



Final Report of the Special Project Facilitator

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

Technical Assistance Numbers: 7387 and 8481

Grant Number: 0392

August 2018

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 2011 Public Communications Policy.

Asian Development Bank

In preparing any country program or strategy, financing any project, or by making any designation of or reference to a particular territory or geographic area in this document, the Asian Development Bank does not intend to make any judgments as to the legal or other status of any territory or area.

**Final Report of the Special Project Facilitator on TAs 8481 and 7387-SAM: Promoting
Economic Use of Customary Land, Phase II and III and Grant 0392-SAM: Samoa
AgriBusiness Support Project
31 August 2018**

BACKGROUND

Successive technical assistance (TA)¹ from ADB to the Government of Samoa were intended to assist the Government in its efforts to encourage growth and jobs by supporting greater investment through the use of leased customary land as collateral for financing. The Ministry of Finance was the executing agency and the Ministry of Natural Resources and Environment (MNRE) and the Ministry of Justice and Courts Administration the implementing agencies. The Special Project Facilitator (SPF) received a complaint from four *matais* (chiefs and, hereafter, Complainants) on 9 September 2014 alleging that the reforms developed with TA support had been carried out without meaningful consultation with the Samoan people. The reforms, they claimed, would have the effect of individualizing control and commercializing large tracts of customary land without appropriate mechanisms to ensure that benefits flow to the landowners.

THE PROBLEM-SOLVING PROCESS

I. Eligibility. The complaint was declared eligible on 29 September 2014.

II. Review and Assessment. An Office of the Special Project Facilitator (OSPF) Mission, together with Pacific Department staff, visited Samoa from 17 November to 1 December 2014 and initiated the Accountability Mechanism Policy problem-solving process with (i) documentation review; (ii) one-on-one and group interviews; (iii) workshop-consultations with villagers in both Upolu and Savaii islands; and (iv) a roundtable discussion with key stakeholders². The Mission concluded that most stakeholders recognized that increased economic use of customary lands is important for achieving further economic development and that appropriate reforms to secure customary land are required. While legislative amendments had been made to clarify that only leasehold interest on customary lands could be mortgaged, some stakeholders considered that those provisions were not discussed transparently. OSPF recommended that the reform process should be approached in small, structured steps built on meaningful community consultation and participation. Aside from a number of recommendations³ made for the Project, the following course of action was agreed by all stakeholders: (i) engage a consultation specialist to develop a communication and consultation strategy (Strategy) to ensure meaningful consultations; (ii) stakeholders to meet to discuss steps forward for engaging the specialist and the design of the Strategy; and (iii) consultation workshop to confirm overall Strategy and implementation plan of the consultations.

¹ Phase I TA was approved on 5 December 2005; Phase II on 23 November 2009; and Phase III on 10 October 2013. Increased TA amount from \$400,000 to \$650,000 included budget for community consultations on the reforms.

² The roundtable discussion participants were the four *matai* Complainants and representatives from the Government and ADB and focus was on clarification of issues and options on a way forward to resolve the issues.

³ Recommendations included: (i) establish CLAC (Customary Land Advisory Commission) as a secretariat with skilled staff and budget for it to function well; (ii) form a legal working group to draft legislative reforms required; (iii) pilot-test the reforms; and (iv) AgriBusiness Support Project to organize awareness-raising events with business communities, banks, and chambers of commerce to help alleviate fears and provide design options for businesses to consider. A launch of the Project was also held, and to date four participating banks have provided financing to nine businesses.

III. Implementation and Monitoring. Following agreement on the course of actions, OSPF provided support as required and monitored implementation of the following:

(1) Additional resources. Government and ADB expanded the scope and resources of TA 8481 to include extensive consultations and engagement of a consultation specialist to design and implement the expanded consultations (see footnote 1).

(2) Consultations. The Strategy was finalized and approved by the Government and ADB in August 2016 and by the Cabinet in October 2016. Over 2000 invitations were sent to traditional chiefs, churches, and women and youth groups. A total of 15 community consultations covering about 250 villages with over 1,500 participants were convened. Outreach also included three radio talk-back shows and three television programs to raise awareness of the community consultations and the issues to be discussed. Minutes of each consultation were documented, and a summary of all issues discussed, and responses prepared.⁴ Participants' feedback on the quality of consultation were also documented.

(3) Legislative framework. In December 2017, the Government introduced legislative amendments to confirm in law precepts that have guided all reforms, including the right of customary landowners to approve or reject any lease of land, any use of land leases as collateral, and any reassignment of leases including as result of potential default when leases are used as collateral. Final reading of the amendment is expected in October 2018.⁵

IV. Complainants' Participation and Withdrawal from Problem-solving Process. The Complainants participated in reviewing the terms of reference and interviewing the consultation specialist who would be responsible under the TA to develop the Strategy. While Complainants commented on the draft Strategy, they did not attend the consultations as they expected to have a more substantial facilitative role. They were also of the view that the methodology of the consultations should have a wider coverage and should include Samoans in Australia, New Zealand, and the United States. In April 2016, the Complainants decided to abandon the problem-solving approach and seek a compliance review investigation⁶ expressing their frustration with the OSPF problem-solving process and claiming it had failed to address their fundamental concerns. After the Complainants withdrawal from problem-solving, OSPF continued to be engaged in monitoring the implementation of the consultation process concluded in December 2017.

V. OSPF Case Closure. With the issuance of the TA Completion Report on 16 August 2018, this OSPF complaint is closed.

⁴ OSPF also advised the Project to have summary reports of each consultation available on the Project website so the public is immediately informed of consultation outcomes.

⁵ ADB. 16 August 2018. *Technical Assistance Completion Report on Promoting Economic Use of Customary Land, Phase III*. Manila.

⁶ The Board Compliance Review Committee in a [report](#) published on 18 August 2016 recommended that a compliance review should not proceed.