



DEPARTMENT OF AGRARIAN REFORM

MEMORANDUM CIRCULAR

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SUBJECT: Implementing Guidelines on Operation and Maintenance of Completed Rural Infrastructure Sub-projects of the DAR-ADB Agrarian Reform Communities Project (ARCP)

A. RATIONALE AND OBJECTIVES

The Agrarian Reform Communities Project (ARCP) is a development project implemented by the Department of Agrarian Reform with funding assistance from the Asian Development Bank (ADB). Now in the homestretch of its implementation, the ARCP aims to provide increased opportunities for improving socio-economic status in 165 Agrarian Reform Communities nationwide.

Implemented under a demand-driven and community-based approach, the ARCP promotes the full participation of all stakeholders to ensure the ownership and sustainability of its services and interventions. In this regard, in rural infrastructure development the ARCP partners with the Local Government Unit and the members of the ARC not only in the implementation but also in the operation and maintenance (O&M) of RI sub-projects.

Under the DAR-LGU Sub-project Agreement (SPA) executed for each RI sub-project, the LGU undertakes to properly operate and maintain the sub-project for a period of 10 years upon turnover. The failure of the LGU to comply with this condition shall warrant the imposition of the extreme penalty of conversion of the ARCP grant portion (loan proceeds and GOP funds) into a loan of the LGU. This loan will be payable via the intercept of the LGU's Internal Revenue Allotment (IRA).

These guidelines are issued to institute the system that will govern the determination of proper compliance with the requirements spelled out in the O&M MOA/Manual. The guidelines provide the rating system, evaluation criteria, persons responsible and procedures in the periodic inspection and assessment of ARCP sub-projects. The guidelines likewise provide the functions of the Dispute Settlement Committee (DSC) and Provincial Inspectorate Teams (PITs).

B. STRUCTURE AND FUNCTIONS

1. The composition of the Dispute and Settlement Committee shall be multi-disciplinary, organic and mainstreamed to ensure continuity for the intended 10-year O&M period. There are four major areas to consider in carrying out its mandate, namely:
 - a. Physical Infrastructure
 - b. Financial Aspect
 - c. Legal Aspect
 - d. Community and Institutional Development

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2. The ARCP, being a Project with specific time frame, shall be tapped to lead the execution of the mandate set forth in these O&M guidelines for the duration of its implementation. During such period, the Project shall promote the mainstreaming and technology transfer of O&M requirements and competencies into the regular DAR field units. Upon termination of the ARCP, the functions enumerated herein, particularly those of the Disputes Settlement Committee, shall become the responsibility of the Office of the Undersecretary for Support Services to ensure continuity.

3. The **Disputes Settlement Committee (DSC)** will be an inter-agency body tasked to deliberate and decide on conflicts and possible violations pertaining to the execution of the Sub-project Agreement (SPA) between the DAR and the concerned LGU. Specifically, the DSC will arbitrate and decide on the failure of the LGU to properly implement, operate and maintain ARCP-financed sub-projects that would possibly warrant the imposition of the extreme penalty of conversion of the ARCP grant into a loan, payable via the intercept of the LGU's Internal Revenue Allotment (IRA).

The DSC will review the findings and recommendations of the DSC-Technical Working Group described below. Should it so deem that an IRA intercept is warranted, it will endorse such recommendation to the ARCP Project Management Board (PMB) or the DAR Secretary for concurrence. Upon concurrence, the PMB or DAR Secretary shall request the Department of Finance to intercept the IRA of the errant LGU accordingly.

The DSC will be composed as follows:

DISPUTES SETTLEMENT COMMITTEE (DSC):

- Chair : Undersecretary/Project Implementation Officer, FAPsO
- Vice Chair : Executive Director, FAPsO
- Members : Director, PDMS/FAPsO Monitoring and Evaluation Div. (MED)
- Director, FIMAS
- Representative, PPLAO
- Representative, NEDA-PMS
- Representative, DOF-MDFO
- Representative, DILG
- Representative, NIA
- Project Manager, ARCP

The DAR through its Field Offices and the ARCP shall pursue every means within its mandate to avoid conflicts and disputes. Should such arise, all efforts shall be exhausted to resolve the same at the lowest level.

4. The **DSC Technical Working Group (DSC-TWG)** will provide technical, legal and financial advice and support to the DSC. It will report SPA violations to the DSC and recommend corrective measures thereon. The DSC-TWG, which will be backstopped by the ARCP CPMO for the duration of the Project and by the FAPsO MED after ARCP completion, is authorized to tap technical experts from other agencies and the private sector to help determine the proper course of action with regard to a reported complaint or violation. The DSC may likewise constitute itself into an Inspectorate Team that will conduct field level investigation of disputes and conflicts. The composition of the DSC-TWG will be as follows:

DSC TECHNICAL WORKING GROUP (DSC-TWG):

Chair : Director, PDMS/FAPsO-MED
Members : Division Chief, FAPsO-MED
Representative, PPLAO
Representative, FIMAS
Representative, PDMS/FAPsO-MED (ARCP Desk Officer)
Representative, ARCP CPMO
Secretariat: ARCP CPMO / FAPsO-MED

5. The Provincial Inspectorate Team shall regularly inspect and evaluate on-going and completed sub-projects to ensure compliance with the SPA, including the approved operation and maintenance (O&M) system. It will coordinate with the LGU concerned to resolve issues and concerns at the local level. In cases of conflict or dispute that could not be resolved at the provincial level, the PIT shall submit its report to the DSC-TWG for investigation and possible arbitration. The PIT will be composed as follows:

PROVINCIAL INSPECTORATE TEAM (PIT):

Chair : Provincial Agrarian Reform Officer II
Vice Chair : CARPO, BDCD
Members : DAR Regional Office Technical Point Person (SSD)
DAR Provincial Office Engineer (Engineer designated for ARCP)
DAR Provincial Office Comm. and Institutional Dev't Officer (CIDO)
Representative, DSC-TWG
Representative, NEDA Regional Office-PMS
Representative, Coop/IA/BAWASA
Representative, PARCCOM

Secretariat: DARPO BDCD

Functions:

- Conducts inspection and evaluation of subprojects on a semi-annual basis or as may be instructed
- Coordinates with LGUs the conduct of semi-annual inspection and evaluation using the approved O&M rating system
- Prepares and submits report to the DSC-TWG the results of O&M inspection and evaluation
- Acts and follows up on issues and concerns as may be raised by the PO and the LGU relative to O&M

C. PROCEDURE FOR DISPUTE SETTLEMENT

The SPA covers provisions for the approval, implementation, operations and maintenance of the subproject. It stipulates the extreme penalty of conversion of the grant portion to loan in case of failure on the part of LGU to maintain the subproject for 10 years. The procedures to this effect shall be as follows:

1. Completed Subprojects

- a. The PIT shall conduct inspection and evaluation of subprojects on a semi-annual basis or as may be instructed.
- b. The PIT, prior to the conduct of inspection and evaluation, will notify the LGU and Peoples Organization (PO).
- c. All technical documents such as as-built plan, annual O&M plan and financial books and records for the O&M may be requested for inspection.
- d. Inspection shall be carried out using the guidelines stipulated herein on the inspection and evaluation of the conditions of operations and maintenance of subprojects.
- e. Each member shall rate the degree of infrastructure conditions and provide his/her findings and recommendations using the same inspection and evaluation form or rating sheet. A 50% plus one attendance shall constitute a quorum.
- f. Documentary proof, such as photos and testimonies and all other documents shall be secured during the site inspection.
- g. An exit conference shall be conducted with the LGU and ARC to discuss the findings and recommendations thereof. The PIT shall conduct follow up activities on whatever agreements made during exit conference. The PIT shall make a report to this effect and submit to DSC thru the DSC-TWG.
- h. When after the agreed prescribed period and where the PIT finds the LGU not complying with the agreements, the PIT shall submit its report to the DSC thru the DSC-TWG.
- i. The DSC-TWG shall conduct its own inspection to validate the report of the PIT. The LGU is given seven calendar days to file an appeal for reconsideration should the DSC-TWG find merit to the report of the PIT.
- j. The LGU may within 15 calendar days raise the dispute with the DSC should the DSC-TWG reiterate its decision upholding the report of the PIT.
- k. When so warrants, the DSC-TWG shall request the DSC to convene for arbitration and decision-making.
- l. The DSC shall endeavor to resolve within reasonable time issues raised before it by the LGU by, among others, reviewing records and other documents pertinent to the dispute, as well as conducting hearings whenever necessary or appropriate for the immediate resolution of the case.
- m. The DSC, should it find merit to the position of the LGU, shall advise the LGU to restore the subproject from its original state of functionality and durability within a prescribed period.
- n. However, should the DSC uphold the findings and recommendation of the PIT and DSC-TWG, the DSC endorses its decision to the DAR for deliberation and concurrence and the LGU shall be advised accordingly.
- o. Upon concurrence by the DAR, by virtue of a Resolution, the decision shall be final and executory.
- p. The DAR, thru the DSC-TWG, shall request the DBM for the IRA intercept.

2. On-going Subprojects

- a. The DSC-TWG shall conduct an immediate investigation following the report submitted by the PIT.
- b. The DSC-TWG shall conduct inspection to validate the report of the PIT. Documentary proof, such as photos and testimonies and all other

documents shall be secured during the site inspection. Exit conference shall be made with the LGU.

- c. The LGU may within 15 calendar days raise the dispute with the DSC.
- d. When so warranted, the DSC-TWG shall request the DSC to convene for arbitration and decision-making.
- e. The DSC shall endeavor to resolve within reasonable time issues raised before it by the LGU by, among others, reviewing records and other documents pertinent to the dispute, as well as conducting hearings whenever necessary or appropriate for the immediate resolution of the case.
- f. The DSC, should it find merit to the position of the LGU, shall advise the LGU to continue the implementation of the subproject within a prescribed period.
- g. However, should the DSC uphold the findings and recommendation of the PIT and DSC-TWG, the DSC endorses its decision to the DAR for deliberation and concurrence and the LGU shall be advised accordingly.
- h. Upon concurrence by the DAR, by virtue of a Resolution, the decision shall be final and executory.
- i. The DAR, thru the DSC-TWG, shall request the DBM for the IRA intercept.

D. RATING SYSTEM

This set of guidelines provides the mechanism to complement the O&M Manual of subprojects. The O&M Manual provides the standards and parameters to measure quality in the maintenance of completed subprojects. It provides the rating system to measure the extent of defects and distresses and the corresponding remedial measures. It provides the actual condition/state of the subproject and the remedial measures to be adopted. The state and condition of the subproject that warrants the extreme penalty that will cause the conversion of the grant to loan, is provided and established by the rating system. The application of the rating/point system covers such aspects as technical, environment and institutional development.

The rating system shall be applied in the evaluation of the conditions in the maintenance of completed subprojects. The PIT and DSC-TWG shall adopt this tool during their inspection activities. The rating system that lays down the standards and parameters of conditions covers the physical, social, and environmental aspects in the operation and maintenance of the subproject. This holistic approach aims to establish objectivity to measure quality and performance in the aforementioned aspects.

1. Physical

The general condition provides the indicator of the overall assessment of the project physical accomplishment including environmental. It refers to the general impression and state of the project. It likewise describes the condition of its components and appurtenances, i.e. Access: drainage, vegetation control, and visibility as the case maybe. Divided into Good, Fair, Poor, and Failed (beyond the scope of cost efficient maintenance), a "**rating/point system**" shall be used for the evaluation. The details and mechanisms shall be based on the ARCP O&M Manual of completed subprojects. Such aspect as environmental is also included in this system.

General condition of a particular subproject is computed based on the guidelines in the O&M Manual for completed subprojects, subject to the conditions prescribed herein.

2. Social

Standards and parameters have also been established to measure the institutional aspect relative to the O&M of subprojects. The qualitative and quantitative measurements are provided for in the guidelines in the O&M Manual for completed subprojects.

3. Classification of over-all condition

(1) Good: The general state and condition which the LGU is required to maintain to achieve the intended benefits of the subproject pursuant to the conditions in the SPA.

The completed project appears in a sound and well-maintained condition, minor failures could appear, ie. Access: such as few potholes, minor areas with cracks, ruts, depression, leaks and ponds, depending on the type of project. Said failures maybe considered insignificant with very minimal or no repairs needed.

(2) Fair: When the general view seems to contain some failures and damages. Structures and components are generally functional. The level of repairs needed seems to be slightly average. Restoration under the ARCP prescribed remedial measures shall be undertaken.

(3) Poor : When the general view appears to have many failures and damages and failed section. Many of its components / appurtenances hardly function. Its level of state is low.

Said state and condition is tantamount to failure of maintenance by the LGU and shall warrant the corresponding penalty as provided for in the SPA.

(4) Failed: Beyond economic repair: When the general view appears to have several failures and damages, more sections are not functional and deteriorated. The quantities required to bring the road to a reasonable standard are largely exceeding the most cost effective solutions.

4. Criteria for Evaluation

a. Criteria for Commendation

1. Case 1 – Newly completed/turned over subprojects

For a sub-project to earn commendation, PIT rating and DSC-TWG validation rating should be good. Other considerations are as follows:

- a. Subproject is observed to have maintenance policies and systems in place and implemented

- b. Extraordinary maintenance measures are being adopted by the PO and LGU to ensure sustainability

2. Case 2 – Other considerations:

- a. If a subproject improved in a category rating (e.g. from "fair" to "good"). The LGU shall be acknowledged for the improvements made.
- b. If a subproject garnered a rating of Good/Very Good in two consecutive inspection cycles, and meets other considerations in Case 1, the LGU will be given the commendation.

b. Criteria for the Issuance of Notice and Warning

- 1. Case 1. Warning letters will be given to LGUs with subprojects posting a rating of poor or failed.
- 2. Case 2. For subprojects that slipped in category or qualitative rating e.g. from "good" to "fair", a notice will be issued to the LGU.
- 3. Case 3. A subproject with consecutive rating of fair, as follows, shall be candidate for loan conversion.
 - a. 1st instance – Notice
 - b. 2nd instance – Warning
 - c. 3rd instance – Warning
 - d. 4th instance – Final warning

c. Candidate for Conversion of Grant to Loan


- 1. Case 1: Subprojects with two (2) consecutive ratings of Failed
- 2. Case 2: Subprojects with three (3) consecutive ratings of Poor
- 3. Case 3: Subprojects with four (4) consecutive ratings of Fair

5. Fortuitous Events

Consistent to the provisions of the SPA, the LGU shall remain responsible in ensuring the subproject to be maintained accordingly. When in cases of fortuitous events such as typhoon or earthquake causing damages beyond the maintenance fund intended for the subproject, the LGU shall report such situation and condition of the subproject. The PIT shall conduct a inspection of the state of the subproject, it shall within its discretion to allow, when so warrants, the extension of the period of compliance. The LGU shall restore the subproject as mutually agreed upon with the PIT.

D. EFFECTIVITY

This guideline shall become effective upon approval by the Secretary.



NASSER C. PANGANDAMAN
Secretary

ORGANIZATIONAL STRUCTURE DISPUTES SETTLEMENT

