



Asian Development Bank

SUMMARY
REVIEW AND ASSESSMENT REPORT
OF THE
SPECIAL PROJECT FACILITATOR
ON

TA 7387 (41173-012)-SAM: Promoting Economic Use of Customary Land, Phase II
TA 8481 (46512-001)-SAM: Promoting Economic Use of Customary Land, Phase III
Grant 0392 (46436-002)-SAM: Samoa AgriBusiness Support Project



March 2015

I. Introduction

1. The Independent State of Samoa: Promoting Economic Use of Customary Land, Phase III TA was approved by the President of ADB on 10 October 2013. Phase I of the TA was approved on 5 December 2005 and Phase II on 23 November 2009. The purpose of the successive phases of the TA has been to assist the Government's efforts to encourage growth and jobs in Samoa by supporting greater investment through the use of leased customary land as collateral for financing. The Ministry of Finance is the executing agency, while the implementing agencies are the Ministry of Natural Resources and Environment (MNRE) and the Ministry of Justice and Courts Administration.

2. The objectives of the Samoa Agribusiness Support Project on the other hand are to (i) increase agriculture/agribusiness contributions to the economy; (ii) improve the balance of trade and increase self-employment opportunities in rural areas; and (iii) increase formal employment in agro processing enterprises, mainly in urban Apia. The Project will provide financing and business support services to 10–15 agribusinesses and their employees, suppliers, and contractors. This is expected to generate broader opportunities for a wide range of Samoan farmers to supply inputs for new or expanding agribusinesses. The financing component is intended to overcome constraints faced by small and medium-sized enterprises, including limited collateral and capital. Participating financial institutions will provide sub loans to eligible agribusinesses, with ADB funds providing cash collateral to secure up to 50% of such loans. ADB funding will also provide up to 25% of total subproject costs in repayable supplemental seed capital, provided as “quasi-equity” in a business, and can be used only if the business would then qualify for a loan. Commercial banks will then finance the remaining portion of the project according to their own standards. The financing component will be complemented by business advisory services.

3. The Office of the Special Project Facilitator (OSPF) received a complaint from four *matais* in Samoa (the Complainants) on 9 September 2014 and declared it eligible on 29 September 2014. The complainants raised concerns about lack of meaningful consultation, individualization, and alienation of customary land that could occur under the projects. Furthermore, they are concerned that the projects are encouraging use of arable land under customary tenure without appropriate mechanisms to ensure benefits flow to local families and villages.

4. OSPF did a desk review of the projects and held discussions with the complainants, ADB staff, and consultants on the complaint. The complaint met OSPF's eligibility requirements and was declared eligible on 29 September 2014.

5. A review and assessment mission was held in Samoa from 17 November to 1 December 2014. The objectives of the review and assessment were to explore the history of the complaint, confirm the key stakeholders, identify the main issues of the complaint, explore the stakeholders' readiness for joint problem solving, and recommend a course of action. The review and assessment included (i) documentation review, (ii) one-on-one and group interviews, (iii) workshops, and (iv) a roundtable discussion. The workshops were organized to consult with communities from the villages in both islands of Upolu and Savaii. The roundtable discussion included representatives from the Government, ADB, and the complainants with the purpose of clarifying issues of concern and identifying a way forward to resolve the issues. The mission also met with the Deputy Prime Minister for a debriefing on its activities and results.

II. Project Issues

6. Most stakeholders see the increased economic use of customary lands as important for achieving further economic development, and recognize that appropriate reforms to mobilize and securitize customary land are required. There is uncertainty and lack of clarity, however, 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). While legislative amendments have been made to clarify that only leasehold interest on customary lands can be mortgaged, some stakeholders feel that these provisions have not been discussed transparently, are unconstitutional, and create a difficult legal situation.

7. The deep relationship between land and culture in Samoan society adds an extra dimension. Customary land tenure is foremost a social issue because it involves many different stakeholders with different and sometimes conflicting interests. The reform process should be approached in small, structured steps built on meaningful community consultation and participation. Greater awareness and dialogue on the legal implications will help shape the legislative framework with required safeguards to protect landowners' rights. As the framework develops, it should be field tested with continued consultation and the involvement of communities.

8. To support the mortgaging of customary leasehold, there is a need to put in place a lease framework. All issues relevant to the leasing of customary land should be considered, with problems identified and addressed. The fundamental rights of customary landowners must be addressed to ensure that those rights are protected whenever their lands are leased. These rights should be no less than those enjoyed by any commercial lessor. Some issues to be considered are time frames for the expiry of leases and options for the lessee regarding the takeover of improvements/fixtures after the lease expires.

9. Different lending institutions have different requirements and procedures for loans. The people need to be aware of the legal processes for entering into leases. The project should therefore develop policies to align and strengthen relevant laws for consistency.

10. Similarly, the Agribusiness Support Project is designed to operate under Samoa's land law and framework. It is designed to reduce the amount of collateral required from participating agribusinesses to secure commercial financing. Since loans are difficult to obtain for small to medium-sized enterprises due to insufficient acceptable collateral, and limited ownership capital, the Project will partly secure loans (up to 50%) to address inadequate collateral. Furthermore the Project will also provide supplemental seed capital to enterprises to add to insufficient owner's funds and weak balance sheets in enterprises seeking business expansion.

11. Strict procedures in relation to environmental and social safeguards have been developed by the Project, consistent with ADB's 2009 Safeguards Policy Statement. These procedures are elaborated on in the Project's Environmental and Social Management System (ESMS).¹ The ESMS was established as the criterion for screening and selecting loan applications based on their likely environmental, indigenous peoples, involuntary resettlement, and social impacts. Only businesses that are categorized as category C (projects that are likely to have minimal or no adverse environmental impacts) will be selected.

12. The Project should, however, acknowledge that use of customary land is a potential issue in the development of commercial agriculture due to its link with rural communities that supply raw materials. This could bring about changes in the use of customary land, generally by

¹ <http://adb.org/sites/default/files/46436-002-esmsab.pdf>

converting idle farmlands to productive uses. In the event that a business would need to acquire a lease on customary land, safeguard mechanisms will be required to ensure free and prior consent by customary landowners and documentation of this consent in the lease agreement.

III. Recommendations for the TAs Promoting Economic Use of Customary Land and Agribusiness Support

13. **Meaningful Consultations.** The community and stakeholders need to be engaged in the reform process to ensure that it reflects community needs, views, and aspirations. Acceptance and ownership by landowners and the community of the reforms are essential if the Government is to achieve its goals and objectives of developing customary land as a means of economic progress. The project must therefore allocate sufficient resources to engage an expert to design and implement a consultation/communication strategy. This strategy must be based on the principle that the consultation process is an opportunity to provide information about key issues and their implications to foster better understanding and to allow those affected by the decision to have meaningful and substantive opportunities to influence the final decisions.

14. **Legal Framework.** Currently, the Government is looking at reviewing legislation, policies, and procedures to strengthen the leasing framework (through legal working groups). Discussions and questions raised during the review and assessment mission have helped identify further areas to consider for giving clarity to concerns raised in the complaint. A consultation with the Samoa Law Society for the draft leasing framework should be conducted to receive broader legal community views and suggestions for improving the framework. This will help develop consensus among the legal community and avoid conflicting legal advice.

15. **Community.** MNRE is assisting landowners and investors in the development of customary land, including the drafting of customary land leases. Current practice has the *matais* signing off as trustees or custodians on behalf of the people. To safeguard community interests, MNRE should explore a consultative process to ensure participation of the wider community in the preparation of leases. This should be required before a lease is agreed upon, signed, and recorded. Advertising in the *Savali*², as required by the ACLA, may be further reviewed and strengthened to ensure approval and endorsement by the customary landowners (not only *matais* as trustees). These steps will ensure broader agreement on the details of the lease, and transparency regarding the flow of rents and benefits to the people.

16. **Customary Lands Act Commission (CLAC).** Establishing and financing the CLAC as a secretariat has been delayed, which has jeopardized implementation of its objectives and recommendations related to the economic use of customary land TAs. The Government needs to fulfill its commitment by ensuring funding (staff and budget) for the CLAC. This is urgently needed for preparing the legislative framework. The CLAC should coordinate its consultation plans to ensure that it does not duplicate the broader communications and consultation strategy that will be developed based on this review and assessment report (RAR).

17. **Pilots.** The project should explore the possibility of pilot testing the reforms, particularly if it can be seen that the public has sufficient confidence to use the new legal framework to formalize old leases or issue new ones.

18. **Awareness.** Not many people in the business community have heard or know about the Project and how it can help economic development in Samoa. To raise awareness about the Project and how it can help reduce financial risk, targeted workshops with business

² *Savali* is a government newspaper with an English and Samoan edition. The Samoan edition comes out once a month while the English paper is published once a fortnight.

communities, banks, and chambers of commerce should be organized. In addition, informative flyers and pamphlets with specific project examples and ideas would help alleviate fears and provide design options for businesses to consider. A launch of the Project is planned and should be held as soon as possible. It would be advisable at the launch to make clear that the Project will not include any leases of customary land at the start. This may take place only at a later stage when the leasing framework is ready and tested.

19. **Types of Projects.** Discussions with the project team and two banks that have signed on to act as financial intermediaries indicate that they are looking for projects that are “type C” (projects with no resettlement or environmental impact). They do not anticipate use of customary land leases as collateral or for mortgages for the Project. In the future, if leases are to be included as collateral, the Project must develop and include consultative processes and procedures to ensure free and prior consent of landowners as stipulated in the ESMS.

IV. Conclusion

20. OSPF believes that there is a good probability that the complaint issues can be resolved through a consultation process with all the stakeholders. As a next step, OSPF will coordinate efforts to facilitate implementation of the recommendations made in consultation with all stakeholders.

