



Monitoring Report of the Special Project Facilitator

Project Numbers: 41173-012, 46512-001, and 46436-002

Technical Assistance Numbers: 7387 and 8481

Grant Number: 0392

February 2017

Independent State of Samoa: Promoting Economic Use of Customary Land, Phase II and III and Samoa Agribusiness Support Project

(Complaint Received: 9 September 2014)

This document is being disclosed to the public in accordance with ADB's Public Communications Policy 2011.

Asian Development Bank

A. Background

1. On 9 September 2014, the Office of the Special Project Facilitator (OSPF) received a [complaint](#)¹ from four *matais*² of Samoa regarding ADB's TA for Promoting the Economic Use of Customary Land and the grant for the Agribusiness Support Project.³ The complainants raised concerns about lack of meaningful consultation, individualization, and alienation of customary land that could occur under the projects. Furthermore, they were concerned that the projects are encouraging use of arable land under customary tenure without appropriate mechanisms to ensure that benefits flow to local families and villages.

2. On 29 September 2014, OSPF determined complaint was eligible for problem solving. OSPF conducted a review and assessment from 17 November to 1 December 2014, that revealed the following concerns: (i) The lack of clarity over some aspects of customary land tenure (e.g., inheritance of rights to land, decision-making rights, incompatibility with individual property rights requirements for commercial use); (ii) the need for greater awareness and dialogue on the legal implications to help shape the legislative framework with required safeguards to protect landowners' rights; (iii) the need to put in place a lease framework to ensure that the rights of customary owners are protected whenever their lands are leased.

3. During the review and assessment mission, it was agreed that meaningful consultations with the Samoan public should be organized on reforms required under the project. Furthermore it was agreed that (i) a consultation specialist would be engaged to develop a consultation and communication strategy; (ii) stakeholders would meet to discuss steps forward for engaging the specialist and the design of the strategy; and (iii) a stakeholders meeting would be organized to discuss the strategy for the consultation.

B. Monitoring Activities in 2015/2016

4. Monitoring activities in 2015 and 2016 have consisted of (i) regular communication with the complainants; (ii) project team leader's communication and visits during regular missions to the project; and (iii) one OSPF mission.

5. ADB made resources available in the amount of \$50,000 in July 2015⁴ for the engagement of a consultant to develop the strategy. The terms of reference for the consultation strategy specialist were prepared and commented on by all stakeholders in June 2015. Complainants were involved in the interview process together with government and ADB for the selection of the consultant, which was guided by a selection criteria and process document developed in August 2015 by the project and complainants, with facilitation from OSPF. Interviews with candidates took place in November 2015. Complainants agreed with the selection of the consultant by unanimous decision of the panel in December 2015.

6. OSPF fielded a mission to Samoa from 25 to 28 January 2016 to review steps taken in resolving the complaint. In addition, the mission also provided an update on progress of the project, finalized the scope of the consultations in terms of the issues to be covered and methodology, and a time line for activities of the project. The new project team leader and the

¹ <https://www.adb.org/sites/default/files/page/42458/complaints-sam-matais-sep14.pdf>

² Matais: The Matais are the chiefs of the Samoans. The matais are responsible for maintaining the respect, traditions, and administration of the village. www.pasifeka.com

³ Technical Assistance Project Phases I, II, and III. Project numbers 37234, 41173-01, and 46512.

⁴ Memo requesting increase in technical assistance amount, extend the closing date, change in technical assistance (TA 8481 SAM: Promoting Economic Use of Customary Land) scope and implementation arrangements dated July 2017 and approved in August 2017.

consultation and communications specialist were introduced to the complainants and their terms of references and time line for outputs discussed.

7. In terms of project updates, government, represented by the Ministry of natural Resources and Environment (MNRE), explained that a legal working group was established to work on the legal aspects of leasing land. From 2014-2015, the group prepared a policy document that covers reforms required to enable the use of customary land. In addition, they have also prepared 4 issues papers covering (i) The constitution, (ii) framework, (iii) rights of landowners when customary lands are leased, and such leases are used as securities, and (iv) protecting the interests of the land owners. These documents were shared with the complainants for their comments and input.

8. A stakeholder meeting was organized on 28 February 2016 involving the ADB, government, and the complainants to consider the design of the communications and consultation strategy. At the meeting, stakeholders agreed that the policy document and issues papers prepared by the legal working group would be the basis of the content to be covered. The complainants also shared their views on the methodology for the consultations stressing the need to have wide coverage of the public, follow traditional protocols for consultations and include the Samoan diaspora in Australia, New Zealand and the United States.

9. The role of OSPF was also discussed. With the engagement of the consultation strategy specialist, more consultations with the complainants were expected to include their views and ideas for the strategy. All stakeholders are focused on developing and implementing the consultation strategy. With the stakeholders collaborating to ensure meaningful consultations it was agreed that OSPF would monitor from a distance. With this, it was concluded that the problem-solving process (stage 3 of the OSPF problem solving function) had ended. A problem solving completion report was prepared in April 2016 and a summary of that report posted on the website in May 2016⁵.

10. A draft communication strategy was completed in March 2016, followed by consultations with various stakeholder groups to discuss the draft. The strategy was finalized and approved by government and ADB in August 2016 and by the Cabinet in October 2016. The strategy contains an overarching communications campaign to launch the strategy and the means for communicating and consulting on specific policy and legislative reform proposals. Policy and legislative reform proposals for strengthening arrangements for mortgaging leasehold interest on customary land are based on the four Fundamental Policy Precepts as endorsed by Government namely: (i) Constitutional/legal mandates; (ii) Leasing Arrangements; (iii) Rights of Customary Landowners; (iv) Interests of Lenders. The strategy also defines the stakeholders who will be consulted namely: customary landowners, Samoan families, villages and districts, parties to existing leases of customary land (lessors and lessees), banking and finance institutions, government regulating and implementing ministries, and private sector organizations e.g. Land Surveyors Association, and Civil Society organizations.

11. The strategy was launched in October 2016, involving media coverage through TV and newspapers. The Samoan Prime Minister launched the policy paper on the economic use of customary land in an event attended by government officials and village representatives in October. During the event, the Prime Minister addressed criticism regarding land leasing by confirming that there will be no alienation of customary land. He further explained current legislation, in place since 1965, which allows the leasing of land stressing the point that it requires full prior and informed consent on landowners to such leases. Government's principles

⁵ <https://www.adb.org/sites/default/files/page/42458/sam-completion-report-grant0392.pdf>

guiding further land reform also make clear that customary landowners have the right to approve or disallow the use of leases as a security for loans, and the power to approve or disallow the assignment of any lease, whether as a result of a default by the mortgagor or otherwise.⁶ Wider public consultations are planned in January and February 2017. ADB TA support mentioned in para 5 is being provided to also strengthen oversight systems to ensure the full, prior, and informed consent of customary landowners (rather than individual matai) for leases before they can be used as security, as well as to introduce further legislation to make explicit (rather than just implicit) that customary land owners have the right to approve or disallow the use of leases as security and any reassignment of leases.

C. Current Situation and Next Steps

12. Complainants were invited to comment on the draft strategy and attend the stakeholder consultations held in March 2016. While the complainants commented on the draft strategy, they did not attend the consultations. Consultations were facilitated by the consultant and CLAC as required to avoid bias on the free flow of information and participation from the public. MNRE, ADB and complainants were invited to participate as observers but the complainants declined as they wanted to facilitate the discussions themselves. The complainants expected to play a facilitative role in the consultations. In June 2016, the complainants decided to submit their complaint to the compliance review panel alleging that the communication and consultation consultant was not performing and that OSPF had rigged the consultation process to keep them out.

13. Proposed legal and legislative reforms have been drafted and community and stakeholder consultations are underway based on the government approved consultation strategy. Government has approved Fundamental Policy Precepts (mentioned in para. 10) which has guided work on current legislative reform proposals and significant legal and legislative work has been completed to explore issues, risks, enabling and constraining factors and to draft legislative and regulatory proposals for addressing those.

D. Conclusion

14. Implementation of the agreement went smoothly except for the perception of the complainants that OSPF was not functioning independently but taking the side of the government. To ensure consultations are meaningful, the communication strategy also includes a monitoring and evaluation framework (guided by OSPF as well). The framework includes an evaluation of each consultation through feedback forms. The forms include questions on content delivery (ease of comprehension and understanding), opportunity to participate, and timeliness of materials shared with the public prior to the consultations, etc. Other indicators to measure meaningful participation include: minutes of consultations that describe feedback from the public; website downloads and comments from the public; number of people attending consultations etc. OSPF will assist in the analysis of the data once all consultations are completed.

15. OSPF is expected to close the complaint by end 2017 after all consultations and evaluation conducted.

⁶ http://www.samoobserver.ws/en/06_10_2016/local/12356/Govt-pushes-economic--use-of-customary-land.htm