillors and Representatives .....	25
	<b>THE JUDICIARY .....</b>	<b>26</b>
84	The Courts.....	26
85	The Court of Appeal .....	26
86	The Supreme Court.....	26
87	Judges to hold office during good behaviour.....	27
88	Acting Judge .....	27
89	Powers.....	27
90	Jurisdiction of Supreme Court .....	27
91	Appeals from Supreme Court .....	28
92	Jurisdiction of Court of Appeal.....	28
93	Legal opinions.....	28
94	Judge may not hear appeal from own decision .....	28
95	Oath of Judge.....	28
96	Court fees.....	29
97	Judge not to receive fine .....	29
98	Jurors.....	29
99	Trial by jury .....	29
100	Form of verdict .....	29
101	Judge to direct jury .....	30
102	Chief Justice to report upon criminal statistics .....	30
103	Powers of Magistrates.....	30

**PART III - THE LAND 30**

104	Land vested in crown – Sale prohibited .....	30
105	Terms of leases.....	30
106	Form of deed .....	31
107	Existing leases respected.....	31
108	Church lands not to be sub-let without permission .....	31
109	Beach frontage.....	31
110	Registration of deeds.....	31
111	Law of succession .....	31
112	Estate without heirs to revert to the crown.....	32
113	Right to allotments .....	32
114	No lease etc. without consent .....	33
115	Citation .....	33



# CONSTITUTION OF TONGA

## THE CONSTITUTION OF TONGA

*Granted by His Majesty King George Tupou I on the fourth day of November One thousand eight hundred and seventy-five and amended in accordance with the law on divers dates\* in and between the year One thousand eight hundred and eighty and the year One thousand nine hundred and eighty-eight and revised in accordance with the Laws Consolidation Act on the thirty-first day of December, 1988.*

*\*The 1966 Act to amend the Constitution had not, as at 31 December 1988, been brought into operation but the amendments made by it are included in this Revised Edition. Each section affected is noted to this effect. The amendments relate to the Court of Appeal. The Act not yet in force is the Constitution (Court of Appeal Amendment) Act, 1966; Act 13 of 1966.)*

## PART I - DECLARATION OF RIGHTS

### 1 Declaration of freedom

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

**2 Slavery prohibited**

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

**3 Conditions under which foreign labourers may be introduced**

Whoever may wish to bring persons from other islands to work for him may make an agreement with them for the number of years they will work for him and a copy of the written agreement he makes with them shall be deposited in the Public Offices stating the amount of payment they shall receive the period they shall work and a promise to take them back to their own land. And the Government shall cause such contract to be carried out both on behalf of those who engage and those who are engaged. And such persons being so introduced shall be subject to the laws of the land and shall pay the same Customs duties as all the people in the Kingdom and taxes as shall be ordained by the King and his Cabinet. (*Law 35 of 1912, Act 10 of 1918, Amended by Act 3 of 1976.*)

**4 Same law for all classes**

There shall be but one law in Tonga for chiefs and commoners for non-Tongans and Tongans. No laws shall be enacted for one class and not for another class but the law shall be the same for all the people of this land. (*Amended by Act 3 of 1976.*)

**5 Freedom of Worship**

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

**6 Sabbath Day to be kept holy**

The Sabbath Day shall be kept holy in Tonga and no person shall practise his trade or profession or conduct any commercial undertaking on the Sabbath Day except according to law; and any agreement made or witnessed on that day shall be null and void and of no legal effect. (*Substituted by Act 3 of 1971.*)



**7 Freedom of the press**

It shall be lawful for all people to speak write and print their opinions and no law shall ever be enacted to restrict this liberty. There shall be freedom of speech and of the press for ever but nothing in this clause shall be held to outweigh the law of slander or the laws for the protection of the King and the Royal Family.

**8 Freedom of petition**

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

**9 Habeas Corpus**

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

**10 Accused must be tried**

No one shall be punished because of any offence he may have committed until he has been sentenced according to law before a Court having jurisdiction in the case. (*Amended by Act 8 of 1972.*)

**11 Procedure on indictment**

No one shall be tried or summoned to appear before any court or punished for failing to appear unless he have first received a written indictment (except in cases of impeachment or for small offences within the jurisdiction of the magistrate or for contempt of court while the court is sitting). Such written indictment shall clearly state the offence charged against him and the grounds for the charge. And at his trial the witnesses against him shall be brought face to face with him (except according to law) and he shall hear their evidence and shall be allowed to question them and to bring forward any witness of his own and to make his own statement regarding the charge preferred against him. But whoever shall be indicted for any offence if he shall so elect shall be tried by jury and this law shall never be repealed. And all claims for large amounts shall be decided by a jury and the Legislative Assembly shall determine what shall be the amount of claim that may be decided without a jury. (*Act 25 of 1942; Amended by Act 13 of 1982.*)

**12 Accused cannot be tried twice**

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

**13 Charge cannot be altered**

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

Save and except that—

- (a) where the complete commission of the offence charged is not proved but the evidence establishes an attempt to commit that offence the accused may be convicted of this attempt and punished accordingly; and
- (b) where an attempt to commit an offence is charged but the evidence establishes the commission of the full offence the accused may be convicted of the attempt; and
- (c) on the trial of any person for embezzlement the jury shall be at liberty to find such person not guilty of embezzlement but guilty of larceny and on the trial of any person for larceny the jury shall be at liberty to find such person guilty of embezzlement. (*Act 10 of 1918, Amended by Act 18 of 1981.*)

**14 Trial to be fair**

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

**15 Court to be unbiased**

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

**16 Premises cannot be searched without warrant**

It shall not be lawful for anyone to enter forcibly the houses or premises of another or to search for anything or to take anything the property of another except according to law: And should any person lose any property and believe it to be concealed in any place whether house or premises it shall be lawful for him to make an affidavit before a magistrate that he believes it to be concealed in that place and he shall describe particularly the property so concealed and the place in which he believes it to be concealed and the magistrate shall issue a search warrant to the police to search for the property according to the affidavit so made. (*Amended by Act 7 of 1967.*)

**17 Government to be impartial**

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

**18 Taxation - Compensation to be paid for property taken**

All the people have the right to expect that the Government will protect their life liberty and property and therefore it is right for all the people to support and contribute to the Government according to law. And if at any time there should be a war in the land and the Government should take the property of anyone the Government shall pay the fair value of such property to the owner. And if the Legislature shall resolve to take from any person or persons their premises or a part of their premises or their houses for the purpose of making Government roads or other work of benefit to the Government the Government shall pay the fair value. (*Act 19 of 1927.*)

**19 Expenditure to be voted**

- (a) No money shall be paid out of the Treasury nor borrowed nor debts contracted by the Government but by the prior vote of the Legislative Assembly, except in the following cases:
  - (i) Where an Act duly passed by the Legislative Assembly gives power to pay out money or borrow or contract debts, then money may be paid out, or borrowing carried out or debts contracted in terms of that Act; and
  - (ii) In cases of war or rebellion or dangerous epidemic or a similar emergency, then it may be done by the Treasurer with the consent of Cabinet, and the King shall at once convoke the Legislative Assembly and the Treasurer shall state the grounds for the expenditure and the amount.

- (b) The Treasurer, with the approval of Privy Council, shall have power to increase or decrease the taxes and/or customs duties and shall have power to levy new taxes and/or customs duties, and all such increases or decreases or new taxes or customs duties shall be published in the Gazette and shall be placed before the next session of the Legislative Assembly and shall have full force and shall remain effective from the date of publication in the Gazette until rescinded by the Legislative Assembly or by the Treasurer with the approval of Privy Council.

*(Substituted by Act 14 of 1972.)*

## **20 Retrospective laws**

It shall not be lawful to enact any retrospective laws in so far as they may curtail or take away or affect rights or privileges existing at the time of the passing of such laws. *(Act 35 of 1912.)*

## **21 Army subject to civil law**

Every soldier shall be subject to the laws of the land whether he belong to the Guards, the Artillery or to the Militia in accordance with the twenty-second clause and any soldier who breaks the law of the land shall be tried in the courts as any other person. And it shall not be lawful for any officer to quarter any soldier upon the premises of anyone except in time of war and then only as may be resolved by the Legislative Assembly.

## **22 Guards and Militia**

The Royal Guards shall have the right to vote for representatives to the Legislative Assembly although they are exempt from taxes in accordance with the provisions of this Constitution. It shall be lawful for the King to command any taxpayer to join the militia for the purpose of instruction or for parade on public occasions should he think fit and also in time of war to call out all those capable of bearing arms and to make orders and regulations for their control and provisioning.

## **23 Disabilities of convict**

No person having been convicted of a criminal offence punishable by imprisonment for more than two years, shall hold any office under the Government whether of emolument or honour nor shall he be qualified to vote for nor to be elected a representative of the Legislative Assembly unless he has received from the King a pardon together with a declaration that he is freed from

the disabilities to which he would otherwise be subject under the provisions of this clause. (*Act 8 of 1961.*)

#### **24 Public officer not to engage in trade**

It shall not be lawful for anyone holding any office under the Government whether of emolument or otherwise to hold any appointment under or receive an emolument from another Government without first obtaining permission from the King. And it shall not be lawful for anyone holding an office of emolument under the Government to engage in trade or work for anyone else, except with the prior consent of Cabinet. (*Amended by Act 28 of 1978.*)

#### **25 Repealed (*Act 28 of 1978.*)**

#### **26 Repealed (*Act 28 of 1978.*)**

#### **27 Age of maturity**

No person may succeed to any tofi'a or any title until he has attained the age of twenty one years, save for members of the Royal Family who shall be deemed to have attained maturity at eighteen years of age. (*Substituted by Act 28 of 1978.*)

#### **28 Qualifications for jurors**

Every male Tongan who has arrived at the age of twenty-one years and can read and write and is not disabled by the twenty-third clause of this Constitution shall be liable to serve on juries and the names of all those who are liable to serve shall be published once every year and anyone who neglects to serve shall be punished as shall be enacted by the Legislature. But members of the Legislative Assembly ministers of religion assistant ministers school-masters collegians public servants guardsmen artillery-men and all officials of the Government shall be exempt from serving on juries. (*Amended by Act 8 of 1977*)

#### **29 Naturalization**

Any foreigner after he has resided in the Kingdom for the space of five years or more may with the consent of the King take the oath of allegiance and he may be granted Letters of Naturalization and all naturalized subjects shall have the same rights and privileges as native born subjects of Tonga with the exception that they shall not be entitled to the rights of hereditary tax allotments. (*Act 35 of 1912, Amended by Act 28 of 1978.*)

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## **PART II - FORM OF GOVERNMENT**

### **30 Government**

The Government of this Kingdom is divided into three Bodies—

- 1st. The King Privy Council and Cabinet (Ministry);
- 2nd. The Legislative Assembly;
- 3rd. The Judiciary.

### **31 Form of Government**

The form of Government for this Kingdom is a Constitutional Government under His Majesty King Taufa'ahau Tupou IV his heirs and successors.

### **32 Succession to the Throne**

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

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

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

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

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

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

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

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

### **33 Heir Apparent may not choose consort**

- (1) It shall not be lawful for any member of the Royal Family who is likely to succeed to the throne to marry any person without the consent of the King. And if any person should thus marry the marriage shall not be considered legal and it shall be lawful for the King to cancel the right of such person and his heirs to succeed to the Crown of Tonga. And the next person in succession to him who so marries shall be declared the heir and the offender shall be regarded as dead.
- (2) The expression “any member of the Royal Family who is likely to succeed to the throne” in the last preceding sub-clause shall be construed to include all persons born in lawful marriage and related by descent either lineally or collaterally to the King but not more than twenty times removed from the King. (*Inserted by Act 3 of 1971.*)

### **34 Coronation oath**

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

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

### **35 Idiot not to succeed**

No person shall succeed to the Crown of Tonga who has been found guilty of a felony or who is insane or imbecile.

**36 King commands forces**

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

**37 King may pardon convicts**

It shall be lawful for the King with the consent of the Privy Council to pardon any person who has been convicted of a breach of law, or to remit or mitigate any sentence, or any part of any sentence, imposed by any court for a breach of law: *(Amended by Act 13 of 1966)*

Provided that he shall not pardon any person convicted of maladministration in accordance with the fifty-first clause. It shall not be lawful to pardon any person convicted of this offence.

**38 King's relations with Parliament**

The King may convoke the Legislative Assembly at any time and may dissolve it at his pleasure and command that new representatives of the nobles and people be elected to enter the Assembly. But it shall not be lawful for the Kingdom to remain without a meeting of the Assembly for a longer period than one year. The Assembly shall always meet at Nuku'alofa and at no other place except in time of war. *(Law No. 1 of 1914.)*

**39 Treaties**

It shall be lawful for the King to make treaties with Foreign States provided that such treaties shall be in accordance with the laws of the Kingdom. It shall not be lawful for the King to alter the customs duties without the consent of the Legislative Assembly. The King may appoint his representatives to other nations according to the custom of nations.

**40 Foreign ministers**

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



**41 King's powers – Signature to Acts**

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

**42 Prince Regent**

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

**43 Prince Regent, how appointed**

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

**44 King may confer titles**

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

**45 Coinage**

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

**46 Martial law**

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

**47 National flag**

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

**48 Royal property**

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

**49 King exempt from action**

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

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

- (1) The King shall appoint a Privy Council to assist him in the discharge of his important functions. The Privy Council shall be composed of the Cabinet in accordance with the fifty-first clause and the Governors in accordance with the fifty-fourth clause and any others whom the King shall see fit to call to his Council. *And if any case shall have been heard in the Supreme Court it shall be lawful for either party thereto to appeal to the Privy Council which shall rehear the case and the judgment of the Privy Council shall in all cases be final provided that it shall not be lawful for the Privy Council to re-try any criminal case but only to advise the King on the remission or mitigation of sentences.* No Ordinance which may be passed by the King and Privy Council shall have any effect until the signature of the minister to whose department such Ordinance relates is affixed thereto and if such Ordinance shall be illegal such minister alone shall be responsible and when the Legislative Assembly shall meet it may confirm such Ordinances and make them law or rescind them. (*Act 25 of 1942; Amended by Act 13 of 1966.*)
- (2) If any case shall be heard in the land Court relating to the determination of hereditary estates and titles, it shall be lawful for either party thereto to appeal to the Privy Council which shall rehear the case and the judgement of the Privy Council shall be final. (*Added by Act 12 of 1990*)

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## CABINET

### 51 Constitution and powers of Cabinet

The Cabinet or ministers of the King shall consist of the Prime Minister, Minister of Foreign Affairs, the Minister of Lands, the Minister of Police and any other ministers whom His Majesty may be pleased to appoint. It is the King's prerogative to appoint the ministers and they shall hold office during the King's pleasure or for such period as may be specified in their commissions and any one minister may hold two or more offices. It shall be lawful to impeach the ministers before the Legislative Assembly if their administration is not in accordance with law. The ministers shall be members of the Privy Council and of the Legislative Assembly as nobles. Each minister shall draw up a report once every year acquainting the King with the affairs of his department and such report shall be forwarded by the King to the Legislative Assembly at its next meeting and if the Legislative Assembly shall wish to know anything concerning the department of any minister he shall answer all questions put to him by the Legislative Assembly and report everything in connection with his department. *(Act 25 of 1942; Amended by Act 4 of 1979.)*

### 52 Duties of ministers

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

### 53 Treasurer to report to Parliament

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

### 54 Governors – how appointed

The King with the consent of the Cabinet shall appoint Governors to Ha'apai and Vava'u. The Governors shall in virtue of their office hold seats in the Legislative Assembly and shall also be members of the Privy Council whilst they hold the office of Governor and they shall hold office only during the King's pleasure.

**55 Powers of Governors**

It shall not be lawful for a Governor to enact any law but he shall be responsible that the law is enforced in his district. If the administration of any Governor be contrary to law it shall be lawful to impeach him in the Legislative Assembly.

**THE LEGISLATIVE ASSEMBLY****56 Power of Legislative Assembly**

The King and the Legislative Assembly shall have power to enact laws, and the representatives of the nobles and the representatives of the people shall sit as one House. When the Legislative Assembly shall have agreed upon any Bill which has been read and voted for by a majority three times it shall be presented to the King for his sanction and after receiving his sanction and signature it shall become law upon publication. Votes shall be given by raising the hand or by standing up in division or by saying "Aye" or "No". (*Law 1 of 1914.*)

**57 Title.**

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

**58 Sessions**

The Legislative Assembly shall meet at least once in every twelve calendar months but it shall be lawful to summon the same at any time. (*Law 1 of 1914.*)

**59 Composition**

The Legislative Assembly shall be composed of the Privy Councillors and Cabinet ministers, who shall sit as nobles, the representatives of the nobles, and representatives of the people. (*Law 1 of 1914.*)

**60 Representative members**

There shall be elected by the nobles of the Kingdom from their number nine nobles as representatives of the nobles and there shall be elected by electors duly qualified nine representatives of the people. The Legislative Assembly shall determine how both classes of representatives shall be apportioned amongst the various districts. (*Law 1 of 1914; Amended by Act 17 of 1962.*)

**61 Speaker**

The King shall appoint the Speaker of the Assembly but all other officers shall be appointed by the Assembly.

**62 Rules of procedure**

The Assembly shall make its own rules of procedure for the conduct of its meetings.

**63 Qualification of nobles**

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

**64 Qualification of electors**

Every Tongan subject of twenty-one years of age or more who being a male and not a noble pays taxes and being a male or female can read and write and is not insane or imbecile and is not disabled by the twenty-third clause shall be entitled to vote in an election for representatives of the people to the Legislative Assembly and on the day appointed for election shall be exempt from summons for debt. (*Act 15 of 1951.*)

**65 Qualification of representatives**

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

Provided that no person holding an office of emolument under the Crown shall enter the Assembly except the Ministers, and the Governors. (*Substituted by Act 8 of 1978.*)

**66 Threats and bribery**

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

**67 Privilege of nobles**

It shall be lawful for only the nobles of the Legislative Assembly to discuss or vote upon laws relating to the King or the Royal Family or the titles and inheritances of the nobles and after any such bill has been passed three times by a majority of the nobles of the Legislative Assembly it shall be submitted to the King for his sanction. (*Law 1 of 1914.*)

**68 King's veto precludes discussion**

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

**69 Quorum**

It shall be lawful for the Legislative Assembly to pass judgment upon its members for their acts or conduct as members of the Legislative Assembly and although all the members may not be present it shall be lawful for the Legislative Assembly to discuss and pass laws and transact business should one-half of its members be present but should there be less than one-half present the Legislative Assembly shall stand adjourned to another day and if at such adjourned meeting there should be still less than half the members present it shall be lawful for the King or the Speaker of the Assembly to command the presence of all the members and if any fail to attend on such command it shall be lawful to inflict punishment for such disobedience such punishment to be determined by the Legislative Assembly. (*Law 1 of 1914.*)

**70 Contempt of Assembly punishable**

If anyone shall speak or act disrespectfully in the presence of the Legislative Assembly it shall be lawful to imprison him for thirty days and whoever shall publish any libel on the Legislative Assembly, or threaten any member or his property, or rescue any person whose arrest has been ordered by the Legislative Assembly, may be imprisoned for not exceeding thirty days.

**71 Noble may be deprived of his seat**

Should any representative of the nobles be guilty of conduct unbecoming his position whether during the session of the Legislative Assembly or not he may be tried and deprived of his office by the nobles of the Legislative Assembly but the representatives of the people shall not take part in his trial and if he be deposed another noble shall be elected to succeed to his seat in the Legislative Assembly but his title and hereditary estates shall not be confiscated except for treason or sedition. (*Law I of 1914.*)

**72 Journal**

A journal of the proceedings of the Legislative Assembly shall be kept and the votes of each member present for and against every motion or resolution shall be recorded in the journal. (*Law I of 1914.*)

**73 Immunity from arrest**

The members of the Legislative Assembly shall be free from arrest and judgment whilst it is sitting except for indictable offences and no member of the House shall be liable for anything he may have said or published in the Legislative Assembly. (*Law I of 1914.*)

**74 Resignation**

Any representative of the nobles or of the people who may wish to resign his seat in the Legislative Assembly may tender his resignation in writing to the Speaker and his connection with the Legislative Assembly shall cease when he tenders his resignation. (*Law I of 1914.*)

**75 Impeachment**

- (1) It shall be lawful for the members of the Legislative Assembly to impeach any Privy Councillor, Minister, Governor, or Judge for any of the following offences—

Breach of the laws or the resolutions of the Legislative Assembly, maladministration, incompetency, destruction or embezzlement of Government property, or the performance of acts which may lead to difficulties between this and another country. (*Law I of 1914.*)

- (2) The impeached person shall be given a copy of the accusation in writing seven days before the day of the trial.
- (3) The trial shall be conducted in accordance with the eleventh clause.

(4) The Chief Justice shall preside but if the Chief Justice is impeached the King shall appoint some other member of the Assembly to preside.

(5) After the witnesses have been heard the impeached person shall withdraw and the Assembly shall consider their decision and upon a decision being made he shall be brought before the Assembly and the decision announced to him. If he be found guilty it shall be lawful to dismiss him from office but if acquitted it shall not be lawful to impeach him again on the same charge as is provided in the twelfth clause.

## **76 Bye-elections**

Upon the death or resignation of any representative of the nobles or of the people the Speaker shall immediately command that the nobles or the electors of the district which he represented shall elect a representative in his place. But the Legislative Assembly shall have the power to sit and act although its number be not complete. (*Law 1 of 1914.*)

## **77 General elections**

New elections shall be held for all the representatives of the nobles and the people at least once every three years but it shall be lawful for the King at his pleasure to dissolve the Legislative Assembly although three years from the last election may not have expired and to command that new elections be held according to law throughout the Kingdom. (*Law 1 of 1914.*)

## **78 Assembly to assess taxation**

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

## **79 Amendments to Constitution**

It shall be lawful for the Legislative Assembly to discuss amendments to the Constitution provided that such amendments shall not affect the law of liberty the succession to the Throne and the titles and hereditary estates of the nobles. And if the Legislative Assembly wish to amend any clause of the Constitution



such amendment shall after it has passed the Legislative Assembly three times be submitted to the King and if the Privy Council and the Cabinet are unanimously in favour of the amendment it shall be lawful for the King to assent and when signed by the King it shall become law

### **80 Enacting formula.**

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

### **81 Laws to cover but one subject**

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

### **82 Chief Justice may suspend laws**

The present law shall be in force until repealed by the Legislative Assembly excepting such laws as are at variance with this Constitution. And it shall be lawful for the Chief Justice to suspend the operation of any law passed by the Legislative Assembly or Privy Council which is at variance with the Constitution until the next meeting of the Legislative Assembly. (*Law 6 of 1903. S. 341.*)

### **83 Oaths of Councillors and Representatives**

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

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

The following oath shall be taken by the ministers:

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

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

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

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

## THE JUDICIARY

### 84 The Courts

The judicial power of the Kingdom shall be vested in the Court of Appeal, the Supreme Court, the Magistrate's Court, and the Land Court. (*Law 25 of 1916; Amended by Act 13 of 1966. \**)

### 85 The Court of Appeal

The Court of Appeal shall consist of the Chief Justice of Tonga and of such other judges as may be appointed from time to time by the King with the consent of Privy Council:

Provided that no person shall be appointed unless—

- (a) he holds, or has held, high judicial office; or
- (b)
  - (i) he is qualified to practise as an advocate in a court in some part of Her Britannic Majesty's dominions having unlimited jurisdiction in civil or criminal matters; and
  - (ii) he has been qualified so to practise for not less than ten years. (*Added by Act 13 of 1966. \**)

### 86 The Supreme Court

The Supreme Court shall consist of a judge called the Chief Justice, and such other judges as may be appointed from time to time by the King with the consent of the Privy Council, sitting with or without a jury. (*Substituted by Act 28 of 1978.*)

**87 Judges to hold office during good behaviour**

The judges shall hold office during good behaviour and shall receive such salaries as the Legislature may determine and the Legislature may increase but shall not decrease such salaries during their tenure of office:

Provided that it shall be lawful to appoint Judges of the Court of Appeal for limited periods, or for the purposes of a particular sitting of the Court of Appeal, or of particular proceedings to come before the Court, on such terms as to salary, or other remuneration, as may be approved by the King with the consent of Privy Council. (*Added by Act 13 of 1966. \**)

**88 Acting Judge**

- (1) It shall be lawful for the Prime Minister with the consent of Cabinet in the name and on behalf of His Majesty, at any time during the illness or absence of any judge, or for any other temporary purpose to appoint an acting judge for the period during which the judge is ill or absent or for the period necessary to effect the temporary purpose.
- (2) An acting judge shall have the jurisdiction and powers of, and may exercise all the authorities which are vested in or may be exercised by a judge and shall be paid such salary as may be determined by Cabinet. (*Added by Act 14 of 1955.*)

**89 Powers**

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

**90 Jurisdiction of Supreme Court**

The Supreme Court shall have jurisdiction in all cases in Law and Equity arising under the Constitution and Laws of the Kingdom (except cases concerning titles to land which shall be determined by a Land Court subject to an appeal to the Privy Council in matters relating to hereditary estates and titles or to the court of appeal in other land matters) and in all matters concerning Treaties with Foreign States and Ministers and Consuls and in all cases affecting Public Ministers and Consuls and all Maritime Cases. (*Law 95 of 1916; Act 75 of 1942; Amended by Act 12 of 1990*)

**91 Appeals from Supreme Court**

- (1) Subject to the provisions of any Act of the Legislative Assembly relating to appeals to the Court of Appeal, a party to any proceedings in the Supreme Court or Land Court (excepting matters relating to the determination of hereditary estates and titles) who is aggrieved by a decision given in those proceedings by that Court, or a judge thereof, sitting in first instance, may appeal to the Court of Appeal against such decision. (*Amended by Act 12 of 1990*)
- (2) Except as may be provided by any Act of the Legislative Assembly, or by rules in respect of limited classes of appeals, no appeal shall be finally determined by less than three members of the Court of Appeal. (*Added by Act 13 of 1966.*)

**92 Jurisdiction of Court of Appeal**

The Court of Appeal shall have exclusive power and jurisdiction to hear and determine all appeals which by virtue of this Constitution or of any Act of the Legislative Assembly lie from the Supreme Court or Land Court (excepting matters relating to the determination of hereditary estates and titles) or any judge thereof and shall have such further or other jurisdiction as may be conferred upon it by any such Act. (*Added by Act 13 of 1966; Amended by Act 12 of 1990.*)

**93 Legal opinions**

The judges shall give opinions upon important or difficult matters when requested so to do by the King the Cabinet or the Legislative Assembly.

**94 Judge may not hear appeal from own decision**

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

**95 Oath of Judge**

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

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

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

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

“I swear in the presence of God that I will perform truly and with impartiality my duties as a judge in accordance with the Constitution and the Laws of the Kingdom . *(Added by Act 13 of 1966)*

## **96 Court fees**

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

## **97 Judge not to receive fine**

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

## **98 Jurors**

The Legislature shall regulate the summoning of jurors and the fees (if any) they shall receive.

## **99 Trial by jury**

Any person committed for trial before the Supreme Court on a charge of having committed any criminal offence punishable by a term of imprisonment exceeding two years or a fine of five hundred pa'anga or both such penalties shall if he shall so elect be tried by a jury; and whenever any issue of fact is raised in any civil action triable in the Supreme Court any party to such action may claim the right of trial by jury; and the law of trial by jury shall never be repealed. *(Act 9 of 1918; Act 7 of 1933; Act 25 of 1942; Amended by Act 25 of 1984.)*

## **100 Form of verdict**

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

**101 Judge to direct jury**

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

**102 Chief Justice to report upon criminal statistics**

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

**103 Powers of Magistrates**

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

## **PART III - THE LAND**

**104 Land vested in crown – Sale prohibited**

All the land is the property of the King and he may at pleasure grant to the nobles and titular chiefs or matabules one or more estates to become their hereditary estates. It is hereby declared by this Constitution that it shall not be lawful for anyone at any time hereafter whether he be the King or any one of the chiefs or the people of this country to sell any land whatever in the Kingdom of Tonga but they may lease it only in accordance with this Constitution and mortgage it in accordance with the Land Act. And this declaration become a covenant binding on the King and chiefs of this Kingdom for themselves and their heirs and successors for ever. *(Amended by Act 3 of 1976.)*

**105 Terms of leases**

The Cabinet shall determine the terms for which leases shall be granted but no lease shall be granted for any longer period than ninety-nine years without the consent of His Majesty in Council and the Cabinet shall determine the amount of rent for all Government lands. *(Amended by Act 11 of 1974.)*

**106 Form of deed**

The forms of deed transfer and permit which shall from time to time be sanctioned by His Majesty in Privy Council are hereby appointed to be the forms according to which all deeds of leases transfers and permits shall be made. (*Law 25 of 1916; Amended by Act 17 of 1981.*)

**107 Existing leases respected**

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

**108 Church lands not to be sub-let without permission**

No leases of any town site shall in future be granted to any religious body for any purpose unless there are thirty adults, male and female, of such church in that town, and it shall not be lawful for any religious body to use such leased lands for other than religious purposes or to sub-let to any person without the prior consent of Cabinet, and upon satisfactory proof before a Court that any such land has been sub-let without consent, such land shall revert to the person from whom the land was leased, or to his successor in title as the case may be. (*Substituted by Act 13 of 1973.*)

**109 Beach frontage**

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

**110 Registration of deeds**

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

**111 Law of succession**

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

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

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

Whereas by Tongan custom provision has always been made that an adopted child might succeed to the estates and titles of his adoptive father now therefore it is decreed that upon the death of the holder of an estate or title who has inherited such estate or title by virtue of his blood descent from such adopted child the estate and title shall revert to the descendant by blood of the original holder of the estate and title in accordance with the provisions of this clause and should there be alive no such descendant by blood the provisions of the one hundred and twelfth clause shall apply. (*Added by Act 15 of 1953; Amended by Act 3 of 1976.*)

## **112 Estate without heirs to revert to the crown**

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

## **113 Right to allotments**

A widow shall have the right to succeed to her deceased husband's tax and town allotment. Every person who holds a tax and town allotment shall pay such rents therefore as may be determined by the Legislature. Every taxpayer shall have the right to hold an hereditary tax and town allotment upon and subject to such



conditions as to the area thereof and the rent to be paid therefore as may be determined from time to time by the Legislature. (*Act 19 of 1927.*)

#### **114 No lease etc. without consent**

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

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

Provided that no consent shall be granted to a lease by a widow of the land of her deceased husband. (*Substituted by Act 17 of 1981.*)

#### **115 Citation**

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