

**TRUSTEESHIP
COUNCIL****CONSEIL
DE TUTELLE**

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ORIGINAL: ENGLISH

Fourth session

Item 3 of the Agenda

COMPARATIVE TABULATION OF THE SAMOA ACT, 1921
(WITH SUBSEQUENT AMENDMENTS), THE REPORT OF THE
UNITED NATIONS MISSION TO WESTERN SAMOA, AND
THE SAMOA AMENDMENT ACT, 1947

Document prepared by the Secretariat

I. INTRODUCTION

At its tenth meeting on 5 December 1947 the Trusteeship Council adopted a resolution stating, "that at the present time the people of Western Samoa should be accorded such measures of self-government as indicated in the report made by the Council's visiting mission". Before the adoption of this resolution, the New Zealand Government took measures to change the administrative organization of Western Samoa, and on 25 November 1947 these were passed by the New Zealand Parliament through the enactment of the Samoa Amendment Act, 1947. This Act came into force on 10 March 1948.

The following chart tabulates original provisions contained in the Samoa Act, 1921 (with subsequent amendments in 1923 and 1926), recommendations made in the Report of the United Nations Mission to Western Samoa, and provisions corresponding to these in the Samoa Amendment Act, 1947. It is communicated to the Council with a view to facilitating the examination of the Annual Report on the administration of Western Samoa for the year ended 31 March 1948.

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/II. Excerpts

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II. Excerpts from Acts and the Report of the United Nations Mission to Western Samoa.

The Samoa Act, 1921
(With Subsequent Amendments)

The Report of the United Nations Mission to Western Samoa.

The Samoa Amendment Act, 1947

Sect. 5

There shall be an Administrator of Western Samoa, who shall be appointed by the Governor-General, and shall be stationed at Apia, and shall, subject to the control of the Minister of External Affairs, be charged with the administration of the executive government of the Territory, save so far as other provision is made in that behalf by this Act.

THE HIGH COMMISSIONER

Sect. 3 (1)

The representative of the New Zealand Government should preside over the Council of State. To stress the difference from the old regime he should have a title other than "the High Commissioner". The title "High Commissioner" might appropriately be used.

There shall be a High Commissioner of Western Samoa, who shall be appointed by the Governor-General, and shall be stationed at Apia, and shall, subject to the control of the Minister, be charged with the administration of the executive government of Western Samoa, save so far as other provision is made in that behalf by the principal Act (Samoa Act, 1921) and its Amendments (including this Act).

THE COUNCIL OF STATE

Sect. 4 (1)

At the head of the Government of Western Samoa should be a representative of the New Zealand Government and a representative or representatives of the inhabitants of

There is hereby established in and for Western Samoa a Council of State, to be called the Council of State of Western Samoa.

THE COUNCIL OF STATE

Samoa sitting together as a "Council of State" or "High Council".

Sect. 4 (2)

The inhabitants of Samoa should be represented by one or more representatives as may be decided by the inhabitants. Unfil a different decision is made, the representatives should be the three Honourable Fautua, acting as a body.

The Council of State shall consist of the High Commissioner and of the Samoans for the time being holding office as Fautua.

Sect. 4 (3)

The representative of the New Zealand Government should preside over the Council of State.

The High Commissioner shall preside at any meeting of the Council of State at which he is present.

Sect. 4 (4)

The Mission recommends that these Samoan representatives should have the following powers and responsibilities:

The High Commissioner shall consult the Council of State on the following matters:

(a) They should ~~act~~ as the representatives of the local inhabitants in the Council of State which would

(a) All proposals for legislation to be recommended by the High Commissioner to the Legislative Assembly.

THE COUNCIL OF STATE (contd.)

be the Supreme Body of the Government of Western Samoa. The High Commissioner and the Fautua would constitute the Council of State, which on all appropriate occasions should represent the Government of Western Samoa.

(b) They should have the power to initiate legislation in all matters except those reserved to the Administering Authority. Whether they should sit as representatives in the legislature should be decided by the Samoan people.

(c) They should advise the High Commissioner in all matters relating to the Government and welfare of Western Samoa. This should include the right to be consulted on the choice of the heads of executive departments, and also on any emergency regulations proposed by the High Commissioner.

(d) The above powers should be exercised by the Fautua acting as a group.

(b) All matters closely relating to Samoan custom.

(c) Any other matters affecting the welfare of Western Samoa which he considers it proper to refer to the Council of State.

THE COUNCIL OF STATE (contd.)

The question as to whether the institution of Fautua should be maintained is for the Samoans themselves to solve. The Mission is of the opinion, however, that the present three Fautua are universally recognized as qualified to represent the Samoans. They should therefore, at least for the present, act as representatives of the Samoans in the Government of Western Samoa.

Sect. 5 (1)

The Governor-General may from time to time, by Order in Council, appoint Samoans to be Fautua.

Sect. 5 (2)

The manner of recommending Samoans for appointment as Fautua, and the terms and conditions of their appointment, and the number of Fautua that may from time to time be appointed may be prescribed by the Governor-General in Council.

Sect. 5 (3)

All Fautua in office at the commencement of this Act shall be deemed to have been duly appointed.

Sect. 47

There is hereby established in and for Samoa a Legislative Council, to be called the Legislative Council of Western Samoa.

THE LEGISLATIVE ASSEMBLY

The legislature should consist of a single body, its title to be decided after consultation with the people - possibly the Assembly or Council.

Sect. 6 (1)

There is hereby established in and for Western Samoa a Legislative Assembly to be called the Legislative Assembly of Western Samoa.

THE LEGISLATIVE ASSEMBLY (contd.)

Sect. 48 (1)

The Legislative Council shall consist of ----

(a) Official members (not less than four in number), being the holders for the time being of such offices in the Samoan Public Service as the Governor-General from time to time appoints as entitling the holders thereof to sit in the Legislative Council:

(b) Unofficial members (not more in number than the official members), being such other persons (if any) as the Governor-General appoints to hold office during his pleasure as members of the Legislative Council.

Samoa Amendment, 1923

Section 6 (1)

Section 48 of the principal Act is hereby amended as follows:-

(a) By omitting from paragraph (a) of subsection one the words "(not less than four in number)," and sub-

The Mission believes that Samoan representation should have an absolute majority in the legislature.

The size of the legislature is a matter for the Administering Authority to determine in consultation with the Samoan and European groups. The Mission feels that it should be a larger body than the present Legislative Council in order to give a reasonable number of Samoans the opportunity to secure training in the responsibilities of legislative power.

The Samoan members should be designated according to procedures developed in consultation with the Samoan people. Whether chosen by the Fono of Faipule as now, or by regional electoral districts, or by any other method, the electoral procedure should be given constitutional recognition.

The Europeans should have a smaller but sig-

Sect. 6 (2)

The Legislative Assembly shall consist of -

(a) The Samoan members for the time being of the Council of State:

(b) Eleven Samoan members, who may be either elected members or nominated members, or partly elected and partly nominated members, as the Governor-General in Council from time to time determines.

(c) European elected members (not more than five in number):

(d) Official members (not more than six in number), of whom not more than three shall be holders for the time being of such offices in the Samoan Public Service as the Governor-General from time to time appoints as entitling the holders thereof to sit in the Legislative Assembly, and not more than three shall be members of the Samoan Public Service appointed by the High Commissioner to hold office as members of the assembly during his pleasure.

stituting the words
"(not less than six in
number)":

(b) By omitting
from paragraph (b) of
subsection one all words
after the words "(not
more in number than the
official members)," and
substituting the words
"who may be either
elected members or
nominated members, or
partly elected and partly
nominated members, as the
Governor-General in
Council from time to time
determined":

With respect to the
elective membership of
the Legislative Council,
the Governor-General may
from time to time make,
revoke, or amend
regulations, not in-
consistent with the
principal Act as amended
by this Act, prescribing--

- (a) The number and
mode of election of
members:
- (b) The qualifications
of electors:
- (c) The qualifications
of candidates for election:
- (d) The tenure of the

nificant representation.

The senior department heads
should sit as ex-officio
members. Whether or not they
should exercise the right to
vote in Parliament does not seem
to be a matter of vital
importance since their vote
would, in most cases, not be
decisive.

The mode of electing or
nominating members of the Legis-
lative Assembly, the qualifications
of electors and of candidates, and
the terms and conditions of their
membership may be prescribed by the
Governor-General in Council.

Sect. 6 (3)

THE LEGISLATIVE ASSEMBLY (contd.)

office of such members:

(e) The forfeiture of

← such office:

(f) Any matters deemed

necessary for the regu-

lation of the elective

membership of the Council.

Samoa Amendment, 1926

Sect. 3 (1)

Paragraph (a) of sub-section one of section forty-eight of the principal Act, as amended by paragraph (a) of subsection one of section six of Samoan Amendment Act, 1923, is hereby further amended by omitting the words "(not less than six in number)" and substituting the words "(not less than four nor more than six in number)."

Sect. 3 (2)

Paragraph (a) of sub-section one of section six of the Samoa Amendment Act, 1923, is hereby repealed.

THE LEGISLATIVE ASSEMBLY (contd.)

entitled to preside over every meeting of the Assembly: but if he is not present at any meeting he shall appoint a member of the Assembly to preside over that meeting.

Sect. 7 (3)

The High Commissioner should preside over the Government.

The High Commissioner or member presiding over any meeting of the Assembly shall not have a deliberative vote, but in case of an equality of votes, he shall have a casting vote.

POWERS OF THE ADMINISTERING AUTHORITY

For proper fulfillment of these tasks (commitments imposed by the Trust trusteeship Agreement) the New Zealand Government should reserve the

It shall not be lawful or competent by any Ordinance to make any provision repugnant to any provision of a reserved enactment.

Sect. 9 (1)

POWERS OF THE ADMINISTERING AUTHORITY (contd.)

Sect. 9 (1)

For proper fulfillment of these tasks (commitments imposed by the Trusteeship Agreement) the New Zealand Government should reserve the following matters: adoption and amendment of the Constitution; external relations; defence; currency; loans; control of foreign exchange; audit of public accounts; discharge of responsibilities imposed upon New Zealand by the United Nations Charter and by the Trusteeship Agreement.

It shall not be lawful or competent by any Ordinance to make any provision repugnant to any provision of a reserved enactment.

Sect. 9 (2)

For the purposes of this section the following shall be deemed to be reserved enactments:-

- (a) Part I, II, III, IV, V, VI, VII, VIII, IX and XIII and section two hundred and ten of the principal Act;
- (b) Section five of the Samoa Amendment Act, 1938;
- (c) This Act;
- (d) Any other enactment declared by any Act or by any regulations (whether made under this Act or otherwise) to be a reserved enactment for the purposes of this section.

Sect. 56

Section still in force

When the Administrator assents to an Ordinance he shall forthwith transmit a

The New Zealand Government should vest its authority to the fullest extent deemed

No Ordinance shall become law until it has been passed by the Legislative Assembly in the

POWERS OF THE ADMINISTERING AUTHORITY (contd.)

printed copy thereof to the Minister of External Affairs.

Sect. 57 (1)
Section still in force

At any time within one year after the assent of the Administrator has been given to an Ordinance the Governor-General may, by notice published in the New Zealand Gazette, disallow that Ordinance either wholly or in part.

possible in its representative, the High Commissioner.

He exclusively should exercise the power of legislative initiative in financial bills. He should have the right to initiate legislation on all other matters.

He should have the right of disallowance over all measures passed by the legislature of Western Samoa All instances in which this right is used should be mentioned in the annual report on the administration of the Territory.

form of a bill and has been assented to by the High Commissioner.

Whenever any bill which has been passed by the Legislative Assembly is presented to the High Commissioner for his assent, he shall, within twenty-one days thereafter, declare according to his discretion, but subject to the provisions of this Act and to such instructions as may from time to time be given in that behalf by the Minister, that he assents to the bill, or that he refuses his assent to the bill.

Provide that the High Commissioner, before making any such declaration in respect of any bill so presented to him, may make such amendments in the bill as he thinks fit, and by message return the bill with the amendments to the Legislative Assembly for consideration by the Assembly.

Sect. 45 (1)
Section still in force

In addition to all special powers of making

POWERS OF THE ADMINISTERING AUTHORITY (contd.)

regulations conferred upon the Governor-General by this or by any other Act, the Governor-General in Council may make all such regulations as he thinks necessary for the peace, order, and good government of Samoa.

Sect. 45 (3)

Section still in force

The power conferred on the Governor-General by this section to make regulations for Samoa shall extend to the imposition of tolls, rates, dues, fees, fines, taxes, and other charges.

Sect. 45 (4)

Section still in force

Notwithstanding anything in the Customs Act, 1913, the Governor-General in Council may, by regulations under this section impose such conditions, restrictions, and prohibitions upon the export or import of goods from or into Samoa as he thinks necessary.

The audit of the accounts of the Samoan Treasure shall be in accordance with such regulations as may be made by the Governor-General in Council in that behalf.

POWERS OF THE LEGISLATIVE ASSEMBLY OF WESTERN SAMOA

Sect. 62

It shall not be lawful or competent for the Legislative Council of Executive Government of Samoa -

(a) To establish or maintain any military or naval base or any fortifications in Samoa.

(b) To provide for the military training or service (otherwise than for the purposes of police) of the inhabitants of Samoa other than Europeans:

(c) To borrow money otherwise than from the New Zealand Treasury in accordance with the express provision of this Act in that behalf.

Sect. 46 (1)

The Administrator acting with the advice and consent of the Legislative Council of Western Samoa, may make laws (to be known as Ordinances) for the peace, order, and good government of the Territory not being repugnant to this Act or to regulations under this

Sect. 8 (1)

Subject to the provisions of the principal Act and its amendments (including this Act), the Legislative Assembly may make laws (to be known as Ordinances) for the peace, order, and good government of Western Samoa.

Sect. 8 (2)

The power conferred by this section to make laws for the peace, order, and good government of Western Samoa shall, save as otherwise provided in this Act, extend to the imposition of tolls, rates, dues, fees, fines, taxes, and other charges, and to the imposition of conditions, restrictions, and prohibitions upon the export or import of goods from or into Western Samoa, but shall not extend to the making of laws relating to defence (except in relation to the taking of land for defence purposes), or relating to external affairs, or affecting the title of His Majesty to any land.

POWERS OF THE LEGISLATIVE ASSEMBLY OF WESTERN SAMOA (contd.)

Act, or to any other Act of the Parliament of New Zealand, or to any Act of the United Kingdom in force in the Territory or to any regulations there in force.

Sect. 46 (2)

The power conferred by this section to make laws for the peace, order, and good government of Samoa shall, save as otherwise provided in this Act, extend to the imposition of tolls, rates, dues, fees, fines, taxes, and other charges.

Sect. 10

The High Commissioner and the representatives of the Samoans (the Fautua) should have the power to initiate legislation, as suggested above. Other members of the legislature either individually or as groups, should also have the powers to initiate legislation with the exception of purely financial bills. Bills

Subject to the provisions of this Act and of the standing orders of the Legislative Assembly, any member of the Assembly may introduce any bill or propose any motion for debate in or present any petition to the Assembly, and the same shall be considered and disposed of in accordance with the standing orders.

POWERS OF THE LEGISLATIVE ASSEMBLY OF WESTERN SAMOA (contd.)

involving financial expenditures should require the consent of the High Commissioner before being introduced.

Provided that, except upon the recommendation of the High Commissioner, the Assembly shall not pass any bill which, in the opinion of the High Commissioner or of the member presiding, would dispose of or charge any of the public revenues or public funds of Western Samoa, or revoke or alter any disposition thereof or charge thereon, or impose or alter or abolish any rate, tax or duty.

Samoa Amendment, 1923

Sect. 4 (1)

Section still in force

The Administrator may from time to time, by Warrant under his hand and the Public Seal of Samoa, appoint such number of Samoans as he thinks fit to be Faipules. No person shall be appointed as a Faipule under this section who is not qualified, in accordance with existing

The present method of electing the Faipule according to Samoan custom, whether by nomination or election according to the wishes of the constituency, seems to be working satisfactorily. Formal confirmation of nominations by the New Zealand representative should no longer be held necessary.

REPRESENTATIVES OF THE LOCAL INHABITANTS

Samoa Act

United Nations Mission

Samoa Amendment Act

(contd.)

REPRESENTATIVES OF THE LOCAL INHABITANTS

Samoa usage and custom, to occupy the position of Faipule in any Council or body having advisory functions.

Sect. 4 (2)

Section still in force

The appointment of any person as a faipule (whether such an appointment has been made before or after the commencement of this Act) may be any time revoked by the Administrator for any cause that he deems sufficient.

JUDICIARY

Sect. 67 (1)

Section still in force

The Administrator may appoint such Native Judges as he thinks necessary, who shall hold office during his pleasure, and shall receive out of the Samoan Treasury such salaries and allowances as he determines.

Samoa associate Judges should be granted the constitutional right to participate in decisions of the High Court, a power they already exercise in effect.

Sect. 67 (2)
Section still in force

Native Judges shall exercise only such jurisdiction as shall from time to time be prescribed by the Administrator. Such jurisdiction shall extend only to Samoans, and no Native Judge shall have authority to impose any term of imprisonment.

Constitutional recognition should be given to acknowledged Samoan custom and tradition ... Along with this should go the grant of constitutional power to district judges and village councils to adjudicate upon matters arising out of traditional Samoan custom and also under the written law to the extent to which such jurisdiction may have been conferred upon them. The jurisdiction of these lower tribunals naturally would be confined in criminal law to minor offences and in civil cases to minor disputes. Such grant of power should take account of Samoan judicial procedure.

Sect. 9
Section still in force

The Minister of External Affairs may appoint to the Samoan Public Service, to hold office during his pleasure, such other officers as he thinks necessary for the government of the Territory.

PUBLIC SERVICE

In place of the present control and supervision exercised at a distance by the New Zealand Public Service Commission, it (the Mission) believes that a Public Service Commission should be developed in the Territory.

Sect. 10 (1)
Section still in force

The Minister of External Affairs may, if an so far as he thinks fit, delegate to the administrator the power of making appointments to office in the Samoan Public Service, and all persons so appointed shall hold office at the pleasure of the person who for the time being has the power of making such appointments.

Sect. 10 (2)
Section still in force

An such delegation may at any time be revoked by the Minister.

JUDICIARY (contd.)

The principle should be recognized that preference in appointments should be given in so far as possible to residents of the Territory.

The New Zealand representative, in consultation with the High Council, should have the power to appoint the heads of the departments.
