

Environmental Assessment and Review Framework

February 2014

MYA: Pro-Poor Community Infrastructure and Basic Services Project

CURRENCY EQUIVALENTS

(as of 9 January 2014)

Currency Unit	–	kyat/s (MK)
MK1.00	=	\$0.001017
\$1.00	=	MK982.98

ABBREVIATIONS

ADB	–	Asian Development Bank
AP/s	–	Affected person/s
EA	–	executing agency
EARF	–	environmental assessment and review framework
EIA	–	environmental impact assessment
GRM	–	grievance redress mechanism
IEE	–	initial environmental examination
MOC	–	Ministry of Construction
MCDC	–	Mandalay City Development Committee
PIU	–	project implementation unit
PMU	–	project management unit
YCDC	–	Yangon City Development Committee

NOTE

In this report, "\$" refers to US dollars.

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ENVIRONMENTAL ASSESSMENT AND REVIEW FRAMEWORK
PRO-POOR COMMUNITY INFRASTRUCTURE AND BASIC SERVICES
REPUBLIC OF THE UNION OF MYANMAR (MYANMAR)

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1 Introduction/Overview

The Pro-Poor Community Infrastructure and Basic Services Project is intended to reduce poverty and vulnerability in selected under-served areas of Yangon and Mandalay, by reducing vulnerability to sanitation and environment related diseases, making access to basic services easier by reducing the need to borrow money for investments in homes, including water and sanitation facilities, and improving the opportunity for the targeted population to participate in local and national economic development.

The project will pilot a community demand-driven approach in providing basic infrastructure and improved urban services management in disadvantaged communities of Yangon and Mandalay. The project will build upon and seek to apply on a large scale the Asian Development Bank (ADB)-supported pilot demonstration activity in “*Demonstrating a Community-Led Approach to Improved Sanitation in Yangon*”.

The project’s impact is better living conditions and environment in selected communities in Mandalay and Yangon leading to better public health and better access to economic opportunity for the urban poor and marginalized. This would result from the proposed improvements in environmental infrastructure for the selected communities in Mandalay and Yangon.

1.1 Purpose of the Environmental Assessment Review Framework

The purpose of this Environmental Assessment Review Framework (EARF) is to (i) describe the proposed activities to be financed under the project; (ii) specify the requirements that will be followed in relation to project screening and categorization, environmental assessment including provisions for meaningful consultation with stakeholders and information disclosure requirements and, where applicable, safeguard and environmental criteria that are to be used in selecting subprojects and/or components; (iii) specify implementation procedures; (iv) specify monitoring and reporting requirements; and (v) describe the responsibilities of the clients and of ADB in relation to the preparation, implementation, and progress review of safeguard documents of subprojects.

Selection of activities and/or components will be in accordance with the selection criteria outlined in this EARF. The EARF shall serve as guide to ensure compliance with the environmental assessment requirements under the 2009 ADB’s Safeguard Policy Statement as well as the environmental requirements of the Republic of the Union of Myanmar.

1.2 Myanmar Environmental Assessment and Review Procedures

1.2.1 National Environment Policy

The National Environment Policy was issued in 5 December 1994¹ to establish sound environment policies, utilization of water, land, forests, mineral, marine resources, and other natural resources in order to conserve the environment and prevent its degradation. The objective of Myanmar’s environmental policy is aimed at achieving harmony and balance through the integration of environmental considerations into the

¹ Proclaimed through a gazette in accordance with Notification No.26/94

development process to enhance the quality of the life of all its citizens.

The development of the environmental policy was followed by the drafting of “Myanmar Agenda 21” in 1997, which follows a UN framework for a multi-pronged approach to sustainable development. Myanmar Agenda 21 calls for integrated management of natural resources and provides a blueprint for achieving sustainable development and recognizes the need for environmental impact assessment (EIA).

1.2.2 Environmental provisions in the 2008 Constitution

Under the 2008 Constitution, the government “shall protect and conserve the natural environment” (Chapter 1, Section 45). The national legislature can, but does not need to, enact laws to protect the environment and help restore areas degraded or damaged by mining and forestry activities or those that have experienced destruction of plants, wildlife, and habitat (Chapter 4, Section 96). State and Division Legislatures also have the power to regulate environmental protection, but within the boundaries of legislation passed by the National Legislature (Chapter 4, Section 196). In addition, every citizen has the duty to “assist” the government in carrying out environmental conservation (Chapter 8, Section 390).

1.2.3 National law on environmental management

The Pyidaungsu Hluttaw Law No. 9/2012, also known as the Environmental Conservation Law (ECL), was enacted in 30 March 2012 to facilitate (i) implementation of the country’s National Environmental Policy, (ii) systematic integration of environmental conservation in the sustainable development process, (iii) healthy and clean environment and conservation of natural and cultural heritage, (iv) reclamation of degenerated and disappearing ecosystems, (v) management of natural resources for sustainable use, (vi) public awareness, (vii) international, regional and bilateral cooperation, and (viii) collaboration within different government departments and organizations, and with non-government organizations, and other stakeholders. The implementing rules are yet to be issued.

The Conservation of Water Resources and River Law of 2006 prohibit pollution of water resources and specify penalties. This law is primarily concerned with river transportation and the regulation of river fishing and sewage discharge. It authorizes the Directorate of Water Resources and Improvement of River Systems to determine dangerous water levels for towns; cooperate with relevant government departments and organizations to solve related problems; and guide the use river water for domestic and agricultural use. The law: prohibits water pollution; prescribes terms and conditions for the monitoring and prevention of water pollution; and specifies penalties for those who pollute water.

The 1994 Protection of Wildlife and Natural Areas Conservation Law also specifies penalties for water pollution.

A number of laws and policies concern the management of urban water resources. The Canal Act (1905, last amended in 1998) regulates the allocation of water for public purposes, water supply and drainage works. The Act permits all water in all rivers and streams flowing in natural channels as well as lakes and other natural still water bodies to be used and controlled for public purposes. The Myanmar Embankment Act (1909, last amended in 1998) requires every owner or occupier of immovable property in the

vicinity of an embankment to help maintain the embankment or to provide a laborer who can. The Act authorizes an embankment officer to enter into any immovable property in the vicinity of an embankment and take possession of, appropriate or remove and use any relevant materials for the purpose of such work.

The Underground Water Act (1930) deals with the conservation and protection of underground sources of water supply in Myanmar.

1.2.4 Requirement for foreign investments

The Myanmar Foreign Investment Law (FIL) specifies major development projects that require EIA and social impact assessment. However the FIL list does not include municipal infrastructures such as water supply systems (treatment and distribution), sewerage systems (collection, conveyance and treatment), and solid waste management (compost plants, landfills and incinerators)² therefore (i) no procedures for requiring assessment of environmental effects of such projects, and (ii) setting environmental conditions to protect the environment and people. This means that for potential municipal infrastructure projects, government is unable to assess whether an activity will have a significant effect on the environment and even if assessments are carried out, government will have limited legal ability to place conditions on the impact the project/activity can have on the environment.

Currently, ADB is assisting Myanmar to strengthen its EIA capability through *TA 7566-REG: Strengthening and Use of Country Safeguards Systems (Capacity Building for Implementing Environment and Social Safeguards in Myanmar)*.

1.3 Implementation Arrangement

The responsible agency will be the executing agency (EA), the Ministry of Construction (MOC) which will house the Project Management Unit (PMU) with responsibility for overall planning and coordination of implementation, including programming, budgeting, financial planning, accounting and reporting. The EA is responsible for the compliance with the environmental safeguard measures set out in this EARF.

The PMU will receive overall direction and policy guidance from a Project Steering Committee (PSC). The PSC will meet every 6 months after grant effectiveness or more frequently as needed.

At the local level, the implementing agency will be the local government of Yangon and Mandalay. Project Implementing Units (PIUs) will be established in each city to coordinate the subproject activities at the township and/or ward level.

On environmental safeguards, the Ministry of Environmental Conservation and Forestry (MOECAF) is the focal and coordinating agency for the overall environmental management while the Environmental Conservation Department is the agency in-charge

² Construction of housing estates, apartment and condominium buildings, bridges, golf courses and other leisure facilities, highways, and railroads require a joint venture with local investors. Construction of office and commercial buildings, in addition, requires an approved Conservation Management Plan and should be operated as joint venture under a build-operate-transfer (BOT) system. Building designs and architectural plans must follow the standard of mutual recognition arrangements, national building codes and other rules and regulations issued by the Ministry of Construction.

of implementation. Under the ECL, MOECAAF has a broad responsibility of (i) planning the national and regional level environmental management, (ii) implementing and monitoring environmental conservation and promotion, (iii) preventing, controlling, and reducing environmental pollution; and (iv) paving the way for sustainable development.

There is very limited experience and technical capability within MOC and related urban agencies on environmental protection and sustainable development, particularly with regard to ADBs safeguards requirements. This gap will be addressed by output 1 and 3 (below).

2 Overview of Type of (sub) Projects to be Assessed and Anticipated Environmental Impacts

The project has three (3) outputs:

Output 1: Multi-agency training structure to support planning, delivery and maintenance of tertiary level infrastructure piloted and documented. The main objective is to improve awareness and build capacity of relevant local government institutions (Yangon City Development Committee [YCDC], Mandalay City Development Committee [MCDC], township, and ward development committees) that have responsibility for providing and maintaining essential urban infrastructure and services. The outputs are designed to demonstrate to city authorities innovative and sustainable methodologies for the planning and delivery of demand-driven tertiary infrastructure with community involvement which will contribute to achieving full socioeconomic benefit of any future investments in large scale infrastructure programs.

Output 2: Improved community infrastructure and basic services demonstrated in four townships in Mandalay and Yangon. The main output is the improved environmental conditions and access to basic services in the selected high density urban settlements. The nature of the improvements will be identified and prioritized by the selected communities through a community action planning process, implemented through the YCDC and the MCDC. It is expected that priority will be given to safe and regular water supplies for drinking and household purposes, sanitation, drainage and flood protection, removal of solid and liquid waste from the living environment; possibly security lighting and upgrading of roads and footpaths. Maintenance and small improvements of some off-site infrastructure such as existing linkages to drainage networks will be required. On-plot services such as latrines will be maintained by the user families. Community participation will be expected for simple maintenance of common services such as drainage and removal of solid waste. Operation and maintenance savings funds will be established for repairs to community infrastructure, including latrine maintenance. Community Development Committees, to be established under the project, will manage operation and maintenance funds. Community members and officers of townships will be trained in operation and maintenance issues of the water and sanitation facilities installed. These activities will be implemented over 30 months.

Output 3: Effective project management, monitoring and audit delivered. The objective is to plan, design, coordinate and monitor all grant-funded activities. This output will arrange for conducting all necessary surveys to prepare, plan and prioritize, design, monitor and audit all civil works activities (community infrastructure and basic services) that are to be delivered under Output 2. YCDC and MCDC and township officers will be

trained in project management, monitoring, and evaluation. These activities will be implemented over 36 months, which is also the project's implementation time frame.

The type of works financed under the project will be small scale. The environmental impacts associated with the works will be localized, temporary and can easily be managed through environmental management measures. The measures will be developed during the impact assessment process. The type of impacts expected include localized vegetation clearance, minor earthworks such as digging drainage lines and latrines and very small scale construction of local amenities with concrete and timber.

3 Procedures for Environmental Assessment of Subprojects

3.1 Environmental Criteria of Subproject Selection

As a general rule, subproject activities unlikely to have adverse and irreversible impacts shall be prioritized. Subproject activities that will be implemented shall meet the following criteria:

- Conforms to ADB's environmental Category **B** or **C**.
- Comply with all requirements of relevant national and local laws, rules, and guidelines
- Does not involve any involuntary resettlement elements (of any scale/magnitude).
- Does not directly or indirectly affect the dignity, human rights, livelihood, or culture of any one indigenous person.
- Does not inflict damage to any physical cultural resource of local, provincial, national and/or international level.
- Must be based on the perceived needs of the residents, community leaders and committees in the areas of sanitation, drainage, access, solid waste management and other potential environmental improvements that may be identified through participatory planning.

3.2 Screening and Categorization

As soon as sufficient information is available, PMU will conduct screening to determine the environmental safeguard requirement:

- *Simplified* Environmental Management Matrix – for subproject activities deemed unlikely to have adverse impacts; or
- Initial Environmental Examination (IEE) Report – for subproject activities deemed likely to have some significant adverse impacts.

3.3 Scoping and Preparation for Environmental Assessment

Prior to conducting the environmental assessment, the PMU will obtain confirmation of environmental safeguard requirement from the ADB and possibly other specific requirements for the environmental assessment, such as monitoring tasks, scope of

public consultation.

To the extent possible, only one (1) Initial Environmental Examination (IEE) Report and Environmental Management Plan (EMP) per city shall be prepared if and where required.

3.4 Preparation of IEE Reports

IEEs (and EMPs) will be prepared by the PIUs with the assistance of PMU and/or implementation consultants. The format shall be in accordance with ADB standards and formats.

In the preparation of IEE reports, relevant primary data will be generated and secondary data will be collected. An assessment of project impacts and risks on biodiversity and natural resources will also be undertaken. Issues regarding natural and critical habitats will be covered in the IEE report. Pollution prevention for conservation of resources particularly technology for management of process wastes will be addressed in the IEE report. Occupational health safety and community health safety will be properly addressed in the EMP section of the IEE report. Climate change and natural hazard impacts on the project (especially in the design of components/activities) shall be considered and integrated. In case subprojects are likely to have adverse impacts on physical cultural resources, appropriate mitigation measures will to be planned and reflected in the IEE report. The document will also reflect meaningful consultation and disclosure process with a provision of grievance redress mechanism.

The EMP, which is developed as part of the IEE report, describes the environmental management measures that will be carried out to mitigate negative impacts or enhance the environment during implementation, and the environmental monitoring to be conducted to ensure that mitigation is provided and is effective in reducing impacts, or to determine the long-term impacts of a subproject. EMPs will outline specific mitigation measures, environmental monitoring requirements, and related institutional arrangements, including budget requirements for implementation. Where impacts and risks cannot be avoided or prevented, mitigation measures and actions will be identified so that the project is designed, constructed, and operated in compliance with applicable laws and regulations and meets the requirements specified in this document. The level of detail and complexity of the environmental planning documents and the priority of the identified measures and actions will be commensurate with the project's impacts and risks. Key considerations include mitigation of potential adverse impacts to the level of "no significant harm to third parties," the polluter pays principle, the precautionary approach, and adaptive management.

If some residual impacts are likely to remain significant after mitigation, the EMP will also include appropriate compensatory measures (offset) that aim to ensure that the project does not cause significant net degradation to the environment. Such measures may relate, for instance, to conservation of habitat and biodiversity, preservation of ambient conditions, and greenhouse gas emissions. Monetary compensation in lieu of offset is acceptable in exceptional circumstances, provided that the compensation is used to provide environmental benefits of the same nature and is commensurate with the project's residual impact.

All IEE reports and EMPs will be prepared prior to the award of construction

contracts. The bid documents will include the requirement to incorporate necessary resources to implement the EMP. The EMP will form part of the contract document, and, if required will need to be further updated during the construction phase of a project.

3.5 Review of IEE Reports

The PMU will be responsible for the internal review of IEE reports (and EMPs). The documents shall also be presented to stakeholders at provincial, district and village level for public review. The PMU will be responsible for finalizing the IEE.

The PMU shall endorse the final IEE reports (and EMPs) to the ADB project officer who shall arrange for the review and clearance by the relevant ADB environmental specialist.

3.6 Monitoring Environmental Performance

To ensure that potential environmental problems are detected and addressed appropriately, environmental monitoring will take place during implementation. During construction, the key tasks are monitoring the compliance with environmental mitigation measures in the environmental management plan for each subproject, which shall be done by the PIU with oversight from the PMU.

The PIUs will conduct environmental monitoring of at least 10% of randomly selected subprojects annually for category C subprojects. The PIUs will conduct annual environmental monitoring of all category B subprojects with participation from the PMU staff.

The PMU will report to ADB of the project's performance on environmental safeguards. For efficient implementation of the project, the environmental reporting schedule should coincide with the overall project progress reporting schedule. The environmental monitoring reports will be made available for disclosure on ADB's website.

ADB reviews the environmental safeguard documents including EMPs and environmental monitoring plans, on a random basis and carries out field trips to verify safeguard compliance.

4 Consultation, Information Disclosure, and Grievance Redress Mechanism

4.1 Public consultation for IEE preparation and disclosure

Meaningful stakeholder consultation and participation is part of the project preparation and implementation strategy. Public consultation will be undertaken during the IEE preparation to invite comment from the public.

During IEE preparation, meetings with groups from the target villages for the subproject will take place to inform them of the proposed subproject and the possible environmental and social impacts, and to collect opinions from people who may be affected by the project. At this stage, the following agenda should be used to ensure that there is adequate exchange of information and opinion:

- a. A summary of the proposed works under the subproject;

- b. A summary of subproject objectives and likely positive and negative environmental impacts, covering the construction phase and operational impacts;
- c. Invitation for feedback in respect of any areas of concern that the public may have, and suggested means of implementation;
- d. Disclosure of and feedback on the Grievance Redress Mechanism
- e. Acceptability of the proposed works to the public; and
- f. Request for information on the known occurrence of unexploded ordinance in the area where the scheme components will be built.

For the consultations, the dates, attendees, topics covered and conclusions should be recorded and included with the IEE report. These are to take the form of meetings, at which the findings of the IEE will be presented in addition to key background information. Comments are recorded and the IEE updated accordingly.

The executing and implementing agencies will send written endorsements to ADB for disclosing these documents on ADB's website. The EA/IA will also provide relevant safeguards information in a timely manner, in an accessible place and in a form and language(s) understandable to affected people and other stakeholders.

4.2 Public consultation during construction

Prior to construction, subproject design and the IEE document is disclosed and feedback sought. During construction and operation, the project developer is obliged to inform project affected people and other stakeholders of project activities which are likely to create environmental and social impacts, and to allow them to access general information about the subproject. In addition, should people affected by the project have any grievances, they have the right of lodging complaints through a grievance redress process established for the subproject.

4.3 Grievance Redress Mechanism

A project-specific grievance redress mechanism (GRM) will be established to receive, evaluate and facilitate the resolution of AP's concerns, complaints and grievances about the social and environmental performance at the level of the subproject. The GRM will aim to provide a time-bound and transparent mechanism to voice and resolve social and environmental concerns linked to the project. A common GRM will be in place for social, environmental, or any other grievances related to the project.

A well-defined grievance redress and resolution mechanism will be established to resolve grievances and complaints in a timely and satisfactory manner. The objective of the grievance redress mechanism is to resolve complaints as quickly as possible and at the local level through a process of conciliation; and, if that is not possible, to provide clear and transparent procedures for appeal. All affected persons will be made fully aware of their rights, and the detailed grievance redress procedures will be publicized through an effective public information campaign.

The PMU and PIUs will ensure that the GRM is fully disclosed prior to construction: (a) in public consultations and information, education and communication, or social/community preparations, (b) through posters displayed in the offices of the PMU, PIU, township and

ward as well as at strategic places within the main subproject areas (posters to include names and contact details).

The following procedures for grievance redress are proposed:

- Stage 1: In the first instance, affected person/s (AP/s) will address complaints to the ward arbitration unit or other designated grievance officers. The unit will organize a meeting with the AP/s to resolve the issue using its traditional methods of conciliation and negotiation; the meeting will be held in a public place and will be open to other members of the public to ensure transparency.
- Stage 2: If within 5 days of lodging the complaint, no understanding or amicable solution can be reached or no response is received from the village arbitration unit, the AP/s can bring the complaint to the PIU. The PIU will meet with the AP/s to discuss the complaint, and provide a decision within 10 days of receiving the appeal.
- Stage 3: If the AP/s is not satisfied with the decision of the PIU or in the absence of any response, the AP/s can appeal to the PMU. The PMU will provide a decision on the appeal within 10 days.
- Stage 4: If the AP/s is still not satisfied with the decision of the PMU, or in the absence of any response within the stipulated time, the AP/s can submit his/her grievance to MOC. The MOC will render within 10 days of receiving the appeal.
- Stage 5: As a last resort, the AP/s may submit his/her case to the Court of Law. The complaint will be lodged with the Court of Law; the decision of the Court will be final.

Safeguard monitoring reports will include the following aspects pertaining to progress on grievances: (a) number of cases registered with the Grievance Redress Committee, level of jurisdiction (first, second, and third tiers), number of hearings held, decisions made, and the status of pending cases; and (b) lists of cases in process and already decided upon may be prepared with details such as name, ID with unique serial number, date of notice, date of application, date of hearing, decisions, remarks, actions taken to resolve issues, and status of grievance (i.e. open ,closed, pending).

5 Staffing Requirements and Budget

Subject to the scope of the selected investments, and outputs from the proposed surveys, environment management expertise (international and/or national) will be identified to contribute and provide technical oversight, as necessary to the overall design of the sub-project investments. Based on past experience, possible budget is estimated below. Figures below are subject to change.

Item	Unit Costs	Quantity	Cost (US\$)
International Environment Specialist	\$20,000	3	\$60,000
National Environment Specialist	\$ 2,500	6	\$15,000
Air Travel and Per Diem			
International Air Travel	\$2,000	3	\$6,000
Domestic Air Travel	\$200	10	\$2,000
Per Diem: International Specialist	\$150	100	\$15,000
Per Diem: National Specialist in provinces	\$50	100	\$5,000
Office Consumables	Lump Sum		\$2,000
Report printing and copying	Lump Sum		\$1,000
Communications	Lump Sum		\$1,000

Total			\$107,000
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