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## 1. Context<sup>1</sup>:

Customary land comprises 565,000 acres, or 81%, of the area of Samoa and includes much of the land with potential for tourism or more intensive agriculture development (e.g., tree crops and livestock). Samoa has strict laws against the alienation of such land through a formal government land tenure system. Customary practice requires that the person currently using the land only continues to use the land with permission from the titleholder, a chief (or *matai*), whose Samoan title carries accompanying land stewardship responsibilities. Traditional rules related to control and usage of customary land remains fundamental to Samoan society, and is “at the very core of everything connected to the faa-Samoa (Samoa way) - culture, titles, language, aiga (extended family) and people.

Land in Samoa is often the cause of major conflicts between individuals, families, villages or districts. Drawn-out disputes are common due mainly to uncertainties over numerous beneficial owners with competing interests. The Lands and Titles Court at Mulinuu in Upolu and Tuasivi in Savaii shows the extent in which Samoans would fight to protect the Pule (authority) over their customary lands.

Examples such as the “McCarthy Case – Fugalei Area point out the need for clearly defined and registered boundaries<sup>2</sup>. “There are many instances where the authority or ownership of customary land is uncertain or disputed. Such disputes are referred to the Lands and Titles Court for decision about the Pule over the land or title in dispute. The majority of Samoans do not favour the idea that the records of the Lands and Titles Court should be open to the public as they jealously guard their genealogies and land entitlements. However the idea of registration of the “Pule” over land is gathering favour.”<sup>3</sup>

In the mean time, customary land, while Samoa’s main and most important natural resource is also the least utilized. Businesses are affected by restrictions such as village curfew hours and the banning of goods and products by village councils. These restrictions directly impact on the earning potential of a business because of its location on customary land. Large areas remain under-developed, as traditional owners seem unable or unwilling to determine how to equitably use them. Customary land cannot be used as collateral, making it very difficult to secure development capital. With an increasing population, there is growing pressure on available land and associated resources like biodiversity, water and forests.

## 2. Samoa’s Economy and Background for Technical Assistance:

The economy of Samoa has traditionally been dependent on development aid, family remittances from overseas, and agriculture and fishing. However, remittances have declined in relative importance compared to other sources of external income, and tourism is expanding, accounting for 15% of GDP. About 88,000 tourists visited the islands in 2001. Agriculture remains an important sector, employing about two-thirds of the labor force, and accounts for 90% of exports, featuring coconut cream, coconut oil, and copra. Samoa is among the fastest growing in the Pacific Islands economies, and has a flexible labor force 90,000 strong. However, reforms have to continue and land has to be available for private-sector growth and for resources to be utilized. Policy recommendations calling for the development of tourism

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1 Adapted from Taule’alo, Tu’u’u leti et al. “Samoan customary lands at the crossroads” (2003)

2 A boundary between estate owner(s) and customary landowner(s) was previously defined by a stream, but over years the stream has slowly changed its direction due to high tides and inundated land. The legal boundary of the land between and had to be defined by the courts.

3 World Bank. “Samoa Infrastructure Asset Management Project Phase II: Land Acquisition and Resettlement Framework.” Pp. 6

through the use of customary land to better Samoa's economy and people have existed since at least 1990.<sup>4</sup> The present technical assistance, TA-4712, was agreed upon by the ADB and the Government during programming discussions in 2003. It follows on work on small business in Samoa, supported by ADB Loan 1785-SAM and TA 3549-SAM.

Though each customary land situation is unique in each country, the use of GIS/LIS as a means of dispute resolution and to secure leases has been implemented and shown to work in Fiji since the last decade.<sup>5</sup> In Samoa, LIS reforms have been long overdue<sup>6</sup> and are being welcomed by agencies involved. The models and plans have been developed over a long process and are fundamentally sound, and have been incrementally implemented in Samoa through other projects. The last remaining, important and crucial component is to communicate the plans, benefits, and rationale mentioned above to the Samoan people.

### **3. Expected Impact and Outcome:**

The intended impact of the TA is to increase levels of economic activity (investment and production) on customary land. The outcome of the TA will be to increase the efficiency and effectiveness with which landowners and investors (domestic and foreign) implement agreements to utilize customary land for economic purposes.

### **4. TA Outputs:**

Subject to Cabinet's decision on the working group (WG) report, the specific TA outputs will be:

- i) Amendments to the Alienation of Customary Land Act 1965 to further promote appropriate economic use of customary land.
- ii) Streamlined administration processes for entering into leases on customary land.
- iii) Public information materials disseminated, and public education processes conducted, on key issues and processes for landowners and potential investors.
- iv) Improved registration, mapping, and availability of information on customary land titles and boundaries, and
- v) Based on findings from the above activities, implementation of a review of institutional arrangements for appropriate government involvement in matters related to economic use of customary land.

### **5. Methodology and Key Activities:**

#### **5.1. Phases of the project:**

The activities of the TA will fall into three broad categories: (i) legal, administrative, and technical reforms within the Government; (ii) public information and education; and (iii) reform coordination. The TA will be carried out over a period of 24 months divided into four phases:

- (i) A preparatory inception phase ending with the presentation of an inception report after four weeks from the start of the TA;
- (ii) The phase II between the presentation of the inception report and the submission of the mid term report, the latter being presented within 12 months from the start of the TA.
- (iii) The phase III between the submission of the midterm report and the presentation of the draft final report, the latter being submitted within 21 months after inception for comments by the government of Samoa and ADB;

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4 School of Travel Industry Management, University of Hawaii at Manoa. "Executive Summary" Tourism Development in Western Samoa (1990)

5 Fonmanu, Mz. Keresi (1999) Dispute Resolution for Customary Lands in Fiji . Masters Research thesis, The Department of Geomatics, The University of Melbourne.

6 World Bank. "Samoa Infrastructure Asset Management Project Phase II: Land Acquisition and Resettlement Framework."

- (iv) A two-month phase IV during which the comments on draft final report by government and ADB will be incorporated and the final report will be submitted.

## 5.2. Inception:

The TA will start with a four-week inception phase. The Executing Agency, Ministry of Finance (MoF), will convene a working group of relevant government and non-government agencies. [redacted with ----] proposes the participation of the involved technical ministries of the Samoa government, relevant line agencies, and the heads of other externally funded programs, representatives of non government organizations and projects, in the working groups. Apart from that, (MoF) will also provide support for the gathering of required information for the implementation of TA.

The specialists will also make use of national, district and communal statistics, as well as census and service statistics. They will review national policies, programmes and technical guidelines, planning documents from Ministry of Natural Resources, Environment and Meteorology (MNREM) and the Land and Titles Court, and evaluation criteria; study documents and finally, reports of relevant related projects within and outside of Samoa.

As Fiji has shown, it is possible to establish a land tenure system that is based on customary ownership while providing individuals with secure and transferable property rights... Fiji is the only country in the Pacific that has effectively addressed the issue of retaining customary ownership of land while meeting the needs of investors and financiers.” In Fiji, 1) The land remains the customary property of the traditional owners. 2) Under the Fiji system, the land may be leased, through the Native Land Trust Board (NLTB) by a specific user for a specified period of time. Samoans will not want to pass power onto a central government authority, but Fiji nevertheless provides useful lessons, especially in their land registration system that will improve this TA, and demonstrate to the public that a similar, but uniquely Samoan system is possible.<sup>7</sup>

The [----] team will be working closely together with the working group. The working group will also serve as a critical partner in reviewing the outputs, giving advice on optimizing the results, and supporting the implementation team in specific areas, namely examining the options to support a strategic plan for economic use of customary land in Samoa, discussing the funding mechanisms, helping to identify the core topics and legal / policy issues that should be taken into account, help identifying ongoing and past activities, studies, projects, and their programmatic impact for replication.

As “public consultation and participation is a hallmark of traditional Samoan life (FaaSamoa, the Samoan way)”<sup>8</sup>, dialogue with villages should be established. The work programme will include a comprehensive, yet preliminary (i.e. expansible) list of visits to be made by the consultants to governmental and non-government organizations, donors, local institutions, villages and village mayors (the *Pulenuu*).

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7 Chris Lightfoot. “Does customary land ownership make economic sense?” *Privatising Land in the Pacific: A defence of customary tenures* (2005): 23-27.

8 World Bank. “Samoa Infrastructure Asset Management Project Phase II: Land Acquisition and Resettlement Framework.” Pp. 16

During the inception phase the TA team will jointly prepare the inception report. The results of a log frame-planning workshop organized a week before the submission of the inception report will be incorporated into the report. The log frame will be based on a general situation analysis, a problem tree analysis, and a capacity constraint analysis. Emphasis will be laid on an integrated approach to service delivery across the sectors by all specialists. The inception report will also contain a list of specified documents available to the team.

### **5.3. Legal Reforms:**

Based on recommendations by Working Group, the TA team will draft amendments to the Alienation of Customary Land Act 1965. The team will also incorporate lessons learnt from other similar situations at the international level. The draft amendments will be submitted to Government for their review. A sufficient amount of time will be spared for government to review and provide feedback on proposed amendments. The TA team will also assist in the review of new legal framework. Any comments / further amendments proposed by government will be discussed with the working group and will be drafted.

### **5.4. Review / Revision of Institutional arrangements:**

**5.4.1. Organizational Assessment / Administrative Review:** [-----] will carry out a detailed assessment to analyze the existing institutional arrangement. The assessment will be analytical to the extent that it will match the responsibilities with the capacity and resources of the department. The review will entail available human resource, organizational structure, workload, and roles and responsibilities. The assessment will identify the weaknesses, gaps and issues of the existing organizational structure, availability of financial and human resources, and existing practices. The assessment will be informed by and follow-up on weaknesses that the MNREM has found internally.<sup>9</sup> As part of this assessment, the [-----] team will also conduct field visits to determine the exact situation.

The analysis will seek reforms to shorten and better define the timeframes for legal services for a deed of lease to customary land (currently takes “up to 20 days”), and applications to lease customary lands (currently: up to 4 months with publication).<sup>10</sup>

**5.4.2. Stakeholder Consultations:** Stakeholder consultations will be an integral part of this assessment. Following a participatory approach, [-----] will involve all the stakeholders throughout the process. The [-----] team will conduct consultations with representation at all organizational levels.

**5.4.3. Revision of LIS:** In addition to the streamlining of administrative processes within MNREM and the Land and Titles Court, the reforms also include the creation of a central, accessible electronic database of leases on customary land. [-----] will better document the judgments of the Land and Titles Court and make them more widely available. [-----]’s proposed system **scans all lands documents, formal surveys, titles, plans, files, and such documents**. These are then automatically entered into a Land Register/MS Access database which is in turn linked a Mapinfo based Digital Cadastral Database. In case the World Bank

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<sup>9</sup> Including but not limited to: “6. Prioritisation of activities; 7. Collaboration among divisions, sections and individuals; 8. Streamlining of operational systems and procedures; 9. Provision of a conducive environment to support and encourage staff development” Ministry of Natural Resources, Environment & Meteorology. Corporate Plan 2006-2008. (June 2005)

<sup>10</sup> Ministry of Natural Resources, Environment & Meteorology. Service Charter 2006-2008. (June 2005)

(WB) database architecture is different, information will be converted into those existing GIS/Land registry databases, and build upon any existing systems.

[-----]'s proposed system can be adapted to the deed system used by Samoa. Decayed and obsolete records can be recovered and entered manually if the documents cannot be automatically recognized. However, because of the unique characteristics of customary land, the pure Torrens systems being developed by the WB project may be ill-suited to the registration of customary land rights. Their existing Land registry database might need substantial technical modification and World Bank and Government staff will be consulted to determine whether this is necessary, and whether it infringes upon the WB project.

**5.4.4. Documentation of Findings:** The findings and observations of the assessment will be documented and presented as an assessment study. Based on the assessment, the report will also include recommendation of various appropriate institutional models.

**5.4.5. Institutional Reorganization:** Based on the findings of institutional review, [-----] team will design mechanisms relating to monitoring and evaluation, organizational structure, information flow, decision making, performance appraisal systems, procedure manuals, job descriptions, staffing plans, and roles & responsibilities, with appropriate changes to the MNREM Service Charter.

#### **5.5. Public Information and Education:**

Public information and education is the most important element of this reform process. The objective of public information and education will be:

- (i) Clarifying important legal and economic concepts (e.g., the difference between mortgaging a lease and mortgaging land);
- (ii) Setting out for landowners and investors important issues to consider before entering into agreements; and
- (iii) Explaining the administrative processes and likely timeline for entering into leases.

Public information and education are expected to be important not only in raising public awareness of opportunities to promote investment, but also in reducing the likelihood of subsequent disputes over the terms and conditions of agreed leases.

#### **Development and Dissemination of Information Material**

This phase will entail the design and implementation of a comprehensive communication strategy to build awareness regarding the important legal and economic concepts, and administrative processes relating to the economic use of customary land. The communication campaign will entail the following steps:

**5.5.1. Stakeholders consultation:** In the light of the legal, administrative and institutional review, a national level stakeholder workshop will be organized. The purpose of this workshop is to seek input in designing and conducting the public information and education campaign.

**5.5.2. Campaign design:** Based on the input received during the stakeholder consultation workshop, a comprehensive communication campaign targeting a variety of audiences will be designed. As mentioned on page one, the majority of Samoans do not favour the availability of decisions to the public. Attempts will be made to design a campaign that aims to change behavior rather than to just raise awareness, through stressing benefits such as secure boundaries, fewer disputes, and uniformity in resolving disputes, should they ever occur again. Special attention will be given to the ethnic and religious diversity in the selected areas and development of material in different languages.

**5.5.3. Approaches:** The main approaches will include Interpersonal communication (workshops, meetings, seminars, individual and group discussions) and the development of information, education, and communication (IEC) material. Keeping the multiple layers of the audiences in view, IEC material will be designed to address the requirements of all the audiences with special attention to ethnic differences.

**5.5.4. Participatory community awareness sessions:** This will entail a two-way communication process between the community and the TA team. The community will be taken through a step-by-step process through group sessions using IEC material to inform, motivate, remove negative perceptions, and bring a positive change in behavior.

**5.5.5. Sensitization sessions:** The participatory sensitization sessions with the stakeholders will be conducted. IEC material addressing issues of legal, economic, and administrative processes will be used.

**5.5.6. Dissemination activities:** The results of the awareness raising initiative will be disseminated through print and electronic media. These results will also be disseminated through a stakeholder workshop to facilitate a possible replication of successful methodologies and materials in addition to building awareness.

**5.5.7. Impact assessment:** The impact of the public information and education campaign will be assessed and documented in the form of a report. The tools used will include feedback forms, exit interviews, pre and post-test forms.

## **5.6. Training & Capacity Development of Staff:**

**5.6.1. Training Needs Assessment:** A comprehensive training needs assessment (TNA) of the staff will be carried out. The objective of the training need assessment will be, to evaluate the job description and compare it with the actual capabilities and experience of the staff to perform adequately. The training need assessment will be a one week exercise.

In the context of proposed project, TNA will be designed to assess the level of understanding through interviews and focus groups will be the main qualitative tool used to assess the training needs of the officials. The findings of the training need assessment will be documented and presented in the form of a training need assessment report. The TNA will [-----] to design a comprehensive training module.

**5.6.2. Module Development:** The TNA report will be reviewed in detail in order to know the existing capabilities and specific training requirement of the target trainees. The gaps identified in the TNA and job requirements will help for covering the necessary topics and areas during the development of training module. Based on the review of TNA, a comprehensive training module will be developed keeping in view the weak areas identified in the assessment of training needs.

**5.6.3. Pre-testing of Module:** The developed module will be pre-tested on a group of trainees. These trainees will be identified in consultation with the executing agency to ensure the true representation. During the pre-test of training module, the impact of training will be assessed with a help of pre and post training tests. The finding of the pre-testing exercise will be documented and shared with EA.

**5.6.4. Refinement of Module:** Based on the findings of pre-testing and feedback from the EA, the training module will be refined by making the necessary changes. The refined module will then be presented to the EA for the final approval.

**5.6.5. Delivery of training:** [-----] will conduct participatory training workshops for the capacity building of staff according to new roles and functions. The participants will be encouraged to actively participate in discussion during the training sessions. The trainers will work as facilitators in the group work and encourage participation in discussions. Supportive approach will be applied during training sessions.

**5.6.6. Training Evaluation:** A pre and post training test will be designed to assess the impact of training. A questionnaire will be designed for this purpose. The results of this test will be summarized and presented along with the training workshop reports.

### 5.7. Reporting:

[-----] will provide brief reports on the contribution of all short-term consultants including domestic and international experts. Apart from that, the following reports will also be submitted:

S. No.	Type	Timeline
1	Inception Report	End of month 1
2	Quarterly Progress Report 1	End of month 3
3	Quarterly Progress Report 2	End of month 6
4	Quarterly Progress Report 3	End of month 9
5	Mid Term Report	End of month 12
6	Quarterly Progress Report 4	End of month 15
7	Quarterly Progress Report 5	End of month 18
8	Quarterly Progress Report 6	End of month 21
9	Draft Final Report	End of month 22
10	Final Report	End of month 24

### 5.8. Workshops and Meetings:

One week before the submission of the inception report the team will organize a planning workshop. Participants will be all team members, the members of the working group, and representatives from ADB. The results of the workshop will be reflected and incorporated in the inception report.

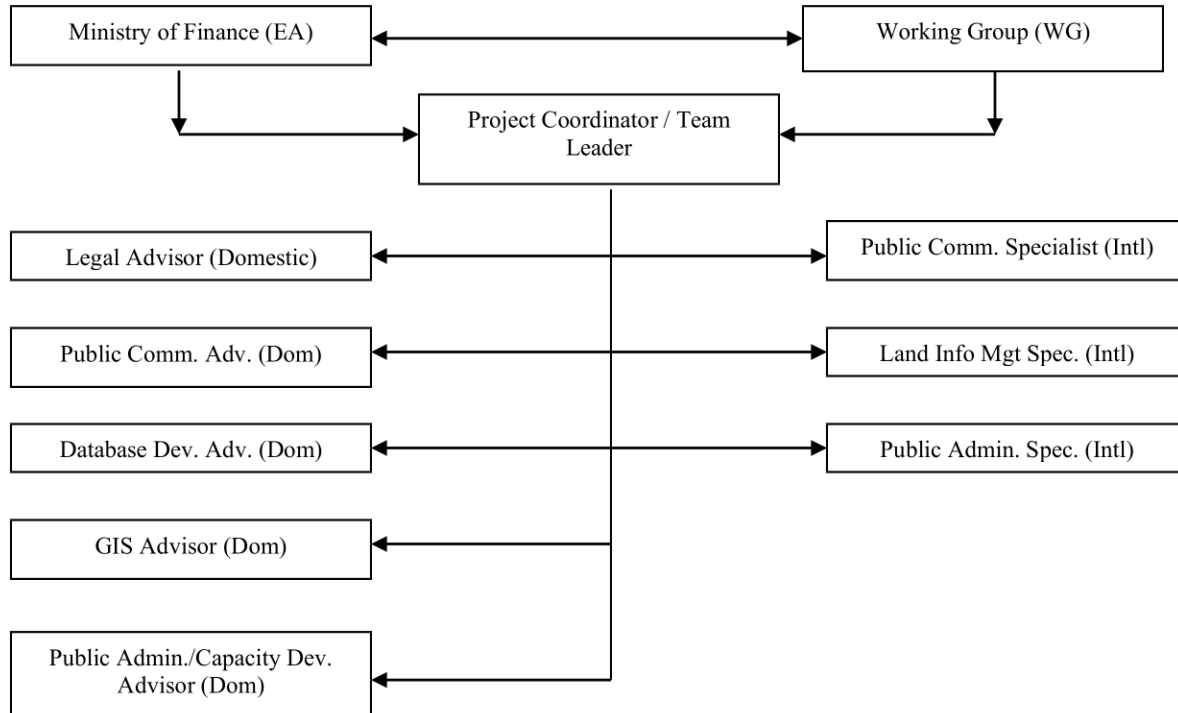
In the eleventh month after TA inception and not more than ten days before the submission of the midterm report, the team will present and discuss its findings at a workshop with the aim to get stakeholder consensus in setting future priorities. The comments, observations and reservations made at this workshop will be incorporated in the mid term report.

The meetings of the working group will take place at least once in a quarter. After the mid term these meetings will be held in months 15, 18 and 21. These meetings will give the team leadership an excellent opportunity to continuously keep abreast of team assessments and concept development while the government stakeholders can make use of the opportunity to vent their own ideas and guide the team on contentious issues. Meetings between the TA leadership and the executing agency on one side and individual team members or parts of or the whole team on the other side will take place according to requirements but on a regular basis.



The draft final report will be completed by Month 22<sup>nd</sup>. At the beginning of the 23<sup>rd</sup> month the TA team will conduct a final workshop in which the findings of the draft final report will be discussed in light of the comments made by the government and ADB to it. The findings of the final workshop comments will be reflected in the final report.

**6. Organizational Structure:**



### 7. Staffing Schedule:

Experts	TimeLine (Quarterly)																Man-Months		
	QTR 1		QTR 2		QTR 3		QTR 4		QTR 5		QTR 6		QTR 7		QTR 8		Home	Field	Total
<b>International</b>																			
Public Communication Specialist																		1	1
Land Information Management Specialist																		2	2
Public Administration Specialist																		1	1
<b>Domestic</b>																			
Team Leader / Project Coordinator																		24	24
Legal Advisor																		1	1
Public Communication Advisor																		3	3
Database Development Advisor																		1	1
Geographic Information Systems Advisor																		1	1
Public Administration / Capacity Development Advisor																		2	2

Continuous	
Intermittent	

**8. Workplan:**

Activities	TimeLine (Quarterly)							
	QTR 1	QTR 2	QTR 3	QTR 4	QTR 5	QTR 6	QTR 7	QTR 8
<b>Inception</b>	█							
Initial Meetings	█							
Formulation of Working Group	█							
Formulation of Work Plans	█							
Literature Review	█							
Inception Report		█						
<b>Legal Reforms</b>		█	█					
Draft amendments		█						
Review of new legal framework		█						
Submission of Final amendments		█						
<b>Institutional Reforms</b>			█	█	█			
Organizational Assessment			█					
Stakeholder Consultations			█					
Administrative Review			█					
Creation of Electronic Database			█					
Data Entry			█					
Documentation of Findings			█					
Institutional Reorganization			█					
<b>Public Information &amp; Education</b>				█	█	█	█	
Stakeholder Consultation				█				
Campaign Design				█				
Workshops/meetings/group discussions				█	█			
Participatory Community Awareness Sessions					█			
Sensitisation Sessions					█			
Dissemination Activities					█	█		
Impact Assessment						█		
<b>Training &amp; Capacity Building of Staff</b>						█	█	█
Training Needs Assessment						█		
Designing of Training Module						█	█	
Pre testing of Training Module							█	
Refinement of Module							█	
Delivery of Training								█
Evaluation of Training								█
Training & Capacity Building Report								█
Final Report								█