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TA 7566-REG: Strengthening and Use of Country Safeguard Systems

Subproject: Institutional Strengthening and
Capacity Development for the Ministry of
Construction (Myanmar)

FINAL REPORT – MAIN REPORT

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Asian Development Bank

Government of Myanmar

**Ministry of Construction
Public Works Department**

Project Number: 44140

TA-7566 REG:

**Strengthening and Use of Country Safeguards
Systems**

Subproject :

**MYA- Institutional Strengthening and Capacity Development
for the Ministry of Construction**

Final Report – Main Report

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List of Acronyms and Abbreviations

| | |
|----------|---|
| ADB | Asian Development Bank |
| CCVJV | Central Committee for Management of Vacant, Fallow and Virgin Lands |
| CHRO | Chin Human Rights Organization |
| CSR | Corporate Social Responsibility |
| CSS | Country Safeguard System |
| CIDA | Canadian International Development Agency |
| CITIC | China International Trust and Investment Corporation |
| DRD | Department of Rural Development |
| DFR | Draft Final Report |
| DMC | Developing Member Country |
| DPW | Department of Public Works |
| DOHSAHD | Department of Human Settlements and Housing Development |
| EA | Executing Agency |
| FAB | Farmland Administration Board |
| GAD | General Administration Department |
| GoM | Government of Myanmar |
| HLP | House, Land and Property |
| IP | Indigenous People |
| IPDF | Indigenous Peoples Development Framework |
| IPDP | Indigenous Peoples Development Plan |
| JICA | Japan International Cooperation Agency |
| MAI | Ministry of Agriculture and Irrigation |
| MOC | Ministry of Construction |
| MOHA | Ministry of Home Affairs |
| MOSWRAR | Ministry of Social Welfare, Relief and Resettlement |
| MOECAP | Ministry of Environmental Conservation and Forestry |
| PPTA | Project Preparatory Technical Assistance |
| REGF | Resettlement and Ethnic Groups Framework |
| RF | Resettlement Framework |
| SLORC | State Law and Order Restoration Council |
| SLRD | Settlement and Land Records Department |
| SIA | Social Impact Assessment |
| SPS 2009 | Asian Development Bank <i>Safeguard Policy Statement 2009</i> |
| SSG | Social Safeguards |
| TA | Technical Assistance |
| ToR | Terms of Reference |
| UNDRIP | United Nations Declaration on the Rights of Indigenous Peoples |
| VFV | Vacant, Fallow and Virgin Land Management Law |
| WB | World Bank |

Executive Summary

Myanmar is the largest country in mainland Southeast Asia and strategically located with its borders shared with peoples Republic of China (PRC), India, Bangladesh, the Lao People's Democratic Republic (Lao PDR), and Thailand. It also has a 2,800-kilometer (km) coastline along the eastern side of the Bay of Bengal. In addition to its strategic location, Myanmar has extensive energy and other natural resources. Since 2008, Myanmar has opened its economy to international investment and is undertaking significant reforms with an aim to build an inclusive society where its people will become participants of its economic development and on-going integration into the regional and global economies. As part of that process, the Asian Development Bank (ADB) has re-engaged with Myanmar and has commenced undertaking a number of projects with significant investment in the country.

Myanmar has a relatively modern environmental policy but lacks a social safeguards policy to address emerging social issues associated with development agenda that the country has set for future. As one of the initiatives to build capacity within the country, the ADB in July 2012 approved the TA 7566-REG MYANMAR: Strengthening and Use of Country Safeguard System (CSS). This ongoing Technical Assistance has four main components to build safeguard understanding and awareness within the GoM. The four components included:

- (a) a National Seminar and Training Workshop;
- (b) coordination and cooperation with other development partners including International financial institutions and bilateral agencies,
- (c) a study tour for GoM and civil society representatives;
- (d) a training and capacity needs assessment and a draft road map for the Government of Myanmar for establishing its own country safeguard system.

The current subproject (TA 7566-Institutional Strengthening and Capacity Development for the Ministry of Construction) is aimed to build up on the recommendations of the TA 7566-REG.

The scope of the **Subproject TA7566: Institutional Strengthening and Capacity Development for the Ministry of Construction** includes the following three main outputs:

Output 1. Review of organization set-up of the MOC/PWD and existing capacity to address environment and social safeguard issues in their operation and a Needs Assessment for capacity development. Results of the assessment will lead to the proposed action plan to strengthen capacity.

Output 2. Review of existing legal and regulatory framework for environment and social safeguards and a comparative analysis with that of ADB's SPS (2009), leading to equivalence assessment and formulation of an action plan to address the gaps.

Output 3. Based on the output 1 & 2, development of planning and implementation guidelines (Manual) on social and environment safeguards and training of MOC/PWD staff.

This Final Report (DFR) presents summary of findings, recommendations, and summary of various outputs in the TA 7566 covering both the environmental and social safeguards.

Needs Assessment

The Needs Assessment of MOC (PWD) including a review of organizational set-up was carried out to identify (i) how the environment and social safeguard issues have been dealt with by

MOC staff in project planning and implementation; and (ii) what are the needs of MOC (PWD) staff for capacity building in social safeguard planning and implementation for the government funded projects and as well the projects funded by international development and funding agencies.

Currently there is no dedicated section or staff responsible for addressing safeguards issues in development projects and the staff lacks awareness and understanding of safeguards (environmental and social). There is therefore, a need for capacity building at all levels.

Review of Legal Framework

The review of existing legal and regulatory framework for environment and social safeguards and a comparative analysis with that of ADB's SPS (2009), leading to equivalence assessment and formulation of an action plan to address the gaps was carried out under the TA.

As regards to the environmental safeguards the equivalence assessment indicates that MOECF/ECD laws and rules are in general similar to the ADB SPS requirements.

As regards to the social safeguards however, existing legal framework, provisions of the acts & regulations in Myanmar are inadequate to efficiently identify and mitigate adverse impacts on indigenous peoples and those arising due to land acquisition (involuntary resettlement) in development projects in general, and those undertaken by the MOC in particular.

Due to the gap between the ADB's SPS policy requirements and local acts and laws, and in the absence of any consolidated policy on involuntary resettlement and supporting implementation procedures there is an urgent need to take actions to fill the gaps and establish legal framework(s) to address adverse impacts due to the development projects for both the involuntary resettlement and ethnic minorities (indigenous peoples) in MOC operations. Proposed Action Plan to fill the gap provides mainly following two options to MOC.

First option available to MOC is to follow the recommendations of the TA7566-REG that proposes MOECF to be the key ministry for oversight in social safeguards. The recommendations included a list of specific actions required and proposed assistance by the ADB to the GoM in strengthening its country safeguards systems. However, the proposed set of actions did not provide any specific time-line.

The second option, which is also recommended under this TA (Subproject TA 7566) is for the MOC to establish its institutional policy of social safeguards as an interim measure and until such times the decision by the Union Government is taken and national legal framework on social safeguards and such legal framework is put in place.

Capacity Building

Together with improving capacity of the staff on dealing with environmental and social safeguards issues in project planning and implementation, MOC is recommended to establish a safeguards sections (including social safeguards and environment) in the central level so as the section could coordinate with various levels of MOC, relevant agencies and local general administration authorities to plan and implement the safeguards properly for MOC's projects.

To increase awareness on safeguards issues two training workshops were organized under the TA, one each for the environment and social safeguards. The workshops were organized for MOC (PWD) staff from different levels of MOC and were attended by over 50 participants. Both the workshops were well received by all the participants. The feedback from the participants indicated that the primary objectives of the workshops: to increase awareness; and to introduce

objectives, procedures and methodologies for addressing safeguards issues in planning and implementation of projects were fully achieved.

Technical Guidelines and Manuals

The safeguards training workshops were supported by technical guidelines and manuals on environment and social safeguards. These manuals were provided to all the participants. The participants found these manuals easy-to-use as a reference and practical guide for their day-to-day operations.

TA Recommendations

Specific recommendations for institutional strengthening and to build capacity for environmental and social safeguards under the TA included the following.

Environmental Safeguards

- i) Approval and dissemination of MOC manual on Environmental Safeguards; and
- ii) Active discussions with MOECAAF regarding ECL and other draft regulations, including environmental assessment procedures.

Social Safeguards

- i) Formulation of MOC's social safeguards policy, supported by implementation guidelines, as an interim measures, to provide a legal context for MOC (PW) to address social safeguards in its operations.
- ii) Institutional Strengthening. MOC will need to undertake immediate steps for institutional strengthening including establishing a department/sub-division with the sole responsibility to oversee safeguards issues in MOC (PWD) operations and hiring experienced staff. Coupled with establishment of safeguards unit, MOC is recommended to hire experienced senior professional and technical staff in environment and social safeguards.
- iii) MOC should continue to take urgent steps for building capacity among the MOC (PWD) staff on sustainable basis. This may include project based training and providing opportunities to its selected staff with greater exposure on international best practices in environment and social safeguards through gaining more knowledge on how environment and social safeguards issues are addressed in neighboring countries through short study tours.

1. Introduction

1.1 Background

Myanmar is the second largest country in Southeast Asia and strategically located with its borders sharing with the Republic of China (PRC), India, Bangladesh, Lao Peoples' Democratic Republic (Lao PDR), and Thailand. It has a total land area of about 676,590 square kilometers and a population of about 61.65 million in 2013¹. It has 2,800 km eastern coastline along the Bay of Bengal. Myanmar's gross domestic product (GDP) reached an estimate of \$55.320 billion in 2011 with an average annual growth rate of 10% from 2000 to 2007. In addition to its strategic location, Myanmar is endowed with vast energy and other natural resources. Its per capita gross domestic product rose to about \$1144 in 2011.² Its economy has been gradually shifting from an agriculture-based economy towards a more service-and industry-oriented economy. The rapid growth of Myanmar's GDP is largely contributed by its energy exports. Myanmar is one of the five energy exporters in Southeast Asia, mainly exporting crude oil, natural gas, and coal. However, despite its rich natural resources and continuing inflow of investments, Myanmar still remains one of the least developed economies of the world.

Myanmar is undergoing significant transition since its elections in 2008. Since 2008 Myanmar has opened its economy to international investment, both in the private and public sector. In 2008, it prepared a new Constitution and has since been developing other laws. Myanmar has a relatively modern environmental policy but lacks a social safeguards policy to address emerging social issues associated with development agenda that the country has set for future. To ensure that the Government of Myanmar (GoM) can cope with the rapid expansion while protecting its people and environment, there is a need for it to develop a country safeguards system (CSS) that meets the needs of Myanmar as well as the international community. A country's policies laws, regulations and practices aiming at avoiding, minimizing or mitigating /compensating potential harmful environment and social impacts of development activities and established institutions in charge of implementation taken together are referred to as Country Safeguards Systems (CSS).

In 2012, the Asian Development Bank resumed operations in Myanmar, with an assistance package for sustainable social and economic development and to build a foundation for further reforms to alleviate poverty and foster growth. As of January 2014, the Asian Development Bank had approved 28 projects in various sectors including the agriculture, energy, finance, health, industry and trade, transport and water supply sectors. The World Bank and JICA have similarly approved funds for a number of development projects. In parallel with the investment in development projects, the ADB in July 2012 approved the TA 7566-REG MYANMAR: Strengthening and Use of Country Safeguard System (CSS) with an aim to build capacity within the country to address emerging social and environment issues associated with development projects. The Technical Assistance had four main components to build safeguard understanding and awareness within the GoM. The four components included:

- a. national Seminar and Training Workshop;
- b. coordination and cooperation with other development partners including International financial institutions and bilateral agencies;

¹ Basic Statistics, 2014, ADB, Economics and Research Department, April 2014.

² United Nations Data, available at <http://data.un.org/CountryProfile.aspx?crName=MYANMAR>

- c. a study tour for GoM and civil society representatives; and
- d. a training and capacity needs assessment and a draft road map for the Government of Myanmar for establishing its own country safeguard system.

The Study under the TA identified, among others, an urgent need to develop laws and policies in relation to social safeguards and to assist Myanmar with training to raise institutional capacity in selected key ministries. The current subproject (TA 7566-Institutional Strengthening and Capacity Development for the Ministry of Construction) is aimed to build up on the recommendations of the TA7566.

The transport was identified as the key sector for ADB assistance in the Interim Country Partnership Strategy: Myanmar, 2012–2014 and training and capacity building program was considered as one of the potential area of support. Therefore, proposed subproject will focus on capacity development of MOC/PWD, district offices, and local authorities. The implementing agency for this subproject is the Ministry of Construction and its Public Works Department (MOC/PWD) since it is responsible for all primary and secondary road networks.

1.2 Scope of TA 7566 Subproject

The scope of the Subproject TA7566: Institutional Strengthening and Capacity Development for the Ministry of Construction includes a review of the legal framework in Myanmar on social and environment safeguards and needs assessment of MOC (Department of Public works) for capacity development.

The proposed TA includes following three main outputs:

Output 1. Review of organization set-up of the MOC/PWD at the head quarter and district offices and existing capacity to address environment and social safeguard issues in their operation and a Needs Assessment for capacity development. Results of the assessment will lead to the proposed action plan to strengthen capacity.

Output 2. Review of existing legal and regulatory framework for environment and social safeguards and a comparative analysis with that of ADB's SPS (2009), leading to equivalence assessment and formulation of an action plan to address the gaps.

Output 3. Based on the output 1 & 2, development of planning and implementation guidelines (Manual) on social and environment safeguards and training of MOC/PWD staff. The guidelines and manuals will be based on the ongoing TA/loan projects regardless of sector or source of financing (Government, ADB, JICA), and improved/revised as necessary based on feedback from participants and to ensure a common approach in safeguards planning and implementation. The guidelines and manuals will be submitted to ADB and MOC/PWD for review and approval. Other stakeholders (donors, ministries, civil society organizations) will also be consulted during the process of drafting and finalizing the guidelines and manuals.

1.3 Structure of the Report

This report is the final report providing summary of various outputs and TA activities carried out by both the environment and social safeguards teams. Environment safeguards team prepared and submitted a standalone final report that is attached as Volume I to this Final Report. Key issues from the Environmental Safeguards final report are included in this report. The contents of the report are organized as below:

1. Chapter One includes general introduction and background of the TA 7566 including expected outputs from the study;
2. Chapter Two contains mobilization and summary of activities by both the environment and social safeguards teams;
3. Chapter Three includes summary of outputs for both the environment and social safeguards;
4. Chapter Four includes a summary of key issues and way forwards for MOC; and
5. Chapter Five includes recommendation for capacity building in MOC/PWD highlighting the focus areas for capacity building in environment and social safeguards.

This report is supported by the following standalone documents:

Volume I A: Final Report on Environment Safeguards;
Volume I B: Draft Manual on Environmental Safeguards
Volume II A: MOC/PWD Needs Assessment Report on Social Safeguards;
Volume II B: Review of Legal Framework and Equivalence Assessment;
Volume II C: Training Workshop Program and Presentations; and
Volume II D: Draft Operational Manual on Social Safeguards.

2 Mobilization & Summary of Activities

Mobilization and summary of activities for both the environment and social safeguards teams are presented in the following sections.

2.1 Environmental Safeguards

Environmental safeguards team had a total of three visits to Myanmar under the TA. The scope of work under each visit and specific activities that were carried out are summarized below.

2.1.1 First Mobilization

The environmental safeguards team was first mobilized in August 2014 to (i) assess MOC/PWD organizational structure, capacity and environmental safeguards experience; (ii) collect data on current legal and regulatory framework for environmental safeguards and assess applicability to MOC/PWD projects; (iii) assess current legal and regulatory framework for environmental safeguards in relation to ADB SPS 2009; and (iv) conduct orientation for MOC/PWD on ADB SPS policy principles, environmental safeguard requirements and standards. The first progress report on activities conducted, findings, recommendations/further actions was submitted to ADB on 27 August 2014. Copies of the report were also provided to MOC/PWD and Ministry of Environmental Conservation and Forest (MOECAF)/Environmental Conservation Department (ECD).

2.1.2 Second Mobilization

The environmental safeguards team was again mobilized from 6 to 15 October 2014 to conduct a one-day workshop (the 1st workshop) to (i) pilot-test training materials, including draft MOC manual/guideline for environmental safeguards; (ii) reinforce MOC/PWD appreciation and understanding of ADB SPS 2009; (iii) collect additional data, as necessary.

2.1.3 Third Mobilization

The third and last mobilization of the environmental safeguards team was from 3 to 18 November 2014 to (i) revise the draft MOC manual/guideline for environmental safeguards based on feedback received during the 1st workshop; (ii) conduct a two-day training program (the 2nd workshop) to train MOC/PWD key staff on requirements of ADB SPS and use of MOC manual/guideline for environmental safeguards; (iii) finalize the draft MOC manual/guideline; and (iv) complete data collection for Output 2.

2.2 Social Safeguards

Key activities carried out by the social safeguards team are summarized in the following sections.

2.2.1 First Mobilization

The Ministry of Construction, through its letter dated 11 June 2014 (**Appendix 1**), agreed to the first mobilization of the consultants for the TA. Actual mobilization of the international and national consultants took place between June 17, 2014 and June 21, 2014.

A brief description of key activities carried out by the consultants during the first mobilization period between 16 June and 1 July 2014 is presented below.

Meetings

During the reported mobilization period (June 15-July 1, 2014) the consultant had series of meetings with MOC/PWD staff at Naypyitaw and at district and township level, Ministry of Environment Conservation and Forestry (MOECAF), Ministry of Social Welfare and Resettlement, and with Local General Administration office in Kyaiklat. The list of persons met during the mobilization period is shown as **Appendix 2**.

MOC/PWD

During the reported period the consultants held series of meetings with MOC/PWD officials including the Chief Engineer and Executive Engineer of PWD Road division; and staff of the

planning and survey sections in the road division. During the meeting the consultant explained the purpose of the TA, its objective and scope. Information on the organization set-up of the MOC and on the procedures adopted for survey and alignment of proposed roads at the planning stage was collected.

Relief and Resettlement Department

In the meeting with the Assistant Director, Relief and Resettlement Department in the Ministry of Social Welfare, Relief and Resettlement information on the main tasks and responsibilities of the department were collected. The Department of Relief and Resettlement works with concerned agencies to formulate and distribute disaster preparedness plans (in the warning stage); under emergency situations take required actions such as evacuation of communities from vulnerable areas to safe locations/designated shelters (in the disaster stage) and conduct field inspections in the affected areas and provide necessary assistance and support for the communities (in the rehabilitation stage). In case of need of land for construction of shelters on safe locations for those who suffered from disaster, the department works with the General Administration Office (GAO) of the Ministry of Home Affairs. The GAO of the Ministry of Home Affairs acquires the land following the procedures of land acquisition of the government.

Ministry of Environmental Conservation and Forestry (MOECAF)

In the meeting with the TA consultants, the Deputy Director-General of the Ministry of Environment Conservation and Forestry explained that the Ministry has had no experience on involuntary resettlement and indigenous people issues. There are only very few cases where the communities living in the core-areas of protected forests were shifted and on such occasions the Ministry worked with the General Administration Office (GAO) of the Ministry of Home Affairs to relocate such communities out of the protected areas.

PMU and Township Engineers

The TA consultant held a meeting with the Director PMU for the Paypon-Maubin road Rehabilitation Project in Yangon on 24th June 2014 prior to the visit to the project area. During the Meeting the TA Consultants enquired if there were any outstanding issues relating to the revised RP for the project and for urgent endorsement of the revised RP.

The TA Consultants during the field visit for the Paypon-Maubin Road Rehabilitation Project held formal and informal meetings with the Executive Engineer and his staff at Paypon and Maubin Townships on 25th June and 27th June respectively. During the meetings and informal discussions carried out during the field visits, the Consultants explained the scope and objectives of the ADB's SPS and its applicability for the project. The Consultants also explained that the provisions of the RP need to be implemented to comply with the ADB's SPS requirements.

The Consultants also held a meeting with the Director after the field visit to brief him on the observation following the field visit.

Local General Administration

The TA Consultants held a meeting with the General Administration Official, who is also the Chairman of the Resettlement Coordination Committee (RCC) at the Kyaiklat Township, and other members of the RCC in Kyaiklat on 26th June 2014. The Chairman briefly explained the procedures adopted for acquisition of land and compensation payment in development projects funded out of domestic funds. Land Acquisition and Compensation for development projects is generally carried out in accordance with the provisions of the Town and Village Acts of Myanmar.

Orientation workshop on Social Safeguards

On 23rd June 2014, the TA Consultants organized an orientation workshop on social safeguards for the senior management of the MOC/PWD as part of the capacity building exercise with specific objective to raise awareness of the MOC on social safeguards issues. The participants raised several issues in regard to the compensation payments and entitlements to the squatters illegally occupying ROW. The list of participants and workshop presentations are presented as **Appendix 3**.

First Progress Report summarizing the activities carried out during the first mobilization period and emerging issues was submitted to the MOC/PWD and the ADB on July 31, 2014.

2.2.2 Desk Review of Local Acts, Regulation and Legal Framework

During the months of July and August the TA consultants at the Home Office reviewed the available documents on the existing legal framework in Myanmar. These included;

The Constitution of Myanmar (2008)
The Land Acquisition Act 1894
The Lower Myanmar Town and Village Lands Act (1899)
Town Act (1907)
Village Act (1908)
Highway Law (2000)
Farmland Law (2012)
The Vacant, Fallow and Virgin Land Management Law (2012)
Transfer of Property Act (1882)
The Land and Revenue Act (1879)
The protection of the Right to Cultivation Act, 1963
The Land Acquisition (Mines) Act (1885)

Desk review also included the land use, land rights and land related issues in Myanmar.

Based on the review of existing legal framework Gap Analysis (Equivalence Assessment) with the provisions of the ADB's SPS was completed.

2.2.3 Second Mobilization

Second mobilization of the consultants for the social safeguards was carried out between 21 September and 04 October 2014 generally keeping with the scheduled specified in the TOR.

Meetings

During the reported mobilization period (21 September-4 October, 2014) the consultants held series of meetings with MOC/PWD staff at Nay Pyi Taw and with the officials of the Ministry of Home Affairs and the Ministry of Agriculture and Irrigation. Description of the meetings and issues discussed are summarized in the following sections.

MOC/PWD

Key issues/matters discussed with the MOC (PWD) included: i) collection of additional information on the experience and educational background of MOC (PW) staff in the planning and surveys sections; ii) The scope, and schedule of the Social Safeguards Training Workshops proposed to be held in January; iii) meetings with the assigned MOC staff for the Regional workshop on Country Safeguards System, Manila to guide them in understand the scope and contents of the ADB's SPS and for preparation of a short presentation on social safeguards; and iv) schedule of workshops on Legal Framework and Needs Assessment.

General Administration Department (Ministry of Home Affairs)

The meeting with the Director, deputy Director and Assistant director of the Land Excise and Revenue Division, General Administration Department (Ministry of Home Affairs) was aimed to collect information on the general administrative structure of the Ministry of Home Affairs, its role and overall responsibilities in regard to land management and land acquisition in development projects; applicable acts and regulations and procedures used for land acquisition and compensation. The Ministry is responsible for coordination of all development in the districts and townships through its office headed by a district collector. The office of general administration at local levels helps different ministries and departments in the planning and implementation of their project by reviewing their preliminary designs, approval, coordination with different ministries as necessary and implementation. Land acquisition for development projects in public interest and

private businesses are governed by the Land Acquisition Act 1984 and the Ministry is mandated for oversight and implementation of the said act.

The level of compensation is normally provided based on the market rates and the procedures to determine market rates have improved over the years. There is no provision for preparation of any specific documentation requirements to record impacts on land and structures which is normally done by the project proponents. The record of impacts, together with project details and design, is submitted by line agencies to the local general administration office. After review of the project and the details submitted, local general administration office carries out public consultation and determines compensation for affected land, structures, trees and crops.

Land Acquisition Act is not supported by standard procedures or implementation guidelines. However, in practice the procedures for compensation assessment, information dissemination to affected communities on their losses and award of compensation entitlements are provided for in the LA Act.

Ministry of Agriculture and Irrigation

The meeting with Settlement and Land Records Department, Ministry of Agriculture and Irrigation was held on 26th September at the Ministry's office. The meeting was chaired by U Kan Htun, Director (Administration). Summary of information provided by the Ministry included the following;

- Land records for agricultural, garden, grazing, culturable and follow land are maintained by the Ministry.
- Information on land areas, land use and ownership details are kept at the local level (district/townships).
- The Ministry is currently trying to update land records and digitizing the maps following field verifications.
- There is currently no plan to provide information to other ministries on the available maps and land ownership details on a pro-active basis. Upon receiving request and information on their projects from line ministries, the Ministerial committee reviews such requests and if approved information on land ownership is provided to respective line agencies for their projects.
- The Ministry has revised and enacted the Farmland Law (2012), and The Vacant, Fallow and Virgin Land Management Law (2012).

The list of persons met in the Ministry of Home Affairs and Ministry of Agriculture and Irrigation is shown as **Appendix 4**.

Workshop on Social Safeguards

During the second mobilization period, two workshops were conducted by the consultants. The scope and contents of the workshops are summarized below.

Workshop on Review of Legal Framework

The workshop on Review of Legal Framework included Gap Analysis (equivalence assessment) and recommendation on the Action plan. The workshop, held on September 24th, was attended by all the senior management officials of the MOC (PW). The powerpoint presentation of the workshop and the list of participants is attached as **Appendix 5**.

The gap-equivalence assessment between Myanmar LAA 1894 and other laws and the ADB's SR2 Policy Requirements shows that the provision of existing acts and laws have, in general, no equivalence with most of the provisions of the ADB's SPS (SR2) requirements. Although the LAA 1894 contains several provisions that have partial equivalence to SPS requirements, in practice they fall short of the objectives due to the lack of standard methodologies and implementation guidelines and antiquated procedures.

Local acts and laws also fall short on cross-cutting policy themes that are equivalent to those of ADB, such as: (i) Public Communications Policy (2011) on disclosure and exchange of information; and (ii) Gender and Development (2006).

Workshop on Needs Assessment

The consultant presented findings of the Needs Assessment in the workshop organized on 2nd October, 2014. The workshop was attended by all the senior management personnel of the MOC (PW) including the General Manager. Powerpoint presentation on Needs Assessment workshop and the list of participants is attached as **Appendix 6**.

Key findings of the Needs Assessment include: i) The planning, design, survey, and inspection sections are primarily responsible for design & planning of projects through their professional and technical staff; ii) During the course of design, planning and survey, the staff of planning and survey sub-sections are responsible for assessment of social impacts and, working with state/regional & district/township offices and with other ministries and institutions, in addressing social safeguards issues in their projects; iii) All staffs of site officers are engineers with very little, if any, exposure to social issues in development by educational background or by training; and iv) The support by the site office staff to the planning and survey section and to the local general administrations is only for limited impact assessment and compensation payments, or as directed by the local general administration offices.

Preparation for Training Workshop on Social Safeguards

During the second mobilization period the consultants held extensive discussions with the MOC (PWD) management on the proposed scope, contents and schedule for the training workshop. The Consultants informed MOC (PW) that the:

- Workshop is proposed to be comprehensive in scope to include both the involuntary resettlement and indigenous peoples issues;
- Participants will be encouraged to actively participate in the discussion and deliberations of the workshop;
- To ensure that the participants are able to relate their day-to-day experience of working on projects the workshop will relate specific best practice examples; and
- The workshop should also include selected staff from some relevant agencies which play coordinating and /or supportive role in MOC (PW) operations.

MOC (PW) endorsed above objectives of the workshop and requested to hold two workshops: at Nay Pyi Taw and Yangon, in order to maximize benefits to its staff at the district/townships and those working on different projects. However, in early December the MOC changed its mind and decided to hold only one workshop for about 45-50 participants at a beach town of Ngwe Saung. The workshop was originally planned for January 13-15, 2015 but was later postponed until February 17-19, 2015.

2.2.4 Finalization and Submission of Report

During the months of October, November and December 2014, the TA consultants finalized the reports on Needs Assessment (Output 1) and Review of Legal Framework (Output 2). English version of the Final reports were submitted to the MOC (PWD) and the ADB on 24th December 2014. Burmese version of both the reports were also submitted to the MOC.

Progress Report 2 was submitted to the MOC (PWD) and the ADB on 6 December 2014.

During the month of December the consultants also finalized the training program and prepared powerpoint presentations for the training workshop.

In parallel with the preparation of above reports, draft Operational Manual on social safeguards was prepared and sent to the MOC (PWD) prior to the training workshop for their review and distribution to the workshop participants.

2.2.5 Third Mobilization

The third and last mobilization of the TA consultants for social safeguards was during February 16-21, 2015 to conduct social safeguards training workshop for MOC (PWD) staff. The 3-day workshop was held at Ngwe Saung and was attended by 55 participants. Apart from the MOC staff, there were three personnel from MOECAF and four participants from Mandalay City Development Committee (MCDC).

3 Summary of Outputs

Activities in regard to various outputs under the TA 7566 are described in the following sections.

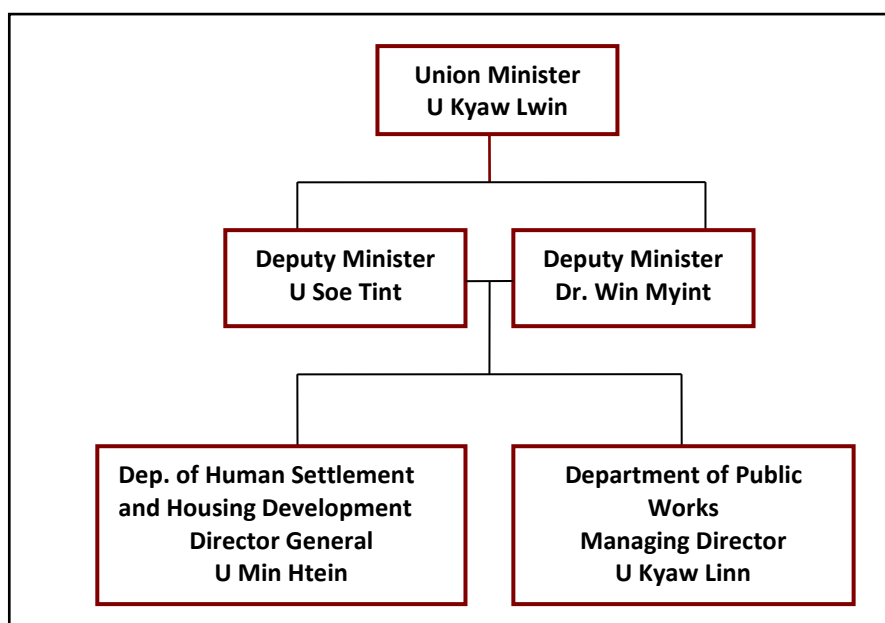
3.1 Needs Assessment

Output one of the TA included the review of organization set-up of the MOC/PWD at the head quarter and district offices and existing capacity to address environment and social safeguard issues in their operation and a Needs Assessment for capacity development. Results of the assessment will lead to the proposed action plan to strengthen capacity.

3.1.1 Overview of MOC (PWD)

The implementing agency for this subproject is the Ministry of Construction and its Public Works Department (MOC/PWD) since it is responsible for all primary and secondary road networks. The Ministry of Construction has the responsibility for construction of highways, bridges, airports and other infrastructure including housing and residential development. MOC's tasks also include preparation of policies for development of roads, repair and maintenance of roads, arranging oversees joint ventures with other agencies for construction and maintenance of roads; undertaking land acquisition and clearance for construction roads and bridges and undertaking research related to construction and maintenance of roads. Ministry of Construction has two departments: Human Settlement and Housing Development Department and Public Works Department. Figure 3.1 presents an overview of the Ministry at the national level.

Figure 3.1: MOC Organization



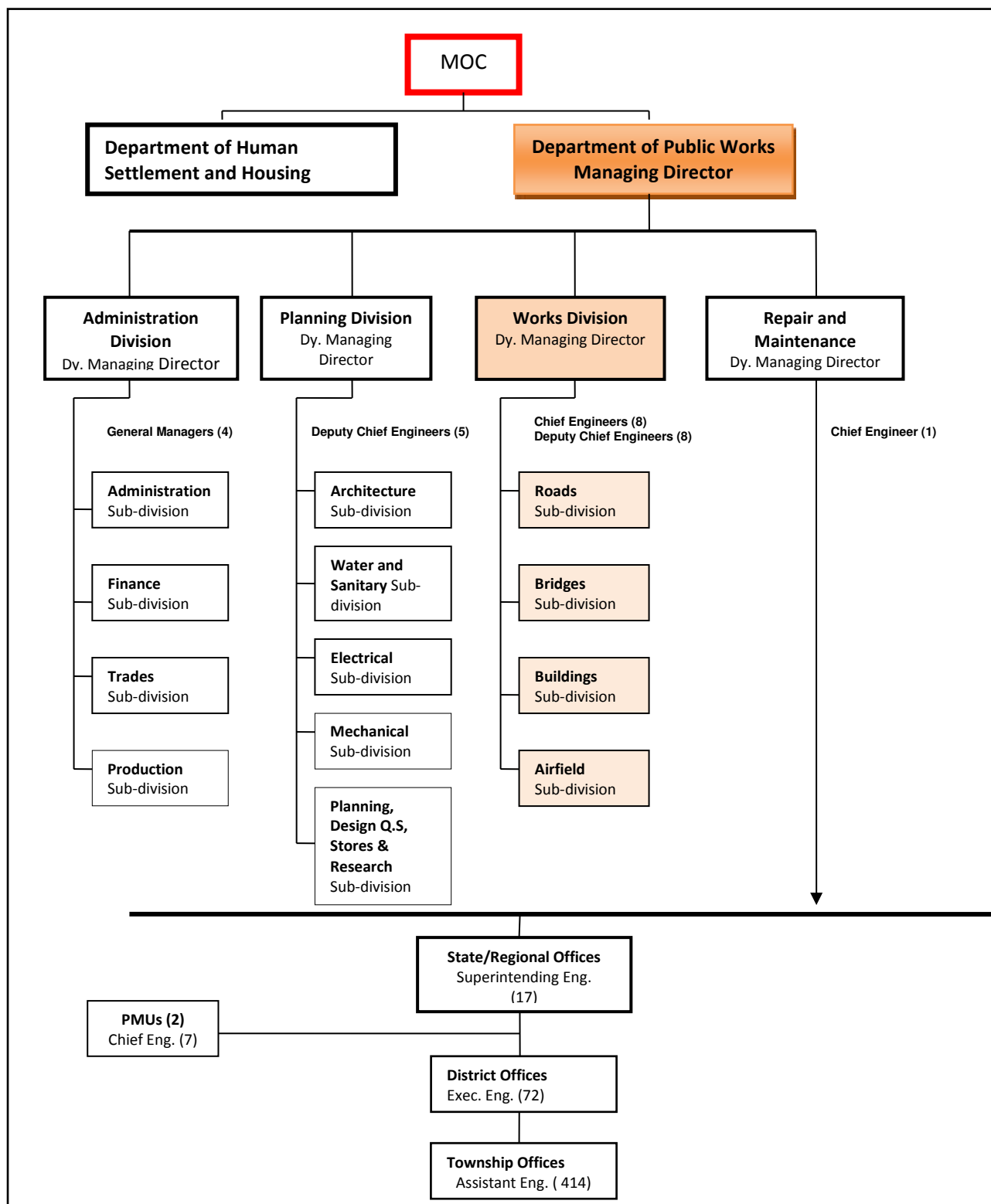
The key function of the Public Works Department is the construction and maintenance of roads and bridges and upgrading works of the same. Additionally, PWD also takes up responsibility of: (i) construction and maintenance of the budgeted works of airfields assigned by the Ministry of Transport; and (ii) construction and maintenance of the budgeted works of public housing, factories, offices, hospitals, colleges, schools; administrative buildings, etc. assigned by other Ministries.

3.1.2 Organization Set-up of Public Works Department

The PWD oversees and provides the resources for infrastructure projects that fall within the scope of its responsibility. PWD has offices at the national level, in Nay Pyi Taw, and at the state/regional

and district & township levels. PWD also sets-up Project Management Units (PMUs) for specific projects, as necessary. The Figure 3.2 below presents organizational set-up of Public Works Department at the central, state/region and district/township levels.

Figure 3.2: Organization Structure of Public Works Department



Public Works Department at the Central Level

Public works is managed by a management board presided over by a Managing Director in collaboration with four (4) Deputy Managing Directors – each with an oversight responsibility of four divisions: Administrative, Planning, Works, and Repair and Maintenance. There are eight (8) chief engineers and thirteen (13) deputy chief engineers to operate different divisions at the head quarter. There are four (4) supporting divisions, under the Administrative Division, headed by four General Managers who are non-technical senior administrative officers.

The Work division is the biggest division in terms of staffing. It has four sub-divisions: Buildings; Airfields; Roads, and Bridges. Each sub-division is headed by a chief engineer. Additionally, each sub-division consists of a Special Unit to manage specific projects in their own specific areas. These special units are headed by a chief engineer. Each sub-division consists of four sections including: planning, design, survey and inspections (Figure 3.3).

The staff at the central level i.e. PWD Head Office, is mainly responsible for planning, design and providing technical guidance. Implementation and supervision of works is carried out by the engineering staff at the regional/state and district/township levels through the regular engineering staff or through PMUs established for specific projects, depending upon the sources of funding.

State/Regional Level

At the state and regional level, there are nine state offices in nine states. Each state office or regional division are assisted by three special units headed by Superintending Engineers.

For the projects that are funded from the local authority's budget the role of the staff in planning, designing, and providing technical guidance at the state offices and regional divisions is the same as the staff at the central level. Supervision of works is done by the lower office levels. For the projects that are funded by the central government's budget (budget from the Union), staffs of state offices and regional divisions coordinate with the staffs of MOC central level on planning and supervisions of construction works.

District/Township Level

There are 72 district offices under the state/regional offices. Additionally, there are 404 township offices under the district offices. Staff of township offices play critical role in project implementation. The works such as tendering of construction materials, organizing construction groups, supervising of construction works, etc. are managed by the township offices.

PMUs

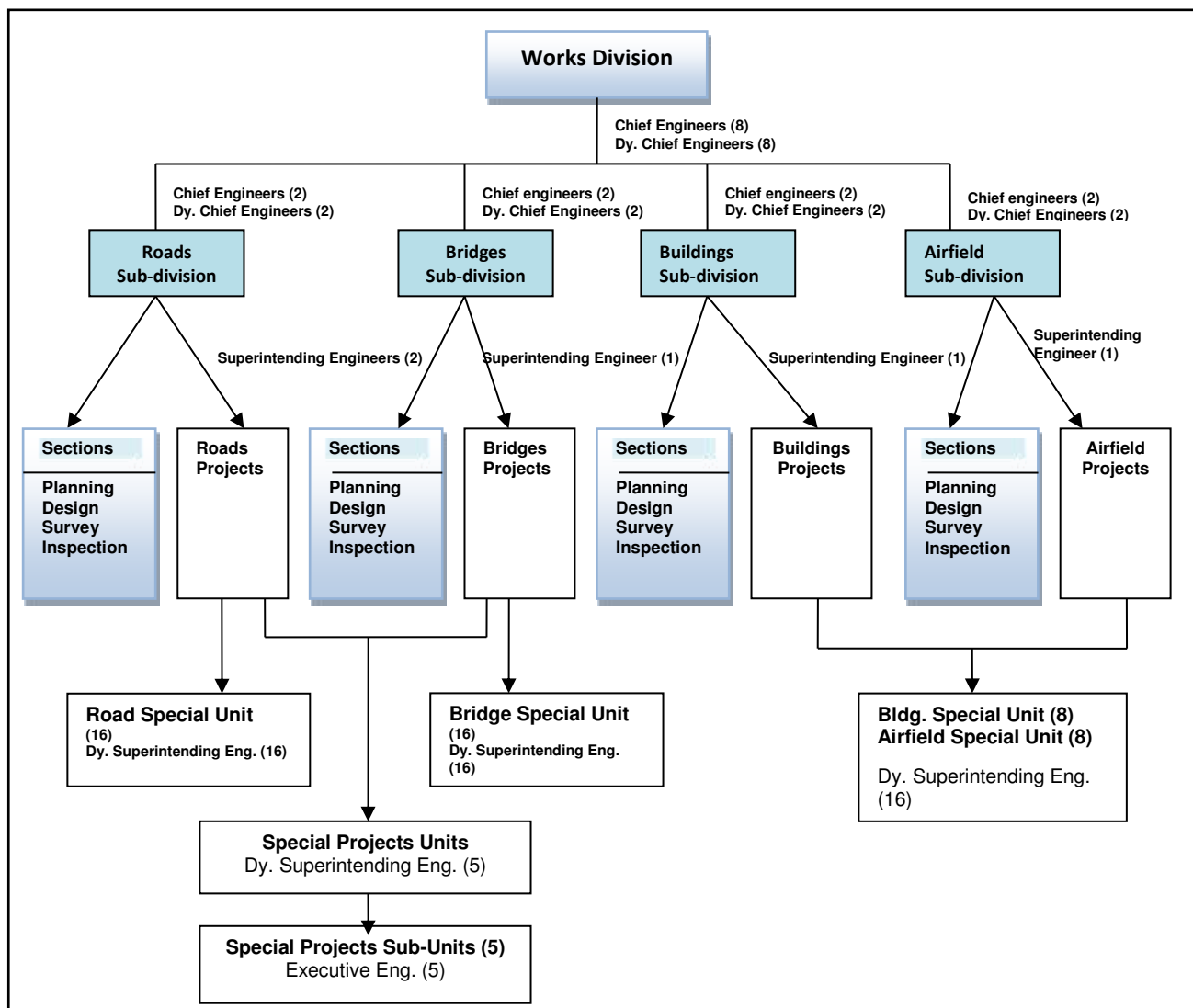
PMUs are established to manage particular projects that funded by multilateral agencies. For the projects that funded by the government, the aforementioned special units and sub-special units manage the works with similar roles of a PMU. Once a project is developed and funded by international development and funding agencies, the PMU is set-up with the staffs from the Works Division at the central level. PMUs work with site engineers (district and township offices) and local authorities to prepare and implement the project. PWD currently has seven PMUs. The PMUs are generally based at state/region where the projects are implemented. PMUs are headed by the Chief Engineers.

3.1.3 Role and Responsibilities of Key Departments and Divisions

As shown in Figure 3.3, each sub-division consists of planning, design, survey, and inspection sections. These sections are primarily responsible for design & planning of projects through their professional and technical staff. Planning, including determining alignment of roads and location of bridges, location of buildings, airfield, etc. is the responsibility of the respective planning, design and survey staff. During the course of design, planning and survey, the staff of planning and survey sub-sections are responsible for assessment of social impacts and, working with state/regional & district/township offices and with other ministries and institutions, in addressing social safeguards issues in their projects. Staff at the state/regional level does not have any responsibility for land acquisition and resettlement issues in the projects that are funded by the union government.

For the projects funded by multilateral agencies the staff of the planning sections works closely with the consultants engaged by the project in planning and designing works. The preliminary designs and alignments are discussed with the site engineers (district and township levels) and district/township general administrations and further refinement to the alignments made based on information collected from land use maps and other relevant documents. Where the project is likely to traverse rural areas and farm land the planning staff also consults the Ministry of Agriculture and Irrigation.

Figure 3.3: Organization Structure of Works Division



In the course of finalization of alignments and project locations, consultations with local communities, through the local general administration offices, are also held. Based on the information collected during the field verification and consultations with local authorities, due consideration is given to avoid impacts on land and buildings, particularly religious & defence lands.

The survey section under Roads sub-division is generally responsible for survey of land and assets impacts by projects. Other tasks include gathering information on geographical conditions, soils, traffics surveys, etc. Once the road alignment and project locations are finalized, the demarcation of alignment, corridor of impact, and project location boundaries, through stake-out, is carried out by the survey section with the support from the planning section and with prior consultation and

agreement with the local general administration office at the township or district, as the case may be.

Staffs of district and township office level are involved directly on planning and implementation of road projects. Generally, the engineers of district/township office level have four main responsibilities:

- (i) coordinate with planning section on planning and design the roads, bridges, buildings, and airfield;
- (ii) coordinate with village, township and district general administrations for the administrative procedures for project planning, approval and implementation, including land acquisition and resettlement;
- (iii) organize and supervise of construction activities; and
- (iv) coordinate with sections under subdivisions of Repair and Maintenance division for the repairing and maintaining plan as well as the repairing and maintaining activities.

The staff at the PWD state/regional offices also assists and coordinates the work on identification of impacts and measurement of affected land and assets. They also provide support to the local general administration office in the valuation of affected assets and assessment of compensation, negotiation with affected households and compensation payment. Where necessary, PWD staff also works with the local general administration office to identify suitable land for relocation of displaced households.

Staffs of PMUs are not directly involved with land acquisition and resettlement in their project but coordinate with and provide assistance to the staff from the central level as necessary. PMU also assist in coordination with relevant agencies and local general administrations to implement land acquisition and resettlement for the project.

3.1.4 Experience and Capacity of PWD staff in Environment and Social Safeguards

MOC is experienced in managing and implementing infrastructure projects. However, project management that ensures safeguarding of the affected people is not evident in their organizational policies, planning process, structure of their organizations, project management practices and processes, and in their employed manpower mainly because of the legal and administrative constraints.

Experience, role and capacity in environmental management/safeguards and in addressing environmental issues

MOC/PWD has issued the various manuals for design, construction and maintenance of roads including: (i) Geometric Design Standards (Public Works); (ii) Structural Design (Overseas Road Note 31, TRRL, UK); (iii) Construction Manual prepared by Road Research and Development Project with the aid of UNDP; and (iv) Maintenance Manual (Public Works). However, environmental safeguards, other than those pertaining to road safety, have not been incorporated in MOC/PWD manuals. Presently, MOC/PWD does not have a dedicated environmental unit to handle the environmental requirements of its projects. The first MOC/PWD project to consider environmental safeguards is the ADB-funded Maubin-Pyapon Road Rehabilitation Project. This project has been categorized as "Category B" and an IEE report was prepared following ADB SPS requirements and procedures. The project management unit (PMU) has been established to oversee the implementation of the project with MOC/PWD engineers acting as safeguards officials on *ad hoc* basis.

Experience and capacity in managing social safeguards issues

As described above, only the planning and survey sections in the central level of MOC are involved with land acquisition and resettlement issues during the preliminary design and finalization of project locations and alignments. However, the scope of their addressing the range of issues is rather limited due to the complex land management procedures whereby different types of land are managed by different ministries with very little, if any, coordination and sharing of information among them. For example, during initial planning stage alignment of roads is generally decided based on technical consideration and it is not clear to what extent the decisions on alignment are

based on social consideration: avoiding or minimizing adverse impacts on people and their assets. Screening of preliminary designs/alignments for social impacts is not conducted. It is also not evident if alternative design options are considered to minimize adverse social impacts. Perhaps it is only when the preliminary designs are taken for site verification the designs/alignments are modified based on the inputs and opinion by local general administration, village chiefs and beneficiary communities.

During the course of their work in the field, bare minimum and rudimentary information on affected households and impacts is collected. Critical requirement of complete census of affected households, preparation of detailed inventory of losses (land, structures, crops, trees and other fixed assets, business, employment, etc.), socio-economic baseline data is neither considered important nor required under the current legal framework and procedures. There are no standard procedures to assess degree of impacts, entitlements for different types of losses, determining compensation at replacement costs, grievance redress mechanism, public consultation and their participation, monitoring and supervision on safeguards issues and disclosure of impacts, entitlements to affected households. Economic displacement is not identified nor is there any provision for income restoration of affected households. There are currently no requirements for preparation of safeguards documents such as: RP and IPPs.

All staffs of site officers are engineers with very little exposure to social issues in development either by educational background or by training. The support by the site office staff to the planning and survey section and to the local general administrations is only for limited impact assessment and compensation payments, or as directed by the local general administration offices. In donor funded projects they are put into awkward and conflicting situations with the local general administration offices which have mandate to follow procedures in accordance with the LAA.

For indigenous peoples' safeguards issues, numerous Ministries have some mandates or functions that pertain to social development including but not limited to the Ministry of Social Welfare, Relief and Resettlement, Ministry of Livestock, Fisheries and Rural Development, Ministry of Labor where the Department of Social Security Board is subsumed, Ministry of Border Affairs, and MOECAP.

3.1.5 Concluding Remarks

Assessment of capacity in MOC/PW has identified that:

- (i) There is very limited capacity and appreciation in MOC at operational level on environment and social safeguards issues, and ADB and World Bank safeguards requirements.
- (ii) The basic social safeguards related activities such as: modifications in alignment and changes in design, etc.; are carried out by the planning and survey staff during the planning stage appear to be more based on technical consideration rather than as a result of conscious efforts to avoid or minimize social impacts.
- (iii) District and township general administrations are experienced in assessing the value of affected land and assets and negotiating of compensation price with affected persons. However, the procedures to ensure that affected persons are consulted and compensation is made fairly for the affected persons are not evident.
- (iv) Although no such interventions are required under the current legal framework and procedures, the district and township general administrations have no, or limited, experience in relocation and resettlement, at least equivalent to international standards, as well as to develop suitable income restoration programs for the affected people.

3.2 Review of Legal Framework

As required in the TOR for Output 2, the TA consultants for environment and social safeguards undertook an in-depth review of existing legal framework in Myanmar for Gap analysis (equivalence assessment). Summary of findings are presented in the following sections.

3.2.1 Environmental Legal and Regulatory Framework

Government of Myanmar's National Environment Policy was issued in 5 December 1994⁵ 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 and achieve harmony and balance through the integration of environmental considerations into the development process to enhance the quality of the life of all its citizens. The development of the national environmental policy was followed by the drafting of "Myanmar Agenda 21" in 1997, which follows 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).

The Pyidaungsu Hluttaw Law No. 9/2012, also known as the Environmental Conservation Law (ECL), was enacted in 30 March 2012. The implementing rules, Environment Conservation Rules (ECR), was issued in May 2014. MOECAF/ECD is still in the process of developing the various environmental quality standards for Myanmar. MOECAF/ECD has also prepared relatively extensive draft regulations, including environmental assessment procedures. In 2012, MOECAF/ECD prepared the draft environmental impact assessment (EIA) rules.

Following the enactment of the ECL, MOECAF/ECD was established in October 2012 to: (i) implement the national environment policy; (ii) develop short, medium and long term strategy, policy and planning for the integration of environmental consideration into the sustainable development process; (iii) manage natural resources conservation and sustainable utilization; (iv) manage the pollution control on water, air and land for environmental sustainability; (v) cooperate with government organization, civil societies, private and international organizations for the environmental affairs. MOECAF will be the executing agency of the proposed draft environmental rules as indicated in the draft rules.

The draft "Projects Categorization for IEE and EIA in Myanmar" indicates that all road rehabilitation projects will be required to prepare an IEE regardless of project size. As advised by MOECAF/ECD, although the EIA rules are yet to be approved, MOC will need to prepare an IEE for MOECAF's approval prior to commencement of civil works.

Comparison of ADB SPS and Government of Myanmar draft EIA Rules

According the gap analysis between the ADB's SPS and MOECAF/ECD laws and rules, the Myanmar's draft EIA rules are equivalent to ADB SPS requirements.

3.2.2 Review of Legal Framework and Equivalence (Gap) Analysis for Social Safeguards - Involuntary Resettlement

Land ownership in Burma has been vague since the 1960s when most of the land was nationalized during the socialist reign of Ne Win³. The 2008 State Constitution of the Republic of the Union of Myanmar in Chapter I of the Basic Principles of the Constitution, Section 37, Sub-Section (a) declares that the State "is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the Union".

The body of law governing land in Burma is expansive, complex and poorly harmonized, with many of the legal instruments dating back to the late nineteenth century. Although the state enacted several major land-related laws in 2012, their effect on preexisting laws is unclear.

In Myanmar the land is divided into two main categories: Agricultural Land and Non-Agricultural Land.

Agricultural Land' refers to cultivable waste land at the disposal of the State and land which is occupied for the purposes of agriculture such as paddy (rice land), *ya* (dry land), *kaing* (alluvial land) and garden.

³ Sophie Chao, Briefing Note No. 8, Union of Burma.

‘Non-agricultural Land’ refers to land that is not used for agricultural purposes. For example, forest land, grazing ground, road, town and village lands, etc. If agricultural land is not used for cultivation, all the buildings on agricultural land can be removed by authorities.

From land administration point of view the land is classified into eleven categories.

Existing Legal Framework related to land acquisition and resettlement

Myanmar does not have any consolidated policy or law governing all aspects of social safeguards (involuntary resettlement and indigenous peoples) issues. Provisions of the Land Acquisition Act, Towns Act and the Village Act and other regulations cover only some aspects of land acquisition and resettlement.

Many land-related laws span different periods (British colonial period, 1886 – 1948; post-colonial independence, 1948 – 1962, and decades of military rule, 1962 – present). While some laws were repealed in 2012, laws pertaining to land are still poorly harmonized⁴. Land laws are generally sector specific and do not consider, or related to, past laws. As such, people appear to be experiencing difficulties in transferring land titles and categories and there is overlapping of institutional control in terms of land management which results to confusion.

Myanmar does not have detailed procedures on land acquisition and primarily applies laws from the 19th and early 20th centuries as the basis for land acquisition.⁵ With land acquisition by domestic and foreign private companies on the rise, and laws being passed that only further undermine communities’ rights to land and natural resources, it appears that with this trend of confusing procedures adopted, land grabbing and expropriation of resources is set to continue. Since many farmers do not possess formal land titles they are susceptible to being classified as squatters. The loss of cultivation rights is likely to exacerbate rural landlessness, poverty and associated problems, such as rapid rural – urban migration and environmental degradation, all of which jeopardize local and national food security.⁶

The 2008 State Constitution of the Republic of the Union of Myanmar in Chapter I of the Basic Principles of the Constitution provides for citizens the right of private property, right of inheritance, and the right to settle in any place within country, these rights are subject to “existing laws”.

The Land Acquisition Act 1894 (hereafter referred as LAA) regulates the land acquisition process and compensation of affected population. It enables the government to acquire private land for public purposes and for companies through the exercise of the right of eminent domain. The law deals with matters related to the acquisition of private land and other immovable assets required for public purpose. The LAA also contains provisions for acquisition of land and assets on an emergency basis. In a situation where a project of public purpose has to be implemented urgently, the government may acquire land on an emergency basis.

The LAA of 1894 has been amended by the Government of Burma (Adaptation of Laws) Order, 1937 and The Burma Laws (Adaptation) Act – Burma Act 27, 1940 (2nd November 1940). The LAA contains provisions that meet only some of the requirements of SPS. Legally the law is still effective. However, current administrative structure in Myanmar and that envisaged in the LAA are quite different rendering many provisions of the LAA ineffective and irrelevant. The procedures and provisions in this Law are antiquated and are not well harmonized with the current governance frameworks in the country. Nevertheless, this law provides the basis for payment of compensation when land is acquired for a public purpose.

The Law also allows for the taking of land by the Government for a business purpose, as opposed to takings limited to a public purpose only, which raises concerns under the current Constitution.

⁴ USAID (2013). Country Profile on Burma. Land Tenure and Property Rights, Available at <http://usaidlandtenure.net/burma>

⁵ Most noted is the 1894 Land Acquisition Act .

⁶ Sophie Chao, briefing Note No. 8, Union of Burma.

The right to acquire land for public purposes is established when Section 4 of the LAA is triggered. The LAA specifies a systematic approach for acquisition and compensation of land and other properties for development projects. It stipulates various sections pertaining to notifications, surveys, acquisition, compensation and apportionment awards, along with disputes resolution, penalties and exemptions. LAA also provides for disclosure of information on surveys to affected persons.

The Farmland Law (2012) effectively replaces the Tenancy Law (1963), Protection of Peasants' Rights Law (1963), and Land Nationalization Act (1953). It pertains to rights and responsibilities to tenure and provides for the processes and management of farmlands. Under the Law, the farmland encompasses (i) low land (paddy land), (ii) upland, (iii) salty land, (iv) hill-side cultivation land, (v) perennial crops land; (vi) palm land, (vii) garden land or horticultural land; and (viii) alluvial land.

According to this law farmers can retain farmland use-rights (LUC), the state's power to rescind such rights, the process for settling certain land-related disputes, and basic requirements for compensation in the case the government acquires the land for public purposes. Those with LUC may transfer, lease, sell, or use as collateral their agricultural lands, provided that the government is informed about these transactions. The holder of the LUC cannot change the use of the allocated land other than what is provided in the LUC. Neither can the holder of the LUC allow the farmland to fallow for no valid reason. Violation of the conditions set in the LUC could lead to the revocation of the LUC and the confiscation of the farmland

The Vacant, Fallow and Virgin Lands Management Law (2012) governs the allocation and use of virgin land (i.e., land that has never before been cultivated) and vacant or fallow land (which the law characterizes as for any reason "abandoned" by a tenant). The law establishes the Central Committee for the Management of Vacant, Fallow and Virgin Lands (CCVFV), which is responsible for granting and rescinding use rights for such lands. This also outlines the purposes for which the committee may grant use-rights; conditions that land users must observe to maintain their use rights; and restrictions relating to duration and size of holdings. The Central Committee is also empowered (Chapter VII, Section 19) to repossess the land from the legitimate owner, after payment of compensation calculated based on the current value to cover the actual investment cost, for infrastructure and other special projects in the interest of the State.

Under the *Farmland Law 2012* and *Vacant, Fallow, and Virgin Land Management Law*, the State remains the ultimate owner of all land. The two laws have received criticisms from concerned farmers and land rights activists in Myanmar as well as from international economists. Under these new laws, farmers still lack land tenure security and are subject to the government's crop prescriptions and production quotas. The main concern is that these land laws will not protect farmers from wide scale land grabs. The land laws⁷ do not recognize customary land rights or the rights of informal land occupiers or users who lack formal documentation of their "usufruct" rights.⁸ However, GoM recognizes the need for Myanmar to have comprehensive sustainable land use and management policies in order to develop and improve living conditions in rural communities.

The Highway Law (2000) repeals the Highway Act of 1907 and provides for the duties and powers of the Ministry of Construction, including, scrutinizing and permitting construction across highways, as well as construction and building within the boundary of highways and also to carrying out land acquisition and removal of building in accordance with the existing laws, in constructing and extending highway. Under the Act it is an offence to build on or within the boundary of a highway.

A gap-equivalence analysis between the Myanmar Land Acquisition Act (1894) and other local laws related to land acquisition and resettlement and ADB safeguard policy principles (SPS) with regard to key land acquisition and resettlement (LAR) aspects is carried out and is shown in Table

⁷ Vacant, Fallow and Virgin Lands Management Law (2012) and Farmland Law (2012) - see the National Context section for further description.

⁸ Land Core Group, Legal Review of Recently Enacted Farmland Law and Vacant, Fallow and Virgin Lands Management, November 2012. pp 15-16.

3.1. The objective of this exercise was to identify if and where the two sets of policy provisions and procedures are in conformity with each other and more importantly, where there are differences and gaps, and how these gaps are to be addressed.

Table 3.1: Gap – Equivalence Assessment- Involuntary Resettlement

| ADB Project Principles | Relevant Laws of Myanmar | Gap-Equivalence Assessment |
|---|---|--|
| 1.1 Screen the project early on to identify past, present, and future involuntary resettlement impacts and risks. | None | No equivalence Although there is a stipulation of protection under the Constitution and screening through a social impact assessment to determine resettlement impacts under the Environmental Conservation Law. However, there are no procedures/guidelines in the conduct of social impact assessment for screening purposes with respect to involuntary resettlement. |
| 1.2 Determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks. | LAA 1894 in Section 4(1) requires publication of preliminary notification and conducting survey. | Partial equivalence by virtue of provision for survey of affected assets. However, the scope of surveys is limited to the impacts on land and other assets. No provision for census and socio-economic survey, or gender analysis. |
| 2.1 Carry out meaningful consultations with affected persons, host communities, and concerned NGOs. | None | No Equivalence |
| 2.2 Inform all displaced persons of their entitlements and resettlement options. Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs | LAA Section 9(2) provides for dissemination of information on affected assets. | Partial equivalence by virtue of provision for dissemination of information on affected assets |

| ADB Project Principles | Relevant Laws of Myanmar | Gap-Equivalence Assessment |
|--|---|--|
| | | |
| 2.3 Pay particular attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and indigenous peoples, and those without legal title to land, and ensure their participation in consultations | None | No equivalence |
| 2.4 Establish a GRM to receive and facilitate resolution of the affected persons' concerns | <p>Land Acquisition Act (1894), Part II, Objection. 5A. (1) Any person interested in any land which has been notified under section 4, sub- section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty day of the notification, object to the acquisition of any land in the locality, as the case may be. (2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary. Submit the case for the decision of the President of the Union, together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the President of the Union on the objections shall be final.</p> <p>Farmland Law 2012. Chapter VIII. Deciding Land Disputes In Respect Of The Right For Farming And Appeal 22. Land disputes in respect of the right for farming shall be decided by the Ward or Village Tract Farmland Management Body, after opening the case file and making actions such as enquiry and hearing about the land disputes. 23. (a) Whosoever may appeal to the respective Township Farmland Management Body against within 30 days from the date of decision made by the Ward or Village Tract Farmland Management Body in accordance with the section 22 of this law; 24 (a) Whosoever may appeal to the respective District Farmland Management Body against within 30 days from the date of decision made by the Township Farmland Management Body in accordance with the section 23 subsection (b)of this law; 25(a) Whosoever may appeal to the respective</p> | <p>Partial equivalence due to the provision for inviting objections on acquisition of assets under the LAA 1894 and grievance resolution system envisaged under the Farmland Law 2012.</p> |

| ADB Project Principles | Relevant Laws of Myanmar | Gap-Equivalence Assessment |
|---|---|---|
| <p>2.5 Support the social and cultural institutions of displaced persons and their host population.</p> <p>2.6 Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase</p> | <p>Region or State Farmland Management Body against within 60 days from the date of decision made by the District Farmland Management Body in accordance with the section 24 subsection (b) of this law; (b) Region or State Farmland Management Body may approve (or) revise (or) cancel the decision made by the District Farmland Management Body; (c) the decision made by the Region or State Farmland Management Body is final</p> <p>None</p> <p>None</p> | <p>No equivalence</p> <p>No equivalence</p> |
| <p>3.1 Improve, or at least restore, the livelihoods of all displaced persons through:</p> <p>3.2 land-based resettlement strategies when affected livelihoods are land based where possible or cash compensation at replacement value for land when the loss of land does not undermine livelihoods,</p> | <p>None</p> <p>Land Acquisition Act (1894), Part III, Acquisition, Section 31(3): Notwithstanding anything in this section, the Collector may, with the sanction of the President of the Union, instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.</p> <p>Part II-Acquisition: 11. On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land at the date of the publication of the notification under section 4, sub-section (1) and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of: (i) the true area of the land; (ii) the compensation which in his opinion should be</p> | <p>No equivalence on restoration of livelihood</p> <p>Partial equivalence due to the provision in the LAA 1894 for consideration of market value in deciding compensation and for land-for-land.</p> |

| ADB Project Principles | Relevant Laws of Myanmar | Gap-Equivalence Assessment |
|------------------------|---|----------------------------|
| | <p>allowed for the land; and (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.</p> <p>12. (1) Such award shall be filed in the Collector's office and shall except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested. (2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.</p> <p>15. In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23 and 24.</p> <p>Land Acquisition Act (1894), PART III REFERENCE TO COURT AND PROCEDURE THEREON.</p> <p>23. (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration: First, the market value of the land at the date of the publication of the notification under section 4, sub-section (1); Secondly, the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof; Thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land; Fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, moveable or immoveable, in any other manner, or his earnings; Fifthly, if in consequence of the acquisition of the land by the Collector the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and Sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.</p> <p>(2) In addition to the market-value of the land as above provided, the Court shall in every case</p> | |

| ADB Project Principles | Relevant Laws of Myanmar | Gap-Equivalence Assessment |
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| <p>3.3 Prompt replacement of assets with access to assets of equal or higher value,</p> <p>3.4 Prompt compensation at full replacement cost for assets that cannot be restored, and</p> <p>3.5 Additional revenues and services through benefit sharing schemes where possible</p> | <p>award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition.</p> <p>Land Acquisition Act (1894), Part III, Acquisition, Section 31(3):</p> <p>None</p> <p>None</p> | <p>Partial equivalence due to the provision in the LAA 1894 for consideration of market value in deciding compensation and for land-for-land.</p> <p>No equivalence</p> <p>No equivalence</p> |
| <p>4. Provide physically and economically displaced persons with needed assistance, including the following:</p> <p>(i) if there is relocation, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, integration of resettled persons economically and socially into their host communities, and extension of project benefits to host communities;</p> <p>(ii) transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities; and</p> <p>(iii) civic infrastructure and community services, as required.</p> | <p>Social Welfare Objectives of Ministry of Social Welfare, Relief and Resettlement</p> <p>(b) To contribute towards the development of human resources.</p> <p>(c) To assist those who are facing social problems.</p> <p>(d) To take preventive measure to control occurrence of social problems.</p> <p>(e) To give assistance to the State in some way by implementing social development tasks and giving social assistance</p> <p>Limited to resettlement of emergency / disaster affected communities only</p> <p>Myanmar Special Economic Zones Law (2014). Chapter 17 Land Use –</p> <p>80. The developer or the investor – (a) shall pay the agreed expenditures for transfer, resettlement and compensation if houses, buildings, gardens, paddy fields, fruit bearing plants and plantations on the land are required to be cleared or transferred; (b) shall, as necessary, negotiate with the management committee in order to ensure that the persons who have to leave the land do not fall below their previous standard of living, their fundamental needs are fulfilled and the transfer is easy and smooth;</p> <p>Limited to Special Economic zones only</p> | <p>Partial equivalence due to the provision for livelihood restoration under the social Welfare Objectives of Ministry of social Welfare and Resettlement and Myanmar Special Economic Zones Law</p> |

| ADB Project Principles | Relevant Laws of Myanmar | Gap-Equivalence Assessment |
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| <p>5. Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards. In rural areas provide them with legal and affordable access to land and resources, and in urban areas provide them with appropriate income sources and legal and affordable access to adequate housing</p> | <p>Social Welfare Objectives of Ministry of Social Welfare, Relief and Resettlement (b) To contribute towards the development of human resources. (c) To assist those who are facing social problems. (d) To take preventive measure to control occurrence of social problems. (e) To give assistance to the State in some way by implementing social development tasks and giving social assistance <i>Limited to resettlement of emergency / disaster affected communities only</i></p> <p>Myanmar Special Economic Zones Law (2014). Chapter 17 Land Use – 80. The developer or the investor – (a) shall pay the agreed expenditures for transfer, resettlement and compensation if houses, buildings, gardens, paddy fields, fruit bearing plants and plantations on the land are required to be cleared or transferred; (b) shall, as necessary, negotiate with the management committee in order to ensure that the persons who have to leave the land do not fall below their previous standard of living, their fundamental needs are fulfilled and the transfer is easy and smooth. <i>Limited to Special Economic zones only</i></p> | <p>Partial equivalence</p> |
| <p>6. Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement to ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status.</p> | <p>None</p> | <p>No equivalence</p> |
| <p>7. Ensure that displaced persons without titles to land or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.</p> | <p>The Mandalay City Development Committee Law (MCDC Law) 2002 under section 8 (d) provides resettlement of squatter but no details provided on their entitlements and relocation assistance.</p> | <p>Partial equivalence due to the provision for relocation of squatters</p> |
| <p>8. Prepare a resettlement plan elaborating on displaced persons' entitlements, the income and livelihood restoration strategy, institutional arrangements, monitoring and reporting</p> | <p>None</p> | <p>No equivalence</p> |

| ADB Project Principles | Relevant Laws of Myanmar | Gap-Equivalence Assessment |
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| taking into account the baseline conditions and the results of resettlement monitoring. Disclose monitoring reports. | | |

The gap-equivalence assessment between Myanmar LAA 1894 and other laws and the ADB's SR2 Policy Requirements shows that the provision of existing acts and laws have, in general, no equivalence with most of the provisions of the ADB's SPS (SR2) requirements. Although the LAA 1894 contains several provisions that have partial equivalence to SPS requirements, in practice they fall short of the objectives due to the lack of standard methodologies and implementation guidelines and antiquated procedures. Local laws do not cover the most critical aspects of the SPS requirements on income and livelihood restoration and do not recognize entitlement to project affected persons without title to land for assistance and compensation for their lost non-land assets and income and livelihood. The provision for livelihood restoration and special assistance to needy households under the Social Welfare Objectives of Ministry of Social Welfare and Resettlement and Myanmar Special Economic Zones Law are limited in scope to the disaster and emergency relocation projects and special economic zones respectively.

Local acts and laws also fall short on cross-cutting policy themes that are equivalent to those of ADB, such as: (i) Public Communications Policy (2011) on disclosure and exchange of information; and (ii) Gender and Development (2006).

Institutional Support in involuntary Resettlement

There is no specific governmental institution entrusted with securing land rights in the country.⁹ Currently, a combination of existing ministries and other institutions extend institutional support to land and tenure arrangements such as the Housing Department of the Ministry of Construction, The General Administration Department in the Ministry of Home Affairs, Department of Settlement and Land Records in the Ministry of Agriculture and Irrigation, MOECAAF and others. On top of that active executing agencies and ministries such as: The Ministry of Industry, electric, Power; Ministry of Transportation; Ministry of Construction; Energy and Mining make it even more cumbersome. Coordination among GoM Ministries is difficult across different issues and sometimes complex and confusing. For donor-funded projects, concerns on involuntary resettlement are borne by the executing and implementing agencies. In regards to acquisition of land for development projects and compensation for affected assets, the provisions of LAA 1894 apply and the responsibility to implement the same is entrusted to local general administration offices, under the Ministry of Home Affairs.

Land Acquisition and involuntary Resettlement procedures and Practices

Current procedures adopted for land acquisition and resettlement in several ongoing development projects funded by multilateral agencies such as ADB and JICA, and private sector have adopted measures to fill the gaps that exist between the local laws and regulations and international best practices and ADB's SPS requirements.

Despite the lack of provisions in the existing legal framework in Myanmar, and the problems some of these project faced, the project proponents including the Ministry of Construction, attempted to meet ADB's SPS (SR2) requirements and international best practices in resettlement planning and implementation.

⁹ Leckie, Scott & Ezekiel Simperingham. (2009) *Housing, Land and Property Rights in Burma: The Current Legal Framework*. Displacement Solutions & The HLP Institute. www.displacementsolutions.org

3.2.3 Review of Legal Framework and Equivalence (Gap) Analysis for Social Safeguards – Indigenous Peoples

The country is divided into seven states and seven regions. The seven states named after the seven largest ethnic nationalities: Chin, Kachin, Kayah, Kayin, Mon, Rakhine (former Arakan) and Shan; mainly encompass the hilly and mountainous areas and are predominantly populated by ethnic communities. The seven regions (previously called divisions): Ayeyarwaddy, Bago, Magway, Mandalay, Sagaing, Tanintharyi and Yangon; encompass the plains and are predominantly populated by people of Bamar ethnic origin. In addition, the Union Territories which cover the capital Nay Pyi Taw has the status of a region and is under the President of the Union. Further, there are six Self-Administered Areas within the States and Regions with a prescribed limited autonomy.

Myanmar is populated by a rich and complex set of ethnic groups with varied cultural background because of its strategic location, shared borders with China in the northeast, India in northwest, Bangladesh on West and Laos and Thailand on east. Its varied indigenous population stems from the settlement of inhabitants of different cultural backgrounds who have migrated within the proximity of the Ayeyarwaddy River. Despite Myanmar's rich cultural heritage, the existence of myriad of ethnic groups has caused inter-ethnic conflict resulting in religious discrimination, persecution, forced settlement and alleged human rights violations. Most of the ethnic minorities in the border areas live in extreme poverty conditions and are most vulnerable among all the ethnic groups in Myanmar. Any development projects in these border areas should be sensitive to the needs and priorities of the ethnic minorities and ensure that their customary land rights, economic activities and cultural identities are protected.

Based on official data, Myanmar is made up of 135 national races, of which the main ethnic groups are Kachin, Kayah, Kayin, Chin, Bamar, Mon, Rakhine and Shan. The population of Burma comprises Barmars 68%, Shan 9%, Karen 7%, Rakhine 4%, Chinese 3%, Indian 2%, Mon 2%, and others 5%¹⁰. While these numbers are disputed by different groups, there are limitations on getting reliable information due to the displacement and shifting population. The census carried out in 2014 will hopefully provide more reliable data. Available studies list the 35 official indigenous groups¹¹ in Myanmar.

For purposes of applicability of ADB's SPS SR3, a community needs to be distinct, socially, culturally and linguistically. The criteria defined in the SPS together with their vulnerability need to be applied to determine whether or not a particular community can be referred to as indigenous peoples (ethnic minorities). The Constitution of Myanmar makes reference to "Tai Yin Thar" or "national races" which is a collective reference: however it approximates the phrase "ethnic nationalities" as opposed to the collective and inclusive term 'citizen'.

Laws and Regulations

There are no laws specifically related to indigenous peoples' safeguards. While Myanmar has signed the *United Nations Declaration on the Rights of Indigenous Peoples*, there are no laws that provide for the recognition of customary land tenure or clear regulations to determine the ownership and extent of ancestral domains and to protect the rights of ethnic nationalities to their ancestral (customary) lands as well as for them to maintain their economic, social, and cultural well-being. A review of GoM legal provisions that may, directly or indirectly, impact indigenous peoples and current institutional practices that reflect treatment of indigenous people is summarized below:

Constitution of Myanmar (2008)

Article 22 of the Constitution, provides for

- (a) development of language, literature, fine arts and culture of the National races; and

¹⁰ Sophie Chao, Brief No. 8, Union of Burma

¹¹ Smith, M., (1994). Ethnic Groups in Burma: Development, Democracy and Human Rights, In Collaboration with Annie Allsebrook. No 8 in ASI's Human Rights Series. Anti-Slavery International, The Stableyard, Broomgrove Road, London SW9 9TL; and Ekeh, C. (2007) Minorities in Burma, Minority Rights Group International

- (b) promotion of solidarity, mutual amity and respect and mutual assistance among the National races; and promotion of socio-economic development including education, health, economy, transport and communication, of less-developed National races.

According to the Article 27 of the Constitution, the Union shall assist development, consolidation and preservation of National Culture. Article 348 also stipulates that The Union shall not discriminate any citizen of the Republic of the Union of Myanmar based on race, birth, religion, official position, status, culture, sex and wealth.

The Development of Border Areas and National Races Law 1993

The Law aims to strengthen the amity among the national races and to preserve and maintain the security, prevalence of law and peace and order of the border areas. The law also calls for the development of infrastructure for national races in the border areas and the preservation of their culture, literature, and customs. However, the law does not explicitly provide for protection of the rights of ethnic nationalities. As an ongoing legal reform process, the GoM proposes to establish a separate ministry at the Union level to deal with the affairs of all national races in Myanmar.

Customary Laws

Customary law may be distinguished from statute law by being 'more closely attached to a people's culture'.¹² Laws related to House, Land, and Property do not recognize customary rights.¹³ There is also confusion on the complex laws pertaining to land. For ethnic nationalities, the laws do not appear to reflect their actual land use. Land under customary use is normally categorized as 'wateland' thereby susceptible to possession by government at will. With an unclear legal framework and the tedious and costly process in claiming legitimate ownership of lands, most ethnic nationalities do not have legal land titles. There are no laws that provide for the recognition of customary land tenure or clear regulations to determine the ownership and extent of ancestral domains. The laws that relate to customary laws in Myanmar include:

- a. *Customary Burma Laws Act 1898* provides for Buddhist, Muslim and Hindu customary laws that pertain to succession, inheritance and marriage for their respective adherents;
- b. *Buddhist Women's Special Marriage and Succession Act 1954* deals with Buddhist customary law also on succession, inheritance and marriage;
- c. *Christian Marriage Act, Burma Divorce Act* (which applies only to Christians) and the *Succession Act 1925* provide for rules of succession, inheritance and marriage for Christians;
- d. *Chin Special Division (Extension of Laws) Act 1948* and *Chin Hills Regulation 1896* recognized the Chin's customs; and
- e. The Kachin Hills Manual specified the customary authority of Kachin headmen to rule on land uses within the community.

Gap (Equivalence) Analysis

Basically, there are no laws of GOM that specifically related to IP safeguards. ADB's IP safeguard principles and requirements are compared to current practice in Myanmar. The gap analysis (Table 3.2) indicated that there is no equivalence as for as the indigenous peoples issues are concerned in Myanmar.

Institutional support for Indigenous Peoples Issues

For indigenous peoples' safeguards issues, numerous Ministries have some mandates or functions that pertain to social development including but not limited to the Ministry of Social Welfare, Relief and Resettlement; Ministry of Livestock, Fisheries and Rural Development; Ministry of Labor where the Department of Social Security Board is subsumed; Ministry of Border Affairs; and MOECAP.

¹² Ahren, M., 'Comparative study on indigenous peoples' customs, culture, traditions and customary law – Analysis from a legal perspective: The Jaamis peoples' perspective', in C. Roy (ed.), *Defending Diversity: Case Studies – Jaamis Council (Swedish Section)*, 2004, pp. 45–88 quoted in Roy, Raja Devasish, "Traditional Customary Laws and Indigenous peoples in Asia" Minority Rights Group International 2005.

¹³ Displacement Solutions (2013), Myanmar at the HLP Crossroads: Proposals for Building an Improved Housing, Land and Property Rights Framework that Protects the People and Supports Sustainable Economic Development. Available at <http://www.burmalibrary.org>

Among these, the Ministry of Border Affairs plays a more dominant role on indigenous peoples issues. However, there is no clear mandate with any specific ministry or institution with full oversight on indigenous peoples issues within the country.

Table 3.2: Gap – Equivalence Assessment : Indigenous Peoples

| ADB SPS 2009 | GOM Policy | Gap – Equivalence |
|--|--|--|
| Principle 1: Screen early on to determine (i) whether Indigenous Peoples are present in, or have collective attachment to, the project area; and (ii) whether project impacts on Indigenous Peoples are likely. | None | No equivalence |
| Principle 2: Undertake a culturally appropriate and gender-sensitive social impact assessment or use similar methods to assess potential project impacts, both positive and adverse, on Indigenous Peoples. Give full consideration to options the affected Indigenous Peoples prefer in relation to the provision of project benefits and the design of mitigation measures. Identify social and economic benefits for affected Indigenous Peoples that are culturally appropriate and gender and intergenerationally inclusive and develop measures to avoid, minimize, and/or mitigate adverse impacts on Indigenous Peoples. | <p>Environmental Conservation Law (2012), Chapter IV, Section 7. The duties and powers relating to the environmental conservation of the Ministry are as follows:</p> <p>(f). facilitating for the settlement of environmental disputes and, if necessary, forming bodies to negotiate such disputes;</p> <p>(m) causing to lay down and carry out a system of environmental impact assessment and social impact assessment as to whether or not a project or activity to be undertaken by any Government department, organization or person may cause a significant impact on the environment</p> <p>Foreign Investment Rules of 2013. Chapter 5-33. Proposals for the economic activities that are considered capital intensive by the Commission, and that are prescribed to undergo environmental impact assessment by the Ministry of Environmental Protection and Forestry have to be submitted along with Environmental and Social Impact Assessment.</p> | <p>Partial equivalence with Environmental Conservation Law as well as the MIC that require SIAs for the following: exploration and production of minerals, oil and natural gas, construction of large dams, hydropower and other large scale electricity production, large scale agricultural activities, large scale manufacturing and construction activities; SIA is required as per MIC guidelines.</p> <p>There are no specific rules or procedures on what are considered acceptable, culturally and gender-sensitive SIAs especially to assess potential project impacts on IPs.</p> |
| Principle 3: Undertake meaningful consultations with affected Indigenous Peoples communities and concerned Indigenous Peoples organizations to solicit their participation (i) in designing, implementing, and monitoring measures to avoid adverse impacts or, when avoidance is not possible, to minimize, mitigate, or compensate for such effects; and (ii) in tailoring project benefits for affected Indigenous Peoples communities in a culturally appropriate manner. To enhance Indigenous Peoples' active participation, projects affecting them will provide for culturally appropriate and gender inclusive capacity development. Establish a | <p>Farmland Law 2012. Chapter VIII. Deciding Land Disputes In Respect Of The Right For Farming And Appeal</p> <p>22. Land disputes in respect of the right for farming shall be decided by the Ward or Village Tract Farmland Management Body, after opening the case file and making actions such as enquiry and hearing about the land disputes.</p> <p>23.</p> <p>(a) Whosoever may appeal to the respective Township Farmland Management Body against within 30 days from the date of decision made by the Ward or Village Tract Farmland Management Body in accordance with the section 22 of this law;</p> <p>(b) Township Farmland Management Body may approve (or) revise (or) cancel the decision made by the Ward or Village Tract Farmland Management Body;</p> <p>24.</p> <p>(a) Whosoever may appeal to the respective District Farmland Management Body against within 30 days from the date of decision made by the Township Farmland Management Body in accordance with the section 23 subsection (b) of this law;</p> <p>(b) District Farmland Management Body may approve (or) revise (or) cancel the decision made by the Township Farmland Management Body;</p> <p>25</p> | <p>No equivalence with respect to meaningful consultation and participation with IPs in project design, implementation and monitoring plans to avert negative impacts.</p> <p>Grievance redress mechanisms are provided, but then again, IPs are not distinct rather included in mainstream implementation of consultation and grievance redress.</p> <p>IPs-APs do not have a privilege to voice out their concerns nor are provided with information about the project. However, there are some cases where village leaders are consulted and</p> |

| ADB SPS 2009 | GOM Policy | Gap – Equivalence |
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| culturally appropriate and gender inclusive grievance mechanism to receive and facilitate resolution of the Indigenous Peoples' concerns. | (a) Whosoever may appeal to the respective Region or State Farmland Management Body against within 60 days from the date of decision made by the District Farmland Management Body in accordance with the section 24 subsection (b) of this law; (b) Region or State Farmland Management Body may approve (or) revise (or) cancel the decision made by the District Farmland Management Body; (c) the decision made by the Region or State Farmland Management Body is final; | provided with information about the project (KHRG). |
| Principle 4: Ascertain the consent of affected Indigenous Peoples communities to the following project activities: (i) commercial development of the cultural resources and knowledge of Indigenous Peoples; (ii) physical displacement from traditional or customary lands; and (iii) commercial development of natural resources within customary lands under use that would impact the livelihoods or the cultural, ceremonial, or spiritual uses that define the identity and community of Indigenous Peoples. For the purposes of policy application, the consent of affected Indigenous Peoples communities refers to a collective expression by the affected Indigenous Peoples communities, through individuals and/or their recognized representatives, of broad community support for such project activities. Broad community support may exist even if some individuals or groups object to the project activities. | The Development of Border Areas and National Races Law (1993), Chapter V, Section 8 The duties and powers of the Ministry in respect of the implementation of the development works of the border areas and national races are as follows: g) laying down programmes for disseminating knowledge and exchanging culture for the national races in the Development Areas; | No equivalence Consent of affected IPs and broad community support are not explicit in laws that intend to protect the interests of national races. In the case of the Development of Border Areas and National Races Law (1993), Chapter V, Section 8, the move is merely towards information dissemination but does not strive for consent or broad community support. |
| Principle 5: Avoid, to the maximum extent possible, any restricted access to and physical displacement from protected areas and natural resources. Where avoidance is not possible, ensure that the affected Indigenous Peoples communities participate in the design, implementation, and monitoring and evaluation of management arrangements for such areas and natural resources and that their benefits are equitably shared. | None | No equivalence |

| ADB SPS 2009 | GOM Policy | Gap – Equivalence |
|---|--|--|
| <p>Principle 6: Prepare an Indigenous Peoples plan (IPP) that is based on the social impact assessment with the assistance of qualified and experienced experts and that draw on indigenous knowledge and participation by the affected Indigenous Peoples communities. The IPP includes a framework for continued consultation with the affected Indigenous Peoples communities during project implementation; specifies measures to ensure that Indigenous Peoples receive culturally appropriate benefits; identifies measures to avoid, minimize, mitigate, or compensate for any adverse project impacts; and includes culturally appropriate grievance procedures, monitoring and evaluation arrangements, and a budget and time-bound actions for implementing the planned measures</p> | None | No equivalence |
| <p>Principle 7: Disclose a draft IPP, including documentation of the consultation process and the results of the social impact assessment in a timely manner, before project appraisal, in an accessible place and in a form and language(s) understandable to affected Indigenous Peoples communities and other stakeholders. The final IPP and its updates will also be disclosed to the affected Indigenous Peoples communities and other stakeholders.</p> | None | No equivalence |
| <p>Principle 8: Prepare an action plan for legal recognition of customary rights to lands and territories or ancestral domains when the project involves (i) activities that are contingent on establishing legally recognized rights to lands and territories that Indigenous Peoples have traditionally owned or customarily used or occupied, or (ii) involuntary acquisition of such lands.</p> | <p>Farmland Law (2011), Chapter III, Section 9. The following rights shall be enjoyed in connection with the right for farming:</p> <ul style="list-style-type: none"> (a) right to have such land in hand, right for farming and gain benefit of such farm; (b) right to sell, pawn, lease, exchange, or donate, in whole or in part of the right for farming in accord with prescribed disciplines; (c) disputes arising out of inheritance of farmland shall be decided upon by the law respective court in accord with existing law; (d) the duration of the right for farming shall continue so long as the stipulated conditions are not breached; (e) land development operation are to be carried out by doing joint-venture with the investment of rural cooperative association or private investors; (f) in accordance with Foreign Investment Law, foreigner or organization containing foreigner are to be carried out by doing joint- | <p>No equivalence</p> <p>Myanmar's laws and ADB's: procedures for land recognition are provided by the Farmland Law and the VFVLM Law but not specific to IPs - that requires legal recognition of customary rights to lands and territories or ancestral domains for identified activities contingent on establishing legally recognized rights to lands and territories owned or customarily used or occupied</p> |

| ADB SPS 2009 | GOM Policy | Gap – Equivalence |
|---|---|---|
| | <p>venture;</p> <p>4. The Central Committee shall permit the right to do, (and) right to utilize land of vacant, fallow and virgin land in the country, for the following purposes:</p> <p>(a) Agriculture;</p> <p>(b) Livestock Poultry Farming and Aquaculture;</p> <p>(c) Mining;</p> <p>(d) Government allowable other purposes in line with law;</p> <p>5. The following persons and organizations may apply to Central Committee in accordance with the prescribed conditions for carry out the purposes which are stated in Section 4:</p> <p>(a) Myanmar citizen investors;</p> <p>(b) Department, Government Organization, and Non Government Organizations;</p> <p>(c) Exemption persons who are eligible in accordance with Section 4 of the Transfer of Immovable Property Restriction Law, 1987;</p> <p>(d) Joint-Venture of Investors who have right to carry out with Department (and) Government Organization in accordance with Foreign Investment Law</p> <p>(e) Joint-Venture of Investors who have right to carry out with Myanmar Citizen Investors , in accordance with Foreign Investment Law;</p> | <p>by IPs or involuntary acquisition of such lands.</p> <p>Majority of GoM's ethnic groups do not have an official entitlement for their land resulting to labelling their areas to be "vacant" or "wastelands"</p> |
| <p>Principle 9: Monitor implementation of the IPP using qualified and experienced experts; adopt a participatory monitoring approach, wherever possible; and assess whether the IPP's objective and desired outcome have been achieved, taking into account the baseline conditions and the results of IPP monitoring. Disclose monitoring reports</p> | <p>None</p> | <p>No equivalence</p> |

3.3 Training in Environmental and Social Safeguards

Under the Output 3 of the TOR both, the environment and social safeguards teams conducted training workshops for the MOC (PWD). Summary of workshops is presented in the following sections. Training workshops were supported by technical guidelines and manuals.

3.3.1 Training in Environmental Safeguards

The training in environmental safeguards was conducted in two phases. The first training workshop (1st workshop) was conducted in October 2014 to: (i) pilot-test training materials; (ii) present the draft manual/guideline for environmental safeguards; (iii) reinforce MOC/PWD appreciation and understanding of ADB SPS 2009; and (iv) explain to MOC/PWD staff applicable MOECAP environmental laws and rules, including drafts pending for issuance; and (v) seek feedback on the training plan, materials and draft manual.

The workshop was attended by a total of 72 participants composed of MOC/PWD MOC/PWD staff from headquarter, state/region, and district levels, resource speakers and staff from MOECAP/ECD and MOECAP/Forest Division (FD), and TA subproject environmental safeguards team.

The second 2-day training workshop (the 2nd workshop) was held on 13-14 November 2014 at Hotel Mandalay, Mandalay City, Myanmar with the objectives: (i) to implement the training plan, thru classroom type discussion and field training, to develop capacity of MOC/PWD on environmental assessment, preparation of EMPs, incorporation of EMP tender and contract documents for civil works, preparation of site-specific/construction EMPs, updating of EMP that may be necessary during project implementation, and monitoring and preparation of report on EMP implementation; and (ii) to finalize the draft MOC manual for environmental safeguards.

65 participants from MOC/PWD MOC/PWD staff from headquarter, state/region, and district levels attended the second workshop. Majority (93%) of them also participated in the 1st workshop. The new participants were replacement of those who could not attend due to prior scheduled activities. However, it was ensured by MOC/PWD that new participants were provided with materials from 1st workshop to familiarize themselves with the topics. The TA subproject environmental safeguards team acted as resource speakers and assisted by a translator and 2 admin/technical staff.

Pre and post workshop surveys were conducted to obtain feedback from the participants on the workshop and the manual. The pre-workshop questionnaire objective was to quantify each participant's awareness/knowledge of environmental safeguards. Results show that the participants were familiar with multilateral development banks and other international financial institutions, ADB SPS, MOECAP laws and rules, and EIA process before the workshop. It was noted by the TA environmental team the participants might need more information on ECL and learn more about environmental monitoring, recording and documentation, and conducting meaningful consultations therefore more focus on these topics during presentations were provided.

Results of the post-workshop questionnaire indicated increased awareness/knowledge of the participants on the topics mentioned in the pre-workshop questionnaire. The no/low change in MOECAP rules and regulations, particularly the ECL, can be attributed to the Myanmar EIA rules still to be passed by the government. The results indicated that the participants generally agreed with the revised manual and found it acceptable and useful in their activities on environmental safeguards.

Draft MOC Manual on Environmental Safeguards

The MOC Manual on environmental safeguards is planned to be an easy-to-use reference manual to guide MOC/PWD and its contractors and consultants in using a common approach in environmental safeguards planning and implementation to prevent and mitigate undue harm to people and their environment. The Manual is a living document and will be continuously revised/updated following comments/suggestions from the ADB and field experiences from MOC (PWD) projects.

The development of the manual was aimed to be based on ongoing TA/loan projects regardless of sector or source of financing (Government, ADB, World Bank, JICA, etc.). However, findings of the first mobilization reveal ongoing and near future externally-funded MOC/PWD projects are mostly by ADB and Myanmar government. Therefore the manual focuses on providing guidance to achieve ADB's environmental safeguards requirements and MOECAP environmental laws and regulations. The content of the manual is largely derived from:

- (i) ADB SPS Requirement 1;
- (ii) Sourcebook for Safeguard Requirements 1: Environment (draft working document as of December 2012);
- (iii) MOECAP laws and regulations; and
- (iv) Workshop proceedings as well as contributions and recommendations provided by the participants based on their experiences and day-to-day work.

The first draft of the manual was submitted to MOC/PWD and MOECAP/ECD in October for review and its salient features were presented to the participants of the 1st workshop.

The draft manual was revised based on the feedback obtained during the two workshops and post-workshop follow-up by emails and direct communications. The main changes were: (i) translation of selected paragraphs, relevant environmental assessment process and technical concepts to Myanmar language; and (ii) re-organization of sections to make the information in the manual more accessible with focus on MOC/PWD projects.

The revised (and most recent) version after incorporating received feedbacks/comments is attached as Volume IA of this report.

3.3.2 Training in Social Safeguards

The training workshop in social safeguards, as an Output 3 for the TA 7566, for the MOC (PWD) was conducted with an objective to:

- (i) Increase awareness of social safeguards issues in development projects in general, and in transport sector in particular;
- (ii) Introduce ADB's Social Safeguards Policy Objectives & Requirements;
- (iii) Introduce existing legal framework for IR and IP issues and gap analysis
- (iv) Relevant social safeguards issues in project process and steps required to address; and
- (v) Planning and implementation of social safeguards in development projects.

The program for the training workshop is attached as **Appendix 7**.

The 3-days training workshop in social safeguards was conducted on February 18-20 in Ngwe Saung, Ayeyarwaddy. 3-day training workshop was planned to ensure that all the key IR and IP issues are covered adequately and that participants are provided sufficient time to absorb contents of the training, discussions and exchange of experiences and ideas. The workshop was attended by MOC (PWD) staff from the head office in Nay Pyi Taw, regional and districts offices, townships and PMUs. Additionally, 3 (three) staff from MOECAP and 4 persons from Mandalay City Development Committee (MCDC) also participated. Together, a total of 56 participants participated in the workshop. The list of participants over three days of training workshop is included as **Appendix 8**.

Workshop is supported by Implementation Manual/Guidelines on social safeguards.

Key Focus Areas for Training and Training Modules

The training in social safeguards was designed to provide participants an overview of safeguards issues in project process. It provided an opportunity to participants to understand the sequence of activities and steps required in planning and implementation of social safeguards. Different modules were designed to cover all aspects of planning, implementation and management of

social safeguards in development projects. The training workshop on social safeguards included the following key modules:

- Module 1 : Introduction to Social Safeguards:
Overview of key principles & objectives
Local laws, regulations and practices in IR and IP safeguards
- Module 2: Project Process & Resettlement Planning
Social safeguards planning in project process cycle
Scope and contents of safeguards documents
- Module 3 : Overview of key Issues in social safeguards
- Module 4 : Social safeguards in Transport Sector
- Module 5: Compensation and Land for Land
Replacement cost
- Module 6 : Relocation & Income Rehabilitation
- Module 7 : Public Consultation, Participation and Disclosure
- Module 8 : Grievance Redress Mechanism/Accountability
- Module 9 : Supervision & Monitoring
- Module 10 : Resettlement Implementation Management
- Module 11 : Overview- social safeguards planning & implementation

The contents of the workshop modules and discussions focused on the critical social safeguards issues and best practice examples from projects in neighboring countries.

Workshop program and presentations are attached to the FR as **Vol II-C**.

Interactive Approach to Training in Social Safeguards

While the presentation of different modules was in the form of formal lectures, the entire approach of the training workshop was interactive in the sense that participants were encouraged to take active part in discussions, ask questions and seek clarifications, and share their experiences. For this purpose, sufficient time was allocated after each session/theme for questions and answer sessions. List of questions asked are shown as **Appendix 9**.

Following are the key issues covered by the questions:

- Land-for-land option for affected agricultural land
- Rehabilitation measures and livelihood restoration
- Tenure security of affected households
- Compensation to vulnerable households
- Relocation of informal settlers
- Grievance Redress mechanism
- Measures to reduce temporary impacts

The types of questions asked by the participants demonstrate their increased understanding of critical social safeguards issues in development projects.

Group Exercise

The training workshop also included breakout session in which the participants were divided into five groups and each group was given a topic for discussion. The participants were encouraged to discuss the topic given to them and note down their responses to the questions/issues raised in the topic. At the end of the session, representative from each group was asked to present the findings/recommendations of the group. The group exercise was included with the objective to share their experience, belief and understanding of involuntary resettlement issues and to encourage discussion among the participants on key involuntary resettlement issues. Key topics given to the groups included the following:

- Entitlements to Informal Settlers

- Upholding the Replacement Cost Standard in Asset Valuation
- Conducting effective consultation strategies in social safeguard planning and implementation
- Designing and implementing effective livelihood restoration schemes
- Identifying Indigenous Peoples at the project level

Each topic included some key questions for the participants to discuss and arrive at some recommendation. Detailed of each topic for discussion are shown as **Appendix 10**.

Feedback from Participants on the Training Workshop

In order to assess the extent to which the training workshop has been successful and to determine whether it has achieved the overall objectives of increased awareness of the participants on social safeguards issues and awareness of the participants on social safeguards issues, the participants were asked to fill-up feedback forms. The forms were provided to the participants at the start of the workshop. The participants were asked to fill up the forms at the end of the workshop and handover to the TA consultants. The feedback forms contained a series of questions to cover the following broad areas:

- a. Content of the workshop
- b. Method of delivering the presentations in the workshop
- c. Handouts
- d. Resource Persons
- e. Organization
- f. Overall Assessment and recommendations

The feedback form and the responses from the participants are summarized as **Appendix 11**. The summary of responses is presented below:

a. Contents of the Workshop:

In response to the questions on sufficiency of the contents, suitability and relevance, and usefulness for concerned agencies in planning and implementation of social safeguards, the responses were overwhelmingly favorable with almost 100% positive responses.

In response to the question on the potential impact on planning and implementation of social safeguards by the MOC for their project, 83% indicated that the implementation of social safeguards would be better while 17% indicated that impacts have yet to be seen.

Encouragingly, 100% respondents indicated to have attained better understanding of social safeguards after the workshop.

b. Method of Delivering the presentations in the Workshop

All the participants (100%) agreed that the presentations were understandable and that they were encouraged for their involvement in the workshop.

In response to the question on adequacy of time for discussion a majority (90.5%) agreed that it was true while the remaining 10% indicated that the time given for discussion was not sufficient. 96% of participants agreed that the duration (3-days) of the workshop was adequate.

In response to the question on appropriateness of the overall method used for conducting the workshop, 92% of the participants were 'very satisfied' while 4% were 'satisfied'.

c. Handouts

In response to the question on handouts being sufficient and cover all topics, 92.5 % agreed while the remaining 7.5% thought the handouts were insufficient.

In response to the questions on handouts being easy to understand, practical, and that they received the handouts prior to the workshop, all the participants (100%) agreed that this being the case.

d. Resource Persons

On the presentation style and delivery of resource persons, 96% participants were 'very satisfied' and the remaining 4% were 'satisfied'. On the knowledge of the subject matter by the resource persons, 92.5% participants were 'very satisfied' and the remaining were 'satisfied'.

On the effectiveness of the resource persons in dealing/interacting with the participants all the participants (100%) were very satisfied. The responses by the participants demonstrate that the objectives of the workshop being interactive were fully achieved.

e. Organization

MOC made all the preparation for the workshop including general organization and sending invitations to the participants. The location and venue for the workshop was decided by the MOC. All the participants agreed that the location (Ngwe Saung) for the workshop and the equipments used were very suitable and worked well respectively. However, only 95% participants thought that the venue (hotel) was suitable for the workshop.

Only 70% of participants thought that the organization and the invitations for the workshop were well-prepared.

f. Overall Assessment and Recommendations

On the questions on the clarity of the workshop objectives and whether the objectives were achieved, the responses by the participants were 96% and 95% respectively. The remaining participants did not respond to the questions.

Participants were asked to identify the reasons for insufficiency or unsuitability of any issues or contents of the workshop. Most (58.5%) of the participants did not respond to the question. 38% respondents indicated that the presentations and handouts should have been in Myanmar language. While all attempts were made to make workshop presentation understandable, presentations in Myanmar language would certainly have been better for easier communication.

Participants were asked their opinion about specific sessions/presentation that they liked most and those they liked least. The responses do not show any specific pattern. Some participants liked the sessions on IP Laws and regulation while some other did not, Most participants did not offer any opinion at all.

In response to the request for participants to list examples of new knowledge and skills that they gained from the workshop, about 51% did not respond. Responses from others include the following:

- Gained new knowledge and skills related to land acquisition and resettlement 40%
- Knowledge on IP issues 30%
- Others included cut-off-date, screening, etc.

Almost 50% participants did not offer any concluding remarks or suggestions for future improvement of similar workshops. About 40% respondents did not quite understand objective of the question as the responses were irrelevant. A few participants indicated the following suggestions:

- More discussions on issues of compensation for affected land
- More workshops are recommended for improvements of knowledge and skills
- Should have field-work during the workshop
- Burmese version presentation is also essential for the participants

Concluding Remarks on the Training Workshop

Feedback from the participants on the contents of the workshop material; knowledge, presentation and delivery by the resource persons; participants' involvement through questions and answers; and group discussion was very positive. Most participants indicated to have gained better knowledge and skills in addressing social safeguards issues in their day-to-day work. Therefore, the objectives of the training workshop for greater awareness and capacity of the participants have been fully achieved.

Draft Manual on Social Safeguards

The training workshop on social safeguards was supported by the technical manual/guidelines. The manual was prepared with an objective to provide a treatise on social safeguards planning and implementation in development projects and a general guide in addressing social safeguards issues. The manual contains general guidelines and procedures, with best practice examples, to handle day-to-day social safeguards issues.

The Manual for Social Safeguards Planning and Implementation is basically prepared for the use of the staffs of MOC at various levels as a guide for carrying-out social safeguards activities such as screening; inventory of loss; detailed measurement survey; replacement cost survey; socioeconomic survey; calculation of compensation and assistances; disclosure of information and public consultations; making of payment and assistance to the APs; development of resettlement site; relocation of displaced persons; preparation and implementation of income restoration program; and monitoring.

The manual can also be used by other agencies and organizations including district and township general administrations; village general administrations; settlement and land records offices under Ministry of Agriculture and Irrigation; and Ministry of Border Affairs. Additionally, the manual will also serve as a useful reference for consultants, civil society organizations and NGOs.

The contents of the manual including social safeguards policy and procedures are consistent with the ADB's SPS (2009) objectives and requirements. However, the guidelines and manual is based on the ongoing TA/loan projects regardless of sector or source of financing (Government, ADB, JICA), and will be improved/revised as necessary based on feedback from participants and to ensure a common approach in safeguards planning and implementation. Other stakeholders (donors, ministries, civil society organizations) will also be consulted during the process of drafting and finalizing the guidelines and manuals.

Participants were provided with feedback forms to solicit their opinion about the manual on social safeguards. The feedback form and the responses are attached as **Appendix 12** of this report. Responses to key questions are summarized below.

a. Relevance and usefulness of the Manual

In response to the question on the relevance of the manual and its contents in their current work about 70% indicated that the manual was 'very relevant' and 30 % indicated as the manual being 'relevant'. 74% of the participants indicated that they can use the manual in their work while the remaining 26% responded expectedly as 'do not know yet'.

b. Structure of the Manual

64% of the participants indicated the structure of the manual as 'very suitable' and another 30% as 'suitable'. The remaining participants did not provide any comment.

c. Presentation of the Manual

A total of 94% participants found the presentation in the manual 'very easy' or 'easy' to follow. About 6% did not respond to the question.

d. Comments on the improvement of the manual

The feedback form solicited participants' suggestions on the further improvement of the manual or specific sections. The participants either did not respond to the question or did not have any suggestions.

e. Topics/sections not presented in the manual

Most of the participants did not have any suggestion or comments on the topics that have been missed out in the manual. However, only one participant indicated the possible inclusion of gender issues in the manual

f. Additional comment and suggestion

Most (79%) of the participants did not have any comments and/or suggestion on the manual. The remaining participants provided the following comments on the manual:

- Should have a section on resettlement budgeting
- The Manual should be finalized after having practices by the users
- The Manual should be distributed in both English and Burmese

Considering that the participants have not had any opportunity to read the manual carefully or to use it in their work, lack of any specific suggestions for change or improvement is expected.

The manual is planned to be a living document in the sense that based on the feedback and experiences it will continue to be improved and modified. The manual will be further improved and finalized following specific comments/suggestions from MOC as well as from the participants of the training workshop.

The draft manual on social safeguards is attached as **Vol II-D** of this report. The guidelines and the manual has been provided to MOC and the ADB for review and comments/suggestions. Following comments from the ADB and the MOC, the Manual will be finalized and translated in Myanmar language for final submission to MOC and the ADB.

4 Summary of Key Issues and Way Forward

Myanmar's high reliance on natural resources and increasing investment in industry-based economy would lead to a number of social issues requiring progressive legislation and institutional strengthening. To ensure that the Government of Myanmar (GoM) can cope with the rapid expansion while protecting its people and environment, there is a need for it to develop a country safeguards system (CSS) that meets the needs of Myanmar as well as the international community.

4.1 Environmental Safeguards

Government of Myanmar's National Environment Policy was issued in 5 December 1994 which was followed by the drafting of "Myanmar Agenda 21" in 1997, which follows 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).

Following the enactment of the ECL, MOECAP/ECD was established in October 2012 and will be the executing agency for the proposed draft environmental rules. Consistent with ADB SPS, MOECAP's environmental safeguards ensure environmental soundness and sustainability of projects and supports integration of environmental considerations into the project decision making process.

MOC (PWD) staff at all levels is generally familiar with multilateral development banks and other international financial institutions, ADB SPS, MOECAP laws and rules, and EIA process. However, their practical experiences in meeting all the environmental safeguards requirements are rather limited and need to be strengthened more particularly in regard to environmental monitoring, recording and documentation, and conducting meaningful consultations in development projects.

4.2 Social Safeguards

Existing legal framework, provisions of the acts & regulations are inadequate to efficiently identify and mitigate adverse impacts on indigenous peoples and those arising due to land acquisition (involuntary resettlement) in development projects in general, and those undertaken by the MOC in particular.

At present, there is no GoM ministry that formulates and implements policies and programs for the recognition, promotion and protection of the rights and well-being of the indigenous peoples with due regard to their ancestral domains and lands, empowerment, social justice, human rights and cultural identity. For this reason, a robust indigenous people's CSS would contribute to the goal of sustainable social development.

The review of existing legal framework relating to land acquisition and resettlement and ethnic nationalities (indigenous peoples), and assessment of existing capacity in the MOC/ PW department identified gaps in the following three major areas:

- (a) social safeguards regulatory framework and guidelines which can be used by the MOC/PW in its operations;
- (b) lack of resources and trained staff; and
- (c) lack of capacity in social safeguards planning, implementation and monitoring.

Any measures formulated to build capacity in MOC/PW and address above gaps will need appropriate enabling environment for it to succeed. Key elements of enabling environment may, among others, include:

- (i) **Appropriate Legislation.** There is a need to strengthen legal domain that will form the basis for other supporting set of actions. Legislation needs to be supported by comprehensive

technical guidelines and manual for planning and implementation of social safeguards issues.

- (ii) Institutional Strengthening. MOC/PW currently does not have staff experienced in all aspects of social safeguards issues. The procedures they follow are as required by the existing legal framework (Land Acquisition Act (1894)) and that required by the local general administration offices which have the mandate for implementation of the LAA. MOC/PW does not have dedicated unit/division to oversee social safeguards in its operation particularly to follow the social safeguards planning, implementation and supervision and monitoring procedures required for any funding by multilateral agency. There is a need to hire experienced senior staff to oversee implementation of social safeguards policy.
- (iii) Increased interaction with other ministries. MOC/PWD even with a social safeguards legislation in place and capacity to plan and implement social safeguards in their projects will not be functional until all the other ministries and institutions are on board and have the same understanding of issues and agreement. This is important because in Myanmar multiple ministries are involved in management of different types of land. Coordination with different ministries is critical for efficient planning and implementation of projects.
- (iv) Added to the complexity is the land record at the district and township level that are managed by different institutions. The line ministries such as the MOC need to work with multiple ministries and institutions to get access to land types, ownership and other relevant details. Timely access to updated maps and land records is critical for PW's operations.
- (v) Knowledge Management. Myanmar is a country in transition. It has opened its economy only recently. The body of knowledge on social issues in development is almost non-existent. It is imperative that the MOC/PW staff at the center, regional and local level is gradually trained and given opportunities to gain knowledge on social issues in their operation. Various approaches can be used to build their knowledge and experience in development work. These may include: on the project training, learning by doing, under the guidance of experienced consultants, access to project reports from countries, visits to various projects within and to neighboring countries, participating in overseas workshops, seminars on social safeguards, etc. MOC/PW should begin to acquire relevant material on social safeguards, preferably translated in Myanmar language, as reference material. Increased awareness of social issues will help MOC/PW to follow international best practices for impact assessment and improved procedures for SSG planning and implementation.
- (vi) Civil society is beginning to play an important role in the continuing reforms in Myanmar. NGOs and civil society organization can complement the efforts of MOC/PW in public consultation, assisting affected communities in grievance redress. They can provide voice to affected people. In due course, NGOs and civil society organization can even expand their role to implements resettlement plans and more specifically in the planning and implementation of income rehabilitation and livelihood restoration activities. MOC/PW on their part should see them as partners in development and create space for them for their positive contribution.

Approaches outlined above will require a change in work culture and perception in the MOC/PW. The management will have to develop a vision for their critical role in the future development of the country and take steps pre-emptively to prepare MOC to play that role effectively and efficiently.

There is a need to build social safeguards understanding and awareness within MOC through training workshops and provision of detailed manual to follow by the staff, civil society representatives, and coordination and cooperation with other development partners including international finance institutes and bilateral agencies. Capacity building for MOC staff on social safeguards understanding and awareness should include the district and township general administrations. Specific recommendations to this effect are presented in the following chapter.

5 Recommendation on Capacity Building in MOC

Specific recommendations by the TA7566 environment and social safeguards consultants for building capacity in MOC (PWD) are summarized in the following sections.

5.1 Environmental Safeguards – Specific Recommendations

Recommendations by the TA environmental safeguards team include:

i) **Approval and dissemination of MOC manual on Environmental Safeguards**

The MOC manual on environmental safeguards provides appropriate strategies, methods, and tools to develop, track, and document environmental assessment process to be able to comply with ADB SPS and MOECAP laws, rules, and regulations. The manual has been partially produced in Myanmar language and confirmed understandable, acceptable and useful by MOC/PWD staff during the workshops. The TA subproject environmental safeguards team recommends approval by MOC/PWD of the manual on environmental safeguards and dissemination of copies (printed and electronic) to all its state, regional and district offices. Also consultants, contractors, and sub-contractors especially those involved in project design, construction and operations and maintenance should be provided with copies.

ii) **Discuss actively with MOECAP.**

Results of the workshop indicate MOC/PWD staff may require more discussions with MOECAP regarding ECL and other draft regulations, including environmental assessment procedures. Coordination and cooperation is recommended to address any issues that may affect in early stages of project design process and throughout the project implementation.

5.2 Social Safeguards

Specific recommendations for capacity building in MOC/PW in social safeguards issues are summarized below.

5.2.1 Establishing Legal Framework

The report on the review of legal framework under this TA proposed formulation of MOC's social safeguards policy, supported by implementation guidelines, as an interim measures, to provide a legal context for MOC (PW) to address social safeguards in its operations. Pending a final decision, MOC can take specific actions for institutional strengthening and capacity building in social safeguards. The manual on social safeguards planning and implementation fulfills the requirements for implementation guidelines, at least in the interim, should MOC decides to formulate institutional policy on social safeguards. Scope of the MOC policy on social safeguards will cover both the involuntary resettlement and indigenous peoples issues.

5.2.2 Institutional Strengthening

Independent of establishing legal framework, MOC will need to undertake immediate steps for institutional strengthening. Institutional strengthening for environment and social safeguards will entail establishing a department/sub-division with the sole responsibility to oversee safeguards issues in MOC (PWD) operations and hiring experienced staff.

Environment and Social Safeguards Sub-Division

MOC (PW) needs to establish a dedicated unit for Environment & Social Safeguards to provide guidance and oversee social safeguards in PW operations. This unit is proposed to be at least a sub-division level and headed by senior safeguards specialists, with sufficient authority and mandate to coordinate with other sub-divisions on safeguards issues. The safeguards specialist to head this sub-division should be at least at the same administrative level as Chief Engineer or at least Deputy Chief Engineer. The proposed environment and Social Safeguards Sub-division should be supported by a Section with capable and experienced staff to work closely with their counterparts in other sections. Proposed administrative framework is shown in Figure 5.1.

Strengthen Professional Staff

In parallel with establishing a dedicated sub-division in environment and social safeguards, MOC should begin to hire experienced professional and technical staff in environment and social safeguards. The availability of social safeguards specialists, both for involuntary resettlement and indigenous peoples issues, is imperative as the SPS requires that qualified and experienced local experts conduct Assessment of Social Impacts (ASI) for both IR and IP safeguards and meet all requirements for safeguards planning and implementation.

Currently, there is not much local capacity in Myanmar in environment and social safeguards and it is almost impossible to identify any professional staff sufficiently qualified and experienced, particularly on involuntary resettlement and indigenous peoples issues in development projects. However, there are currently several ongoing development projects in Myanmar that have moderate to complex involuntary resettlement issues. Most of these projects, particularly those funded by multilateral agencies, have international experts with their counterpart national staff who overtime would be trained in involuntary resettlement and ready to take up the responsibilities independently.

For indigenous peoples issues, beyond any formal educational qualification, the experience of directly working with indigenous peoples in Myanmar would be very relevant. Alternative sources of relevant experts are members of indigenous peoples who have left the communities and undertaken education outside the traditional system, and social researchers from educational and private sector (such as mining, forestry) institutions and who have been based in the area. MOC should give preference to people who have local knowledge of IPs and proficient in local languages.

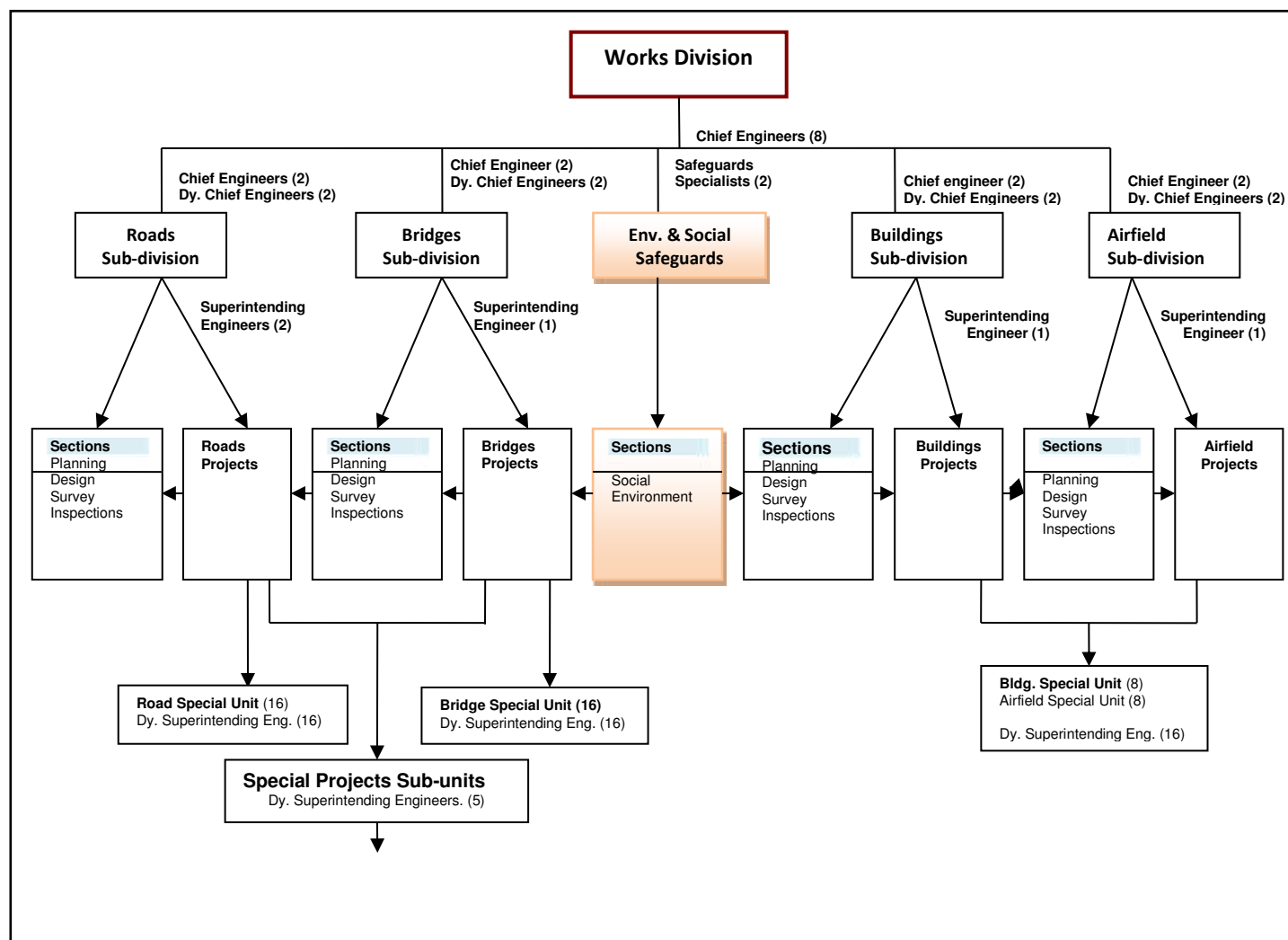
MOC should attract professionals with experience, or at least inclination and interest, in environment, involuntary resettlement and indigenous people safeguards and take steps for capacity building.

5.2.3 Capacity Building

The review of the existing capacity in MOC staff at central level and district/township level it is shows the lack of awareness and understanding of social safeguards issues in development projects. Although training workshops in environment and social safeguards conducted under the TA have shown some very positive outcomes, more efforts are needed for sustainable capacity among the MOC (PWD) staff.

The aspects that the staff need to have capacity built on include for (i) a better understanding of the principles, requirements, procedures and good practices of international development and funding agencies in dealing with social safeguards issues in project planning and implementation; and (ii) a better use of some softwares that they are using for works that related to land acquisition and resettlement such as Land Development, GIS, and others.

Figure 5.1: Proposed Environment and Social Safeguards Sub-division



5.2.4 Other Action

Realizing that knowledge gained through such short-term training cannot be sustainable and complete without any hand-on practice, greater emphasis should be placed on learning by doing – project based training. It is recommended that the staff is trained under the guidance of international and national experts on actual projects covering entire project process.

Based on the current recognized lack of capacity across the environmental and social space, it is recommended that international environment, social and indigenous people's expert be engaged over the short to medium terms (up to two years) to assist and increase the capacity within MOC (PWD) on environment and social safeguards issues. The specialists should form an integral component of the MOC (PWD) team, in that the specialists would:

- (a) be in house and able to immediately respond to specific project requirements;
- (b) be available to undertake informal and formal training across MOC(PWD) on both a set and as needs basis;
- (c) review social impact assessments and be able to train MOC (PWD) staff in undertaking such work; and
- (d) assist PWD management closely liaise with international development partners and where necessary provide advice to senior MOC staff on particular issues related to policy and projects.

MOC (PWD) should also provide opportunities to its selected staff with greater exposure on international best practices in social safeguards through gaining more knowledge on how environment and social safeguards issues are addressed in neighbouring countries through short study tours.

APPENDICES



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**Subject: TA-7566 REG: Strengthening and Use of Country Safeguards Systems:
MYA: Institutional Strengthening and Capacity Development for the
Ministry of Construction -- Mobilization of Consultants (16 June 2014 – 4
July 2014)**

Dear Mr. Hideaki Iwasaki:

This refers to your letter dated 10 June 2014 informing us on the proposed mobilization of Messrs. Pramod Agrawal and Tran Quy Suu for the TA-7566 REG: Strengthening and Use of Country Safeguards Systems: MYA: Institutional Strengthening and Capacity Development for the Ministry of Construction Subproject from 16 June to 4 July 2014.

Please be informed that the proposed mobilization of Messrs. Agrawal and Tran is acceptable to us. We will provide the necessary support and cooperation to them.

Thank you.

A handwritten signature in black ink, appearing to be 'Kyaw Linn', is written over a horizontal line.

Kyaw Linn
Managing Director
Public Works
Ministry of Construction

**TA-7566 REG: Strengthening and Use of Country Safeguards Systems:
MYA: Institutional Strengthening and Capacity Development for the Ministry of Construction**

List of Person Met

| | Names | Positions | Agencies | Contact Details |
|----|--------------------|--|-------------------|------------------------|
| 1 | U Khin Maung Kyaw | Chief Engineer (PWD) | Road | 098641035 |
| 2 | Daw Hla Hla Thwe | Superintending Engineer (PWD) | Road | 098633440 |
| 3 | Daw Myat Thiri Aye | Assistant Director (PWD) | Road | 094301667 |
| 4 | U Kyaw Shane | Project Director, Project Management Unit | Road | |
| 5 | U Khin Maung Htun | Assistant Director, Project Management Unit | Road | |
| 6 | Zin Zin Htike | Deputy Project Director, Project Management Unit | Road | 090865217 |
| 7 | Daw Su Mon Kyan | Assistant Engineer (Kyiaklak) | Road | 098304493 |
| 8 | U Myat Noe | Staff Office (PWD) | Road | 094304769 |
| 9 | U Sai Nyu Nyi Aung | Assistant Engineer/Planning (PDW) | Road | 095986372 |
| 10 | U Soe Lwin | Assistant Engineer/Planng (PWD) | Road | 095943070 |
| 11 | U Tun OO | Surveyor (Survey Subsection) | Road | 076407575 |
| 12 | U Aung Myat | Surveyor (Survey Subsection) | Road | 067407578 |
| 13 | Way Phyo Linn | Assistant Engineer (PWD) | Road | 095114738 |
| 14 | Hla Maung Thein | Deputy General Director (Environmental Conservation Department – Ministry of Environmental Conservation Department MECF) | MECF | 095674313 |
| 15 | U Thurein Tun | Assistant Director (Relief and Resettlement Department –Ministry of Social Welfare, Relief and Resettlement MSWRS) | MSWRS | 095674040 |
| 16 | U Aung Naing | Chief of the District General Administration Office | Kyiaklat District | |

TA 7566-REG: Strengthening and Use of Country Safeguards Systems
Subproject: MYA-Institutional Strengthening and Capacity Development for the Ministry of Construction

INTRODUCTION TO ADB'S SOCIAL SAFEGUARDS POLICIES SPS (2009)
 Nay Pyi Taw, June 23, 2014

Pramod Agrawal, Social Safeguards Specialist/Team Leader
 Tran Quy Suu, Resettlement Specialist
 Hector Zaw, Resettlement Specialist

Background of the TA

TA7566-Strengthening Myanmar Country Safeguard System (CSS).....approved in 2012

- National seminar followed by regional safeguards awareness was held in Nay Pyi Taw from 10 to 11 Feb. 2014 hosted by MOECAT
- Participants from ADB, WB, JICA and other development partners

Background of the TA

- No clear guidelines on Social Impact Assessment
- Gaps on regulatory framework related to land as well as proper jurisdiction of land
- Lack of clarity on land rights where land records are out of date
- Ultimate output of the TA (CSS) is to develop a capacity development roadmap and institutional strengthening

Present TA 7566 is a subproject to follow-up on the CSS

Objectives of the TA-7566
 Subproject: Institutional Strengthening and Capacity Development of Ministry of Construction

Scope of the TA

- To address the gaps of CSS
 - I. Review of regulatory framework (local laws, acts & regulations) pertaining to land and leading to gap analysis vis-a-vis ADB's SPS on social & environmental safeguards
 - II. Suggest measures to fill the gaps
- Review of MOC/PWD organizational structure and "Needs Assessment" on social & environment safeguards
- Training of MOC/PWD and preparation of Guidelines/Manual on social and environment safeguards

Introduction to ADB's Safeguards Policy Statement (SPS)

With Focus on Social Safeguards
 a. Involuntary Resettlement (IR)
 b. Indigenous peoples (IP)

Why social Safeguard Policy?

- **Issue/Challenge:**
 - Infrastructure development projects are intended to benefit large numbers of people
 - They can also pose severe economic, social and environmental risks on affected communities and affect vulnerable group and poor disproportionately *unless well-managed*

Why Safeguard Policy

ADB's Approach

To avoid, minimize, mitigate, and compensate for the adverse impacts through well-designed and appropriately-implemented plans/programs on environmental management, resettlement and indigenous peoples

Do No Harm

IR Impacts

Development projects that displace people involuntarily generally give rise to severe economic, social, and environmental problems:

- ❖ Production systems are dismantled;
- ❖ productive assets and income sources are lost;
- ❖ People are relocated to environments where their productive skills may be less applicable and the competition for resources greater;
- ❖ Community structures and social networks are weakened;
- ❖ Kin groups are dispersed, and cultural identity, traditional authority, and the potential for mutual help are diminished.

Mitigating Impacts: The Intent

- Safeguard Policies aim at improving development impact in an inclusive way by:
 - Increasing local benefits (e.g. reaching out to vulnerable and Indigenous communities)
 - Doing no harm to the humans, social and natural assets (e.g. natural habitats)
 - Mobilizing local support (thru consultation)

"sustainable development should benefit vulnerable groups and affected communities, and provides them a platform to contribute to development"

Who are vulnerable groups?

Individuals and groups who may be differentially or disproportionately affected by a project because of their disadvantaged or vulnerable status. Vulnerable groups generally include:

- those below the poverty line
- the landless
- women headed households without any earning members
- indigenous peoples,
- those without security of tenure or legal title to land
- households with elderly and handicapped members

Policy Application

The Safeguard Policy Statement (SPS) applies:

- to all ADB-financed and/or
- ADB-administered sovereign and non-sovereign projects and their components regardless of the source of financing,
- including investment projects funded by a loan and/or a grant, and/or other means such as equity and/or guarantees

Objectives of Involuntary Resettlement (IR)

- To avoid involuntary resettlement wherever possible, and
- To minimize involuntary resettlement by **exploring project and design alternatives;**
- To enhance, or at least restore, the livelihoods of all affected/displaced persons in real terms relative to pre-project levels; and
- To improve the standards of living of the affected/displaced poor and other vulnerable groups.

Policy Scope & Triggers (IR)

- Physical and economic displacement resulting from
 - (i) *involuntary land acquisition or*
 - (ii) *involuntary restrictions on land use or on access to legally designated parks and protected areas*
- Physical displacement: relocation due to loss of residential land and/or shelter
- Economic displacement: loss of productive land and other assets, access to assets, income sources, means of livelihood

Who is Eligible?

Three types of Affected Persons (APs):

- *Owners of land/assets with titles*
- *Land users with customary claims*
- *Occupants without titles or customary claims*

Non-titled persons are eligible for compensation of non-land assets and other assistance

Entitlements



Screening and Categorization

Category A: If it is likely to have significant involuntary resettlement impacts. A resettlement plan, including assessment of social impacts, is required

Category B: If it involuntary resettlement impacts are not deemed significant. A resettlement plan, including assessment of social impacts, is required

Category C: If it has no involuntary resettlement impacts. No further action is required

Category F: If it involves the investment of ADB funds to, or through, a financial intermediary

Social Impact Assessment (SIA)

The borrower will conduct a *sample socio economic survey and 100% of census and Inventory of Loss assets (IOL) survey* with appropriate socioeconomic baseline data to identify all the displaced persons by the project and the socio economic impacts on them

Key Tasks in the SIA Process

- Systematic stakeholder analysis
- Assessment of past, present and future potential social impacts
- An inventory of displaced persons (based on census) and their assets
- Impact assessment:
 - ✓ Related to Land acquisition
 - ✓ Other social risks and impacts: indirect, temporary, partial
- Socio-economic baseline survey & data collection
- Gender-disaggregated information pertaining to the economic and socio cultural conditions of displaced persons.

The borrower will identify individuals and groups who may be differently or disproportionately affected by the project because of their vulnerable or disadvantaged status

Resettlement Plan (RP)

An RP will be based on the SIA and will include measures to ensure that

- APs are informed about their entitlements
- APs are consulted on resettlement options and choices
- APs are provided with resettlement alternatives
- Attention is paid to gender concerns, and the needs of poor and vulnerable groups
- Socio-cultural institutions are supported
- A social preparation time frame is provided

Defining Indigenous Peoples

Social or cultural groups who are:

Distinct, possessing in varying degrees

- Self identification & recognition by others
- Collective attachment to geographical habitats & natural resources
- Separate customary cultural, economic, social or political institutions
- Distinct language

Vulnerable (historically, economically, socially)

Take into account national legislation, customary law, and international convention



Policy Scope and Triggers (IP)

When projects ...

- Affect IPs directly or indirectly
- Affect the dignity, human rights, livelihood systems & culture of IPs
- Affect territories or natural or cultural resources that IPs own, use, occupy, or claim as an ancestral domain or asset

Objectives (IP)

To design and implement projects that fosters full respect for IP identity, dignity, human rights, livelihood systems, and cultural uniqueness **as defined by IPs themselves** so that they:

- Receive culturally appropriate social & economic benefits
- Do not suffer adverse impacts as a result of project's environmental and social risks
- Can participate actively in projects that affect them

Projects with Impacts on IPs

- *Free, prior and informed* consultation required leading to *broad community support* to the project
- Multilateral agencies will not agree to physical relocation of Indigenous Peoples if they have not provided their broad support
- Prepare and disclose appropriate IPP /IPPF documents
- Resettlement Plan should be *compatible with Indigenous Peoples' cultural preferences* using a land-based resettlement strategy and should allow for the possibility of Indigenous Peoples returning to previously occupied lands, if reasons for acquisition of such land parcels cease to exist

Screening and Categorization of IP Impacts

Category 'A', 'B' or 'C' depending upon..

1. Magnitude of impact in terms of:
 - Customary rights of use/access to land & natural resources
 - Socioeconomic status
 - Cultural and communal integrity
 - Health, education, livelihood and social security status
 - Recognition of indigenous knowledge
2. The level of the affected IP community

Key Policy Principles and Requirements

- Project screening
- Impact assessment
- Management Plan
- Meaningful consultations
- Assist vulnerable groups
- Information Disclosure
- Grievance Redress Mechanism
- Monitoring and Reporting

In addition to the above, IP safeguards require:

- Ascertain consent of affected IP communities
- Avoid restricted access to and displacement from protected areas
- Prepare action plan for legal recognition of customary rights (when project involves activities that are contingent on such recognition or involuntary acquisition of such lands)

Social Impact Assessment covers

- IPs in project area & project impact zone
- Short and long-term impacts
- Positive and negative impacts
- Assessment of their income and livelihoods
- Meaningful consultations conducted & proposed during implementation
- Recommendations to avoid negative impacts; to minimize/mitigate unavoidable impacts, for culturally appropriate benefits, and for information disclosure & grievance redress
- Be carried out in a manner commensurate with scale of impacts on IPs

Meaningful Consultation

- Begins **early** and carried out on an ongoing basis throughout implementation
- **Timely information disclosure** that is adequate, understandable and readily accessible to APs
- **Free of intimidation** or coercion
- **Gender-inclusive** and sensitive to needs of vulnerable groups, women and youth
- **Incorporates all relevant views** of APs and other stakeholders



Consultation and Participation

In case of serious differences and disagreements, the borrower "will undertake good faith negotiations to resolve the differences and disagreements".

Good Faith Negotiation

- Willing to engage in extended process of negotiation
- Provides information necessary for informed participation
- Mutually- acceptable and culturally appropriate procedures
- Willingness to change initial position
- Allow sufficient time for decision-making
- Document process and agreements

Consent of Affected IP Communities

Broad community consent of affected IP communities required for:

- Commercial development of cultural resources
- Physical displacement from customary lands
- Commercial development of natural resources within customary lands

Consent refers to "a collective expression by the affected IP communities through individuals and/or their recognized representatives, of broad community support for such project activities".

ADB's Roles and Responsibilities

- Screening and categorizing projects
- Advising borrowers/clients about ADB's SPS requirements
- Determining the feasibility of ADB financing – due diligence and review
- Helping the borrower/client in capacity building
- Monitoring and supervision
- Disclosing information
- Ensuring compliance with legal agreements

Roles and Responsibilities of Borrower's/Clients

Delivering policy principles and meeting the requirements

- RP/IPP is a borrower's document
- Assessing project impacts
- Engaging affected persons and communities
- Preparing and implementing safeguard plans
- Monitoring and reporting
- Complying with host country laws regulations and ADB's requirements

Source of Information

For queries about the SPS, please call:

SPS Helpdesk at ADB (local) 6673

www.adb.org/Safeguards

Thank you.

Open Forum
Questions and Answers

TA-7566 REG: Strengthening and Use of Country Safeguards Systems:
MYA: Institutional Strengthening and Capacity Development for the Ministry of Construction

Names and Contact Details of Meeting Participants

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List of Persons Met

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Date : 23.9.2014

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General Administration Department, Land Divisions

Date : 23.9.2014

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TA 7566-REG: Strengthening and Use of Country Safeguards Systems

Subproject: MYA-Institutional Strengthening and Capacity Development for the Ministry of Construction

Review of Regulatory Framework and Equivalence Assessment Nay Pyi Taw, September 24, 2014

Pramod Agrawal, Social Safeguards Specialist/Team Leader
Tran Quy Siu, Resettlement Specialist
Thion Zaw, Resettlement Specialist

Key Laws & Acts

- Constitution of Myanmar (2008)
- Land Acquisition Act (1894)
- The Lower Myanmar Town and Village Lands Act (1899)
- The Towns (Amendment) Act (1947)
- The Village (Amendments) Act (1961)
- The Farmland Law (2012)
- The Vacant, Fallow and Virgin Land Management Law (2012)
- The Land and Revenue Act (1879)
- The Special Economic Zone Law (2014)
- Highway Law (2000)
- The Development of Border Areas and National Races Law 1993

Objectives of the TA-7566

Subproject: Institutional Strengthening and Capacity Development of Ministry of Construction

Scope of the TA

- To address the gaps of CSS
 - I. Review of regulatory framework (local laws, acts & regulations) pertaining to land and leading to gap analysis vis-à-vis ADB's SPS on social &
 - II. Suggest measures to fill the gaps
- Review of MCA, PDA and preparation and implementation of social and environmental safeguards
- Training of MRC, PDA and preparation and implementation of social and environmental safeguards

Key Provisions

Land Acquisition Act 1894:

- Regulates the land acquisition process and compensation
- Enables the government to acquire private land for public purposes and private businesses through the exercise of the right of eminent domain
- Provides for:
 - I. Conducting surveys of affected assets (Section 4(i))
 - II. Objections on inventory and compensation amount (Section 5A(1) and (2))
 - III. Compensation for affected assets at market value (Section 24) taking into consideration:
 - market value of the land
 - damages caused to any standing crops or trees
 - adverse impacts on the residual land and on other assets movable or immovable
 - displacement of residence or place of business due to acquisition
 - Compensation in kind for affected land (land-for-land)
 - Provision of additional 15% on the assessed market value in view of the compulsory nature of the acquisition for public purposes

Implementation of LAA by local general administration office at district/township level

Key Land Issues

- The body of law governing land in Myanmar is expansive, complex and poorly harmonized
- Many legal instruments dating back to the late nineteenth century.
- Land related issues in Myanmar are complex as multiple ministries are involved in management of different types of land
- Gaps on regulatory framework related to land as well as proper jurisdiction of land
- Lack of clarity on land rights where land records are out of date
- Myanmar does not have any consolidated policy or law governing all aspects of involuntary resettlement
- Provisions of the Land Acquisition Act (1894) and other regulations cover only a few aspects of land acquisition and resettlement
- No specific law that protects rights of ethnic minorities (indigenous peoples)

Key Laws and Acts

Land Acquisition Act 1894 (Cond.)

Does not provide for:

- Preparation of resettlement plan
- Public consultation, Grievance redress mechanism, Monitoring
- Compensation for affected structures, or other fixed assets, at replacement cost ('land' includes all things attached to the land)
- Entitlements to APs without legal title to the land
- Compensation payment prior to displacement
- Relocation Assistance
- Assistance for income rehabilitation
- Responsibility is placed on affected household to prove ownership and tenure status
- Comparatively comprehensive in its scope for land acquisition but lacks several critical provisions and clear implementation procedures and guidelines
- Existing administrative structure in Myanmar is quite different to that envisaged in the LAA rendering many provisions ineffective and often irrelevant.

Key Laws and Acts

The Lower Myanmar Town and Village Lands Act 1899

Governs the land rights in towns and villages and provides for certain rights (such as the right to cultivate and right to sell) relating to hereditary and government lands.

Chapter VIA provides for payment of compensation, in accordance with LAA, for any land possessed by the Government in the person holding such rights.

The Towns (Amendment) Act 1947

Article 7 (Rg): The Headman of the ward is responsible for:

- collecting any revenue or other money due to the Government or to a municipal or town committee from residents of the ward or persons holding land therein;
- report to officer as appointed by the Deputy Commissioner in this behalf all trespasses or encroachments upon, and injuries to, State land and public property which may occur within his ward.

The Village (Amendments) Act 1961

Article 8: The headman of the village is responsible for collecting revenue and other money due to the State from residents of the village-trust or persons holding land therein.

Key Laws and Acts

The Highway Law (2000)

Repeals the Highway Act of 1907

Empowers MOC to carrying out land acquisition and removal of building in accordance with the existing laws, in constructing and extending highway.

Under the Act it is an offence to build on or within the boundary of a highway.

Key Laws and Acts

The Land and Revenue Act (1879)

First major land law enacted in Burma and governed the acquisition of land rights for private persons as well as the procedures for assessment and collection of land revenue taxes.

Under the law, all lands were for the first time divided into either "state land" or "non state land".

The Act does not apply to land within the limits of any towns, nor to reserved forestry, fisheries land, military cantonments or specified religious sites.

Key Laws and Acts (Related to ethnic minorities)

Constitution of Myanmar (2008)

-Art. 22. development of language, literature, fine arts and culture of the National races

-Article 27. the Union shall assist development, consolidation and preservation of National Culture

-Article 348 stipulates that The Union shall not discriminate any citizen of the Republic of the Union of Myanmar based on race, birth, religion, official position, status, culture, sex and wealth

The Development of Border Areas and National Races Law 1993

-Aims to strengthen the amity among the national races and to preserve and maintain the security

-Calls for the development of infrastructure for national races in the border areas and the preservation of their culture, literature, and customs.

However, the law does not explicitly provide for protection of the rights of ethnic nationalities.

Key Laws and Acts

The Farmland Law (2012)

Provides for compensation in case the government acquires the land for public purposes in accordance with the LAA (1894)

Chapter VIII (22) Provides for settling of land disputes in respect of the right for farming

Empowers the State (Article 29 under Chapter 10, Utilization of farmland) to utilize farmland for projects in national interest after obtaining permission from of the Union Government Cabinet and on recommendations from the Central Farmland Management Body

How the compensation is to be assessed is not defined

The Vacant, Fallow and Virgin Land Management Law (2012)

The Central Committee empowered (Chapter VII, Section 19) to repossess the land from the legitimate owner, after payment of compensation calculated based on the current value to cover the actual investment cost, for infrastructure and other special projects in the interest of the State.

Under these two laws:

- the State remains ultimate owner of all lands
- farmers still lack land tenure security
- do not protect farmers from wide scale land grabs

Key Laws and Acts (Related to ethnic minorities)

Chin Special Division (Extension of Laws) Act 1948 and Chin Hills Regulation 1896 recognized the Chin's customs; and

The Kachin Hills Manual specified the customary authority of Kachin headmen to rule on land uses within the community.

Gap Analysis – Involuntary Resettlement

ADB SPS (SRs) Principles:

1. Screen the project early on, identify involuntary resettlement impacts and risks through a survey and/or census

2. Carry out meaningful consultations with affected persons, pay particular attention to vulnerable groups
Establish a Grievance Redress Mechanism (GRM)

3. Compensation at replacement cost improve, or at least restore, the livelihoods of all displaced persons

Provisions under Local Laws/Acts

- LAA (2004 in Section 43) requires conducting survey of affected property.
- No provision for impacts on income and livelihood/employment
- No provision for census and socio-economic surveys
- LAA (2004 in Section 43 (1) and the Farmland Law (2002) provide for filing of objections and being heard
- No provision for meaningful consultation and information dissemination on entitlements.
- No provision for establishment of GRM. Farmland Law provides for conflict resolution only related to farm land.
- LAA provides for land-for-land, compensation to take into consideration indirect impacts
- No provision for income restoration and benefit sharing

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Gap Analysis - Involuntary Resettlement

10. Conceive and execute involuntary resettlement as part of a development project or program. Include the full costs of resettlement in the presentation of project's costs and benefits

11. Pay compensation and provide other resettlement entitlements before physical or economic displacement

12. Monitor resettlement implementation and assessment of resettlement outcomes & impacts on the standards of living of APs. Disclosure of monitoring reports.

• No provision to consider involuntary resettlement as part of development project

• No provision to pay compensation and other assistance prior to displacement

• No provision for monitoring and evaluation of resettlement implementation.

• No provision for monitoring reports and disclosure

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Gap Analysis - Involuntary Resettlement

4. Provide APs secured tenure to relocation land. Comparable access to employment and production opportunities

5. Improve the standards of living of the displaced poor and other vulnerable groups

6. Develop transparent, consistent and equitable procedures for land acquisition through negotiated settlement

- Social Welfare Objective of Ministry of Social Welfare, Relief and Resettlement provides for social assistance to APs (only for emergency and disaster situations)
- The Special Economic Zones Law of 2004 broadly stipulates that persons who have to leave the land do not fall below their previous standard of living and their fundamental needs are fulfilled (Only for SEZ)
- No clear guidelines or requirements on security of tenure, access to employment opportunities, production opportunities and transitional support
- No specific provision for improvement of standard of living of vulnerable groups
- No provision for negotiated settlement for land acquisition compensation

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Resettlement Practices

Despite lack of adequate legal framework on involuntary resettlement current resettlement planning and implementation procedures in the following three ongoing projects are broadly consistent with the SPS requirements.

- ADB funded Pypoon-Moulin Road Rehabilitation Project, Ayeyarwady Delta with the Ministry of Construction
- Dawoo-Kyauk Flyu, Kachin State (The Shwe Project, consisting off shore field facilities and on-shore gas transportation system; and
- Thilawa SEZ Project, Yangon Region.

Gap Analysis - Involuntary Resettlement

7. Affected persons without title in land or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets

8. Prepare a resettlement plan consisting of APs' entitlements, compensation and other assistance, including income and livelihood restoration strategy, institutional arrangements, monitoring and reporting, budget, and time-bound implementation schedule

9. Disclosure of draft and final resettlement plans to all stakeholders in a timely manner

• No specific entitlements to persons without any title to affected land

• No specific requirements for preparation of RP

• No disclosure requirements

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Gap Analysis – Indigenous Peoples

ADB SPS (SRs) Principles:

1. Screen the project early to determine (i) whether Indigenous Peoples are present in, or have collective attachment to, the project area; and (ii) whether project impacts on Indigenous Peoples are likely.

2. Undertake a social impact assessment to assess potential project impacts. Give full consideration to options the affected IPs prefer in provision of project benefits & mitigation measures. Identify social and economic benefits for affected IPs that are culturally appropriate and gender-inclusive. Develop measures to avoid, minimize, and/or mitigate adverse impacts on IPs.

Provisions under Local Laws/Acts

• No Provision

• Partial Provision

Environmental Conservation Law (2002), Chapter IX, Section 7, and Foreign Investment Rules of 2004, Chapter 3, 33 require Social Impact Assessment

There are no specific provisions as to what are considered acceptable culturally and gender sensitive SIA measures to assess potential project impacts on IPs.

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Gap Analysis – Indigenous Peoples

3. Undertake meaningful consultations with affected IPs To solicit their participation (i) in designing, implementing, and monitoring measures to avoid or to minimize, mitigate, or compensate for such effects; and (ii) in tailoring project benefits in a culturally appropriate manner. To enhance active participation Establish a culturally appropriate and gender inclusive grievance mechanism

No Equivalence with respect to meaningful consultation and participation with IPs in project design, implementation and monitoring plans to avert negative impacts.

Grievance redress mechanisms are provided in the Farmland Law but IPs are not distinctly included

IPs-APs do not have a privilege to voice out their concerns nor are provided with information about the project.

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Gap Analysis – Indigenous Peoples

8. Prepare an action plan for legal recognition of customary rights to Affected lands and territories or ancestral domains

No Equivalence
Majority of GoM's ethnic groups do not have an official entitlement for their land resulting in labeling their areas to be "vacant" or "wastelands"

9. Monitor implementation of the IPP, adopt a participatory monitoring approach, and assess whether the IPP's objective and desired outcome have been achieved. Disclose monitoring reports

No Equivalence

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Gap Analysis – Indigenous Peoples

4. Ascertain the consent & broad community support of affected IP communities to:
(i) commercial development of the cultural resources and knowledge
(ii) physical displacement from emotional or customary lands
(iii) commercial development of natural resources within customary lands under use that would impact the livelihoods or the cultural, ceremonial, or spiritual uses that define the identity

No Equivalence

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Concluding Remarks

The gap analysis and comparison between Myanmar LAA 1894 and other laws and the ADB's SR2 & SR3 Policy Requirements shows that:

- The provision of existing acts and laws have in general no equivalence with the provisions of the ADB's SR2 & SR3 requirements.
- Although the LAA 1894 contain several provisions that come close to SR2 requirements, in practice they fall short of the objectives due to the lack of standard methodologies and implementation guidelines.
- Local laws do not cover the most critical aspects of the SR2 requirements on income and livelihood restoration.
- Local laws do not recognize entitlement to project affected persons without title to land for assistance and compensation for their lost non-land assets and income and livelihood.
- Basically, there are no laws of GoM that specifically related to IP safeguards.

Gap Analysis – Indigenous Peoples

5. Avoid any restricted access to and physical displacement from protected areas and natural resources, or Ensure that IPs participate in the design, implementation, and monitoring and evaluation of management arrangements for such areas and that their benefits are equitably shared.

No Equivalence

6. Prepare an Indigenous Peoples plan (IPP) based on the SLA
7. Disclose IPP, including documentation of the consultation process and the results of the SLA in a timely manner

No Equivalence

No Equivalence

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Concluding Remarks

- Existing legal framework, provisions of the acts & regulations are inadequate to efficiently identify and mitigate adverse impacts on indigenous peoples and those arising due to land acquisition (involuntary resettlement) in development projects in general, and those undertaken by the MOC in particular
- There is need to establish legal framework(s) to address adverse impacts due to the development projects for both the involuntary resettlement and ethnic minorities (indigenous peoples)

Way Forward – Proposed Actions

OPTION I:

Accept Recommendations of TA 7566 REG – Myanmar

- National Environmental Conservation Committee to be renamed to capture all aspects of social safeguards, MOECF should be granted ownership of all aspects of Myanmar' CSS (Environment, Involuntary Resettlement and Indigenous Peoples).
- Enactment of Indigenous Peoples Safeguards Law
- Setting up an independent commission under the Office of the President or establishing a separate ministry at the Union level to oversee the implementation of the law.

Limitations:

- Long-term, time-line not clear
- Impact on and coordination with the existing general administration (Min. Of Home Affairs) not clear
- No consensus yet within the Union Government on the recommendations

Way Forward – Proposed Actions

OPTION II:

Take interim measures :

- Develop institutional policy to address involuntary resettlement and indigenous peoples issues for the MOC (PW) operations
- MOC's institutional social safeguards policy to be consistent with the ADB's SPS, WB and JICA social safeguards policies

Advantages:

- Will facilitate continued and unobstructed funding arrangements with multilateral agencies for MOC (PW) projects
- MOC can go ahead with capacity building
- No conflict with the current national administrative structure i.e. General Administration (Ministry of Home Affairs)
- Will be superseded when national policy on IR and IP is in place

ADB can provide assistance in the formulation of MOC policy on IR and IP

Kye Zu Tin Par De

Questions and Answers

Workshop on Review of Legal Framework and Action Plan
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TA 7566-RFG: Strengthening and Use of Country
Safeguards Systems

**Subproject: MYA-Institutional Strengthening and
Capacity Development for the
Ministry of Construction**

Needs Assessment

Nay Pyi Taw, October 2, 2014

Pramod Agrawal, Social Safeguards Specialist/Team Leader
Tran Quy Suu, Resettlement Specialist
Thien Zaw, Resettlement Specialist

Objectives of the TA-7566

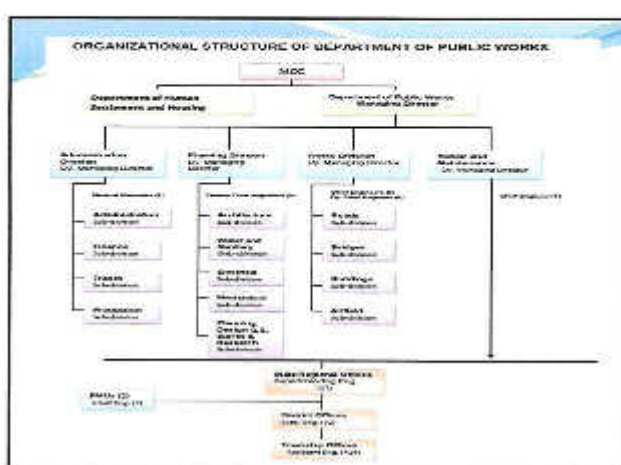
**Subproject: Institutional Strengthening and Capacity
Development of Ministry of Construction**

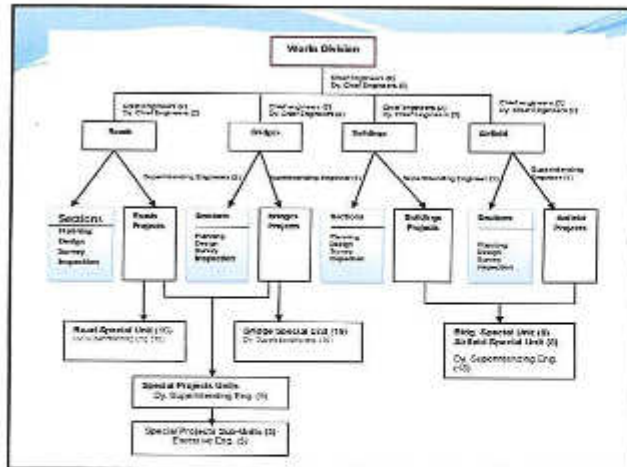
Scope of the TA

- To address the gaps of CSS
 - Review of regulatory framework (social laws, acts & regulations) pertaining to land and leading to gap analysis to see if ADPs SOPs on social & environmental safeguards
 - Suggest measures to fill the gaps
- Review of MOC/PWD organizational structure and "Needs Assessment" on Social & Environmental Safeguards
- Training of MOC/PWD and preparation of guidelines, procedures and designing of SOPs

"Needs Assessment" ?

- Review of organization set-up of the MOC/PWD at the head quarter and district offices
- Review of existing capacity to address social safeguard issues in their operation
- Needs Assessment for capacity development
- Proposed Action Plan to strengthen capacity



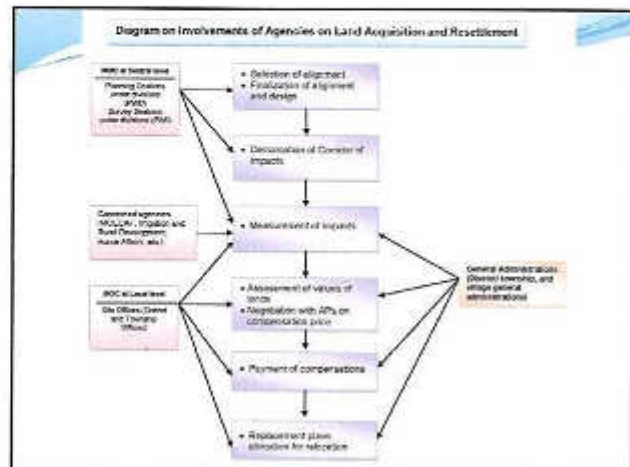


Role of Public Works in Social Safeguards

- Planning and survey section, in coordination with PWD staff at the district/township offices, is primarily involved in social safeguards activities in their project:
 - Adjusting alignments to avoid or minimize adverse impacts;
 - Collect details on loss of land, structures, trees and crops affected due to the projects;
 - In coordination with local general administration staff, disseminate information of losses to affected households;
 - Assist local general administration offices in assessment of compensation;
 - Provide budget for compensation; and
 - Assist local general administration in payment of compensation

Role of Local General Administration in Social Safeguards

- Review project design and alignment
- Provide assistance in coordination with other ministries and institutions
- Provide access to maps and land records
- Oversee consultation with communities
- Addresses complaints about documentation of impacts
- Conducts valuation of affected assets
- Assess compensation and conduct negotiation on compensation
- Oversees compensation payment



Gaps in Current Procedures

- Consultation with affected households inadequate
- No screening of projects for social impacts (IR & IP) at planning stage
- Information on impacts inadequate:
 - Partial impacts on assets not identified*
 - Impacts on businesses not identified*
- Relocation requirements not determined
- No guarantee that compensation at replacement cost
- Compensation for loss of businesses, employment not paid
- Breakdown of compensation by types of losses not identified
- Compensation to households without title to land not given
- Disclosure of losses, entitlements to affected households not carried out
- RP and IPP not prepared
- No grievance redress mechanism in place
- No monitoring and supervision of social safeguards issues

Constraints

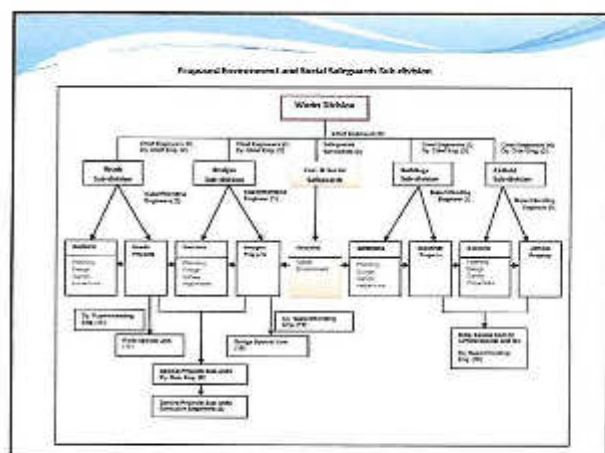
- Role of PWD staff limited in social safeguards due to:
 - Scope of their role in social safeguards limited due to existing legal provisions
 - Lack of timely access to updated maps and information on land types, use, ownership etc. at the preliminary planning stage
 - Dependent upon local general administration staff for access to land records, surveys, impact assessment and compensation entitlements
 - Role of Local General administration offices more dominant due to their mandate to oversee LAA (1894)
 - Lack of awareness of social safeguards issues and international best practices
 - Limited capacity to pay attention to social issues as primarily responsible for technical issues

General Approach to Better Planning and Implementation of Social Safeguards

- Need to enhance awareness of social safeguards issues in PW operations among PW staff
- Creating enabling environment:
 - Legislation
 - Institutional Strengthening
 - Bringing related institutions on board for better coordination
 - Better access to land records and updated maps at the initial planning stage
 - Knowledge management
- Increase interaction with other key ministries and institutions, particularly with the Ministry of Home Affairs & the Min. of Border Affairs on updating legal framework related to land acquisition and resettlement & Indigenous Peoples
- Bringing NGOs and civil society organizations on board for increased public consultation and participation & for monitoring
- Follow international best practices for impact assessment and improved procedures for SSG planning and implementation

Action Plan to Build Capacity in MOC/PW

- Establishing legal framework / regulations to address social safeguards in MOC/PW operations
- Establish dedicated unit for Environment & Social Safeguards to provide guidance and oversee social safeguards in PW operations
- Strengthen professional and technical Staff in Env. & Social Safeguards
- Increase capacity through training in Environmental and Social Safeguards
 - *MOC/PW Staff at all levels*
 - *Local General Administration Staff*
- Greater emphasis on learning by doing - *project-based training*
- Increase awareness of international best practices in social safeguards through gaining more knowledge on how social safeguards issues are addressed in neighboring countries



Kye Zu Tin Par De

Questions and Answers

Workshop on Needs Assessment
List of Participants
MOC (PW)

| No | Name | Designation | Ph No | Email |
|-----|---------------------------|--|---------------------|--|
| 1. | U Kyaw Linn | Managing Director | | |
| 2. | U Win Pe | Dy MD (Planning) | | |
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| 4. | U Saw Win Naing | Dy Chief Engineer (Road) | +95(0)9 681 0460 | |
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| 6. | U Aung Myint Oo | Dy Chief Engineer (Planning) | | |
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| 11. | Daw Mie Mie Htwe | Executive Engineer (DQSR) | +95(0)9 680 7986 | eemiemie@gmail.com |
| 12. | Daw Myat Shwe Sin Htun | Executive Engineer (Bridge) | | |
| 13. | Dr Nilar Aung | Assistant Engineer (Road) | | nilaraungnaing@gmail.com |

RETA 7566: SOCIAL SAFEGUARDS CAPACITY DEVELOPMENT TRAINING
NGWE SAUNG (18-20 February, 2015)
WORKSHOP PROGRAM

February 18, 2015:

| | | |
|-------------|--|---------------|
| 8.00 - 8.30 | Registration | |
| 8.30 - 9.00 | Welcome Note by U Aung Myint Oo, Chief Engineer, MOC (PWD) | |
| | Introduction and Welcome by Mailene Radstake, ADB | |
| | Objectives of the Training & Modules | (P K Agrawal) |
| | Participants' introduction – 15 min. | |

Morning Session: Chair – U Hla Maung Thein, Deputy General Director, MOECAP**Module 1 : Introduction to Social Safeguards**

| | | |
|---------------|---|---------------|
| 09.05 - 09.35 | IR – An Overview of Key Principles and Objectives | (P K Agrawal) |
| 09.35 - 10.00 | IR- Local laws, Regulations & Practices | (P K Agrawal) |
| 10.00 - 10.15 | <i>Open Forum/Q&A</i> | |
| 10.15 - 10.30 | <i>Tea Break</i> | |
| 10.30 - 10.50 | IPs- An Overview of Key Principles and Objectives | (P K Agrawal) |
| 10.50 - 11.05 | IPs- Local laws and Regulation | (P K Agrawal) |
| 11.05 - 11.20 | Recap of Issues on Local Laws, Regulations and Practices | (P K Agrawal) |
| 11.20 - 11.30 | <i>Open Forum / Q&A</i> | |

Module 2 : Project Process & Resettlement Planning

| | | |
|---------------|--|---------------|
| 11.30 - 12.00 | Social Safeguards Planning in Project Process Cycle | (P K Agrawal) |
| 12.00 - 13.30 | <i>Lunch Break</i> | |

Afternoon Session: Chair – U Hla Maung Thein, Deputy General Director, MOECAP**Module 2 : Project Process & Resettlement Planning (Continue)**

| | | |
|---------------|---|----------------|
| 13.30 - 14.00 | Scope and Contents of RF and RPs | (Tran Quy Suu) |
| 14:00 - 14:30 | Scope and Contents of IPDF and IPDPs | (Tran Quy Suu) |
| 14.30 - 14.45 | <i>Open Forum / Q&A</i> | |

Module 3 : Key Issues – Overview

| | | |
|---------------|--|---------------|
| 14.45 - 15.15 | Overview of IR issues in Transport Sector | (P K Agrawal) |
| 15.15 – 15.30 | <i>Open Forum/Q&A</i> | |
| 15.30 – 15.45 | <i>Tea Break</i> | |

Module 4 : Social Safeguards in Transport Sector

| | | |
|---------------|---|----------------|
| 15.45 – 16.45 | Case study: Transport Sector (Maubin-Pyapon Road Proj) | (Tran Quy Suu) |
| 16.45 – 17.00 | Summary of Proceedings of Day 1 | (P K Agrawal) |

February 19, 2015:

Morning Session: Chair – U Hla Maung Thein, Deputy General Director, MOECAP

| | | |
|--|---|------------------|
| <u>Module 5: Compensation and Land-for-Land</u> | | |
| 09.00 - 09.30 <i>Suu)</i> | Compensation, Replacement Cost & Land-for-Land | <i>(Tran Quy</i> |
| 09.30 - 10.00 <i>Suu)</i> | Assessment of Compensation: Practices and Procedures / Methodologies | <i>(Tran Quy</i> |
| 10.00 – 10.15 | <i>Open Forum/Q&A</i> | |
| 10.15 – 10.30 | <i>Tea Break</i> | |

Module 6 : Relocation & Income Rehabilitation

| | | |
|------------------------------|--|----------------------|
| 10.30 - 11.00 <i>Suu)</i> | Relocation, Income Rehabilitation | <i>(Tran Quy</i> |
| 11.00 - 11.30 | Informal Settlement & IR Issues | <i>(P K Agrawal)</i> |
| 11.30 - 11.45 | <i>Open Forum/Q&A</i> | |

Module 7 : Public Consultation, Participation and Disclosure

| | | |
|---------------|--|----------------------|
| 11.45 – 12.35 | Public Consultation & Participation-Issues and Procedures | <i>(P K Agrawal)</i> |
| 12.35 - 13.30 | <i>Lunch Break</i> | |

Afternoon Session

Group Exercise

| | | |
|---------------|--|----------------------|
| 13.30 - 13.15 | Introduction of the Topics for Group Discussion (Breakout Session, 5 groups) | |
| 13.15 - 14.30 | Group discussions | |
| 14.30 - 15.30 | Group Presentation and Discussion | |
| 15.30 - 15.45 | <i>Tea Break</i> | |
| 15.45 - 16.45 | Introduction to Quiz | <i>(P K Agrawal)</i> |
| 16.45 - 17.00 | Summary of Proceedings of the afternoon session | <i>(P K Agrawal)</i> |

February 20, 2015:

Morning Session: Chair - U Hla Maung Thein, Deputy General Director, MOECAP

0900 – 09.30 **Key Consideration in Designing of questionnaire** *(Tran Quy Suu)*

09.30 – 10.15 **Module 8 : Grievance Redress Mechanism/Accountability**
Grievance Redress Mechanism *(Tran Quy Suu)*

10.15 - 10.40 *Open Forum/ Q&A*

10.40 – 11.00 *Tea Break*

11.00 – 11.40 **Module 9 : Supervision & Monitoring**
Supervision and Monitoring – Objectives, Indicators & Report *(Tran Quy Suu)*

Module 10 : Resettlement Implementation Management

11.40 – 12.10 **Resettlement Cost and Financing – Principles & Process** *(Tran Quy Suu)*

12.10 – 12.30 *Open Forum & Discussion*

12.30 – 13.30 *Lunch*

Afternoon Session: Chair – U Hla Maung Thein, Deputy General Director, MOECAP

Module 11 : Overview- Social Safeguards Planning & Implementation

13.30 – 14.00 **Overview of IR issues and Challenges** *(P K Agrawal)*

14.00 – 14.15 **Good Practice in SSG Planning & Implementation** *(P K Agrawal)*

14.00 – 14.15 *Open Forum/Q&A*

14.15 – 15.00 **Group Presentation of Quiz & Discussion**
(Conducted by P K Agrawal)

15.00 – 15.30 *Feedback on Training Workshop by Participants*

15.30 – 15.45 *Tea Break*

15.45 - 16.00 **Certificates to Participants** *By Mailene Radstake, ADB*




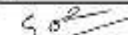



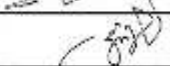
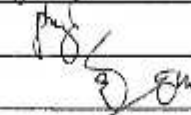

16.00 – 16.15 *Closing Remarks by Chair*

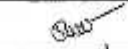
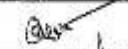
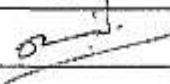

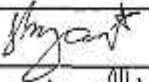
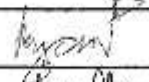
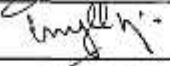
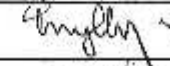



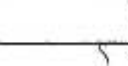
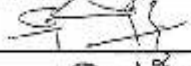

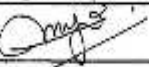
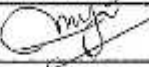
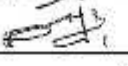

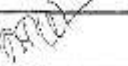
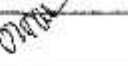
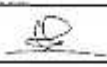


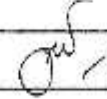
16.15 – 16.30 *Vote of Thanks by U Aung Myint Oo, Chief Engineer, MOC (PWD)*






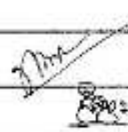


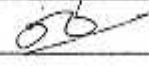



16.30 - 16.35 *Vote of Thanks by Participants' Representative*

16.35 - 16.45 *Vote of Thanks by Mailene Radstake, ADB*

TA 7566 REG: Strengthening and Use of Country Safeguard Systems
Institutional Strengthening and Capacity development for Ministry of Construction
18 February 2015 - Day - 1 PARTICIPANTS LIST

| No | Name | Position | Name of Organization/ PMU | Morning | Afternoon |
|----|-------------------|--------------------|---------------------------|---|---|
| 1 | U Kyaw Linn | Managing Director | Public Works | | |
| 2 | U Khin Maung Kyaw | Chief Engineer | Road Dept | | |
| 3 | U Aung Myint Oo | Dy-Chief Engineer | Planning Dept |  |  |
| 4 | U Saw Aung | General Manager | Trade Dept | | |
| 5 | U Myint Kyi | Superintending Eng | Ayeyarwaddy | | |
| 6 | Daw Aye Aye Soe | Dy-Director | Trade Dept |  |  |
| 7 | Daw Khin Sun Twin | Executive Eng | Building Dept | | |
| 8 | Daw Yin Yin Than | Executive Eng | Building Dept | | |
| 9 | Daw Aye Aye Twin | Executive Eng | Road Dept | | |
| 10 | Daw Ei Ei Myo | Executive Eng | Road Dept |  |  |
| 11 | U Nyi Nyi Zaw | Executive Eng | Bridge Dept | | |
| 12 | Daw Zin Zin Htike | Executive Eng | PMU |  |  |
| 13 | Daw Phyu Phyu | Executive Eng | PMU |  |  |
| 14 | U Aung Tun Naing | Assistant Director | Production Dept | | |
| 15 | U Khin Maung Htwe | Executive Eng | Kachin State | | |

| No | Name | Position | Name of Organization/ PMU | Morning | Afternoon |
|----|--------------------|--------------------|------------------------------|---|---|
| 16 | U Tun Hlaing | Executive Eng | Kayah State |  |  |
| 17 | U Tun Tun Naing | Executive Eng | Kayin State |  |  |
| 18 | U Kyaw Swe | Executive Eng | Chin State | | |
| 19 | U Htin Kyaw | Executive Eng | Mon State |  |  |
| 20 | U Kyaw Kyaw Htwe | Executive Eng | Rakhine State |  |  |
| 21 | U Khin Maung Than | Executive Eng | Shan (North) |  |  |
| 22 | U Ko Ko Aung | Executive Eng | Shan (South) |  |  |
| 23 | U Han Zaw Toe | Executive Eng | Shan (East) |  |  |
| 24 | Daw Khin Myo Kyi | Executive Eng | Magway State |  |  |
| 25 | U Kyaw Min Oo | Executive Eng | Mandalay Region |  | |
| 26 | U Nu Tin | Executive Eng | Yangon Region | |  |
| 27 | U Thet Zaw Win | Executive Eng | Ayeyarwaddy |  |  |
| 28 | U Tint Lwin | Executive Eng | Ayeyarwaddy |  |  |
| 29 | U Sein Aung Tin | Executive Eng | Bago Region | | |
| 30 | U Myo Win | Executive Eng | Thanithayi Region | | |
| 31 | Daw Htwe Nge Myint | Executive Eng | Sagaing Region |  |  |
| 32 | U Khin Maug Tun | Assistant Director | PMU | | |
| 33 | Daw Ei May Hlaing | Staff Officer | NPT | | |

| No | Name | Position | Name of Organization/ PMU | Morning | Afternoon |
|----|---|---------------|------------------------------|---|---|
| 34 | U Nay Win Aung | Staff Officer | NPT | | |
| 35 | U Hlaing Phyo Win | Assistant Eng | Bridge Dept | | |
| 36 | Daw Thin Nayzar Win Din Nay Zar Win | Assistant Eng | Road Dept |  |  |
| 37 | Daw Khin sandar Myo | Assistant Eng | Road Dept | | |
| 38 | Daw Zar Yi Pwint | Assistant Eng | Road Dept | | |
| 39 | Daw Nilar Aung Ei Ei Mon | Assistant Eng | Road Dept |  |  |
| 40 | Daw Thi Thi Aung | Assistant Eng | Building Dept | | |
| 41 | Daw Ei Ei Aung | Assistant Eng | Building Dept | | |
| 42 | U Myint Zaw | Assistant Eng | Airfield Depr | | |
| 43 | U Htin Lin Aung | Staff Officer | Administration | | |
| 44 | U Zaw Aye | Staff Officer | Administration |  |  |
| 45 | Daw Yi Yi Htwe | Staff Officer | Production Dept |  |  |
| 46 | U Hla Win | Staff Officer | Trade Dept | | |
| 47 | U Thein Toe | Staff Officer | Trade Dept | | |
| 48 | U Win Myint Oo | Staff Officer | Kachin State | | |
| 49 | Daw Mar Mar Aye | Staff Officer | Kayar State |  |  |
| 50 | U Mg Mg Aung Soe | Staff Officer | Chin State | | |
| 51 | U Than Oo | Staff Officer | Mon State |  |  |

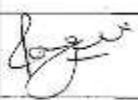







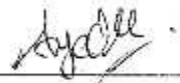
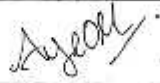


| No | Name | Position | Name of Organization/ PMU | Morning | Afternoon |
|----|-------------------|---------------|---------------------------|---------|-----------|
| 52 | U Myint Aung | Staff Officer | Rakhine State | | |
| 53 | U Thein Htay | Staff Officer | Shan (North) | | |
| 54 | U Myo Thet Maung | Assistant Eng | Shan (South) | | |
| 55 | U Yan Naing Myint | Assistant Eng | Shan (East) | | |
| 56 | U Kyaw Lin Oo | Staff Officer | Magway State | | |
| 57 | U Maung Maung | Staff Officer | Mandalay Region | | |
| 58 | Daw Ohnmar Aung | Staff Officer | Yangon Region | | |
| 59 | U Aung Myo Htut | Staff Officer | Ayeyarwaddy | | |
| 60 | Daw Aye Aye Soe | Staff Officer | Bago Region | | |
| 61 | U Aung Kyaw Nyunt | Staff Officer | Thanithayi Region | | |
| 62 | U Aung Lwin | Staff Officer | Sagaing Region | | |
| 63 | Naw Zi Zawar Ba | Assistant Eng | Naypyitaw | | |
| 64 | U Oakkar | Staff Officer | PMU | | |
| 65 | Daw May Thu Myint | Junior Eng 2 | Road Dept | | |


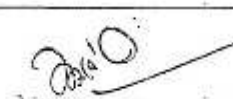

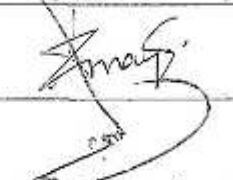
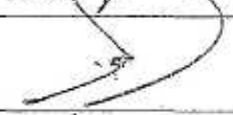

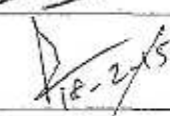





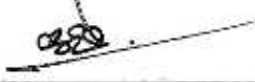

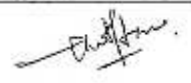
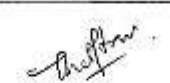
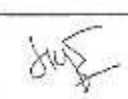
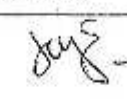


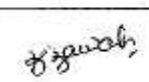
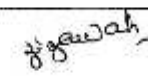
66 Daw Mya Sein Aye Executive Engineer DQSR
67 Daw Mic Mic Htve Executive Engineer DQSR
68 U Kyaw Kaung Cho Executive Engineer Bridge Section
Public Works
69 U Aye Aye Aye Executive Engineer Road Section

Mya Sein
Htve
Kaung Cho

U Aye Aye Aye

| No | Name | Position | Name of Organization/ PMU | Morning | Afternoon |
|----|------------------|--------------------|------------------------------------|-----------|-----------|
| 1 | U KHIN MO MYO | Staff Officer | ADMIN | ES | ES |
| 2 | U MYAT MINN | Staff Officer | ADMIN | Myat Minn | Myat Minn |
| 3 | Daw Mya Sein Aye | Executive Engineer | Design, Quantity Survey & Research | Mya Sein | Mya Sein |
| 4 | Daw Mie Mie Hwe | Executive Engineer | Design, Quantity Survey & Research | Flar | |
| | U WAY PHO LINN | Executive Engineer | Design, Quantity Survey & Research | U Way | U Way |
| | | | | | |
| | | | | | |

| No | Name | Name of Organization | Morning | Afternoon |
|----|----------------|---------------------------|---|---|
| 1. | F. K. AERIAL | ADB TA Consultant |  | |
| 2. | Maileane | | | |
| 3. | Tiran Guy Sui | ADB TA consultant |  | |
| 4. | Hector | ADB |  |  |
| 5. | Lydia | ADB TA Consultant |  |  |
| 6. | Sithu Aung | Workshop Admin. assistant |  |  |
| 7. | Aye Ohmar | Workshop Admin. assistant |  |  |
| 8. | Zaw Min Naing | Ngare Saung GAD |  | |
| 9. | Nay Aung Naing | Ngare Saung GAD |  | |

| No | Name | Name of Organization | Morning | Afternoon |
|-----|------------------------------|----------------------|---|---|
| 10. | U Kyaw Naing Oo | Ayeyarwady ECD |  |  |
| 11. | Daw May Yadanar Oo | Ayeyarwady ECD |  |  |
| 12. | U Kyaw Soe Aung | Ayeyarwady GAD |  |  |
| 13. | Dr San Oo | MOECAR |  |  |
| 14. | U THAN HTUE | Kar MCDC |  |  |
| 15. | U Khin my Nyunt | MCDC |  |  |
| 16. | U Htan Linn Saw | MCDC |  |  |
| 17. | THET HTAR MYINT | ADB PPTA 8472 |  |  |
| 18. | Dr. Hnagan Thwet Thwet Naing | DRD |  |  |
| 19. | Dr. Thet Yadanar Htan | DRD |  |  |
| 20. | Daw Naw gya wah Sa | may pyi Pau |  |  |

Photos of Social Safeguards Training in Ngwe Saung (18-20 February)



Presentations





Group Discussions





Group Presentations







ADB Safeguards Officer Responded to the Questions



Closing Remarks by MOECF

RETA 7566
SOCIAL SAFEGUARDS CAPACITY DEVELOPMENT WORKSHOP
NGWE SAUNG 18-20 FEBRUARY 2015

Questions and Answers during the Workshop

DAY 1

Q: U Than Htut (Director, MCDC): [How to explain to our superiors so that they understand the gap analysis?](#)

Answer: Awareness of social safeguards issues among the decision makers is a graduate process and it will take some time for them to fully understand its importance and implications.

Q. Daw Thet Htar Myint (Resettlement Consultant): [At the present time, land prices became higher and higher, when land acquisition is carried out, is it possible land for land compensation?](#)

Answer: compensation in terms of Land-for-land is possible. However, one must understand that no two pieces of land holdings are exactly same. Therefore, particularly for the loss of productive land (agricultural land) the criteria for replacement land should be equivalent productive capacity – not the exact area. For loss of residential land the replacement land should have better or at least the same attributes: locational advantage, access to facilities, etc. as the land lost.

Q. U Kyaw Kaung Cho (Executive Engineer, Bridge, MOC): [How to manage farmland tenure security?](#)

Answer: Land tenure security means that the land title, land ownership must be secured for the affected households. If replacement land (production land, residential land, etc.) is allocated, land title must be secured for the affected households.

DAY 2

Q. U Thet Zaw Win (Executive Engineer, Pyapon district, MOC): [How will you have the solution for the ownership of a husband and his multiple wives in land acquisition?](#)

Answer: Legal wife should have the dual ownership. Cultural background should be considered in such cases to determine eligibility of the wife.

Q. Daw Thet Htar Myint (Resettlement Consultant): [Projects try to promote the livelihoods of AHs, but the AHs don't want to change their jobs and livelihoods. How should this be handled?](#)

Answer: To support the livelihoods of AHs does not mean to change the jobs and livelihoods of the APs. Projects can assist the AHs to improve their livelihoods and sustain their current jobs. If their livelihoods are agricultural based – agricultural extensions can be supported to the AHs by the project. Occupational trainings can be provided for any member of the AHs who are in productive age-group (not necessary the AH's head). Other supports such as credit, trainings, etc can be provided by projects to the AHs to improve livelihoods and sustain the current jobs of AHs.

Q. U Wai Phyo Linn (Executive Engineer, Design, Quality and Survey, PW): [How to compensate the vulnerable people in a resettlement plan?](#)

Answer: Based on socioeconomic data and consultation results with the AHs, vulnerable households and communities, compensation and assistance should be provided for in the resettlement plan – the compensation and assistance must be adequate to ensure that living standards of vulnerable households be improved. After being approved by MOC and ADB, the compensation and assistance that envisaged in the approved resettlement plan shall be provided to the vulnerable households.

Q. U Wai Phyo Linn (Executive Engineer, Design, Quality and Survey, PW): [How much percentage of the total project is to be compensated to the AHs?](#)

Answer: There is no fixed percentage. It depends on the scope of land acquisition impacts by the project. During the screening process, if land acquisition impacts by the project is considered very significant and resettlement costs likely to be very high, alternative technical designs should be looked into to minimize resettlement impacts. For linear projects, this would mean modifying the alignment of the roads to avoid impacts on residential, commercial or very productive irrigated agricultural land or impacts on buildings.

Q. U Thant Htut (Director, MCDC): [How to organize a grievance redress mechanism? Even though squatters are relocated, they tend to sell their new residences and come back to illegally occupy other land?](#)

Answer: A grievance redress mechanism can be organized with participations of representatives of APs, village general authorities, township general administration, district general administration and NGOs. The mechanism does not impede AHs accessing to the country's judicial or administrative remedies – it addresses complaints of APs promptly and provides options for further appeal and representation.

Relocated informal settlers tend to come back either because the relocation site did not take into consideration their location of employment and place of work. Further, attempts must be made to find sustainable relocation solutions for affected informal settlers.

To avoid invasion of outsiders within the project areas in order to get benefits, it is important to establish a cut-off-date, the date of completion of census surveys. The cut-off-date should be made announced to the community with clear understanding that anyone entering the project area or occupying any area within the project boundary illegally after the cut-of-date will not be entitled to any compensation or assistance in the project.

Q. U Wai Phyo Linn (Executive Engineer, Design, Quality and Survey, PW): [\(i\) when categorizing the numbers of IPs, about more than 200 IPs, should they be put in the category A? \(ii\) Could you explain about how gender issue works?](#)

Answer: The number of IPs becomes secondary when categorizing, but the magnitude of impacts on IP community or sub-community level is more important. If a project impacts in any of the following five areas adversely and widespread at the community or sub-community level, the impact is generally considered as significant (category A): (i) customary rights of use and access to land and natural resources; (ii) socioeconomic status; (iii) cultural and communal integrity; (iv) health, education, livelihood, and social security status; and (v) recognition of indigenous knowledge.

For the gender issue, male and female members should be given the same opportunities. Woman should be consulted and given opportunities to share their views on all project related issues.

Day 3

Q. Dr. San Oo (Director, MOECAP): [What if an AP doesn't want to sell land because of religious believe?](#)

Answer: The project should change the alignment to avoid the impact. Another option is that, the project should together with local authorities to make a community meeting with AP. Community based solution should be sought to deal with cultural and religious issues.

Q. Dr. San Oo (Director, MOECAP): [How would you consider for the future compensation of land?](#)

Answer: Compensation should be based on the current market rates and not on future prospects of land usage. Future usage of land is purely speculative and is not considered for determining compensation.

Q. Daw Ei Ei Myo (Executive Engineer, MOC): [How do we decide for the donated land 20 years ago and wanted it back by the donor now?](#)

Answer: If the donor signed on paper 20 years ago to donate the land, the donor cannot take the land back. It must be ensure that; (i) documentation of land donation is properly made; and (ii) the donor signed the documents for donation without any pressure.

Q. U Wai Phyto Linn (Executive Engineer, PW): [What should be the percentage for contingency for resettlement cost?](#)

Answer: It should start with screening process and inventory of losses. If screening process and inventory of losses carried out properly, contingency for resettlement cost up to 15% of total estimated resettlement costs is acceptable.

Q. U Nyi Nyi Zaw (Executive Engineer, PW): [How to ask about income of an AP household?](#)

Answer: Getting reliable information on household incomes is always very difficult as the issue is sensitive and not many people would like to provide correct answers. However, experienced surveyor should find ways to extract information on incomes. Some indirect ways to get information on household income include: i) breakdown of incomes by different occupation the household members are involved in; ii) collect information on average monthly expenditures on different items; iii) average household savings, is any. Responses to item ii) and iii) above would help in cross-checking the household incomes. Often indirect questions on incomes can get more reliable information.

Q. U Than Htut (MCDC): [How shall we avoid or reduce the temporary impact?](#)

Answer: To minimize temporary impacts during civil works one could find open unused public land for storage of construction material and equipments. In case private land is to be used for such purposes, contractors are required to pay rent for the duration of the use of the land based on the market prices. This can be negotiated between the owner and the contractors. After the civil works, the contractors are required to make good to bring the land to original condition. Contractors are also required to pay compensation if the civil works causes any damage to private assets. Further, for roadside shops and residences, contractors are required to provide temporary access to ensure that civil works does not restrict access to businesses.

Q. U Aung Kaung Cho (Executive Engineer): [If displaced persons want to have their own budget and build a new house of relocated land, would it be permissible? And what to do if one of the APs want more compensation – for example, the AP asks US\\$ 5 more for one square meter of land?](#)

Answer: Yes, the affected households are permitted to improve their living conditions by utilizing compensation amount and using their own savings. APs are encouraged to do so because they can build a new house by the construction materials that they like and they can monitor the construction quality.

For the case that an AP asks higher compensation for land, community meetings should be made with the AP. Community meetings will help community pressure on the AP. If required, engage the external appraiser for land value valuation. The valuation result should be documented and showed in the community meetings. If all the measures are unsuccessful, let the court decides.

Q. U Wai Phyo Linn (Executive Engineer, Design, Quality and Survey, PW): [\(i\) If the affected productive land is very fertile/very good and there is no similar productive land available for land for land compensation, how to calculate to compensate by cash for that productive land?](#)

Answer: In the absence of any market mechanism to determine market rates, the compensation in cash can be determined based on the productivity of the affected land area. In this process, average annual value of the crops (or productive trees) can be the basis for compensation. Usually, the compensation thus determined is equivalent to three to five years of average annual value of the crops.

TOPICS FOR GROUP DISCUSSION

Topic 1: Entitlements to Informal Settlers:

1. What are the main reasons for emergence of squatters?
2. Do informal settlers/squatters/encroachers have any rights? Should they be compensated despite unauthorized occupancy?
3. What are the main areas of concern in terms of informal settlers and involuntary resettlement planning and implementation?
4. What are the risks faced by informal settlers when they are involuntarily resettled and how can these be addressed?
5. What are the constraints to effectively addressing the risks to informal settlers of involuntary resettlement?
6. What are the major gaps in the legal framework relevant to informal settlers in Myanmar in relation to ADB policy/international good practice?
7. Are there different groups among the illegal settlers?
8. Who among the affected settlers are eligible?
9. Would provision of assistance encourage more squatters?
10. What types of compensation and assistance should they receive?
11. How to prevent fraudulent claims by those who invade project areas illegally?

Topic 2: Upholding the Replacement Cost Standard in Asset Valuation

1. What are the asset valuation regimes in Myanmar and how do these compare to “replacement cost” standard for:
 - Affected land
 - Structures
 - Other fixed assets: Trees & Crops
2. What are the current methodologies for estimating replacement cost? Do they ensure compensation at replacement cost?
3. What are the ‘**opportunities**’ for reducing gaps between asset valuation under the procedures used in Myanmar and replacement cost?
4. What are the ‘**constraints**’ for reducing gaps between asset valuation under the procedures used in Myanmar and replacement cost?
5. What capacity building programs can be developed to promote the use of these methodologies?

Topic 3: Conducting effective consultation strategies in social safeguard planning and implementation

1. What are measures in country systems that promote consultation with affected persons and communities?
2. What are barriers in country systems that inhibit meaningful consultation?
3. What additional measures are there to improve consultations in country context?
4. What channels and institutions should be tapped to promote meaningful consultation?
5. What are effective tools to design communications and consultation strategies for social safeguards?
6. Are there any best practice examples on meaningful consultations in Myanmar?

Topic 4: Designing and implementing effective livelihood restoration schemes

1. Why are livelihood restoration necessary?
2. Who are entitled to livelihood restoration and rehabilitation assistance?
3. What are the key challenges to restoring the livelihood of resettled persons?
 - What is the level of capacity among the implementing agencies to undertake livelihood restoration of affected households in projects?
 - Institutional Structure in IR Planning and Implementation (PMU/PIU) & continuity beyond project implementation schedule
 - Funding
4. Are there lessons in good practice in addressing economic displacement and income restoration and how can they be promoted in Myanmar?

Topic 5: Identifying Indigenous Peoples at the project level

1. What is the perception of GOM in regard to recognition of IPs?
2. Is there any legal frameworks for the recognition of Indigenous Peoples in Myanmar?
3. Are there any institutions responsible to implement and monitor them?
4. What are elements of Indigenous Peoples identification/definition in Myanmar?
5. Are these elements consistent with the approach of international institutions? If not, what are the gaps and how can these be addressed at the project level?
6. Please identify the barriers in country systems that prevent the IP in participating in their own development and suggest the mechanism to address them

RETA 7566: SOCIAL SAFEGUARDS CAPACITY DEVELOPMENT WORKSHOP

NGWE SAUNG 18-20 FEBRUARY 2015

Please fill in the feedback form by marking the appropriate choice. The feedback will help us evaluate achievement of the objectives of the workshop. Thank you!

A. Content of the workshop

1. Sufficiency of the content of the workshop?
 - Sufficient ☐
 - Insufficient ☐
2. Suitability and relevance of the workshop content to your current work?
 - Very suitable/relevant ☐
 - Suitable/relevant ☐
 - Not suitable/not relevant ☐
3. Is the workshop useful/practical for the concerned agencies in planning and implementation of social safeguards?
 - Useful/practical ☐
 - Somewhat useful/ somewhat practical ☐
 - Not useful/Not practical ☐
4. In your opinion, does this workshop have any impacts on planning and implementation of social safeguards by the Ministry of Construction for the projects in the future?
 - The planning and implementation of social safeguards will be better ☐
 - The planning and implementation of social safeguards will not be better ☐
 - The impacts have yet to be seen ☐
5. Please evaluate your understanding on social safeguards planning and implementation:
 - My understanding is better after the workshop ☐
 - My understanding is as before the workshop ☐

B. Method of delivering the presentations in the workshop:

- | | True | False |
|---|--------------------------|--------------------------|
| 6. The presentation is understandable | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Encourage the involvement of participants | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. The duration of the discussions is adequate | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. The duration of the workshop is inadequate | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. The appropriateness of the overall method use: | | |
| Very satisfied <input type="checkbox"/> Satisfied <input type="checkbox"/> Dissatisfied <input type="checkbox"/> Very dissatisfied <input type="checkbox"/> | | |

C. Handouts

- | | True | False |
|---|--------------------------|--------------------------|
| 11. The handouts are sufficient and cover all the topics | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. The handouts are easy to understand | <input type="checkbox"/> | <input type="checkbox"/> |
| 13. The handouts are practical and can be used in practice | <input type="checkbox"/> | <input type="checkbox"/> |
| 14. The handouts are distributed before the workshop begins | <input type="checkbox"/> | <input type="checkbox"/> |

D. Resource Persons

15. Presentation style/delivery of the resource persons:
Very satisfied ☐ Satisfied ☐ Dissatisfied ☐ Very dissatisfied ☐
16. Knowledge of subject matter of the resource persons:
Very satisfied ☐ Satisfied ☐ Dissatisfied ☐ Very dissatisfied ☐
17. Effectiveness in dealing/interacting with workshop participants of the resource persons:
Very satisfied ☐ Satisfied ☐ Dissatisfied ☐ Very dissatisfied ☐

E. Organization

- | | True | False |
|---|--------------------------|--------------------------|
| 18. The location is suitable for organizing the workshop: | <input type="checkbox"/> | <input type="checkbox"/> |
| 19. The venue is convenient and suitable | <input type="checkbox"/> | <input type="checkbox"/> |
| 20. The equipment used for the workshop operate well | <input type="checkbox"/> | <input type="checkbox"/> |
| 21. The organization and invitation to participants are well-prepared | <input type="checkbox"/> | <input type="checkbox"/> |

F. Overall Assessment and recommendations

| | True | False |
|--|--------------------------|--------------------------|
| 22. The objectives of the workshop were stated clearly: | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. The objectives of the workshop were achieved: | <input type="checkbox"/> | <input type="checkbox"/> |
| 24. For the content of the workshop, please explain any "insufficient", "not suitable" or "not useful" ratings you gave and tell us what we could do to improve these areas: | | |
| 25. If your rating is that, after the workshop, the planning and implementation of social safeguards by MOC for its future projects will not be better, please tell us the reasons why:..... | | |
| 26. Please list one session you would have liked more and one session you would have liked less: The session would have like more:..... The session would have like less:..... | | |
| 27. Please list examples of new knowledge and skills that you gained from the workshop: | | |
| 28. Please write any additional comments or recommendations on how this workshop and your experience could be improved..... | | |

G. Please can you give some information about yourself (if possible)?

- Full name :
- Place of work :
- Title :

Thank you very much for your feedback

Feedback of Attendants on the Workshop

A. Content of the workshop

01. Sufficiency of the content of the workshop?

| Valid | Frequency | Percent |
|--------------|-----------|---------|
| Sufficient | 53 | 100.00 |
| Insufficient | 0 | 0.00 |
| Total | 53 | 100.00 |

02. Suitability and relevance of the workshop content to your current work?

| Valid | Frequency | Percent |
|---------------------------|-----------|---------|
| Very suitable/relevant | 46 | 86.79 |
| Suitable/relevant | 7 | 13.21 |
| Not suitable/not relevant | 0 | 0.00 |
| Total | 53 | 100.00 |

03. Is the workshop useful/practical for the concerned agencies in planning and implementation of social safeguards?

| Valid | Frequency | Percent |
|-------------------------------------|-----------|---------|
| Useful/practical | 49 | 92.45 |
| Somewhat useful/ somewhat practical | 3 | 5.66 |
| Not useful/Not practical | 0 | 0.00 |
| No response | 1 | 1.89 |
| Total | 53 | 100.00 |

04. In your opinion, does this workshop have any impacts on planning and implementation of social safeguards by the Ministry of Construction for the projects in the future?

| Valid | Frequency | Percent |
|---|-----------|---------|
| The planning and implementation of social safeguards will be better | 44 | 83.02 |
| The planning and implementation of social safeguards will not be better | 0 | 0.00 |
| The impacts have yet to be seen | 9 | 16.98 |
| Total | 53 | 100.00 |

05. Please evaluate your understanding on social safeguards planning and implementation:

| Valid | Frequency | Percent |
|---|-----------|---------|
| My understanding is better after the workshop | 53 | 100.00 |
| My understanding is as before the workshop | 0 | 0.00 |
| Total | 53 | 100.00 |

B. Method of delivering the presentations in the workshop:

06. The presentations are understandable?

| Valid | Frequency | Percent |
|-------|-----------|---------|
| True | 53 | 100.00 |
| False | 0 | 0.00 |
| Total | 53 | 100.00 |

07. Encourage the involvement of participants?

| Valid | Frequency | Percent |
|-------|-----------|---------|
| True | 53 | 100.00 |
| False | 0 | 0.00 |
| Total | 53 | 100.00 |

08. The duration of the discussions is adequate?

| Valid | Frequency | Percent |
|-------|-----------|---------|
| True | 48 | 90.57 |
| False | 5 | 9.43 |
| Total | 53 | 100.00 |

09. The duration of the workshop is adequate?

| Valid | Frequency | Percent |
|-------|-----------|---------|
| True | 51 | 96.23 |
| False | 2 | 3.77 |
| Total | 53 | 100.00 |

10. The appropriateness of the overall method use?

| Valid | Frequency | Percent |
|-------------------|-----------|---------|
| Very satisfied | 49 | 92.45 |
| Satisfied | 4 | 7.55 |
| Dissatisfied | 0 | 0.00 |
| Very dissatisfied | 0 | 0.00 |
| Total | 53 | 100.00 |

C. Handouts

11. The handouts are sufficient and cover all the topics?

| Valid | Frequency | Percent |
|-------|-----------|---------|
| True | 49 | 92.45 |
| False | 4 | 7.55 |
| Total | 53 | 100.00 |

12. The handouts are easy to understand?

| Valid | Frequency | Percent |
|-------|-----------|---------|
| True | 53 | 100.00 |
| False | 0 | 0.00 |
| Total | 53 | 100.00 |

13. The handouts are practical and can be used in practice?

| Valid | Frequency | Percent |
|-------|-----------|---------|
| True | 53 | 100.00 |
| False | 0 | 0.00 |
| Total | 53 | 100.00 |

14. The handouts are distributed before the workshop begins?

| Valid | Frequency | Percent |
|-------|-----------|---------|
| True | 53 | 100.00 |
| False | 0 | 0.00 |
| Total | 53 | 100.00 |

D. Resource Persons

15. Presentation style/delivery of the resource persons?

| Valid | Frequency | Percent |
|-------------------|-----------|---------|
| Very satisfied | 51 | 96.23 |
| Satisfied | 2 | 3.77 |
| Dissatisfied | 0 | 0.00 |
| Very dissatisfied | 0 | 0.00 |
| Total | 53 | 100.00 |

16. Knowledge of subject matter of the resource persons?

| Valid | Frequency | Percent |
|-------------------|-----------|---------|
| Very satisfied | 49 | 92.45 |
| Satisfied | 4 | 7.55 |
| Dissatisfied | 0 | 0.00 |
| Very dissatisfied | 0 | 0.00 |
| Total | 53 | 100.00 |

17. Effectiveness in dealing/interacting with workshop participants of the resource persons?

| Valid | Frequency | Percent |
|-------------------|-----------|---------|
| Very satisfied | 53 | 100.00 |
| Satisfied | 0 | 00.00 |
| Dissatisfied | 0 | 0.00 |
| Very dissatisfied | 0 | 0.00 |
| Total | 53 | 100.00 |

E. Organization

18. The location is suitable for organizing the workshop?

| Valid | Frequency | Percent |
|-------|-----------|---------|
| True | 53 | 100.00 |
| False | 0 | 0.00 |
| Total | 53 | 100.00 |

19. The venue is convenient and suitable?

| Valid | Frequency | Percent |
|-------|-----------|---------|
| True | 50 | 94.34 |
| False | 3 | 5.66 |
| Total | 53 | 100.00 |

20. The equipment used for the workshop operate well?

| Valid | Frequency | Percent |
|-------|-----------|---------|
| True | 53 | 100.00 |
| False | 0 | 0.00 |
| Total | 53 | 100.00 |

21. The organization and invitation to participants are well-prepared?

| Valid | Frequency | Percent |
|-------|-----------|---------|
| True | 37 | 69.81 |
| False | 16 | 30.19 |
| Total | 53 | 100.00 |

F. Overall Assessment and recommendations?

22. The objectives of the workshop were stated clearly?

| Valid | Frequency | Percent |
|-------------|-----------|---------|
| True | 51 | 96.23 |
| False | 0 | 0.00 |
| No response | 2 | 3.77 |
| Total | 53 | 100.00 |

23. The objectives of the workshop were achieved?

| Valid | Frequency | Percent |
|-------------|-----------|---------|
| True | 50 | 94.34 |
| False | 0 | 0.00 |
| No response | 3 | 5.66 |
| Total | 53 | 100.00 |

24. For the content of the workshop, please explain any “insufficient”, “not suitable” or “not useful” ratings you gave and tell us what we could do to improve these areas?¹⁴

| Valid | Frequency | Percent |
|---|-----------|---------|
| Every part of presentation should be distributed to the participants as soft copy and in a CD | 1 | 1.89 |
| Should have given more time on workshop days | 2 | 3.77 |
| Needs more coordinations in organizing the workshop | 2 | 3.77 |
| Presentations and handouts should be translated in to Burmese | 4 | 7.55 |
| Presentations should be presented in Burmese | 16 | 30.19 |
| No response | 31 | 58.49 |

25. Please list one session you would have liked more and one session you would have liked less?

The session would have like more:

| Valid | Frequency | Percent |
|---|-----------|---------|
| Social Safeguards Planning in Project Process Cycle | 3 | 5.66 |
| IPs Local Laws and Regulations | 1 | 1.89 |
| IR Local Laws and Regulations and Practices | 2 | 3.77 |
| Group Discussions and presentations | 7 | 13.21 |
| IP/Issues for Squatters | 1 | 1.89 |
| Compensation, Replacement Costs & Land for Land | 3 | 5.66 |
| Quiz Session | 3 | 5.66 |
| Social Impact Assessments | 1 | 1.89 |
| Assistance and Compensation for the AHs | 1 | 1.89 |
| Assessments of Compensations | 2 | 3.77 |
| Resettlement Plans | 1 | 1.89 |
| The rest participants give blank comments | 28 | 52.83 |
| Total | 53 | 100.00 |

¹⁴ Some provided more than one explanations

The session would have like less

| Valid | Frequency | Percent |
|---|-----------|---------|
| Social Safeguards Planning in Project Process Cycle | 2 | 3.77 |
| IPs Local Laws and Regulations | 3 | 5.66 |
| Grievance Redress Mechanism | 1 | 1.89 |
| Relocation and Rehabilitation | 2 | 3.77 |
| Assessment of Compensation | 2 | 3.77 |
| No response | 43 | 81.13 |
| Total | 53 | 100.00 |

26. Please list examples of new knowledge and skills that you gained from the workshop¹⁵:

| Valid | Frequency | Percent |
|--|-----------|---------|
| New knowledge on the issues related to land acquisition, resettlement | 21 | 39.62 |
| New knowledge on the issues related to IP issues | 16 | 30.19 |
| New knowledge on how to handle squatters, compensate and assistance and also how to prevent from encroachers | 1 | 1.89 |
| Understanding the importance of resettlement screening | 3 | 5.66 |
| Understanding the importance of cut off date and disclosure of information | 2 | 3.77 |
| Gained skills on social impact assessment processing | 2 | 3.77 |
| No response/irrelevant responses to the question | 27 | 50.94 |

27. Please write any additional comments or recommendations on how this workshop and your experience could be improved:

| Valid | Frequency | Percent |
|---|-----------|---------|
| More discussions on issues of compensation for affected lands | 1 | 1.89 |
| More workshops are recommended for improvements of knowledge and skills | 1 | 1.89 |
| Should have field-work during the workshop | 1 | 1.89 |
| Burmese version presentation is also essential for the participants. | 3 | 5.66 |
| Others/irrelevant responses to the question | 21 | 39.62 |
| No response | 26 | 49.06 |
| Total | 53 | 100.00 |

¹⁵ Some provided more than one examples

RETA 7566

Comments on the Draft Manual on Social Safeguards Planning and Implementation

Please fill in the feedback form by marking the appropriate choice. The feedback will help us improve and finalize the Manual. Thank you!

Q1: Is the content of Manual relevant to your current work?

- Very relevant ☐ Relevant ☐ Not relevant ☐

Q2: Can you use the Manual for the current work?

- Yes, I can use ☐ No, I can not use ☐ I do-not know yet ☐

Q3: In your opinions, is the Manual useful to your current works?

- Very useful ☐ Useful ☐ Not useful ☐

Q4: Is the structure of the Manual suitable?

- Very suitable ☐ Suitable ☐ Not suitable ☐

If it is "not suitable", please tell us why?.....

.....

.....

Q5: Is the presentation of issues in the Manual easy to understand?

- Very easy ☐ Easy ☐ Not easy ☐

If it is "not easy", please tell us why?.....

.....

.....

Q6: For improvement and finalization the Manual, please provide us your comments on the sections of the draft Manual:

| Sections | No comment | Comments |
|---|--------------------------|----------|
| The screening on social and resettlement impacts (pages 10-11) | <input type="checkbox"/> | |
| Demarcation and disclosure of project affected area (pages 12-13) | <input type="checkbox"/> | |
| Census and establishment of cut-off date (pages 13-15) | <input type="checkbox"/> | |
| Inventory of affected assets (pages 15-19) | <input type="checkbox"/> | |
| Socioeconomic survey (pages 20-23) | <input type="checkbox"/> | |
| Replacement cost study (pages 23-27) | <input type="checkbox"/> | |
| Information disclosure and public consultation (pages 27-33) | <input type="checkbox"/> | |
| Preparation of social safeguards documents (pages 33-40) | <input type="checkbox"/> | |
| Relocation site preparation (pages 41-43) | <input type="checkbox"/> | |
| Payment of compensation and assistance (pages 44- 45) | <input type="checkbox"/> | |
| | | |

| | | |
|---|--------------------------|--|
| Relocation of relocating households (pages 45-46) | <input type="checkbox"/> | |
| Implementation of Indigenous Peoples development plan (page 46-47) | <input type="checkbox"/> | |
| Preparation and implementation of Income Restoration Plan (pages 47-52) | <input type="checkbox"/> | |
| Grievance redress mechanism (pages 52-55) | <input type="checkbox"/> | |
| Monitoring and evaluation (pages 55-59) | <input type="checkbox"/> | |

Q7: Please tell us the section(s)/contents that have not yet been presented in the draft Manual and you want us to add in?.....

.....

Q8: Please write any additional comments or recommendations on how the draft manual can be improved and finalized:.....

.....

.....

Thank you very much once again for your cooperation!

RETA 7566

Feedback on the Draft Manual on Social Safeguards Planning and Implementation

Q1: Is the content of Manual relevant to your current work?

| Valid | Frequency | Percent |
|---------------|-----------|---------|
| Very relevant | 37 | 69.81 |
| Relevant | 16 | 30.19 |
| Not relevant | 0 | 00.00 |
| Total | 53 | 100.00 |

Q2: Can you use the Manual for the current work?

| Valid | Frequency | Percent |
|-------------------|-----------|---------|
| Yes, I can use | 39 | 73.58 |
| No, I can not use | 0 | 00.00 |
| I do-not know yet | 14 | 26.42 |
| Total | 53 | 100.00 |

Q3: In your opinions, is the Manual useful to your current works?

| Valid | Frequency | Percent |
|-------------|-----------|---------|
| Very useful | 36 | 67.92 |
| Useful | 17 | 32.08 |
| Not useful | 0 | 00.00 |
| Total | 53 | 100.00 |

Q4: Is the structure of the Manual suitable?

| Valid | Frequency | Percent |
|---------------|-----------|---------|
| Very suitable | 34 | 64.15 |
| Suitable | 16 | 30.19 |
| Not suitable | 0 | 00.00 |
| No response | 3 | 5.66 |
| Total | 53 | 100.00 |

Q5: Is the presentation of issues in the Manual easy to understand?

| Valid | Frequency | Percent |
|-------------|-----------|---------|
| Very easy | 22 | 41.51 |
| Easy | 28 | 52.83 |
| Not easy | 0 | 00.00 |
| No response | 3 | 5.66 |
| Total | 53 | 100.00 |

Q6: For improvement and finalization the Manual, please provide us your comments on the sections of the draft Manual:

| Valid | Frequency | Percent |
|-----------------------------------|-----------|---------|
| No comments on the draft sections | 11 | 20.75 |
| No response | 42 | 79.25 |
| Total | 53 | 100.00 |

Q7: Please tell us the section(s)/contents that have not yet been presented in the draft Manual and you want us to add in?

| Valid | Frequency | Percent |
|--|-----------|---------|
| More about gender issues | 1 | 1.89 |
| No response/irrelevant responses to the question | 52 | 98.11 |
| Total | 53 | 100.00 |

Q8: Please write any additional comments or recommendations on how the draft manual can be improved and finalized?

| Valid | Frequency | Percent |
|--|-----------|---------|
| Should have a section on resettlement budgeting | 1 | 1.89 |
| The Manual should be finalized after having practices by the users | 1 | 1.89 |
| The Manual should be distributed in both English and Burmese | 9 | 16.98 |
| No response/irrelevant responses to the question | 42 | 79.24 |
| Total | 53 | 100.00 |