On the 29th of October 2013 Elora Raymond, now a Ph.D wrote the following in the Samoan Observer.

In 2008, the Samoan government passed a controversial law creating a land registry. In 2013, another very controversial law was passed that allows mortgages against leases of customary land.

Where did these radical ideas come from? Who wrote the bills? Did Prime Minister Tuilaep awake up one morning with the idea to create a mortgage market, or perhaps the Attorney General? Did the motivation even come from anyone in Samoa at all?

These laws came from the Asian Development Bank (ADB), which started working patiently 15 years ago to alienate Samoans from their customary land. The 2008 Land Titles Registration Act and 2013 Customary Land Advisory Commission Act were written by ADB consultants,and paid with ADB grant money.

As I will describe, the Samoan government passed the laws in exchange for one multi-million dollar loan and the promise of another when the work is done. The project is mostly completed, but not yet: the ADB has just announced the remaining steps they must take to alienate customary land from the aiga.

There are still a few opportunities left to block this process.

How did this all start?

One place to begin the story is in January of 1998, when the ADB published a report saying they were dissatisfied with the amount of borrowing and lending going on in Samoa.

In the minds of these development bankers, Samoans should be borrowing more money so that they may become a more advanced economy. Other experts disagree. For example, Americans borrowed between 80per cent– 125per cent of their income, right up until the entire U.S. economy crashed and banks seized the homes of millions of families, many left to live on the street.

Since then, many leading development bank economists have started to worry about the potential dangers of debt and investment, even more so since IMF, ADB and other development bank projects that set up western style property rights failed to deliver economic growth in many developing nations.

The 1998 ADB report was released at the very beginning of Prime Minister Tuilaepa’s first term. The ADB threatened the government, saying that they would stop lending money to the financial sector unless Samoa agreed to two conditions:

1) privatize the state-owned enterprises, and
2) pass laws allowing mortgages against customary land.

If Samoa agreed to do this, the ADB offered to lend US$7.5 million to the financial sector and to provide another US$1.0 million in technical assistance and legal advice.

Maybe the government should have just said no, but they didn't.

In 2000, the ADB lent US$3.5 million under Project Number 33167 to the financial sector. In exchange, the government agreed to privatize the state-owned enterprises, to create a land registry, and to allow mortgages against customary land (1).

Who in the government agreed to this?

At that time, the ADB said (and continues to say) that they had [a] commitment from the "highest level," which can only mean Prime Minister Tuilaepa.

Key government officials on the project were Ms.Hinauri Petana, Financial Secretary for the Treasury Department; Mr.Papali'I Scanlan, Governor of the Central Bank, and Mr.Falani Chan Tung, Secretary of the Department of Trade, Commerce and Industry.

Neither the parliament nor the Samoan people were asked to help decide about these radical changes to [the] customary land law.

Instead, we were informed after the fact several years later.

The initial ADB deal provided the government US$500,000 worth of legal advice. This wasn't generosity: these lawyers were hired to rewrite the Samoan constitution so that foreign investors could finally access Samoan land.

The lawyers instructions were to create the land titles registry, and "legislative amendments promulgated as necessary" to "free up customary land for commercial activities in a designated area or areas…. [and to] undertake a comprehensive review of the law pertaining to land, including but not necessarily limited to the various legal impediments preventing the movement of land, particularly customary land, to higher economic uses."

(1, 2) The legal experts were to pay special attention to "the current prohibition on any Samoan who is not holder of a matai title from leasing any customary land, and procedures acquiring and registering customary land leases….[and] prepare a submission for a declaratory judgment by the Supreme Court on the legal standing of mortgaging any interest in customary land… lease with local financial institutions in developing a system or model for valuing interests in customary land leases."(1)

Even back in 2002, the ADB consultants knew the Samoan people wouldn't want this.

"Resistance to changes related to the economic use of customary land is expected", they wrote. But they didn't care, writing that there was "sufficient will to implement the proposed legal and regulatory changes."

(3) In other words, that Prime Minister Tuilaepa would push the law through parliament.

The ADB lawyers spent the next few years writing the bills. Despite the expected resistance, the 2008 Land and Titles Registry Bill and 2012 Securitization Act that the ADB decided Samoa should have in 1998, had bribed the financial sector to pass in 2000, and had drafted in 2006, passed.

So… what is next?

Well, the ADB isn’t done setting up a mortgage market in customary land. The last bit of the legal puzzle is to find a way to establish some sort of ownership title for customary land.

Right now, it may be legal for a matai to lease customary land, but in order to create a mortgage against that lease with foreign investors, the investors want to know that the “owners” are identified and consent.

This is legally impossible: Samoan land belongs to the aiga in perpetuity. No individual man or group of men, no one generation, has ownership.

This is a problem for the ADB, so their next task is to narrow the definition of the aiga to some list of living people who can sign a document saying they consent. To do this, the ADB is spending US$400,000 on consultants both internationally and in Samoa to create this legal framework.

There are more details about their plan in the proposal documents for Phase III: Promoting the Economic Use of Customary Land in Samoa, on their website.

(3)Over the next year, the ADB will try to establish title on customary land. The next steps in their process are to set up a Legal Working Group using the Customary Land Advisory Council that is housed at the MNRE.

If that legal working group cannot come to a consensus, the project might fail.

Additionally, the ADB will need to perform a test case of the law. They have found a foreign investor who has gotten a lease of customary land. This investor will approach the Samoa branch of the ANZ bank to borrow money against this lease, and if they succeed, they have set a precedent.

Who is this mystery investor? What is the mystery village? Perhaps if some member of the aiga protested this development in the Land and Titles Court, this could cause the project to come to a standstill.

If this test case fails, that would certainly be a problem for the ADB as well.

The US based Accountability Project has published a useful document on how to try and engage the ADB in projects that have gone awry.

One avenue is to contact the project officer, MalieLototele at mlototele@adb.org, with complaints about ways in which the project does not comply with ADB internal regulations.

So, for example, the ADB is required to pay special attention to projects which are expected to displace ‘indigenous people’. Without a doubt, the bank has projected a default rate for mortgages against customary land. They must, in order to decide what interest rate to charge!

That means that they have estimated what percentage of Samoans who borrow against leases of customary land will fail to pay back the bank – that is, the percentage of Samoans they think that the use of whose land will be seized by the investor and sold on the open market. Is this not the displacement?

And therefore isn’t the ADB obliged by its own procedures to evaluate this risk more closely, particularly in a country without strong borrower education programs or predatory lending laws?

(4)Ideally, the government will step back and think about the ramifications of these legal changes. However, based on their behaviour so far, it is likely that the Government of Samoa is going to go all the way with the ADB, even if it means registering title on customary land in the names of individuals and legally depriving generations to come of their rights as members of the aiga.

Recall that in 2000, the ADB promised US$7.5m dollars to the financial sector for the government to alienate customary land for foreign investors. So far, the ADB has only lent US$3.5m – there’s still US$4.0m in loans to the financial sector if the government delivers on their end of the deal.

What happens if the ADB succeeds in creating a streamlined mortgage market in Samoa? Because of current financial conditions, it is more dangerous now to allow foreign interests in Samoan land than it has ever been in the nation’s history.

I am writing from the city of Atlanta where, for five years since the credit-fuelled asset bubble deflated, close to the entire population of Samoa is evicted from their homes every single year as banks seize property from people who default on their mortgages.

Since 1997 the pattern of real estate bubbles and mass evictions has happened all over the world from developing nations to first world economies.

Much as cyclones are getting stronger due to global warming, financial crises are getting stronger as global markets expand. The countries that have escaped either did not have ties between their mortgage markets and global financial markets, or else they had very good legal protections for borrowers.

If the ADB succeeds in streamlined mortgage markets for foreign investors in Samoa, these problems will start happening to Samoans fast.

*Elora Raymond was a PhD Student, at the Housing FinanceSchool of City and Regional Planning, Georgia Institute of Technology, Atlanta, Georgia at the time of this article, but has since gained her doctorate. Although the author works in the research department of a Federal Reserve Bank of the United States, these views in no way represent the views of the Federal Reserve Bank.