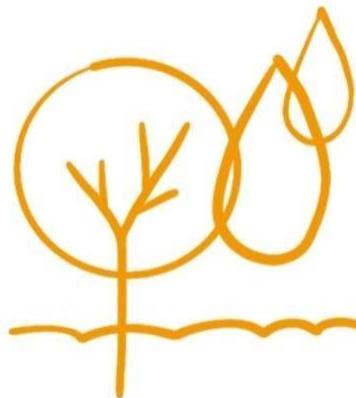


## ENVIRONMENTAL AND SOCIAL MANAGEMENT SYSTEM

### ESS 5: ACCESS RESTRICTIONS TO NATURAL RESOURCES, LIVELIHOOD LOST, AND LIMITED INVOLUNTARY RESETTLEMENT

ACCESS RESTRICTIONS TO  
NATURAL RESOURCES,  
LIVELIHOOD LOST, AND  
LIMITED INVOLUNTARY  
RESETTLEMENT



## ENVIRONMENTAL AND SOCIAL MANAGEMENT SYSTEM

# ESS 5: ACCESS RESTRICTIONS TO NATURAL RESOURCES, LIVELIHOOD LOST, AND LIMITED INVOLUNTARY RESETTLEMENT

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“ESS 5: Access Restrictions to Natural Resources, Livelihood Lost, and Limited Involuntary Resettlement” is part of MAR Fund’s Environmental and Social Management System (ESMS). Therefore, ESS 1 should be read and understood in conjunction with the other 9 Safeguards and the other documents that are part of the ESMS.

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**FIGURES**

FIGURE 1: ACCESS RESTRICTIONS – LIVELIHOOD LOST – LIMITED RESETTLEMENT PROCEDURE

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## • GLOSSARY

AFD	Agence Française de Développement <sup>1</sup>
BMZ	Bundesministerium für Wirtschaftliche Zusammenarbeit und Ent-wicklung <sup>2</sup>
EbA	Ecosystem-based Adaptation
CAPEX	Capital Expenditure
CSO	Civil Society Organization
CTF	Conservation Trust Fund
Due Diligence	Environmental and Social Due Diligence
EIA	Environmental Impact Assessment
ERP	Emergency Response Plans
ESAP	Environmental and Social Commitment Plan
Escazú Agreement	Regional Agreement on Access to Information, Public Participation, and Justice in Environmental Matters in Latin America and the Caribbean
ES	Environmental and Social
ESDD	Environmental and Social Due Diligence
ESIA	Environmental and Social Impact Assessment
ESMF	Environmental and Social Management Framework
ESMP	Environmental and Social Management Plan
ESMS	Environmental and Social Management System
ESPF	Environmental and Social Performance Framework
ESSQ	Environmental and Social (ES) Screening Questionnaire
ESS	Environmental and Social Safeguards
FB	Fundación Biosfera
FCG	Fundación para la Conservación de los Recursos Naturales y Ambiente en Guatemala

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<sup>1</sup> French Development Agency

<sup>2</sup> Federal Ministry for Economic Cooperation and Development of the Federal Republic of Germany.

FC–Measures	Financial Cooperation Measures
FFEM	Fonds français pour l’environnement Mondial <sup>3</sup>
FI	Financial Intermediary
FMCN	Fondo Mexicano para la Conservación de la Naturaleza
FPIC	Free, Prior, and Informed Consent
GCF	Green Climate Fund
GEF	Global Environment Facility
GHG	Greenhouse gas
GMO	Genetically Modified Organism
H&S	Health & Safety
IDB	Inter–American Development Bank
IFC	International Financial Corporation
ILO	International Labour Organisation
ISPM	International Standard for Phytosanitary Measures
IUCN	International Union for Conservation of Nature
JMP	WHO/UNICEF Joint Monitoring Programme for Water Supply, Sanitation and Hygiene
KfW	Kreditanstalt für Wiederaufbau <sup>4</sup>
LGBTQ+	Lesbian, gay, bisexual, transgender, queer (or sometimes questioning) and others. + represents other sexual identities including pansexual and Two–Spirit.
MAR	Mesoamerican Reef
MAR Fund	Mesoamerican Reef Fund
NAP	National Adaptation Plans
NDC	National Determined Contributions
NGO	Non–Governmental Organization
OH&S	Occupational Health & Safety
PACT	Protected Areas Conservation Trust

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<sup>3</sup> French Facility for Global Environment.

<sup>4</sup> Reconstruction and Credit Corporation of the Federal Republic of Germany.

PPE	Personal Protective Equipment
PS	Performance Standards
RfP	Request for Proposals
SEA	Sexual Exploitation and Abuse
SECF	Stakeholder Engagement and Communication Framework
SECP	Stakeholder Engagement and Communication Plan
SGBV	Sexual and Gender-Based Violence
SIA	Social Impact Assessment
The Policy	MAR Fund's Environmental and Social Policy
ToR	Terms of Reference
UN	United Nations
UNDP	United Nations Development Programme
UNEP	United Nations Environmental Programme
UNFCCC	United Nations Framework Convention on Climate Change
UN Protocol	United Nations Protocol on Allegations of Sexual Exploitation and Abuse Involving Implementing Partners
WASH	Water, Sanitation, and Hygiene

## 1 ESS 5: ACCESS RESTRICTIONS TO NATURAL RESOURCES, LIVELIHOOD LOST, AND LIMITED INVOLUNTARY RESETTLEMENT



### 1.1 INTRODUCTION

1. The “ESS 5: Access Restrictions to Natural Resources, Livelihood Lost, and Limited Involuntary Resettlement” (ESS 5) is in alignment with the KfW’s Sustainability Guideline and adapts and incorporates provisions from the following internationally recognised safeguards and standards that are pertinent and appropriate to MAR Fund’s context and operations
  - The IFC’s PS 5 Land Acquisition and Involuntary Resettlement.
  - The World Bank’s ESS 5: Land Acquisition, Restrictions on Land Use and Involuntary Resettlement.
  - The IUCN’s Standard on Involuntary Resettlement and Access Restrictions.
2. The ESS 5 must be applied in full compliance with the national legislations of Mexico, Belize, Guatemala, and Honduras, including the countries’ obligations under international law. When the national law and this Safeguard have different views on the same issue, in accordance with MAR Fund’s *Most Stringent Policy Provision*<sup>1</sup>, the most stringent standard or provision must apply.

#### 1.1.1 OBJECTIVES

3. The objectives of the ESS 5: Access Restrictions to Natural Resources, Livelihood Lost, and Limited Involuntary Resettlement are to:
  - i. Establish procedures and requirements to avoid negative impacts on people and communities when restrictions on access to natural and other resources are unavoidable.
  - ii. Minimize and mitigate impacts caused by restrictions on access to natural resources and involuntary resettlement affecting communities and ensure full and fair compensation.

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<sup>1</sup> *Most Stringent ES Policy provision*: When MAR Fund’s environmental and social provisions are to be considered in parallel with the provisions of any of the Governments of Mexico, Belize, Guatemala, and Honduras, the most stringent environmental and social Policy provision should apply. MAR Fund’s Environmental and Social Policy (section 2 of this document).



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- iii. Enable affected people and communities to participate fully in the identification and design of mitigation measures that support livelihoods that are sustainable, environmentally, socially, and economically beneficial, culturally appropriate, and legally acceptable.
- iv. Ensure that natural resource access restrictions and resettlement activities are planned and implemented with adequate information disclosure, meaningful consultation, and informed participation of those affected.

### 1.1.2 DEFINITIONS

4. For the ESS 5: Access Restrictions to Natural Resources, Livelihood Lost, and Limited Involuntary Resettlement, the definitions in this section are adopted. Most of these definitions are from the IFC (PS 5, Guidance Note and support material) and the World Bank (ESS 1 and ESS 5, and Guidance Notes).
5. Cut-off date is the date of “completion of the census and assets inventory of persons affected by the *project*.”<sup>2</sup>
6. Displaced persons are the people who are displaced because of the Activity. There are three types of displaced persons:
  - People who have formal legal rights to the land or assets they occupy or use
  - People who do not have formal legal rights to land or assets, but have a claim to land that is recognized or recognizable under national law
  - People who have no recognizable legal right or claim to the land or assets they occupy or use.
7. Forced eviction is the permanent or temporary removal against the will of individuals, families, or communities from the homes and lands which they occupy without the provision of, and access to, appropriate forms of legal and other protection. Involuntary resettlement does mean, nor imply, “*forced eviction*”.<sup>3</sup>
8. Host Communities are any community receiving displaced people.
9. Involuntary Resettlement refers both “to physical displacement (relocation or loss of shelter) and to economic displacement (loss of assets or access to assets that leads to loss of income sources or other means of livelihood)”<sup>4</sup> because of restrictions to access

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<sup>2</sup> IFC – Handbook for Preparing a Resettlement Action Plan.

<sup>3</sup> IFC Performance Standard 5 Land Acquisition and Involuntary Resettlement.

<sup>4</sup> IFC Performance Standard 5 Land Acquisition and Involuntary Resettlement.

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to natural resources. Affected stakeholders in involuntary resettlement (people and communities) do not have the right to refuse the imposition of access restrictions to natural resources or land use, or land acquisition, that result in physical or economic displacement. Involuntary resettlement neither means nor implies forced eviction.

Note 1: The grantees must be aware that there will not be involuntary resettlement of Indigenous Peoples in projects approved by MAR Fund.

Note 2: The World Bank ESS 5 establishes that affected stakeholders in involuntary resettlement (people and communities) do not have the right to refuse the imposition of access restrictions to natural resources or land use, or land acquisition, that result in physical or economic displacement. *MAR Fund's ESS 5 establishes that it is necessary to have the Free, Prior, and Informed Consent (FPIC) of the affected communities* to proceed with planning and implementing projects that will result in the resettlement of these communities.

10. Livelihood 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”.<sup>5</sup>
11. Natural Resource Assets are a set of benefits that people, including businesses, derive from ecosystems. This definition is equivalent to that of Ecosystem Services<sup>6</sup> defined in the ESS 6.
12. Natural features with cultural significance, are also considered as cultural heritage and refer to various features such as “sacred hills, mountains, landscapes, streams, rivers, waterfalls, caves and rocks, sacred trees or plants, groves and forests; carvings or paintings on exposed rock faces or in caves; and paleontological deposits of early human, animal or fossilized remains”.<sup>7</sup>

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<sup>5</sup> IFC Performance Standard 5 Land Acquisition and Involuntary Resettlement.

<sup>6</sup> “Ecosystem services are the benefits that people derive from ecosystems. Ecosystem services are organized into four types: (i) provisioning services, which are the products people obtain from ecosystems and which may include food, freshwater, timbers, fibers, medicinal plants; (ii) regulating services, which are the benefits people obtain from the regulation of ecosystem processes and which may include surface water purification, carbon storage and sequestration, climate regulation, protection from natural hazards; (iii) cultural services, which are the nonmaterial benefits people obtain from ecosystems and which may include natural areas that are sacred sites and areas of importance for recreations and aesthetic enjoyment; and (iv) supporting services, which are the natural processes that maintain the other services and which may include soil formation, nutrient cycling and primary production.” World Bank Guidance Note of ES1: Footnote 27.

<sup>7</sup> World Bank's ESS 8 Cultural Heritage.

### 1.1.3 PRINCIPLES

13. MAR Fund's preference is to avoid resettlement altogether. Large involuntary resettlement<sup>8</sup> is prohibited by MAR Fund exclusion list. MAR Fund does not support involuntary resettlement of Indigenous Peoples or Local Traditional Communities.
14. MAR Fund only supports access restrictions to natural resources to achieve the recovery or restoration of the resources and the protection or conservation of ecosystems and their functionality. For this Safeguard, the term “natural resources” refers to both terrestrial and aquatic resources, including marine areas and resources.
15. MAR Fund recognizes that economic and livelihood losses, loss of income, and non-material impacts related to the spiritual, cultural, and educational value of natural resources, are some of the impacts of access restrictions.

### 1.1.4 LARGE AND LIMITED INVOLUNTARY RESETTLEMENT

16. Whether the involuntary resettlement is large or limited depends on the frame of reference, including the extension, components, budget, and other characteristics of the projects to be approved by MAR Fund. When a large number of people or a significant portion of the affected communities would be subject to relocation, it will be considered as Large Resettlement. The no-project scenario must be given serious consideration when the trade-off between the project benefits and the impacts and cost of resettlement exceeds an acceptable level or if the affected population is particularly vulnerable.
17. As it relates to MAR Fund, projects involving resettlement of up to 50 persons or 10 households may be considered as Limited Resettlement and, therefore, subject to this Safeguard. Projects involving more than 500 persons or 100 households will be assessed as Large Resettlement and therefore not considered for funding on the grounds of the Exclusion List.

### 1.1.5 VOLUNTARY ADOPTION OF RESTRICTIONS TO ACCESS TO NATURAL RESOURCES

18. There may be situations where the community is willing to commit to upholding access restrictions to natural resources, agree on a voluntary basis with these restrictions, and

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<sup>8</sup> Large involuntary resettlement is defined as the resettlement of more than 100 households of the same location.

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in some cases even demand the imposition of the restrictions. These situations may be broadly classified as “Voluntary Adoption of Restrictions to Access to Natural Resources”<sup>9</sup>.

19. A proposal or a project may include Voluntary Adoption of Restrictions to Access to Natural Resources. Subject to prior MAR Fund approval, this may be acceptable providing the grantee demonstrates the following:
  - A. The community involved in the project was appropriately informed regarding the proposed activity and its impacts, its requirements in terms of access to natural resources, and their rights to compensation for livelihood loss, if any.
  - B. The community involved in the project could exercise their free will, i.e., could refuse the restrictions.
  - C. The community involved in the project knowingly rejected their right to renege on their decision.
  - D. The community involved in the project may not require compensation.
20. The grantees must document the process of the Voluntary Adoption of Restrictions to Access to Natural Resources, especially regarding literals A), C), and D) of the previous paragraph. MAR Fund will request evidence of this process during the environmental and social due diligence.

### 1.2 SCOPE OF APPLICATION

21. The applicability of the ESS 5 is decided during the environmental and social due diligence, following the ESS 1, with the support of the ESSQ tool.
22. EES 5 applies to projects that include permanent or temporary impacts due to restrictions on access to natural resources, loss of livelihoods, or limited involuntary resettlement<sup>10</sup> resulting from the following types of restrictions:
  - Restrictions of access to natural resources or land use that cause a community, or groups within a community, to lose access to resource usage where they have traditional or customary tenure, or recognizable usage rights. This may include situations where new legally designated protected areas, forests, biodiversity areas or buffer zones are established in connection with the project.

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<sup>9</sup> This section adapts the content from the Guidance Note 4.11 of the ESS 5 of the World Bank.

<sup>10</sup> As per KfW guidance on risk-based classification, projects requiring large scale resettlement or that lead to a significant loss of livelihood shall be classified as Category A and, therefore, will be included in MAR Fund Exclusion List.

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- Restrictions on access or use of other resources including communal property and natural resources such as marine and aquatic resources, timber and non-timber forest products, fresh water, medicinal plants, hunting and gathering grounds and grazing and cropping areas.
  - Restrictions arising from changes in natural resource use and management regimes that negatively affect the economic, social, cultural, and environmental benefits that communities derive from these resources.
  - Land rights or land use rights acquired or restricted through expropriation or other compulsory procedures in accordance with national law, or through negotiated settlements with those with legal rights to the land, if failure to reach settlement would have resulted in expropriation or other compulsory procedures.
  - Relocation of people without formal, traditional, or recognizable usage rights, who are occupying or utilizing land prior to a project specific cut-off date.
  - Land rights or claims to land, or resources relinquished by individuals or communities without full payment of compensation<sup>11</sup>.
23. This ESS will be triggered when any of the following apply to the project and the restrictions caused have an impact on the rights, livelihoods, and quality of life of those involved (the applicability is decided on a case-by-case basis):
- The project establishes restrictions on natural resources in new protected areas.
  - The project establishes sustainable natural resource management plans that involve access restrictions outside protected areas
  - The project includes enforcement of existing restrictions on natural resources, in protected areas or outside of protected areas
  - The project restricts physical access to subsistence resources, or to areas where social services are provided to the community

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<sup>11</sup> In cases when the land, or portion of the land, necessary for the project is donated by an individual, a group of individuals or a community. This shall be previously approved by MAR Fund, provided that the grantee demonstrates that “the potential donor (s) have made the donation after making sure that “a) the potential donor or donors have been appropriately informed and consulted about the project and the choices available to them; (b) potential donors are aware that refusal is an option, and have confirmed in writing their willingness to proceed with the donation; (c) the amount of land being donated is minor and will not reduce the donor’s remaining land area below that required to maintain the donor’s livelihood at current levels; (d) no household relocation is involved; (e) the donor is expected to benefit directly from the project; and (f) for community or collective land, donation can only occur with the consent of individuals using or occupying the land”. (World Bank Guidance Note of ESS 5 (Footnote 10). The grantee will “maintain a transparent record of all consultations and agreements reached.”

24. This Safeguard ***does not apply*** in the following cases:

- The project is Non-Area-Based, as defined in ESS 1 (section 3.2.2 *Area-Based and Non-Area-Based Projects*).
- To “Voluntary Adoption of Restrictions to Access to Natural Resources” as defined in *point 7.1.4*<sup>12</sup>.
- Risks and impacts on community incomes and livelihoods that are not a direct result of natural resource access restrictions imposed by the project. In that case, such risks and impacts are addressed in line with MAR Fund’s ESS 1.
- The project supports land titling or other confirmation, regularisation, or determination of land rights. In these cases, it is necessary to carry out a social, legal, and institutional assessment, in line with MAR Fund’s ESS 1.
- The project consists of “land use planning or the regulation of natural resources to promote their sustainability on a regional, national, or subnational level (including watershed management, ground water management, fisheries management, and coastal zone management)”<sup>13</sup>. When MAR Fund supports projects to develop better plans but does not support the implementation of such plans, it is necessary to carry out a social, legal, and institutional assessment, in line with MAR Fund’s ESS 1<sup>14</sup>.

### 1.3 REQUIREMENTS FOR GRANTEES

25. MAR Fund urges grantees to work with communities to find viable alternatives to limited resettlement. If limited resettlement is unavoidable, grantees must satisfy the requirements established in this Safeguard, including securing the Free, Prior, and Informed Consent (FPIC) of the community to be affected by the resettlement.
26. MAR Fund requires the FPIC of the communities affected by the access restrictions to natural resources. Without their FPIC, MAR Fund cannot support imposing or otherwise implementing these restrictions.
27. Projects involving access restrictions to natural resources and/or limited resettlement will be automatically classified as Category B+. Grantees must seek professional assistance

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<sup>12</sup> In these cases, the grantee may freely use the requirements and the methodology established in this Safeguard to provide some sort of compensation for livelihoods loss.

<sup>13</sup> World Bank ESS 5 (The text has been highlighted by the author of this ESS).

<sup>14</sup> When MAR Fund supports a project that include the implementation of these plans that involve the imposition of restrictions to access to natural resources, this Safeguard will apply. World Bank Guidance Note 8.1 to the ESS 5.

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to satisfy the requirements of this Safeguard, unless they have enough experience with resettlement and restoration of livelihoods and fully trained personnel

28. When the imposition of restrictions on access to natural resources or the limited resettlement of households is unavoidable and necessary to achieve a higher objective of protection or conservation of ecosystems and their functionality, grantees must compensate the affected people unless there is a Voluntary Adoption of Restrictions to Access to Natural Resources as defined in *point 7.4.2* (Resettlement Action Plan or a Process Framework).
29. When compensating affected people, the grantees must provide them with all necessary assistance to improve or restore their standard of living or livelihoods to at least pre-intervention levels.

### 1.3.1 ELEGIBILITY

30. Affected persons eligible for compensation, resettlement, and other assistance and benefits will be identified with a census to be elaborated in collaboration with the affected community as part of the *Process Framework* (see *section 7.4.1*). The affected persons will be classified as follows:
  - A. Persons who have formal legal rights to land or assets.
  - B. Persons who do not have formal legal rights to land or assets but have a claim to land or assets that is recognizable by the law of Mexico, Belize, Guatemala, or Honduras (as the case may be).
  - C. Persons who have no recognizable legal right or claim to the land or assets they occupy or use.
31. Those who encroach into the affected area after the eligibility cut-off date will not be entitled to any compensation. The grantee will not be required to compensate such persons, provided that the cut-off date has been clearly established and communicated. Similarly, fixed assets such as built structures, crops, fruit trees and forest plots, established after the date of completion of the asset inventory, or a mutually agreed alternative date, shall not be compensated.

### 1.3.2 COMPENSATION AND BENEFITS

32. Compensation and benefits will be standard for each of the three categories of affected persons established in § 30, meaning that all persons included in category A will have the same type of compensation. Same for all persons included in category B and in category C.

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33. Compensation includes in-kind compensation, non-monetary compensation, and monetary compensation, as appropriate. The type of compensation and benefits by category will be documented and disclosed by the grantee. Compensation and benefits will be distributed through transparent procedures.
34. Where the livelihoods of affected persons are land-based based, or where land is collectively owned, and access restrictions are permanent, or there is permanent displacement, grantees should offer a replacement option. This replacement option should have productive potential, locational advantages, and other factors at least equivalent to that which is lost.
35. In exceptional circumstances, after grantees have demonstrated to MAR Fund that no feasible replacement land is available, and no other viable alternative exists, MAR Fund may approve compensation instead of replacement.
36. The grantees shall establish effective restrictions on access to natural resources only after replacement or compensation has been made available to affected persons by this ESS, and if the project involves limited resettlement, the displaced persons have been resettled, and their livelihoods have been returned or compensation has been provided to them
37. Notwithstanding the above requirement, in exceptional cases where, despite the efforts of the grantees, the payment of compensation to some affected persons proves too difficult for reasons beyond the control of the grantees, MAR Fund may authorize the establishment of restrictions on access to natural resources, provided that the grantee deposits the necessary compensation funds in an interest-bearing account. These funds will be made available to the affected parties when the problems that made payment impossible are resolved.
38. Affected persons under category C (in § 30) are entitled to compensation in lieu of land.
39. Affected persons whose livelihoods are derived from illegal activities under the law of their country (Mexico, Belize, Guatemala, or Honduras) will not be eligible for compensation and benefits. These activities include, but are not limited to, poaching, logging, and dynamite fishing<sup>15</sup>.

### 1.3.3 LIVELIHOOD LOSS AND ECONOMIC DISPLACEMENT

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<sup>15</sup> Activities such as smuggling and drug trafficking that may be affected by access restrictions are not subject to any compensation.



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40. Where the project involves loss of livelihoods, impacts on income generation, or economic displacement, the beneficiary should plan and implement effective measures to enable affected people to restore their income and livelihoods<sup>16</sup>. The plan shall establish transparently, consistently, and equitably the different entitlements of affected persons. The grantee shall pay particular attention to gender differences and shall strive to meet the needs of the most vulnerable, including the LGBTQ+ persons. The grantee shall monitor the effectiveness of such measures and evaluate them upon completion.
41. Mitigation of loss of livelihood and economic displacement shall be considered completed when the affected persons have received all assistance to which they are entitled and have been provided with an adequate opportunity to restore their livelihoods.
42. The results of the implementation of livelihood restoration and resettlement activities will be evaluated in the framework of an independent completion audit.
43. The grantee shall offer to the persons affected by livelihood lost or other economic displacement classified under A. or B. (in § 30) replacement property of equal or greater value or, where appropriate, cash compensation at replacement cost. In case of affected persons classified under C. (in § 30), the grantee shall compensate them for lost assets other than land (such as crops, irrigation infrastructure and other improvements) at replacement cost. Additionally, the grantee will provide assistance instead of land sufficient to give such persons an opportunity to re-establish livelihoods elsewhere. There is additional guidance for cases where commercial enterprises are affected<sup>17</sup>.
44. The grantees shall ensure that economically displaced persons can restore their livelihoods, income-earning capacity, and standard of living.
45. Persons whose affected livelihoods are land-based must be offered replacement land with productive potential at least equivalent to that being lost. Persons whose affected livelihoods are natural resource-based must be allowed to continue accessing the affected resources or provided with access to alternative resources equally accessible

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<sup>16</sup> The provisions of this Safeguard do not apply to the Voluntary Adoption of Restrictions to Access to Natural Resources, as defined in point 8.1.3

<sup>17</sup> “In cases where land acquisition or restrictions on land use affect commercial enterprises (including shops, restaurants, services, manufacturing facilities, and other enterprises, regardless of size and whether licensed or unlicensed) affected business owners will be compensated for the cost of identifying a viable alternative location; for lost net income during the period of transition; for the cost of the transfer and reinstallation of the plant, machinery, or other equipment; and for re-establishing commercial activities. Affected employees will receive assistance for temporary loss of wages and, if necessary, assistance in identifying alternative employment opportunities.” World Bank ESS 5.

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and with equivalent livelihood-earning potential. Where common property resources are affected, the benefits and compensation may be collective in nature.

46. Only when it is demonstrated to MAR Fund that replacement land or resources are unavailable, grantees may offer economically displaced persons other options for alternative income earning opportunities including credit facilities, skills training, business start-up assistance, employment opportunities, or cash assistance additional to compensation for assets.

### 1.3.4 PHYSICAL DISPLACEMENT

47. Where the project requires the physical displacement of individuals, the grantee should offer resettlement options, including housing replacement or cash compensation. The grantee shall also provide adequate relocation assistance tailored to each group of displaced persons.
48. New locations should offer at least the same conditions as the previous location. Where the previous location's conditions are/were below national minimum codes or local minimum codes, new locations must at least satisfy those codes.
49. The grantee will offer persons affected by physical displacement classified as category A. or B. (in § 30), the alternative of a replacement property of equal or greater value, with security of tenure, better or equivalent characteristics, or cash compensation at replacement cost. In the case of affected persons classified as C. (in § 30), the grantee will enable them to obtain adequate housing with security of tenure. Where these persons own structures, assets, or other improvements, the grantees will compensate them at replacement cost for the loss of assets other than land. Prior consultation, instead of compensation for land, grantees will provide them with relocation assistance sufficient to restore their standard of living.

### 1.3.5 COMMUNITY ENGAGEMENT

50. The implementation of this safeguard requires meaningful community involvement. This involvement should begin early in the proposal development process, continue during project appraisal and approval, and be sustained during project implementation.
51. Community involvement will facilitate agreement on the process framework required for all projects that include access restrictions, loss of livelihoods, and/or limited resettlement. The process framework is described in *section 7.4.1 Process Framework*.
52. Community engagement is a good faith dialogue between the grantee and the communities affected by access restrictions and/or resettlement. This dialogue should

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be culturally sensitive, conducted in a language easily understood by the community, and in collaboration with the representative of the affected communities' organization.

53. The grantees shall ensure that the community engagement process reflects the perspectives, interests, and concerns of people of all genders, gender identities, and sexual orientations, without discrimination based on gender or sexual orientation.
54. The grantees should ensure that all stakeholders can effectively engage in community participation sessions and can express their preferences and issues related to livelihood restoration and resettlement planning. It may involve grantees having to organize separate consultation sessions to respond to the special needs of stakeholders. For example, it may be necessary to conduct an intra-household analysis in cases where women's and men's livelihoods are affected differently and have different preferences for restoration or compensation.
55. The host communities (i.e., the communities living in the locations where the new settlement is to be prepared) need to be consulted previously regarding the resettlement plans.
56. For the community engagement, grantees shall follow the guidance established in MAR Fund's ESS 10, and in ESS 9 for matters specific to gender.

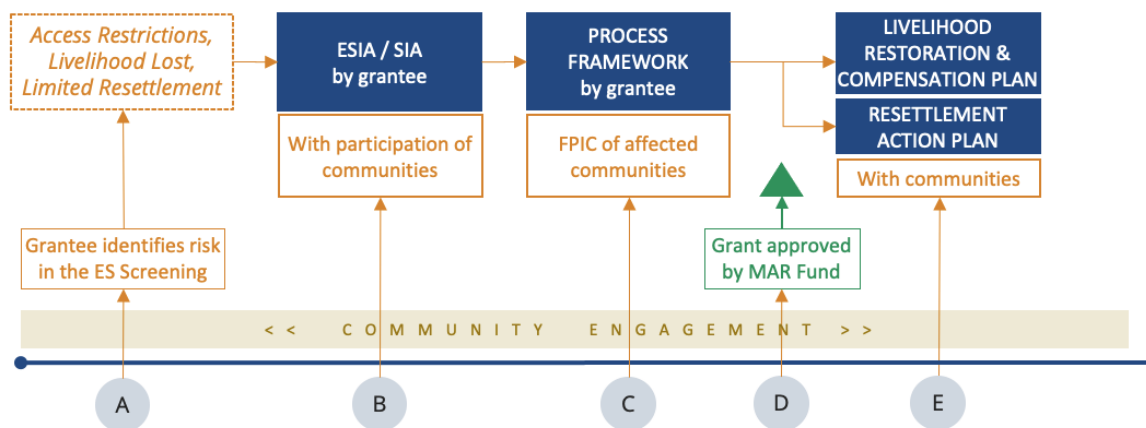
### 1.3.6 GRIEVANCE MECHANISM

57. According to ESS 1 and ESS 10, grantees must have in place a Grievance Mechanism to manage grievances and concerns of affected persons regarding the imposition of access restrictions, livelihood restoration, compensation, and relocation.
58. The Grievance Mechanism should be easily accessible through different channels. It shall also allow for the receipt and processing of confidential and anonymous complaints. Complaints will be handled by the grantees in a culturally appropriate manner. Responses should be discreet, objective, and sensitive to the individuals concerned. To this end, grantees shall follow the guidance set forth in MAR Fund's ESSs.

## 1.4 ACCESS RESTRICTIONS AND LIMITED RESETTLEMENT PROCEDURE

59. When the risks and impacts from access restrictions or limited resettlement are identified in the environmental and social assessment made by the organization proposing the project to MAR Fund, the following procedure is triggered (Figure 2: Access Restrictions - Livelihood Lost - Limited Resettlement Procedure).

Figure 2: Access Restrictions - Livelihood Lost - Limited Resettlement Procedure



- A. While conducting the environmental and social screening, the grantee determines that the project involves access restrictions to natural resources and/or limited resettlement. The grantee carries out the screening with the participation of potentially affected communities. If the resettlement is limited, the grantee classifies its proposal as Category B+. If the resettlement is large, the grantee classifies its proposal as Category A and shall abstain from presenting it to MAR Fund<sup>18</sup>.
- B. The grantee prepares a fit-for-purpose Environmental and Social Impact Assessment (ESIA) or a Social Impact Assessment (SIA), with the active participation of the affected stakeholders (i.e., the persons and the community most likely to be affected by access restrictions and resettlement).
- C. After the ESIA / SIA, the grantee prepares a Process Framework to assess, mitigate and manage impacts of access restriction and limited resettlement, as established in this ESS 5. The FPIC of the affected communities is necessary for the Process Framework.
- D. Upon completion of the Process Framework and verification of FPIC of the affected communities, MAR Fund may approve the proposed project. This approval includes a commitment to complete and implement the Livelihood Restoration and Compensation Plan or Resettlement Action Plan, as appropriate. These instruments are also subject to approval by MAR Fund.

<sup>18</sup> Activities including resettlement or more than 15 households of the same location will be deemed to include large resettlement, be in MAR Fund Exclusion List, and therefore they will not be subject to financing by the MAR Fund.

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- E. The grantee develops and implements a Livelihood Restoration and Compensation Plan or Resettlement Action Plan, as appropriate, in collaboration with the affected communities. The grantees and communities will monitor and evaluate the plan execution. The grantees will introduce corrective measures where necessary. The completion of livelihood restoration and resettlement plans, and the results of their implementation will be evaluated as part of an independent completion audit, which cost shall be included as part of the project budget.

### 1.4.1 PROCESS FRAMEWORK

- 60. All projects involving access restrictions, loss of livelihoods, and limited resettlement should prepare a Process Framework. It involves an ongoing process of engagement and collaboration with affected communities.
- 61. The Process Framework will include a description of the risks and impacts of the project. It will present the eligibility criteria for compensation, assistance, resettlement, and livelihood losses. It will also adapt the procedures set out in ESS 7 for obtaining FPIC from affected communities to local circumstances. The Process Framework will include a census of grantees or the ToR of the census if it has not been conducted yet as part of the ESIA/SEA. The Process Framework will satisfy the requirements set forth by the ESS 5, ESS 7, and ESS 10.
- 62. Access restrictions will be determined with the best available scientific information and traditional knowledge, through participatory processes where the affected communities will play a central role.
- 63. For projects involving access restrictions with impacts on livelihoods or income generation, the process framework shall set out the following: eligibility criteria for affected persons; compensation procedures and standards; additional measures related to livelihood improvement or restoration; provisions for monitoring; the consultation process; and grievance management.
- 64. For projects involving limited resettlement, in addition to the aspects mentioned in the previous point, the Process Framework shall set out relevant additional measures for the relocation of affected persons.
- 65. The above provisions (§ 63 and 64) also apply where the project includes land-use changes that restrict access to resources in legally designated protected areas or other common property resources on which local people may depend for their livelihoods. In these cases, the process framework shall establish a participatory process to determine

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appropriate use restrictions and establish mitigation measures to address adverse impacts on livelihoods that may result from such restrictions.

66. The process framework shall describe the roles and responsibilities for implementing the plans (the livelihood restoration and compensation plan or resettlement action plan, as appropriate). It includes roles and responsibilities of the grantee, any third-party organization contracted by the grantee to assist in the plan's implementation. It also includes the roles and responsibilities of the community representatives and other stakeholders. An indicative budget and a schedule are also required. Organizations submitting project proposals should note that the total cost of the plans must be included in the total estimated cost of the project.
67. The process framework shall include provisions for monitoring the implementation of the livelihood restoration and compensation plan or resettlement action plan and the timely adoption of any necessary corrective actions. The plan's implementation results will be evaluated as part of an audit of the project.
68. To identify who will be affected by restrictions on access to natural resources or resettlement, grantees will conduct a census to collect appropriate baseline socio-economic data. The census may be part of the ESIA/ SIA or may be conducted later if circumstances require. The census will help in determining who will be eligible for compensation and assistance and provide an inventory of land and other resources, as well as who will be eligible for compensation and assistance. The census will respect an eligibility cut-off date to discourage ineligible persons - opportunistic livelihood seekers. Information about the cut-off date should be disseminated widely throughout the affected area at different times and by various media, including written information, non-written forms (such as graphics and other visuals), audio using local radio stations, and social media.
69. The following indicative content for the Process Framework is suggested. It shall be adapted to the specific circumstances of each project. A Process Framework format is available in the Annex section of this document and in MAR Fund's website.
  - Brief description of the project
  - Definition of the affected area and of the areas used by the affected community (including social mapping, GIS mapping and official maps of protected areas -if there are any).
  - ToR for the census, including the cut-off date

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- Affected stakeholder analysis, including description of their customary approach to natural resources management
- A land / marine tenure assessment, including the formal / legal tenure and the informal, customary systems
- Description of the Protected Area management plan (if there is any)
- Description of the risks and anticipated positive and negative impacts
- Description of any conservation agreement with the affected communities
- Description and documentation of the community engagement process and the process to seek FPIC.
- Criteria for eligibility of beneficiaries and affected people
- Mitigation measures to restore livelihoods (or improve them)
- Roles and responsibilities
- Monitoring arrangements

#### 1.4.2 INSTRUMENTS RELATED TO LIVELIHOOD RESTORATION AND COMPENSATION, AND RESETTLEMENT

70. The Livelihood Restoration and Compensation Plan and the Resettlement Action Plan are the instruments to use after the Process Framework is approved. Formats of both Plans are presented in the Annex section of this document and are available on the MAR Fund website.

\*\* \*\* END OF ESS 5 \*\* \*\*

\*\*\*\* END OF DOCUMENT \*\*\*\*

