

**PRESIDENT LOLO M. MOLIGA'S**  
WRITTEN STATEMENT BEFORE THE  
HOUSE SUBCOMMITTEE ON INSULAR AFFAIRS

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I extend to you Honorable Madame Chairperson Donna Christensen and distinguished members of the Sub-Committee on Insular Affairs warm greetings from the Senators and the people of American Samoa. When American Samoa was graced by your presence earlier this year, we felt a great sense of honor and contentment, for your attendance was perceived as an expression of genuine interest by the Congress of the United States in what we have to say on issues affecting our survival as a people, who are forever grateful for the benevolence of the United States, and in a small measure precipitated reciprocation by our unquestionable and unwavering commitment to the defense of democratic ideals which has made the United States of America the envy of the world. The invitation extended to the leaders of the Territory to offer testimony on the issue of establishing a Federal Court System in American Samoa is very much appreciated. We would have been more gratified, had this hearing

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been venued in American Samoa to offer all our people the opportunity to participate in the process, which will affect their dreams and aspirations for themselves and for their children.

In preparing this written statement, the wisdom of each of the sitting Senators was solicited and sought after because the issue under consideration demanded the collective thinking of all the leaders of American Samoa. As a result, the content of this written statement reflects the amalgamation of the Senate's unified thinking. Being privy to the opinions of the Senators and the combined advocated stance of the Senate gave me great confidence that the disclosures herein contained are representative of their views and desires. Moreover, the individual opinions of the Senators on the issue have not changed since the public hearing orchestrated by the Legislature of American Samoa in 2006.

The Senators expressed deep appreciation to the

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Congress of the United States for maintaining the pledge issued and memorialized in the 1900 Treaty of Cession of Tutuila and Aunu'u which states "The Government of the United States of America shall respect and protect the individual rights of all people dwelling in Tutuila to their lands and other property in said District; but if the said Government shall require any land or any other thing for Government uses, the Government may take the same upon payment of a fair consideration for the land, or other thing, to those who may be deprived of their property on account of the desire of the Government." The same commitment was again proclaimed in the 1904 Treat of Cession for the Manu'a group wherein states "It is intended and claimed by these Presents that there shall be no discrimination in the suffrages and political privileges between the present residents of said Islands and citizens of the United States dwelling therein, and also that the rights of the Chiefs in each village and of all people concerning their property according to their customs shall be

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recognized.” The two Treaties of Cessions clearly asserted that the system of land ownership existing in the islands according to their culture and traditions will prevail. On February 20, 1929 the Congress of the United States accepted and ratified the 1900 Treaty of Cession for Tutuila and Aunu’u, and the 1904 Treaty of Cession for the Manu’a island group with language negating the application of existing United States laws on public lands to such lands in the islands of Tutuila, Aunu’u, and Manu’a referred to as eastern Samoa in Title 48 Sections 1661 and 1662 of the United States Code. For 108 and 104 years respectively since the two treaties of cessions were executed, the declared respect for the rights of the indigenous population to their lands and customs has been preserved and honored by the United States. We are grateful that the United States has remained steadfast to honoring the wishes and desires of our forefathers whose great wisdom fashioned a relationship which recognizes the protection of our lands and traditions.

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Since the ratification of the Treaties of Cessions the inhabitants of the islands of Tutuila, Aunu'u, and Manu'a have periodically convened political commissions to assess the adequacy of its political relationship with the United States. The most recent is the 2006 American Samoa Political Status Study Commission. Its primary recommendation mirrors the declarations of the previous political study commissions calling for the retention of the current relationship with the United States. The slight difference is the Commission's urging to continue the dialogue with the United States hoping to establish a permanent political relationship which affirms the protection of our land tenure system while eliminating jurisdictional impediments retarding our ability to become self reliant and self-sufficient. The Commission's report, which presents its findings and recommendations, is published and distributed to government leaders. The Governor is calling a Political Convention for November of this year to

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review, discuss, and issue recommendations of issues to be presented to the people of American Samoa for a decision in a referendum.

Before articulating the position of the Senate regarding the issue under consideration, allow me at this time to commend the recent report GAO-08-655 prepared and issued by the Congressional GAO Office on “Issues Associated with Potential Changes to the Current System for Adjudicating Matters of Federal Law”. This document did an excellent job highlighting significant issues connected with each documented possible presence scenario for the Federal Court System in American Samoa. The report also acknowledged receipt and review of the content of the Public Hearing Report conducted on the subject. The overwhelming consensus of those present at the public hearing, organized by the Legislature of American Samoa, was to maintain the current status of our present Judiciary System. This same spirit is again expressed and echoed by the

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Senators and the Senate of American Samoa during recent deliberations attempting to determine the appropriate course of action regarding the matter under consideration.

The GAO Report laid out three principal scenarios for change, if a change to the current system were made: (1) establishing a district court in American Samoa pursuant to Article IV of the U.S. Constitution, (2) establishing a district court in American Samoa that would be a division of the District of Hawaii, or (3) expanding the federal jurisdiction of the High Court of American Samoa. The Senate concurs with some of the documented reasons which compelled the current assessment of the sufficiency of our present judiciary system regarding adjudication of matters of federal law. Despite this acknowledgement, the Senate is of the opinion that the problem is not systemic but more administrative in nature, thus the recommended solution involving federal court presence in

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American Samoa might be excessive given huge financial demands and other considerations. Similarly, the question of sufficiency of workload to warrant the fulltime presence of the federal court system, along with the annual financial demands to maintain the operation requires meticulous review. The GAO Report acknowledges substantial financial demands connected with the implementation of each of the three scenarios.

The Senate holds the view that that there are insufficient significant reasons why the establishment of a Federal Court presence in the Territory of American Samoa is merited. Nevertheless, the Senate is not opposed to the necessity to realistically assess whether our people have open and seamless access to justice on issues under federal jurisdiction. The Senate is also of the opinion that the majority of disconcerting legal issues are being adequately addressed by our existing judiciary system except for a few matters arising out of misappropriation of



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federal grants and human trafficking. It is unfortunate that the GAO Report did not prepare a fiscal comparison between the current costs connected with the present adjudication of matters of federal law and the cost of establishing a permanent federal presence in American Samoa. In the long run, it would be cheaper to maintain the current approach to adjudicating matters of federal law with minor modifications. This prognosis is predicated on our conviction that the number of violations of federal law will be reduced substantially. The painful lessons and our peoples' actual exposure to the workings of the Federal Bureau of Investigations supply sufficient deterrent precluding replication of such practices. We hold the belief that those who perpetrate violations against federal laws deserve the treatment they may receive or encounter. The issue of human trafficking emerged more from our inexperience to deal with such issues than deliberately attempting to perpetrate such gruesome acts.

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We are not unmindful of the fact that the presence of the Federal Court System in the Territory will contribute positively to the Territory's economic attraction, as the perception for enhanced security of investment is raised. Moreover, the speed at which the adjudication of issues of federal law will be much faster. Nevertheless, the fear embedded in the loss of our lands eclipses the associate economic benefits inherent in the establishment of a Federal Court system in American Samoa. This fear might be baseless, but we have experienced painful consequences of foreign policy decisions. We understand fully the current realities especially when we weigh the interest of 67,000 inhabitants of American Samoa against the needs of approximately 284 million residents of the United States; obviously the interests of the majority will prevail. It is this reality which continues to fuel our fixation and obsession to do everything necessary to appeal for special consideration for the preservation of the indigenous elements of our culture and traditions that

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give credence and legitimacy to our ethnicity, identity, and way of life. Our land is the basic foundation of our cultural traditions.

We hold the firm belief that the current deliberations on the advisability, feasibility, and necessity for a federal court presence in American Samoa are premature. We noted earlier that the Territory of American Samoa has activated the process dedicated to assessing the sufficiency of its current political status relationship with the United States. The first phase of the process is completed culminating with the issuance and distribution of the 2006 American Samoa Political Status Study Commission Report. The Governor has invoked the execution of the second phase with the call to convene a political convention facilitating the review of the findings and recommendations of the Commission. The expected outcome of the political convention is the identification and approval of issues to be presented to the people of American Samoa for a decision. The

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expressed wishes and desires of the people reflected in the voting outcome will officially be presented to the Department of the Interior and the Congress of the United States. We deem the above described process to constitute the logical progression of events to get us to the point at which issues such as the federal court presence can be accommodated within the established framework similar to the Organic Acts of Guam and USVI, or the Covenant for CNMI. It is important to recognize that the Federal Court presence in Guam, CNMI, and USVI are clearly defined in formalized documents of political association or relationships such as an organic act or a covenant. This opportunity should be afforded to the Territory of American Samoa. The process is in motion to answer the question of political relationship sufficiency to accommodate modern day challenges while safeguarding national assets such as land and cultural traditions. This attempt aims to better define our formal relationship with the United States mirroring the contents of the formal political

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structures defined in an Organic Act or Covenant establishing parameters within which interfacing with the United States will be regulated. It does not appear prudent for American Samoa to piecemeal changes which might retard our future ability to fashion a political union with the United States that is reflective of our aspirations.

Our first plea for consideration by the Subcommittee, Honorable Chairperson Christensen, is to grant us the chance to complete our political status review process which is in motion; the results of which will accurately express our people's wishes and desires. The 2006 American Samoa Political Status Study Commission issued as its primary recommendation to maintain our status quo but then extended the proposal calling for continuing to explore and negotiate with the United States Congress a permanent political status. It is obvious and plainly transparent that the accepted wisdom behind this recommendation is to forge a relationship with the

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United States which will guarantee the perpetuation of our land tenure system and the latitude to ascertain direct financial and incentive commitments to bolster the expansion of our economic development capacity. We earnestly implore the Honorable Subcommittee to please let us canvass the will of our people particular to the type of political framework they deem beneficial to address issues affecting their quality of life. We envision the preparation of formalized documents similar to an organic act or covenant clearly articulating the political union with the United States representative of the wishes of our people.

In excess of 100 years, American Samoa's political status has been defined as "an unorganized and an unincorporated" territory of the United States. It is unorganized because American Samoa does not have an organic act or a covenant approved and ratified by the Congress of the United States defining parameters regulating internal and external interfacing with the

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federal government and foreign countries. It is unincorporated because not all federal laws are automatically enforceable in American Samoa. This political status relationship has served us well and continues to receive overwhelming support for its continuation. This sentiment is inscribed in the 2006 American Samoa Political Status Study Commission's primary recommendation. Since 1950, the Department of the Interior has maintained absolute power over the administration of American Samoa. Political changes experienced by American Samoa were orchestrated by the Department of the Interior. The agency has direct influence over American Samoa's judicial system, not only through its appointive powers for the High Court justices, but also serving as one of the integral stages of the appeal process. To address the noted concerns of the Department of Justice relative to aggressive prosecution of federal law violations, the Senate recommends that the Department of the Interior be compelled to place a federal prosecutor in American

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Samoa to immediately address the Department of Justice's concerns and expand the authority of the High Court to adjudicate matters of federal law. The High Court of American Samoa is already authorized to handle cases involving the violation of federal laws. This scenario will provide needed time for us to complete our political status review process. The Senate shares the belief that this recommendation is within the purview of the Department of Interior's overall mandate to improve the Territory of American Samoa's capacity for self-reliance and self-sufficiency. This change can easily be implemented without much doing, and it can be simply undone upon completion of the territory's search for a more perfect union with the United States.

In the event the Subcommittee deems the above two recommendations unfeasible, the Senate would endorse the third scenario involving the expansion of the federal jurisdiction of the High Court of American Samoa. This option eases to some degree



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our anxiety over the potential adverse impact of the federal court presence to our land tenure system. Additionally, we would like to include additional safeguards endorsed in the 1996 draft legislation to ensure clear understanding that matters pertaining to land and titles will never be addressed in the Federal Court System. Our preference is to incorporate these prohibitions in a revised constitution of American Samoa along with a lucid description of the preferred status of association and relationship with the United States of America. We would advocate for American Samoa to consider revising its constitution, after the political status review process is completed, incorporating the desired political affiliation with the United States, along with other issues, such as Federal Court presence, deemed necessary to clearly define said association and then have the Congress of the United States consider and ratify it as the official organizing document with the same force as an Organic Act or a Covenant.

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The Congress of the United States has in retrospect made amends recognizing the rights of the American Indians and the sovereignty of the American Indian Nation. As such, ownership of their lands is secured and the utilization of said lands is theirs to do as they please. We are loyal Americans aspiring to obtain the same level of acknowledgment granted to the American Indians and the autonomy of its nation. Our loyalty to the United States of America is exemplified by holding the highest rate of voluntary enrollment per capita in the Armed Forces defending envied democratic values, and the unpleasant distinction of holding the highest per capita casualty and mortality rate.

Thank you very much again for this rare opportunity to offer testimony on legislation which extends Federal Court presence to American Samoa. While the question of the guaranteed perpetuation of our land tenure system is unresolved, the posture of caution will always be adopted when issues which

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potentially affect our lands and our inherent way of  
life are raised.

= THANK YOU VERY MUCH =