

National Contact Point of Switzerland

Initial Assessment

Specific Instance regarding the World Wide Fund for Nature International (WWF) submitted by Survival International Charitable Trust

Berne, 20 December 2016

1 Submission

The National Contact Point of Switzerland (henceforth referred to as “Swiss NCP”) received a written submission on 19 February 2016 to consider a specific instance under the OECD Guidelines for Multinational Enterprises (OECD Guidelines) regarding the World Wide Fund for Nature International (henceforth referred to as “WWF” or “responding party”), which is headquartered in Gland, Switzerland. The specific instance has been raised by Survival International (henceforth referred to as “submitting party”).

The submission concerns the rights of the Baka people of southeast Cameroon related to the environmentally protected areas which the government of Cameroon has introduced with the financial and logistical support of WWF, but according to the submitting party without the free, prior and informed consent (henceforth referred to as “FPIC”) of the Baka. As a consequence, the Baka has been denied or seriously curtailed access to their traditional territories and natural resources on which they depend (the ‘Land Issue’). The submitting party further states that the Baka people have been subjected to violent abuse by the ecoguards and other law enforcement officials who patrol the protected areas with WWF’s support (the ‘Ecoguard Issue’).

The submitting party claims that the responding party has violated the OECD Guidelines by failing to conduct a due diligence and not making its support for the demarcation of the protected areas conditional upon the FPIC of the Baka. Moreover, WWF should have supported ecoguard patrols only if effective steps were taken to ensure that the patrols focused on commercial poachers rather than Baka hunting for subsistence, and that ecoguards should be held accountable if they used or threatened violence against the Baka. The result of the non-intervention of WWF has been a denial of Baka rights to their land and natural resources, and a conflict with the governmental forces.

According to the submission, the development and management of protected areas in southeast Cameroon has required significant expenditure and expertise with WWF being the government’s most important source of funds and logistical support. As a consequence, the protected areas have depended and continue to depend heavily on WWF, which has been able to set the agenda and determine priorities. The submitting party further states that the Ministry of Forests and Wildlife in Cameroon describes WWF as the “joint manager” of each of the parks of the Jengi Southeast Forest Program¹. It also mentions that WWF has regarded ecoguards as crucial to its operations, and thus established its own Wildlife Law Enforcement Programme in Cameroon. Furthermore, WWF until the mid-2000 organized workshops to train ecoguards about wildlife law and criminal prosecution and supported the deployment of a

¹ The Jengi programme is located in the extreme southeast of Cameroon. It comprises three national parks Lobéké, Boumba-Bek, Nki and the Ngoyla Mintom forest block.

heavily armed military unit called the *Bataillon d'Intervention Rapide* on anti-poaching patrols. Ecoguards were also supported financially and logistically by WWF.

In the view of the submitting party, the responding party should fund an independent consultation of the Baka in which they can express their own views on the way forward and ensure that in future the Baka have an effective say in decisions that affect them, and can protect themselves against physical and other forms of abuse. Consequently, the WWF procedures in order to respect the human rights of the Baka should be revised.

2 Alleged Violations of the OECD Guidelines

In the submission, the submitting party claims the violation of the following recommendations of the OECD Guidelines:

2.1 Failure to Conduct Due Diligence and to Engage in Consultation with the Communities directly affected (2000 and 2011 OECD Guidelines²)

According to the submitting party, the responding party should have known, that its support of the demarcation of the protected areas and the deployment of ecoguards to police them would result in adverse human rights impacts such as the loss of the customary rights of the Baka. The fact that the responding party did not conduct a due diligence and did not make its support conditional upon the FPIC of the Baka was a violation of the 2000 and the 2011 OECD Guidelines:

2011 OECD Guidelines, Chapter IV, Human Rights, Paragraphs 4 and 5:

[...] Enterprises should within the framework of internationally recognized human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

4. Have a policy commitment to respect human rights.

5. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.

2000 and 2011 OECD Guidelines, Chapter VI, Environment, Paragraph 2b:

Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards, take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development.

In particular, enterprises should:

2b. Engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise and by their implementation.

² The OECD Guidelines were updated over the period 2010–2011 with the updated 2011 Guidelines coming into effect on the 25 May 2011.

2.2 Failure to Respect Human Rights, to Avoid Causing and Contributing to Adverse Impacts and to Address Adverse Impacts (2000 and 2011 OECD Guidelines)

The submitting party considers that the responding party has failed to respect human rights under the OECD Guidelines by not having taken account of human rights impacts when taking its decision to support the demarcation of the protected areas, by not having put in place an appropriate human rights policy and by its subsequent failure to conduct ongoing and adequate human rights due diligence.

Furthermore, the submitting party contends that WWF's support of the ecoguard patrols and the *Bataillon d'Intervention Rapide*, which led to violent abuse of the Baka, without having taken effective steps to ensure that the patrols focused on commercial poachers rather than Baka, and that ecoguards were held to account if they used or threatened violence against the Baka, means that under the 2011 OECD Guidelines, the responding party has failed in its responsibility to avoid contributing to adverse human rights impacts and to address such impacts when they occur:

2011 OECD Guidelines, Chapter IV, Human Rights, Paragraphs 1, 2, 3 and 6:

[...] Enterprises should within the framework of internationally recognized human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

- 1. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.*
- 2. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.*
- 3. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.*
- 6. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.*

3 Expectations of the submitting party regarding the Swiss NCP proceedings

Since 2014 the submitting party has engaged in particular with the WWF Central Africa Regional Programme Office in Cameroon and WWF International in Switzerland mainly by correspondence on the respect of the human rights of the Baka. According to the submitting party, WWF commissioned an investigation into some of the allegations of violent assaults against the Baka in 2015, but did not respond to the requests of the submitting party for a copy of the report.

Therefore, the submitting party requests that the Swiss NCP offers its good offices for mediation between the responding and the submitting party. The purpose of the mediation would be, first, to identify how WWF could put in place a mechanism to monitor future compliance with the WWF Statement of Principles on Indigenous Peoples and Conservation³ and the OECD Guidelines. The mechanism would need to ensure that any future project likely to have a major impact on the Baka proceeds only with their genuine FPIC. Secondly, the submitting party would also like WWF to place more emphasis on the development of community conservation zones to be managed by the Baka and to push for legal recognition

³ Cf. www.worldwildlife.org/publications/wwf-statement-of-principles-on-indigenous-peoples-and-conservation; 1997, reaffirmed in 2008

of their rights to this land. Specifically, the submitting party would wish to address the following issues regarding the land and the ecoguards:

3.1 Land Issue

- Assessment whether and on what terms the Baka might be prepared to give their free and informed if not their prior consent to some or all of the existing protected areas;
- Provide the Baka with financial and other assistance they require to negotiate suitable terms with the government if the Baka are prepared to give their FPIC on suitable terms;
- Withdrawal of further support for the protected areas if the government rejects the proposed terms;
- Implementation of this process by a body independent from WWF which is supplied with participatory maps prepared by the Baka and WWF and with resources to commission any further mapping that may be required.

3.2 Ecoguard Issue

- Consultation of the Baka about reducing the risk of abuse by ecoguards or the military unit *Bataillon d'Intervention Rapide* (e.g. as part of an FPIC exercise) and discussion of the introduction of safeguards against ecoguard abuse and WWF's role therein;
- Monitoring of ecoguard conduct by WWF until the safeguards have been put in place;
- Monitoring of the safeguard system by an independent person with adequate resources and power;
- Organisation of workshops with the Baka to explain the new safeguard system.

4 Statement of the responding party

On 1 September 2016, the responding party submitted a written statement to the Swiss NCP concerning the issues raised in this specific instance.

In its communication, the responding party emphasizes its commitment to respecting and promoting internationally accepted human rights standards in its conservation work, and to ensure that nature conservation activities have positive impacts for indigenous peoples and local communities. Furthermore, the responding party states that experience from many years of direct work with indigenous peoples assisted WWF to take a pioneering role in the development of a specific and sympathetic policy on indigenous peoples for WWF and the conservation sector generally. The responding party works continuously to ensure that WWF respects rights and encourages other actors to do so.

In practice, the responding party is required to work in a wide diversity of settings, including some where there is limited official recognition and respect for indigenous rights, where extreme marginalization and difficult demographics or politics present particular challenges. According to the responding party, the submission takes little account of the considerable and special challenges facing recognition of indigenous rights and implementation of the international indigenous rights agenda in southeast Cameroon. Furthermore, the submission does not take account of the complexity of the zoning process which also brought new areas under community control and imposed limits as well as community focused obligations on existing concessionaires. According to the responding party, the actual livelihood and access impacts would need careful study that also takes account of the impacts of population increases and alternative scenarios of the impacts of the destruction or degradation of forest in the absence of protection.

Moreover, the responding party states that the submission does not take into account the extensive consultations undertaken prior to and still continuing during the establishment and operation of the Jengi projects with the Baka which resulted in significant amendments of the projects. A particularly intense phase of the consultation process took place from 1997 to 2002

and was during this period mainly conducted by an experienced development agency⁴. According to the responding party, the submission does not note that the Jengi projects had specific socio-economic objectives beyond the creation of protected areas or that the consultative processes in most respect fulfilled the still being outlined requirements of FPIC. The efforts of the responding party to prevail on the government of Cameroon to formalize and extend the requirements of FPIC were recently commended by the UN Special Rapporteur as an example of best practice by international environmental NGOs⁵.

Regarding the ecoguards' operations, the responding party states that WWF has facilitated the provision of human rights training to ecoguards and the employment of Baka ecoguards since 2006. WWF does also attempt to verify credible allegations of instances of abuse coming to its attention and has taken up instances of verified abuse with the Cameroonian authorities. It has made clear that it does not tolerate abusive ecoguard behavior towards the Baka. WWF specifies that the majority of incidents raised in the specific instance occurred in the period 2009–2013 of turmoil characterized by security concerns, increased availability of military grade weaponry, related insurgency in the Central African Republic and subsequent refugee emergency, and the withdrawal of other international agencies from the area. The increased instability and militarization together with the 2007–2009 global financial crisis meant that WWF was from 2010 the only remaining international partner of the agencies originally involved in the Jengi Southeast Forest Program. Currently, WWF engages in support for a ministry review of the conduct and use of ecoguards. Furthermore, WWF's initiatives under its indigenous commitments include complementing existing fraud prevention and complaint mechanisms with a new Project Complaints Resolution Process and finalizing Guidelines on Prevention of Restrictions of Rights and Involuntary Relocation and Resettlement of indigenous Peoples, Tribal and Local Communities.

In its written response to the draft report on the Initial Assessment sent on 9 December 2016, the responding party recalled that it did not agree with several statements included in the submission. It pointed out that WWF was not a joint manager of any national park in Cameroon and that its influence on the Cameroonian government was limited. Even if WWF Cameroon provided advice to the Ministry of Forests and Wildlife to ensure the protection of natural resources, it was not able to set the respective agenda and determine priorities. It also explained that the deployment of the *Bataillon d'Intervention Rapide* (BIR) was a decision by the Cameroonian government, on which WWF had no influence. Moreover, WWF did not provide logistical or financial support to the BIR. The responding party also stated that it has consistently been and continues to be open to dialogue in order to contribute to the furtherance of local communities' rights. Since 2014, WWF has invited the submitting party on various occasions to meet and join its efforts in furthering the rights of the local community on the ground in Cameroon, with the participation of the local actors. However, these invitations have been refused.

⁴ Deutsche Gesellschaft für Internationale Zusammenarbeit

⁵ Report of the Special Rapporteur of the Human Rights Council on the rights of the indigenous peoples, Victoria Tauli-Corpuz, 29 July 2016, Paragraph 48 (cf. www.un.org/en/ga/search/view_doc.asp?symbol=A/71/229).

5 The proceedings of the Swiss NCP up to date

Since the receipt of the submission on 19 February 2016 the Swiss NCP took the following steps:

- Written confirmation to the submitting party to acknowledge receipt of the submission on 22 February 2016.
- The submission was forwarded to the responding party on 22 February 2016. Preliminary discussion by phone with the responding party in order to explain the Swiss NCP proceedings on 3 and 8 March 2016.
- On 21 March 2016, according to the Specific Instances Procedure of the Swiss NCP⁶ an ad hoc working group was constituted, including representatives from the State Secretariat for Economic Affairs (SECO), the Federal Department of Foreign Affairs (Human Security Division and Swiss Development Cooperation) and the Federal Office for the Environment. This working group is involved in all steps of the procedure of the specific instance.
- On 21 March 2016, the ad hoc working group of the Swiss NCP held a meeting with the responding party to inform them about the procedure of the specific instance. The responding party informed the NCP about its intention to contact the submitting party in order to try to resolve the issues raised in the submission outside the OECD NCP system.
- On 17 May 2016, the Secretariat of the NCP discussed by phone with the responding party regarding the Swiss NCP proceedings.
- On 9 June 2016, on the occasion of the OECD Global Forum on Responsible Business Conduct in Paris, informal exchange of the NCP Secretariat with the responding party on its efforts to resolve the issues raised outside the NCP system.
- On 22 July 2016, the Secretariat of the NCP discussed by phone with the submitting party regarding the state of play of the discussions between the two parties and gave explanations on the Swiss NCP proceedings.
- On 29 July 2016, the Secretariat of the NCP answered questions from the responding party regarding the Swiss NCP proceedings by phone.
- On 1 September 2016, the Swiss NCP received a detailed written statement by the responding party in response to the submission. The statement was forwarded to the submitting party on 6 September 2016, which commented in writing on 16 September 2016.
- On 11 October 2016, the Secretariat of the NCP discussed the state of play of the elaboration of the Initial Assessment with the responding party by phone.
- On 18 November 2016, the NCP sent its draft report on the Initial Assessment to both parties for comments on possible misrepresentations of factual information. The submitting and the responding party responded by letters dated 28 November respectively 9 December 2016.

Upon request of the responding party and in order to provide the parties an opportunity to possibly resolve the issues raised in the submission outside the NCP system, the NCP agreed in March 2016 to suspend the Initial Assessment. In September 2016, the NCP continued the Initial Assessment after being informed by the responding party that an agreement between the parties outside the NCP system had not been possible.

⁶ Cf. https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/NKP/organisation-und-kontaktaufnahme.html

6 Considerations and decision of the Swiss NCP

Based on the Procedural Guidance to the OECD Guidelines and the Specific Instances Procedures of the Swiss NCP, the Swiss NCP considered the following points in its Initial Assessment:

a) Identity of the parties concerned and their interest in the matter

The Swiss NCP comes to the conclusion that the submitting party has provided sufficient information regarding their interest in the issues raised. The submitting party is a non-governmental organisation headquartered in London, United Kingdom. The charitable organization supports tribal peoples around the world.⁷ Since 2014 the submitting party has been engaged in an exchange of letters in particular with the WWF Central Africa Regional Programme Office in Cameroon and WWF International in Switzerland on the respect of the human rights of the Baka.

b) Responsibility of the Swiss NCP

A specific instance must be raised in the country in which the alleged breach occurred. If this country is not a signatory state of the OECD Guidelines and therefore does not have its own NCP, the issue should be raised in the country where the multinational enterprise has its headquarters. The Swiss NCP is competent for this specific instance because Cameroon is not a signatory state of the OECD Guidelines and WWF International, which is responsible for WWF operations in Cameroon, has its headquarters in Gland, Switzerland.⁸

c) Applicability of the OECD Guidelines to the responding party

The OECD Guidelines do not provide a precise definition of the term “multinational enterprises”. However, they state that these include enterprises in all sectors of the economy and that ownership may be private, State or mixed. In addition, they usually comprise companies or other entities established in more than one country and so linked that they may coordinate their operations in various ways⁹.

The OECD Guidelines expressly establish legally non-binding principles and standards for responsible business conduct, which is generally understood as the responsibility of entities involved in business or commercial activities. The key question should therefore be whether an entity is involved in commercial activities, independently of its legal form, its sector of activity or its purpose (profit or non-profit). Whether an entity can be considered to have commercial activities, should be decided by the competent NCP through a case-by-case analysis based on the concrete circumstances.

WWF International is an independent foundation under Chapter 3 of the Swiss Civil Code, registered in the Commercial Register of the Canton of Vaud. Under this law it is recognised as a non-governmental and non-profit making foundation. WWF International is headquartered in Gland, Switzerland, and acts as the secretariat for WWF's global organization. Its role is to lead and coordinate the WWF network of offices in more than 80 countries around the world, through developing policies and priorities, fostering global partnerships, coordinating international campaigns, and providing supportive measures.¹⁰ The WWF network employs around 6,200 full time staff and has dedicated around USD11.5 billion to charitable activities like conservation projects since its foundation in 1961.

⁷ Cf. www.survivalinternational.org/info

⁸ WWF operates in Cameroon through its Central Africa Regional Programme Office (CARPO), which opened an office in Cameroon in 1990 and signed its first agreement with the Government in 1992, but is not a separate legal entity.

⁹ OECD Guidelines, Chapter I, Paragraph 4.

¹⁰ Cf. wwf.panda.org/who_we_are/organization/

In the case at question the Swiss NCP makes the following considerations based on the OECD Guidelines:

- WWF International leads and coordinates the activities of the WWF network of offices in more than 80 countries around the world. In the present case, WWF International in particular works together with the WWF Central Africa Regional Programme Office which is responsible for Cameroon and also located there. WWF International ensures their compliance with its policies and procedures. Therefore, it has international operations and a multinational scope.
- Unlike other enterprises, WWF International's operations may not *per se* be qualified as being of commercial nature. Its status as a multinational enterprise under the OECD Guidelines must therefore be established in a case-by-case analysis based on the concrete circumstances.
- WWF's approach to conservation is to a certain extent market based and it undertakes commercial activities (e.g. income of the WWF network from royalties as well as from other trading activities). WWF for example sells collectors' albums and the panda emblem for more environmentally friendly products. This would not be possible without projects such as the ones in southeast Cameroon which are part of its activities to protect the environment. Therefore, WWF's involvement in the establishment and maintenance of protected areas in southeast Cameroon can also be considered as activities of commercial nature, to which the OECD Guidelines are applicable.

Based on these considerations, the Swiss NCP concludes that in the particular case of the present submission the OECD Guidelines apply to the responding party.

d) Scope of the OECD Guidelines and materiality of the specific instance

The submission is material in the sense that it refers to alleged breaches of specific provisions of Chapters IV and VI of the OECD Guidelines. The submitting party has substantiated its submission by providing the necessary information for the NCP to consider the issues raised. Information provided by the submitting party about the situation of the Baka includes, among other information, a report of the University of Yaoundé I, WWF Cameroon and the International Union for Conservation of Nature, Cameroon on the resource use by the Baka and their customary rights¹¹.

The OECD Guidelines distinguish between impacts on matters covered by the OECD Guidelines including human rights through own activities¹² of the concerned enterprise and adverse impacts directly linked¹³ to the operations of the enterprise. The Swiss NCP considers that while the submitting party has referenced various violations of Bakas' rights in Cameroon, the role of possible other actors (e.g. the state of Cameroon) according to the different provisions of the OECD Guidelines will have to be further explored.

e) Legal context and parallel proceedings

The Swiss NCP will take into consideration ongoing parallel proceedings, including court rulings. According to the Specific Instances Procedures of the Swiss NCP, already concluded or ongoing parallel proceedings will not necessarily prevent the Swiss NCP from pursuing a specific instance. However, in each individual case the Swiss NCP assesses whether or not an offer to mediate would make a positive

¹¹ Mapping of Resource Use Area by the Baka Pygmies inside and around Boumba-Bek National Park in Southeast Cameroon, with Special Reference to Baka's Customary Rights, African Study Monographs, Suppl. 43: 45–59, March 2012.

¹² OECD Guidelines, Chapter II, Paragraph 11 and Chapter IV, Paragraph 2.

¹³ OECD Guidelines, Chapter II, Paragraph 12 and Chapter IV, Paragraph 3.

contribution to the resolution of the issues raised or if it would prejudice either of the parties involved in other proceedings. At this time, the Swiss NCP is not aware of any parallel legal proceedings between the responding and the submitting party covering the topics of the submission.

f) Contribution to the purpose and effectiveness of the OECD Guidelines

The role of the Swiss NCP is to offer a forum for discussion and to assist the parties concerned to deal with the issues raised. The submitting party has engaged in a mainly written exchange with the responding party prior to this submission during the last two years. The Swiss NCP considers that by accepting this specific instance and offering a confidential setting for discussions, it could foster the continuation of this previous exchange between the responding and the submitting party. Thereby, the NCP could contribute to a better understanding among parties and help them reach a mutually acceptable outcome concerning the issues raised with regard to the future situation of the Baka related to the engagement of WWF in Cameroon.

The Initial Assessment of the Swiss NCP results in the conclusion that the issues raised in this submission merit further consideration, and the Swiss NCP therefore accepts the specific instance. This conclusion should not be construed as a judgment of whether or not the corporate behaviour or actions in question were consistent with observance of the OECD Guidelines and should not be equated with a determination on the merits of the issues raised in the submission.

7 Further proceedings

The Swiss NCP will contact the parties in order to offer its good offices and ask for confirmation whether they are willing to accept this offer with the aim of reaching a mutually acceptable outcome.

The Swiss NCP will publish its report on the Initial Assessment on the Swiss NCP website.

If the parties reach an agreement and find a solution for the dispute or a further means of resolving the dispute, the Swiss NCP will make publicly available a final statement with the results of the proceedings. Information regarding the contents of the discussions and the agreement will only be recorded with the express consent of the parties involved.

If no agreement is reached or one of the parties is not willing to take part in the proceedings, the Swiss NCP will also make this information publicly available in a final statement. The latter will include a summary of the reasons why an agreement was not reached.

The Swiss NCP may draw up recommendations for implementation of the OECD Guidelines, which will also be included in the statement. In addition, in consultation with the parties, the NCP can envisage specific follow-up activities, for which the NCP will provide support following completion of the specific instance procedure.

Final statements are published on the Swiss NCP website and in the annual report by the Chair of the OECD Working Party on Responsible Business Conduct. Unless there is good reason not to do so (e.g. protection of individuals), the Swiss NCP publishes the names of the parties involved in its written statement. Before the statement is issued, the Swiss NCP gives the parties the opportunity to comment on a draft statement. If there is no agreement between the Swiss NCP and the parties about the wording of the statement, the Swiss NCP makes the final decision.

The Swiss NCP requests parties concerned to agree to maintain confidentiality during the further proceedings. In order to establish an atmosphere of trust, the OECD Guidelines foresee

that no information regarding the content of the proceedings may be shared with third parties or supporters of the complaint. If sensitive business information is provided or discussed during the meetings of the Swiss NCP, special requirements concerning the treatment of confidential information can be agreed upon by the parties involved in this specific instance. The NCP informs the parties that it reserves the right to stop the proceedings if one or other of the parties does not respect this confidentiality. Even after the proceedings have finished, parties concerned remain committed to treat information received during the proceedings in a confidential way unless the other party agrees to their disclosure.