



# Technical Assistance Consultant's Report

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Final Inception Report  
Project Number: 37234  
January 2007

## Samoa: Promoting Economic Use of Customary Land (Financed by the Japan Special Fund)

Prepared by The Financial Consultants (FINCON), Pakistan in collaboration with KEW Consult Ltd., KVA Consult, IslandersNET, and FINCON Services Inc., Canada

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.

**Asian Development Bank**

**Asian Development Bank (ADB)**

**January 2007**

**Final Inception Report**

*For*

**TA No. 4712-SAM**

**Promoting Economic Use of Customary Land in Samoa**



**The Financial Consultants (FINCON)  
Pakistan**

*In Collaboration with:*



**IslandersNET**

**FINCON Services Inc., Canada**

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## Abbreviations

ADB	–	Asian Development Bank
TA	–	technical assistance
WG	–	Task Force on Economic Use of Customary Land
GIS	–	Geographic Information System
LIS	–	Land Information System
CEO	–	Chief Executive Officer
QTR	–	Quarter
TF/WG	–	Task Force

## **Government of Samoa Counterparts**

### **(i) Government Task Force Members**

- a. CEO Ministry of Natural Resources and Environment (Chairperson):  
Mr. Tu'u'u Luafatasaga Dr. Ietitaia Setu Taule'alo
- b. CEO Finance: Hinauri Petana
- c. CEO Ministry of Justice and Courts Administration: Masinalupe Tusipa  
Masinalupe
- d. Attorney General: Brenda Heather-Latu Now replaced by Ming Leung  
Wai
- e. Representative of the Samoa Law Society: Toleafoa Solomona Toailoa
- f. Two representatives of the community
  - i. Leaupepe Farani
  - ii. Tuisalega Semu

### **(ii) Secretariat of the Task Force: Project Monitoring Unit, ADB Loan 1785-Small Business Development Project, Ministry of Finance**

- a. Leota Laki Sio, Project Manager
- b. Margaret Lesa, Project Assistant

### **(iii) Ministry of Natural Resources and Environment**

- a. Assistant CEO: Soialo David Fong

## **TA Team**

- (i) Project Director President of FINCON Services Ltd: Mr. Shahid Yusaf  
(Contractually not a formal member of the team)
- (ii) Team Leader/Project Coordinator (Domestic Consultant): Epa Tuioti /  
Kolone Vaai (Contractually not a formal member of the team)
- (iii) Public Communication Specialist (International Consultant): J. Tim  
O'Meara
- (iv) Public Communications Adviser (Domestic Consultant) Chris Solomona

- (v) Land Information Management Specialist (International Consultant): Peter Timothy Gunson
- (vi) Database Development Adviser (Local Consultant): Oloipola Tai Tauilili
- (vii) Public Administration Specialist (International Consultant): Leslie Bohm
- (viii) Public Administration/Capacity Development Adviser (Domestic Consultant): Temukisa Kupa
- (ix) Legal Adviser (Domestic Adviser): Ming Leung Wai Now replaced by Brenda Heather-Latu .
- (x) Geographical Information Systems Adviser (Local Consultant): Proposed to be eliminated.

**Mobilization:** The TA started in August 2006 and major activities were launched during the 4<sup>th</sup> quarter of 2006 (Sept-Dec: referred to as the 1<sup>st</sup> quarter in the implementation schedule). The highly sensitive nature of the reforms has meant the inception activities needed to be managed cautiously. The initial orientation internal inception workshop, of the TA team and the Government of Samoa Task Force, was held on 7<sup>th</sup> September 2006. The second workshop, with the Task Force and other key stakeholders, are planned for February 2007.

## 1. Executive Summary

Customary land is a sensitive and critically important matter for Samoans and their culture. The Government of Samoa would like to help the common man realize the best economic use of their land while safeguarding and promoting the cultural and traditional aspects of the Samoan society. Samoan culture and traditions make this project very challenging in nature and it can not achieve success unless Government of Samoa fully supports its implementation. The government has shown its commitment to the project and has provided critical feedback and support during the initial consultations to ensure that the project moves forward in a positive manner and achieves its objectives.

ADB project is quite limited in its scope. Following are the specific outputs of the project:

- **Output 1:** Propose amendments to Alienation of Customary Land Act 1965 to promote appropriate economic use of customary land
- **Output 2:** Recommend streamlined administration processes for entering into leases of customary lands
- **Output 3:** Design Public education and awareness campaign on key issues and processes for landowners and potential investors
- **Output 4:** Design an improved registration system; with mapping and availability of information on customary land titles and boundaries
- **Output 5:** Review of institutional arrangements to support proposed reforms

However the government objectives are quite broad.

**“Increasing levels of economic activity (investment and production) on customary lands in Samoa”**

### 1.1 Government Support and Commitment

**Government Task Force:** The government has formed a Task Force with the following composition and mandate:

- Composition:  
Government, Investors, NGOs and landowners
- Mandate
  - Provide guidance to the ADB TA team, with work plan, as per ADB contract

- Act as the link between public and private sector and community at large
- Lead and support the great community dialogue and consultations
- Facilitate access to key stakeholders and data

The Task Force may need to be selectively expanded to ensure some of the key stakeholders, such as the Public Service Commission and the Ministry of Women, Community and Social Development are able to provide inputs to this important project.

**Government Commitments:** Government has shown its commitment to support the TA and has carried out an open and frank dialogue with the TA Team. The government's positive attitude and strong commitment to the project is very encouraging. In addition to the local counterpart staff and logistical support, provided for the TA team, the Government has shown its willingness to work with the donor community to identify additional financial and technical inputs to ensure that the project can fully achieve its objectives. The required resources need to be mobilized in a timely manner.

## 1.2 Review of Work Programme Activities and Resource Limitations

The resources provided in the project will kick start the process of looking at the economic potential of the customary lands. TA Team will be able to study the issues and make broader recommendations on how to move forward. An outline design will also be developed. However there are lack of resources in many areas and there are a number of constraints in this project.

### **Review of Project Outputs and Activities:**

The constraints which will have a direct impact on the implementation of the TA need to be discussed in greater detail with the Government during the proposed February 2007 workshop. TA team will need guidance from the Government and the ADB on how to proceed forward, Critical attention and responsiveness to these issues are necessary for the best TA implementation

### **Project Constraints:**

Derived from the analysis of the project review. The ADB project as currently designed; and the resources provided to achieve the project outputs are quite limited. The resources provided in the project will kick start the process of looking at the economic potential of the customary lands. However, resources are lacking in many areas and there are a number of constraints in this project in terms of the legal framework, LIS,

and community consultations and others. Following is a summarized list of constraints:

**Design Constraints**

- Community Consultation requirements
- Estimation of Financial Cost to the Government to undertake the legal and institutional reforms.
- Consultants inputs are limited Including the direct involvement of FINCON
- Economic impact assessment of land reforms
- Gender issues in the design phase

**Implementation Constraints**

- Financial resources needed by the Government to adopt the new system
- Limited Survey Data and resources required to carry out of detailed survey
- Development and implementation of Land Registry System (database and GIS)
- Increased resources for Project management

To achieve success in this project, it has to ensure that the wishes and desires of the people are taken into account and are the foundation of the new framework of land reforms. A continuous dialogue with the community and incorporation of their inputs in the development of new framework are essential. This will ensure that the public has a significant “buy in” and are supportive of the land reforms. The project lacks essential resources to carry out the public consultation exercise.

Project also lacks direct project leadership inputs by the main consultant i.e. FINCON, as there in no leadership inputs by FINCON

Besides that the project needs resources in a number of other areas like:

- Gender mainstreaming to ensure that the new framework fully addresses the gender issues,
- Financial analysis to calculate the cost of these reforms to ensure that the government is able to meet these financial obligations,
- Design of the Financial Management systems to ensure that a system is in place to manage and account the funds generated,
- Economic analysis to determine cost and benefit to the economy through these reforms,

- Enhancement of the Land Registry Software System which is already in place for public lands to ensure that the new system is efficient and effective and can cover customary lands.

**Recommended solutions to Constraints:**

This project needs tremendous infusion of new resources to achieve the government objectives. Additional resources will be required to carry out this very important core exercise. A number of practical steps can be taken to reduce these constraints. These include:

- **Separation of the Design and Implementation Phases:** This TA needs to preliminarily focus on developing a practical design for the project. The resources need to be reallocated so that the design phase is fully resourced and is carried out effectively. The TA will have to focus more on community consultation to design a comprehensive project.

The project implementation phase can be resourced later by project expansion and by bringing additional resources.

- **Strengthening ADB TA Team:** The present TA team needs to be strengthened and reorganized to ensure that their inputs lead to a comprehensive design of the project and is submitted, in a timely manner, for the consideration by the Government Task Force
- **Increasing FINCON's Role:** With the sensitive nature of the project, involvement of several domestics firms, the changing design and scope of the project, the requirement of donor consultations, the extensive liaison of the government and to ensure that the reports are properly developed and submitted to the government and the ADB a more direct supervision by FINCON as the principal contractor is required.
- **Resource Mobilization:** Sustainability of the outputs of the TA could be further enhanced by the Government first addressing a number of design and resource gaps. Initially some resources can be reallocated from the existing TA contract to address the resource requirements. However, the government and ADB may like to address this issue by mobilizing additional resources either through ADB or other donors.

**Task Force Response**

- The Task Force has endorsed the separation of design and consultation from implementation with the current TA focusing on design and consultation.
- The Task Force proposed the separation of the design and implementation phases into two distinct phases with design being given first priority under this TA

- The Task Force also noted that survey data is limited because very little customary land has been formally surveyed.
- The Task Force considered the issues of financial analysis to calculate the cost of land reforms, design of a financial management system to manage the funds generated and the conduct of economic analysis to determine the benefits to the economy from these reforms as important but could be addressed at a later date.
- The Task Force supported the increased role of FINCON and endorsed the idea with clearly defined role for project director and the coordinator.
- Task force endorsed the idea of carrying out public consultations and considers them essential for this project. The Task Force suggested that the scope of Works required be defined and costs associated with consulting inputs and for the Conduct of consultations be estimated by FINCON.

### 1.3 Future Actions

**Inception Workshop:** The workshop initially planned for December 2006 has been rescheduled by the Task Force to February 2007. This will provide a launching platform for the Government to reiterate its endorsement of the TA objectives and to clarify the nine guiding principles (**listed in section 4.4**) aimed at strengthening the framework and process which would facilitate the economic use of customary land. This will coincide with the mobilization of the following consultants :

- Land Information Management specialist (International)
- Database development adviser (Domestic)
- Public Administration specialist (International)
- Public Administration / Capacity Development Adviser (Domestic)

The workshop will also provide guidance for the TA team to refine, where necessary, the scope of inputs and roles of individual consultants and the scheduling of inputs to achieve outputs. The workshop will also provide a forum for the government to, in principal, agree on any changes required for the final project design and scope of outputs to be implemented by the TA team.

**Future Work Programme and Mobilization:** Two domestic consultants and two international consultants will be mobilized during the 1<sup>st</sup> quarter 2007 with the rest of the team to be mobilized towards the end of 2<sup>nd</sup> quarter of the implementation schedule. The final re-scoping of the roles of consultants and the scheduling of inputs for the output activities are expected to be finalized during first half of the 2<sup>nd</sup> quarter.

## 2. Introduction

This report reviews the original TA objectives, work plan, consultants TORs and inputs in light of the preliminary consultations with the stakeholders in Samoa as well as the review of the relevant secondary data. Based on the review and consultations, the TA team has identified the core issues and constraints that this TA is facing. The TA team has also identified some preliminary solutions to address these key issues which will be further refined during the first external workshop in December.

The original plan to hold a workshop with a broad representation of the community in September 2006, during the first Inception Mission, was not held. Instead a more cautious approach was adopted given the sensitivity surrounding any public discussion on using customary land for investment purposes. This change in approach led to the holding of an internal workshop in September 2006 involving the TA team, the Government appointed Task Force, an ADB representative and the Ministry of Finance project monitoring unit personnel. Broadly based inception consultations, involving other stakeholders, initially planned for September 2006 is now planned for February 2007.

This Inception report captures the dialogue with the Government's Task Force from the September 2006 internal workshop and the initial assessment of possible changes needed to the design and scope of the proposed reforms relative to the present TA design. This Inception Report will be used as the basis for the presentations at the February 2007 Workshop.

### 2.1 Background to the TA

The technical assistance (TA) on Promoting Economic Use of Customary Land was agreed upon by the ADB and the Government of Samoa during the programming discussions of 2003 and was listed in the Samoa Country Strategy and Program Update 2004-2006. The Design/Monitoring Framework and the Terms of Reference of this ADB TA 4712-SAM are in **Appendix 1**. The present TA has been based largely on the exploratory work undertaken under the ADB Loan 1785-SAM and the related TA 3549-SAM: Capacity Building of Financial and Business Advisory Services which led to the production of the main report entitled "Economic Use of Customary Land".

The Task Force set up under the ADB TA 3549-SAM submitted a Cabinet paper through the Minister of Finance based on the findings and

recommendations of the main report entitled “Economic Use of Customary Land” and a report entitled “Report on the Study Visit of Task Force” following visits by the task force to Fiji and New Zealand to observe the framework, systems and processes in these countries which deal with the lease and/or use of customary lands.

After noting the exploratory work under the ADB TA 3549-SAM, the Government has approved the establishment of a Task Force to guide the next phase of the reforms to be implemented under the new ADB TA 4712-SAM.

Technical assistance inputs from FINCON and its team will support the Task Force. The Project Monitoring Unit of the Ministry of Finance been tasked to provide secretariat support to the Task Force.

## 2.2 Initial Mobilization And Current Status

Under the ADB TA 3549-SAM, the Task Force, mainly comprised of government officials and chaired by the CEO Finance, had a relatively low public profile. This was due to the delicate and sensitive nature of customary lands in the socio-political environment in Samoa and also because the country was moving towards the March 2006 general elections for the Parliament.

Even with the low public profile of the Task force, during the lead up to the March 2006 General Elections, a high profile controversy developed with accusations that the Government was planning to sell customary lands as a part of the World Bank assistance to Samoa. The World Bank had to publicly clarify the situation about its assistance to set up a Torrens-based land registration system for public lands; and that there were no such conditions for the sale of customary lands. The controversy highlighted the sensitivity of land reforms in the country and importance for the government to make its position very clear that the land reforms should not result in customary lands being sold or alienated from the traditional title holders. The approval of the nine guiding principles (**listed in section 4.4**) made this position of Government clear.

The situation has also highlighted the need to take a cautious and sensitive approach in the initial public consultations. The key focus has to be on public awareness about the guiding principles and key outputs expected from the customary land reforms. It has also highlighted the need for the ADB TA team not to take a high public profile to avoid being perceived as the main drivers of the land reforms. Therefore the ADB TA team would need to be clearly seen as providing a supporting and facilitating role with the Task Force members and secretariat taking the lead in the public consultations.

The September 2006 workshop held between the FINCON team and the Task Force provided the opportunity to brief members of the Task Force on the technical resources currently available to the FINCON Team. The Task Force was also apprised of the expected counterpart tasks and services which the FINCON team would require to enable its members to optimize their inputs within the time allocated under the TA. The workshop also provided the opportunity for the FINCON team to discuss with the Task Force the TA design and implementation constraints which needed to be addressed if the overall desired impact of the reforms is to be effectively achieved.

The key people met by the Inception Mission during September 2006 are in **Appendix 4**. The reports which were collected and reviewed by the Inception Mission and used as background material for this Inception Report are in **Appendix 5**.

## 3. Organizational Arrangements

### 3.1 The Government Task Force

The Government Task Force members appointed by Government for the second phase of the land reforms programme are:

- (i) CEO Ministry of Natural Resources and Environment (Chairperson)
- (ii) CEO Finance
- (iii) CEO Ministry of Justice and Courts Administration
- (iv) Attorney General
- (v) Representative of the Samoa Law Society
- (vi) Two representatives of community

In addition to the existing members of the Government Task Force; it is proposed that the following persons/organizations be considered to be co-opted by the Task Force given their critical potential contribution to the implementation of the customary land reforms

- (i) President of the Lands and Titles Courts (when reviewing the legal, administrative procedures and registries )
- (ii) CEO Public Service Commission (when reviewing and deciding on the institutional support options for implementation of the land reforms)
- (iii) CEO of the Ministry of Women, Community and Social Development (when reviewing the role of the village fono and consultations at the village level)
- (iv) President of the Samoan Bankers Association (when reviewing from a commercial perspective the terms and conditions of customary land leases and mortgages on customary land leasehold interest)
- (v) President of the Samoa Hotel Association (when reviewing the setting of terms and conditions of leases for tourism projects and the overall governance practice in managing the relations between the lessor ,village fono and the lessee).

The Working Group / Task Force, essentially, consider the role of the Task Force as one of facilitation; for which the current membership is adequate. However it would be prepared to add two additional members representing the general community to strengthen community networking and to facilitate wider public consultations.

## 3.2 The Task Force Secretariat

The Government, while appointing the Task Force, also approved the Project Monitoring Unit (PMU) of ADB Loan 1785-SAM: Small Business Development Project, based in the Ministry of Finance, to be the secretariat of the Task Force given the leading role played by the PMU in the exploratory work on customary land reforms under the ADB TA 3549-SAM. It is understood that secretariat for the Task Force is expected to provide the following services:

- (i) Liaise with the Chairperson and the ADB TA Project Director/Coordinator in the setting of the annual work programme and the quarterly meeting agenda.
- (ii) Keep a record of the minutes of the Task Force meetings and the follow-up schedules which are circulated to the Task Force and the ADB TA Team preferably two week after each meeting.
- (iii) Liaise with the ADB TA Project Director/Coordinator in preparation of presentations of the Task Force. It is expected that there will be at least one month's notice to the Project Director/Coordinator from the Task Force if a special presentation is needed.
- (iv) Organize venues, stationery, photocopying services and audio visual aids for presentations to the Task Force.
- (v) Other services as the Task Force consider necessary from time to time.

## 3.3 Government Commitments

The Government is expected to provide the following support so that the ADB TA team could provide timely and effective support to the Task Force:

- (i) Provide guidance to the ADB TA team, with work plan, as per ADB contract.
- (ii) Provide access to the past relevant reports, data, survey records, database / GIS systems, and court rulings dealing with customary lands.
- (iii) Provide Local Counterpart Staff from PMU and relevant Ministries.
- (iv) Provide transportation for ADB TA members attending meetings and workshops held outside of Apia town area.
- (v) Provide permanent office space for Project Coordination and venues for meetings and consultative workshops for the ADB TA members
- (vi) Provide stationery and photocopying services for presentations to the Task Force meetings and consultative workshops

### 3.4 Revised Reports and Reporting Schedule

The TA team will liaise with the secretariat of the Task Force to develop an indicative work programme. To ensure the political ownership and leadership of the proposed reforms, the Task Force is expected to provide the regular quarterly status reports to the cabinet to seek their endorsement of proposed activities.

The ADB team is to provide the following nine reports which could be integrated into the quarterly reports to Cabinet

- (i) 4 quarterly reports
- (ii) 1 inception report
- (iii) 1 mid term review report
- (iv) 1 final report

An indicative reporting plan to Cabinet could be as follows:

- (i) By the end of October 2006 (1<sup>st</sup> Qtr): Inception Report outlining the proposed implementation and public communication arrangements for the inception activities of the reforms programme and the workshop planned for February 2007.
- (ii) By the end of February 2007 (2<sup>nd</sup> Qtr): Quarterly report for the progress up to the end January 2007 and seeking endorsement of the revised design of outputs and activities from the ADB TA to effectively support the work of the Task Force
- (iii) By the end of April 2007 (3<sup>rd</sup> Qtr): Quarterly report on the institutional and administrative reforms.
- (iv) end July 2007 (4<sup>th</sup> Qtr): Seeking endorsement of the final institutional reforms and implementation arrangements
- (v) By the end of November 2007 (5<sup>th</sup> Qtr): Status report on implementation arrangements
- (vi) B y the end of February 2008 (7<sup>th</sup> Qtr): Status report
- (vii) By the end of June 2008 (8<sup>th</sup> Qtr): Draft Final report on the outcomes of the reforms achieved and improvements to be effected to further facilitate and sustain better economic use of customary lands through leasing

## **4. Summary of Work Programme Activities**

### **4.1 Background**

Customary land comprises approximately 565,000 acres or 81% of the land area of Samoa and includes much of the land with potential for tourism development or more intensive agriculture development. The vibrant and stable Samoan social system is based on the control and usage of customary lands through its Matai system. Therefore, Samoan society has been very protective of its customary lands with strict laws against alienation or sale of such land. For future sustained growth, the challenge for Samoa is to work out the reforms and institutional changes necessary to support the economic use of its customary lands. At the same time, the reforms must keep its system of traditional control, and usage of such customary land, intact.

The TA programme of activities has therefore been designed to accommodate and focus on what could be improved within the parameters set by Government so that Samoan customary land will not be alienated or sold. The highly sensitive nature of the proposed customary lands reforms has therefore dictated the types and sequencing of TA programme activities so that they are not misinterpreted by the general public.

### **4.2 Process For Prioritization of Action**

To maximize “buy in” for the proposed reforms by the Task Force, it is envisaged that the TA team will work closely with the Task Force on the prioritization and sequencing of TA inputs to support the overall customary land objectives set out by the Government. It is proposed that after the February 2007 workshop, the final work plan and sequencing/timing of TA inputs will then be finalized by the Task Force.

To secure continued ownership and support of the proposed activities at the highest political level, it is envisaged that a Cabinet information paper will be submitted by the Ministers of Finance and of Natural Resources and Environment immediately after the submission of the second quarter report. This information paper will contain the prioritized reform action plan, and will seek Cabinet views on issues. Feedback from the government will be given particular attention during this second phase of the land reforms programme.

### **4.3 Summary of Objectives And Outputs**

The intended impact of the TA is to increase levels of economic activity on customary lands. The objective 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.

**The five TA outputs are:**

- (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
- (iv) Improved registration, mapping and availability of information on customary land titles and boundaries
- (v) Based on findings from above activities, implementation of institutional arrangements for appropriate government involvement in matters related to economic use of customary land

### **4.4 Nine Guiding Principles for Customary Land Reform**

The Government has approved the following customary land reforms guidelines aimed at strengthening the framework and process to facilitate the economic use of Customary Land. These guidelines will need to be factored into the delivery of the above five outputs

- (i) Customary land will not be alienable/alienated and cannot be sold
- (ii) Primary decision-making on the use of customary land stays with the title holder and family
- (iii) The lease application process should be as efficient and practicable as possible
- (iv) The process should produce robust and bankable leases
- (v) Government will play a facilitative and educational role in the leasing process
- (vi) Government will improve the transparency of its processes and the capacity of its departments and institutions
- (vii) Government will promote and support/facilitate the efficient use of land for economic use of land for economic development of Samoa
- (viii) Samoa will earn the reputation as a certain, safe place for local and foreign investment
- (ix) Disputes will be resolved efficiently, timely and according to law

## 4.5 Overview of Work Programme Outputs

<u>Output One</u>	<u>Progress Report/Action Taken</u>
Amended Alienation of Customary Land Act 1965 (the Act) so that it better promotes economic use of customary land	Exploratory work of ADB TA 3549 highlighted the need for an explicit provision to allow for the mortgaging of leasehold interest of customary land leases. The original sequencing of Activities 1.1, 1.2 and 1.3 was based on the Government passing amendment to the Alienation of Customary Lands Act and then having the situation reviewed with further legislative refinements made at the end of the TA period.
<b><u>Comments / Issues</u></b>	
<p><b><u>Comments</u></b></p> <p>Government has decided not to make amendments to the Alienation of Customary Land Act 1965 until after extensive consultations of the Task Force. Therefore the sequencing of Activities 1.1, 1.2 and 1.3 will have to be rescheduled towards the end of the TA. In addition to making explicit enabling provisions for mortgaging of leases of customary lands, the following areas have also been identified for review of the Alienation of Customary Lands Act 1965:</p> <ul style="list-style-type: none"> <li>(i) Prohibition of a Samoan not holding a Matai title to lease customary land.</li> <li>(ii) Simplification of the definitions like “authorized purposes” for leases.</li> <li>(iii) Role of the Minister of Lands as trustee for customary land owners.</li> <li>(iv) Updating / streamlining processes for establishing a lease of customary lands.</li> </ul> <p>There is no provision in the present TA design for reviewing other related legislation like the Lands and Titles Court Act 1981 and the Land Registration Act 1992/1993. These acts need to be reviewed and amended as part of the comprehensive package for enabling better economic use of customary lands. In consultation with the government and other stake holders during the February Workshops, the scope of the inputs by the Legal Specialist needs to be rescheduled and expanded subject to extent to which the capacity of the Attorney General’s office could assist with legal advisory services. The formal proposal to revise the TORs can then be submitted to the ADB for its approval.</p>	
<p><b><u>Future Work</u></b></p> <ol style="list-style-type: none"> <li>1. Instructions for the drafting of the proposed legislative amendments will be established after the endorsement of the policy reforms. These policy reforms to be effected through amendment of the Alienation of Customary Land Act 1965 could be finalized by the 2<sup>nd</sup> quarter following the endorsement by Cabinet of the Task Force’s recommendations.</li> <li>2. The policy decisions to be affected by legislative amendments to the Lands and Titles Court and the Land Registration acts could be packaged together and drafted for submission to the Parliament towards the end of the TA period.</li> </ol>	

<b><u>Output Two</u></b>	<b><u>Progress Report/Action Taken</u></b>
Streamlined administrative processes for entering into leases on customary land.	<p>The ADB TA 3549 conducted mapping of the administrative processes. The TA determined that the main deterrent to investors using customary lands has been the protracted delays in establishing leases when working through the detailed procedures of the Lands and Titles Court for settling the disputes</p> <p>Activities 2.1, 2.2 and 2.3 assume that the International Public Administration Specialist will map out the processes and identification of possible bottlenecks to be addressed.</p>
<b><u>Comments / Issues</u></b>	
<p><b><u>Comments</u></b></p> <p>Activities 2.1, 2.2 and 2.3 would require close liaison between the TA team with the Ministry of Natural Resources and Environment and the Lands and Titles Court. Some of the administrative processes for entering into leases on customary lands which could be streamlined include the following:</p> <ul style="list-style-type: none"> <li>(i) Use of the Government newspaper “Savali”, and other newspapers for the public notices.</li> <li>(ii) Shortening the period allowed for objections to be filed with the Lands and Titles Court.</li> <li>(iii) Restricting who can file an objection with the Lands and Titles Court.</li> </ul> <p>A detailed review will be required to focus on mapping the current administrative processes which involve both the Lands and titles Court and the Ministry of Natural Resources and Environment. The review will identify areas where these processes could be streamlined and realigned to make it easier to enter into leases of customary lands. In the present design of this TA, a more in-depth involvement of the Lands and Titles Court may be needed during the implementation phase. Consideration may also need to be given to establishing a public database / administrative mechanism to bring together those customary land owners who want to lease out their lands and potential investors. This database could have a critical contribution to the land reforms achieving their main goal of “increasing efficiency and effectiveness with which the customary land owners and investors implement agreements to utilize customary lands</p>	
<p><b><u>Future Work</u></b></p> <ol style="list-style-type: none"> <li>1. It is envisaged that the institutional review will start in the 2<sup>nd</sup> quarter to map out the present administrative processes. The public could then be invited to comment on ways and means they feel will be appropriate for streamlining the relevant procedures, responsibilities and documentation of these processes.</li> </ol>	

<b><u>Output Three</u></b>	<b><u>Progress Report/Action Taken</u></b>
<p>Public information materials disseminated and public education processes conducted on key issues and processes for land owners and investors proposing to enter into leases on customary land.</p>	<p>The highly sensitive nature of issues relating to customary lands has led to the relatively cautious approach taken with the September 2006 internal inception mission meeting involving only:</p> <ul style="list-style-type: none"> <li>i) the Government Task Force,</li> <li>ii) the ADB TA Team,</li> <li>iii) a representative of the ADB; and</li> <li>iv) The staff of the Project monitoring Unit of the Ministry of Finance.</li> </ul> <p>The public workshops will initially focus on allaying fears that the proposed reforms will lead to alienation or sale of customary lands. Activities 3.1, 3.2 and 3.3 which are to be undertaken by the International Public Communication Specialists and the domestic Public Communication Adviser assume that additional resources are available, TA scope will be expanded to enable extensive public consultations and education activities throughout the TA period.</p> <p>During the inception mission the role and importance of public consultation and awareness process was greatly emphasized as being critical to the success of these reforms and must be adequately resourced. These will be reconfirmed in February workshop and a formal reallocation request to the ADB will be submitted.</p>
<b><u>Comments / Issues</u></b>	
<p><b><u>Comments</u></b></p> <p>The focus will be on the design and implementation of a comprehensive bilingual communication strategy. It will build awareness regarding the important legal and economic and administrative processes relating to economic use of customary lands.</p> <p>The highly sensitive nature of the reforms requires a well resourced public awareness and education component of the TA centered around the public consultations driven by the Task Force and avoiding any perception of external influences. The present TA budget for public awareness and education is considered inadequate for undertaking Activities 3.1, 3.2 and 3.3. Therefore a source of funding for delivery of the public awareness and education output needs to be secured from the outset before any detailed planning of the Activities is undertaken by the Public Communication Specialist and Adviser.</p>	

The increased emphasis on bilingual consultations and toning down any public perception of “outsiders” driving reforms will require more public role of the Public Communications Advisor and background support by the Public Communication Specialist at the initial stages of the TA. The scope of the tasks of the Public Communications Advisor will be expanded and shared among persons with combined skills in communications and customary traditions and practices. Although they are not in the original TA design, the following may also need to be considered to further enhance a wider and in-depth ownership of the proposed reforms:

- (i) The government may consider the appointment of a Commission of Inquiry, if it feels that the delicate nature of the reforms requires elevation of the Task Force to a Commission of Inquiry. This decision may be made after the feedback from the first consultations with the stakeholders.
- (ii) There may also be a need to have extensive consultations with the village fono on the possible role of the village fono in the facilitation and general governance of the customary land leases under the village fono jurisdiction.

#### **Future Work**

The original plan envisaged the public information and education component starting as from the 4<sup>th</sup> quarter. It is now envisaged the public information and education activities will start from the 1<sup>st</sup> quarter and are expected to intermittently go right through to the 8<sup>th</sup> quarter. The domestic communications advisers will be working with the Project Director/Coordinator in the preparation and delivery of the Stakeholders workshop planned for February 2007.

<b><u>Output Four</u></b>	<b><u>Progress Report/Action Taken</u></b>
<p>Improved registration, mapping and availability of information on customary land titles and boundaries</p>	<p>Exploratory work of ADB TA 3549 highlighted that leased customary lands are required to be registered under the Land Registration Act 1992/1993. The Lands and Titles Act requires the Land Registrar to enter any decisions of the Lands and Titles Court concerning the title or status of customary lands</p> <ul style="list-style-type: none"> <li>▪ Activity 4.1 assumes that there are resources available in addition to the ADB TA to design and develop a database and that access to decisions of the Lands and Titles Court are not restricted</li> <li>▪ Activity 4.2 assumes that the land registry for freehold land, public land and customary leased land, developed under the World Bank IDA 3193 –WSO can be adapted for registration of customary lands and related Lands and Titles Court decisions</li> <li>▪ Activity 4.3 assumes that there are resources available in addition to the ADB TA for undertaking surveys and digitizing them under the GIS</li> </ul>
<b><u>Comments / Issues</u></b>	
<p><b><u>Comments</u></b></p> <p>Whilst there is evidence that of at least 80 customary land leases have been registered, the registration of the decisions of the Lands and Titles Court have not been effected yet due to lack of clarity in the legal and administrative linkages between the Lands and Titles Court and the Ministry of Natural Resources and Environment.</p> <p>Undertaking Activity 4.1 will need to be re-phased if no resources are available upfront for development of an electronic database. The lack of clarity and the lack of registered lease information, signify that there will also be a likely difficulty for the domestic Database Development Adviser to access the decisions of the Lands and Titles Court for inputting into the database.</p> <p>Activity 4.2 could be undertaken on a timely basis if the Database Developer has access to the manuals of the proposed system established under the World Bank loan IDA 3193-WSO. The pure Torrens systems being developed under the World Bank project may be ill-suited to the registration of the customary land rights. If there are major modifications to be made then the whole registration system may need to be reconsidered for implementation under this TA.</p>	

Undertaking Activity 4.3 is likely to be very difficult to implement given the lack of resources for surveys of customary land and digitizing them. Therefore the role and scope of the inputs required of the Geographic Information System Adviser may need to be re-examined.

**Future Work**

1. A detailed system study will be carried out based on the existing work done under the World Bank project as well as the requirements for a comprehensive land registration system for customary land. Based on the system study a design for the new LIS system will be developed.
2. The roles and phasing of the inputs by the Database Developer and Geographical Information Advisor would need to be reviewed following the February 2007 consultations with the Government Task Force on the design and resourcing aspects of the proposed customary land reforms.
3. The Database developer could undertake a brief scan of the situation regarding the systems involved in Activities 4.1 and 4.2 during the 1<sup>st</sup> and 2<sup>nd</sup> quarters.
4. A legal review of the present practice of restricting access to the decisions of the Lands and Titles Court would also need to be commissioned during the 1<sup>st</sup> quarter to determine if there is value in creating databases for those types of information. The findings from this legal review could then be tabled at the February 2007 workshop

<b><u>Output Five</u></b>	<b><u>Progress Report/Action Taken</u></b>
<p>Revised institutional arrangements to be put in place that reflect appropriate Government involvement in matters related to economic use of customary land.</p>	<p>The key Government institutions involved in the administration of customary lands (Ministry of Natural Resources and the Lands and Titles Court) are represented in the Government Task Force by their respective CEOs.</p> <p>Activities 5.1, 5.2 and 5.3 assume the International Public Administration Specialist will work closely with the domestic Public Administration /Capacity development adviser in reviewing and implementing reforms and training for delivery of the tasks.</p>
<b><u>Comments / Issues</u></b>	
<p><b><u>Comments</u></b></p> <p>The main focus of the institutional review will be on matching responsibilities with capacity and resources of the relevant Government institutions. The reviews will be conducted as part of the regular reviews of the corporate plans of each of the relevant institutions. At least six months of training and capacity building has been built into the present activities.</p> <p>The TA team will have to work closely with the Public Service Commission to access past institutional reviews and to fully brief the Public Service Commission on the proposed institutional reforms and related training and capacity building which need their approval.</p> <p>Personal involvement of the President of the Lands and Titles Court, given his previous experience as CEO of Ministry of Justice and Minister of Ministry of Natural Resources and Environment, is seen as critical not only in the success of the proposed reforms but also in guiding and facilitating the institutional reforms needed to align and restructure the institutional arrangements to allow a more effective and efficient use of customary lands.</p>	
<p><b><u>Future Work</u></b></p> <p>The domestic Public Administration /Capacity development adviser will undertake a brief scan during the 1<sup>st</sup> quarter of the institutional situation for tabling at the February 2007 workshop. She will also brief the local counterparts on the proposed approach and steps to be adopted for the initial phase of the institutional review envisaged to start as from the 2<sup>nd</sup> quarter.</p> <p>The detailed review will be carried out once the international consultant is mobilized in January 2007.</p>	

## 4.6 Revised Work Programme Outputs

Graphical plan of comments and issues described above. The following will be submitted for approval by the Task Force during the February 2007 Workshop.

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 Task Force	█							
Formulation of Work Plans	█							
Literature Review	█							
Inception Report	█							
<b>Institutional Reforms</b>		█	█	█				
Organizational Assessment		█						
Stakeholder Consultations		█						
Administrative Review		█						
Systems Study of Electronic Database		█	█					
Documentation of Findings			█					
Institutional Reorganization			█	█				
<b>Legal Reforms</b>		█						█
Draft amendments		█						
Review of new legal framework								█
Submission of Final amendments								█
<b>Public Information &amp; Education, Gender issues</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								█

## **5. Design and Implementation Constraints and FINCON Recommendations**

The following section summarizes the issues described above, in the work programme, organizational arrangements, additional challenges present in the TA design, and recommendations to address these challenges

### **Summary of Design Constraints**

- Community Consultation requirements
- Estimation of Financial Cost to the Government to undertake the legal and institutional reforms.
- Consultants inputs are limited Including the direct involvement of FINCON
- Economic impact assessment of land reforms
- Gender issues in the design phase

### **Summary of Implementation Constraints**

- Financial resources needed by the Government to adopt the new system
- Limited Survey Data and carry out of detailed survey
- Development and implementation of Land Registry System (database and GIS)
- Increased resources for Project management

### **5.1 Community Consultation**

As demonstrated in the discussion of output three; to achieve success in this project we have to ensure that the wishes and desires of the people are taken into account and are the foundation of the new framework of land reforms. A continuous dialogue with the community and incorporation of their inputs in the development of new framework are essential. This will ensure that the public has a significant “buy in” and that they are supportive of the land reforms. The project lacks essential resources to carry out the public consultation exercise. More funding, in-kind support from the government, and a leadership role provided by the Task Force can adequately extend the consultations to cover more of Samoa.

Specifically, FINCON would like to request the TF’s assistance in the following areas:

- (i) Act as the link between public and private sector and community at large
- (ii) Lead and support the great community dialogue and consultations
- (iii) Facilitate access to key stakeholders and data

The Task force is fully aware of the resource constraints. Additional resources, mostly during the implementation stage, may be required and the government has shown a willingness to carry out discussions with the donor community to mobilize additional resources to achieve the government objectives

Furthermore, plans to resource consulting inputs follow.

## 5.2 Limited Inputs

Currently, there are not enough inputs to ensure a “buy-in” to the TA, and the successful running of the public consultation phases.

Therefore, the top priority is to reallocate existing resources into the public consultation inputs of this TA. The next sections will discuss the need to reduce GIS and LIS inputs, equipment funds and other heads to support this.

A matrix follows in **section 5.8** which details the specifics of the reallocation plan. Furthermore, revised Terms of Reference of existing positions are in **Appendix 2**. The original staffing and work plans for the TA team are in **Appendices 6 and 7**.

The inputs into the project are currently not enough to properly impact, as well as to monitor changes in economic activity. Additional inputs that can benefit this TA include addressing gender issues, and assessing the impact of women’s enterprises and customary land that can impact economic activity. The lack of a formal monitoring and evaluation component also hinders this TA.

Sample Terms of Reference for new positions are in **Appendix 2**

## 5.3 Limited Project Management Inputs

The sensitive and fluid nature of the socio-political environment in which the TA team will work, requires a redesign of some components of the TA whilst still having flexibility to ensure the inputs from the TA team effectively supports the work of the Government Task Force. Such a situation requires a more direct role of FINCON through its president, Mr. Shahid Yusaf. The high level experience of Mr. Yusaf will become a

valuable component of the TA team. His input will be particularly valuable in the timely refining of the project design, project management, and the provision of technical advice to carry out the reform process.

The project has provided a project coordinator with the limited scope. There are no international inputs for project management. These are increasingly important as the scope and scale of the project is changing. It is taking a very different form from the Original TORs. There are extensive consultations needed with government and the donors to redefine the scope of the project and to redevelop the project objectives so that they are more in line with Government role. Also the process needs constant monitoring, supervision and support so that it moves forward. A more active participation by FINCON as project director is essential at this stage. This will ensure that the road blocks and bottlenecks are handled correctly and quickly and the project moves forward with a steady pace. Without these constant inputs and site visits there is a fear of project slowing down and may come to a halt, as it was seen after the initial inception mission.

## **5.4 Human Resources and Financial Resources Estimation**

It will cost the government to undertake this reform agenda. The policy level reforms when implemented will cause the reorganization and restructuring of some government functions and institutions. The estimated financial and human resource commitments of the Government to successfully undertake these changes need to be estimated. Government also needs to carry out a dialogue with the donor community to determine how it will pay for these changes.

## **5.5 Software Development**

The discussion of output four reveals the lack of a survey team and the lack of counterpart programming resources and IT resources needed to carryout the LIS software development and surveying for GIS.

The project, as it stands, needs a major re-design for the implementation of GIS surveys and the development of LIS software, either through the current TA. As such, it is recommended that this TA involve itself with the design phases of software development and a plan for the eventual surveying of all customary lands of Samoa, while resources are shifted to public consultation.

The proposed customary land surveys, software development for a LIS and GIS system will require additional resources which have not been

provided in the TA. These financial requirements need to be estimated, which will enable the Government to cost and identify the funding arrangements for effective implementation of the proposed package of reforms. It is also important that these be carried out by first reviewing the existing systems in place. Especially the software system implemented through the World Bank project. Efforts need to be made to see if that can work for customary lands. However, if it is found that the system can not work for customary lands, than a complete scoping exercise needs to be carried out to determine which need s to be done to address this issue.

## 5.6 Revised Inputs

The ADB Team at present is made up of the following, followed by brief comments on proposed changes, if any.

Input	Current Situation	Proposed Revision
<p>Team Leader/Project Coordinator (Domestic Consultant)</p> <p>At present Epa Tuioti occupies this position</p>	<p>This position currently coordinates local inputs. There is no Team leader position and there are no international inputs for the project management.</p> <p>However more high-level project management expertise is required in light of the changes in the TA design.</p>	<p>The expected extensive involvement of the Team Leader in high level coordination of the work of the ADB TA team in refining the design and implementation of the project requires the following adjustments subject to reconfirmation of the situation at the planned February 2007 workshop:</p> <ul style="list-style-type: none"> <li>a. Kolone Vaai, Co-Managing Director of KVAConsult to share the work of Team Leader with Epa Tuioti, with no impact on Project budget.</li> <li>b. Mr. Shahid Yusaf of FINCON Services Inc to become more directly involved in the project management, trouble shooting and refinement of the design as there are no inputs for that in the project.</li> </ul> <p>However a formal decision on</p>

		the inclusion of the project director has been deferred. This proposed position may or may not be required as the project progresses further.
<p>Public Communication Specialist</p> <p>At present, J. Tim O'Meara occupies this position.</p>	<p>Lack of public support for the redesign will mean that the reforms will have to be communicated to the general public.</p>	<p>The consultant will mainly contribute to public communication phases in the design and conceptual stages</p> <p>If available, additional resources are to be allocated to this position for implementation and execution of additional community consultation pilots.</p>
<p>Public Communications Adviser</p> <p>At present Chris Solomona occupies this position</p>	<p>Lack of public support for the redesign will mean that the reforms will have to be communicated to the general public.</p> <p>At present, the project does not cover enough communities for this project.</p>	<p>The expanded nature of the consultations has led to a proposal (subject to reconfirmation of the situation at the planned February 2007 workshop) to increase the allocation of resources for this position and that the tasks of this position.</p>
<p>Legal Adviser</p> <p>At present Brenda Heather is in the process of finalizing documentation for her to fill this position once she leaves Government service</p>	<p>Reform options and legal framework is restricted to the Alienation of Customary Lands Act 1965.</p>	<p>Expanded to include review and amendment of other related legislation in addition to the Alienation of Customary Lands Act 1965. The inputs are to be re-phased to reflect the change in the approach for implementation of the legal reforms. The redefined scope and expanded TORs with proper ADB approval will be needed.</p>
<p>Land Information Management Specialist</p> <p>At present Peter Timothy Gunson occupies this</p>	<p>Inputs to study and design a broader LIS and GIS system. The resources of the software development, satellite imagery and survey are not provided in the TA.</p>	<p>Reduce inputs to 1 man month and separate design from implementation phase. Changes to this position are proposed to make this consultant perform a system study of the LIS and develop</p>

position		a proposed outline design for a software solution.
Database Development Adviser  At present Oloipola Tai Tauilili occupies this position	Inputs to study and design a broader LIS system. The resources of the software development are not provided in the TA.	Consultant will assess the LIS situation, perform a system study and design a proposed solution.
Geographical Information Systems Adviser	Subject to reconfirmation of the situation at the planned February 2007 workshop, the role of this position would be reviewed in the light of the expected difficulties in securing the resources and the limited surveys of customary lands likely to be available during the TA period	As surveys are not expected to be carried out at this design stage, this position is proposed to be eliminated from the proposed TA design. However a final decision, in this regard, will be made after the February workshop.
Public Administration Specialist At present Leslie Bohm occupies this position	Mobilization will occur as soon as the legal review is finished.	No foreseeable changes
Public Administration/Capacity Development Adviser  At present Temukisa Kupa occupies this position	The consultant will carry out an initial review in quarter 2	No foreseeable changes

## 5.7 Sustainability Guidelines

Sustainability of the outputs from the TA project will be dependent on the following issues being effectively addressed

- (i) Ensuring that the design of the TA fully captures the intended scope of the reforms envisaged by the Government.
- (ii) Launching a communication strategy to emphasize that the proposed reforms are a Government initiative and that there are significant benefits to the community when they are fully implemented.
- (iii) Ensuring that the outputs, tasks and scheduling of inputs by the TA team match the work plan of the Government Working Committee
- (iv) Operational links between the TA team consultants and their government counterparts. The specific counterparts for each of the members of the TA team will need to be identified. The counterparts will then have to ensure their availability to optimize skills transfer from the TA team specialists
- (v) Securing additional resources to the ADB TA to allow effective implementation of the reforms. This necessitates the careful costing of the financial and technical reform options so that the Government could effectively plan and secure resources on a timely basis
- (vi) To improve the chances of success in achieving the overall impact of the reforms, there needs to be a range of mechanisms to facilitate the bringing together of the customary landowners who want to lease their lands and the potential investors. Government may also consider under another related project to have a series of model/pilot projects which are based on using a commercial models for utilizing customary lands in different key sectors of the economy to demonstrate the benefits of the reforms.

## **6. Proposed February 2007 Workshop and Next Quarterly Report**

### **6.1 February 2007 Workshop**

The proposed broad programme of the consultants outputs, tasks and scheduling for the TA has been commented on in this inception report. It is envisaged that the finalization of the scope of the project outputs and related tasks and timing will be finalized after the February 2007 workshop. This will be based on the feedback from the consultations and the decision of the Government Task Force on its overall work programme during the implementation period of the TA.

The desired outcomes of the planned workshop are envisaged as follows:

- (i) Establishing the basis that the proposed reforms are government driven to address the challenges of encouraging investment and making the best economic use of customary lands through leasing.
- (ii) Raising public awareness of the nine principles which the Government has approved to guide any reforms for the use of customary lands and stressing the guiding principle that customary lands are not to be alienated or sold
- (iii) ADB TA design, outputs and activities are revised and refined. Agreement from the ADB TA team to adapt the agreed improvements to the TA design and availability of resources so that the ADB TA effectively supports the work of the Task Force
- (iv) Task Force has an outline of its work and set of recommendations to seek endorsement of Cabinet in January 2007

The workshop could be for one day with the following proposed sessions

- (i) Government leader to reaffirm the rationale for the customary land reforms as well as explains the nine principles to guide these reforms in a keynote statement to officially open the workshop
- (ii) Chairperson of the Task Force to chair the sessions, after the key note address.
- (iii) Current status of legal and institutional framework for the use of customary lands (based on the Main ADB Vinstar report findings) could be presented by a member of the Task Force.
- (iv) Log frame of the present ADB TA objectives outputs and activities and reviews based on the proposed design improvements and resource availability (Could be facilitated by the ADB TA team Project Coordinator and Public Communication Advisers).

- (v) Review of implementation work plans for the eight quarters and the timetable of reports to Cabinet (Reporting to the ADB will be down played in the presentations.

Documentation which will be produced by the ADB TA team for the preparations and finalization of the decisions from the February 2007 workshop is to be as follow:

Document 1: Cabinet information paper and briefing on approach to be taken in the February 2007 workshop

Document 2: Keynote statement for workshop

Document 3: Extracts from ADB /Vinstar report

Document 4: Extracts from Inception Report on review of the project outputs and activities

The suggested list of participants for the proposed February 2007 workshop could include the following:

- (i) Task Force members (5)
- (ii) Samoa Land Corporation top management (2)
- (iii) Land Board members (4)
- (iv) Samoa Tourism Authority top management (2)
- (v) Public Service Commission (1)
- (vi) Ministry of Women, Community Development and Social Affairs (Internal Affairs)- (3)
- (vii) Members of the Task Force under ADB TA 3549 (4)
- (viii) SUNGO (2)
- (ix) Council of Churches (2)
- (x) Chamber of Commerce / SAME / SHA (3)

## **6.2 Next Report: Quarterly Report 1**

The next report of the ADB TA team (Quarterly Report 1) will be February 2007, which should contain the work plans of the consultants' inputs and scheduling and the consultants work done till the end of January 2007 on the system study and broader design of the project.. The final plans, discussed at the February 2007 Workshop and the further design phase of the first quarter will receive endorsement by the Cabinet at the end of 2<sup>nd</sup> quarter. The quarterly report which is due at the end of February 2007 is requested to be postponed to the end of March 2007 to factor in the delays encountered in the initial months of TA mobilization.

## **APPENDICES**

## Appendix 1: Design and Monitoring Framework

Design Summary	Performance Targets / Indicators	Data Sources / Reporting Mechanisms	Assumptions and Risks
<p><b>Impact</b> Increased levels of economic activity (investment and production on customary land)</p>	<p>1. Trend increases in contribution of tourism and commercial agriculture to GDP (proxy indicator).</p> <p>2. Number and value of commercial investments on leased customary land.</p>	<p>National accounts from Ministry of Finance Analysis by TA consultant of investment data from Ministry of Commerce, Industry and Labor</p>	
<p><b>Outcome</b> Increased efficiency and effectiveness with which landowners and investors (Domestic and foreign) implement agreements to utilize customary land for economic purposes.</p>	<p>1. Reduced time from proposal to registration of formal lease on customary land.</p> <p>2. Efficient resolution of disputes through Samoan Land and Titles Court.</p>	<p>Surveys by TA consultant of new lease holders on the land registry held at the MNRE</p> <p>Assessments by private sector stakeholders and practicing lawyers surveyed during ADB reviews</p> <p>Analysis by TA consultant of case load records of Land and Titles Court</p>	<p><b>Assumptions</b></p> <ul style="list-style-type: none"> <li>• "Bankable" projects exist and can be assisted by greater clarity and efficiency of leasehold tenure.</li> <li>• Samoa's financial sector will, over time, increase credit provision in response to greater clarity of leasehold arrangements.</li> </ul> <p><b>Risk</b></p> <ul style="list-style-type: none"> <li>• Clarity and certainty over leasehold arrangements does not lead to improved compliance with rule of law or, consequently, reduced credit risk.</li> </ul>

<p><b>Outputs</b></p> <p>1. Amended Alienation of Customary Land Act 1965 (the Act) so that it better promotes economic use of customary land.</p> <p>2. Streamlined administrative processes for entering into leases on customary land.</p> <p>3. Public information materials disseminated and public education processes conducted on key issues and processes for landowners and investors proposing to enter into leases on customary land.</p> <p>4. Improved registration, mapping and availability of information on customary land titles and boundaries.</p>	<p>Amendments submitted to Government by July 2006.</p> <p>Report on lessons learned under revised Act, by February 2008.</p> <p>Clear information on revised administrative procedures, responsibilities, and performance standards, readily accessible to the public by March 2007.</p> <p>Accessible materials and information programs (in Samoan and English) widely available and effectively disseminated, by December 2006</p> <p>Central database, with geographic information, of leases granted and Land and Titles Court decisions established, maintained and accessible to the public, by June 2007.</p>	<p>TA and ADB monitoring</p> <p>TA reporting—including client feedback surveys—and ADB monitoring</p> <p>TA reporting—including client feedback surveys—and ADB monitoring</p> <p>TA reporting—including client feedback surveys—and ADB monitoring</p>	<p><b>Assumptions:</b></p> <ul style="list-style-type: none"> <li>• The current Alienation of Customary Land Act, with minor amendments, provides a workable legal framework for the achievement of priority outputs and the TA outcome.</li> <li>• Public information and education activities will be sustained by relevant Executing Agency.</li> <li>• Executing Agency able to maintain database and geographic information.</li> </ul> <p><b>Risk</b></p> <ul style="list-style-type: none"> <li>• Interface between Ministry of Natural Resources and Land and Titles Court remains unclear or ineffective.</li> </ul>
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Design Summary	Performance Targets / Indicators	Data Sources / Reporting Mechanisms	Assumptions and Risks
<p>5. Revised institutional arrangements in place that reflect appropriate Government involvement in matters related to economic use of customary land.</p>	<p>Review submitted by September 2007</p> <p>Revised institutional arrangements in place by March 2008.</p>	<p>TA and ADB monitoring</p>	
<p><b>Activities with Milestones</b></p> <p>1.1 Amendments to <i>Alienation of Customary Land Act 1965</i>, based on WG recommendations, submitted for Government consideration, by July 2006.</p> <p>2.1 Review of administrative processes for entering into leases on customary land completed by July 2006.</p> <p>3.1 Public information and education plan, addressing key audiences, topics, and proposed media, submitted for WG approval by</p>	<p>1.2 Review of lessons learned under new legal framework, by February 2008.</p> <p>2.2 Revised administrative processes implemented by February 2007.</p> <p>3.2 A range of public information materials disseminated by March 2007.</p> <p>4.2 Upgraded land registry extended to include all</p>	<p>1.3 (If necessary) Further amendments to the Act submitted for Government consideration, by June 2008.</p> <p>2.3 Clear information on administrative processes readily available to the public by February 2007.</p> <p>3.3 A series of public education programs operating by March 2007.</p>	<p><b>Inputs</b></p> <p>ADB</p> <ul style="list-style-type: none"> <li>• Long-term domestic consultant (24 person months).</li> <li>• Short-term specialist international (4 person months) and domestic (10 person-months) consultants.</li> <li>• IT hardware and software and training for database and GIS.</li> <li>• Information materials and education programs.</li> <li>• Government staff training.</li> <li>• Office supplies and consumables.</li> </ul> <p>Government</p> <ul style="list-style-type: none"> <li>• Counterpart staff in Executing Agency and WG.</li> <li>• Office space and facilities.</li> <li>• Access to land registry and Land and Titles Court</li> </ul>

<p>September 2006.</p> <p>4.1 All Land and Titles Court decisions recorded in an electronic database, and accessible to the public, by February 2007.</p> <p>5.1 Review of institutional arrangements and appropriate role of the Government, by September 2007</p>	<p>leases on customary land, by February 2007.</p> <p>5.2 Government reorganization, reflecting agreed review findings, in place by March 2008.</p>	<p>4.3 Records of all surveys of customary land digitized and placed on a geographic information system, by June 2007.</p> <p>5.3 Staff training, capacity development on new functions and roles.</p>	<p>records.</p> <p>Co-financing (Parallel) IDA loan 3193-WSO "Infrastructure Asset Management Project":</p> <p>(i) updated cadastre (Samoa Integrated Grid);</p> <p>(ii) strengthened systems for freehold and public land administration and registration (which can also be applied to customary land).</p>
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ADB = Asian Development Bank,  
 GDP = gross domestic product,  
 GIS = geographic information systems,  
 IDA =International Development Association (of the World Bank),  
 IT = information technology,  
 TA = technical assistance,  
 WG = Task Force on economic use of customary land.

## Appendix 2: Revised Terms of Reference for Consultants

Changes in the Consultants TORS and person months.

Position	Person Months		TORs (changes highlighted in bold)
	old	new	
Public Communication Specialist	1	1+(part of public consultation budget)	Working with the public communication adviser, and under the guidance of the project coordinator, the expert will (a) provide strategic advice and quality control on the public information and education plan, (b) develop models and templates for effective public information and education tools, (c) comment on the quality of selected high-priority information and education materials, <b>(d) assist in the running and holding of pilot workshops and initial public consultation meetings, (e) design campaign to maximize support for reform in customary land leasing</b>
Land Information Management Specialist	2	1	<b>Under the guidance of the project coordinator and building on existing systems where possible while addressing the needs of both the Land and Titles Court and MNREM, the specialist will (a) carry out a detailed system study (b) recommend a sustainable data management strategy for customary land-related data,; the strategy should encourage seamless data management between the two agencies, and should ensure appropriate public access to the data; (c) deliver an appropriate design of a sustainable database for customary land-related data (d) develop and deliver a strategy for digitization and storage of customary land survey information so that during the implementation stage (i) the Records of all surveys of customary land digitized and placed on a geographic information system (ii) All Land and Titles Court decisions recorded in an electronic database (iii) land registry is upgraded extended to include all leases on customary land.</b>

Public Administration Specialist	1	1	No changes
Legal Adviser	1	1	Under the guidance of the project coordinator, the adviser will (a) in response to recommendations of the WG, draft amendments to the Alienation of Customary Land Act 1965, <b>Lands and Titles Court Act 1981, and the Land Registration Act 1992/1993</b> for consideration by the Government; and (b) participate in a review of the new legal framework and, as necessary, draft further amendments to the various acts for consideration by the Government
Public Communication Adviser	3	3+(part of public consultation budget)	Working with the public communication specialist, and under the guidance of the project coordinator, the expert will (a) support the development of the public information and education plan and (b) prepare a range of public information and education materials and formats for consideration by the WG, ensuring appropriate targeting of messages to key audiences and clarity and consistency of messages in both the Samoan and English languages <b>(c) assist in the running and holding of workshops and public consultation meetings, (d) design campaign to maximize support for reform in customary land leasing.</b>  <b>Revised TORs need to be developed for additional Public Consultation inputs.</b>

Database Development Adviser	1	1	Working with the land information management specialist, and under the guidance of the project coordinator, the expert will design, develop and deliver an appropriate and <b>sustainable database strategy</b> for customary land-related data, building on existing systems where possible, addressing the needs of both the Land and Titles Court and MNREM, addressing the need for seamless data management between the two agencies, and addressing the requirement for appropriate public access to the data
Public administration/ capacity development adviser	2	2	No changes
Geographic Information Systems Adviser	1	0	<b>Proposed to be eliminated, however a final decision will be made later on after the February 2007 workshops.</b>

## New Positions for the detailed project Design

Position	Person Months	Sample TORs
Project Director	1	<ul style="list-style-type: none"> <li>• Strategic advice and project design</li> <li>• Government liaison</li> <li>• Reports review and development of final reports and other documentation required by the ADB and the government</li> <li>• Domestic firms coordination</li> <li>• Consultants supervision, development and review of the work plan and results</li> <li>• Donor coordination</li> <li>• Provide backstop Support</li> </ul>

		<ul style="list-style-type: none"> <li>• Address other concerns as they arise</li> </ul>
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The ADB only sees the immediate need to for the Project Director for which Detailed TORs need to be developed. Following positions may be considered later:

Financial Analyst	1	<ul style="list-style-type: none"> <li>• Provide inputs to develop the financial model and financial estimates for the implementation and maintenance of the comprehensive surveying, GIS, and LIS database for all of Samoa</li> <li>• Provide inputs to develop the financial model and financial estimates for the implementation of the customary land reforms in Samoa</li> <li>• Formulate and design the financial model for determining Ministry of Finance, Ministry of Natural Resources, Environment and Meteorology, and Land &amp; Titles Court's fiscal capacity, and other agencies as required</li> <li>• Work with Coordinator and Ministry of Finance management in developing a detailed work plan for Ministry of Finance financial and donor assistance and lead its implementation</li> </ul>
Economist	1	<ul style="list-style-type: none"> <li>• Determine the economic benefits and cost of implementing the land reforms proposed under the project including impact analyses and cost-benefit analyses.</li> </ul>
Gender Specialist	1	<ul style="list-style-type: none"> <li>• Ensuring that the new land reforms are gender sensitive and gender issues are addressed fully in the new implementation plan,</li> <li>• Exploration of gender mainstreaming and the involvement of women's enterprises as another variable to increase the economic use of customary land</li> <li>• Address other issues raised in fact-finding report for JICA, SAMOA: COUNTRY GENDER PROFILE, November 2005</li> </ul>

## Appendix 3: Original Terms of Reference for Consultants

1. The following international and domestic consultants will be engaged through a firm.

### **A. Project Coordinator** (domestic, 24 person-months, full time)

2. The project coordinator will have at least 10 years experience in the public and/or private sectors, including demonstrated experience with managing reform processes. The consultant will have a sound knowledge of traditional Samoan land tenure arrangements, of the requirements for a conducive business environment, and of Government processes. He or she will have a demonstrated capacity to coordinate and communicate effectively among diverse groups and interests. Effective verbal and written communication skills in both Samoan and English languages will be essential, with media skills a plus. Project management, monitoring, and reporting skills will be a distinct advantage. Demonstrated ability to prepare terms of reference for and supervise consultants is desirable.

3. The consultant will work closely with the nominated representative of the Executing Agency toward the achievement of project outputs and outcomes. Tasks will include, but not be limited to, monitoring, updating, and reporting on implementation of the agreed action plan. Reporting should focus on achievement of outputs and outcomes, measured in terms of indicators and targets set out in the action plan (see Appendix 1 for TA performance indicators). The consultant will also actively support and provide secretariat services to the Task Force nominated by the Government to guide the reform process.

4. The project coordinator will contribute to the delivery of non-technical TA outputs. These are expected to include the drafting of administrative instructions, public information materials (for consideration by communications consultant/s), and education materials (for consideration by public education consultant/s). The project coordinator will actively cooperate with his or her Executing Agency counterpart in promoting awareness of the relevant issues and reforms to the broader public. The consultant will support capacity development among Executing Agency staff as appropriate, and will actively ensure that short-term consultants also pay attention to strengthening the technical capacity of relevant government agencies.

5. As project coordinator, the consultant will work closely with the consulting firm to ensure that consultant inputs are well coordinated and appropriately timed. He or she will ensure that all consultants have clear and appropriate terms of reference and are briefed on their responsibilities and on progress and outstanding issues for the reforms and the overall TA. The project coordinator will compile reports from short-term consultants, will be responsible for quarterly progress reports, and will draft project inception and draft and final reports.

### **B. Short-term International Consultancy Assignments**

6. Subject to review at the time of the TA inception mission, the following are the short-term international consultants.

(i) **Public Communication Specialist** (1 person-month, two visits). Working with the public communication adviser, and under the guidance of the project

coordinator, the expert will (a) provide strategic advice and quality control on the public information and education plan (Activity 3.1\*), (b) develop models and templates for effective public information and education tools, and (c) comment on the quality of selected high-priority information and education materials (Activities 3.2\*\* and 3.3\*\*\*).

**\*Activity 3.1** – Public information and education plan, addressing key audiences, topics, and proposed media, submitted for WG approval by September 2006.

**\*\*Activity 3.2** – A range of public information materials disseminated by March 2007.

**\*\*\*Activity 3.3** – A series of public education programs operating by March 2007.

- (ii) **Land Information Management Specialist** (2 person-months, three visits). Working with the database development and geographic information systems advisers, and under the guidance of the project coordinator, the specialist will (a) recommend a sustainable data management strategy for customary land-related data, building on existing systems where possible; the strategy should address the needs of both the Land and Titles Court and the Ministry of Natural Resources, Environment and Meteorology (MNREM), should encourage seamless data management between the two agencies, and should ensure appropriate public access to the data; and (b) advise on and monitor the implementation of the strategy (Activities 4.1\*, 4.2\*\*, 4.3\*\*\*).

**\*Activity 4.1** – All Land and Titles Court decisions recorded in an electronic database, and accessible to the public, by February 2007.

**\*\*Activity 4.2** – Upgraded land registry extended to include all leases on customary land, by February 2007.

**\*\*\*Activity 4.3** – Records of all surveys of customary land digitized and placed on a geographic information system, by June 2007.

- (iii) **Public Administration Specialist** (1 month, two visits). Working with the public administration/capacity development adviser (see para. 7, point [v.] of this appendix) and under the guidance of the project coordinator, the specialist will (a) support a review of institutional arrangements for customary land (Activity 5.1\*); (b) recommend a program of targeted training and other capacity development activities in response to the recommended reorganization; and (iii) if required, deliver priority elements of the training and capacity development activities (Activity 5.3\*\*).

**\*Activity 5.1** – Review of institutional arrangements and appropriate role of the Government, by September 2007.

**\*\*Activity 5.3** – Staff training, capacity development on new functions and roles.

### C. Short-term Domestic Consultancy Assignments

7. Subject to review at the time of the TA inception mission, the following are the short-term domestic consultants:

- (i) **Legal Adviser** (1 person-month, intermittent). Under the guidance of the project coordinator, the adviser will (a) in response to recommendations of the WG (Activity 1.1\*), draft amendments to the Alienation of Customary Land Act 1965 (the Act) for consideration by the Government; and (b) participate in a review of the new legal framework (Activity 1.2\*\*) and, as necessary, draft further amendments to the Act for consideration by the Government (Activity 1.3\*\*\*).

\***Activity 1.1** – Amendments to *Alienation of Customary Land Act 1965*, based on WG recommendations, submitted for Government consideration, by July 2006.

\*\***Activity 1.2** – Review of lessons learned under new legal framework, by February 2008.

\*\*\***Activity 1.3** – (If necessary) Further amendments to the Act submitted for Government consideration, by June 2008.

- (ii) **Public Communication Adviser** (3 person-months). Working with the public communication specialist, and under the guidance of the project coordinator, the expert will (a) support the development of the public information and education plan (Activity 3.1\*); and (b) prepare a range of public information and education materials and formats for consideration by the WG, ensuring appropriate targeting of messages to key audiences and clarity and consistency of messages in both the Samoan and English languages (Activities 3.2\*\* and 3.3\*\*\*).

\***Activity 3.1** – Public information and education plan, addressing key audiences, topics, and proposed media, submitted for WG approval by September 2006.

\*\***Activity 3.2** – A range of public information materials disseminated by March 2007.

\*\*\***Activity 3.3** – A series of public education programs operating by March 2007.

- (iii) **Database Development Adviser** (1 person-month). Working with the land information management specialist and geographic information systems adviser, and under the guidance of the project coordinator, the expert will develop and deliver an appropriate and sustainable database for customary land-related data, building on existing systems where possible, addressing the needs of both the Land and Titles Court and MNREM, addressing the need for seamless data management between the two agencies, and addressing the requirement for appropriate public access to the data (Activities 4.1\*, 4.2\*).

\***Activity 4.1** – All Land and Titles Court decisions recorded in an electronic database, and accessible to the public, by February 2007.

\*\***Activity 4.2** – Upgraded land registry extended to include all leases on customary land, by February 2007.

- (iv) **Geographic Information Systems Adviser** (1 person-month). Working with the land information management specialist and database development adviser, and under the guidance of the project coordinator, the specialist will

develop and deliver a strategy for digitization and storage of customary land survey information, building on existing systems where possible, addressing the needs of both the Land and Titles Court and MNREM, addressing the need for seamless data management between the two agencies, and addressing the requirement for appropriate public access to the data (Activity 4.3\*).

**\*\*\*Activity 4.3** – Records of all surveys of customary land digitized and placed on a geographic information system, by June 2007.

- (v) **Public administration/capacity development adviser** (2 person-months, intermittent). Working with the public administration specialist and under the guidance of the project coordinator, the expert will (a) support a review of institutional arrangements (Activity 5.1), (b) support the Government reorganization process arising from the review (Activity 5.2), and (c) recommend and deliver a program of targeted training and other capacity development activities to address new functions and roles under the reorganization (Activity 5.3).

**\*Activity 5.1** – Review of institutional arrangements and appropriate role of the Government, by September 2007.

**\*\*Activity 5.2** – Government reorganization, reflecting agreed review findings, in place by March 2008.

**\*\*\*Activity 5.3** – Staff training, capacity development on new functions and roles.

- (vi) **Unallocated** (2 person-months). This is reserved to respond to needs emerging during TA implementation.

## **Appendix 4: Inception Mission – Key People Met**

### **Government Task Force**

Luafatasaga Dr. Tu'u'u Ieti Taulealo, CEO MNRE

Hinauri Petana, CEO Ministry of Finance

Leaupepe Farani, Community Representative

Tuisalega Semu, Community Representative

### **Project Monitoring Unit, Ministry of Finance**

Leota Laki Sio

Margaret Lesa

### **Asian Development Bank**

Maria Melei-Tagiilima: Senior Project Implementation Officer  
(Pacific Sub regional Office, Fiji)

### **Other Donors**

UNDP

JICA

AusAID

## Appendix 5: List of Reports Reviewed

Vinstar Consulting 'Report for Cabinet on Economic Use of Customary Land – TA No 3549 SAM: 'Capacity Building of Financial and Business Advisory Intermediaries,' Asian Development Bank, and January 2006.

- (i) Task Force '*Economic Use of Customary Land: Report on the Study Visit by Task Force (Draft)*, Government of Samoa, 2006.
- (ii) Minister of Finance Cabinet Submission '*Faaaogaina o Fanua Faaleaganuu E Atinaeina ai Alamanuia*' (*Draft Samoan Version Only*), Government of Samoa, 2006
- (iii) FINCON Services Inc. '*General Approach and Methodology Proposal to the Asian Development Bank for TA-4712-SAM 'Promoting Economic Use of Customary Land in Samoa 2006*.
- (iv) FINCON Services Inc '*Orientation Workshop with Government of Samoa Task Force in ADBTA4712-SAM (Power Point Format)* 7 September 2006.



## Appendix 7: Provisional Schedule of Consultants Inputs

Original Work Plan

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 Task Force								
Formulation of Work Plans								
Literature Review								
Inception Report								
<b>Institutional Reforms</b>								
Organizational Assessment								
Stakeholder Consultations								
Administrative Review								
Creation of Electronic Database								
Data Entry								
Documentation of Findings								
Institutional Reorganization								
<b>Legal Reforms</b>								
Draft amendments								
Review of new legal framework								
Submission of Final amendments								
<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								

The original work plan needs to be revised to reflect various developments in the project. This includes the changes that the Government of Samoa and ADB has agreed upon. Including the expanded public consultation process, the separation of implementation and design phases, the changing TORs of the legal expert, the mobilization of international communication expert. These changes will be further discussed and finalized in the progress report to be submitted in May 2007.