



# **Process Framework for Involuntary Access and Use Restrictions**

LLF ESMS Annex L

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## ACRONYMS AND ABBREVIATIONS

Name	Description
E&S	Environmental and Social
ESMS	Environmental and Social Management System
FPIC	Free Prior and Informed Consent
GM	Grievance Mechanism
HWC	Human Wildlife Conflict
IP	Indigenous Peoples
IUCN	International Union for Conservation of Nature
LL	Legacy Landscapes
LLF	Legacy Landscapes Fund
MoU	Memorandum of Understanding
NGO	Non-Governmental Organization
PA	Protected Area
PAP	Program Affected Persons
PF	Process Framework
PRA	Participatory Rural Appraisal
SEP	Stakeholder Engagement Plan
SOP	Standard Operation Procedures
WB ESS	World Bank Environmental and Social Standards

## DOCUMENT HISTORY

Version	Revision	Prepared by	Reviewed by	Approved by	Date	Comments

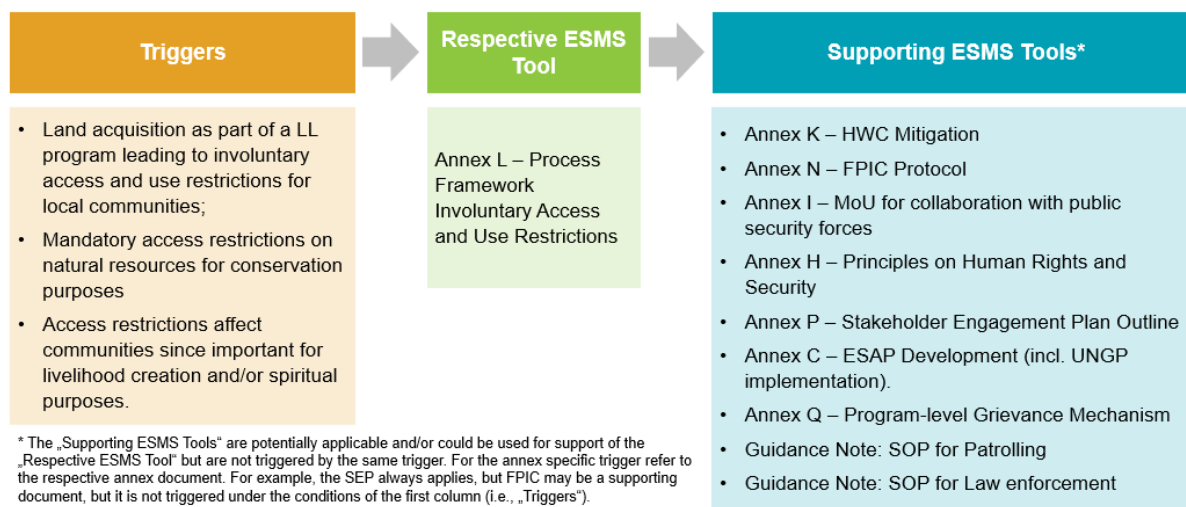
## 1. INTRODUCTION

This document provides guidance for the development of a process framework (PF) on involuntary access and use restrictions that shall be applied to all legacy landscape (LL) programs in which for conservation purposes there will be access and use restrictions on natural resources in legally designated parks and protected areas (PA). These restrictions could potentially lead to negative consequences for affected communities, since those communities often depend on natural resources for their livelihood generation or have a special spiritual connection with them.

Access and use restrictions imposed by LL programs might, thus, impact the economic, social, cultural and environmental benefits that people gain from those resources or areas. In the same way overuse, unregulated or illegal access may counteract LL conservation goals set out by the grantee, national wildlife authorities and/or other LL management partner. In some cases, restrictions may cause physical and/or economic displacement endangering their livelihood generation from those resources or excessive coercive actions. Further risks lie in the actual enforcement of such restrictions by the authority that manages the LL or deals with protection and law enforcement.

Therefore, such LL programs require processes by which members of potentially affected communities participate in the development of actions to avoid and mitigate adverse impacts. Corresponding processes should be guided by an overarching PF.

The requirement to develop the PF might be stated in the environmental and social action plan (ESAP) that is part of the grant agreement between the grantee and LLF. Alternatively, such requirement will be triggered by legacy landscape (LL) program activity during the lifecycle of the LL program.



### Comments

If such restrictions affect IP and/or traditional and/or vulnerable groups FPIC is required.

In case that the grantees have developed frameworks or strategies (e.g., through zoning processes during management plan development or other engagement strategies) that respond to the requirements described in this guidance note, a gap analysis against the key content of this guidance should be conducted and existing frameworks/strategies should be adapted accordingly.

Process framework design should include how resource use and access restriction will be enforced and monitored (of both enforcement actions and proper use agreements) with provisions on both sides of measures in case of abuses (MoU, SOP, Guidelines on Security and Human Rights)

Within the grievances management process there should be qualified experts to assist the grievances officer in his/her assessment of the grievances relating to access and use restrictions.

**Note:** This document provides a guidance that is aligned with the applicable standards listed in the LLF ESMS manual. In all cases, the grantee and/or the party developing the process framework must comply with the local/national requirements; then, the guidance provided in this document (including the other recommended publications) should be utilized to determine how to align the LL program with the applicable standards. If the LL program (or the grantee organization) already have similar framework and/or templates developed and/or currently implemented, the grantee should conduct the gap analysis exercise between the existing framework and/or template and this LLF guidance. The identified gaps should be closed following the rule – stricter applies.

## 1.1 Purpose

The purpose of the PF on involuntary access and use restrictions is to identify potential adverse impacts on affected local communities that may result due to such restrictions and to mitigate such impacts (i.e., minimize, restore and remedy) as early as possible in the program lifecycle. This should be done in the program planning stage. The PF shall be based on dialogue with affected people who should be encouraged to participate in the identification of potential adverse impacts from the program and imposed access and use restrictions, avoidance and mitigation of such impacts, as well as implementation and monitoring measures. Where affected people are considered indigenous peoples, the principles of free, prior and informed consent (FPIC) will be followed (refer to LLF ESMS documents, **Annex O – FPIC Protocol**).

The purpose of this document is to serve as a guiding note for the grantee during the development of the process framework for involuntary access and use restrictions in order to identify possible adverse impacts on local communities based on their participation and input. The grantee should adapt this template to match the specific context of the LL program.

## 1.2 Objective

The overall objective of the PF on involuntary access and use restrictions is to:

- Offer focused and practical guidance on how to manage access restrictions;
- Avoid negative impacts on local communities whose livelihoods and/or cultural values/identity might be impacted by restrictions imposed by the LL program
- Help managers mitigate for the key social and environmental risks arising from their programs.

All provisions agreed in the PF shall be carried out during the program planning and implementation stages. The PF will guide the final development of an action plan that will describe all relevant restrictions and mitigation or compensation measures.

## 2. APPLICABLE STANDARDS

The full list of the applicable standards for developing the process framework for involuntary land use and access restrictions are indicated in the LLF ESMS manual document. In addition, the following standards were used for the development of this guidance note and should be reflected in process framework:

- World Bank Environmental and Social Standards (2017), in particular;
  - Guidance Notes on ESS4 (2018), ESS5 (2018), ESS7 (2018) and ESS8 (2018);
- Voluntary Principles for Security and Human Rights (VPSHR)<sup>1</sup>;

<sup>1</sup> <https://www.voluntaryprinciples.org/the-principles/>

- The UN Guiding Principles on Business and Human Rights (UNGP, 2011), including:
  - Guidance Note on Displacement and Resettlement (UNGP, 2021)<sup>2</sup>;
- Voluntary Guidelines on the Responsible Tenure Governance of Land, Fisheries and Forests (FAO, 2012)<sup>3</sup>;
- United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP, 2018)<sup>4</sup>;
- Indigenous and Tribal Peoples Convention (ILO 169)<sup>5</sup>;
- United Nations Basic Principles and Guidelines on Development-Based Evictions and Displacement (UN, 2007)<sup>6</sup>.

### 3. KEY TERMINOLOGY

Table 3-1 below elaborates on key terms used in this process framework guidance note.

**Table 3-1 Key Terminology**

Term	Definition
<b>Area of Influence</b>	The area within which program’s activities have the potential to create E&S changes, including the: <ul style="list-style-type: none"> <li>■ Zone of direct impact, an area, often demarcated by a LL boundary, where land access restrictions will be in place and enforced, and where program facilities may be constructed.</li> <li>■ Zone or zones of indirect impact, areas where stakeholders affected by a program’s reside, work or farm, including areas that experience economic growth, increased traffic or influx as a result of program’ activities.</li> </ul>
<b>Grantee</b>	A NGO(-s) and/or party that is in contractual agreement with LLF and receiving grant funds through the grant agreement.
<b>Compensation</b>	Compensation payment in cash or kind for an asset to be acquired or affected by a program at replacement value.
<b>Economic displacement</b>	Loss of assets or income or access to assets that leads to loss.
<b>Eligibility</b>	Degree to which people are affected by access and use restrictions and their rights that would make them eligible for compensation and restoration.
<b>Entitlement</b>	Compensation and assistance required to be developed for addressing various risks and to which eligible persons may be entitled

<sup>2</sup>

[https://info.undp.org/sites/bpps/SES\\_Toolkit/SES%20Document%20Library/Uploaded%20October%202016/UNDP%20SES%20S5%20Displacement%20and%20Resettlement%20GN\\_Final-rev\\_July2021.pdf](https://info.undp.org/sites/bpps/SES_Toolkit/SES%20Document%20Library/Uploaded%20October%202016/UNDP%20SES%20S5%20Displacement%20and%20Resettlement%20GN_Final-rev_July2021.pdf)

<sup>3</sup> <https://www.fao.org/publications/card/en/c/12801E/>

<sup>4</sup> <https://digitallibrary.un.org/record/1656160?ln=en>

<sup>5</sup>

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55\\_TYPE,P55\\_LANG,P55\\_DOCUMENT,P55\\_NODE:REV,en,C169./Document](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:REV,en,C169./Document)

<sup>6</sup> <https://www.ohchr.org/en/special-procedures/sr-housing/forced-evictions>

<b>Term</b>	<b>Definition</b>
<b>Free Prior and Informed Consent (FPIC)</b>	Free, prior, and informed consent (FPIC) is a collective human right of indigenous peoples <sup>7</sup> to give or withhold their consent prior to the commencement of any activity that may affect their rights, land, resources, territories, livelihoods, and food security. This right is exercised through representatives of their own choosing and in a manner consistent with their own customs, values, and norms. FPIC exists to promote, protect, and safeguard the full enjoyment and exercise of numerous underlying, fundamental human rights, including the rights to property, culture, and self-determination.
<b>Land-based livelihoods</b>	Refers to livelihood-activities such as rotational cropping and grazing of livestock as well as the harvesting of natural resources.
<b>Legacy Landscape Program/Program activity</b>	All activities <sup>8</sup> related to the legacy landscape and/or stakeholders that are planned, implemented and/or supervised by the grantee and/or their contractor.
<b>Legacy Landscape Staff</b>	All staff related to the legacy landscape program and/or program activity development and implementation (e.g., grantee, contractors, park management, etc.)
<b>Livelihood</b>	Refers to the full range of means that individuals, families and communities utilize to make a living, such as wage-based income, agriculture, fishing, foraging, other natural resource-based livelihoods, petty trade and bartering.
<b>Livelihood restoration</b>	The measures required to ensure that program-affected persons have the resources to at least restore, if not improve, their livelihoods and quality of life to pre-program levels
<b>Program Affected Persons (PAP)</b>	Any person experiencing loss of asset, access to income whether of a temporary or permanent nature due to the land acquisition process, and/or access restrictions regardless of whether they are physically displaced or relocated or not.
<b>Physical displacement</b>	Loss of land or access to land that leads to loss.
<b>Restrictions on land use</b>	Refers to limitations or prohibitions on the use of agricultural, residential, commercial or other land that are directly introduced and put into effect as part of the program. These may include restrictions on access to legally designated parks and protected areas, restrictions on access to other common property resources, and restrictions on land use within utility easements or safety zones
<b>Vulnerable Groups</b>	Those who are less able to access a program benefit and / or more likely to experience adverse impacts from a program's activities as a result of a given status, which may stem from their ethnicity, color, gender, sexual identity, language, religion, political or other opinion, national or social origin, property, birth or perceived social status.

<sup>7</sup> The LLF follows WB standard definition of IP (compare also FPIC guidance note) and requires the application of FPIC as defined per ESS 7. As best practice and also to avoid potential conflicts in communities where indigenous and non-indigenous people live in mixed settings, programs might and are encouraged to adopt FPIC to those mixed communities, as well as to other local communities and vulnerable groups affected by the program.

<sup>8</sup> The PF must cover not only LLF funded activities for the LL program, but all activities in the program specific legacy landscape and surroundings.

## 4. CONSIDERATION AND PRINCIPLES

The PF will guide the LL program which involves:

- Access restriction to and/or use of natural resources by communities, groups or individuals living within or outside legally designated LL, i.e., parks and protected areas (e.g., fishing, hunting wildlife, harvesting timber or non-timber forest products);
- Physical access restriction to areas of occupation or use;
- Access restriction to social services such as education or health services by prohibiting or limiting physical access to the places where those services occur; or
- Changes in the use and management regimes of natural resources.

The following sub sections will elaborate on relevant steps of the PF template for involuntary access and use restrictions.

### 4.1 Key Principles

In accordance with the abovementioned applicable standards, all programs developing the PF should follow eight key principles that are presented in Figure 4-1 and briefly elaborated below.



**Figure 4-1 Key Principles for Developing Process Framework**



#### **4.1.1 Principle 1: Mainstream Community Considerations**

The grantee must mainstream social considerations in the LL program planning and implementation, rather than separately managing social impacts caused by access and use restrictions. Long-term success of the LL programs will be guaranteed with the involvement and support of local stakeholders<sup>9</sup>. This will only be obtained by considering all actual and potential social impacts and seek avoidance or effective mitigation measures. All measures should be documented and monitored.

#### **4.1.2 Principle 2: Promote Inclusion**

The grantee must ensure the inclusion of all stakeholders and rightsholders in their planning and implementation processes. Therefore, all potential relevant stakeholders need to be assessed and analyzed carefully and be encouraged to participate in the LL program process. Special attention should be placed on marginalized and vulnerable groups. Different stakeholders will require different engagement activities in order to fully include each group<sup>10</sup>.

#### **4.1.3 Principle 3: Respect Human Rights**

The grantee must adopt a human-rights-based approach when assessing adverse impacts resulting from land access and use restrictions in its LL program and providing remedy for such impacts (depended on the grantee's level of involvement, i.e., causing, contributing, being linked or not as well as on the severity of the impact, the requirement and proportionality to provide remedy can differ<sup>11</sup>).

In particular, the following rights must be respected in all LL program activities, which requires understanding impacts on the human rights of PAP as right holders:

- The rights of affected communities, including indigenous peoples (IP), to the lands and resources they use;
- The right to a standard of living adequate for the health and well-being;
- The right to free movement of peoples;
- The right of people to determine their own economic, social and cultural development priorities;
- The right of people to participate in decision-making in matters which affects them;
- Respect for traditional structures and systems of government and decision-making, including those of indigenous peoples;
- The right to own property;
- Respect the equal rights of women and ensure their participation and inclusion;
- Respect for cultural heritage and knowledge;
- Right to life, liberty and security;
- Prohibition of torture or other cruel, inhuman or degrading treatment or punishment;
- Respect for the inherent dignity of the human person.

#### **4.1.4 Principle 4: Ensure Participation & Consent**

The grantee must ensure the full and informed participation of affected communities and households in the LL program assessment, planning and implementation. This will require diverse stakeholder

<sup>9</sup> Refer to LLF ESMS document **Annex M – Community Engagement and Planning Framework for Voluntary Access Restrictions**. LLF encourages the grantee to follow the community-based natural resource management principles.

<sup>10</sup> For further guidance on stakeholder engagement and consultation refer to the LLF ESMS documentation, **Annex P – Stakeholder Engagement Plan Outline**

<sup>11</sup> For further guidance on how to establish the level of grantee's involvement and the UNGP involvement framework refer to the LLF ESMS documentation, **Annex C – ESAP Development (incl. UNGP Implementation)**

engagement activities, including effective participation methods and the inclusion of vulnerable groups, such as women, elderly etc. If indigenous peoples are affected by a program, clear evidence of free, prior and informed consent (FPIC) must be provided, following appropriate traditional structures and methods of consultation, decision-making and consent.

#### **4.1.5 Principle 5: Establish the Social and Security Context**

In order to develop an effective PF a comprehensive social baseline needs to be established in accordance with the applicable standards (e.g., WB ESS1). The social baseline study includes the basic social and economic information needed to develop appropriate impact mitigation measures, including compensation and other entitlements, livelihood restoration programs, community development initiatives, or resettlement programs. The time and resources required to develop the baseline will reflect the complexity of a program's social context and the scale of a program's impact.

In the same way that the social baseline assessment is key to sound implementation, WB ESS4 recommends that a security and conflict analysis be conducted to identify risks, potential for emerging conflicts, and mitigation measures to human rights and security from a law enforcement perspective, if such measures are included in the LL program.

#### **4.1.6 Principle 6: Assess, Avoid and Minimize Impacts**

All LL programs should aim to first avoid adverse impacts on local communities. Where avoidance is not possible, then any impacts must be minimized to the greatest extent possible.

#### **4.1.7 Principle 7: Addressing all Impacts and Provision of Remedy**

The process framework should clarify that all impacts identified will be addressed by mitigation measures that are tailored to the respective impact and the respective involvement (i.e., responsibility) of the grantee and other parties under the UNGP. For further reference, please refer to the LLF ESMS documentation, **Annex C – ESAP Development (incl. UNGP Implementation)**. Remedy should be provided for victims of abuses and violators subjected to disciplinary processes and according to the UNGP involvement framework. It must be proven by monitoring and evaluation data, that all adverse impacts have been addressed by consecutive actions and that implemented mitigation measures are regularly reviewed and updated if needed.

#### **4.1.8 Principle 8: Create Win-Win Outcomes.**

The grantee should aim to create win-win outcomes, meaning that the LL program will not only benefit the grantee through conservation purposes, but also bring added value, benefit sharing and prioritization for employment opportunities to program affected persons (PAP) and other relevant stakeholders. The LL programs should strive to improve the livelihoods and standards of living for displaced persons by respecting the human rights enshrined in the International Bill of Human Rights<sup>12</sup> and other relevant human rights standards, and to contribute to the further realization of human rights of both the economically and physically displaced PAP. Furthermore, programs should strive to improve the living conditions among physically displaced persons through (contributing to) fulfilling the right to adequate housing and security of tenure. This might mean going beyond minimum requirements but will very likely lead to long-term success of the LL program.

## **4.2 Developing the Process Framework**

The following sections should be developed as part of the PF. The PF should be made publicly available prior to or within the inception phase of the LL program and/or the program activity

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<sup>12</sup> In December 1966, the UN General Assembly adopted two international treaties that would shape international human rights: the International Covenant on Economic Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR). Together, the UDHR and these two Covenants are known as the International Bill of Human Rights.

implementation so that it is available to all stakeholders. The purpose of the disclosure is to ensure that all affected groups are informed and provided an opportunity to raise any concerns. Disclosure of the PF can be integrated in the overall stakeholder engagement process. For further reference, please refer to the LLF ESMS documentation, **Annex P – Stakeholder Engagement Plan Outline**.

The development of the detailed PF requires considerable time, resources and technical inputs, and must be considered at the outset or during the inception phase (first and/or second year) of the LL program support. If budgets do not account for these needs, they will need to be updated.

Figure 4-2 provides an overview of the essential components the PF should describe and assess during the LL program planning or inception stage in order to develop a comprehensive and solid action plan that will be implemented during the program implementation stage. Further guidance on each stage will be provided in the below sections.

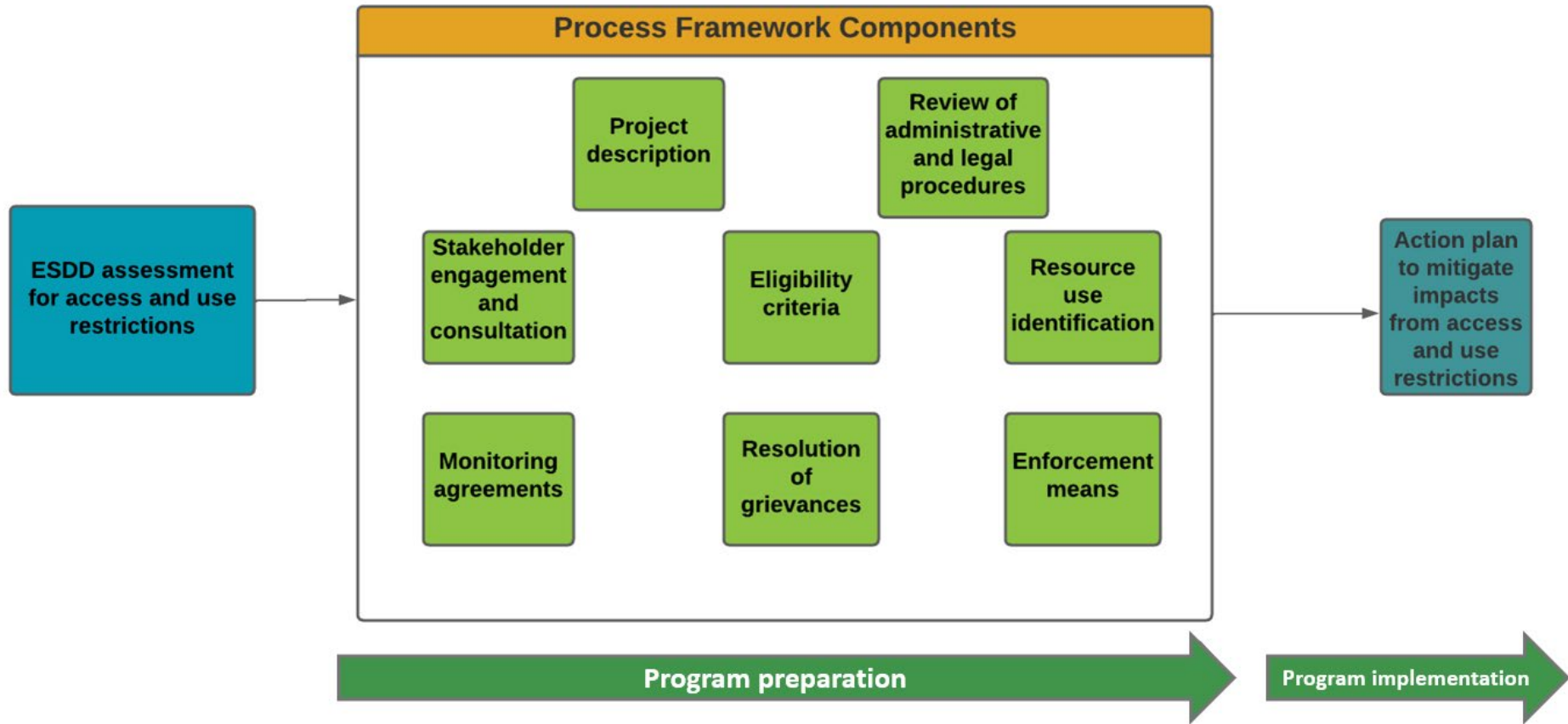


Figure 4-2 Process Framework Components

### 4.2.1 Project Description

In order to make a proper assessment on the impact of access and use restrictions, the overall LL program (including all specific program components) should be described, including a detailed description of designated areas requiring access or use restrictions. The description should include any new or updated and more stringent restrictions (in addition to possible already existing restrictions). The following points should be elaborated on in the LL program description:

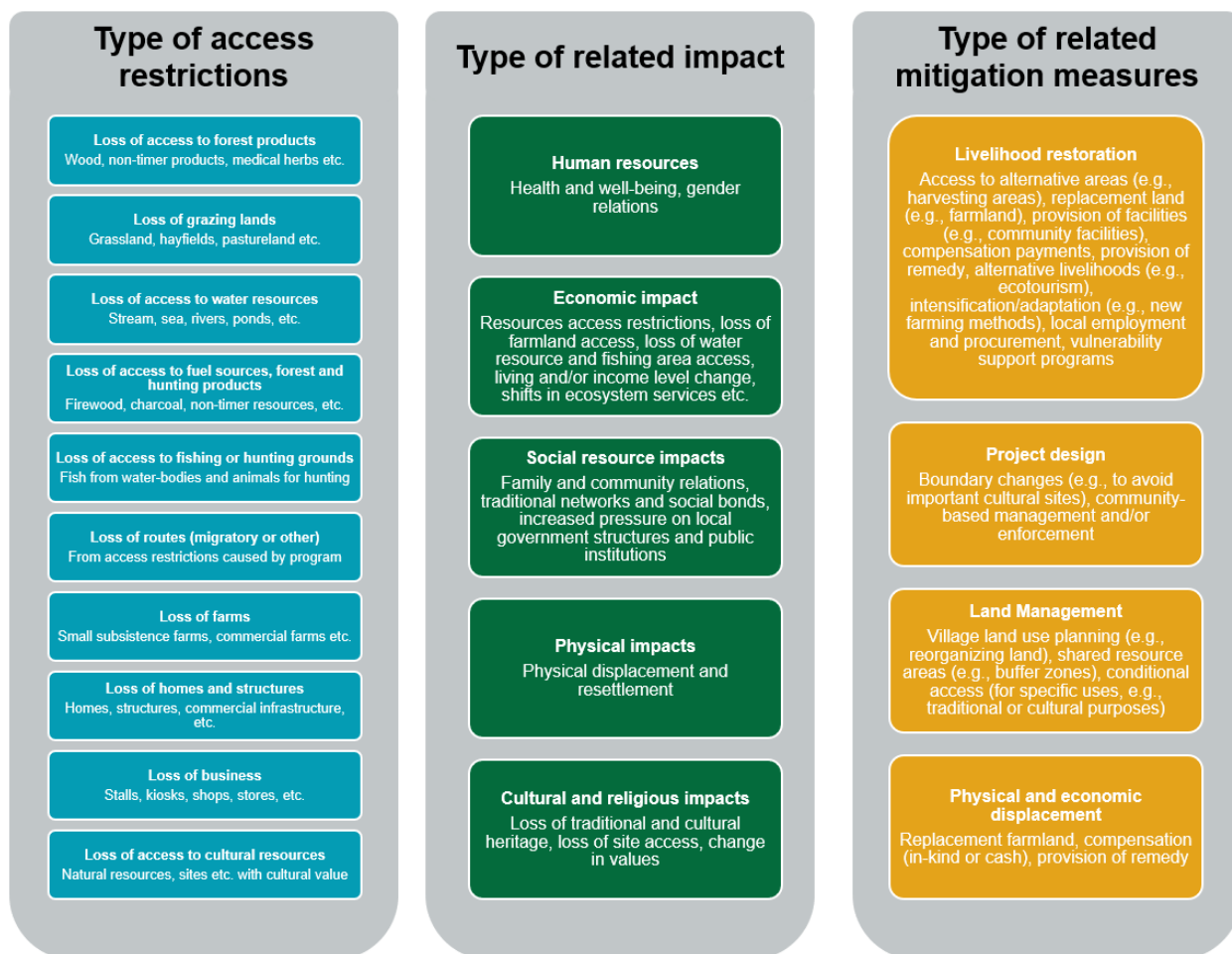
- Program environment (populated areas, parks and protected areas, multiple jurisdictions and users etc.);
- Program scale;
- Relevant types of access restrictions (natural resources, physical access or access to social services);
- Required changes in the use and management regimes of natural resources;
- Location and people or groups that would be affected by restrictions;
- Budget and funding for the PF development and implementation;
- Capacity (local implementing partners, government support etc.);
- External threats to PAP; and
- Cumulative impacts.

### 4.2.2 Identification of Resources, Use and Access Restrictions

The inventory is a first step for analyzing livelihood impacts when the LL program's conservation objectives require use restrictions for certain natural resources. To systematize the analysis and to ensure that no significant resources or groups are left out, an inventory should be developed including but not limited to the following points:

- Main types of natural resources;
- Current use of resources/land and importance for the livelihoods of affected stakeholders (e.g., nutrition, sale, cultural/spiritual value etc.);
- Sites of cultural importance;
- Indigenous people (IP) or customary communities and their relationship to resources;
- Frequency and time of use (e.g., seasonal, daily, monthly, yearly or occasional basis, e.g., in case of cultural ceremonies etc.);
- Current land access rights;
- Purpose of access to resources;
- Planned restrictions (e.g., temporary, seasonal, or permanent) and changes in use and management of respective areas.

Figure 4-3 gives an overview of types of access restrictions that can arise in the LL programs as well as related impacts and mitigation measures. Table 4-1 below provides a template for the development of a resource identification, including guiding questions and examples. Please note, that the LL program description and resource identification list should be updated, if new insights are gained during the stakeholder consultation process (e.g., on particular use of a natural resource, ceremonial grounds, important natural features for cultural identity creation etc.).



**Figure 4-3 Access Restrictions, Related Impacts and Mitigation Measures in Conservation Projects**

**Table 4-1 Template for Resource Use Identification**

Resource	Current use	Importance for stakeholders	Current sites of gathering/harvesting	Frequency	Use and access rights	Planned Restrictions	Anticipated Impact	Possible Mitigation Measures
Which resources are affected?	What is the current use of the resource?	How important is the resource for stakeholder's livelihoods?	What are the current sites for gathering or harvesting the resource?	What is the frequency of use? Is the resource harvested seasonal? How often are rituals/ceremonies in relation to the resource performed?	What formal and customary rights are regulating the current use/access?	What are the planned restrictions?	How will the planned restrictions impact relevant stakeholders?	Is there already a potential solution, mitigation measure?
<i>Example: Timber, Medical plants, wetlands etc.</i>	<i>Example: Nutrition, construction purposes, ceremonial use etc.</i>	<i>Example: Essential resource for livelihoods (e.g. for nutrition), essential part of cultural identity of local communities etc.</i>	<i>Example: Local forest, riverbed, cave etc. (indicate area as accurate as possible)</i>	<i>Example: Seasonal harvest (indicate months of harvesting); frequently occurring ceremonies (indicate frequency: daily, weekly, monthly, yearly?) etc.</i>	<i>Example: Customary land rights without official land use certificates etc.</i>	<i>Example: Seasonal restrictions during breeding time; permanent access restrictions; restrictions only in certain areas (e.g., riverbed) etc.</i>	<i>Example: Severe impact if main source of nutrition; cultural heritage and identity loss etc.</i>	<i>Example: in-kind compensation, setting up nursery for IP, enable controlled access to relevant cultural sites, improved resource management etc.</i>

### 4.2.3 Eligibility Criteria and Entitlement Matrix

As part of the PF the criteria for eligibility of PAP should be determined and the process of establishing such criteria must be elaborated. The eligibility criteria regulate which groups or persons will be eligible for mitigation and compensation measures. If possible, the PF should already establish criteria or at least key principles for setting out eligibility criteria.

The PF should ensure that potentially affected communities will be involved in identifying any adverse impacts, assessing of the significance of impacts, and establishing of the criteria for eligibility for any mitigating or compensating measures necessary. Such criteria should be reflected in an entitlement matrix that is a core component of the PF.

The following sections provide guidance on how to establish eligibility and entitlement criteria for the purposes of the PF.

#### 4.2.3.1 Eligibility and Entitlement

Any residual risks beyond acceptable levels need to be compensated and restored by the program as set out in the PF. This is to be done by establishing criteria for eligibility for assistance to mitigate adverse impacts or otherwise improve livelihoods. Based on eligibility of the PAP the PF will then establish the respective compensation and restoration measures. As part of this, the PF should describe the process how groups or communities will be involved in determining, preparing and approving the measures for livelihood restoration to mitigate economic displacement impacts. The common objective is to improve or restore, in real terms, to pre-displacement levels, their livelihoods while maintaining the sustainability of the park or protected area.

Various forms of livelihood restoration may be utilized, as shaped by the PAP themselves and according to their eligibility and respective entitlements. Determining eligibility and entitlements is a crucial aspect of any LL program that restricts land use and/or access to natural resources. It should be noted that “eligibility” refers to the degree to which people are affected by access and use restrictions and their rights that would make them eligible for compensation and restoration, while “entitlement” refers to the compensation and assistance required to be developed for addressing various risks and to which eligible persons may be entitled.

#### 4.2.3.2 Categories of Eligible Groups

The determination of eligibility criteria should be developed by the PAP themselves through participatory rural appraisal (PRA) methods for consulting their views on who would be eligible for certain program entitlements. Nevertheless, there are three general categories of affected persons established by WB ESS5, who are eligible for receiving livelihood restoration that should always be reflected in any PA eligibility and entitlement assessment that are as follows:

##### *Category A: Affected Persons who have formal Legal Rights to Land or Assets*

This group includes PAP who have formal documentation under national law to prove their rights or are specifically recognized in national law as not requiring documentation. This can include PAP with areas registered in their name or in the name of their communities, as well as persons that have a lease on the land and therefore have legal rights.

##### *Category B: Affected persons who do not have formal rights to land or assets, but who have a recognized or recognizable claim under national law or international regulations*

This groups of PAP has no formal rights, but can claim land and assets under national law or international regulations, such as the United Nations Declaration on the Rights of Peasants (UNDROP) or the Indigenous and Tribal Peoples Convention (ILO 169). PAP of this group can include land users without formal documentation but that have been using the land under customary



or traditional tenure arrangements for generations and that are accepted by the community and recognized by national law. In other cases, they may have never been provided formal title or their documents may be incomplete or lost. They may have a claim for adverse possession if they have occupied land for a certain period of time as defined by national law, without the formal owner contesting the occupation. In such cases, national law often has legal procedures by which such claims can become recognized.

### *Category C: Affected persons who have no recognizable legal right or claim to the land or assets they occupy or use*

Category C PAP can be seasonal resource users, such as firewood collectors, herders, pastoralists, fishermen, beekeepers, or hunters that claim customary rights or other forms of informal and undocumented tenure or could be tenants and lessees but without formal recognition of rights under national law or international conventions.

#### *4.2.3.3 Eligible Groups*

Eligible groups may include, but are not limited to, the following user groups:

- Individuals, households of a community or entire communities inside a PA who are directly affected by restrictions;
- Individuals, households of a community or entire communities outside a PA who are directly affected by restrictions;
- Seasonal or migratory user groups that are not members of a community inside or adjacent to a PA;
- Individuals, households of a community or entire communities that would be impacted by leakage effects resulting from the influx of people whose livelihoods have been restricted by a PA;
- Individuals, households of a community or entire communities that would be impacted by human wildlife conflict (HWC) either directly by loss and damage to structures, assets, or livelihood due to increased wildlife populations or through leakage effects resulting from respective PA zoning.

#### *4.2.3.4 Ineligible Groups*

On the other hand, there are some groups that may be ineligible for entitlements. Such groups include people that have encroached/moved into the PA after the cut-off date<sup>13</sup> has been announced, or are engaged in clearly illicit and destructive use of natural resources, such as activities that are unlikely to remain sustainable in the future in a sense that they are being used in manner and at a rate that leads to the long-term decline of the conservation value of the PA and are thereby threatening the potential to meet the needs and aspirations of present and future generations (e.g., wildlife poachers, loggers, miners, or dynamite fishers). However, caution should be paid to exclude these users per se but instead identify whether they may not fall under one of the eligibility criteria listed above. Similarly, excluded from any livelihood assistance would be those user groups that use natural resources

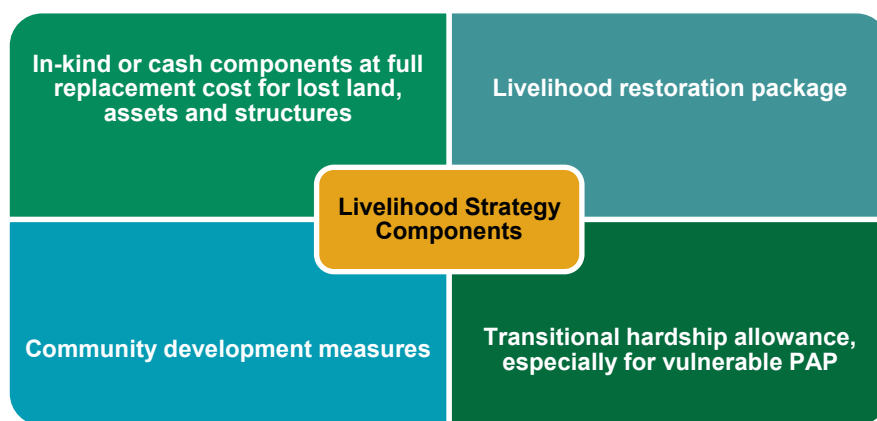
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<sup>13</sup> For economic displacement usually the completion of the census represents the cut-off date for resettlement compensation and/or assistance. However, the cut-off date could also be the date the program physical boundaries were delineated, prior to the census, provided that there has been an effective public dissemination of information on the area delineated, and systematic and continuous dissemination subsequent to the delineation to prevent further population influx. A common complication encountered with respect to cut-off dates involves “historic” cut-off dates, which were established at the time a project was ready for development but, due to project delays, have become forgotten or outdated. In such scenarios, natural population growth from eligible households leads to “new” households not listed in the initial surveys: these are to be considered eligible for resettlement benefits and assistance. If there is a significant time lag (>3-5 years) between the completion of the census and implementation of the resettlement or livelihood restoration plan, a repeat census may be required to allow for these natural changes.

illegally for commercial purposes despite having access to alternative legal sources of income. In such cases people are choosing the illegal option due to the high economic returns and the low associated costs or risks of being arrested or persecuted.

#### 4.2.3.5 Livelihood Strategy Components

Every PF should provide guidance on livelihood strategy components that are should include at a minimum the following provisions. All persons with legally recognized statutory rights covered by category A and B as well as people with only customary rights under category C are eligible for restoration measures of some sort if they occupied the land before the respective cut-off date. However, the nature of that restoration may vary depending on the significance of risk, namely the degree to which the PA could lead to actual livelihood losses (based on their sensitivity and adaptive capacities), and their eligibility. Those covered under category A and B are to be provided replacement land or, if unfeasible, compensation for the land at full replacement cost, including the assets they lose and in addition to that assistance for livelihood restoration. Persons covered under category C are to be provided compensation for the assets they lose at full replacement cost and additionally assistance for livelihood restoration. Therefore, it is clear that all PAP irrespective of their status or whether they have formal titles, legal rights or not, squatters or otherwise encroaching illegally on land, are eligible for some kind of compensation and livelihood assistance if they occupied the land before the entitlement cut-off date. There will therefore be a package of compensation and other livelihood measures to assist each category of eligible PAP in their efforts to restore adversely affected livelihoods. Figure 4-4 below presents the four main livelihood strategy components.



**Figure 4-4 Livelihood Strategy Components**

#### 4.2.3.6 Creating an Entitlement Matrix

At the program level these different components are reflected in an entitlement matrix that needs to be established as part of the PF and/or resettlement action plan (RAP) and/or livelihood restoration plan (LRP) to identify all PAP (i.e., eligible persons), the types of risks they are exposed to, and the types of compensation and restoration being provided to them in order to address those risks (the entitlements). The entitlements should always be commensurate to the access and use restrictions PAP are exposed to and the impacts these may have on affected people's livelihoods and wellbeing: The more substantial the impact, the greater efforts should be placed on respective entitlements and as the level of impact varies, so should the entitlements: from partial losses to full losses of livelihood and assets and depending on the peoples respective vulnerabilities. Table 4-2 below presents an example entitlement matrix.

**Table 4-2 Example Entitlement Matrix**

Eligibility Criteria and Entitlements for Compensation and Livelihood Restoration					
Eligibility criteria and category of PAP	Main Impacts	Loss category	Entitled person	Compensation entitlements according to National Law	Proposed compensation and livelihood assistance entitlement as top-ups for compliance with the applicable international standards
<i>Example: PAP with formal legal rights to land and resources</i>	<i>Example: Partial or full livelihood loss due to access and use restrictions of land and resources</i>	<i>Example: Loss of private/ community land, assets, structures</i>	<i>Example: user, title holder</i>	<i>Note: To be filled out according to relevant national legislation.</i>	<i>Example: Land loss has to be compensated through alternative replacement land or cash compensation at full replacement cost (if no replacement land is available)</i>

#### 4.2.4 Review of Administrative and Legal Procedures

Before developing the final action plan for mitigation of adverse impacts caused by restrictions on land use and land access, any agreements reached regarding the process approach with relevant administrative jurisdictions and ministries (considering law enforcement, police or paramilitary presence in enforcing or monitoring restrictions), including clear delineation for administrative and financial responsibilities under the LL program should be reviewed and incorporated in the final action plan. For further guidance on security assessment tools refer to LLF ESMS documents, **Annex H – Security and Human Rights in Protected Areas**, **Annex I – MoU for collaboration with public security forces** as well as **Guidance Note: SPO for Patrolling** and **Guidance Note: SOP for Law Enforcement**<sup>14</sup>).

#### 4.2.5 Stakeholder Consultation Process

In order to have a holistic understanding of potential impacts arising from imposing access and use restrictions on natural resources, all relevant stakeholders and affected communities, rights holders and groups should be consulted as part of the PF development. Engagement with local communities is essential for understanding possible impacts on their livelihoods since some aspects might not be able to be identified from mere observation or desk-based research.

The consultative process should include legitimate representatives of all affected communities or groups as well as other relevant stakeholders, such as LL management, local experts etc. All groups and individuals potentially affected from restrictions on natural resources should be carefully documented and updated regularly. Information and consultation should be conducted in a culturally appropriate manner and in relevant local languages. Special importance should be placed on the involvement of vulnerable groups, such as women, children, elderly, disabled persons, indigenous groups or customary communities.

The extent of stakeholder consultation activities will depend on the complexity of the LL program and its context. According to context and complexity the degree of assessment needs will vary. It might involve a mix of quantitative and qualitative assessment and planning tools and formal and informal consultations. Tools for the assessment can include, but are not limited to:

- Surveys about the current use of natural resources, prevailing tenure system, livelihood constraints and expectations;

<sup>14</sup> These guidance are available at LLF and can be shared on a request basis.

- Semi-structured interviews with affected groups;
- Focus group discussions, workshop-based methods or participatory land-use mapping;
- Consultations with local opinion leaders, key informants and local authorities;
- Documenting contextual or external risks as well as enforcement or protection measures envisioned;
- Information exchange and dissemination using appropriate channels and tools such as posters, radio announcements, or communications to local community events.

The description of the stakeholder consultation process should clearly establish how participation of affected will be achieved, how decisions will be made and how it will be equal participation of different groups, such as women, men, indigenous people, vulnerable groups etc. Detailed information on the stakeholder consultation process is provided in LLF ESMS documentation, [Annex P – Stakeholder Engagement Plan Outline](#).

#### **4.2.6 Grievances and Conflict Resolution**

The imposition of access and use restrictions is likely to cause grievances within or between affected communities. To ensure that such grievances do not escalate into major conflicts, grievances should be addressed as soon as they arise in an appropriate manner. An effective grievance mechanism is required for every LL program. The mechanism should be fit to address and resolve disputes relating to resource use restrictions that may arise between or among affected communities, and grievances that may arise from members of communities who are dissatisfied with the eligibility criteria, community planning measures, or actual implementation.

Within the grievances management process there should be qualified experts to assist the grievances officer in his/her assessment of the grievances and helping him/her to contribute to finding adequate solutions in accordance with criteria set out in the applicable standards (e.g., WB ESS5). Please refer to the LLF ESMS documents, [Annex Q – Program-level Grievance and Feedback Mechanism](#) for further guidance on grievances management.

#### **4.2.7 Mitigation of Impacts from Access and Use Restrictions**

The stakeholder consultation process should aim at identifying key areas of impact imposed by access and use restrictions on land and natural resources. A group of experts should then develop a list with respective mitigation and compensation measures, taking into account all relevant information obtained during the stakeholder engagement activities. When assessing adverse impacts their likelihood of occurrence and severity of consequence should be considered in setting priorities for developing adequate mitigation measures. Generally, the assessment should distinguish between:

- Impacts on livelihoods and associated economics, and
- Impacts on cultural heritage.

While impacts on livelihoods might be easier to be mitigated via in-kind replacements or compensation payments, adverse impacts on cultural heritage, such as sacred sites, natural sites of particular importance, ceremonial grounds etc. might be harder to mitigate. Measures to assist affected persons in their efforts to improve their livelihoods or restore them, in real terms, to pre-displacement levels, while maintaining the sustainability of the LL will be identified. When there are adverse impacts on cultural heritage, one needs to distinguish between tangible and intangible cultural heritage. While tangible cultural heritage refers to physical and built sites or artefacts, intangible cultural heritage indicates ‘the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that

communities, groups and, in some cases, individuals recognize as part of their cultural heritage’<sup>15</sup> Given this definition, natural features that are relevant for traditions and rituals of local communities and indigenous peoples, fall under the scope of intangible cultural heritage, that has to be protected in accordance with WB ESS8 and continued access should be granted to affected stakeholders. This can be done by the provision of an alternative access route or providing access on certain days/times<sup>16</sup>. When cultural heritage of IP is affected, the LL program will trigger WB ESS7<sup>17</sup> and will require Free, Prior and Informed Consent (FPIC) of affected communities. Please refer to the LLF ESMS documents, **Annex O – FPIC Protocol** for further information.

Mitigation and remedy measures, should therefore, consider the irreplaceable value of cultural heritage sites (e.g., natural features, ceremonial grounds, etc.) and aim to guarantee access to such sites, despite other applicable restrictions, in a controlled manner, that will not stand in opposition with conservation purposes and secure affected communities’ frequent access to the respective sites in accordance with the “do no harm principle”. This includes securing access to such sites, e.g., by the provision of assistance to access the sites. Measures including sensitive topics, such as cultural heritage sites and IP or customary communities, should be developed in frequent and meaningful consultations with affected stakeholders and with the involvement of qualified specialists in the field of work.

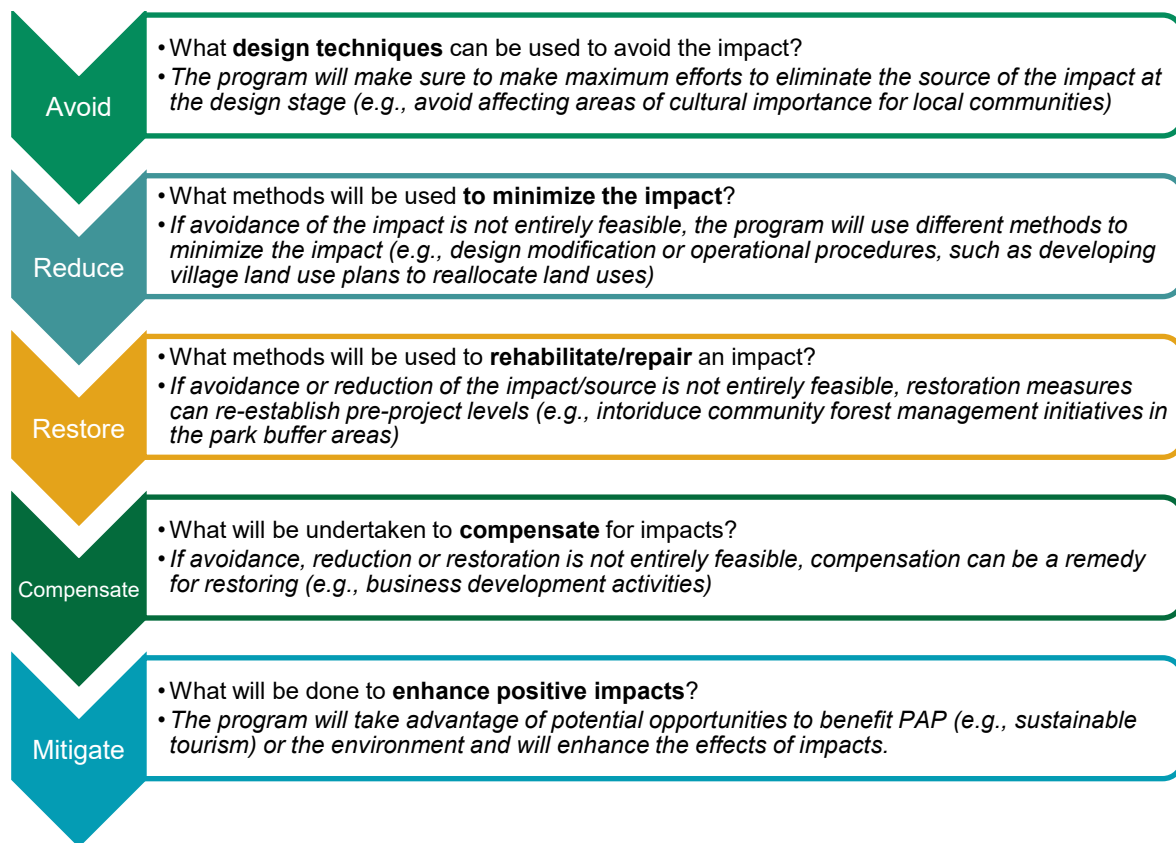
The PF should describe methods and procedures by which communities will identify and choose potential mitigating or compensating measures to be provided to those adversely affected, and procedures by which adversely affected community members will decide among the options available to them. If avoidance of negative impacts is not feasible, mitigation should aim at restoring livelihoods with in-kind replacement, such as replacement land or alternative access to natural resources, rather than cash, unless cash compensation is clearly preferred by stakeholders, in accordance with WB ESS5. Nevertheless, a budget plan should be required for cash compensations, in order to assure that the compensation money is indeed foreseen to be used to replace an access restriction and not used for other purposes in which case the PAP are likely to continue to access the restricted areas. For further guidance Figure 4-5 below introduces a mitigation hierarchy that should be followed when developing actions to counter adverse impacts imposed by the LL program.

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<sup>15</sup> UNESCO (2004), Tangible and Intangible Cultural Heritage, Retrieved from: [Tangible and Intangible Heritage - intangible heritage - Culture Sector - UNESCO](#), Accessed in August 2022.

<sup>16</sup> See WB ESS8, section 16 and Guidance Note 16.1 and 16.2

<sup>17</sup> See WB ESS7, section 24c



**Figure 4-5 Mitigation Hierarchy**

The PF should define arrangements for the implementation of the measures that will be finalized in the action plan.

#### **4.2.8 Monitoring Arrangements**

Part of the PF shall be a review of arrangements for participatory monitoring of the LL program activities as they relate to (beneficial and adverse) impacts on persons within the LL program area of influence, as well as for monitoring the effectiveness of measures taken to improve or at a minimum restore incomes, livelihoods and living standards. Monitoring arrangements shall be incorporated into the final action plan as essential component.

### **5. INVOLVMENT OF SECURITY PERSONNEL**

Since levels of restrictions in access to natural resources are presupposed in conservation objectives and LL management, levels of enforcement are proportionally affected. The legal status of the protected areas is determined by domestic laws and further defined by the Convention on Biological Diversity as an area “designated or regulated and managed to achieve specific conservation objectives”<sup>18</sup>. IUCN defines seven “categories” of protected areas, which imply various objectives and permissions for access and use of natural resources<sup>19</sup>. Furthermore, IUCN identifies four broad protected areas governance types applicable to the seven categories<sup>20</sup>:

<sup>18</sup> <https://www.cbd.int/protected/pacbd/>

<sup>19</sup> IUCN 2008 Guidelines for applying protected area management categories - <https://portals.iucn.org/library/sites/library/files/documents/pag-021.pdf>

<sup>20</sup> Governance of Protected Area, IUCN, 2013 - <https://portals.iucn.org/library/sites/library/files/documents/PAG-020.pdf>

- Type A: Governance by government (at various levels);
- Type B: Shared governance by diverse rights holders and stakeholders together;
- Type C: Governance by private entities (often land owners);
- Type D: Governance by indigenous peoples and/or local communities (at times referred to as territories and areas conserved by indigenous);

In terms of law enforcement, these categories and governance types strongly dictate enforcement means and methods based on predefined access restrictions, which carry certain risks to staff and civilians. Although access is of paramount importance to communities (including IP and vulnerable groups) too much access or too light regulation may lead to abuses, encroachment and significant poaching/extraction under cover of “traditional” use of resources or spaces.

Prior to engaging security personnel<sup>21</sup>, all potential impacts of a security incident, potential mitigation measures and responses shall be assessed carefully in accordance with the applicable standards (e.g., WB ESS4 compliance guidelines exist for both public and private forces). All security personnel have to be carefully assessed by the grantee and external partners, especially in terms of oversight and reporting powers. Security arrangements and the provision of security personnel guarding designated LL areas, and areas in which access and use restrictions apply, may pose additional risks and impacts on the LL program workers and local communities. Those risks should be carefully assessed and addressed and be part of discussions in ongoing stakeholder engagement activities. Contractual arrangements with private security forces should provide clear instructions and guidance on their conduct, especially in situations in which force may be used<sup>22</sup>.

Process framework design should include how resource use and access restriction will be enforced and monitored (of both enforcement actions and proper use agreements) with provisions on both sides of measures in case of abuses (refer to LLF ESMS documents, **Annex I - MoU for collaboration with public security forces**). Consultations can also include various avoidance and mitigation measures such as recruitment among communities to perform or collaborate with surveillance actions and patrol as key stakeholders and stewards of resources and security. This may limit access restriction related tensions between LL management and communities due to perceived or real oppression. However, the protected area category and governance type will define the ability of the grantee or external partners to influence these trends.

The program-level grievance mechanism<sup>23</sup> should encourage stakeholders to submit complaints about conduct of security personnel. Actions in response to security complaints should be monitored carefully and be communicated to relevant parties, taking into account confidentiality arrangements. Furthermore, all security arrangements should align with the voluntary principles on security and human rights (among other security governing principles and standards).

## 6. FURTHER RESOURCES

The below listed documents provide additional guidance and information on the development of a process framework on involuntary access and use restrictions:

- Access Restriction Mitigation Process Framework (IUCN, 2019)<sup>24</sup>;
- Standard on Resettlement and Access Restrictions (IUCN, 2016)<sup>25</sup>.

<sup>21</sup> Refer to LLF documents for more guidance, **Guidance Note: SOP for Patrolling** and **Guidance Note: SOP for Environmental Law Enforcement Compliance** (could be shared upon request).

<sup>22</sup> See WB ESS4 Guidance Note 24.4 & 24.5

<sup>23</sup> Refer to the LLF ESMS documentation, **Annex Q – Project-level Grievance and Feedback Mechanism**

<sup>24</sup> <https://www.iucn.org/sites/default/files/2022-05/esms-access-restriction-mitigation-process-framework-guidance-note.pdf>

<sup>25</sup> <https://www.iucn.org/sites/default/files/2022-05/iucn-esms-standard-inv-resettlement-access-restrictions.pdf>