



# Domestic Violence Laws in American Samoa

Assessing Victims Rights

**Presentation**

<b>Page</b>	<b>Content</b>
2	Historical Context of Western Governance in American Samoa
4	Constitutional Evolution of the Territorial Government Table 5: Bill of Rights
6	American Samoa Judiciary
7	Domestic Violence in the Context of the Fa'aSamoa
8	The Concept of 'Human Rights'
9	Due Diligence Standard and Gender-based Violence Table 2: U.S. Model Code
11	What does American Samoa's Law encompass and does the justice system provide effective redress for victims of violence?
13	Does American Samoa's Law provide for victims' rights and protection? Table 3: Enforceability of Victims' Rights
18	Recommendations

## Historical Context

American Samoa is a dependent territory of the U.S. consisting of five islands and two atolls with a total land area of 76 square miles. Located 2500 miles southwest of Hawai'i and 1600 miles northeast of New Zealand, it is the only inhabited U.S. insular area south of the Equator.

The Samoan people of American Samoa share Polynesian heritage with the people of the independent country of Samoa (formerly Western Samoa from 1962-1976) located 40 miles east. The populations of both Samoa's remain homogenous with little racial mixture or cultural change.

In 1787, the first foreigner from the West, French explorer J. F. de Galaup de Laperouse and his crew landed on Tutuila, the main island of the American Samoan group. In 1824, U.S. Captain C. Wilkes arrived in Pago Pago Harbor. Subsequently, the British, Germans and Americans became the dominate economic powers in both Samoas through the late 1800s.

In 1872, in their quest for protection from the British and Germans who had already demonstrated their ability to usurp Samoan land tenure and customs in neighboring Samoa, a group of paramount chiefs of Tutuila wrote to U.S. President Grant asking him to '*annex these our islands to the United States of America*'<sup>1</sup>. The request was denied.

Eventually, the U.S. Senate ratified a **treaty** of '*friendship and commerce*'<sup>1</sup> in 1878, approved by Tutuila's paramount chiefs or matai, transferring lands bordering Pago Pago Harbor to the U.S. Navy for a **coaling depot**. This event developed on the heels of a massive invasion of missionaries into Tutuila beginning with the London Missionary Society from Samoa in 1830 and conversion of the majority population to Christianity by 1850.



Pago Pago Coaling Depot

The Convention of 1899 between the U.S., Germany and Britain assigned the 'Islands of Tutuila' to the U.S., and the rest of Samoa to Germany. In 1900, the U.S. secured the "*indigenous consent*"<sup>2</sup> for U.S. annexation by the paramount chiefs of Tutuila and Aunu'u islands via deeds of cession, followed by the Manu'a island group in 1904.

The terms and verbiage of the Deeds reflect a formative constitutional backdrop tying the communal system of fa'aSamoa to a streamlined version of formal U.S. federal authority:

" . . . the said governments have deemed it necessary to assume the control of the legislation and administration of said state of Samoa; and whereas for the promotion of the peace and welfare of the people of said islands, for the establishment of a good and sound government, and for the preservation of the rights and property of the inhabitants of said islands, ***the Chiefs, rulers and people thereof are desirous of granting unto said government of the United States full powers and authority to enact proper legislation for and to control the said islands*** .... The Government of the United States of America shall respect and protect the individual rights of all people dwelling in

<sup>1</sup> Leibowitz, A.H. (1989). *Defining Status: A comprehensive analysis of US Territorial Relations*. Kluwer Pub. MA

<sup>2</sup> Statham, R. E. (2002). *Colonial Constitutionalism: The Tyranny of the United States' Offshore Territorial Policy and Relations*. Lanham, MD: Lexington Books.

Tutuila to their lands and other property in said District; The Chiefs of the towns will be entitled to retain their individual control of the separate towns, if that control is in accordance with the laws of the United States of America concerning Tutuila, But the enactment of legislation and the general control shall remain firm with the United States of America .... We (*signers*). . . will obey and owe allegiance to the Government of the United States of America.”<sup>3</sup>

In 1925 nearby Swains Island was added to the Samoan group by a joint resolution of Congress. The deeds of cession were formally ratified by the U.S. Congress in 1929.

By then, American Samoa had been managed by the U.S. Department of the Navy for 29 years. Naval governors were appointed for two-year terms to run the territory which most did with evidence of little interest in the social, economic, and political development of the indigenous people. The naval governor represented all three branches of government. Samoan self-governance was impeded by lack of access and opportunity to take part in territorial legislation, economics and politics. The Navy retained sole legislative power for 50 years, during which thirty-seven naval governors ran the territory like a naval base and did little more than supply minimal education and health services to the Samoans.

In 1951, administration of the territory was transferred from the U.S. Navy to the U.S. Department of the Interior by a Presidential Executive Order that empowered the Secretary of the Interior to appoint territorial Governors and exercise broad supervisory powers over all three branches of government. However, living conditions did not improve much for the Samoan people. In 1961, Reader's Digest published C.W. Hall's infamous '*Samoa: America's Shame in the South Pacific*', describing Tutuila as a '*slum*' resulting from America's '*neglect and apathy*'.<sup>4</sup> In 1977, the Interior approved the territory's first popular election for Governor and Lieutenant Governor with the hopes that Samoan leadership under the Interior's guidance would facilitate self-determination and economic growth.

Unlike the indigenous peoples of (Western) Samoa, the (American) Samoan people yielded their sovereignty to the U.S. government without resistance. Yet they do not enjoy all of the same constitutional rights as U.S. citizens. So how has the territory fared since these historical developments? Do the people of American Samoa feel oppressed, or unjustly treated as a result?

In **2017**, Dr. Tapa'au Daniel Aga provided a statement to the UN Committee on Decolonization on behalf of then Governor, Lolo Moliga. In it he claimed that the people of American Samoa do not '*live under a regime of colonization*', and do not '*consider ourselves a colonized people*.' He also denied that there exists a '*yearning for political independence*' from the U.S., and that in fact the territory enjoyed '*the best of both worlds*'.<sup>5</sup> Today, the 54<sup>th</sup> Secretary of the Interior is a female of Native American descent, and her Director of Insular Affairs, Nikolao Pula, is the first Samoan in this Senior Executive position. As the OIA Director, Pula is the liaison between the Interior and American Samoa, and responsible for the general policies and oversight of Federal activities in the territory. Representation by indigenous, and indeed Samoan, officials at the Interior is a significant advancement for the collective voice of American Samoans today. The territory continues to receive financial benefit and protection from the U.S., and continues to resist forfeiting land rights and limited self-governance in exchange for full U.S. citizenship.

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<sup>3</sup> digital.lib.washington.edu

<sup>4</sup> Hall, C.W. Samoa: America's Shame in the South Seas. Reader's Digest, July 1961, pp.111-116.

<sup>5</sup> [www.un.org/dppa/decolonization/sites/www.un.org.dppa.decolonization/files/2017\\_5\\_nsgt\\_american\\_samoa.pdf](http://www.un.org/dppa/decolonization/sites/www.un.org.dppa.decolonization/files/2017_5_nsgt_american_samoa.pdf)

## Constitutional Evolution

In 1948, the Naval administration executed the first steps towards a representative government by establishing a bicameral legislative body or Fono. The first Fono was comprised of the House of the Ali'i - 12 paramount chiefs or matai, and the House of Representatives composed of fifty-four members of whom fifty-two were selected according to the fa'amatai or chief system, and two were elected by balloting American Samoans not living under the matai system. The House held advisory capacity with little influence on territorial legislation. The first Naval Governor, **B.F. Tilley** issued Regulation 4 **codifying the traditional land tenure system of the Samoans, forbidding the alienation of their own land in the islands through conveyances of title, except through provisions approved by the governor.** This was later incorporated as a basic tenet of the territory's constitution, modified to accommodate 40-year leases to businesses and church organizations.



In 1952, upon full transfer of territorial management from the Navy to the Interior, the Fono was reformed into a Senate and House of Representatives with authorization to pass non-revenue bills that only affect the local population. The structure of the Fono remains the same today: a bicameral legislature, made up of 21 Representatives of legislative districts elected to the House, and eighteen registered heads of Samoan families (Ali'i) appointed by their County councils to the Senate, representing the Manu'a, Western, and Eastern Districts of the territory.

Because American Samoa is an unincorporated, unorganized territory of the United States, tied to the U.S. only by the deeds of cession, in 1958 the U.S. Secretary of the Interior gave American Samoa the authority to draft its own constitution.

The first Constitution of American Samoa, including a Bill of Rights, was drafted by a local constitutional committee after six years of study and preparatory work. The constitutional convention, conducted in Samoan, lasted two days with full press coverage of the ensuing debate and compromise. The Constitution, the first official legislation created by the American Samoan people, was adopted by referendum, and ratified by the Secretary of the Interior in 1960. The document signing was a significant historic event, attended by over 5,000 people.

American Samoa was able to secure for itself powers not allocated to the states, including control over immigration policies; control over duties and other taxes; and some territorial participation in international bodies of cooperation. It also includes legislation in Article 1, Section 3: *'to protect persons of Samoan ancestry against alienation of their lands and the destruction of the Samoan way of life'* thus preserving the fa'aMatai system of land tenure which is the foundation of the fa'aSamoa itself. *"The whole fiber of the social, economic, traditional and political pattern in American Samoa is woven fully by the strong thread which the American Samoan places in the ownership of land. Once protection of this is broken . . . the whole pattern of Samoan way of life will be forever destroyed."*<sup>1</sup>

The Constitution prohibited legislation that did not align with that of the U.S. or conflicted with U.S. treaties or international agreements. All provisions of the U.S. Constitution apply to the territory except the following:

- U.S. Citizenship
- Voting for U.S. President
- Voting in Congress.

The Constitution was amended in 1967 by the [Fono](#) to extend its power to appropriate local government revenue and create the annual territorial budget. A second amendment, in 1977, supported the election of, and vestiture of executive powers in the offices of a locally elected Governor and Lieutenant Governor under general supervision of the Secretary of the Interior. The first Governor, Peter Coleman, of Samoan heritage was elected in 1977.



**Table 1** is a comparison between the constitutional Bill of Rights of the territory and the U.S.:

American Samoa	U.S.
Freedom of religion, speech, press, rights of assembly and petition	Freedom of religion, speech, press, assembly, and petition
No quartering of militia	No quartering of soldiers.
Protection against unreasonable searches and seizures	Freedom from unreasonable searches and seizures.
Habeas corpus	Rights of accused persons, e.g., right to a speedy and public trial
Rights of an accused	Right to due process of law, freedom from self-incrimination, double jeopardy
No deprivation of life, liberty of property without due process	Right of trial by jury in civil cases.
<p>The following are specific to A.S.</p> <ul style="list-style-type: none"> <li>- Policy protective legislation</li> <li>- Dignity of the individual</li> <li>- No Imprisonment for debt except for in cases of fraud</li> <li>- Treason against the government of American Samoa</li> <li>- Traitors ineligible to hold public office.</li> <li>- Retroactive laws and bills of attainder</li> <li>- Health, safety, and general welfare</li> <li>- Education shall be provided free and non-sectarian by local government</li> <li>- Unspecified rights and privileges and immunities</li> </ul>	<p>The following are specific to the U.S.</p> <ul style="list-style-type: none"> <li>- Right to keep and bear arms in order to maintain a well-regulated militia</li> <li>- Freedom from excessive bail, cruel and unusual punishments.</li> <li>- Other rights of the people.</li> <li>- Powers reserved to the states.</li> </ul>

*Notably, American Samoa has not incorporated a 'Victims' Bill of Rights' into its Constitution to protect victims of crime, specifically victims of violence. Through a Victims' Bill of Rights, human rights law becomes an integral, enforceable part of the legal system.*

The Bill of Rights guarantees civil rights and liberties to the individual and reserves all powers not delegated to the U.S. federal government to the state and territorial governments.

## American Samoan Judiciary

The Judiciary was created under the auspices of the territorial Constitution and American Samoa Code established by the Fono. A High Court and Local District Court are under the supervision of a Chief Justice, who along with an Associate Justice, are appointed by the Secretary of the Interior to lifetime terms, removable for cause. Both must have completed formal legal training. Six associate judges, with no legal training requirement, are appointed by the Governor. These judges are matai who preside over cases in the High Court, primarily over issues concerning matai titles and land ownership. One Local District Judge is appointed by the Governor. This position requires formal legal training. In 1921, the first Justice of the American Samoa High Court was appointed by the Secretary of the Interior. The longest sitting Justice is Chief Justice Michael Kruse, appointed in 1988.

The High Court has four divisions: trial, family/drug/alcohol, land/title, and the appellate division. The trial division has general jurisdiction, empowered to hear felony and civil cases in which the amount of debate exceeds \$5000.00, while the Local District Court presides over misdemeanors and cases involving less than \$5000.00.

American Samoan culture, the fa'aSamoa, and its traditions concerning criminal accountability and reparation influence the formal Judiciary. The majority of presiding judges hold matai titles. The custom of ifoga or ceremonial apology from the offending family to the victims' family is written into the American Samoa Code as a consideration in sentencing convicted offenders. The Code also establishes a court authority in each village to adjudicate matters pertaining to village rules and local customs.

American Samoa is the only U.S. insular area that does not have a federal court, but federal criminal law extends to the territory. Congress granted the local High Court federal jurisdiction for issues concerning maritime law, protection of animals, food safety, conservation, and shipping<sup>6</sup>. Most issues are tied to federal laws upholding U.S. international treaties and agreements, human and animal safety under the Food and Drug Administration, Environmental and Wildlife Protection Agencies. Federal criminal cases, however, are adjudicated to U.S. district courts in Hawai'i and District of Columbia.



Chief Justice Michael Kruse



Associate Justice Fiti Sunia

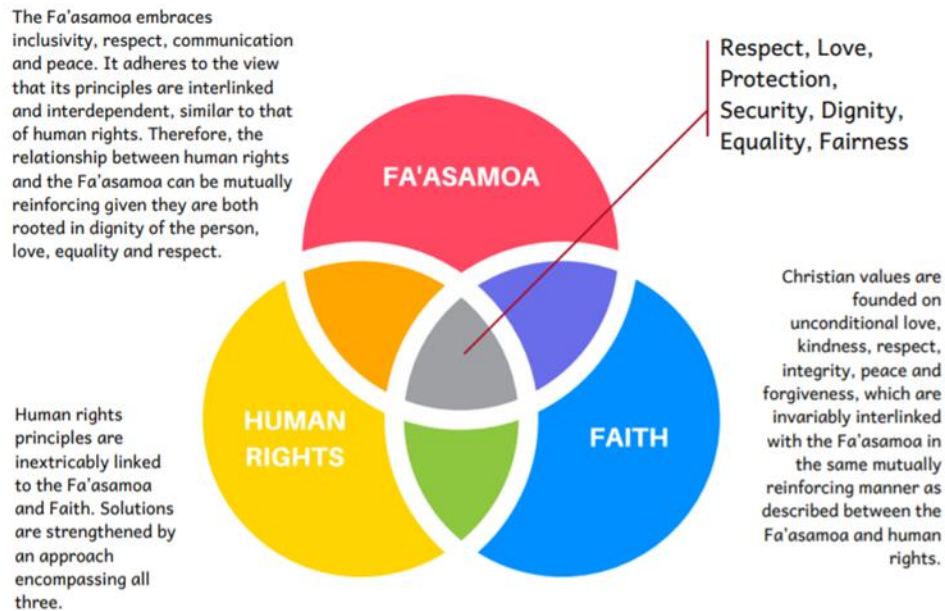


High Court Building  
Fagatogo, American Samoa

<sup>6</sup> American Samoa: Issues Associated with Some Federal Court Options, GAO-08-1124T, Sept. 2008

## Domestic Violence in the Context of Fa'aSamoa

The Samoan culture or fa'aSamoa is grounded in interdependent relationships. Protecting the rights of individuals ensures better protection of the collective rights of all. Protection against family violence in Samoa can be found in the law, culture and religion:



*National Public Inquiry Into Family Violence in Samoa Final Report 2018 | State of Human Rights Report 2018*

The traditional protection mechanisms of families are found in Samoan communities, congregations, and Village Fono which bind contemporary Samoan society. Out of fa'amatai—the system of chiefs with ranked titles conferred by their extended kinship networks—is a political network vested with the authority to lead family, village and territory. The fa'amatai is the foundation from which traditional interpersonal relations are observed in support of the 'āiga or extensive kinship network. The system stratifies Samoan society into two statuses, those with matai titles and those without, with each 'āiga headed by a matai elected by adult members of the family. The 12 paramount matai titles, presiding at the top of the cultural hierarchy, protect the interests of the Samoan people and their holders are commonly referred to as the 'fathers of our nation'. They hold exclusive rights to all communal land (est. 90% of territory) in trust for their 'aiga, including lesser matai titles.

Faith is a primary protection mechanism, preaching values of nonviolence, tolerance and peace. However, fa'aSamoa contradicts itself in areas where power dynamics determine social norms surrounding gender-based and family violence. The patriarchal and political hierarchy reinforce popular views on what constitutes a 'Samoan man' and notions of masculinity which excuse the violent behavior of men. The hierarchy also facilitates a controlling environment out of which violence arises. Perpetuation of inequality through roles such as nofotane, breakdown of traditional sacred relationships such the va tapuia, ineffective communication resulting from power inequities, and gendered stereotypes contribute to violence against women in contemporary American Samoa. The notion of violence as an abuse of human rights has yet to be articulated in the fa'aSamoa.



## Human Rights

A 'human right' is one believed to belong to every person based on shared values of fairness, equity, respect, self-determination, peace and safety. This extends to one's right to live 'free from violence', including domestic, intimate partner, and gender-based violence.

The United Nations houses three mechanisms by which countries can agree on constitutionally embedded bill of rights containing basic human rights for all: the charter-based system, treaty-based system, and the international conference on human rights.

The **charter-based system** established the Commission on Human Rights and the near universal acceptance of the three primary human rights documents: the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, both adopted in 1966. Eight **treaties** have been adopted on human rights between 1965 and 2006. The most relevant to this discussion is gender-specific human rights treaty: the Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**) adopted in 1979. The High Commissioner of the **International Conference** has the major responsibility for monitoring human rights in the UN. While the U.S. has not ratified the majority of these instruments, they have provided a foundation for the human rights laws enjoined under the U.S. Crime Victims' Rights Act.

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***"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."***

Universal Declaration of Human Rights (art. 1) resolution 217 A (III), adopted 1948 by unanimous vote of the U.N. General Assembly

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## International Standards of Gender-Based Violence Legislation

The CEDAW is the primary international instrument protecting rights of females, defining discrimination against women, gender-based violence, and providing strategies for ending them. Its' goal is to '*eliminate all forms of discrimination against women*' (article 1) by addressing gendered stereotypes, practices and laws that perpetuate and normalize violence against women. In 2017 the Committee approved Recommendation No. 35 on gender-based violence against women, adding the following form of discrimination against women: '*violence which is directed against a woman because she is a woman or that affects women disproportionately, and, as such, is a violation of their human rights.*'<sup>7</sup>

Women's right to a life free from violence is *indivisible from and interdependent with other human rights, including the right to life, health, liberty and security of the person, the right to equality and equal protection within the family, freedom from torture, cruel, inhumane or degrading treatment, freedom of expression, movement, participation, assembly and association*<sup>7</sup>.

The CEDAW acknowledges that gender-based violence may affect some women to different degrees, or in different ways, so appropriate legal and policy responses are needed. CEDAW and other international

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<sup>7</sup> <https://www.ohchr.org/en/hrbodies/cedaw/pages/gr35.aspx>

instruments establish that **prevention of violence** against all marginalized peoples, women specifically, is a **government responsibility under international law**.

Article 2 establishes that the **obligation of countries to pursue** by all appropriate means and *without delay a policy of eliminating discrimination against women*, including gender-based violence against women. *Governments are responsible for preventing these acts or omissions by their own agents –including through training and the adoption, implementation and monitoring of legal provisions, administrative regulations and codes of conduct- and to investigate, prosecute and apply appropriate legal or disciplinary sanctions as well as provide reparation in all cases of gender-based violence against women, including those constituting international crimes, as well as in cases of failure, negligence or omission on the part of public authorities*<sup>7</sup>.

## **Due Diligence Standard and Gender-Based Violence**

Due diligence is the legal standard for assessing the adequacy of government action, and since 1993 it has featured prominently in international efforts to address violence against women<sup>8</sup>. The CEDAW provides a framework for determining a country's responsibility and assessing its effectiveness according to human rights laws and a standard of due diligence. While there is no single agreed upon definition of what diligence entails, all UN and human rights bodies concur with the following actionable standards issued in the CEDAW.

Countries have a *duty to take positive action to address violence against women*<sup>8</sup> according to four **standards of 'due diligence'** recognized in the **Inter-American Court of Human Rights in 1989**<sup>9</sup>:

1. To prevent
2. To investigate and protect against
3. To prosecute and punish
4. To provide reparation

The due diligence standard expands the scope of **duty to address violence against women beyond the private and into the public domain of concern**<sup>9</sup>. Every country is obliged to prevent human rights violations before they occur by executing these actions (see full document at <https://www.ohchr.org/en/hrbodies/cedaw/pages/gr35.aspx>).

At the legislative level, U.N. member countries are required to adopt legislation prohibiting all forms of gender-based violence against women and girls, and recognize female victims/survivors of violence as having inalienable rights, including sanctions and reparation. Countries are obliged to adopt and adequately fund prevention measures and service provision for victims/survivors, including public policies and monitoring systems. At the judicial level, countries are required to *refrain from engaging in any act or practice of discrimination or gender-based violence against women; and to strictly apply all criminal law provisions punishing this violence, ensuring all legal procedures in cases involving allegations of gender-based violence against women are impartial and fair, and unaffected by gender stereotypes or discriminatory interpretation of legal provisions*<sup>10</sup>.

<sup>8</sup> Farrior, S. (2004). The Due Diligence Standard and Violence against Women. *Interights Bulletin* (14).

<sup>9</sup> Addadzi-Koom, M.F. (2019). An African Perspective on the due diligence standard and state responsibility for domestic violence in international law. *African Human Rights Law Journal*. 19:624-652.

<sup>10</sup> Qureshi, S. (2013). The Emergence/Extension of Due Diligence Standard to Assess the State Response towards violence against Women/Domestic Violence. *Research Jour of S Asian Studies*, 28(1), 55-66.

All forms of violence against women should be criminalized, and victims should have access to justice. All discriminatory laws, and those which jeopardize the rights of women should be repealed, including religious and indigenous laws. CEDAW goes so far as to require that legislation be established to address the underlying causes of violence against females including patriarchal norms. It encourages awareness raising to address violence related stigma, victim-blaming, and perpetrator accountability.

A **second standard** of due diligence is the U.N. **Vienna Declaration & Program of Action of 1993** which affirmed the ‘universality of women’s rights as human rights’ and called for ‘elimination of gender-based violence’. Women’s collective organizing through the U.N. and other human rights entities promoted the practice of **establishing anti-violence legislation from the perspective of female victims of violence**. For example, in Brazil the Maria da Penha Law established punitive, protective, and preventive measures to address violence against women. Special courts and stricter sentences were established for offenders, dedicated police units and shelters were created to support victims. The Law set a precedent for other countries, and spurred women’s anti-violence groups into action.

While aggressive policies have not reduced domestic violence, they do provide protection for victims<sup>11</sup>. Which leads to a **third standard of due diligence**: the **effectiveness of domestic violence legislation**. Comprehensive legislation packages should include the punitive, protective and preventive measures outlined in Maria da Penha Law, as well as provisions for monitoring of implementation. U.N. Women describes ‘monitoring’ as determining the prevalence of violence, evaluating the laws, protocols, and policies used, identifying consequences of implementation and associated gaps, and continuously educating and training professionals involved in domestic and gender-based violence work<sup>12</sup>.

In **1994**, the **U.S. National Council of Juvenile and Family Court Judges** published a **Model Code on Domestic and Family Violence**<sup>13</sup>. The code was not designed as a uniform code but rather one that should be adapted to the needs of each state. The Code complies with international standards of due diligence:

<b>TABLE 2</b>	<b>U.S. Model Code on Domestic Violence</b>	<b>International Standards of Due Diligence</b>
	Law provides ways for states to coordinate efforts to <b>identify, intervene and prevent</b> domestic and family violence	Prevent
	Offers procedures for comprehensive <b>protection</b> orders for victims	Investigate and Protect Against
	Law treats domestic and family violence as a <b>crime requiring aggressive and thorough intervention</b>	Prosecute and Punish
	Emphasizes <b>safety</b> of the victim and children, and <b>accountability of the batterer</b>	Provide Reparation

The Model Code and Standards of Due Diligence promote the support mechanisms needed to effectively protect women’s rights to life free from violence. They provide essential criteria with which to assess **American Samoa’s laws pertaining to gender-based and family violence and answering the following questions:**

<sup>11</sup> Dugan, L.J. (2002). Domestic Violence Legislation, Final Report. U.S. Dept of Justice. Dept of Criminology and Criminal Justice Univ. of Maryland.

<sup>12</sup> Sardenberg, C. (2011). What Makes Domestic Violence Legislation More Effective? Pathways Policy Paper, Pathways of Women’s Empowerment Research Program Consortium. Brighton: Pathways of Women’s Empowerment RPC

<sup>13</sup> <http://hrlibrary.umn.edu/svaw/domestic/laws/modellegislation.htm>

1. What does the law encompass and does the justice system provide effective redress?
2. Does the law provide for victims' rights and protection?
3. What is the enforceability of the laws?

**What does the law encompass and  
does the justice system it creates provide effective redress?**

Title 46, 'Offenses Against the Person', and Title 47, 'Domestic and Family Violence' of the American Samoan Code address violence between intimate partners, domestic and family members.

The '**purpose**' of **Title 47** is to '*recognize the importance of domestic violence as a serious crime against society and assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide.*' The law clearly defines domestic violence as a crime against society and recognizes victims' right of safety – meeting the CEDAW standard of due diligence, 'to prevent'. However, it fails to address the crime as a violation of human rights.

Title 47 **defines 'Domestic or Family Violence'** as the occurrence of acts by a family or household member that '*attempt to cause or causing physical harm to another family or household member, placing a family or household member in fear of physical harm, or causing a member to engage involuntarily in sexual activity by force, threat of force, or duress.*' By limiting covered acts of violence to 'physical harm' and excluding acts of control, emotional abuse and intimidation, isolation, verbal, psychological and economic abuse the definition falls short of diligent prevention.

Title 47 **clearly delineates who victims are**, including those who are dating, are related by adoption, or related formerly by marriage. The wide scope provides protection for all categories of relationships, meeting the standard to 'protect against'.

Title 47 **does not criminalize the act** of Domestic and Family Violence itself, nor does it address 'gender-based violence'. Rather the Title defines it as '*Crime involving domestic or family violence*'. These *crimes* are listed in Title 46 as Offenses Against the Person. 'Domestic and Family Violence' is simply the context in which these crimes occur. The law falls short of providing direct investigation, prosecution and punishment of Family and Domestic Violence.

**Domestic violence crimes are reported as criminal acts listed in the context of Title 47** as follows in this order:

- (1) Arson
- (2) Assault (1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> degree) and harassment
- (3) Burglary, robbery, tampering
- (4) Property damage
- (5) Homicide offenses (1<sup>st</sup> and 2<sup>nd</sup> degree murder, manslaughter, negligent homicide)

## FORMS OF DOMESTIC VIOLENCE

Pushing, punching, restraining, slapping, throwing objects, etc.

Intimidation (i.e. blocking exits, bullying)

Stalking and use of weapons

Sexual Abuse

Emotional & Psychological threats, controlling or coercing

Undermining self-esteem, disempowering, blaming, isolating, berating, humiliating, threatening harm of victim's family, pets, friends

Attacks against religion, morale

False accusations

Controlling finances, withholding access to resources, blocking from work or school

- (6) Kidnapping, felonious restraint, false imprisonment
- (7) Sex offenses (rape, sexual assault, deviate sexual assault, sexual abuse, child molesting)
- (8) Stealing and related offenses
- (9) Weapon law violations
- (10) Offenses against public order (public peace disturbance)
- (11) Family offenses (related to child – covered in Title 46, Chapter 38 Offenses Against the Family)
- (12) Property damage and trespass

And any crimes which the Attorney General deems relevant and necessary.

In addition to mandatory incarceration, persons convicted of these crimes are required to pay a **mandatory fine** of \$150.00 to the Court. Half of this is to fund a batterer's program or 'other appropriate counseling.' The other half supports territory-wide training and education to increase public awareness of domestic violence and improve 'the scope of services provided to the victims.'

Title 46, Chapter 20, entitled '**Restitution to Victims of Crime**' recognizes that victims suffer 'undue hardship by virtue of physical injury or loss of property' and that persons convicted of crimes have a legal and moral obligation to 'make adequate restitution to those injured by their conduct.' Restitution may take the form of money, service, and/or rehabilitation efforts. The Department of Public Safety 'may establish programs and procedures whereby persons may contribute toward restitution.'

Persons convicted of C or D felonies (i.e., manslaughter, negligent homicide, incest, child abuse, etc.) are may be required to pay a fine not exceeding \$5,000.00. Misdemeanors carry fines of \$200.00 to \$1,000.00. These fines are ordered at the discretion of the court. There is no clear indication in the law as to who receives the funds – court or victim. A defendant may petition for the revocation of a fine or an unpaid part of it, and the court may do so at its discretion.

Title 46 also addresses the Samoan custom of '**ifoga**' or public apology and reparation between the family of the offender and the family of the victim. The ifoga is defined as '*the traditional practice of seeking forgiveness and rendering a formal apology resulting from a hostile event involving physical injury and/or the verbal degrading of a family reputation . . . performed by a family or as a whole village, initiated by the guilty party or parties who created the most damage resulting in the greatest degradation to the reputation of the family*<sup>14</sup>.' (Note: this perspective

of the fa'aSamoa can perpetuate the stigma of domestic and sexual violence as it relates to the reputation and affect to the victim's family.) The tradition is an integral part of the fa'aSamoa and may function as both restitution and reparation **if** the act is victim-focused.

<sup>14</sup> Filoiali'i, L.A., Knowles, L. (1983) The ifoga: Samoan Practice of Seeking Forgiveness for Criminal Behavior.

Upon conviction, the Court may consider the impact of the ifoga ceremony during sentencing. In fact, the court may **reduce the level of the crime by a maximum of one classification from the classification upon which judgement of guilt was entered following a plea of guilty or trial** based upon the victim's response to the ifoga, and that of her family.

Title 46 provides '**time limitations**' during which prosecution must commence for all crimes:

- Class A felony (Murder in the 1<sup>st</sup> or 2<sup>nd</sup> degree with qualifications) – no limitation
- Any felony – within 3 years of crime
- Any misdemeanor – within 1 year of crime
- Any infraction – within 6 months

A statute of limitations spanning three years is the norm across U.S. states. However, the concerns regarding time limitations on crimes involving domestic and family violence disregard the impact on victims. These forms of violence are debilitating, causing long-term trauma, and involve a complicated **cultural dynamic**. Domestic violence is inherently different from other crimes of violence in that a personal relationship exists between offender and victim. They may share children, a household, one may be financially dependent on the other. A victim may not have the power, resources, awareness, or knowledge to initiate prosecution. For example, in the traditional Samoan household, the daughter in-law is relegated to the status of nofotane, a position subservient to her husband, his family and his village. If victimized, she has no voice, and may have no alternative but to remain in the relationship to avoid shame upon her own family, and because she may be rejected by others in the community. Cultural protocol fails to allow for reparation.

Another unique circumstance experienced by victims of domestic violence in American Samoa is **immigration status**. Territorial control over immigration is upheld in the local constitution. Migrants, mostly from Samoa, represent about 41% of the total population<sup>15</sup>. Many victims are abused by a spouse or relative who is also their sponsor which, for immigration purposes, is a requirement to maintain residence in the territory. A sponsor may revoke sponsorship for no reason, requiring the immigrant to leave the territory within 20 days. However, a person subjected to Court validated domestic or family violence may be given 45 days, or remain in the territory if the abuser is charged and has a case pending in Court. This policy victimizes the abused in two ways: one, there is **no relief for the victim** to stay in the territory; two, revocation of sponsorship may be used as a form of control over the victim, a form of abuse in itself, trapping the victim in the relationship. In other territories and states, federal immigration law provides for a self-petitioning process under the Violence Against Women Act. The victim must show that the abuser is a U.S. citizen or permanent resident, but it also precludes access to any benefit if the victim is required to then leave the U.S. for lack of sponsorship.

The legislative, judicial and cultural systems in American Samoa provide **limited redress for victims of domestic and family violence**, and **no redress for victims of gender-based violence**.

Due diligence also requires the law to address 'prevention' of domestic violence. Title 47, Chapter 8, provides for the 'Prevention and Treatment of Domestic Violence'. It creates an Advisory Council to increase 'awareness and understanding of domestic and family violence and its consequences to the territory' and proposes to reduce the prevalence of said violence through a coordinated community response. The

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<sup>15</sup> <https://www.macrotrends.net/countries/ASM/american-samoa/immigration-statistics>

Council, appointed by the Governor, reports to the Governor, Speaker of the House and President of the Senate.

Title 47 also requires the Department of Public Safety to establish education and counseling programs for 'offenders who are also victims of domestic or family violence' and interventions for perpetrators convicted of said crimes. The DPS Director is responsible for providing **domestic violence training to its employees** of the correctional facilities, and adopt written policies and procedures concerning 'the effective response to domestic and family violence, enforcement, protection and safety of victims, and coordination with hospitals and programs.'

### Does the law provide for victims' rights and protection?

Federal law provides victims of federal crimes with the following rights, and all 50 states have established statutory provisions that grant these rights to victims of crime. 36 states have added victims' right amendments to their state constitutions.

## Victims' Rights Today

### Justice For All Act (2004) Sec. 3771

### Title 1: Crime Victims' Rights Act (CVRA)

### Establishes 8 rights of crime victims in federal criminal proceedings

- Right to protection from the accused
- Right to be informed of court, parole, release information regarding the accused
- Right not to be excluded from public court proceedings
- Right to be heard at any public district court proceeding involving release, plea, sentencing, parole of offender.
- Right to confer with the attorney for the Government in the case
- Right to full and timely restitution
- Right to proceedings free from unreasonable delay
- Right to be treated with fairness and with respect for the victim's dignity and privacy

Title 47 includes the victim's right to protection from the accused and to be notified if the prosecutor dismisses criminal charges or enters into a plea. The law does not specifically iterate the rights listed in the Justice For All Act. American Samoa has not amended its constitution to include victims' rights. However, Title 47 requires a law enforcement officer responding to an allegation of domestic or family violence to 'give the victim immediate and adequate written **notice of the rights of victims** and of the remedies and services available' in Samoan and English, or in the victim's native language 'when practicable'. This requirement is extended to 'practitioners at the Department of Public Health' who 'become aware that a patient is a victim of violence.

## Written notice of the rights of victims

“If you are the victim of domestic or family violence and you believe that law enforcement protection is needed for your physical safety, you have the **right to request that the officer assist in providing for your safety, including asking for an emergency order for protection**. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you to a safe place, including but not limited to a designated meeting place for a shelter, a family member’s or a friend’s residence, or a similar place of safety. If you are in need of medical treatment, you have the **right to request that the officer assist you in obtaining medical treatment**. You may request a copy of the report at no cost from the law enforcement department. You may ask the prosecuting attorney to file a criminal complaint. You also have the **right to file a petition in the High Court requesting an order for protection from domestic or family violence** which could include any of the following orders:

- (1) An order enjoining your abuser from threatening to commit or committing further acts of domestic or family violence;
- (2) An order prohibiting your abuser from harassing, annoying, telephoning, contacting or otherwise communicating with you, directly or indirectly;
- (3) An order removing your abuser from your residence;
- (4) An order directing your abuser to stay away from your residence, school, place of employment, or any other specified place frequented by you and another family or household member;
- (5) An order prohibiting your abuser from using or possessing any firearm or other weapon specified by the Court;
- (6) An order granting you possession and use of the automobile and other essential personal effects;
- (7) An order granting you custody of your child or children;
- (8) An order denying your abuser visitation;
- (9) An order specifying arrangements for visitation, including requiring supervised visitation; and
- (10) An order requiring your abuser to pay certain costs and fees, such as rent or mortgage payments, child support payments, medical expenses, expenses for shelter, court costs, and attorney’s fees.

The forms you need to obtain an order for protection are available from the Department of Human and Social Services or the Office of the Attorney General. The resources are available through the appropriate government agencies for information relating to domestic family violence, treatment of injuries, and places of safety and shelters. You also have the **right to seek reimbursement for losses suffered as a result of the abuse**, including medical and moving expenses, loss of earnings, or support, and other expenses for injuries sustained and damage to your property. This can be done without an attorney in small claims court if the total amount claimed is less than \$3,000.”

The officer must notify the prosecutor’s office or provide a copy of their report on the incident within 72 hours of responding to the incident of violence. Upon determination of the ‘primary aggressor’, with or without a warrant, the officer is required to make a **mandatory arrest** for crimes involving domestic or family violence.’ However, the burden is placed on the individual officer to determine whether a person is the aggressor. Considerations include prior complaints of violence committed by the person, severity of the injuries allegedly made on others, likelihood of future injury. The responding officer is required to file a report on the incident whether or not he/she makes an arrest. The officer may also arrest for violations of orders of protection and seize weapons.



Title 47 provides a **detailed process for obtaining emergency orders for protection**, with clear remedy for violations of the orders (section 47.0403). Orders may be issued by the court in writing or orally at the request of a police officer by phone or in person on behalf of a victim. Orders may include prohibiting the offender from contacting the victim in any way, remove the offender from a residence, ban the offender from the victim's school or work, and allows the police to accompany the victim to his/her residence to safely obtain possessions. The law requires a judge or 'other court officer' to be available 24 hours per day to hear petitions for emergency orders. These orders expire after 72 hours, at which time the victim may petition for an Order for Protection with or without a hearing.

Title 47 also provides for conditions of custody and visitation, presuming that it is in the best interest of children to 'not reside with the perpetrator of domestic and family violence.' The Court is allowed to award visitation by a perpetrator only if it 'finds that adequate provision for the safety of the child and the parent who is the victim can be made.'

In the interest of safety, this section prohibits the visiting perpetrator from consuming alcohol, overnight visitation, and other action deemed necessary to provide for 'the safety of the child, victim, or other household member.' The perpetrator is also required to complete a 'program of intervention for perpetrators.'

While American Samoa's laws do not acknowledge the right of humans to live free from violence, nor mandate measures to prevent violence, a considerable effort has been made to provide for victims' safety through court orders and police assistance. There is extensive legal remedy for violation of those orders. The law also comprehensively protects the safety of the victims' children. However, there is an insufficient number of accessible support services for victims including shelters, a hotline, emergency medical care, and safe havens for victims who choose not to report but need emergency shelter.

### ***What is the enforceability of the laws?***

The statutes do not create a **cause of action** by anyone other than law enforcement, and Public Health service providers if they are made aware of a patient experiencing abuse. There are sufficient laws to support continuous training of law enforcement to assist victims and enforce laws effectively but the responsibility rests with the Dept. of Public Safety and there are no remedies for inaction.

There is no inclusion of the **cultural manifestations of violence** such as protections for nofotane, for fa'afafine, and clear definitions of child abuse (the difference between 'sasa' or discipline and abuse).

According to the U.S. Office for Victims of Crime, the mechanisms for which victim complaints are made should be 'easily accessible' and allow for 'immediate protection to the victim and ensure access to support services.' Victims are merely told in writing that 'forms are available' from the Dept. of Human & Social Service and Attorney General's office to obtain protection orders.

Determination of the crime and subsequent reporting by police may be biased by the 'aiga relationship between officer and victim, or victim's family, or the perpetrator. There are no laws to 'police the police.' This issue has been documented in field research with local Samoan victims/survivors<sup>16</sup>.

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<sup>16</sup> Alliance Against Domestic Violence and Sexual Assault (2018). 'Defining an Effective Response to DVSA in American Samoa: A Gap Analysis.

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*‘Even in states with a victims’ rights constitutional amendment, the overall protection of victims is varied and uneven. Without federal constitutional protection, victims’ rights are always subject to being automatically trumped by defendants’ rights.*

*R. E. Preston, Co-chair, Natl. Victims’ Constitutional Amendment Network*

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The right to be present ensures the opportunity to participate – a criminal proceeding is not happening to the victim; it is happening on the victim’s behalf. The victims’ right to participate in court proceedings are not described in the statute and there are no remedies to include victims.

The **Office for Victims of Crime** provides seven criteria for analyzing the enforceability of victims’ rights statutes. These criteria are applied to American Samoa’s Title 46 and Title 47 in Table 3 below:

**Table 3**

Criteria for Analyzing Enforceability of Victim Rights <sup>17</sup>	American Samoa’s Titles 46 and 47
Are victim rights located in the constitution, a statute, a rule, or policy?	Victims’ Rights are only outlined in Title 47 Chapter 6 under ‘Duties & Responsibilities of Law Enforcement’
Are mandatory or permissive language used, i.e., may or shall, and versus or?	Title 47 Chapter 6 states that the police officer <b>‘shall use’</b> all reasonable means to protect the victim, and <b>‘shall give</b> written notice’ to the adult victim. The notice states victims <b>‘have</b> the right’
Types of crimes attached to victims’ rights?	12 crimes ranging from Class A felony to Class D misdemeanor
Scope of the definition of ‘victim’?	A family or household member without regard to whether the persons involved are or were married, cohabitating, or involved in a relationship. Adults and minors included, by blood, adoption or formerly by marriage.
Explicit or implicit constraints on the timing of when the rights attach and how long they extend?	No.
Explicit provision for or limitation on remedies?	The statute of limitations ranges from 6 months to 3 years for anything less than a Class A felony, which has not time limit. Emergency protective orders last for 72 hours; the initial court hearing must commence within 30 days of charge.
Prerequisites for the victim to qualify for the rights?	None other than that responding law enforcement officer’s determination that a crime involving domestic and/or family violence has occurred.

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<sup>17</sup> [www.ovcttac.gov/Enforcing\\_Victims\\_Rights/Analyzing\\_an\\_Individual\\_Jurisdictions\\_Laws\\_Checklist\\_508c.pdf](http://www.ovcttac.gov/Enforcing_Victims_Rights/Analyzing_an_Individual_Jurisdictions_Laws_Checklist_508c.pdf)

## Recommendations

To further the goals of victim safety and perpetrator accountability the following recommendations are provided.

1. First, **amend the territorial constitution to include a Victims' Bill of Rights** that complies with the U.S. Justice for All Act of 2004 to clearly denote domestic violence as a crime in itself, not merely the context in which a crime is committed.
2. The Bill will **prioritize safety, justice, and reparation for the victim throughout the continuum of the domestic violence experience**, as opposed to temporary (72 hour) protection from, and prosecution of the offender, which is as it stands today.
3. A **system of checks and balances** should be implemented to protect victims from bias, discrimination, victim-blaming during the reporting of a crime, and protect victim privacy and safety.
4. Title 47 should be modified to **include remedies for non-performance of duties** by law enforcement.
5. Title 47 should be modified to **include the collection and reporting of data** specific to domestic and family violence crimes i.e., delineated in population data as domestic violence.
6. Establish the Advisory Council, including equal representation of women, to monitor implementation and enforcement of the law.

**Reform at the infrastructural level is required to support the law, and promote a victim-focused and trauma-informed advocacy for victims of domestic violence.**

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