Project Number: TA 8481 SAM

Promoting Economic Use of Customary Land, Phase III
December 2016

INCEPTION REPORT

Prepared by Leitumai Malaulau – Project Leader/Consultation Specialist

For the ADB

This consultant’s report does not necessarily reflect the views of ADB or the Government concerned, and ADB and the Government cannot be held liable for its contents.
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ABBREVIATIONS

ACL Act Alienation of Customary Land Act 1965 (Samoa)
ACEO Assistant Chief Executive Officer
ADB Asian Development Bank
AGO Attorney General’s Office
CBS Central Bank of Samoa
CEO Chief Executive Officer
CLAC Customary Land Advisory Commission
CLLS Customary Land Leasing Section (MNRE)
DBS Development Bank of Samoa
LTR Act Land Titles Registration Act 2008 (Samoa)
LWG Legal Working Group (established by the TA)
MOF Ministry of Finance
MNRE Ministry of Natural Resources & Environment

NOTES: The fiscal year (FY) of the Government and its agencies ends on June 30.
EXECUTIVE SUMMARY

Since 2006, ADB has provided Technical Assistance (TA) to support the government of Samoa to find ways for promoting the economic use of customary land. The impact of the TA will be improved access to credit for business investment. This will be measured by credit to the private sector increasing from 43% of gross domestic product in 2012 to 50% in 2019 based on annual figures of the Central Bank of Samoa. The outcome will be the use of customary land leases as collateral. The achievement will be reflected in commercial banks accepting customary land leases as collateral.

The TA has been delivered in phases with Phases I and II completed. Phase I involved public consultations, drafting legislative reforms and the development of Program Implementation Plan with six major components to guide reforms. Phase II supported national coordination of customary land stakeholders, capacity building for administrative reforms and community advocacy. ADB provided technical assistance to assist the government in (i) establishing the Customary Land Advisory Commission (CLAC) through the CLAC Act, 2013; (ii) setting up the Customary Land Leasing Section; and (iii) amending the Alienation of Customary Land Act, 1965 to allow the mortgage of customary land leases.

Three Commissioners have been appointed by Cabinet under the CLAC Act 2013. Government has provided resources for Commissioner meeting allowances, and for the establishment of a Secretariat to support the CLAC including office premises staffing and office expenses e.g. stationary. CLAC has a sunset clause of 7 years after which time it will be reviewed.

Phase III, which is currently underway is tasked with two objectives: (1) To establish a functional Legal Working Group (LWG) which will liaise with the Bankers Association and other key stakeholders. (2) To establish a leasing framework (including registration processes for security interests over customary land leases; protection of security interests; publicizing security interests affecting leases of the customary land; and processes for repossessing or re-selling leases in the event of a default under the mortgage).

A complaint to the OSPF from four matai saw work on the project paused for several months to await the outcome of the OSPF problem solving process. OSPF recommended the recruitment of communications and consultation specialists to design and support the implementation of a consultation strategy. A consultation design specialist was recruited in December 2015 signaling the resumption of work on the project and the Consultation Strategy was approved by Cabinet in September 2016. As part of Phase III a LWG has been established and has met regularly to consider issues and proposals. Proposed legal and legislative reforms have been drafted and community and stakeholder consultations are underway based on the approved consultation strategy. Government has approved Fundamental Policy Precepts 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.

Emphasis has shifted to consultations, building the capacity of CLAC and support for the banking sector. The TA started in May 2014 and will end in December 2017.
A. Introduction

1. This inception report addresses the scope and direction of the Asian Development Bank (ADB) Technical Assistance (TA) 8481 Samoa: Promoting the Economic Use of Customary Land. The Executing Agency (EA) is the Ministry of Finance (MOF) while the Implementing Agency (IA) is the Ministry of Natural Resources and Environment (MNRE). The inception report explores the TA rationale and design, and challenges to successful implementation, while indicating adjustments that reflect evolving circumstances and that will improve TA performance. The report summarises progress against the TA’s design and monitoring framework (DMF); explains the activities undertaken to-date; and presents a work plan for completing the TA.

B. Overview of the TA

2. The ADB support to Samoa through technical assistance (TA) has been ongoing since 2006. The TA has assisted the government to develop the legal and institutional framework needed to enhance the use of customary land leases, allowed under Samoan law since 1965. Phases I and II, of the TA have been implemented. Phase I supported public consultations, drafting of legislative changes and development of a program, with six major components, to guide further reforms. Phase II of the TA supported national coordination of customary land stakeholders, capacity building for administrative reforms and community advocacy. ADB provided technical assistance to assist the government in (i) establishing the Customary Land Advisory Commission (CLAC) through the CLAC Act, 2013; (ii) setting up the Customary Land Leasing Section; and (iii) amending the Alienation of Customary Land Act, 1965 to allow the mortgage of customary land leases. Government provided resources to house and staff a Secretariat to support the work of CLAC. The Customary Land Leasing Section, which is housed within the Ministry of Natural Resources and Environment, now acts as the one-stop shop where landowners and investors can get information and advice on customary land.

3. Phase III, which is currently underway, reviews laws relating to customary land through a legal working group, and will establish a leasing framework that will allow use of lease interest in land as collateral. A legal working group has been established and has met regularly to consider issues and proposals. Proposed legal and legislative reforms have been drafted and consultations are underway with community and stakeholders.

4. A complaint from four matai to the Office of the Special Project Facilitator (OSPF) on 9 September 2014 resulted in work on the project being put on hold to await the outcome from the OSPF problem solving process. “The complainants raised concerns about lack of meaningful consultation, individualization, and alienation of customary land that could occur under the project[s]. Furthermore, they are concerned that the project[s] are encouraging use of arable land under customary tenure without appropriate mechanisms to ensure benefits flow to local families and villages.” OSPF’s report dated 12 March 2015 recommended amongst other things that “the TA engage specialists to design and implement a communications strategy and ensure that CLAC is adequately staffed and funded.”
5. On 11 April 2016, the complainants decided to abandon the problem solving approach and seek a compliance review investigation. This is despite ADB and Government commitments to implement all recommendations emerging from the problem-solving process. The Compliance Review panel found evidence that ADB was not in compliance with its Public Communications Policy, notably OM Section L3. Specifically, ADB did not ensure all affected sections of the community were fully consulted. The Board agreed with the CRP view but did not agree to proceed with a review given that reforms were still underway (…that the Government of Samoa will propose legislative changes that would substantially remove material harm to the Complainants). The Committee went further to state that “…as the legislative process progresses, it becomes clear that a risk of material harm directly attributable to ADB’s noncompliance with its Public Communications Policy remains, the Committee agreed that it may reconsider this recommendation.

C. Period of Implementation

6. The TA commenced in May 2014. The final completion date is set as December 2017.

7. The complaint lodged with OSPF on 9 September 2014 resulted in work on the project being paused. Work on the project resumed in December 2015 with the mobilization of the Consultation Design Specialist from December 2015 to 30 September 2016 and a new Project coordinator was mobilized from 24th December 2015 to October 2016. Cabinet approved the Consultation Strategy in September 2016 and implementation is now underway.

D. Recruitment

8. TA team members at Inception phase include:

<table>
<thead>
<tr>
<th>Member</th>
<th>Designation</th>
<th>Mobilization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Leitumai Malaulau</td>
<td>Project leader/Consultant</td>
<td>22 November 2016</td>
</tr>
<tr>
<td>Graham Bruce Powell</td>
<td>International Legal Specialist</td>
<td>11th May 2014</td>
</tr>
<tr>
<td>Mareva Betham-Annandale</td>
<td>National Legal Adviser</td>
<td>13th May 2014</td>
</tr>
</tbody>
</table>

E. Project Coordination

9. The project will be managed through the Customary Land Advisory Commission (CLAC) in association with the Ministry of Natural Resources & Environment (MNRE) as the Implementing Agency and the Ministry of Finance (MOF) as the Executing Agency. The Project Leader will coordinate all activities of the project team, including meetings and activities of the Legal Working Group (LWG), and consult with the CLAC, MNRE and MOF as well as all principal stakeholders on all matters pertaining to the Technical Assistance.

10. All issues papers and reform proposals will be circulated for comment following endorsement by the CLAC and the LWG to the government, and where necessary and
appropriate, Cabinet approval will be sought on matters of policy, due process and/or legislative drafting including associated plans for public consultations.

**F. CLAC and Secretariat**

11. The need for a well-functioning CLAC and Secretariat continues to be imperative to the successful delivery of this TA. CLAC has a sunset clause and is mandated to operate for 7 years after which time it will be reviewed. CLAC was formed to:
   (i) advise the Cabinet on the facilitation, encouragement, and promotion of economic use of customary land;
   (ii) conduct public consultations on areas affecting customary land considered to be in need of reform; and
   (iii) review all laws affecting customary land in Samoa and make recommendations to the Cabinet for changes to such laws.

12. The CLAC comprises three Government appointed Commissioners one of whom has been appointed by Cabinet to Chair the CLAC. The Commissioners are appointed under the CLAC Act 2013 and remunerated consistent with Government’s standard approach to the remuneration for Boards of Directors which provides for a fixed annual fee. The Commissioners are expected to front all community and stakeholder consultations on reforms and for the promotion of CLAC’s Objects.

13. The CLAC is supported by a Secretariat. Office premises, staff salaries, CLAC meeting fees, and office running expenses e.g. stationary are funded by government as an activity in the MNRE budget. Staffing composition of the Secretariat has not changed from when it was first established in 2013 and it continues to operate with a head of the secretariat whose designation is that of Principal Officer and is responsible to the CLAC through the MNRE ACEO - Land Management Division. The Head of Secretariat looks to CLAC for directives for its day to day work which is in the main, administrative. A second senior officer has been seconded from the MNRE and is accountable to the Head of Secretariat.

14. CLAC is still a relatively new entity that would benefit from more systematic and structured capacity support so that it fulfills its mission synonymous with objectives of this TA. CLAC has mandate under its Act to engage expertise, promote, educate, inform and advise but lacks any operating budget for the delivery of these functions. At a basic level, CLAC has no budget for basic office equipment and furniture and does not have appropriate space and provision for receiving and meeting with community and potential investors at their premises. MNRE has signaled that CLAC must move towards operating more autonomously in terms of fulfilling its legislative mandate and the transfer of responsibility for financial management to CLAC of its own budget has been foreshadowed.

15. Building the capacity of CLAC and its Secretariat is crucial to the sustainability of work in this area when the TA is closed. Given the nature of the issues to be addressed going forward, there is an urgent need for the CLAC to be adequately staffed with two additional officers and the position of Head of Secretariat elevated to function at a higher management level in order to better support the CLAC to drive towards the achievement of its mandate.
and to advise on and deliver strategic and innovative approaches in this regard. Government recently approved ST $70k for the recruitment of a consultant to work with CLAC to develop its Strategic Plan. The strategic plan will provide crucial guidance for CLAC’s short to medium term work-plans which will in turn inform resource and skill requirements. The specialist is likely to be on board by late February 2017. A capacity assessment will be undertaken by the Project Leader concurrently and in close liaison with the work of the Strategic Planning TA.

G. Phase III: Impact, Outcomes and Outputs

16. The impact of the TA will be improved access to credit for business investment. This will be measured by credit to the private sector increasing from 43% of gross domestic product in 2012 to 50% in 2019 based on annual figures of the Central Bank of Samoa. The outcome will be the use of customary land leases as collateral. The achievement will be reflected in commercial banks accepting customary land leases as collateral.

17. Section 15 of the CLAC Act allows the mortgage of customary land leases. However, despite their willingness to move into this area, commercial banks are yet to take advantage of this because of different legal interpretations of Article 102 of the Constitution of Samoa, Section 4 of the Alienation of Customary Land Act, 1965; and Section 15 of the CLAC Act, 2013. To discuss and resolve these differences, Phase III TA is expected to provide two outputs.

Output 1: A functional legal working group established. Given that the legal framework is in place to allow the mortgage of customary land leases, CLAC will establish a legal working group (LWG) to work closely with the Banking Association of Samoa to discuss further actions required to enable commercial banks to take advantage of this legal framework and accept customary land leases as collateral.

Output 2: Leasing framework established. The TA will assist CLAC to establish a leasing framework for the use of customary leasehold as collateral. In establishing the leasing framework, the TA will ensure that the framework addresses four issues: (i) the process for the registration of a security interest, (ii) perfection of the security interest, (iii) the publicizing of security interests in leases, and (iv) the process for repossessing and reselling the lease in the event of default.

H. Phase III Work Plan dated June 2014

18. The Work Plan below was submitted as part of a Phase III Inception Report by the then Project Leader – Hinauri Petana in association with the International Legal Specialist Graham Powell and National Legal Specialist Mareva Betham-Annandale to address the above two Outputs for the TA.
<table>
<thead>
<tr>
<th>Activities and tasks</th>
<th>Responsibility</th>
<th>Timing and duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Review of relevant laws</td>
<td>GP, MBA</td>
<td>May – July 2014</td>
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<td>(ii) Review of policies, reports, legal opinions and proposed reforms</td>
<td>HP, GP and MBA</td>
<td>May – August 2014</td>
</tr>
<tr>
<td>(iii) Support for the CLAC:</td>
<td>HP, GP and MBA</td>
<td>Entire TA duration</td>
</tr>
<tr>
<td>• Statement of project policy precepts</td>
<td></td>
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<tr>
<td>• Preparation of Issues Papers for confirmation</td>
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<td>• Preparation of consultation materials</td>
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<tr>
<td>(iv) Establishment of the LWG:</td>
<td>HP, GP and MBA</td>
<td>May – June 2014</td>
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<tr>
<td>• Identification of members</td>
<td></td>
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<tr>
<td>• Preparation of ToR for LWG</td>
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<td>• Endorsement of ToR</td>
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<tr>
<td>• Initial meeting(s)</td>
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<tr>
<td>(v) Identification of issues and recommendations for legal reforms</td>
<td>HP, GP and MBA</td>
<td>June – October 2014</td>
</tr>
<tr>
<td>(vii) Consultations with the LWG and the Bankers Association of Samoa</td>
<td>HP, GP and MBA</td>
<td>Commencing October 2014 – December 2016</td>
</tr>
<tr>
<td>(viii) Broader community and stakeholder consultations</td>
<td>HP and MBA</td>
<td>Commencing October 2014 – December 2016</td>
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<tr>
<td>• Rights of customary landowners</td>
<td></td>
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<tr>
<td>• Protection of interests of lenders and developers</td>
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<tr>
<td>• Other aspects of the leasing framework</td>
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<td></td>
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<tr>
<td>(x) Scoping legislative reforms and preparation of Drafting Instructions and other necessary documentation</td>
<td>GP and MBA</td>
<td>Commencing July 2015</td>
</tr>
<tr>
<td>(xi) Drafting of legislative reforms</td>
<td>GP and MBA</td>
<td>September 2015 – May 2016</td>
</tr>
</tbody>
</table>

HP – Project Leader/Coordinator; GP – International Legal Specialist, MBA – National Legal Specialist
I. Overview of TA Activities to date

Legal and Legislative Drafting

19. The pause in the Project to await the outcome of the OSPF problem solving process in relation to the complaint from the four matai, affected the timing for the delivery of the activities however, the 'Status Report on Legal Work as at August 2016' prepared by Graham Powell - International Legal Specialist, complete with 12 associated attachments confirm that all scoping and legislative drafting work proposed in items (i) to (xi) of the June 2014 Work Plan have been substantially completed. On the basis of the June 2014 Inception Report Work Plan, the following extracts are taken from status report of the International Legal Specialist to summarise work undertaken and to draw attention to the significant focus on advancing and protecting the rights of landowners:

(a) May 2014 - Establishment of the Legal Working Group and preparation of the Terms of Reference for the LWG. The LWG has been comprises legal officers of relevant government ministries and agencies (including the AGO, SLRC, MNRE, MOF, MJCA, NPF, SHC, DBS, and CBS). Where such bodies do not have a legal officer, they have been represented by nominated officers who perform legal related tasks. These additional officers have included ministry and agency staff who have duties related to the registration of land titles, the preparation of security documentation, and debt recovery arising from loans and securities.

(b) Seven meetings of the LWG have been held. Issues Papers were prepared to identify key issues and to facilitate resolution of fundamental legal matters. These Papers relate to the Constitutional Issues, the Current Leasing Arrangements, Rights of Landowners, and Powers of Mortgagees.

(c) June 2014 – Fundamental Project Precepts were prepared for consideration and approval by the CLAC to highlight the protections that would be accorded to the rights and interest of landowners by the TA.

(d) July 2014: A Statement of Rights of Landowners was prepared for consideration and approval by the CLAC to further diffuse complaints about landowner interests being neglected in these reforms.

(e) January 2015 - A Draft Policy for endorsement by the CLAC and approval by Cabinet was prepared. Cabinet has approved this Policy as the foundation for the legal and legislative reforms.

(f) February 2015 – At the request of CLAC and with the support of MNRE’s legal adviser, an Issues Paper was prepared to identify issues relevant to negotiating proper rentals for leases of customary lands.

(g) April 2016 - A Legal Issues Paper was prepared for consideration by the LWG. This Paper identifies the provisions of the 3 main laws (the Property Law Act 1952, the Land Titles Registration Act 2008 and the Alienation of Customary Land Act 1965) which need to be amended to remove any contradictions and to otherwise provide a solid
legal foundation for the mortgaging of customary land leases in accordance with the approved policy.

(h) April/May 2016 - Drafting Instructions were prepared for the amendments to the *Property Law Act 1952*, the *Land Titles Registration Act 2008* and the *Alienation of Customary Land Act 1965*. These were considered and endorsed by the LWG, and have been forwarded to the AGO for drafting.

(i) July/August 2016 - Draft Regulations were prepared to make comprehensive provision for all issues related to the mortgaging of customary land leases. These can be made under the authority of the *Land Titles Registration Act 2008* if the amendments are made to this Act as proposed in the Drafting Instructions. These draft Regulations are based on the modernised provisions of the *Property Law Act 2007 (NZ)*. They have been adapted to Samoa's circumstances, and also to reflect all aspects of the approved Policy. For example, no provision is made to permit second or subsequent mortgages, an aspect which all stakeholders continue to endorse. The Draft has been considered by the LWG and some changes have been made to reflect the views stated at the meeting of the LWG held in August. The draft has also been presented to the risk management committee of the Development Bank of Samoa, and some modifications were also made to incorporate their views. These amendments are noted at the start of the document.

(j) Amendments required for the three relevant laws (the *Alienation of Customary Land Act* (ACL Act), the *Land Titles Registration Act* (LTR Act) and the *Property Law Act* (PL Act)) have been fully scoped and the drafting instructions for all of these have been provided to the AGO for final drafting to be undertaken. The *draft Land Titles Registration (Mortgages of Customary Land Leases) Regulations 2016* have been fully drafted and are still being reviewed by the LWG and other stakeholders, before being forwarded to the AGO for final confirmation.

**The Rights of Customary Land Owners**

20. Protecting the rights of the customary landowners of leased customary lands has been a key focus of the legal work of the TA, and of the legislative reforms which the TA has assisted to scope, develop and draft. These important considerations have been reflected in numerous outputs of the TA, including: (a) the Fundamental Project Precepts; (b) the Statement of Rights of Landowners; (c) the Issues Paper on the Rights of Landowners; and (d) the Issues Paper which identifies issues relevant to negotiating proper rentals for leases of customary lands.

21. These four documents then formed the basis of the approved Policy. The approved policy statements of particular relevance to the protection of landowner rights and interests are as follows:

   i. There can be and will be no alienation or disposition of ownership of customary land, as specifically required by the Constitution.
ii. All dealings in customary land by way of lease or licence (and the creation of mortgages over such leases and licences) must be strictly in accordance with procedures specified in legislation made in accordance with the proviso in Article 102(a) of the Constitution.

iii. The rights of customary land owners will be recognised and enforced by the reforms so that they enjoy all of the rights usually vested in commercial lessors, including:
   
   (a) the right to approve or disallow the use of the lease as security;
   
   (b) the power to approve or disallow the assignment of the lease, whether as a result of a default by the mortgagor or otherwise; and
   
   (c) the right to receive lease payments strictly in accordance with the terms of the lease, and applicable statutory provisions.

iv. The interests of lenders as mortgagees of customary land leases are to be respected and protected, taking account of the underlying rights of the customary landowners as beneficial and perpetual owners.

v. All leases of customary lands are to continue to be executed by the Minister as trustee for and on behalf of the beneficial landowners, but in certain cases the landowners will have authority to grant rights of access to and use of customary lands under licences granted by them...

vi. Customary landowners will be given powers to take action to recover rents and other payments due under the lease, irrespective of the doctrine of privity of contract.

vii. Customary landowners of leased lands will be authorised to exercise a number of rights such as initiating a review of rents in accordance with the lease, and enforcing beneficial covenants and environmental protection obligations under the lease. As the Minister will sign the lease on behalf of the landowners, these new rights will be confirmed in the legislative amendments.

viii. A range of other legal rights and powers are to be given to the customary landowners of leased lands to ensure that they enjoy the same rights and privileges ordinarily enjoyed by commercial lessors. These include the rights noted in paragraph 3. In some cases, these rights will be terms of the standard lease document, and where necessary they will be stated in the legislative amendments...

ix. A power for a mortgagee who has taken possession after a default to sell the lease will be provided for, but this will not be the only enforcement option. The sale of the lease will be subject to the consent of the landowners.

x. It will not be permissible under the legislative reforms for more than one mortgage to be registered against a customary land lease...

xi. A mortgagee in possession after a loan default will have power to appoint a receiver of rents and profits, or a receiver and manager of the development, in addition to the power of sale.

xii. A mortgagee in possession after a loan default will not have power to extract minerals on the land or to fell timber on the land, and appropriate amendments will
be made to the *Property Law Act 1952* to ensure that these rights are not vested in mortgagees of leased customary lands.

xiii. When a mortgagee in possession of leased customary lands receives rents and profits, and proceeds of sale of the lease, the first priority for the payment of such monies will be given to the payment of rents due to the landowners under the lease.

xiv. Appropriate mechanisms will be available to permit the extension of the term of a lease prior to a sale or takeover by the mortgagee in possession so as to provide for the full term of the lease to apply but will be subject to the consent of the landowners. This will increase the value of the lease as a security and make it more saleable."

22. It should be noted that the interests of customary landowners are a specific feature of 14 of the 17 approved policy principles.

**Consultation Strategy**

23. The June 2014 work plan provided for the conduct of consultations with stakeholders and broader community in relation to proposed reforms. The recommendations of the OSPF arising from the complaint of four matai however, punctuated the need for community consultations and significant emphasis, care and attention has been placed on consultations, how they are designed and executed, how the impact on proposed reforms is determined and the importance of feedback to the community and stakeholders. The Consultation Design Specialist was mobilised on 14 December 2015 with the following key deliverables:

a) Conduct Stakeholder Analysis  
b) Develop Stakeholder Consultation Strategy  
c) Assist the MNRE in Preparing to Deliver the Strategy  
d) Develop an M&E Framework.

24. The Consultation Strategy was approved by CLAC in August 2016 (Annex 1) and provides a framework of objectives, principles and standards that should guide the way in which CLAC undertakes public consultation and includes a monitoring and evaluation framework (Annex 2) to assess CLAC’s performance against these. Provision for specific strategies for consulting on current reform proposals was also included.

25. The estimated cost for implementing the Strategy was USD $62k (Annex 3). Of this an initial USD $45k was available with a further USD $20k found from savings in the Project to enable complete delivery of the strategy.

26. The Strategy was developed using a consultative approach with affected stakeholders and a Summary of Responses to Key Issues raised during consultations is attached at Annex 5. Consultation meetings included representatives from:

- Banking sector
- 2 meetings with multi stakeholders comprising NGO’s; Government organisation representatives including Lands and Titles Court, Ministry of Women Community
and Social Development, Private Sector and the four matai complainants to the OSPF.

- Existing customary land lessees and lessors.
- Upolu village representatives as advised by MWCSD
- Savaii village representatives as advised by MWCSD.

27. Implementation of the Consultation Strategy is currently underway and is the major focus of CLAC’s work at present.

J. Progress against the Design and Monitoring Framework

<table>
<thead>
<tr>
<th>Progress Chain</th>
<th>Results Chain</th>
<th>Performance Indicators with Targets and Milestones</th>
<th>Status and Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Impact</td>
<td>Improved access to credit for business investment</td>
<td>Credits to private sector increase to 50% of GDP by 2019 (2012 baseline: 43%)</td>
<td>Public opposition due to lack of information is identified in the DMF as a risk. The scope for mis-information is significant and a high level of information, communication and education building on the consultation strategy currently being delivered, needs to be sustained.</td>
</tr>
<tr>
<td>Outcome</td>
<td>Use of customary land leases as collateral</td>
<td>Commercial banks accept customary land leases as collateral by 2016</td>
<td>General support amongst the banks continues however Banking specialist services to deliver a road-map for banks should instill greater willingness and confidence of Banks to act.</td>
</tr>
</tbody>
</table>
| Outputs        | 1. A functional LWG established 2. Leasing framework established | - LWG formed, meets regularly by 2014  
- A successful case of using customary land leases as collateral by 2016  
- Leasing framework implemented by 2016 | - LWG was formed in August 2014 and has met regularly around Issues and policy papers and draft legislative reforms.  
- Profiling a successful case using customary land leases as collateral has not yet progressed  
- Eight separate Issues papers were developed. The LWG was consulted on these (May 2014 – Nov 2015). The papers were:  
i. Fundamental Project Precepts  
ii. Statement of Rights of Landowners  
iii. Issues Paper on the Constitutional Implications  
iv. Issues Paper on Current Leasing Arrangements  
v. Issues Paper on the Rights of Landowners |
Six pieces of legislation were reviewed including Constitution of Samoa 1960 along with those governing the potential creation of security interests in land leases in Samoa. Of these, legal reforms are proposed to three pieces of legislation namely Property Law Act 1952, the Land Titles Registration Act 2008 and the Alienation of Customary Land Act 1965. (May – August 2016):

- A “Fundamental Policy Precepts’ paper was submitted and approved by Cabinet (Nov 2015).
-Draft Land Titles Registration (Mortgages of Customary Land Leases) Regulations – framework completed (May – August 2016).
- Additional drafting/re-drafting requirements may emerge out of the current public consultation strategy.

### Activities with Milestones

<table>
<thead>
<tr>
<th>Activities with Milestones</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1 Prepare LWG terms of reference and identify LWG members (June 2014)</td>
<td>Completed</td>
</tr>
<tr>
<td>1.2 Prepare and submit the Cabinet paper for approval of terms of reference and membership of the LWG (July 2014)</td>
<td>Completed</td>
</tr>
<tr>
<td>1.3 Discuss with the Banking Association of Samoa the use of customary land leases as collateral (throughout TA)</td>
<td>Partially Completed</td>
</tr>
<tr>
<td>1.4 Support and initiate discussions between investors and commercial banks using customary land leases secured (throughout TA)</td>
<td>Yet to start</td>
</tr>
<tr>
<td>1.5 Support LWG meetings (throughout TA)</td>
<td>Ongoing</td>
</tr>
<tr>
<td>2.1 Review all existing legislation governing the potential creation of security interests in land leases in Samoa (April 2014)</td>
<td>Completed</td>
</tr>
<tr>
<td>2.2 Suggest any changes necessary to establish an effective system of using land leases as collateral (June 2013)</td>
<td>Mostly completed subject to consultation outcomes</td>
</tr>
<tr>
<td>2.3 Draft instructions for any new law (and amendments to existing laws if required) (December 2013)</td>
<td>Mostly completed subject to consultation outcomes</td>
</tr>
<tr>
<td>2.4 Undertake or oversee the drafting of any necessary changes to legislation (July 2014)</td>
<td>Mostly completed. AGO to finalise draft laws with TA assistance</td>
</tr>
</tbody>
</table>

### K. Proposed Work Plan

28. This section outlines the activities and tasks of each team member. It should be noted that much of the legislative reform work is complete subject to any revisions identified as necessary as arising from community consultations that are currently underway. The resulting reforms should create an enabling legislative environment for mortgaging of leasehold interest in customary land. As such the emphasis of the project has shifted towards:

   i. Ensuring meaningful consultations on proposed reforms with community and stakeholders through the implementation of the Consultation Strategy approved by Cabinet in September 2016
   
   ii. Supporting the Banking Sector to implement mortgaging of leasehold interest in customary land

   iii. Ensuring CLAC has good capacity to fulfill its mandate and mission to promote, inform, educate, and advise on the economic use of customary land.

29. The Project Team in its consultations with the Banking sector particularly National Provident Fund (NPF) and the Development Bank of Samoa (DBS) identified the need for the services of a Banking specialist to support the Banks in the area of lending and securities over customary land leases. Recruitment is underway for this role.
30. The project team at time of Inception report comprises:

<table>
<thead>
<tr>
<th>Member</th>
<th>Designation</th>
<th>Mobilization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Leitumai Malaulau (LM)</td>
<td>Project Leader/Consultation specialist</td>
<td>22 October 2016 (120 days)</td>
</tr>
<tr>
<td>Graham Powell (GBP)</td>
<td>International Legal Specialist</td>
<td>May 2014 (16.5 days as at Sept 2016)</td>
</tr>
<tr>
<td>Mareva Bethan Annandale (MBA)</td>
<td>National Legal Specialist</td>
<td>May 2014 (24.5 days as at June 2016).</td>
</tr>
<tr>
<td>TBC</td>
<td>Banking Specialist</td>
<td>TBC</td>
</tr>
</tbody>
</table>

**ToR Activities and Tasks of Project Team Members**

31. The roles of Project Leader and Consultation specialist have been merged into one ToR which specifies the following activities and tasks:

i. Manage and coordinate delivery of the technical assistance.

ii. The Project Leader will monitor, update, and report on implementation of the TA focusing on achievement of outputs and outcomes, measured in terms of indicators and targets set out by the IA.

iii. Facilitate Stakeholder Consultations: Facilitate forward looking stakeholder consultations through appropriate channels while ensuring capacity improvement and participation of CLAC and its Secretariat.

iv. Analyze Feedback and Recommend necessary changes to intended reforms.

v. Ensure compliance with ADB’s Public Communications and Safeguard Policies.

vi. Assist CLAC in Preparing to Deliver the Strategy: Including but not limited to: (a) establishing mechanisms for continued interaction with the various stakeholders; and (b) supervising the design, production and pre-testing of consultation materials.

vii. Strengthen capacity of CLAC: Including (a) support capacity development among staff of CLAC as appropriate, and will actively ensure that short-term consultants also pay attention to strengthening the technical capacity of CLAC and (b) assist CLAC in developing its work plan and securing appropriate TA counterpart resources.

viii. Implement an M&E Framework for Consultations: The specialist will implement a monitoring and evaluation framework and tools.

32. The Terms of Reference for the International Legal Specialist specify the following activities and tasks:

i. Review all existing legislation governing the potential creation of security interests in land leases in Samoa.

ii. Suggest any changes necessary to establish an effective system of using land leases as collateral.

iii. Support discussions between the legal working group and the Bankers Association of Samoa on options for how customary land can be used as collateral by commercial banks.

iv. Support the work of CLAC and the legal working group in advising the Cabinet on the proposed way forward.
v. If required, prepare drafting instructions for any new laws (and amendments to existing laws if required) in accordance with the requirements of the Legislative Drafting Handbook.

vi. Undertake or oversee the drafting of any necessary changes to legislation.

33. The Terms of Reference for the National Legal Adviser specify the following activities and tasks:
   
   i. Work with the International Legal Specialist to develop a framework for the use of land leases as collateral for lending.
   
   ii. Develop a framework for the use of land leases as collateral for lending;
   
   iii. Review all existing legislation governing the potential creation of security interests in land leases in Samoa;
   
   iv. Suggest any changes necessary to establish an effective system of using land leases as collateral;
   
   v. Support discussions between the Legal Working Group and the Bankers Association of Samoa on options for how customary land can be used as collateral by commercial banks.
   
   vi. Support the work of the CLAC and the LWG in advising Cabinet on the proposed way forward;
   
   vii. Assist the Project Leader & Project Leader in managing consultations and management of meetings with all of the stakeholders where legal and technical issues may come up;
   
   viii. Assist with any other task.

34. Terms of Reference for the Banking Specialist for which recruitment is underway specifies the following activities and tasks:

   i. Review all relevant project reports and all laws and proposed laws relevant to banking, land tenure and securities, and become familiar with the processes for leasing customary land, and for mortgaging such leases under the proposed reforms.
   
   ii. Suggest any changes necessary to establish an effective system of using land leases as collateral that is likely to be acceptable to commercial lenders, without undermining any existing rights of the customary landowners.
   
   iii. Support discussions between the legal working group and the Bankers Association of Samoa on options for how customary land can be used as collateral by commercial banks, and in relation to any related reforms to laws and procedures associated with securities and debt recovery by commercial lenders.
   
   iv. Liaise with representatives of the commercial banks and other lenders (including government agencies such as the Development Bank of Samoa, the National Provident Fund, the Samoa Housing Corporation and the Samoa Life Assurance Corporation) to identify current problems arising from the lending of monies and the recovery of debts by such institutions, with a particular focus on the opportunities to utilize customary land leases as securities for the monies that they lend.
v. Support the work of CLAC and the legal working group in advising the Cabinet on the proposed way forward.

vi. Assist in scoping changes to legislation and loan documentation.

vii. Assist the program manager in preparing the TA reports.

viii. Assist with any other task relevant to the intended reforms for the use of customary land lease interests as collateral.

**Work Plan Phase III as at 22 October 2016**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Responsibility</th>
<th>Timing</th>
</tr>
</thead>
<tbody>
<tr>
<td>i. Input (legal advice and clarification) on issues being consulted on</td>
<td>MBA</td>
<td>During consultations</td>
</tr>
<tr>
<td>a. Participation in community consultations – attend to meetings, provide input into documents, present when asked to, respond to questions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ii. Determine implications arising from Community wide consultations and draft responses to key issues where necessary</td>
<td>MBA &amp; GBP</td>
<td>Post consultations</td>
</tr>
<tr>
<td>iii. Support AGO to complete the drafting (AGO’s will re-draft the proposed regulations as a schedule to the LTR Act) with TA support to review and advise.</td>
<td>GBP &amp; MBA</td>
<td>Post consultations</td>
</tr>
<tr>
<td>iv. Support the LWG discussions with the Bankers Association on options for how customary land can be used as collateral by commercial banks and other lenders, and in relation to any related reforms to laws and procedures associated with securities and debt recovery by lenders.</td>
<td>Banking specialist; GBP; MBA</td>
<td>tbc</td>
</tr>
<tr>
<td>v. Engage reps of commercial banks to identify current problems arising from the lending of monies and the recovery of debts by such institutions, with a particular focus on the opportunities to utilise customary land leases as securities for the monies that they lend.</td>
<td>Banking specialist</td>
<td>tbc</td>
</tr>
<tr>
<td>vi. Support CLAC to undertake broader community and stakeholder consultations on proposed reforms: a. Review, revise and confirm budget and implementation plan b. Review and strengthen record keeping systems c. Analyse recurring questions/issues and develop additional Fact sheets/FAQ tools</td>
<td>LM</td>
<td>Ongoing to end of TA</td>
</tr>
<tr>
<td>vii. Provide Feedback to community and stakeholders on responses to key issues from consultations: a. Analyse and identify key issues arising from consultations and draft responses to those. b. Publicise and disseminate to broader community Responses to key issues information document.</td>
<td>LM with input from GBP &amp; MBP</td>
<td>Post consultations</td>
</tr>
</tbody>
</table>
L. Risk Management

35. A range of risks are inherent in this TA particularly because it deals with customary land but also because there are a number of moving parts and dependency relationships on government, financial sector and community stakeholders. Risks will be managed using the following four-point framework.

i. Clear, transparent and timely communication with affected players and the management of perception. The practical application of this is to ensure awareness of the Project, its objectives and its work plan going forward and to manage perception through well timed meetings, briefings and communications to ensure all relevant stakeholders are aware and on board.

ii. A carefully designed and monitored work plan including time frames. It will be important to monitor and report on activities undertaken in association with the work plan and to identify and address any slippage in timeframes or standards of delivery.

iii. No surprises approach. People should be advised as early as possible of issues relevant to their interests and/or mandate and be offered an opportunity for open dialogue.

iv. Disciplined record keeping and documentation throughout all facets of the TA.
Annex 1  Consultation Strategy

PROMOTING ECONOMIC USE OF CUSTOMARY LAND, PHASE III  
COMMUNICATIONS AND CONSULTATION STRATEGY

Purpose

The communications and consultation strategy supports the work of the Customary Land Advisory Commission (CLAC) for Promoting the Economic Use of Customary Lands Project through outlining strategies for informing and consulting with Samoa’s people and organisations on proposed policy/legislative reforms.

Definition of terms

- Consultation/meaningful consultation
- Alienation
- Stakeholders
- Mortgage
- Mortgagee
- Rights of land owners
- Foreign interests
- Foreclosure procedures
- Land owners
- Leasehold interest
- Economic use
- Lessor
- Lessee.

Objective

To ensure that the people of Samoa can have a say and can effectively contribute to the development of policies and legislation providing for the economic use of customary land.

Scope/Coverage

This consultation strategy addresses proposed policy and legislative reforms for the economic use of customary land.

Guiding principles

Consultations under this strategy should:
i. identify and address stakeholders based on the degree to which they are affected by the proposed policy or legislative reform;
ii. ensure stakeholders are well informed about the issues;
iii. adopt an inclusive approach by consulting as widely as possible;
iv. demonstrate proportionality and parity across stakeholders and their views;
v. be transparent in terms of how consultations will be carried out, feedback from stakeholders and the effect of stakeholder feedback on proposed policy and legislative reforms;
vi. Be timed so that stakeholder views can still make a meaningful difference.

Minimum standards and requirements

Consistent with CLAC’s minimum standards and requirements for communications and consultations on policy and legislative reforms, this strategy identifies:

i. Relevant stakeholders.
ii. Consultation strategies overcome barriers to participation for targeted stakeholder’s e.g. timing, location and resources (including for the appropriate observance of cultural protocols) should be configured to enable participation.
iii. Information and resources to ensure stakeholders are well informed about proposals two weeks prior to consultations
iv. Ways for achieving necessary depth (e.g. to the level of individuals and individual villages) and breadth (necessary capture of sectors nationally) of information dissemination and consultation.
v. Roles and responsibilities including who comprises the consultation team, skills and attributes for leading consultations, accurate recording, logistics and administration and feedback to stakeholders¹.
vi. Necessary financial and technical skills and resources.

How this strategy is structured

The Strategy builds on the foundations and processes already established as part of Phases I and II of the project to Promote the Economic Use of Customary land.

An overarching communications campaign to launch and support the consultation strategy is outlined, following which, strategies for communicating and consulting on specific policy and legislative reform proposals are detailed.

Policy and legislative reform proposals for strengthening arrangements for mortgaging leasehold interest on customary land will be contexted within the four Fundamental Policy Precepts as endorsed by Government namely:

i. Constitutional/legal mandates
ii. Leasing Arrangements
iii. Rights of Customary Landowners

¹ Feedback on consultations should identify who participated in the consultation, the organization or sector of the population they represent, aspects of reforms they addressed and key issues raised.
Stakeholders

This strategy seeks to communicate and consult with a diverse range of stakeholders including but not limited to:

- 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
- Private sector organisations e.g. Land Surveyors Association
- Civil Society organisations/NGOs.

How Communications and Consultations will be delivered

Implementation of Communications and Consultations under this strategy will commence 1 October 2016

Information tools will be developed in both English and Samoan to help the public understand the context for proposed policy and legislative reforms.

Vehicles for disseminating information include the distribution of physical documents (e.g. fact sheets; FAQs); newspaper; television, radio; online media and in person delivery.

A proposed list of consultation meetings is attached to this strategy and will be finalized/confirmed on completion of the public consultation document.

Formal feedback on proposals will be received mainly via community consultations or in writing via email or post.

Feedback to the public on the key issues raised during the consultation phase will be issued via either newspaper, radio, television, website or a combination of these mediums.

Public Launch of the C&C Strategy

At the launch of the C&C Strategy the proposed schedule of meetings will be released along with the public consultation document detailing policy and legislative proposals and associated Fact Sheets and FAQs.

Newspaper, Radio and Television segments

Two weeks prior to the commencement of consultation meetings, radio and television bulletins will be launched to inform the public and stakeholders of policy and legislative proposals and
advise them of ways in which they can engage with the process for developing these. This publicity will continue for the duration of the consultation phase.
**Consultation meetings**

The main mechanism for achieving feedback on proposed policy and legislative changes will be through face to face consultation meetings held in Upolu [covering Manono and Apolima] and Savaii. **Attachment 1** to this Strategy outlines a proposed approach for consulting with key stakeholders. Information will be developed to ensure the public and stakeholders understand what is being proposed. This information will be tailored for target audiences identified in the strategy and will be disseminated at least two weeks prior to meetings taking place in each locality. CLAC will consult with the Ministry of Women, Community and Social Development as the official channel for sui o nuu (village representatives), to determine the number and location of consultation meetings with the community sector.

**Online via website**

A CLAC website will be established and will have ongoing resource implications. This web presence will be set up as a CLAC web-page within the MNRE website with a view to establishing a standalone CLAC website at a later date. The link to the web-page will be publicized via all information tools produced as part of this strategy. As an online tool, the website will enhance access of Samoan people everywhere, to this strategy and associated information resources. Appropriate governance over the website including designing and approving content, monitoring hits and downloads, identifying ways to increase public awareness and its online search profile and responding to comments and/or questions emanating from the website will all be important. To the fullest extent possible, newspaper, radio and TV programming should also be able to be accessed via online platforms.

Stakeholders will also be able to make written submissions via email or post and contact details for receiving submissions via email or post will be publicized via all communications mediums.

**Engaging Samoans resident overseas**

Feedback from Samoans residing overseas is welcome and can occur through a range of mechanisms including:

- Communicating views to their respective family members or matai representative resident in Samoa
- Coming to Samoa to attend consultation meetings in person
- Lodging a written submission via email.
**Focus Area 1:**

**Communications campaign to launch the C&C Strategy**

**Objectives:**
1. To raise public awareness of the promotion of economic use of customary land, including through ability to mortgage leasehold interest
2. To launch the public consultation strategy on policy and legislative proposals

<table>
<thead>
<tr>
<th>Target Audience</th>
<th>Key Messages for Communications Or Key issues for consultation</th>
<th>Tools/tools and method of delivery</th>
<th>Responsibility / Timing</th>
</tr>
</thead>
<tbody>
<tr>
<td>All of Samoa particularly Matai as Landowners, Samoan Banking Association, General public</td>
<td>Key messages for communications include:</td>
<td>Launch of consultation phase and official release of Public Consultation Document</td>
<td>Launch date 1 October 2016</td>
</tr>
<tr>
<td></td>
<td>1. Promoting the economic use of customary land supports objectives of the SDS</td>
<td>2. PRESS RELEASE</td>
<td>Public consultation document finalised by 5 Aug 2016 (Legal TA with proj coord)</td>
</tr>
<tr>
<td></td>
<td>2. There can and will be no alienation or disposition of ownership of customary land as specifically prohibited by the Constitution</td>
<td>3. Complete public consultation document available in hard-copy from the CLAC office and MNRE, downloadable from the CLAC website (with a link to MNRE and Government website)</td>
<td>All strategy Fact sheets and FAQs finalized by 19 Aug 2016 (Legal TA with proj coord)</td>
</tr>
<tr>
<td></td>
<td>3. The ability to lease customary land is not new.</td>
<td>4. Fact Sheets and FAQs on CLAC; and Public Consultation Document</td>
<td>All strategy audio visual tools finalized by 16 September 2016 (Videographer with proj coord).</td>
</tr>
<tr>
<td></td>
<td>4. New policy/legislative reform measures are proposed in the public consultation document to strengthen opportunities to use leasehold interests in customary land as security for obtaining development finance where customary landowners consent.</td>
<td>5. Television and Radio interviews and segments focused on key messages, the Public Consultation Document and existing leases. Footage and audio recordings to be posted on website. Can simulcast feed to radio stations overseas if cost effective</td>
<td>Launch and logistics finalized by 16 Sept (project coordinator/CLAC).</td>
</tr>
<tr>
<td></td>
<td>5. CLAC has been established as an independent body to advise on and establish the modalities for promoting the economic use of customary land.</td>
<td>6. Information paper on methods of accessing documents and providing feedback on policy and legislative proposals (e.g. written submissions via email or post; directly via electronic submission form on website; in person by attending consultation meeting)</td>
<td>1. CLAC Commissioners &amp; Secretariat</td>
</tr>
<tr>
<td></td>
<td>6. Copy of proposed schedule of CLAC consultation meetings.</td>
<td>7. Copy of proposed schedule of CLAC consultation meetings.</td>
<td>2. MNRE</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3. Project Coordinator</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>4. Legal TA</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>5. TA for:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Developing storyboard, scripting and producing television and radio tools.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Scheduling &amp; streamline all publicity campaign events and material</td>
</tr>
<tr>
<td></td>
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<td></td>
<td>• Overseeing 'look and feel' of all publicity material to ensure consistency with branding, quality control and risk manage.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Assigned first point of contact for public and media queries, receiving written feedback on proposals via email or website.</td>
</tr>
</tbody>
</table>

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2 All comms tools will be in both Samoan and English unless otherwise specified/
Focus Area 2: Public Consultation Document: Constitutional and Legislative Mandate

Objectives:
1. To inform and raise awareness of the constitutional and legal basis for leasing Customary land and mortgaging the leasehold interest on Customary Land
2. To raise awareness of the rationale and potential development impact from CL owners who exercise the option to allow mortgage of leasehold interests on customary land
3. To ensure all law reforms are consistent with article 102 of the Constitution.

<table>
<thead>
<tr>
<th>Target Audience</th>
<th>Key Messages (Comms) OR Key issues for consultation</th>
<th>Tools and method of delivery 3</th>
<th>Responsibility / Timing</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Key messages for communication include:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1. There can be and will be no alienation or disposition of ownership of customary land, as specifically required by the Constitution</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2. Legislation enabling leasing customary land has been around for 51 years with the Alienation of Customary Land Act 1965.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>3. The ability to mortgage the leasehold interest on customary land is not new.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>a. It is designed to promote economic use of customary land.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>b. It provides customary landowners and leaseholders with an option to secure development finance using leasehold interest in customary land.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>c. Policy and legislative reforms will progressively be introduced to enable and regulate this. All such reforms will uphold the constitutional provision prohibiting alienation or disposition of ownership of customary land.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>4. Review of processes for upholding article 102 of the Constitution to ensure that all law reforms and legal processes are fully consistent with the constitutional requirements that there be no alienation of customary land, other than by leases created in accordance with legislation.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consultation on:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Legislative reforms to strengthen mortgaging leasehold interest on customary land.</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3 All comms tools will be in both Samoan and English unless otherwise specified.
## Focus Area 3: Public Consultation Document: **Leasing Arrangements**

**Objectives:**
1. To inform and raise awareness of existing leasing arrangements
2. To seek feedback on proposed policy and legislative reforms associated with leasing arrangements.

<table>
<thead>
<tr>
<th>Target Audience</th>
<th>Key Messages for Communications OR Key Issues for consultation</th>
<th>Tools/tools and method of delivery</th>
<th>Responsibility / Timing</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Customary Landowners, Matai, Families and villages, Politicians; sui a le malo/sui o nuu, Potential investors/developers, Samoa Banking Association, Government Departments directly impacted, particularly legal officers, Civil Society/NGOs, General public.</td>
<td>Communications will include information on:</td>
<td>Plain language fact sheet on existing leasing arrangements and procedures.</td>
<td>MNRE: re existing leasing arrangements. Project Coordinator re video footage.</td>
</tr>
<tr>
<td></td>
<td>• Powers and responsibilities for the creation of leases over customary lands.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• The Role and powers of the Minister when customary lands are leased</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Who can customary lands be leased to?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Responsibilities and powers for the recovery of unpaid rent on customary land.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Consultation on:</td>
<td>Use of video footage interviews of landowners with existing leases</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Any proposed policy/legislative reforms on leasing arrangements.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## Focus Area 4: Public Consultation Document: **Rights of Customary Landowners**

**Objectives:**
1. To inform and raise awareness of existing rights of customary landowners of leased customary land
2. To seek feedback on issues and associated policy proposals for strengthening the rights of customary landowners in relation to the lease of customary land, and the mortgaging of lease interest on customary land.

<table>
<thead>
<tr>
<th>Target Audience</th>
<th>Key Messages (Comms) OR Key Issues (Consultation)</th>
<th>Tools/tools and method of delivery</th>
<th>Responsibility / Timing</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Customary Landowners, Matai/families, Potential Investors/developers, Samoa Banking Association.</td>
<td>Communications on:</td>
<td>Subject specific fact sheet on existing rights of customary landowners of leased customary land. Factsheets and associated FAQs.</td>
<td>Legal Advisors Project Coordinator</td>
</tr>
<tr>
<td></td>
<td>• Existing regime of rights of customary landowners of leased customary land.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Consultation on:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Any policy/legislative reform proposals on the rights of customary landowners.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**Focus Area 5:** Public Consultation Document: **Interests of Lenders**

**Objective:**
1. To ensure that the interests of lenders are addressed in line with objectives related to the economic use of customary land.

<table>
<thead>
<tr>
<th>Target Audience</th>
<th>Key Messages (Comms) OR Key Issues (Consultation)</th>
<th>Tools/tools and method of delivery</th>
<th>Responsibility / Timing</th>
</tr>
</thead>
</table>
| Samoa Bankers Association | Key messages for Communications will address the interests of lenders:  
- Vis-a-vis customary landowners;  
- In the event of loan default;  
- For the transfer of lease to a new developer;  
- Where landowners withhold consent to transfer the lease to a proposed new owner of the development. | Fact sheets and FAQs e.g. on rights and associated processes and responsibilities/requirements. | Legal Advisors, Project Coordinator |
| Samoan customary landowners | Consultation on:  
- Any new policy or legislative reform proposals addressing the interests of lenders. | Fact sheet and FAQ on any new policy or legislative reform proposals. | Legal Advisors; Project Coordinator |

---

4 All comms tools will be in both Samoan and English unless otherwise specified.
ATTACHMENT 1
HOW CONSULTATIONS WILL BE CONDUCTED

AFFECTED STAKEHOLDERS

A stakeholder analysis has been conducted to identify stakeholders and the degree to which they are likely to be affected by policy/legislative reform proposals to strengthen arrangements for mortgaging leasehold interest on customary land.

The following proposes a plan for consulting with various stakeholders. Notwithstanding any set meetings, individual sectors, organisations, community districts or villages may wish to host their own meetings and are welcome to do so. CLAC will supply copies of relevant information and proposals to support such meetings. CLAC will also do its best within its resource constraints to respond to requests for CLAC attendance to present at such meetings.

The CLAC may convene small focus group meetings for issues needing more detailed consideration or that are of a technical nature.

STAKEHOLDER CONSULTATION MEETINGS

Specific consultation meetings will be convened as outlined below.

Public sector:

- MNRE; MoF; AG; MJCA; Law Reform Commission; MWCSD; Development Bank; NPF; MCIL; SHC.

Private sector:

- Financial banking sector
- SAME
- Chamber of Commerce
- Samoa Hotel Association
- Other Relevant organizations
- Institute of Land Professionals
- Existing lessees of customary land
- Existing beneficial owners/lessors of customary land

Civil/NGO sector:

- National Council of Churches
- SUNGO
- O le Siosiomaga Society
Community Sector:

At the national level, CLAC will work with MWCSD to meet with the Fono-o-Pulenu’u during their monthly meetings. A separate meeting will also be held with existing customary land lessors/beneficial owners.

At the Districts and village level, time and resources constrain the ability to hold separate meetings with each and every district, village and sub-groupings within villages and it is likely that meetings will need to involve combined districts. CLAC will take advice from the MWCSD on this.

Whatever the horizontal configuration, the subject of mortgaging leasehold interest on customary land and associated policy/legislative reform proposals being consulted upon, potentially affects all people of Samoa through to the family unit. It will therefore be important to deepen community sector consultations. A means of achieving greater depth will be to conduct not one but three meetings simultaneously within each grouping of districts (as determined in consultation with MWCSD) as outlined below.

1. Combined District Alii ma Faipule
2. Combined Districts sui a tina & aualuma
3. Combined Districts sui a aumaga.

Conducting the above 3 meetings simultaneously will require CLAC to field 3 teams with identical areas of specialization. It is proposed that each of the teams be led by a Commissioner and supported by logistics crew and note takers, along with those with expertise in the proposals being discussed e.g. legal advisors.

Individual Districts, villages, or families who wish to host separate meetings on the policy or legislative proposals are welcome to do so and can request CLAC to attend and present at those meetings. CLAC will do its best to accommodate such requests within its resource constraints. At a minimum, CLAC will provide copies of information and proposed reforms for such meetings.

Multi-stakeholder meeting:

A multi-stakeholder meeting will be convened for groups and organisations not specifically covered above.

- Private sector (e.g. Farmers Association; Other associations; Law Society; Samoa Institute of Accountants).
- Civil/NGO sector (e.g. SBEC; Women in Business; Centre for Samoan Studies; NUS; USP; other academic bodies; special interest groups).

OPEN PUBLIC MEETINGS - CATCH-ALL

If determined necessary, two open public meetings will be held towards the end of the consultation period. One in Upolu and One in Savaii. These meetings will be designed to allow anybody to attend. Typically, participants of such meetings self-select. Individuals can attend in their own right and need not be an official representative of any organization or affiliated with any given sector. These meetings are
expected to be useful for allowing people from different walks of life the opportunity to express their views and hear one another’s views.
## Annex 2  Consultation strategy Monitoring & Evaluation Framework

### C&C Strategy: Monitoring & Evaluation (M&E) Framework

<table>
<thead>
<tr>
<th>INDICATOR</th>
<th>TARGET</th>
<th>DATA SOURCE</th>
<th>FREQUENCY</th>
<th>RESPONSIBLE</th>
<th>REPORTING</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Objective</strong></td>
<td>To ensure that the people of Samoa can have a say and can effectively contribute to the development of policies and legislation providing for the economic use of customary land.</td>
<td>70% of invitees: Number of people who turn up to consultation meetings. Number of people who felt they had an opportunity to have their say</td>
<td>Each meeting</td>
<td>CLAC Sec</td>
<td>Quarterly to CLAC Commissioners and as part of the aggregate annual report</td>
</tr>
<tr>
<td><strong>Principles</strong></td>
<td>Transparency</td>
<td>100%: ‘Responses to Key Issues’ document disseminated to stakeholders is on file along with list of stakeholders it was sent to.</td>
<td>At the end of each round of consultations.</td>
<td>CLAC Sec</td>
<td></td>
</tr>
<tr>
<td><strong>Minimum Standards</strong></td>
<td>Relevant stakeholders identified</td>
<td>100%: Stakeholder Analysis document for each consultation strategy is on file.</td>
<td>Each set of policy/legislative reforms.</td>
<td>CLAC Sec</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Information received by stakeholders two weeks prior to consultation meetings.</td>
<td>100%: Information is prepared and delivered to stakeholders two weeks ahead of consultation meetings.</td>
<td>Each meeting</td>
<td>CLAC Sec</td>
<td></td>
</tr>
</tbody>
</table>
### Annex 3 Consultation Strategy Implementation Budget

<table>
<thead>
<tr>
<th>Line item</th>
<th>US 65k budget</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ST $ 165,844.00</td>
</tr>
<tr>
<td>1. LWG</td>
<td></td>
</tr>
<tr>
<td>2. Website</td>
<td>4000</td>
</tr>
<tr>
<td>3. Photocopy/stationary</td>
<td>3000</td>
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<tr>
<td>4. Translation</td>
<td>7000</td>
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<tr>
<td>5. Fact Sheets publication</td>
<td>2000</td>
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<tr>
<td>6. Video footage</td>
<td>3000</td>
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<tr>
<td>7. Experts video footage</td>
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</tr>
<tr>
<td>8. TV x 4</td>
<td>15,000</td>
</tr>
<tr>
<td>9. Radio x3</td>
<td>2000</td>
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<tr>
<td>10. Newspaper</td>
<td>1000</td>
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<tr>
<td>11. Consultation meetings</td>
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<tr>
<td>12. Team transport/accomm/meals</td>
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<tr>
<td>13. CL leaseholders</td>
<td>3300</td>
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<tr>
<td>14. Banking/finance sector</td>
<td>1000</td>
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<tr>
<td>15. Government Ministries</td>
<td>800</td>
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<tr>
<td>16. Multi-stakeholders</td>
<td>2900</td>
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<tr>
<td>18. PA system</td>
<td>5000</td>
</tr>
<tr>
<td>19. Contingency</td>
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</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$ 165,845.00</strong></td>
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