



HEAD OF STATE

PROCLAMATION OF THE HEAD OF STATE

*Vaialele,
Samoa*

**CONVENING OF THE XVIITH PARLIAMENT OF THE INDEPENDENT
STATE OF SAMOA**

**I, TUIMALEALIFANO VA'ALETO'A SUALAUVI II, HEAD OF STATE of
the Independent State of Samoa, pursuant to Article 52 of the Constitution of
Samoa, APPOINT MONDAY, 2nd of AUGUST 2021, at 9:30am as the date for
the OFFICIAL OPENING OF THE XVIITH PARLIAMENT of the Independent
State of Samoa, at the MAOTA FONU, at MULINUU.**

**THAT I make this PROCLAMATION for the convening of Parliament at the date
I have so appointed, to permit the following matters to be resolved and hopefully
concluded properly. I make the following observations:**

- 1. *Uncertainty as to composition of the Legislative Assembly:***
 - a. That at present there is **no certainty** as to the correct number and/or composition of the Members of the Legislative Assembly that should and ought to attend at the convening of the XVII Parliament given:
 - i. The definition of the Legislative Assembly in Article 111 that requires the Legislative Assembly to be constituted in accordance with Article 44 of the Constitution of Samoa. Of the 51 Elected Members, 5 are Women, which is less than 10% minimum requirement of the Constitution.

- ii. The Constitutionally guaranteed seat of the additional Woman Member of Parliament in accordance with Article 44(1A) of the Constitution of Samoa has not been activated yet, although the Court of Appeal has confirmed that a 6th Woman Member of Parliament is mandatory. That means that the number of a properly constituted Legislative Assembly at present is 52, and not 51.
- iii. That a convening of the Legislative Assembly without the 6th Woman Member breaches the Constitution and the constitutional rights of the additional Woman Member.
- iv. The Court of Appeal held: "We hold that the determination under Article 44(1A) must be made on the basis of the General Election results as finally determined after the results of any electoral petitions under the Electoral Act 2019 and by-elections pursuant to the terms of that Act."¹
- v. At present, one elected woman has resigned her seat, and 2 are facing electoral petitions. That means, all 3 women could be replaced by women through by-elections, bringing the number of the Legislative Assembly to 52, through the activation of Article 44(1A). If that is not the case, then there are various possibilities as to the membership of the Legislative Assembly in order to meet the prescribed 10% minimum of Women in Parliament.

2. No clear Majority of the Parliament

- a. That due to the uncertainty as to when the outcome of the petitions and possible by-elections and consequential proceedings will be concluded,

¹ *Electoral Commissioner v Aliimalemanu v FAST and Seuula Ioane*, Misc CA04/21, CA05/21, (CA Decision 2 June 2021), pgh38.

there is presently no clear majority as to the number of seats of Parliament, therefore neither of the political parties can claim to have a majority. It follows that the Speaker and the Deputy Speaker cannot be nominated or elected, and there is no one person who commands the confidence of the majority of the House, to be appointed as the Prime Minister.

- b. There is uncertainty insofar as the number of the Legislative Assembly is concerned, therefore Parliament cannot be properly convened at the present time.

3. *No Parliament, No Speaker, No Vacation, No By-election*

As a further consequence of the determination by the Court to activate Article 44(1A) after all petitions and by-elections, the declaration of the vacation of the seats of Members of Parliament who are successfully challenged, is frustrated. Such a declaration is a prerequisite to trigger the by-elections process.

4. *Frustration of the 45 days requirement*

The effect of the Court of Appeal's decision² is the frustration of Article 52, which requires the Legislative Assembly to meet no later than 45 days after the holding of a general election.

THEREFORE if the above matters have not been resolved by the appointed date, I will consider other options available to me.

² *Electoral Commissioner v Aliimalemanu v FAST and Seuula Ioane*, Misc CA04/21, CA05/21, (CA Decision 2 June 2021).

I FURTHER STATE that the Supreme Court has no jurisdiction to order the convening of Parliament, as only **I**, the **HEAD OF STATE** of the Independent State of Samoa, have the **POWERS** to appoint a time and place for the meeting of the Legislative Assembly. I also add that the Court, through their decision of Monday 28th June 2021,³ have shown flagrant disregard, and disrespect, of the powers of the position of the Head of State.

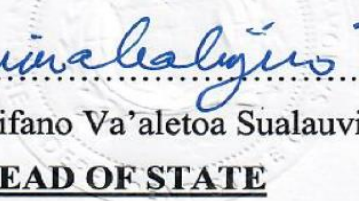
- a. By ordering that the Parliament be convened within 7 days of its decision, the Court has usurped the powers of the Head of State, as only I have the legal powers and Constitutional authority under article 52 of the Constitution, to appoint a time and place for the meeting of the Legislative Assembly.
- b. By ordering that failure to comply with its decision will be tantamount to contempt of Court, the Parliament and the Head of State, I read it as a direct threat to the legal authority, powers and integrity of both the Office of the Head of State, and that of the Parliament of the Independent State of Samoa.

I PRAY, that such usurping of the said powers of the Head of State shall not happen again.

FINALLY, through this **PROCLAMATION, I REVOKE AND REPLACE** my Proclamation of 20th May 2021, that called for the meeting of the XVII Parliament for Monday 24th May 2021. That Proclamation has **lapsed and is of no effect at all.**

³ *The Attorney General v Matafeo George Latu &, FAST Members*, Misc 139/21 & 140/21, Supreme Court Judgment of 28 June 2021.

GIVEN under my hand at Vailele on this^{4th}.....day of^{JULY}.....
2021.


Tuimaleali'i Fa'anoa
.....
Tuimalealiifano Va'aletoa Sualauvi II
HEAD OF STATE