



Guidance Note: Environmental and Social Action Plan Development (incl. UNGP Implementation)

LLF ESMS Annex C

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APPENDIX A ENVIRONMENTAL AND SOCIAL ACTION PLAN (ESAP) FORMAT

Acronyms and Abbreviations

Name	Description
E&S	Environmental and Social
ESAP	Environmental and Social Action Plan
ESDD	Environmental and Social Due Diligence
ESMS	Environmental and Social Management System
LL	Legacy Landscapes
LLF	Legacy Landscapes Fund
NGO	Non-Governmental Organization
PAs	Protected Areas
ToR	Terms of References
UNGP	United Nations Guiding Principles (on Business and Human Rights)
WB ESS	World Bank Environmental and Social Standards

Document history

Version	Revision	Prepared by	Reviewed by	Approved by	Date	Comments

1. INTRODUCTION

The environmental and social due diligence (ESDD) will be conducted by an independent consultant with the selected potential grantee, in line with the LLF environmental and social management system (ESMS) as part of the legacy landscape (LL) program selection process. The ESDD will also include a stakeholder risk mapping that lists all relevant agencies and third parties and the E&S risks and impacts that may be directly or indirectly (e.g., contextual risks) connected to the LLF financed legacy landscape (LL) program activities. Thereafter an environmental and social action plan (ESAP) will be developed, which will list actions and measures required to mitigate environmental and social (E&S) risks per different levels of responsibility according to the applicable standards, i.e., United Nations Guiding Principles on Business and Human Rights (UNGP).

LLF financed programs are often located in landscapes and co-management settings where the proposing grantees may only have limited control and influence over either their co-management partner, e.g., the national ministry of environment, or other third parties operating in the legacy landscape, such as military forces or private entities. Related risks, including associated activities/facilities (hence by/through third parties), that often bear substantial reputational risks, will have to be assessed and addressed in accordance with ESS1 and proportionate to their significance¹ and the proposing grantees contribution as well as leverage over the causing entity².

1.1 Purpose

This document provides a guidance for consultants conducting ESDD on the development of the ESAP and on establishing responsibility for adverse E&S impacts, including human rights, under the UNGP framework. The UNGP establish a framework for assessing, preventing and remediating actual and potential human rights abuses of states and companies. For the purpose of this document, the UNGP framework will be applied by the grantees to assess all E&S impacts.

This is essential since grantees may not always be directly responsible for impacts that can occur and are caused by third parties. Therefore, the UNGP framework helps in establishing the relationship between the grantee and different third parties, as well as their role in causing or contributing to adverse impacts. Impacts that are not directly attributable but are directly linked to the grantee can be assessed through the use of the UNGP framework and it can be determined how leverage can be used to mitigate such risks and impacts.

1.2 Objective

The objective of the ESAP is to summarize all E&S risks and gaps against the applicable standards identified during the ESDD process. Furthermore, the ESAP will include gap closure and/or mitigation measures, responsibilities, timelines and evidence of the gap closure. The UNGP add a human right lens to the ESAP and help the ESDD consultant to establish the level of involvement of the grantee to an E&S risk under the UNGP, and to determine whether this would require a respective ESAP action item.

¹ To evaluate the significance of identified environmental, social and human rights risks, it is necessary to estimate both the potential impact (e.g., consequences if the risk were to occur) and probability (e.g., the likelihood of the risk occurring) for each identified risk. The probability should be assigned considering number of incidents occurred over past 5 years and stakeholder perspective of future incidents. The impact/consequence should be defined based on scale/extent; magnitude/severity; sensitivity for affected people and/or concern of stakeholders; duration and reversibility.

² Where a proposing grantee may be causing or contributing to an E&S risk, it will be required to take action to prevent and mitigate such risk and use its influence with other parties which may be contributing to the risk. Where a proposing grantee may be linked to a certain E&S risk, it will be required to document its best efforts through which it has sought to influence others to change their wrongful practices.

2. APPLICABLE STANDARDS

The full list of the applicable standards for developing the ESAP is indicated in the LLF ESMS manual document and in the terms of reference (ToR) for the ESDD. In particular, the following standards should be used for the development of the ESAP:

- World Bank Environmental and Social Standards (WB, 2017), especially:
 - Guidance Notes on ESS1 (WB, 2018);
- The UN Guiding Principles on Business and Human Rights (UNGP, 2011):
 - In particular, UNGP 17-22.

3. KEY TERMINOLOGY

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

Table 3-1 Key Terminology

Term	Definition
Area of Influence	<p>The area within which program's activities have the potential to create E&S changes, including the:</p> <ul style="list-style-type: none"> ■ 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. ■ 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.
Associated activities/facilities	<p>Facilities or activities that are not funded as part of the program and, are:</p> <ul style="list-style-type: none"> ■ Directly and significantly related to the program; ■ Carried out, or planned to be carried out, contemporaneously with the program; and ■ Necessary for the program to be viable and would not have been constructed, expanded, or conducted if the program did not exist. <p>For facilities or activities to be associated facilities, they must meet all three criteria.</p>
Grantee	<p>A NGO(-s) and/or party that is in contractual agreement with LLF and receiving grant funds through the Grant Agreement.</p>
Legacy Landscape Program/Program activity	<p>All activities³ related to the legacy landscape and/or stakeholders that are planned, implemented and/or supervised by the grantee and/or their contractor.</p>
Leverage	<p>According to the UNGP, leverage is the ability to effect change in the wrongful practices of an entity that causes a harm.</p>

³ The ESAP must cover not only LLF funded activities for the program, but all activities in the program specific legacy landscape and surroundings.

Term	Definition
Remedy	The manner in which a right is enforced or satisfied by a court or other authority when some harm or injury, recognized by society as a wrongful act, is inflicted upon an individual.
Stakeholder	Any interested individual or group directly or indirectly affected by a program activity.

4. ENVIRONMENTAL AND SOCIAL ACTION PLAN

As conclusion of the ESDD, the consultant will develop an ESAP, comprising the proposed measures for gap closure including responsibilities, timelines and indication of necessary budget. The ESAP will describe the E&S mitigation and the criteria for their successful implementation and organizational measures to be implemented for the LL programs.

The ESAP shall present measures including:

- Prioritization of measures according to the assessment, and to the extent possible, distinguishing between:
 - Short term immediate and high priority measures to be integrated into the potential grantee's proposal as for immediate action and implementation; this would be actions to be implemented as soon as possible after start of the funding period;
 - Measures and processes which would be implemented over a longer period, including milestones (envisaged LLF funding period is minimum 15 years or in perpetuity);
- Definition of additional E&S safeguard instruments and documents, that could for example encompass a socio-economic baseline, an environmental and social management plan (ESMP), a process framework (according to WB ESS5) or any activity required as to implement the E&S action plan etc.;
- Definition of responsibilities in implementing the recommended measures of gap closure (as per UNGP, further guidance of this regard is included in chapter 5);
- Setting of realistic deadlines and timeframes for the completion of the measures (with the emphasis on achieving compliance as soon as possible, e.g., prior to approval, prior to contractual signing, prior to first disbursement, during inception phase, before construction etc.);

Appendix A presents an ESAP format that should be used by the independent consultant. So that all ESDDs are conducted under the same logic and provide comparable outputs.

The ESAP should primarily focus on where the environmental and social risks/impacts are the most severe. The ESAP should distinguish actions that are within the authority/influence of the grantee and directly related to activities under the influence of LLF funding vs where impacts are likely to be caused by another party. Where the grantee is directly linked to risks or impacts caused by another party, the ESAP should outline the steps that the grantee and/or potentially the LLF or other parties (e.g., primary donors) will take to influence the relevant party/parties. The UNGP provide guidance on how to establish responsibility for human rights risks and impacts.

5. APPLICATION OF THE UNGP

The UNGP are a set of guidelines for states and companies to prevent, address and remedy human rights abuses committed in business operations and provide guidance on assigning the responsibility of the identified human rights risks and gaps during the ESDD process. The UNGP are built on the three “protect, respect and remedy” pillar framework that sets out the state duty to protect human rights, the corporate responsibility to respect human rights and the necessity to provide remedy for victims of human rights violations, as presented below:

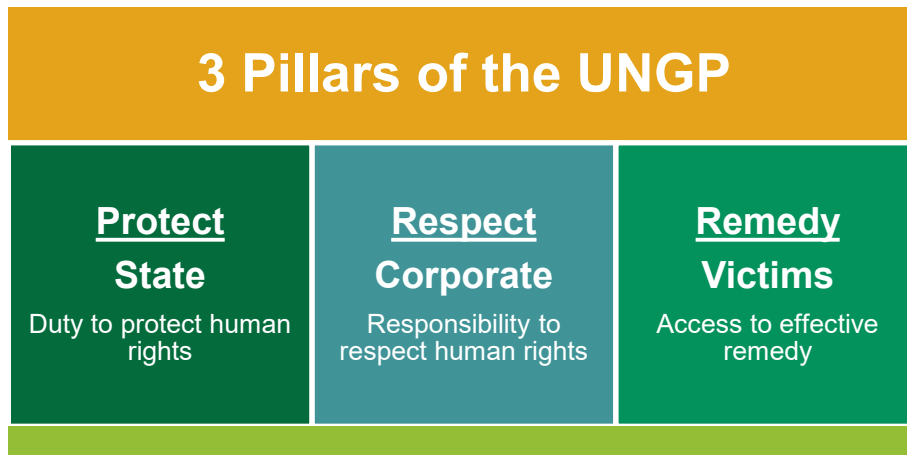


Figure 5-1 Three Pillars of the UNGP

The UNGP establish that the scope of a business’s responsibility for impacts extends throughout its value chain. This responsibility exists regardless of how many intermediary steps there might be in the value chain, regardless of whether the company has influence or control over those actors, and even in situations where the company is not aware of the identity of parties in its supply chain. Under the UNGP, ‘responsibility’ is not a statement of fault or liability for harm. Rather, ‘responsibility’ involves a recognition of a connection between a company’s operations, products or services, and an adverse impact – regardless of the role the company may have played in that impact – and the corresponding social expectation that the company should take appropriate action in response, depending on the particular role it plays. The UNGP provide guidance on how responsibility in form of an existing connection between a company and an adverse impact can be established.

LLF acknowledges, that the LL programs proposed for LLF grant funding are often set up in a way where the proposing grantees may only have limited control and influence over either their co-management partner or other third parties operating in the LL program area. Therefore, it is essential to establish responsibilities for actual and potential adverse E&S and human rights impacts in line with the UNGP. The following sections provide further guidance on applying the UNGP involvement framework for assigning ESAP tasks.

LLF requires its grantees to apply leverage constantly where feasible, to avoid and mitigate actual and potential E&S and human rights impacts. This includes using leverage during the implementation of all ESMS listed standards and guidance documents. Chapters 5.2.1 to 5.2.3 further elaborate on the concept of leverage and how to use it.

5.1 Assigning Responsibilities

According to UNGP Principle 19, the grantee should integrate the findings from their impact assessments across relevant functions and processes, and take appropriate action, in order to prevent and mitigate adverse E&S and human rights impacts. When adverse impacts occur, the level

of involvement to the impact will provide the grantee with the guardrails for the measures it needs to take to address the harm. The UNGP provides a framework for understanding the connection to impact: that is, the grantee or other stakeholder can either: cause, contribute or be linked to an impact as summed up in Table 5-1 below.

Table 5-1 Levels of Involvement established by the UNGP

Cause	Contribution	Linkage
<p>Causing an adverse impact directly is done through the grantee’s own actions or omissions.</p> <p>Example: The grantee commits a human rights violation (e.g., takes land of indigenous people without consultation).</p>	<p>By facilitating or incentivizing impacts caused by third parties⁴ or by a parallel contribution, meaning that actions of the grantee and third parties combined result in the adverse impact.</p> <p>Example (1): The grantee has the co-management mandate over LE personnel in the PA but does not provide sufficient resources to the LE for adequate training. The LE is involved in an abuse that could have likely been prevented with proper training on the issue at stake.</p> <p>Example (2): The grantee has no mandate to execute LE but makes a financial contribution for the equipment (no weapons) of rangers conducting patrols. Those rangers then commit a human rights abuse.⁵</p>	<p>Linkage is established through a direct connection between the grantee’s operations, products, or services by its business relationship with another entity causing the harm.</p> <p>Example: An entity that is operating in the program area and that the grantee shares benefits with (e.g., state security forces) is involved in a human rights abuse.</p>

In cases when it is identified that the grantee is not linked to a human rights or other E&S impact (i.e., the impact is not connected to the grantee’s operations or relationships) there is no responsibility under the UNGP. The below sections elaborate further on the different levels of involvement in adverse human rights and other E&S impacts and resulting responsibilities (i.e., cause, contribution, linkage and no linkage).

In some cases, it might be challenging to establish whether a human rights or other E&S impact was caused or contributed to by the grantee or whether the grantee is directly linked to a human rights violation or E&S risk or impact. Therefore, the decision tree flowchart presented in Figure 5-2 below, aims to help the consultant to work through relevant questions stipulated by the UNGP in order to assign the level of involvement (i.e., responsibility) for a certain human rights or E&S issue under the UNGP framework.

⁴ Please note, that the grantee may be perceived as being “complicit” in the acts of another party where, for example, they are seen to benefit from an abuse committed by that party.

⁵ Please note, that under a model where the park authority has a full mandate over LE, any violations of LE personnel will constitute a causing relationship under the UNGP.

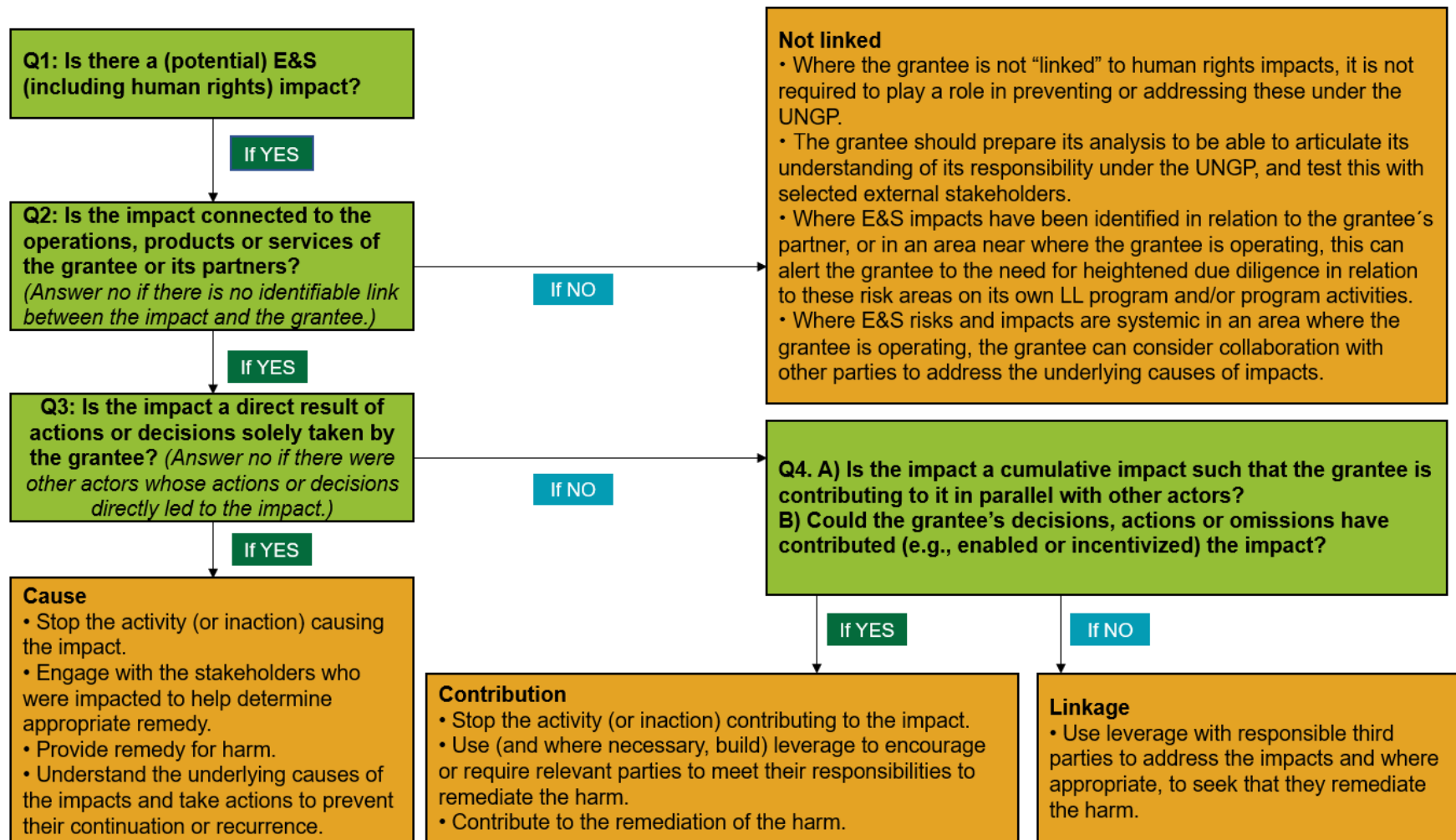


Figure 5-2 Decision Tree Flowchart for Establishing Responsibility under the UNGP

5.1.1 Navigating the Decision Tree

The decision tree diagram presented in Figure 5-2 can be used as checklist for the ESDD consultants to establish the extent to which the grantee and other stakeholders (identified during the ESDD stakeholder mapping exercise) are responsible for the identified human rights or other E&S risk and gap as well as respective ESAP measures. The diagram guides through establishing responsibility for ESDD findings, checking whether the impact is caused, contributed by or linked to the grantee.

The following guiding questions should be considered by the consultant, to navigate through the decision tree diagram and ultimately establish the level of involvement in a certain human rights violation or other E&S risk or impact an entity has caused or may cause in the future.

Guidance for Question 1: Did a Human Rights or other E&S impact occur?

The following supporting questions should be considered, when answering the first question of the decision tree flowchart:

- Has a severe human right, environmental or social risk or impact been identified?
- Who are the affected stakeholders?
- What is the nature of the harm?
- What actions, taken (or not taken) by which actors, are alleged to have caused or contributed to the harm?
- Which human rights or other standards are relevant?
- Does the situation of the affected stakeholders fall below the relevant international human rights or E&S standard(s)?

Table 5-2 below provides for examples of typical human rights risks that can occur in the conservation context and that may help identifying, whether a human rights impact occurred in the first place. However, if the identified risk does not have any connection to the human rights and if the answer to the main question – “Is there (potential) impact on human right?” – is ‘no,’ and there is no human rights impact, then there is no responsibility to act under the UNGP. The same approach can be applied to other E&S risks and impacts.

Table 5-2 Typical Human Rights Risks in the Conservation Sector

Typical Risks	Relevant international human rights standards ⁶
Indigenous people lose their land or access to land when a protected area is created without their free, prior, and informed consent (“FPIC”)	Right to land and natural resources Right to self-determination Right to cultural survival Right not to be forcibly removed from lands or territories Right of access to remedy Right to life
Forced eviction of communities living in a protected area	Right to property Right to housing Right to adequate standard of living

⁶ Please note, that the list of possible international human rights standards that may be affected by the risk discussed is a non-exhaustive list.

Access restrictions prevent local communities from collecting water, firewood, hunting and fishing, impacting their livelihoods and health.	Right to health Right to work Right to water Right to life Right to adequate standard of living Right to cultural survival
Human Wildlife Conflict (HWC)	Right to life Right to health Right to land and natural resources
Security personnel use unnecessary force when patrolling/policing activities in a protected area, including assault, gender-based violence.	Right to life Right to non-discrimination Freedom from cruel, inhumane, or degrading treatment or punishment
Security risks for eco-guards or other protected area staff when confronted with illegal activities (poaching, illegal mining, logging, drug trafficking).	Right to life Right to just and favorable conditions of work
Conflict, including violent clashes between communities who have been displaced from a protected area and now are in competition for scarce resources	Right to life Right to food Right to water Right to health
Gender inequity related risks (e.g., women's underrepresentation in program design and decision-making, retaliation to women's participation, and sexual harassment by program staff.)	Right to non-discrimination and freedom from violence

Guidance for Question 2: Is the Grantee connected to the (potential) impact?

The following supporting questions can help the consultant to establish, whether the grantee is directly linked to an (potential) impact:

- Are the risks or impacts related to the grantee? Were the activities that gave rise to the impact within the scope of the LL program that is operated by the grantee?
- Are the risks or impacts related to the LL program and/or activity operated and/or supervised by the grantee?
- Are there any **legacy issues**, e.g., impacts that took place prior to the financing relationship with the grantee? Do past not remediated impacts connected to the LL represent ongoing or continuing impacts (such as continuing impacts on livelihoods resulting from a prior land acquisition process, or failure to remediate a past failure to achieve FPIC where required by international standards)? Are there ongoing impacts connected to the legacy impacts? (e.g., continuing impacts on livelihoods resulting from a prior land acquisition process, or violence over scarce resources resulting from a prior resettlement?)

In this case, if the answer is 'yes', the indication of a direct link is suggested. If the answer to those questions is 'no', then there is no direct link to the impacts and no responsibility under the UNGP.

- Are there any **contextual E&S and/or human rights risks** related to the LL that the grantee is operating in that could give rise to E&S risks and/or human rights impacts?
 - Do these risks exist or are they exacerbated by the existence of the protected area?
 - Does the existence of the protected area create a more attractive environment for these impacts to occur, or a more challenging context for the prevention or management of these risks (e.g., through law enforcement)?

If the answer to the above questions is 'yes', then a direct link is recommended. An example of such activities that suggest a direct link to the entity would be risks arising from poaching activities, illegal logging etc. Please note, that there will be contextual human rights risks that exist in the context independently of the existence of the protected area and therefore, should not be directly linked to the grantee. An example would be drug trafficking within the LL that is not exacerbated by the protected area or impacts on communities of ongoing armed conflicts in the area.

- Do these risks exist in the context independently of the existence of a LL program? For example, drug trafficking or ongoing armed conflict may exist independently of the existence of a protected area/LL program, and not exacerbated by its existence.

If the answer to the last question is 'yes', it suggests that the grantee is not connected to the impacts.

When there is no connection to the impacts:

- Where the grantee/its partner is not "connected" to E&S and/or human rights impacts, it is not required to play a role in preventing or addressing these under the UNGPs. However, the grantee should be aware of indicators of heightened risk within its scope of responsibility and continue to monitor new risks that may evolve.
- The grantee should be able to articulate its understanding of its responsibility under the UNGPs to third parties, and test this with relevant external stakeholders.
- Where a grantee's partner is connected to E&S and/or human rights impacts independently of its work with the grantee, this should alert the grantee to the need for heightened due diligence with respect to that partner.
- Similarly, if there are E&S/human rights impacts in or adjacent to an area where the grantee is operating, this alerts the grantee to the need to do heightened due diligence in relation to their implications for its own programs.
- Where E&S/human rights risks or impacts are systemic in an area where the grantee is operating, the grantee can consider collaboration with other parties to address underlying causes that may create risks for its own funding.

Considerations:

The grantee might decide to ring-fence⁷ LLF grant finances so that it is not funding the high-risk activities of the LL program (e.g., security forces in the LL program area etc.), to minimize the potential risk category of the LL program. It is important to note, that this does not absolve the grantee of its responsibilities. There is a relationship between the grantee and its partners (e.g., the PA authority) in executing the funded activities (even if not a funding relationship), and there are foreseeable high risks associated with the e.g., security forces' activities.

For example, given the severity and likelihood of security related human rights impacts potentially caused by the grantee's partner, ring-fencing financing does not negate the need for actions to prevent / mitigate these contextual human rights impacts. There is a strong argument to suggest that the grantee would be directly linked to these impacts.

Guidance for Question 3: Is the (potential) Impact a Direct Result of Actions or Decisions solely taken by the Grantee?

To establish whether an (potential) impact is a direct result of actions or decisions of the grantee the following supporting questions should be considered by the consultant:

- Is the impact a direct result of actions, decisions or omissions taken by the grantee?

⁷ Expressly limiting the use of funds to certain activities or expressly excluding certain activities from funding

- Were there other actors who took actions or decisions that led to the impacts?

Under the UNGP, the grantee or a partner would have “caused” the impacts if its actions solely and directly led to the impacts. If other actors are involved, then this would be considered as a “contribution.”

If a LLF partner (e.g., the grantee) within the scope of the LLF funded program has caused an E&S impact (including human rights impacts), the LLF’s partner should:

- Stop the activity (or inaction) causing the impact;
- Engage externally with those stakeholders who were impacted to help determine appropriate remedy;
- Provide remedy for harm;
- Understand the underlying causes of the impacts, and take actions to prevent continuation or recurrence; and
- Analyze conditions elsewhere in their operations that could give rise to a similar impact and take actions to prevent its continuation or occurrence.

Guidance for Question 4: Did the Grantee or its Partner contribute to the Impact?

If the grantee is not causing impacts the consultant needs to establish if there is an intermediary party between the grantee and the impact. If there is no party between the grantee and the impact, then ask question 4A below if there is a party – ask question 4B:

Question 4A: Contribution in Parallel (Cumulative Impacts)

- Did the grantee take actions that, when combined with the actions of other parties, directly contribute to an impact?

Example: A grantee’s partner (government agency) expands a protected area with as a part of LL program, adjacent to an existing protected area and a commercial forestry plot which restricts community land use. This results in a significant restriction on land and natural resources for communities to use, and thus impacts on their livelihoods and health.

Result: Both the establishment of the new protected area, and the existing restrictions on land use, including the commercial forestry plot, contribute to the impacts on livelihoods. As such, it is expected that the grantee, the government partner and the forestry company have to address these impacts.

Question 4B: Contribution through a Third Party:

- Could the grantee’s decisions, actions or omissions enable or incentivize the impacts (caused by a grantee or third party)?

Note: Key to answering this question will be considering whether grantee’s environmental, social, and human rights due diligence (including mitigation actions) is/was adequate in seeking to prevent or mitigate the actual or potential impacts.

Figure 5-3 and Table 5-3 below help the consultant establishing, whether a grantee contributed to a human rights violation and/or other E&S risk or impact through a third party.

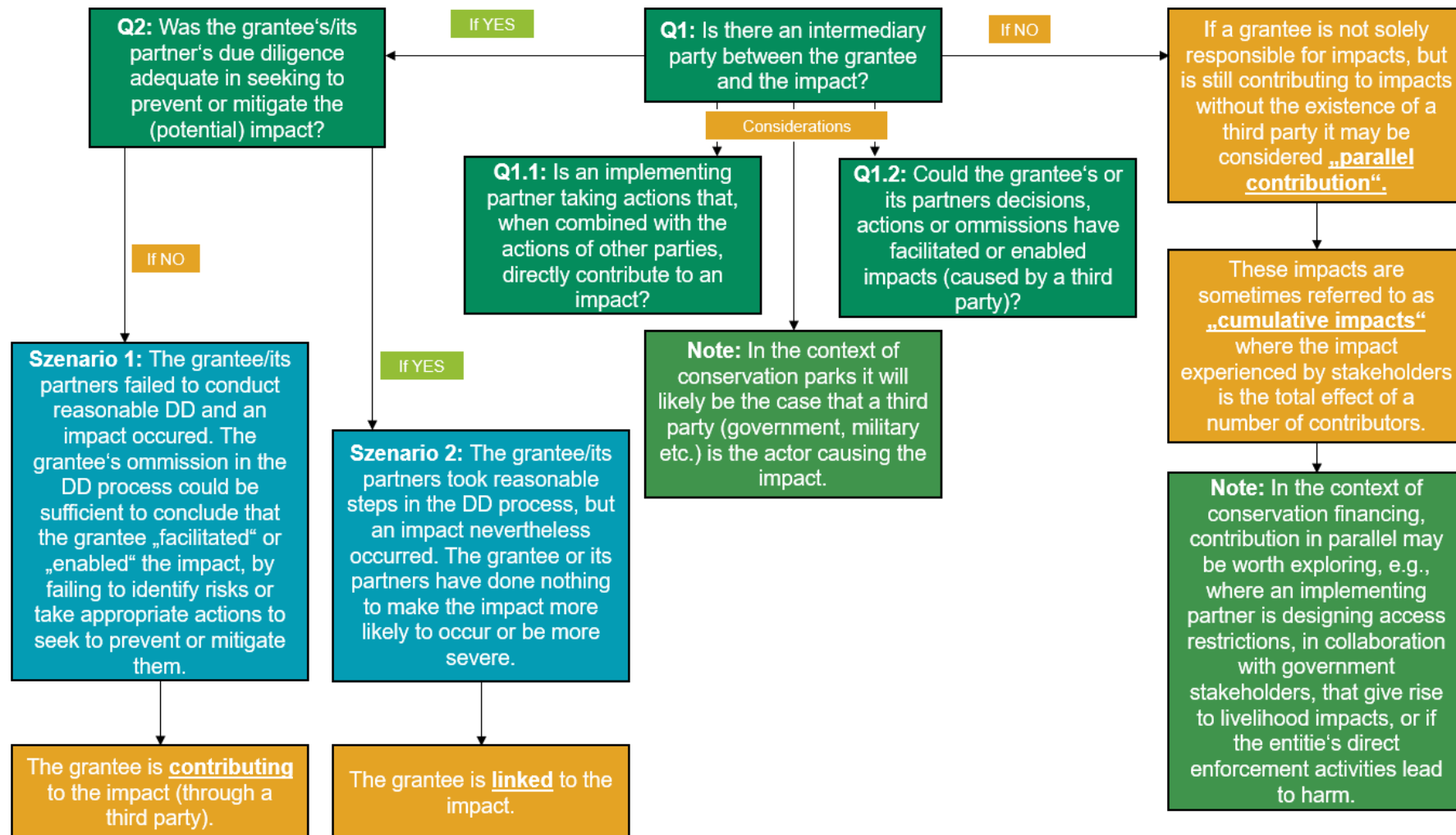


Figure 5-3 Determining Contribution

This tool assumes that in most cases, the relevant question will be whether a partner's failures of due diligence contributed to impacts through an intermediary (e.g., violence committed by park rangers.)

As such, this determination hinges on the sum quality of the grantee and/or its partner's due diligence, both pre and post impact. 'Due diligence' in this case refers to the full cycle of ongoing risk management, including the identification and assessment of risks, efforts to use leverage to prevent or address those risks, and the decision-making to proceed or continue with transactions or relationships.

This determination is not static, and the analysis is less about bright lines and clear or definitive answers, and rather, is a factor-based analysis, in which some factors might point towards 'contribution', while others might point towards 'linkage'. These factors need to be considered in the aggregate by the consultant to reach a conclusion. Therefore, the following supporting questions should be considered.

Table 5-3 Distinguishing Contribution and Linkage

Factors to be considered for establishing 'contribution' or 'Linkage'	Supporting Questions
<p>Foreseeability:</p> <p>Was the impact foreseeable?</p>	<ul style="list-style-type: none"> ▪ Was the impact identified as part of the environmental and social due diligence process? ▪ If not, is it reasonable to expect that the impact should have been identified through E&S due diligence? ▪ Is the impact of a type that was known within the conservation sector, at the time the due diligence was conducted? ▪ Is the impact typical for the relevant geographic area? ▪ How easy would it have been for the grantee or its partners to find basic information about the risk of this type of impact? ▪ Was the impact raised by stakeholders as part of the due diligence process, or would it have been identified through effective stakeholder engagement? ▪ Was the scope of the grantees and/or its partner's due diligence adequate? ▪ Did the due diligence process consider contextual risk factors, which would have made the impacts more likely to occur? ▪ Did the grantee and/or its partners conduct adequate due diligence on its partners (NGOs, consultants, government agencies) and other related third parties (e.g., security forces) to identify issues arising from track record, management capacity, etc.? ▪ Were there adequate monitoring mechanisms in place to remain attuned to emerging risks during the course of the relationship? (e.g., through adequate grievance mechanism and monitoring and reporting on grievances)
<p>Prioritization:</p>	<ul style="list-style-type: none"> ▪ Was the LL program and/or program activity appropriately categorized?

<p>Was the risk appropriately prioritized?</p>	<ul style="list-style-type: none"> ▪ Would a reasonable and prudent E&S expert within a financial institution have similarly categorized this LL program and/or program activity? ▪ Was the due diligence that was conducted commensurate with an appropriate categorization of the LL program and/or program activity? <p>Note: Risks should be prioritized based on their significance⁸. If the risk should have reasonably been prioritized, but was not, this can add weight to an argument that LLF/its partner contributed to the impacts (through omission).</p>
<p>Reasonable Preventive Action:</p> <p>Was reasonable action taken to prevent or reduce the significance of the impact?</p>	<ul style="list-style-type: none"> ▪ What steps did the grantee take to use leverage, to try to prevent or mitigate the risk prior to the ESDD? (e.g., engagement with implementing partners, inclusion of relevant contractual provisions, etc.). ▪ Did the grantee take appropriate actions considering the (potential) risk? ▪ If not, was it reasonable for the grantee to believe that the steps it took (including those it encouraged or required others to take) should have been effective in practice at preventing or mitigating the risk? How would these actions compare with leading standards and practice at the time? ▪ Did the Grantee assess its leverage prior to the LL project, and/or, were there reasons to believe that the grantee might lack sufficient leverage to manage risks and impacts effectively?
<p>Credibility of Implementing Partners:</p> <p>Was it reasonable to rely on a partner's ability to identify & manage the risk?</p>	<ul style="list-style-type: none"> ▪ Was the capacity of partners to identify and manage relevant human rights or other E&S risks assessed as part of its regular E&S due diligence process? ▪ What mechanisms does the grantee have in place to address weaknesses in partner capacity? ▪ Did the grantee include appropriate requirements to retain oversight over potential emerging risks? (Assessment of Leverage) ▪ Does the implementing partner (NGOs) have structures or processes to hear and respond to the perspectives of vulnerable groups/affected stakeholders? ▪ Did the grantee periodically track the effectiveness of its partner's E&S safeguards?
<p>Reasonable Post Impact Mitigation:</p> <p>After the impact occurred, did the grantee or its partner</p>	<ul style="list-style-type: none"> ▪ What steps did the grantee take after the impact occurred to verify the impacts and the activities that caused them?

⁸ To evaluate the significance of identified environmental, social and human rights risks, it is necessary to estimate both the potential impact (e.g., consequences if the risk were to occur) and probability (e.g., the likelihood of the risk occurring) for each identified risk. The probability should be assigned considering number of incidents occurred over past 5 years and stakeholder perspective of future incidents. The impact/consequence should be defined based on scale/extent; magnitude/severity; sensitivity for affected people and/or concern of stakeholders; duration and reversibility.

take reasonable action(s) to address the impact?	<ul style="list-style-type: none"> ▪ Has the grantee escalated the use of its leverage, where necessary, to ensure appropriate remedial action by the implementing partner or other third party causing the harm? ▪ Where legacy impacts (not remedied, ongoing impacts) have been identified, has the grantee taken appropriate steps to encourage remediation of these?
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5.2 Addressing Impacts under the UNGP

Once the involvement (i.e., responsibility) is established under the UNGP, entities (e.g., the grantee) must remedy the adverse impact that they caused or contributed to under UNGP 22. In the ESAP the consultant should propose the measure and/or action that will be in a line with and assigned to the grantee involvement level (i.e., causing, contribution, linkage, or no linkage) as well as on the significance of the impact. Table 5-4 below presents some examples of possible actions under the UNGP.

Table 5-4 Possible Actions under the UNGP

Cause	Contribution	Linkage	No Linkage/Unclear
Stop the activity (or inaction) causing the impact and provide remedy for harm.	Stop the activity (or inaction). If the grantee holds leverage over the other contributing party, use leverage to stop the activity and contribute to the provision of remedy , proportional to the extent of the grantee’s contribution to the impact. If the grantee holds no/little leverage, it should be considered how to increase it . Understand the underlying causes of the impacts and take actions to prevent continuation or recurrence . Analyze conditions elsewhere in its operations that could give rise to a similar impact and take actions to prevent its continuation or occurrence .	Use leverage to encourage third parties to stop the activity causing the impact. The grantee can use its leverage to encourage third parties to provide remedy. If there is no/little leverage the grantee should take steps to increase it , e.g., offering capacity-building or other incentives to the related party.	The grantee has no responsibilities under the UNGP to take action but can choose to do so for other reasons (on a voluntary basis). If unclear , the grantee should seek additional external expertise to support its initial assessment.

In cases where the grantee is causing the impact, the consultant must present in the ESAP mitigation measure and/or action as required per the applicable standards and international good practices.

Where the proposing grantee may be contributing to a certain human rights or other E&S risk, it will also be required to take action to prevent and mitigate such risk (proportional to the extent of the contribution) and use its influence with other parties which may be contributing to the risk.

Where the proposing grantee may be linked to a certain human rights or other E&S risk, it will be required to document its best efforts through which it has sought to influence others to change their wrongful practices.

The consultant should take this in account proposing the mitigation measures or action items in the ESAP. The ESAP item proposed should be with the influence and responsibility level of the grantee

and can include items that will build the leverage (see section 5.2.3). For impacts that are not caused or contributed to by the grantee, further guiding questions needs to be applied, since in this case establishing responsibilities and determining the appropriate action is more complex and depends on a variety of factors, such as significance of the impact. Where leverage is low or does not exist, impact mitigation may include actions to build or increase leverage. How to establish and use leverage is elaborated on in the following sub section.

5.2.1 Establishing and Using Leverage

The UNGP refer to leverage as a medium to encourage third parties to stop activities causing harm to human rights or encourage them to provide remedy for harm that occurred. Grantees that are linked to a (potential) human rights abuse or other E&S risk or impact should, therefore, assess their leverage with the third party and use it for such purposes. Leverage can have various sources such as contractual (e.g., provisions written in contracts between the grantee and third party), expertise (e.g. when the grantee is valued by the third party as a partner and therefore, has a certain level of influence), collaborative (i.e. when the grantee can offer the third party help in managing human rights or other E&S risks).

Nevertheless, assessing whether and to what extent leverage exists can be very complex in practice. Therefore, the following sections provide guidance to the consultant in order to make an accurate assessment of the grantee's leverage with third parties.

LLF requires its grantees to apply leverage constantly where feasible, to avoid and mitigate actual and potential E&S and human rights impacts. This includes using leverage during the implementation of all ESMS listed standards and guidance documents.

5.2.2 Assessing Leverage

The questions presented in Table 5-5 can help the consultant to assess whether the grantee had or has potential influence with implementing partners and third parties, hence, whether it has leverage.

Table 5-5 Guiding Questions for Leverage Assessment

Main Topic and Guiding Question	Supporting Questions
<p>Relationship: To what extent is this organization likely to engage with the grantee and take meaningful action to address concerns because they value their relationship with the grantee?</p>	<ul style="list-style-type: none"> ▪ What does the partner primarily value in its relationship with the grantee? ▪ Is this a long-term relationship, or a one-off program? ▪ How important is the grantee as a source of funding for this partner? ▪ Has the partner taken the grantee's advice on E&S issues and engaged constructively when the grantee has raised concerns? ▪ Does the grantee have access to senior decision-makers within the partner organization?
<p>Partner Capacity: Does the partner have the commitment and capacity to manage identified risks?</p>	<ul style="list-style-type: none"> ▪ How strong is the partner's understanding of relevant risks and impacts? Does the partner have the technical expertise to manage relevant risks and impacts? ▪ Does the partner already have the policies and governance infrastructure in place for managing the specific human rights or other risks relevant to the program? ▪ Has the partner made any public commitments relevant to these issues, or have a track record in relation to relevant risks/issues? ▪ Does the partner have the financial resources available to pay for prevention, mitigation or remedial actions? ▪ Does the partner have authority/control to take meaningful actions to address the risks, or are there other parties that need to be involved? Are there barriers to the partner taking meaningful action to address risks? ▪ Does the risk/impact require a collaborative approach?

<p>Collaborative leverage: Are there other actors who can be the grantee’s allies for managing identified risks?</p>	<ul style="list-style-type: none"> ▪ Are there other actors/funders involved in the program that share the grantee’s commitments to managing E&S risks? ▪ Are there other actors (NGOs, government agencies, industry associations, companies) who are likely to share the grantee’s concerns and who can use their influence with its partners/third parties?
<p>Expertise: Does the grantee know what actions, taken by whom, would be effective to prevent, mitigate or address relevant risks?</p>	<ul style="list-style-type: none"> ▪ Does the grantee have prior experience with these actors? ▪ Does the grantee have prior experience of managing similar issues? ▪ Are there trusted resources or experts who can help inform what actions need to be taken? ▪ Does the partner value the grantee’s expertise or past experience managing relevant risks? ▪ Are there relationships with external third party experts that the grantee could facilitate to support the partner to manage the risk or impact effectively? ▪ Are there other forms of technical or advisory assistance that the grantee could provide or facilitate?
<p>Financial leverage: To what extent is the partner/third party likely to engage and take meaningful action because it is in their financial interest to do so?</p>	<ul style="list-style-type: none"> ▪ How dependent is the partner on a financial relationship with the grantee? ▪ Would a termination of the relationship with the partner send a signal to others that could affect them financially?
<p>Influence over third parties: What is our level of influence over relevant third parties?</p>	<ul style="list-style-type: none"> ▪ Is the grantee able to engage directly with the third party? ▪ Is the third party likely to value the grantee’s expertise? ▪ Is the third party dependent on partners who are dependent on the grantee? ▪ Does/could the grantee’s partner have contractual clauses which would help to manage the risk?

Depending on how the supportive questions above will be answered by the consultant in relation to an ESAP item, it will be established whether the grantee has leverage over a third party (potentially) causing or contributing to a human rights violation or not. If the grantee has leverage to prevent or remedy the adverse impact, it should exercise it. However, it may be the case that the consultant concludes that the grantee has no or little leverage over the respective party.

5.2.3 Building Leverage

If the consultant deems there is a lack of leverage that the grantee has on a third party that is causing or may cause a human rights violation or other E&S risk, the consultant will conclude that the grantee should build leverage, if possible. There may be ways for the grantee to increase leverage, e.g., by capacity-building, monitoring and evaluation, contractual requirements on due diligence by potential funded programs or other incentives to the related entity, or collaborating with other actors.

Table 5-6Table 5-5 below provides a range of examples of different ways that the grantee might seek to build influence over a third party where necessary, or specific ways that the grantee may use leverage (i.e., specific actions the grantee might ask or encourage an implementing partner or third party to take). The consultant should consider the following recommendations for building leverage and include them in the ESAP.

Table 5-6 Possible Actions for Building Leverage

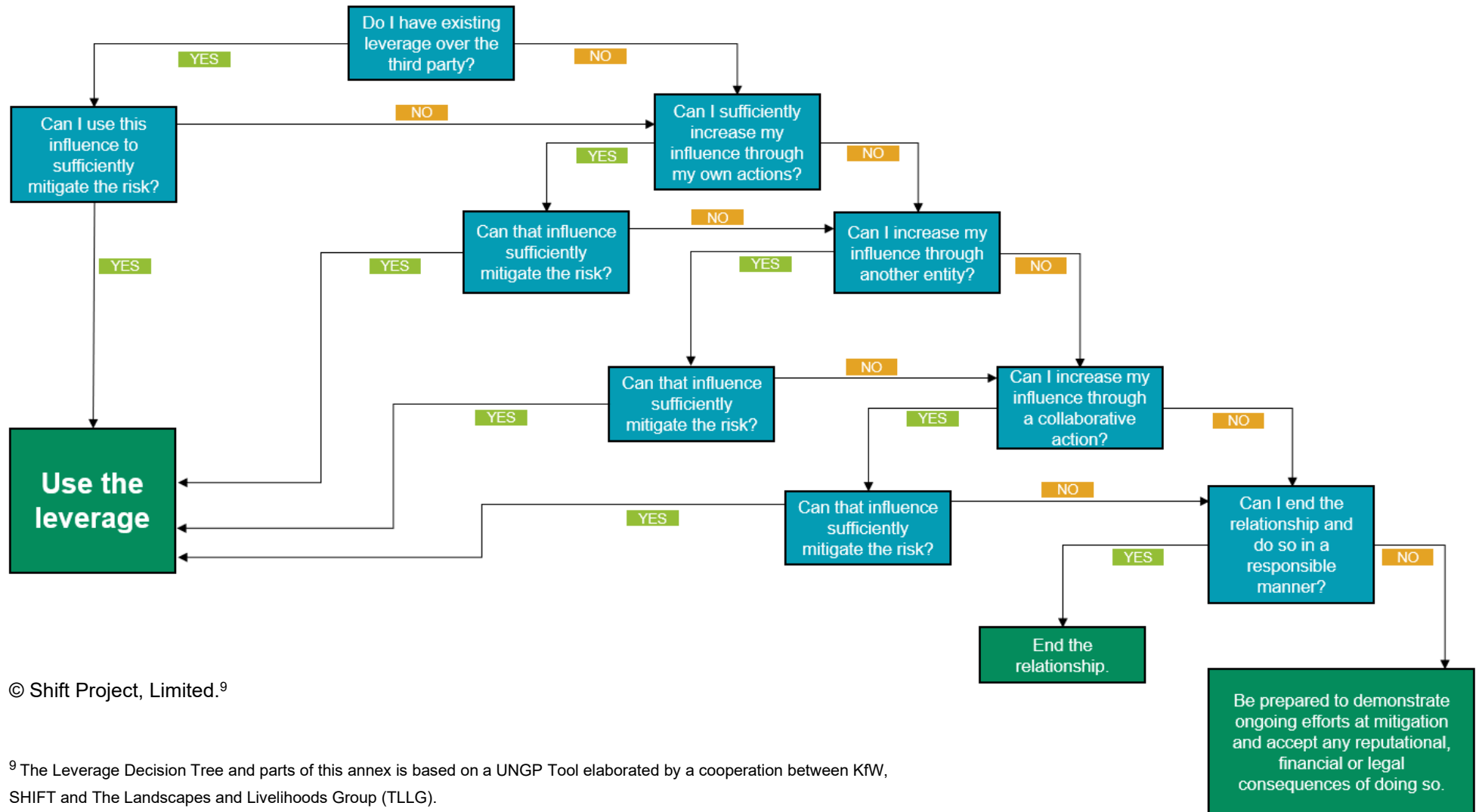
Source of Leverage	Possible Actions
<p>Contractual</p>	<ul style="list-style-type: none"> ▪ Require (or encourage) adherence to the grantee’s own standards, industry standards, or international standards that go beyond minimum legal requirements, including as a condition precedent to grants or loans.

	<ul style="list-style-type: none"> ▪ Require (or encourage) social, environmental or human rights management systems, including grievance mechanisms. Alternatively, Require (or encourage) adaptation of the PA's grievance system. ▪ Create more moments of tractions within the funding agreement, i.e., milestones where reporting or implementation are required prior (such as conditioning disbursements on verification of specified conditions, or on fulfilment of progress reports or other reporting). ▪ Clauses that require implementation of specific corrective actions / corrective action plans. ▪ Clauses that require disclosure of human rights or other E&S issues. ▪ Clauses that specify monitoring mechanisms.
Relationship-based	<ul style="list-style-type: none"> ▪ Engagement: Address an issue or concern with a partner (or other actor) to raise awareness, and potentially to increase the internal leverage of internal champions at the partner (or other actor) level. ▪ Create a conversation between the grantees management and partner's management team and discuss issues at stake.
Expertise	<ul style="list-style-type: none"> ▪ Know the issues: Act as a source of value to the partner in helping them to identify relevant norms and standards in protected area management and foreseeable risk of impacts on people and the environment. ▪ Know what good practice looks like: Be able to help the partner identify and implement appropriate responsive actions to prevent or manage a risk or impact, based on an understanding of good practice or similar past experiences. ▪ Build capacity of partners: Educate partners about issues, expectations and standards (bilaterally or collectively), (delivered through engagement or knowledge product /resources). For example, training of park employees on human rights standards, the application of the principle of proportionality when defending against threats, and interaction with neighboring communities. ▪ Engage with affected stakeholders to better understand expectations and credible actions (particularly locally affected stakeholders, or credible proxy representatives).
Collaborative	<ul style="list-style-type: none"> ▪ Engage other financiers relevant to a particular protected area. ▪ Engage government ministry responsible for the PA (where relevant, e.g., on land law reform or security sector reform). ▪ Collaborate with local actors (i.e., local community organizations or other representative bodies) to jointly understand issues and develop / take actions to address those issues.

Selected items of the list of possible indicators for increasing leverage can be used by the consultant as an indicator of completion of the ESAP task for the grantee that is linked to increasing or building leverage over a third party.

In cases in which the grantee lacks leverage to prevent or remedy adverse impacts and is unable to increase its leverage, it should consider drawing on expert opinion in further deciding how to respond to the impact.

In cases in which the grantee is “linked” to impacts and its efforts to use or build leverage are unsuccessful, the grantee should consider responsible exit. Otherwise, the grantee needs to prepare for strong criticism of the ongoing relationship. This process is illustrated by the Leverage Decision Tree presented in Figure 5-4 below.



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⁹ The Leverage Decision Tree and parts of this annex is based on a UNGP Tool elaborated by a cooperation between KfW, SHIFT and The Landscapes and Livelihoods Group (TLLG).

Figure 5-4 Leverage Decision Tree

6. FINAL REMARKS

Upon the completion of the analysis guided by the UNGPs, the grantee should:

- **Communicate** its understanding of its responsibility with regard to remedy for specific impacts with relevant stakeholders;
- **Engage** in dialogue, as appropriate, with relevant stakeholders who may disagree with the initial internal analysis in order to stress-test the grantee's conclusions;
- **Confirm** and stress-test its initial internal analysis with outside experts, as appropriate; and finally
- **Take appropriate action**, aligned with its responsibility under the UNGPs.

APPENDIX A ENVIRONMENTAL AND SOCIAL ACTION PLAN (ESAP) FORMAT