

METHODOLOGY

Diagnostic tool for assessing customary law applicable to wildlife

**SWM SUSTAINABLE
WILDLIFE
MANAGEMENT
PROGRAMME**

SWM METHODOLOGY SERIES: MARCH 2021



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1. INTRODUCTION TO THE TOOL

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 assessing customary law applicable to wildlife”**, here also referred to as annex 3.

This tool provides an opportunity to identify, understand and document the rights of indigenous peoples and local communities (IPLCs) to land¹ and associated natural resources, such as wildlife, as well as the multiple challenges associated with promoting the recognition of customary rights.²

Customary law is referred here as:

...a body of norms generated and enforced by a traditional, sub-state polity and governing the actions of its members... (that) may or may not be recognized by national law. Customary rules are best not regarded as informal, because they enjoy social sanction by a polity. They come with administrative institutions and powerful advocates and have deep cultural resonance (Bruce, 2007:13).

Within this context, customary law should be understood as complementary to the practices of IPLCs insofar as it relates to wildlife management. These may or may not be connected to traditional customs, but will commonly have been agreed to over time by the community as being admissible.

¹ Up to 50 percent of the world’s land is de facto managed by indigenous peoples and local communities (IPLCs) (Land Portal Foundation, 2019).

² Drawing on seminal work on tree tenure by Berry, Fortmann and Rocheleau (Berry 1988; Fortmann, 1985; Fortmann and Rocheleau 1985; Rocheleau and Edmunds, 1997), several insights into wildlife tenure can be drawn:

- Land and wildlife tenure are distinct but entangled.
- Rights to wildlife are multiple and overlapping.
- Wildlife tenure is flexible and dynamic.

To complete this tool, the national legal consultant (NLC) is expected to carry out a preliminary literature search on customary law (constitutional recognition, customary institutions and practices, taboos, etc.) and to operate in close collaboration with the site coordinator and team of the sites where the SWM Programme operates, as well as the national focal point and national authorities responsible for wildlife management.

The questions in the diagnostic tool aim to guide NLCs and local anthropologist and/or social scientist in developing a qualitative survey of customary law with respect to access to, management and use of wildlife resources in and around the sites where the SWM Programme operates. The developed questionnaire will need to be tested, revised and used multiple times to reflect the ethno-linguistic diversity of each SWM Programme site. Survey results and available written sources of information and data on customary law will be used to answer all annex 3 questions, and subsequently complete the matrix of land and wildlife tenure control.

This analysis will be used by the NLC to undertake a comparison of the statutory and customary rules regulating the different aspects of wildlife use along the relevant value chain. This will further inform the legal country profile where inconsistencies and contradictions with the applicable statutory laws and regulations will be identified, thus enabling better knowledge of customary law and practices in each country and at each SWM Programme site.

2. HOW TO USE THE TOOL

The NLC should follow various steps in order to adequately and efficiently complete the diagnostic tool.

At the outset the NLC should communicate with the site coordinator and the national focal point of the SWM Programme as well as local anthropologist and/or social scientist to verify whether/which questions in the diagnostic tool are applicable to their context. The site coordinator and national focal point will also be able to indicate which questions can already be answered based on available literature and/or relevant studies, existing public or private service contracts, etc., and using available knowledge and experience of members of the team of the area.

This will be followed by the development of a survey questionnaire by the NLC and local anthropologist and/or social scientist tailored to the target audience(s) by rephrasing (when needed) the questions in the diagnostic tool, as well as an associated protocol that will detail the sampling methodology (i.e. how many people will be interviewed, how they will be selected and/or stratified, how they will be approached, etc.). The survey questionnaire and protocol will be reviewed and approved by the site coordinator, the Result 1 team, and by an ethics review board. Thereafter, the planning and implementation of the field survey(s) will start, and the NLC and local anthropologist and/or social scientist, assisted by SWM Programme community facilitator(s), will conduct the survey in and around the sites where the SWM Programme operates. Please note that the survey may need to be translated into different local languages depending on the local context and the diversity of ethno-linguistic groups living in or around the SWM Programme sites.

The NLC and local anthropologist and/or social scientist will be able to populate the diagnostic tool with the results of the field survey, and develop a short narrative per sub-section summarizing the main findings in order to compare them, when and where relevant, with statutory law provisions. This is made easier by the fact that annex 3 has a similar structure to annex 2b.

For each interview, the NLC and local anthropologist and/or social scientist will need to fill out the diagnostic tool, including the following data:

Country/Site:	Department:	
Village:	Size/number of inhabitants (men/women):	
Ethnic group/clan:	Language(s) spoken:	
Group:	Name of group chief/leader:	
Name of investigator:	Date of survey:	GPS reference:
Notes/source(s): Additional observations based on the customary law survey and/or other oral and/or written sources of information including archival materials, anthropological monographs, published articles etc. Questions in the diagnostic tool aim to establish if and how customary rules provide criteria, limitations, requirements and procedural mechanisms to use and manage wildlife resources.		
Firstcomers = Original families/clans to settle in a specific territory		
Latecomers = Families/clans who have moved into a specific territory at a later date (based on Lentz, 2005)		

This identifier information needs to be kept separate from the data/answers. This will ensure that any sensitive information cannot be easily connected to the community, ethnic group or clan.

3. HOW TO USE THE TOOL'S RESULTS

After completion of the “diagnostic tool for assessing customary law applicable to wildlife” (annex 3), the NLC may use the “**matrix of land and wildlife tenure control**” (hereafter “the matrix”, Figure 1) and the “**conceptual framework for analysing changes in access in wildlife resources**” (hereafter “the conceptual framework”, Figure 2) to address both the complexity of overlapping rights to wildlife and the process for negotiating them.³

The matrix distinguishes between an **operational** level of rights (access to and withdrawal of wildlife resources) and a **collective-choice** level of rights (management, exclusion and alienation of wildlife resources).⁴ It should help to disentangle the bundle of rights to the same resource by linking it with the social organization of the management of the resource.⁵ However, the matrix provides a description of the result of a process of appropriation at a specific point in time and not how the process works.

To focus on processes and negotiation, the concept of “**ability**” instead of “**right**” should be emphasized, and an analysis of the **bundle of powers**⁶ that enables people to control, maintain, or gain access to wildlife resources should be conducted.⁷

³ Based on Rousseau, Gautier and Wardell, 2017.

⁴ Based on Schlager and Ostrom, 1992.

⁵ Based on Le Roy et al., 1996; 2011.

⁶ In this approach, power resources can be seen as assets, abilities, or situations which enable or constrain actors in the power relationships. Recent research has also highlighted the importance of relative customary privilege in determining the outcomes of customary property rights reforms (Honig, 2017).

⁷ Based on Ribot and Peluso, 2003.

In order to analyse changes in access to wildlife resources, it is also necessary to understand the **broader (and historical) context**, which helps explain the changing power resources available to actors, and which affect power relationships and consequently, access. This may include diverse factors such as constitutional and legal reforms, patterns of migration and the emergence of new technologies, or new regional and global markets.

The use of the matrix and the conceptual framework will assist in developing a better **qualitative** knowledge of the social organization by different local communities to help understand the powers that enable particular groups living in and around each SWM Programme site to control, maintain or gain access to wildlife resources. It will help in identifying trends such as growing privatization of hunting rights due to exclusion associated with land sales.

Figure 1. Matrix of land and wildlife tenure control

Appropriation mode (across)		1	2	3	4	5
		Undifferentiated tenure	Prioritized tenure	Specialized tenure	Exclusive tenure	Absolute tenure
Management mode (down)		Access	Access Withdrawal	Access Withdrawal Management	Access Withdrawal Management Exclusion	Access Withdrawal Management Exclusion Alienation
	A	Public common to all	A1	A2	A3	A4
B	External common to N groups	B1	B2	B3	B4	B5
C	Alliance common to two groups	C1	C2	C3	C4	C5
D	Internal common within one group	D1	D2	D3	D4	D5
E	Private for one person or group	E1	E2	E3	E4	E5

Source: Rousseau, Gautier and Wardell, 2017, based on: Schlager and Ostrom, 1992; Benjaminsen, 2002; Le Roy et al., 1996; and Le Roy, 2011.

Glossary:

Operational level property rights:

Access: The right of access to land property owned by the state, private concession holder or community.

Withdrawal: The right to use and benefit from (i.e. extract) a resource (“droit de prélèvement”) for subsistence and/or commercial purposes.

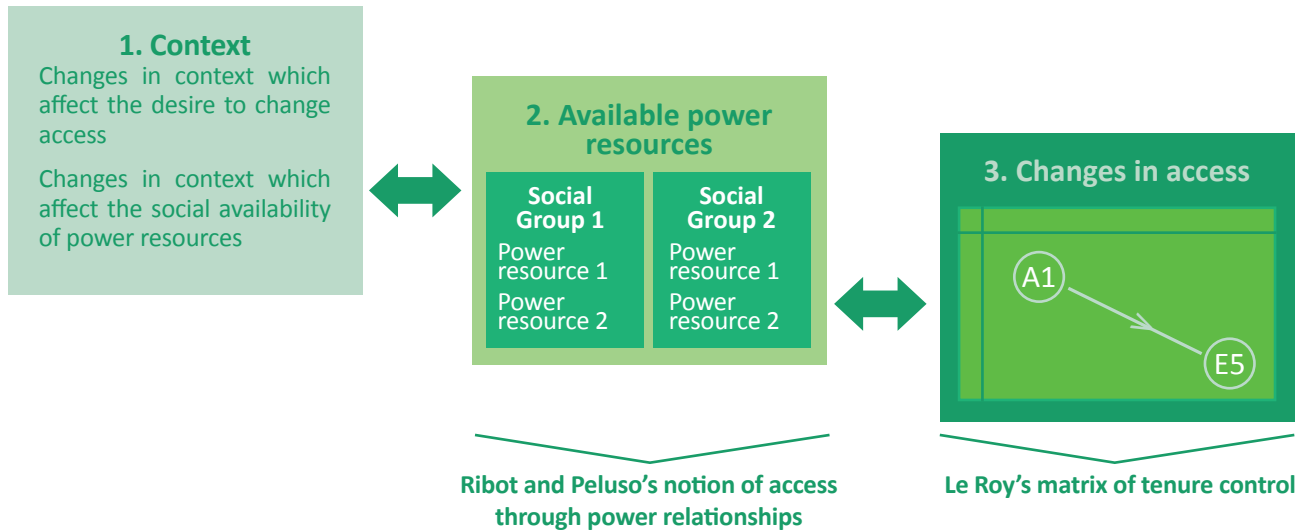
Collective choice action:

Management: The right to regulate the conditions of use of a resource and/or changes that may be needed to improve how the resource is used/managed.

Exclusion: The right to legitimately prohibit access to a resource by third parties. Allows the property owner/right holder to limit who may, or may not enter the property or use a resource.

Alienation: The right to transfer access and usage rights, either permanently or temporarily, to third parties. This may involve the full or partial sale, rent, transfer or inheritance of landed property or the rights of exclusion to, and management of a resource.

Figure 2. A conceptual framework for analysing changes in access to wildlife resources



Source: Rousseau, Gautier and Wardell, 2017

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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).

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SWM-programme@fao.org
www.swm-programme.info

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