METHODOLOGY

Diagnostic tool for identifying the barriers to implementation and/or enforcement of laws and regulations relevant to wildlife

SWM SUSTAINABLE WILDLIFE MANAGEMENT PROGRAMME

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1. OBJECTIVE OF THE METHODOLOGY

This methodology is developed to contribute to the achievement of "Result 1" of the Sustainable Wildlife Management (SWM) Programme, namely, "improve the institutional and legal frameworks for sustainable wildlife management". It is designed to facilitate the use of the "**diagnostic tool for identifying the barriers to implementation and/or enforcement of laws and regulations relevant to wildlife**", also referred to as annex 4.

This tool must be completed by the national legal consultant (NLC) and the results of interviews and questionnaires must remain anonymous.

Due to the diversity of stakeholder in the groups, it is expected that the NLCs will work closely with the site teams under the SWM Programme to gather background information, identify relevant stakeholders to interview, develop questionnaires, and carry out consultations (including translations, which may require allocation of additional funds). The results of the surveys should also be discussed with the teams, along with presentation of conclusions/narrative summaries.

2.   KEY TERMS/GLOSSARY

The glossary below will assist the NLCs to fill out the diagnostic tool.

"Access to justice" refers to the existence of measures to ensure due process and recognition of peoples' rights in practice, especially where there is a conflict with government activity. Such measures include access to justice through the judiciary, such as judicial review, legal aid and other support for accessing courts, but also extra-judicially, such as dispute resolution or mediation mechanisms, including customary mechanisms.

"Law Enforcement" is defined as the series of coercive actions (including through the issuance of fines, summonses, warrants, criminal procedures, etc.) carried out by an enforcement officer or duty bearer to ensure compliance with the rules by the general public (including rights holders). Enforcement generally refers to the actions of state authorities, but where customary duty bearers exist and are recognized, the actions they take to ensure compliance with customary rules can also be understood as enforcement actions.

"Law Implementation" is defined as the series of actions carried out by a duty bearer to ensure compliance with the rules they are responsible for. Examples of implementing actions include development of land-use plans, mapping of rights holders, carrying out consultations, granting permits, etc.

3.   INTRODUCTION TO THE TOOL

This diagnostic tool is designed to identify the structural and conjunctural factors in poor or absent implementation or enforcement of certain legal instruments in a delineated area. The results will be specific to the legal instruments examined and the geographic area where the tool is administered, and should therefore not be extended, by extrapolation, to others instruments or areas.

The tool is comprised of two distinct but complementary elements, and requires field surveys for completion. The first aims to assess the level of knowledge that relevant state and non-state actors have of specific legal instruments, and the second aims at guiding and compiling the interview results on these same actors' perceptions of the underlying factors for the poor or absent implementation or enforcement of the law.

As the level of implementation/enforcement of each sector-specific legislation may vary based on a number of different factors (some structural and others contextual), a list of possible factors has been proposed in the tab "Law implementation-enforcement" of the tool to guide the NLC in the interviews. This list should not be considered exhaustive, and the NLC is encouraged to improve on it by adding or deleting factors, as the circumstances may require. Currently the list includes the 12 following factors:

- **Security situation:** a poor or volatile security situation makes it difficult for law enforcement officials to ensure prompt law implementation/enforcement.

- **Unclear or conflicting mandate of law enforcement officials:** no state entity is directly mandated, its powers and responsibilities are not defined, or the mandate overlaps with, or contradicts, other statutory/legal or customary authorities' mandates/jurisdictions to carry out the duty associated with the criteria. The mandate of state actors across multiple administrative scales is not well coordinated.

- **Public authorities are hindered in the exercise of their powers:** the state authority's ability to enforce its decisions hinges on the ability of another actor or group to undermine this authority. When completing this column, the NLC should enquire whether the power of state authorities to enforce their decisions is challenged by other state entities, the private sector, or the local population.

- **Lack of resources (human/economic) for ensuring law implementation/enforcement:** these include the physical/technological (office, transportation, GPS, computers, phones, etc.), financial (budgets), and human (staffing) resources needed to enable state authorities to effectively carry out their responsibilities (to put plans into action at the appropriate spatial scale and report the outcomes and impacts of their efforts). Where certain areas are hard to access due to geographical barriers, lack of vehicles or other transport infrastructure could be reported as lack of resources. In the case of prosecution and

convictions, the lack of personnel and resources in the judiciary could be a reason why many cases are not prosecuted, or are delayed. Gathering information regarding the adequacy of available resources will likely rely on interviewing the duty bearers themselves. Resources are more likely than not to be judged insufficient, and the questions need to be framed so as to avoid generating "shopping lists" of needs, and to focus on priority interventions.

- **Lack of economic resources to comply with the norms:** the relevant resources in this case are those that enable or prevent compliance with a legal obligation (registering a tenure claim, obtaining a hunting permit). Therefore, relevant resources include the availability of transport (private or public), technology (computers, phones, etc.), financial means (to pay for administrative fees), possibly even time (where the rights holder must forego an economically productive activity to obtain the necessary administrative authorizations to comply with the rules).

- **Lack of integrity (corruption) of some segments of public authority:** whether/how duty bearers justify their actions to other overseeing entities, through budgetary transparency, audits, or even punctual oversight by specialized anti-corruption bodies. Prosecutions of state employees by the judiciary for corruption or abuse of power are other indicators of effective accountability.

- **Lack of accountability:** This dimension of power relates to whether rights holders have the power (or not) to hold the group to account for their decisions and actions, i.e., hold them accountable and determine whether this lack of power is a possible explanation for gaps in implementation/enforcement. This aspect of power, though critically important, is largely captured within this diagnostic tool by consideration of transparency (access to information), participation and accountability.

- **Lack of access to information:** Ensuring access to information means that a state entity ensures the public's right to both passive and active access to information held by it, i.e. both granting access to information relevant to its activities "upon request," as well as actively disseminating information relevant for stakeholders who may be affected by it, in a timely and culturally appropriate manner (for instance, in local dialects, through local radio or other means of dissemination). Access to information also means the extent to which rights holders are able to access relevant information upon request. Where this is not applicable, the NLC should assess whether stakeholders indicate lack of information as a factor in the gap in implementation/enforcement. Lack of transparency around the actions of a duty bearer increases the risk of resistance to these actions, thus contributing to gaps in implementation and enforcement of the bearer's duty.

- **Lack of access to justice for victims/witnesses:** high accountability suggests effective complaints/grievance resolution mechanisms, where citizens can lodge complaints against state representatives where they have acted illegally (corruption) or improperly (abuse of authority). Where state actors are seen not to be downwardly accountable for their actions, or responsive to the interests of users and rights holders, this can lead to resistance and therefore the failure to implement or enforce their duties.

- **Lack of recognition of statutory authorities:** this column should include information on whether the lack of law implementation/enforcement is due to non-recognition from non-state actors of the role and functions of state actors.

- **Lack of participation in decision-making:** this column should include information on whether or not key users and rights holders perceive that their participation (or Free, Prior and Informed Consent, where applicable) is sought, facilitated, and valued. Such considerations often determine whether or not they feel that the duty bearer has the authority to make decisions for them about access and use of "their" resources and whether these decisions will be respected. Participation refers to the interactions between government and civil society, and includes the process by which government engages civil society (adequately informing stakeholders and in a timely manner), gathers its inputs (mechanisms for consultation) and takes these inputs into account (do the government's plans change based on the inputs received?) when designing, implementing and evaluating policies, projects and programmes. Effective participation also means ensuring adequate representation of marginalized or vulnerable groups such

as ethnic minorities or women. The spectrum of participation ranges from simple "consultation" (two-way flow of information and exchange of views), "collaboration" (joint activities, involving other groups, but with the initiator retaining decision-making authority), "joint decision-making" (collaboration where there is shared control over a decision made) and "empowerment" (where control over decision-making, resources and activities is transferred from the initiator to other stakeholders).

- **Lack of participation in benefit-sharing deriving from resource use:** this column should include information on whether non-state actors consider that the lack of law implementation/enforcement is due to benefits from exploitation of resources not being fairly shared with rights holders.

4. HOW TO USE THE TOOL

This tool is composed of two different tabs, one to assess the actual level of knowledge that state and non-state actors have of a selected number of legal instruments (laws/regulations), and the other for assessing the perceptions that state and non-state actors have of the level of implementation/enforcement of the same laws/regulations.

By following the four steps below, it will be possible to complete each tab of the tool with the responses given by the different interviewees, thus providing a generic overview of their answers.

4.1. Step 1: Identify and select priority areas where law implementation/enforcement is problematic vis-à-vis the SWM Programme site model

As a preliminary step, and based on the seven thematic tabs of annex 2b, the NLC will proceed, based on literature review as well as on his/her practical knowledge, **to shortlist up to 10/15 legal areas that are top-priorities for ensuring the progressive achievement of the relevant SWM Programme site model.**

Thematic tabs	Legal areas	Examples of relevant legislations
Preconditions	• Wildlife tenure • Land and inland waters use planning • Land and inland water tenure	• Land Act • Forest Act • Tribal land Act • Land acquisition regulation • Rural land regulation • …
Consumption use	• Hunter/fisher status • Licensing (right to hunt/fish in a given area) • Identification of species • Adaptive determination of quotas/limitations • Determination for adaptive hunting/fishing seasons • Harvesting/taking methods and tools	• Parks and Wildlife Act • Forest Act • Fisheries Act • Environmental management Act • Protected species regulation • EIA Regulation • Hunting/fishing regulation • …
Non-consumption use	• Identification of protected areas for ecotourism • Ecotourism development • Ecotourism licensing	• Parks and Wildlife Act • Forest Act • Environmental management Act • Tourism Act • Tourist facilities regulations • …
Human–wildlife conflict	• General requirements	• Parks and Wildlife Act • Forest Act • Wildlife Damage Compensation regulation • …

Table continues

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Thematic tabs	Legal areas	Examples of relevant legislations
Animal health	• Regulation of the veterinary profession • Surveillance and monitoring • Disease control • Contingency planning and emergency response • Import control and export certification • Veterinary laboratories • Veterinary medicinal products (VMPs)	• Animal Health Act • Veterinary Surgeon Act • Public Health Act • Medicines control regulation • …
Animal production	• Animal identification and traceability • Feed safety and quality • Animal welfare • Aquaculture	• Animal Health Act • Fishing and Aquaculture Act • Husbandry Act • Farm Feed regulations • …
Food safety	• General provisions (both wild and farmed animals) • Meat and products generated from hunting • Fish and products generated from fishing and aquaculture • Inspection • Processing • Distribution	• Public Health Act • Food and Food standards regulation • Food Inspection regulations • …

Once this first shortlist is complete, the NLC **will identify up to four/five laws and/or regulations that are the most relevant across these priority areas**. In this regard, the choice can differ from site to site. The shortlist is to be made in consideration of both the relevance of these laws vis-à-vis their recurrence in annex 2b as well as their perceived level of implementation/enforcement at site level.

The shortlist is to be shared with the site coordinator, to be agreed upon and to ensure it captures the key features of the site model. The SWM Programme Site Review Committee can also be consulted to ensure full consideration of all relevant priority areas.

4.2. Step 2: Identify relevant interviewees among rights holders and duty bearers at the level of the SWM Programme site

The NLC should develop a shortlist of key state and non-state actors represented at the level of the SWM Programme site that are relevant vis-à-vis the implementation/enforcement of each shortlisted sectoral law/regulation.

Example:

In relation to the **Wildlife Act** or the **Forest Act**, categories of interviewees may include, but not be limited to, magistrates, eco-guards, police officers, local governors, mayors (on behalf of the state authorities at site level) and local hunters/fishers, national park managers and forest concessioners (as part of non-state actors at site level).

In relation to the **Land Act**, categories of interviewees may include, but not be limited to, magistrates, land boards, police officers, local governors, mayors (on behalf of the state authorities at site level) and village chiefs, representatives of the ethnic groups, and women (as part of non-state actors at site level).

In relation to the **Animal Health Act**, categories of interviewees may include, but not be limited to, magistrates, public veterinaries, local governors, and others (on behalf of the state authorities at site level) and village chiefs, women, farmers and others (as part of non-state actors at site level).

As highlighted above, the two main categories of stakeholders are the state actors (executive, judiciary and, where relevant, customary), and the non-state actors. From the shortlist, the NLC should identify at least 20 individuals to be interviewed in relation to each of the four/five sectoral laws and/or regulations, 10 state actor representatives and another 10 actors whose lives are influenced by their decisions (non-state actors). The same individuals can be interviewed for more than one law whenever relevant.

To obtain a range of opinions it is important to select, whenever possible, equal numbers of men and women, and in the case of the state actors, officials in different positions of authority. Where possible, people from different places within a project or state actor's jurisdiction should be interviewed, which may require more than 10 people.

Once identified, the interviewees and their respective functions/roles must be transcribed into both tabs in relation to the laws/regulations they are interviewed about, replacing the current examples in grey.

4.3. Step 3: Prepare and conduct interviews

The NLC will have to first develop interviewers' modules/protocols based on both the first tab (for assessing the level of knowledge of sectoral legislation) and the second (for identifying the underlying causes of weak law implementation/enforcement), in relation to each of the shortlisted sectoral laws/regulations.

- **The tab for assessing the level of knowledge of sectoral legislation**
  The interview module should enable the NLC to assess the knowledge interviewees have of the specific law/regulation. Therefore, the NLC will have to formulate questions beforehand on key areas of each of the four/five laws and/or regulations relevant to wildlife management that need to be mentioned in the sub-headers of the related law/regulation in the tab. The number of questions should be kept reasonable. Some examples have been provided in grey in the relevant tab of the tool.

- **The tab for identifying the underlying causes of weak law implementation/enforcement**
  The interview module should enable the NLC to identify, among the proposed factors, those that most affect the implementation/enforcement of the given laws/regulations. Additional explanations have been included in section 3 to assist the NLC in tailoring the questions to the audience being interviewed.

Before starting the interview, the NLC should explain (i) the purpose of the interview (i.e. identifying underlying causes of weak implementation/enforcement), (ii) how the answers will be used, indicating that neither individual names nor answers will be published if requested and (iii) the process followed.

The NLC should then present a short summary of the scope/themes of each law/regulation investigated.

Interviews should preferably be conducted individually but could also be done collectively if the target audience members belong to the same group (e.g. hunters/fishers,) and consented to. In the case of **single interviewees** (e.g. the head of the national park, the president of the tribunal, the mayor, the concession holder) the answer should remain disaggregated, while for **collective interviewees** (e.g. hunters, law enforcement officials) the answer should reflect the average score/collective answers within the group unless major differences apply among its members. In this case, the NLC may decide to disaggregate the answer accordingly.

The questions will need to be tailored to the audience by the NLC with the support of an anthropologist and/ or a social scientist in the case of questions addressed to non-state actors with limited levels of literacy.

The NLC should also keep a separate record of each interviewee's background information, such as:
- age
- gender
- role
- position
- ethnic group
- date of survey
- name of surveyor.

This will ensure that sensitive information cannot be easily linked to the community.

4.4. Step 4: Analysis and collation of findings

Once the interviews have been completed, the NLC will use the tool to consolidate and compile the responses.

- **The tab for assessing the level of knowledge of sectoral legislation**
  This tab is to be completed with the questions asked in relation to each law/regulation and with a "Y" in case of correct answer, a "P" in case of partial/incomplete answer or an "N" in case of incorrect or no answer. The "P" and "N" results should inform a summary of those topics on which there is a recurrent lack of knowledge. These results, supported by analysis, will be used as evidence of the level of knowledge

that state and non-state actors have of a specific law/regulation, and design appropriate training. Examples provided in grey in the relevant tab are to be deleted.

- **The tab for identifying the underlying causes of weak law implementation/enforcement**
  This tab is to be completed with an "X" in relation to the weaknesses reported by each interviewee. The "X" should be further complemented with supporting information/examples to best inform/support the answer provided. While all the proposed weaknesses could potentially be relevant, **information/examples should only be provided for the four/five main weaknesses as prioritized by the interviewee**. It is also possible to add additional weaknesses if mentioned in the questionnaire/interviews.

  Example:
  If, as part of the interview on the implementation/enforcement of the Wildlife Law, the interviewee highlights that hunting activities occur without a permit due to a lack of awareness of how to apply for and obtain a permit, the result falls under **Lack of legal knowledge of non-state actors**. The NLC should then ask the interviewee why he/she thinks this is the case, being as precise as possible and providing examples. Using the permit example, the explanation could be that the lack of awareness is also due to the lack of regular government outreach. Equally, it could be due to the remoteness of the location of the rights holder (and consequent difficulty in travelling to the issuing authority's office) or cost of travel (**Lack of economic resources to comply with the norms**), etc.

Based on this assessment, a summary providing an overview of the underlying causes for weakness in implementation/enforcement of the law, according to both state and non-state actors interviewed, completes the tool. Whenever possible, it will be important to reflect the obstacles specific to each investigated law, relying in particular on the contributions of respondents who, because of their functions/roles, have a more specialized and detailed knowledge of these aspects.

SUSTAINABLE WILDLIFE MANAGEMENT (SWM) PROGRAMME

Millions of people depend on the meat of wild animals for their food and income. It is an important source of protein, fat and micronutrients, especially for indigenous peoples and rural communities in the tropics and subtropics of Latin America, Africa and Asia. The demand for meat from wild animals is increasing significantly, especially in urban areas. Yet, if the hunting of wild animals for their meat is not managed in a sustainable manner, wildlife populations will decline, and rural communities will be at risk of increased food insecurity. Recent studies show that hundreds of wild species are threatened with extinction due to overexploitation for meat consumption.

Between 2018–2024, the Sustainable Wildlife Management (SWM) Programme will help improve the conservation and sustainable use of wildlife in forests, savannahs and wetlands. Field projects are being implemented in 15 countries in Africa, the Caribbean and the Pacific, and aim to:

- improve regulations on the hunting of wild animals;
- increase the supply of sustainably produced meat and fish;
- strengthen the wildlife management capacities of indigenous and rural communities;
- reduce the demand for wild meat, especially in towns and cities.

The SWM Programme is an initiative of the Organisation of African, Caribbean and Pacific States (OACPS), which is funded by the European Union (EU) and co-financed by the French Facility for Global Environment (FFEM) and the French Development Agency (AFD). It is being implemented by a dynamic consortium of four partners with expertise in wildlife conservation and food security:

- Food and Agriculture Organization of the United Nations (FAO)
- Center for International Forestry Research (CIFOR)
- French Agricultural Research Centre for International Development (CIRAD)
- Wildlife Conservation Society (WCS).

For further information: www.swm-programme.info

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