

# Full Country Report on Dispute-Resolution Practices in American Samoa

## 1.0 Introduction

American Samoa, a United States territory in Oceania, operates under a unique dual system where modern American legal frameworks coexist with *Fa'aSamoa*, the traditional Samoan way of life. This intricate dynamic, deeply embedded in the territory's social and political fabric, shapes how conflicts are understood, addressed, and resolved. For legal and mediation practitioners accustomed to Western models, a nuanced understanding of this interplay is not merely an academic exercise; it is a critical prerequisite for effective, respectful, and culturally competent engagement. This report provides a comprehensive analysis of this dual system, navigating the cultural foundations and contemporary realities that define justice and reconciliation in the Samoan context.

Politically, American Samoa is an unorganized and unincorporated territory of the United States, located within the broader Samoa Archipelago. Culturally, it is governed by *Fa'aSamoa*, an all-encompassing cultural code that structures social relations, identity, and governance. This way of life is centered on the *aiga*, the extended family, which serves as the fundamental unit of society and the primary locus of an individual's identity and responsibilities. Authority within this system is vested in the *matai* (chiefs), who lead their respective *aiga* and govern village affairs.

The purpose of this report is to furnish a comprehensive analysis of both the customary and formal dispute-resolution systems in American Samoa. It examines the cultural and historical foundations of traditional practices, details the contemporary legal framework derived from the U.S., and explores the symbiotic and often contentious relationship between the two. By contrasting the core philosophies and processes of Samoan resolution with Western mediation models, this analysis aims to illuminate key differences that have profound practical implications.

For legal professionals, government liaisons, and mediators operating in Western contexts, a deep appreciation of these practices is essential. It provides the necessary insight to avoid imposing culturally incongruent models of justice and to engage effectively with the Samoan community, whether in the territory or in diaspora communities abroad. A failure to grasp these foundational differences risks not only ineffectiveness but also cultural disrespect. Understanding this legal duality requires first examining the cultural bedrock of *Fa'aSamoa*, from which all traditional notions of justice and harmony arise.

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## 2.0 Cultural and Historical Foundations of Conflict Resolution

In American Samoa, traditional conflict resolution is not simply a set of procedures but a profound embodiment of core cultural values designed to maintain social harmony and

reinforce the societal structure. These mechanisms are deeply integrated into *Fa'aSamoa* and cannot be understood apart from the social and governance systems that give them meaning. It is through dedicated service (*tautua*) that a person demonstrates the wisdom to earn a *matai* title and the authority (*pule*) that comes with it. This earned authority, in turn, legitimizes the *matai's* role within the village council (*fono*) to adjudicate disputes and impose sanctions (*sala*) aimed at repairing the sacred relational space (*va*) between families. This section deconstructs these dynamically interrelated elements.

## 2.1 Central Pillars of the Traditional Social Structure

The traditional social and governance structure is built upon two interconnected pillars: the extended family and the chiefly system.

- **The *Aiga* (Extended Family):** The *aiga* is the fundamental unit of Samoan society. It is a large, corporate kin group of people related by blood, marriage, or adoption. Individual identity, responsibility, and social standing are primarily understood in relation to this collective group. The well-being and honor of the *aiga* are paramount, often taking precedence over individual desires.
- **The *Matai* System:** The *matai* (chiefly) system is the cornerstone of governance, providing leadership for the *aiga* and the village. Each *aiga* is led by one or more *matai*, who are selected for their wisdom, leadership skills, and history of service. There are two primary types of *matai* titles:
  - ***Ali'i*:** The high chief, who holds a sacred and high-ranking title often linked to the historical lineage of Samoan gods.
  - ***Tulafale*:** The talking chief or orator, who serves as the spokesperson for the *ali'i* and acts as a custodian of oral history, genealogies, and ceremonial protocols.

## 2.2 Primary Traditional Mechanisms for Resolving Conflict

Rooted in the social structure, a number of formal and informal mechanisms exist for adjudicating disputes and restoring social order.

- **The Village Council (*Fono*):** The *Fono Alii ma Faipule* (Council of Chiefs and Orators) is the primary deliberative and judicial body within a village. Composed of the *matai* from the village's constituent families, the *fono* is responsible for making and enforcing local rules, adjudicating disputes between villagers, and protecting the collective welfare and honor of the community.
- **Reconciliation Ceremonies (The *Ifoga*):** The *ifoga* is a highly ritualized and profound public ceremony of atonement reserved for grave offenses such as bloodshed. The ceremony's most powerful symbolic act involves the offender's family, led by their chief, kneeling on the ground before the victim's family, covered by a treasured fine mat (*ietoga*). This act of deep humility and submission is a plea for forgiveness, aimed at preventing retaliation and restoring peace between the families.
- **Restitution and Sanctions:** For violations of village rules, the *fono* imposes punishments known as *sala*. These sanctions are designed to be restorative and reaffirm community norms. Examples include:
  - Fines (often of pigs, taro, or money)
  - Requiring the offender to feed the entire village
  - In the most severe cases, banishment from the village

- The enforcement of these rules is the responsibility of the *aumaga*, the group of untitled men of the village, who act under the authority of the *matai* council.
- **Mediation Roles:** Traditionally, *tama'ita'i* (daughters of high chiefs) hold a respected status as peacemakers and may serve as mediators in disputes, leveraging their unique position within the social hierarchy to foster reconciliation.

## 2.3 Core Principles of Customary Practices

These mechanisms are guided by a distinct set of cultural principles that differ significantly from Western legal concepts.

- **The Concept of *Va*:** The term *va* refers to the sacred "relational space" that exists between individuals and groups. It is the invisible web of connections, roles, and responsibilities that binds Samoan society together. Conflict is understood as a violation or breach of this space, an act known as **toia le va**.
- **Restoration of Harmony:** The ultimate goal of conflict resolution in *Fa'aSamoa* is not to determine a winner and a loser or to assign blame in an individualistic sense. Rather, the primary objective is to repair the damaged *va*, restore harmony, and reaffirm community bonds and hierarchies. The process is inherently collective and restorative.
- **The Path of Service (*Tautua*):** The proverb "*O le ala 'i le pule 'o le tautua*" translates to "The path to authority is through service." This core value shapes the entirety of Samoan social life, dictating that leadership and status (*pule*) are earned through a lifetime of dedicated service (*tautua*) to one's *aiga* and village. This principle underpins the social obligations and hierarchical relationships that are central to maintaining order.

These deeply rooted traditions form the cultural bedrock upon which a modern, American-style legal system was later superimposed, creating the unique hybrid system that exists today.

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## 3.0 Contemporary Legal Framework and Formal Dispute-Resolution Systems

The formal legal system in American Samoa is a framework largely derived from the United States but has been deliberately adapted to accommodate and, in some cases, protect the territory's unique cultural landscape. This system operates in parallel with and often intersects the customary practices of *Fa'aSamoa*. This section maps the key institutions, statutes, and formal processes that constitute the modern legal and dispute-resolution apparatus of the territory.

### 3.1 Constitutional and Governmental Structure

American Samoa is classified as an unorganized and unincorporated territory of the United States. Its governance is structured as follows:

- **Local Government:** The territory is governed by a locally elected Governor and a bicameral legislature, known as the *Fono*. The Constitution of American Samoa establishes this framework of self-government.
- **U.S. Oversight:** The U.S. Secretary of the Interior retains significant oversight authority. This includes the power to appoint the Chief Justice of the High Court, although this authority has been exercised with a policy of fostering greater self-government.

### 3.2 Formal Court System

The judiciary is structured to handle both standard legal matters and issues unique to Samoan custom.

- **High Court:** This is the highest court in the territory and comprises three divisions:
  - The Trial Division
  - The Appellate Division
  - The Land and Titles Division
- **Land and Titles Division:** This specialized division holds a unique and critical mandate. It has exclusive jurisdiction over all disputes concerning customary land ownership and the succession of *matai* titles. In its adjudications, the court is legally bound to apply "Samoan custom and usage," making it a primary institutional bridge between the formal legal system and *Fa'aSamoa*.
- **District Court:** The District Court has jurisdiction over misdemeanors and civil cases where the claims are under \$15,000.
- **Village Courts:** Established by the *Fono*, these courts are designed to handle local matters. Notably, their judicial composition includes a village *matai* as one of the judges, further integrating traditional authority into the state-sanctioned legal process.

### 3.3 Statutory Law

The American Samoa Code Annotated (ASCA) contains the territory's codified laws. While based on U.S. legal principles, certain statutes reflect a clear intent to protect Samoan traditions.

- **Family Law:** The ASCA specifies the grounds for divorce, which include adultery, habitual cruelty, desertion, and "irreconcilable differences," mirroring standards common in the U.S.
- **Property Rights:** A key provision (ASCA § 43.1528) protects Samoan customary land by stipulating that the real property of a Samoan generally cannot be sold to satisfy a court judgment. This law is specifically designed to prevent the alienation of Samoan land from Samoan hands.

### 3.4 State-Sanctioned Alternative Dispute Resolution (ADR)

As a U.S. territory, formal Alternative Dispute Resolution (ADR) practices endorsed by the U.S. government, such as mediation, facilitation, and arbitration, are available in American Samoa. These Western-style processes offer alternatives to litigation and exist alongside, but are structurally distinct from, the indigenous reconciliation practices of *Fa'aSamoa*. They represent a formal, state-sanctioned layer of conflict management that reflects the territory's connection to the U.S. legal system.

This formal legal apparatus does not operate in isolation but is in constant dialogue with the customary practices that have governed the islands for centuries, creating a complex and dynamic legal environment.

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## 4.0 The Symbiotic Relationship Between Customary Practices and the Modern Legal System

In American Samoa, the customary and formal legal systems are not siloed; they are deeply intertwined in a dynamic, symbiotic, and at times contentious relationship. The modern state has formally recognized and integrated key aspects of *Fa'aSamoa* into its own structure, while traditional institutions continue to operate in parallel, creating hybrid forms of justice. This section explores the points of formal recognition, parallel operation, and friction between these two powerful systems of social ordering.

### 4.1 Formal Recognition of Customary Law

The government of American Samoa has institutionalized aspects of customary law and traditional authority directly into the state apparatus.

- **In the Legislature:** The upper house of the bicameral *Fono* is composed exclusively of *matai* who are selected according to Samoan custom in their respective villages. This ensures that traditional leadership has a direct and powerful voice in the legislative process.
- **In the Judiciary:** The most significant judicial recognition of custom is the mandate of the **Land and Titles Division** of the High Court to adjudicate disputes based on "Samoan custom and usage." Furthermore, the inclusion of *matai* as judges in the territory's **Village Courts** integrates traditional authority directly into the state's judicial framework.
- **In the Executive:** The government includes an **Office of Samoan Affairs**, a specific agency designed to serve as a liaison between the executive branch and the traditional leadership structures of the villages.

### 4.2 Parallel and Hybrid Operations

The two systems often address conflicts simultaneously, leading to outcomes that blend customary and formal justice. The nature of these interactions reveals a complex power dynamic. In some instances, the formal legal system defers to the cultural system's perceived legitimacy in restoring social harmony. In others, it asserts its supremacy based on a conflicting philosophy of individual rights. The following table illustrates these interactions:

Customary Mechanism	Interaction with the Formal Legal System
The Village <i>Fono</i> imposes a customary punishment ( <i>sala</i> ), such as a fine of pigs, for a local offense.	This process operates in parallel to the state police and courts. The state may or may not become involved, depending on the severity of the offense and whether it is formally reported.

A family performs the <i>ifoga</i> ritual to atone for a serious crime (e.g., assault) committed by one of its members.	The formal High Court may explicitly recognize the performance of an <i>ifoga</i> as a mitigating factor during sentencing, potentially leading to a reduced legal penalty for the offender.
A village <i>Sa</i> (curfew) is enforced by the <i>aumaga</i> (untitled men) under the authority of the village <i>matai</i> council.	A constitutional challenge could be brought in the High Court, arguing that the village-enforced curfew infringes on an individual's fundamental right to freedom of movement under the U.S. Constitution.

### 4.3 Primary Sources of Friction and Limitation

Despite their integration, the two systems are founded on competing principles, leading to significant legal and social tension.

- **Collective vs. Individual Rights:** The most fundamental conflict arises between the collective interests enforced by the village *fono* and the individual rights guaranteed by the U.S. Constitution. For example, the customary power of a *fono* to banish an individual from the village directly clashes with the constitutional right to freedom of movement and due process.
- **Human Rights Standards:** Certain customary practices conflict with international human rights standards. The *ifoga* ritual, while a powerful tool for community reconciliation, is a process between families where the victim's individual voice may not be directly heard. This collectivist approach can be seen as running counter to modern principles that prioritize the agency and testimony of the individual victim.
- **Constitutional Application:** The courts in American Samoa have struggled with determining which parts of the U.S. Constitution should apply in the territory. They use a legal standard known as the "**impractical and anomalous**" test to decide whether applying a specific U.S. constitutional right is appropriate within the unique cultural and social context of *Fa'a Samoa*. This creates legal uncertainty and an ongoing negotiation between two distinct legal philosophies.

This complex interplay requires a careful balancing act, and its tensions are most clearly revealed when comparing the core values and methods of Samoan and Western approaches to dispute resolution.

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## 5.0 Comparative Analysis: Customary/Local Practices vs. Western Mediation

Contrasting the core philosophies, processes, and goals of Samoan customary resolution with the standard Western mediation model reveals fundamental differences in worldviews. This comparison makes it clear why a "one-size-fits-all" approach to dispute resolution is inherently flawed and culturally incongruent in the Samoan context. While both systems aim to manage conflict, their underlying assumptions about society, the individual, and justice are profoundly different.

The following table systematically compares the two models based on key features of the dispute resolution process.

Feature	Samoan Customary Resolution	Western/U.S. Mediation Model
<b>Core Values</b>	Collective harmony; Restoration of the <i>va</i> (sacred social space); Upholding the honor of the <i>aiga</i> (family); Respect for hierarchy and tradition.	Individual autonomy; Self-determination; Reaching a voluntary, mutually beneficial, and legally enforceable agreement.
<b>Role of Third Parties</b>	Authoritative, directive, and high-status figures ( <i>matai</i> , village <i>fono</i> ) who embody tradition, represent the community's interest, and have the power to impose solutions or sanctions.	An impartial and neutral facilitator who has no authority to impose a decision. The mediator's role is limited to managing the process and facilitating communication, not dictating the outcome.
<b>Formality &amp; Process</b>	Highly structured, often public, and ritualistic processes rooted in tradition. Examples include formal <i>fono</i> deliberations and the profound ceremonial acts of the <i>ifoga</i> .	A confidential, voluntary, and less formal process with structured stages (e.g., opening statements, joint sessions, private caucusing, and agreement drafting).
<b>Key Principles</b>	Focus on public apology, communal reconciliation, restoration of honor, and adherence to social hierarchy. The process is centered on the collective, with the family as the primary unit.	Focus on strict confidentiality, mediator neutrality, voluntariness of participation, and procedural fairness for the individual parties involved.
<b>Communication Styles</b>	Often indirect, hierarchical, and ceremonial. Orators ( <i>tulafale</i> ) frequently speak on behalf of principals ( <i>ali'i</i> ), and direct confrontation is culturally discouraged to avoid loss of face.	Encourages direct, face-to-face communication between the disputing parties. The mediator's role is to ensure this dialogue is productive and respectful.
<b>Outcome Formation</b>	Authority-based decisions from the <i>fono</i> , restorative acts like the performance of <i>ifoga</i> , and community-driven solutions that reaffirm the existing social order and repair relational breaches.	A privately negotiated, written, and mutually acceptable settlement agreement. The outcome is determined solely by the individual parties and is typically legally binding.

## Fundamental Alignment and Divergence

Ultimately, while both systems seek to resolve conflict, their fundamental purposes diverge. Western mediation, as outlined in U.S. government handbooks, is primarily a **problem-solving process** focused on the interests and self-determination of the individual parties. It is a tool for reaching a private settlement.

In stark contrast, Samoan customary practices represent a **social-ordering process**. Their primary focus is on healing relational ruptures, reaffirming community values, and restoring harmony within a collectivist and hierarchical society. The individual is understood as part of

a larger whole, and justice is measured by the successful repair of the social fabric. These foundational differences carry direct and significant implications for any external mediator seeking to work effectively in the Samoan context.

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## 6.0 Implications for Mediators Working with People from American Samoa

The profound philosophical and procedural differences between Western mediation and *Fa'aSamoa* have direct, practical implications for mediators from outside the culture. Effectiveness in this context depends less on rigid adherence to a standard model and more on cultural humility, situational awareness, and a willingness to adapt. Attempting to impose a strictly individualistic, confidential, and neutral process may not only fail but may also be perceived as disrespectful. This section distills key sensitivities and recommends specific strategies for adapting mediation practice.

### 6.1 Critical Cultural Sensitivities and Risk Factors

Mediators must be acutely aware of the following cultural dynamics to avoid causing offense and undermining the resolution process.

1. **Respecting Hierarchy:** The Western mediation principle of treating all participants as equals can be culturally inappropriate and viewed as disrespectful. Mediators must recognize and acknowledge the status of *matai* and elders. Their input carries significant weight, and they should be addressed with the appropriate deference and titles. A failure to do so can derail the entire process.
2. **Navigating Collectivism:** An individual at the mediation table is almost always representing their entire *aiga* (extended family). The "client" is not just the individual but the family collective. Any proposed resolution must be acceptable to the *aiga*, not just the person physically present. Decisions are often made collectively after consultation with family elders and the *matai*.
3. **Understanding 'Face' and Indirect Communication:** Direct confrontation and a blunt focus on facts can cause a loss of face (*maasiasi*), which can lead to shame and withdrawal from the process. This is because such directness is a public and aggressive breach of the *va*—the sacred relational space that is valued above direct factual clarification. Mediators must be highly attuned to non-verbal cues, metaphor, and the use of a family spokesperson to convey sensitive information.

### 6.2 Recommended Strategies for Adapting the Mediation Process

To maintain procedural fairness while respecting cultural norms, mediators should consider the following adaptations:

- **Conduct Pre-Mediation Consultations:** Before convening a formal mediation, consider holding a pre-mediation consultation with elders or *matai* from the relevant families. This gesture shows respect, allows the mediator to seek guidance on an appropriate process, and helps build trust with key decision-makers.



- **Allow for Collective Participation:** Be flexible with who attends the mediation. Allow for the presence of non-speaking family members who are there for support and to bear witness. This acknowledges the collective nature of the dispute and its resolution.
- **Incorporate Narrative and Storytelling:** Rather than enforcing a rigid, linear agenda focused on "positions" and "interests," allow space for narrative and storytelling. This enables parties to share their perspectives and the history of the conflict in a culturally familiar and comfortable manner.
- **Be Open to Culturally Relevant Outcomes:** The goal may not be a comprehensive written agreement. Be open to outcomes that align with *Fa'aSamoa*, such as a formal apology or a gesture of restitution. Such outcomes are often more meaningful than a written contract because the goal is not a transactional settlement but the visible repair of the social fabric.

### 6.3 Final Recommendations

The most effective approach is a co-constructive one. This involves the mediator working *with* the participants to design a process that is fit for purpose. Such a process might blend the useful elements of Western mediation, such as the provision of a structured and safe space for dialogue, with the essential values of *Fa'aSamoa*, such as respect for hierarchy, collective decision-making, and the ultimate goal of restoring the *va*. Success requires the mediator to act as a culturally sensitive facilitator, not a purveyor of a fixed, external model. This collaborative spirit is the key to bridging cultural divides and achieving meaningful resolution.

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## 7.0 Conclusion

This report has detailed a system of dispute resolution in American Samoa that is a complex tapestry, woven from the threads of ancient custom and modern American law. To engage with justice in this context is to engage with the very essence of *Fa'aSamoa*—a worldview where relationships, hierarchy, and communal harmony are paramount. The coexistence of this customary system with a formal, U.S.-derived legal framework creates a unique jurisprudence that is both symbiotic and fraught with tension.

### 7.1 Summary of Key Insights

The analysis has yielded several critical insights for practitioners seeking to understand and operate within this environment:

- **The Enduring Centrality of Custom:** *Fa'aSamoa*, with its emphasis on the *aiga* (extended family) and the leadership of the *matai* (chiefs), remains the primary and most powerful framework for social order and dispute resolution, governing daily life and shaping community expectations of justice.
- **A Unique Hybrid Jurisprudence:** The formal integration of customary law and traditional authorities into American Samoa's modern legal system—through the legislature, the specialized Land and Titles court, and village courts—has created a

truly hybrid system where the two paradigms formally interact and influence one another.

- **A Fundamental Philosophical Divide:** The core philosophy of Samoan justice, which is restorative, community-focused, and aimed at repairing the sacred relational space (*va*), stands in stark contrast to the principles of Western mediation, which prioritize individual autonomy, self-determination, and the negotiation of private settlements.

## 7.2 Emerging Issues and Future Trends

This unique system faces ongoing challenges. The legal and social tension of balancing collective tradition with individual rights guaranteed under the U.S. Constitution remains a central point of friction, particularly in cases involving village council authority (e.g., banishment) and fundamental freedoms. Furthermore, the increasing influence of the cash economy and globalization presents new pressures on sacred rituals like the *ifoga*, creating a dynamic where traditional values are constantly being negotiated in a modern context.

## 7.3 Overarching Importance

For legal and mediation practitioners, the American Samoan context serves as a powerful and essential case study. It demonstrates with clarity the necessity of moving beyond the simple exportation of Western models and toward a more nuanced, culturally grounded, and collaborative approach to international dispute resolution. Effective engagement requires not expertise in a single process, but cultural humility, a deep respect for local epistemology, and the flexibility to co-create solutions that are not only effective but also meaningful to the communities they are intended to serve.

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