

The 2008 Land Titles Registration Act (LTRA): A Case Study of Saoluafata

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Abstract

This article considers the provisions of the Land and Titles Registration Act, 2008, which made it possible to lease customary land in Sāmoa and to use the lease as security for a mortgage for capital development on the land. It addresses the development thinking that underlies the Act, the objections that have been expressed to it, and the problems that can arise in relation to leasing customary land when the custody of customary land belongs to many high chief (matai sa'o). To consider the public consultation process that preceded the passing of the Act, it presents a case study that outlines how local Sāmoan people understand the history of leases of customary land in the village of Saoluafata. The findings of this case study suggest that not only did they only have a vague understanding of the legality of past leases of customary land, but they did not fully understand the provisions of the 2008 Act. It exposes the inadequacy of the government's consultation process, and concludes that complex legislation needs a far more transparent and participatory process when changes are proposed that affect customary land and the traditional rights of Sāmoan people.

Keywords: Sāmoa, Customary Land Tenure, Land Titles Registration Act, Community Consultation

In 2008 the Government of Sāmoa passed the Land Titles Registration Act (LTRA). This article considers the provisions of the Act, the development thinking that underlies it, the objections that have been expressed to it, and the public consultation process. It presents a case study that outlines the history of leases of customary land in Saoluafata, and considers whether the Sāmoan people there understand the provisions of the Act affecting their customary land. The Act adopts the 'Torrens' registration of title system and permits the registration of public land, freehold land, and leases and licences of customary land. In the form presented in the 2008 version of the Act, it also allows "the registration of customary land in respect of which judgment has been made by the Land and Titles Court and replaced the 1920 Order and its subsequent amendment Orders" (Ye 2009: 62). Prior to 2008, Sāmoa had followed a Deeds Conveyance system where families ('aiga), if they registered their land at all, registered them under the title of their paramount titleholder of a lineage or group of connected lineages (matai sa'o) as the custodian of the land, not its owner (Iati, 2006). Since Sāmoa became Independent the Constitution of Sāmoa has permitted the granting of a lease or licence of customary land or taking of customary land for public purposes, under the authorization of an Act of Parliament. Accordingly, the Taking of Land Act 1964 and the Alienation of Customary Land Act 1965 provided for such lease, licence and taking of land. Other than these, the prohibition of alienation was absolute, which means that customary land could not be alienated to members of the family or other clans, and cannot be exchanged between customary landowners (Ye 2009: 75). Article 102 provides that there shall be no alienation or mortgaging of customary land.

As Ye, using a legal perspective explains it, the LTRA modified this provision by allowing for the mortgaging of customary land that is legally registered and leased under the new system of registration:

The most apparent and fundamental change is the adoption of the Torrens system. One of the purposes of the LTRA 2008 is to establish "ownership of interest in land by registration"; the folio is conclusive evidence of title; and the estate of the registered proprietor is paramount. Also entailed in Torrens indefeasibility is compensation by the government to persons who suffer loss or damage as a result of the operation of the Act, in contrast to the LRA 1992/1993 which specified that the Government was not liable for any loss or damage caused by the act, omission or default of the Registrar or the Registrar's subordinates (Ye 2009: 70).

Also that:

The fundamental shift to Torrens system as a general rule and the lack of clear provision raise three questions: first, whether the Torrens registration applies to adjudicated customary land; second, whether the registered customary land remains customary land or becomes freehold land; third, under whose name the land would be registered (Ye 2009: 84).

In effect, the LTRA allows customary land that has been leased to be mortgaged, using the lease as security. Due to a number of prominent critics of the legislation pointing out a lack of clarity in the provisions of the LTRA, it became a political issue. In 2019 the Ministry of Natural Resources and Environment, responding to parliamentary questions, said that all registration and licensing of customary lands have been removed from the Act, which "means that leases, licences and interests are now registered under the Principal Act. This clarifies that all matters pertaining to customary lands (leases, licences, and interest therein) are now under the mandate of the Principal Act as authorised by the Constitution" (Radio New Zealand 2018). By that time public consultations had already been completed and, as we will show, based on my Saoluaifata case study, those public consultations on the implications of the LTRA were inadequate.

The Intention of the LTRA

Reforms aiming to reduce the size and cost of Sāmoa's public administration, promote efficient use of public finance, and encourage the development of the private sector, were commenced over 20 years ago with technical and financial assistance from the Asian Development Bank (ADB) and Australian Aid. Part of the agenda for these reforms in relation to private sector growth was to promote the economic use of Sāmoa's customary lands that are perceived as underutilized (ADB 2005: 32). Around 81% of total land or 2,820 sq. km according to Aus AID, (2008: 4) is customarily owned by extended families (*'aiga*) and their chiefs (*matai*). From this perspective land is an economic resource; therefore if customary land is not more extensively used for activities that contribute to the goal of economic growth, that goal is undermined. Economic growth, it is argued, is achieved by more investment in the production of export crops, construction of hotels and other tourist facilities, shops, manufacturing, and other income-generating activities and private sector services. Therefore more land is needed for these purposes (ADB 2005). At the launch of the Customary Land Advisory Commission (CLAC) in 2016, the former Prime Minister said "Sāmoa has more than half a million acres of customary lands and only 0.31% are leased out. He added, "81% of customary lands are under the care of the family chiefs (*sa'o*) and he encouraged the chiefs to consider the future of [their families] by developing customary lands" (Keresoma 2016: 1). The economic view of land tenure argues that the benefits of making it easier to lease or even sell customary land will offset Sāmoa's reliance on remittances from Sāmoans living overseas (Pepper 2016), support its struggling tourism sector and improve agricultural exports. The

change as Ah Tong (2016) reported would create opportunities for Sāmoans to develop their lands and derive more benefits from them.

From a planning standpoint, Seumanutafa of the Planning and Urban Management Agency (PUMA), Ministry of Work, Infrastructure and Transport (MWTI) explained that the Act would eliminate one of the biggest areas of conflict over land boundaries (pers. comm. September 2020). It would allow the MNRE to map and identify boundaries of customary lands. Identifying boundaries has been difficult because Sāmoans used trees, rocks, and other land features as markers of land boundaries. The usefulness of these features is becoming obsolete as villages move further inland, closer to access roads. He added that the Land and Titles Court also faces problems to adequately deal with conflicts over land boundaries. With the LTRA, the government would be able to settle land boundaries before issuing a business license to a potential investor

In terms of infrastructure development, the LTRA would advance the connectivity of Sāmoa to ICT and other essential communication services. Leasing customary land to establish television and telephone satellite and other facilities would improve the delivery of these services throughout the country. Many families now receive rents of about SAT\$ 500 per month for communication towers (although it is not clear how this income is shared within the families who own the land).

Criticism of the LTRA

Although in the tourism sector, the LTRA can boost foreign investment, there have been ongoing disputes over leases for tourism development. In one example, since 2007 Salaneta Lemalu's family has leased part of their land in the village of Lefaga to the Sāmoana Resort for 30 years after a long dispute about the rights and legalities involved (Keresoma 2016). In the dispute between *Return to Paradise Resort* and members of the Lemalu family of Lefaga (Feagaimaali'i-Luamanu 2018) several matai of the Lemalu family filed a successful petition to the Land and Titles Court to object to the leasing of land for the resort. However, another heir of the family challenged the matter in Court. The Appeal Court ruled that once the Minister granted the lease, the Land and Titles Court has no power to cancel it (Elisara 2019). There have been rumoured concerns about the lack of transparency over the distribution of lease payments in another case where the village council of Sasina leased lands in 2008, one lease is a 100-year lease with the South Pacific Development Group (SPDG) based in Hawaii, allowing 600 acres of customary land to build the Sasina Village Resort. The agreement: the village gets \$120,000 US each year for the first five years and a 10% increase every five-year period thereafter. "All is secured when it comes to the Sasina Resort project even though there has been no physical development Sasina village is still receiving lease payments." (Government of Sāmoa 2018), according to the then Member of Parliament for the local electorate. The other Sasina lease is for 120 years, signed in 2017 with a Hong Kong-based Kiu Hang International Holdings Limited to use 100 acres of land for a commercial Noni (*nonu*) plantation. Accordingly, "the lease plan of 120 years is "subdivided into 30-year sections so the village will have a safety valve, because they cannot live for 100 years and whichever generation will come around at that time they will have to decide on whether to continue the lease or not" (Fanene 2019). The village had received pay-outs of SAT\$250,000 in September 2017, March 2018, and 2019 (Fanene 2019) but the arrangement for sharing of this revue is unknown.

As Iati (2016: 4) has argued, the LTRA does not guarantee the integrity of the registration process. The Act gives the Registrar "wide discretionary powers to manage the system" and it does not provide

appropriate checks and balances for this role The Registrar would have “discretion in the Bill to make changes to the Folio, a record of interests on a particular piece of land, at any time with or without notifying and affirming that changes were made with the concerned parties”. The Act also holds those managing the system unaccountable that, “the Ministry shall not be liable to any action or proceedings for or in respect of any act or matter done or omitted to be done in good faith. (SUNGO. 2008). While the former Prime Minister of Sāmoa has publicly stated that the Act would only affect freehold and public lands, Iati (2016) and Ye (2009) have found inconsistencies in what he said in public and what is written with regards to which lands will be affected. This inconsistency and many others only breed further mistrust in legal processes and in the intentions of the government.

With the Act coming to effect from March 2009, it is assumed that registration of a lease is contingent of consent for the lease, resulting from approval by the highest ranking chief (*sa’o*) of the land-owning *aiga*, and that the *sa’o* has secured a customary consensus from them. But this will likely be problematic if there are many holders of the *sa’o* title, or when these the right to hold a *sa’o* title via ancestral connections are disputed in the Land and Titles court (Meleisea 2018: 61). As the consultations on the authority of the matai *sa’o* by the Sāmoa Law Reform Commission (2017) have demonstrated, this often results in no agreement being reached, land becoming in effect ‘no man’s land’ as the right to use it cannot be agreed upon. Decisions by the Land and Titles Court are often arbitrary when the evidence before them is contradictory. This results in at least one branch of a family being aggrieved, with further negative consequences. As Ye pointed out in a critical review of the legislation (Ye 2009: 62) the LTRA may introduce uncertainties about rights to approve leases and ownership of customary land. In fact it has been Sāmoan custom since ancient times that the *sa’o* is custodian of family land, but not its owner, and it was also customary to avoid questioning the authority of a matai *sa’o*. However as Meleisea described (1987), the 19th century civil wars in Sāmoa involved large scale ‘selling’ of customary land to foreign land speculators at a time when the concept of permanent alienation of land was unknown to most Sāmoan leaders. Nowadays land has considerable monetary value and many *Sa’o* titles have multiple holders, so, as Meleisea and Schoeffel (2022) explain:

A practical obstacle to the implementation the LTRA is the question of who has the traditional authority to approve a lease of customary land. ... A sa’o title is usually derived from the name of a founding ancestor or event deep in the mists of time associated with an ancestor, referred to in the fa’alupega or ceremonial greeting speech of the village to which it is ancestrally associated. Each village may have one or less often two such titles of the highest rank. A matai sa’o has authority over members of his, or less commonly her, lineage and also over holders of lesser titles derived from that lineage. The matai sa’o is a trustee of family property, not its owner. The powers of the sa’o over land have diminished considerably since the 19th century and when exercised may result in an appeal to the Land and Titles Court. ... The power of the matai sa’o is an extremely vexed question in today’s Sāmoa. To become legal, a lease agreement on customary land requires the consent of registered holder or holders of the matai sa’o title who have authority (pule) over it. Nowadays a sa’o title may have two or twenty or more holders, but rarely one holder. Some of the co-holders of a sa’o title may be living in Sāmoa, others abroad but all those who are registered as sharing a title must agree to a lease of the land appurtenant to their title if it is to be legal, even supposing that there was agreement about the exact location and the extent of such land, which there rarely is.

Sa’o titles are not only often divided among many holders, but are often held by people living in different countries. As the transnational matai research team (Anae and Peterson. 2020) has shown, the responsibility of the holder of a matai *sa’o* living overseas has less to do with the village it belongs to, and more to do with leadership in overseas church communities and with organising and binding together members of the *’aiga* living overseas. However when a major issue concerning the land, titles or traditional status of the family arises, all the *sa’o* are expected to agree on interests of their various branches of the *’aiga*.

Land and Cultural Values

The role of the *sa’o* means greater responsibility and accountability when economic development has implications for customary land. In contrast to the economic view of land is the indigenous Sāmoan perspective held by many Sāmoans, including those living overseas, which sees their ancestral land as the core of their identity (*fa’asinomaga*) and long term family security. As Ta’isi (2008) explains, Sāmoans have deep connections with their land through the ritual of “disjointing of the umbilical cord (*pute*) and burying it in the land. A symbolic ritual that connects peoples and the land thus the Sāmoan saying: “*O le tama [teine] o le eleele*” (The child, [boy or girl] of the land). This relationship stands for a genealogical connection between people and the land as well as their boundary (*tuaoi*) with land to care and to look after. This is an ancient Sāmoan reference of being, knowing and belonging and one cannot ignore. Elisara (2017: 35) describes land in this way – “Land means everything to Sāmoa, more than money can ever buy. There are spiritual and cultural connections between land and people. Land is one’s identity; it is one’s existence; it is our birth right.” To land in the Sāmoan culture is regarded as an inheritance from God and connected intimately to the matai system. The fear is that if the land is lost so will the matai system, hence also the culture of Sāmoa (Meleisea and Schoeffel, 2015). Overseas Sāmoans remit money to their families in Sāmoa not just from the obligation to them, but also to mark their rights as members of a family in customary villages and to customary land.

Case Study of Saoluafata

This section will summarize findings from Tavila’s field study of Saoluafata in 2020, a traditional village (*nu’u mavae*). This research aimed to find out how much the people there knew about land laws and land rights, as Saoluafata has a history of leasing its land since the early colonial period. Tavila’s survey was based on *’talanoa’* methodology which “... can be referred to as a conversation, a talk, an exchange of ideas or thinking, whether formal or informal” (Vaiotei 2006: 23). His conversations (*talanoaga*) were with 16 people selected from different families, and because he is of the village himself, he excluded members of my own family there.

In Sāmoa, a village (*nu’u*) refers to a settlement and its surrounding lands and sea under the collective governance of a council of matai. The village council (*fono a matai*) is the village decision-making forum, the main institution in the village, whose members consists of matai who represent their families. Unlike most other villages in Sāmoa, Saoluafata has a Women’s Council (*Nu’u o Tamaitai*) that operates like the matai council on the basis of traditional rank and status. Its members consist of married and unmarried women (*tamaitai o le nuu*) who are daughters of the village. Women who married into the village (*nofotane*) from other villages belong to the Women’s Committee (*Komiti a Tina*). The latter is a service group that is in charge of the general health and hygiene programs of the village, among other things, under the guidance of the Women’s Council.

Figure 1: Map of Samoa



Source: Ministry of Natural Resources and Environment

Historically, each *'aiga* in Saolufata today trace their ancestral roots to two paramount chiefly families – Tagaloa and Sagapolutele. Initially, Tagaloa and his families occupied the north side of the village while Sagapolutele took the southern end at the time when the population of the village was small. Over time however, the population of the village grew in numbers, and some members of each family intermarried and occupied other village lands without following the north-south divide.

Of 33 matai titles in the village; 16 of these titles trace their roots to Tagaloa and the remaining 17 to Sagapolutele. Each of these matai titles are the heads of individual *'aiga*. (My research on Saolufata chose eight *matai* titles for interview from each paramount chiefly family).

Table 1: Matai titles of Saolufata

| TAGALOA | SAGAPOLUTELE |
|---------------|--------------|
| Aigamaua | Afesulu |
| Asomua | Afuvai |
| Fu'e | Evaimalo |
| Itaifaleupolu | Faamau |
| Leumu | Faautagia |
| Loau | Fotanu |
| Malaulau | Letua'a |
| Malofie | Nuualiu |
| Manuipulotu | Paleaae |
| Mao | Pimoe |
| Mosogau | Safiki |
| Mulitalo | Seumalo |
| Pauu | Sua |
| Tanoi | Taamai |
| Tele | Talataina |
| Vaivao | Tamaupolu |
| | Toilolo |

Source: Tavila 2020.

According to census data (SBS 2017) there are 120 households in total in the population of Saolufata. There were 829 people, and of the 510 villagers aged 15 years and above, 232 have completed secondary and 98 tertiary levels of education while the 180 have no qualification (SBS 2018: 13). When the census survey was conducted in 2016, there were 105 villagers in paid employment, and 12 households operating different types of small businesses, while 107 were earning a living from

fishing and farming. The Manunu inland road, now newly sealed, has had positive economic impacts by improving access to farmland as most families rely on semi-subsistence agriculture and fishing for a living. Most receive remittances, both in kind and cash from relatives residing in Apia and abroad. Remittances have enabled most families to live in enclosed houses build from permanent materials (*fale palagi*) and most have access to piped water and flush toilets. At the time of my fieldwork Saoluafata did not have any people travelling overseas as seasonal workers.

Understanding of Land Tenure

For a long time, Saoluafata has also been leasing and gifting land in the interior of the village territory, in the area called Solaua. While the people of Saoluafata know and/or have heard of Solaua, their understanding of the term of these land leases varies. Except for the land on the coast that the village gifted to the Congregational Christian Church of Sāmoa, and it is now freehold, the rest of the land is customary. However, as will be shown, the participants in this study have different understandings of what is meant by ‘customary’, ‘freehold’ and ‘leasehold’. They know that all land (and associated matai titles) belongs to the village and that unwritten village laws govern decisions of the village and maintain law and order. They believed such that bylaws also protect land of the village from alienation, using the phrase, “*O tu ma agaifanua*” (local traditions and customs) to explain that land and matai titles are treasures of the village. They also offered different descriptions of the territory of Saolufata. Some described the size of the land of the village as it begins from the reef to the ridge (“... *e amata mai i le aau se ia oo i lalo o mauga*”) while pointing to the sea and then to the mountains behind the village. Some used the borders with other districts as points defining the boundaries, Falealili bordering the South, Solosolo to the west and Falefa. And most said that the village has a lot of land (“*e tele fanua o le nuu*”) but that the exact area was unknown so to be more exact the village council has been considering a plan to have its lands surveyed and to avoid new cases before the Land and Titles Court over land boundaries.

Land belongs to three general categories, residential areas, farmland, and leased land. The greater part is farmland planted with root crops and in recent years fenced for cattle farms, in an area of high soil fertility called Li’uli’u where all families have customary access to land. Solaua is the collective name of these parcels of land inland that the village initially leased to the Germans for their rubber plantation and later to Sāmoans who are not from Saoluafata. According to an estimate by one participant in my survey, the area of Solaua is 5,530 acres of which the Tagaloa family has 2,300 acres and the Sagapolutele family has 1,400 acres. While participants understand these categories of land use, the boundaries between each are not fixed. Participants often referred to physical features – a hill, a bush, where the tar-sealed part of the road ends, or an old tree – as markers to estimate the boundaries between these categories.

While the participants in my survey understood that their village had leased land in the past, they have varying recollections and details of these arrangements. They mentioned of the terms, ‘old’ leases (*lisi tuai* or *lisi ua leva*) in the time when the Germans were in Sāmoa. (This refers to the pre-colonial period of the 1870s to 1899 and when Sāmoa became a German colony, 1900-1914). They were able to identify recent leases (*lisi fou*) from old, but few had a broader understanding of the details of the conditions of these leases or the benefits derived from them.

Initially, the village leased land at Solaua to a German Rubber Company called Sāmoa Kaustkluck Companies (SKC) in the mid-1800s which, according to three of my informants, was for 40 years. One of them said that the rubber plantation also drew other businesses to lease land at Solaua: "O.F Nelson also leased a piece of land of Pauu family for his store. If you look at the location of this lease, it faces the road to where the German had their *pulu* [rubber] plantation." In the opinion of another, a 69 year old businesswoman said that:

"... there are lots of freehold lands in the village but they are not registered, even this land where we live on is not customary. We don't know how the palagi [Europeans] negotiated the buying of this land from our family matai. My grandfather bought this land from a palagi and we have all the documents"

The parcels of land claimed as freehold originated from when German settlers bought a piece of land from a matai in the village and later resold it to the original sellers. Some pointed to freehold land called Sauniatu that was once a part of Solaua. According to some, the village gifted it to a matai, Lealaisalanoa in the neighbouring village of Falefa as a token of their appreciation for his support towards a court case that the village had in the past. In turn, Lealaisalanoa sold parts of that land to the Church of Jesus Christ of Latter-day Saints (LDS) and a village established by that church still occupies the land. However, some of those whom I interviewed said there is no freehold land other than the land given to the Congregational church, which is registered. Only few old people of these families understood the history of how these lands became freehold, if they did, and it is possible that documentation may not exist. Some participants believe that there are ongoing cases before the Land and Titles Court on ownership issues relating to these lands.

It is generally believed that when the Germans left Sāmoa, the holders of Tagaloa and Sagapolutele titles began to lease land in Solaua to people from other villages. Business people were also recipients of these leases, according to one participant, a 58-year old entrepreneur. One elder said that a previous holder of the Tagaloa title (Tagaloa Tuiuli) approved the first lease of village lands in 1904. Details of these leases are unknown to these participants. Besides the Germans, there were other leases awarded to Sāmoans who are not from Saoluafata. These 'old' land leases have varied areas, fee structure and terms. It was said that one outsider leased the largest section of land for 5 years (975 acres) at 200 pounds annually, and that leases to two others of 38 acres at 38 shillings, and of 147 acres at 7.7 pounds per annum were given for a term of 14 years each. Although the leases are thought to have expired, families (children, grandchildren and other relatives) the last two continued to occupy the land up to the present time, with the approval of the Village Council according to several survey participants. Instead, on money these tenants pay the village in-kind through the produce of the land whenever the village asks. For example, one holder of 83 acres leased for 99 years, like several others, is paying the village in-kind. The opening of the upgraded Manunu Road at Saoluafata at the time of fieldwork in 2020 illustrates these unwritten, yet recognized land 'lease' arrangement with these 'tenant' families at Solaua, who provided ceremonial and traditional gifts for the government and donor representatives at the opening ceremony. Their contributions were in the form of cattle, sacks of taro, bundles of bananas and cash for the event. Another instance was described by a participant concerning a local businessman from Saoluafata who leased 872 acres for 20 years in 1953 at 100 pounds per annum, since renewed at WST\$12 tala per acre or WST\$10,464 yearly, and according to one informant, this leaseholder is the only tenant who pays the *sa'o* in cash. Because the

land at Solaua belongs to Tagaloa and Sagapolutele, according to one informant the two *sa'o* have an informal system of sharing the proceeds of the leases.

Provisions of the LTRA

While participants undoubtedly understand the existence of the three types of land tenure – freehold, state owned and customary but 15 participants said they knew little about the provisions of the LTRA. Most incorrectly assumed that the LTRA 2008 is the same as the three Acts (Electoral Amendment Act 2020, Constitution Amendment Act 2020 and Judicature Act, 2020), which have recently been a point of political controversy in Sāmoa, passed into law on 15 December 2020. These new laws separate the civil and criminal courts of Sāmoa from the Land and Titles Court into two separate institutions (Meleisea and Schoeffel, 2022). The village council agreed to the public consultations held in the village on this legislation held by the Parliamentary Select Committee before they became law. This indicated the degree of public confusion. Typical responses from participants when told that the LTRA was a different law, was that:

“... contentious matters like this [land registration under name of a sa'o] especially when involve lands the village council should ring bells and sound conch shell (foafoa) to inform the village that they need to attend the consultation.”

“... sometimes it is only when people know that they are going to receive money and/or food then they will decide to go to those meeting and they don't take matters critically. Whoever knows about this Act or went to a consultation must inform the village.”

Recent leases were generally approved of by the survey participants. One is the 2005 lease of a small area of land for a Digicel communication mast, for a rent of WST\$2,000 annually, plus WST\$500 a month to the land owners for keeping the road up to the mast cleared. Another lease is to the Sāmoa Meteorology Office for a small station, but according to one participant, the owner was still negotiating conditions of the lease, although it had been there for the past six years. A participant who leases his shop to a Chinese shopkeeper said it was of benefit to him and the village, creating employment and services that saved people a trip to town. The lessee was happy with the arrangement as he had experienced difficulty running the shop himself and now earned WST\$5,000 per month from the leaseholder. Most thought that if families and the village agreed to lease land, it should be inland where the old leases were, not where people live, near the village centre and close to the coast. Otherwise, participants were not worried about the LTRA because their perception is that the village has leased land for a long time and not 'lost' any land; although some said that they thought that the village should always have legal advice on the terms of any future leases under that law.

The exception to their approval was concern about the registration of customary land under the name of an individual *sa'o*, because the *sa'o* has control over the use of their land without necessarily seeking the agreement of the family and could potentially abuse his power under the new Act. As Iati (2016) pointed out, under the LTRA 2008 a matai *sa'o* could sign a lease or lease customary land for a period that extended beyond the signatories' lifetime, which may deprive their successors of any rights over this land. While the *sa'o* of Saoluafata seem to have agreed to have 'old' leases continued,

members of their *'aiga* cannot exercise their ownership rights during the period of the lease, unless parties agreed to terminate. Would that not be a form of alienation?

There is also an issue relating to the manner in which 'tenant' families pay the village for their use of 2,115 acres of land for over a long period. Contributing bundles of taro or a cow now and then is insufficient given the productive potential of the land. Therefore, a strict reading of these facts suggests that people belonging to Saoluafata *'aiga* have indeed 'lost' the opportunity to use over 2000 acres of land for generations at a time when coastal areas are affected with erosion due to climate change and may need to relocate inland in the future.

Lack of Adequate Consultation

The earlier public consultation on the LTRA for Saoluafata was for the whole Anoama'a district and took place at the village of Solosolo. Five representatives of each village in the district attended this consultation but those from Saoluafata apparently did not share their opinions of it with others, and as one participant said, the village should have been informed about it. It seems likely that those attending did not really understand what it meant, which is why they did not explain it to their community. It was clear to me that the participants all had only vague understandings of land law. As Iati (2018) commented, holding consultations on the LTRA at district level was inadequate and the goal of wide and inclusive consultations as noted in the Customary Land Advisory Commission Act 2013 was not achieved (Iati 2018). The consultations did not include all customary landowners, but only a few representatives of chiefs and council members (*ali'i* and *faipule*) of a village. As Elisara (2018: 3) argued that, "Clearly the number of people 'consulted' fails miserably the test for meaningful consultation." In response to a complaint by Malifa et al. (2014), the ADB Office of Special Project Facilities carried out an investigation visit in Sāmoa between 1 November and December 2014. The team found that less than 10% of people they interviewed knew that there was a project to increase the economic use of customary land in Sāmoa, despite a series of ADB Technical Assistance projects to achieve its aims in Sāmoa. Iati (2018) was also concerned that members of staff at MNRE, the government ministry responsible for the administration of the Act, appear not to know the law and that consequently, they apply it inconsistently. He claimed that some members of MNRE staff still entertain challenges by some matai concerning land leases that already been finalized. Malifa et al. (2014) pointed to the same challenge but also added that the lack of consultations in all three phases (ADB 2014) of the project (LTRA 2008) is obvious. How can the government expect villages to understand the Act when government officials have a different understanding and application of it?

Flawed consultation processes explain why some important reforms and initiatives rolled out by the government do not get the desired outcomes. In the case of the LTRA 2008, inclusive and meaningful consultation as one would hope for did not take place. The representatives of Saolufata did not report to the village council what took place at the Solosolo consultation, which exposes what appeared to be a casual attitude of government when rolling out consultations on the Act. Furthermore, the approach to consultation was flawed. Can a village of 829 (2016) people be adequately were represented by five male matai especially given the complex legal provisions of the LTRA? As one participant put it: "*Ali'i* and *faipule* discuss and approve issues at the village council that hardly filter down to us. We should know about it as well as other development projects and plans by the government because they attend village meetings."

While the LTRA 2008 is the outcome of a project that aimed to alleviate poverty and generate economic growth through the commercial use of customary lands, the processes the government used to bring this about did not reflect the importance it deserved. To pass an Act without ensuring a clear understanding of the people who may be affected deprives them of their right to a fair, transparent and just consultation process and may breed distrust of government. While Faleauto (2018) emphasized the need for the government to reach out to all groups, the limited consultation processes for the LTRA 2008 exposed the need for genuine consultation processes.

Conclusion

The government maintains that the economic use of 81% of Sāmoa's land currently under customary ownership is the solution to the country's economic challenges. It has been possible to lease customary land, or take it for public purposes since Sāmoa became politically Independent under the Taking of Land Act 1964 and the Alienation of Customary Land Act 1965. The difference created by the LTRA 2008 is that it introduced the Torrens system, which as Iati and Ye (previously cited) claim could be interpreted to allow customary land, when registered, to become freehold. The fact that 94 percent of the participants in my Saoluafata study knew little to nothing about the details raises issue about the extent to which the LTRA empowers the *sa'o*. In July 2012 the Sāmoa Law Reform Commission circulated a discussion paper arising from community consultations on the "authority of a principal chief (*sa'o*)" which was clearly related to the requirement that a lease of customary land must be signed by all persons holding the *sa'o* title appurtenant to the land being leased. In Saoluafata the two highest titles have so far not been split, but it as previously discussed, it is common for *sa'o* titles to have two or more holders in other villages. The SLRC proposed to limit the holding of *sa'o* titles to persons who mainly reside in Sāmoa, and to limit the number of *sa'o* that may be appointed, and the uses of lease income, perhaps to place in a family trust. These are recommendations that require far more discussion and consultations, but would reduce the possibility of abuse of power by the *sa'o*

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