SURVIVAL INTERNATIONAL CHARITABLE TRUST

Complainant

v

THE WORLD WIDE FUND FOR NATURE

Respondent

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SPECIFIC INSTANCE

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I Introduction

1. Survival International has lodged this Specific Instance against the World Wide Fund for Nature (“WWF”) under the OECD Guidelines for Multinational Enterprises. For the reasons set out below we submit that WWF has failed its duty under the Guidelines to respect the human rights of the Baka “Pygmies”\(^1\) of southeast Cameroon, and that this failure has significantly contributed to the desperate predicament in which the Baka now find themselves.\(^2\)

2. As the global movement for tribal peoples’ rights Survival International has tried to persuade WWF in correspondence that it must do far more to help the Baka, but has made very little progress. The Baka human rights NGO, Okani, has fared no better. Its requests for copies of the management plans that WWF has helped to devise, its partnership agreement with the Government of Cameroon and a number of other key documents have all been ignored.\(^3\) A formal commitment to “ensure that all relevant information developed through [partnerships with governments] is shared with the appropriate representatives of indigenous peoples” appears to count for very little.\(^4\) In early 2015 WWF did commission an investigation into some of our allegations of violent assaults against the Baka, but has failed to respond to our requests for a copy of the report.

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1 This is a term that many Baka consider offensive and prefer to avoid.
2 See Annex I.
3 See page 60 of the Bundle.
4 Article 32 of the WWF Statement of Principles [1997]
3. These and other factors have persuaded us that a more formal intervention is now required before WWF is likely to fully acknowledge its responsibilities to the Baka. We ask the NCP to use its good offices to bring this about.

4. It should urge WWF to fund an independent consultation of the Baka in which they can express their own views on the way forward. It will be especially important to ensure that in future they have an effective say in decisions that affect them, and can protect themselves against physical and other forms of abuse. WWF procedures will also require reform so that it can “know and show,” as it cannot at present, that it respects the human rights of the Baka.

5. We have lodged the Specific Instance with the Swiss National Contact Point because Cameroon does not have an NCP, and because the legal responsibility for WWF operations in Cameroon rests with WWF in Switzerland.⁵ We have lodged in Survival’s name because the Baka lack the resources to file a complaint of their own.⁶

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⁵ 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 CARPO is not a separate legal entity.

⁶ We took a similar course against a British company named Vedanta Resources plc which had threatened to mine tribal land in India. See: http://webarchive.nationalarchives.gov.uk/20121205150610/http://www.bis.gov.uk/policies/business-sectors/green-economy/sustainable-development/corporate-responsibility/uk-ncp-oecd-guidelines/cases/final-statements
6. Our complaint is based upon field research in Cameroon and upon extensive discussions with Baka, local NGOs and anthropologists familiar with the area, as well as with other interested parties. For reasons of space, we have not identified all our sources and have omitted references to the statutory enactments and other documents from which we quote. We will provide these on request, but in the meantime attach a small bundle of core documents. We have anonymised some of the witnesses’ statements included in the bundle, to avoid possible repercussions if their names are disclosed. If this is likely to cause difficulties, we are happy to discuss with the NCP how these might be overcome.

7. We also attach various annexes which we hope will introduce the NCP to areas with which it may not be familiar. These provide brief accounts of the Baka and of their rights under international law; of the network of protected areas in southeast Cameroon and of the national legislation which applies to it; and of the relevant provisions of the OECD Guidelines and their application to WWF.

8. We can elaborate on any or all of these issues if and when asked to do so.

II Summary

9. The first limb of the complaint concerns the protected areas (or “PAs”) that the Government has introduced to southeast Cameroon with the vital support of WWF, but without the free prior and informed consent (or “FPIC”) of the Baka. These have denied or seriously curtailed Baka access to the traditional territories and natural resources on which they depend (“the Land Issue”).

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7 See page 1 of the Bundle for a map of protected areas in southeast Cameroon, and page 2 for a map of Baka land in Cameroon.
10. The second limb is to do with the violent abuse to which Baka have been subjected by the ecoguards and other law enforcement officials who patrol the PAs, with WWF’s equally crucial support (“the Ecoguard Issue”).

11. The two limbs are closely connected, in that the PAs would not have been created and the ecoguard force could not have established without WWF’s financial and logistical assistance. They are also linked by a common chain of events, in that:

(1) Since at least colonial times the Baka have depended for their subsistence on lands now incorporated into the PAs.

(2) The national laws under which the PAs were created made no allowance for this fact. On the contrary, they forbade the Baka any further access to their traditional lands and criminalised their use of the resources found there. Even traditional hunting is banned in PAs.

(3) These laws were enacted in violation of a host of international treaties by which Cameroon has agreed to respect Baka rights.

(4) The Baka were not asked for and did not give their FPIC to any of the PAs or to the curtailment of their customary rights.

(5) With no alternative means of subsistence, the Baka continued to depend upon the land and resources to which they had now been denied lawful access. For many Baka, the formal demarcation of their lands by park or reserve boundaries had little or no relevance anyway.

(6) The ecoguards who patrolled these boundaries regarded the Baka as inferior, and as an easier target than commercial poachers.

(7) The cumulative effect of these factors was to make violent conflict between Baka and ecoguards almost inevitable.
12. Although the Government of Cameroon is principally responsible for this state of affairs, WWF also bears a major responsibility because of the support it has provided the Government and because of its duty under the Guidelines to respect the human rights of indigenous peoples affected by its operations.

13. WWF itself spelled out the scope of this duty in a Statement of Principles on Indigenous Peoples and Conservation which it first made in 1997 and reaffirmed in 2008. This provides that:

(1) Prior to initiating conservation activities in an area, WWF will exercise due diligence to seek out information about the historic claims and current exercise of customary rights of indigenous peoples in that area [Principle 23]

(2) WWF will not promote or support ... interventions which have not received the prior free and informed consent of affected indigenous communities, and/or would adversely impact - directly or indirectly - on the environment of indigenous peoples' territories, and/or would affect their rights ...This includes activities such as... the creation of protected areas or imposition of restrictions on subsistence resource use" [Principle 30]

(3) In the context of its partnerships with.... national governments ... WWF will ensure that such partnerships do not undermine ... the basic human rights and customary resource rights of indigenous peoples [Principle 32].

14. If WWF had exercised “due diligence” it would have known or anticipated all of the matters summarised in Paragraph 10 above before the Ministry of Forests and Wildlife (MINFOF) formally demarcated the PAs. In accordance with both the Guidelines and its own Statement of Principles it should have made its support for the PAs conditional upon the FPIC of the Baka.

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8 This Statement of Principles is included at page 61 of the Bundle.

9 WWF is also a founding member of Conservation Initiative on Human Rights, through which it is committed to make “special efforts to avoid harm to those who are vulnerable to infringements of their rights and to support the protection and fulfilment of their rights within the scope of our conservation programmes.”
15. MINFOF was heavily dependent on WWF to bring its plans for the PAs to fruition and might well have agreed to seek the Baka's FPIC. It could only have expected to obtain this FPIC if it had revised its plans to ensure that Baka rights over their traditional territories were preserved. This in turn would have removed a key source of the conflict with the ecoguards.

16. When the effects of this conflict began to make themselves felt, WWF should have told MINFOF that it would continue to support ecoguard patrols only if effective steps were taken to ensure that the patrols focussed on commercial poachers rather than Baka hunting for subsistence, and that the ecoguards were held to account if they used or threatened violence against the Baka.

17. WWF did not do any of these things. It chose instead to press on with the establishment of the PAs and to place itself in the vanguard of the so-called “war” against the poachers. It took no effective steps to protect the Baka against this risks to which this war was likely to expose them.

18. The result has been a wholesale denial of Baka rights to their land and natural resources, and a head-on collision with the forces of “law and order.”

III WWF’s central role

19. The development and management of PAs in southeast Cameroon has required significant expenditure, and field personnel equipped with the appropriate knowledge and expertise. WWF has access to both, but the Government of Cameroon has access to neither. WWF has not disputed in our correspondence that it has been the Government’s most important source of funds and logistical support.
20. As a consequence the national parks, reserves and buffer zones established in southeast Cameroon have depended and continue to depend very heavily on WWF, which has been able to set the agenda and determine priorities. There is a clear “nexus” between WWF and the relevant acts and omissions of the Government of Cameroon.

Protected areas

21. As a consequence the national parks, reserves and buffer zones established in southeast Cameroon have depended and continue to depend very heavily on WWF, which has been able to set the agenda and determine priorities; and as WWF Deutschland volunteered in a letter to one of our supporters in October 2015, WWF still "oversees" each of the national parks with which this complaint is concerned.\(^{11}\) There is therefore a clear “nexus” between WWF and the relevant acts and omissions of the Government of Cameroon.\(^{12}\)

22. Among the “key achievements” of its Jengi Program WWF has listed the establishment of all three national parks in the region; the development of management plans for each park; the creation of a management committee for the Lobéké NP and of the community use zone in Lobéké. MINFOF’s literature describes WWF as the “joint manager” of each of the parks.

23. WWF was also responsible for the creation of a “management and communications infrastructure” for each park; of at least 10 of the 15 zones d’intérêt cynégétique (or “ZICs”) which surround the parks; of all 14 zones d’intérêt cynégétique à gestion communautaire ("ZICGCs" or “community hunting zones”); and of the Comités de Valorisation des Ressources Fauniques (or "COVAREFs") which administer the ZICGCs.

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10 See Annex II
11 See page 165 of the Bundle
24. WWF says it has “improved” the management plans for 23 forest management units, helped to set up two trans-boundary conservation initiatives, and been involved in a host of other conservation measures. WWF also developed a land-use plan for the Ngoyla-Mintom forest block which identified “a core conservation area” within the block. It was this plan which eventually led to the establishment of the Ngoyla Wildlife Reserve.

Support for ecoguards

25. WWF has regarded ecoguards as crucial to its operations, worked closely with them, and established its own Wildlife Law Enforcement Programme in Cameroon. It has organised workshops to train ecoguards about wildlife law and criminal prosecution and has actively supported the deployment of a heavily armed military unit called the *Bataillon d'Intervention Rapide* (or “BIR”) on anti-poaching patrols.

26. Ecoguards are supported financially by WWF, and often transported in WWF vehicles driven by WWF personnel to the villages or other places in which they have abused Baka “suspects.” They have even interrogated suspects in WWF-built facilities.

27. We understand that until the mid-2000s WWF recruited and trained the ecoguards itself, and that it transferred them into the employ of MINFOF only after repeated allegations that guards had engaged in physical assault, racist conduct and corruption. Despite this the Baka continued to run away when WWF vehicles approach, and to refer to the ecoguards as “dobidobi” (which derives from the letters WW).

28. The Lobéké Management Plan 2004-2010 confirms that throughout this period WWF guaranteed guards’ wages at Lobéké. We are informed that similar arrangements remain in place in all three parks and the reserve. WWF continues to take credit for the training and recruitment of ecoguards and of other government staff “in various aspects related to monitoring, law enforcement etc.”; for the construction and equipping of
control posts “to support law enforcement and surveillance operations”; and for “technical assistance” in the development and implementation of “law enforcement and anti-poaching activities” generally.

IV No land or resource rights

Forest Code

29. The core of the problem is the Cameroonian Forest Code 1994, to which the Forest Decree 1995 and the Wildlife Decree 1995 are both subordinate. The Code classifies PAs as “permanent” “state” forests, which has resulted in the effective expropriation of the customary property of any individual, family or community in the classified land.13

30. This means that the Code and ancillary legislation violate at almost every turn Cameroon’s international obligations to respect the land rights and resources of the Baka.14 The Code therefore also violates Cameroon’s own Constitution, which provides in Article 45 of that:

Duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement.

Management Plans

National Parks

31. It is by no means clear whether the law allows the Baka to exercise “usage rights” in a national park; but if it does, these rights will only arise if and to the extent that they are incorporated in a management plan for the relevant park.15

13 See Annex II
14 See Annex III
15 It is occasionally suggested that the Baka may also derive benefit from the so-called Mambele Convention. But this conferred no legally enforceable rights on the Baka in the parks, buffer zones, or anywhere else. Its sole purpose appears to have been to try to reduce conflict between the various users of land in the buffer zones and to combat poaching.
32. So far as we are aware, only the management plan for Lobéké has yet made any provision at all for the Baka. According to WWF, this resulted from an agreement apparently reached between MINFOF officials and a “consultative committee” in or around 2000 to gazette a community use zone in the Lobéké National Park. This process came after a decision by national park authorities in Yaoundé whereby national wildlife laws prohibited human activities in national parks. Acceptance by the government to gazette a community use zone in the national park was an unprecedented decision in the history of protected area management in Cameroon. This decision demonstrated the government’s commitment to engage in a people-centred conservation approach.

33. There appear to have been few if any Baka, however, on the “consultative committee.” It is unclear whether or how the Baka are said to have approved the “community use zone,” or precisely what rights they are said to have in it. The zone is said to cover only 32,000 hectares, or less than 15% of the Park. It is uncertain how many Baka communities consider that they have rights in the zone. We do not know whether the zone appears in the current management plan for Lobéké, because we have been denied access to a copy of it.

34. Our research indicates that in practice the Baka derive little benefit from the zone. They have told us that they can use it only with the prior written authority of the Conservateur, which is often difficult to obtain and is given only for a prescribed period. Only women are allowed to gather bush mangos, although they are vulnerable to attack by wild animals when they enter the Park unaccompanied.

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16 The same study reported that “The community park zone [in Lobéké] was made with the Baka in mind However it is uncertain who is using it and the WWF employee interviewed did not know where this zone is. It appears it is not very well defined” (Clay 2011: 63).
35. Other researchers have repeatedly confirmed that the demarcation of particular portions of the forest for specific uses is fundamentally at odds with Baka notions of territory and resources. They have also referred to the cultural and spiritual attachments which still bind the Baka to forest lands and traditional livelihoods, and to the lack of alternative economic opportunities available to them.

36. We have not seen the first management plans for Boumba Bek and Nki NPs because, remarkably, these are not public documents and WWF has said that we must ask the Government for copies of them. We have done so, without result.

37. It is clear, however, that the plans made no or no adequate provision for Baka rights inside either Park. On the contrary, a survey conducted by WWF in the Boumba Bek and Nki Parks between March 2006 and July 2007 (“the 2007 survey”)\(^\text{17}\)

\[\text{demonstrated vividly that the management plan for Boumba-Bek and Nki NPs should be adjusted sufficiently to the actuality of traditional use of land and resources by the Baka, and their customary rights.}\]

38. “Adjustments” are necessary because WWF chose to ignore Principle 23 of its own Statement of Principles when it prepared a first draft of the plan.\(^\text{18}\) The unsurprising result, to quote again from the 2007 survey, was:

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\(^{17}\) See page 86 of the Bundle.

\(^{18}\) Principle 23 requires WWF to “seek out information about the historic claims and current exercise of customary rights of indigenous peoples” in the area “prior to initiating conservation activities”: see Annex IV.
the unsatisfactory involvement of the Baka hunter-gatherers in the zoning process. During the process, the recognition of “human occupation of territory” was limited only to clear indicators of human inhabitance such as settlements, farming fields and fallows that can be identified by aerial photographs and satellite images. This method can distinguish a village area where almost all agro-pastoral activities are permitted to some extent, the non-permanent forest domain and areas where access is restricted by regulation, such as national parks and sport hunting zones. But this procedure can only take into account the land used by sedentary farmers, and the mode of occupation and exploitation by the semi-nomadic hunter-gatherers were largely invisible and ignored.

Aerial reconnaissance would not have detected Baka hunting grounds, for example, or their graves, semi-permanent settlements, and other important areas which are not visible from high above the forest canopy.

39. In an effort to win back for the Baka the right to continue at least some of the practices which the 2007 survey had found “essential” to their wellbeing, attempts were later made to “adjust” the management plans for the Boumba Bek and Nki NPs. In particular, in 2011 MINOF engaged a former WWF employee to revise a WWF draft plan and supposedly seek the Baka’s FPIC.

40. The Baka were in no position to give this, for at least two reasons:

(1) It was too late, because the Boumba Bek and Nki NPs had already been created and required management plans whether the Baka consented to them or not. They had nothing to negotiate, and could not give their “prior” consent to a project which was already in place.

(2) Since no study had been made of the social and cultural impact that the NPs were likely to have on the Baka, they could not give their “informed” consent either.

41. We understand that management plans for both Boumba Bek and Nki were formally approved in about May 2012. If either plan had made provision for the “usage rights” of the Baka it is difficult to understand why WWF should have been so reluctant to provide us with copies of them.
42. It is equally difficult to see why WWF should now claim only that it has “advocated” the inclusion of Baka rights in the management plans of the two Parks, if its advocacy had actually succeeded. We have been informed by a former WWF employee that the plans did not include any community zones for either Park, and none of the Baka to whom we have talked are aware of any zones.

43. Unless management plans are now produced and show the contrary, we invite the NCP to infer that neither plan makes any provision for the Baka, and that ten years after the creation of the two parks the Baka still have no or no adequate “usage rights” in either of them.

44. Subject to one qualification, there is unlikely to be any progress on this front until new management plans are adopted for Boumba Bek and Nki in 2017. It remains to be seen whether the new plans will refer to Baka rights, and if so in what terms.

45. The “qualification” is the draft Memorandum of Understanding which attempts to set out usage rights for the Baka in Boumba Bek. The parties to the MoU, if and when it is ever signed, will be MiINFOF and various Baka communities.

46. The formal status of the MoU is uncertain. Even if it is intended to have legal effect it is almost certainly unenforceable, because the current draft makes no attempt to define the “traditional rights” of the Baka to which it refers.

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19 See page 77 of the Bundle for a draft version of the MoU, produced in 2013.
47. It is unclear whether and to what extent the Baka have been consulted about or consented to its terms, or whether they have given any mandate to the organisation that is said to act on their behalf. Since the MoU would last only as long as the relevant management plan remained in place, it offers the Baka no security. They could still lose their rights at a moment’s notice, if MINFOF chooses to exercise its draconian powers under the Forest Code or the Wildlife Decree.

48. So far as we are aware, no management plan for the Ngoyla WR has yet been put in place.

The ZICGCs

49. The various ZICGCs have usually been divided into subsistence and sports hunting zones in “simple” management plans under the Wildlife Decree negotiated by the COVAREFs. These have significantly reduced the areas left to the Baka for subsistence hunting.

50. The COVAREFs are supposed to act for the benefit of the community as a whole, but in practice act only for the benefit of the Bantu elites who control them. They have little interest in the prime hunting territory in their zones, other than as a source of revenue from safari operators. The Baka have been powerless to resist the grant of concessions to these companies, because they are rarely represented on the COVAREFs and have no one to protect their interests.20

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20 Several independent studies confirm this: see, e.g., Poverty, Equity and Rights in Conservation: Technical Papers and Case Studies Joint ICUN-IUED Project [2005] at page 88 et seq. According to USAID, COVAREF committees “have often been hijacked by special interests.”
V No Free Prior and Informed Consent

51. The incorporation of Baka lands in the PAs required their FPIC because, as we have explained, it meant that they would no longer had lawful access to land and resources on which they it required: see the Endorois decision. This was also a requisite, of course, of Principle 30 of the WWF Statement of Principles. But FPIC was not obtained for any of the parks or for the wildlife reserve.

National Parks

52. WWF has claimed in correspondence that it “insisted on a high level of informed community consent for the creation of the three national parks in southeast Cameroon.”21 This claim does not bear serious scrutiny, because the only other parties to the discussions with government and conservation officials were local Bantu chiefs. They may have purported to speak on behalf of their communities but had no mandate from the Baka, who played very little part in the process. Bantu chiefs that we have interviewed have themselves complained that promises from these consultations have not been kept.

53. Our own research and that of other NGOs shows that most Baka were not even aware of the Government’s plans until after the parks had been officially launched, and that many are still largely ignorant of the various zones into which their lands have been divided. WWF’s Regional Coordinator has himself admitted that the Baka still “recognize no meaning in the distinctions” introduced by these zones. Even if they had given their consent (which they did not), it could not have been an “informed” consent.

54. The same Coordinator has highlighted an even more fundamental difficulty. When WWF first surveyed the area, he has frankly conceded, “the mode of occupation and exploitation by the semi-nomadic hunter-gatherers were largely invisible and ignored.”

21 See page 158 of the Bundle.
55. The Coordinator went on to explain that:

Beyond this technical shortcoming, one has to raise concerns regarding the feasibility of carrying out zoning in an area like south-eastern Cameroon, where people live in the forest that is a continuum consisting of farmlands, and hunting, fishing and gathering fields connected by a network of trails.

In addition, considering dimensions beyond the zoning code that governs the actual classification of the fields ... we realize that the zoning process did not guarantee an optimal involvement of the Baka in the process.

It was difficult for the zoning operation to take into account the specificities of the Baka who hardly understand French, rarely frequent public places, and are less inclined to frankly express their points of view in the presence of their Bantu brethren. Public notices must be written in French and published in the press, posted at the Senior Divisional and Sub-divisional offices, town halls and delegation in charge of forests in the region concerned Letters that convened awareness raising meetings with the local people must be addressed to village chiefs, who are the Bantu or other farmers. Despite efforts of the field teams to involve Baka people in the zoning process, given the above procedure of regulatory framework, the participation of Baka in the zoning process was very small.

56. These are the words of WWF’s most senior officer on the ground. They entirely refute the notion that the parks attracted a “high level of consent” from the Baka community. On the contrary the report of the 2007 survey makes clear that there was no “level of consent” at all, and that the Akwe: Kon Guidelines were simply ignored. Although the report related only the Boumba Bek and Nki NPs, there is no reason to suppose that different considerations apply to the Lobéké NP.

57. In any event, the Baka could only have given their FPIC to the creation of any of the parks if they had first been informed that:

(1) any customary rights that they had or thought they had over land within the boundaries of the proposed park or reserve would be automatically extinguished

(2) those rights would be replaced by “usage rights” in a management plan only if and to the extent that the Government chose to include them in the plan
(3) whatever the plan might say, MINFOF would have the power to “suspend” their usage rights temporarily or permanently

(4) appearances to the contrary notwithstanding, the Baka would receive no compensation for the extinguishment of their rights

(5) the Government had ratified human rights treaties which required or apparently required it to obtain their consent to its proposals

(6) WWF itself had made formal commitments

(i) to find out how the Baka currently used the lands that were to be included in the Parks, and about their historic claims to these areas; and

(ii) not to support the creation of PAs, or restrictions on subsistence resource use, which had not received the FPIC of the affected communities.

There is no evidence that the Baka were given any of this information.

Wildlife Reserve

58. By the time work began on the Ngoyla WR, there was a greater awareness of the need at least to be seen to have consulted the Baka. As a result WWF was made responsible for “specific consultations with Indigenous Peoples to ensure their free, prior and informed consent” to the creation of the reserve.
59. WWF held some 16 meetings with the Baka in August and September 2013, in which two Baka organizations were also involved. At those meetings the Baka asked that their usage rights, sacred sites and fields inside the proposed reserve should be protected, and that they should have a right to share in any profits that the reserve might generate.

60. Official committees met very shortly after these consultations had taken place and resolved that the reserve should proceed as originally planned, but that the “agro forestry band” that was to run on either side of the roads that skirt the reserve should be widened. They also said that the Baka’s customary rights inside the reserve should be “taken into consideration.”

61. Only time will tell whether and to what extent they are taken into consideration, because under Article 6 of the Decree the Baka can exercise only those usage rights as may eventually be “given” to them in a management plan. The Decree makes no provision for the Baka to share in reserve income.

62. It is difficult to conceive that the Baka would have given their FPIC to the Ngoyla WR if they had been told that that they would have rights in the reserve only when a plan was adopted, and then only to the extent that MINFOF considered it appropriate. There is no evidence that the Baka were told this, or about any of the other factors listed in paragraph 109. Any consent they gave cannot have been an informed one.

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22 These meetings followed hot on the heels of meetings held in July/August 2013 in about half of the 60 villages and hamlets in the Ngoyla-Mintom massif involving local Bantu and an unknown number of Baka.
VI Ecoguard abuse

63. If the formal demarcation of PAs for particular uses bears no relation to Baka notions of land use and occupation, takes no account of their cultural and spiritual attachments to the land, and offers them no alternative economic opportunities, it is hardly surprising that the Baka should have come into frequent conflict with the ecoguards and BIR personnel whose job it is to police zonal boundaries.

64. The ecoguards’ brief is to oppose the large-scale, commercial poachers who threaten the integrity of the PAs. They regard this as a thankless task, however, because the poachers are often better resourced than they are; and because even if they are caught, they are likely to have powerful friends to protect them. In an attempt to be seen at least to do something, ecoguards have often searched for an easier target. As the most economically and politically marginalized group in the country, the Baka have fitted the bill admirably.

65. Baka rarely have the means to record dates or names, and only a few incidents of ecoguard abuse are properly documented. Virtually every NGO which has had dealings with the Baka, however, has reported the ecoguards’ regular use of force against them, and a clear pattern has emerged.

66. Ecoguards are frequently said to raze to the ground any Baka camps they come upon in a PA, and to destroy or confiscate any property they are able to seize. They are said to often assault those Baka that they can catch, and to even threaten to kill them if they return.

67. In the villages outside the PAs there are regular complaints that ecoguards and Baka huts have been unlawfully searched and property seized. Baka have also claimed that they have been assaulted under interrogation, and several are even said to have died from their injuries.
68. We have ourselves received many accounts of violent abuse, and have included in the Bundle a chronology which identifies some of the better-known incidents.\textsuperscript{23} We also attach the statements of some eyewitnesses, one of whom has worked as a WWF consultant; reports from the Cameroonian press;\textsuperscript{24} the video testimony of Baka whom we interviewed in 2013 and 2014\textsuperscript{25}; and the accounts of others whom we interviewed during the same period and in 2015.\textsuperscript{26} Another video filmed by the Baka themselves speaks of the hardship they have suffered and describes incidents in which the “dobido” beat them and burned down their homes. At one stage a group of Baka act out a scene in which two hunters are caught and beaten with sticks.\textsuperscript{27}

69. The use or threat of force against Baka hunters is by no means confined to the national parks. In the huge ZICs close to the parks, safari companies to which the Government has granted hunting rights have been more than ready to use or threaten violence to protect their interests. Difficulties arise particularly where the Baka have not been made aware of ZIC boundaries or when concessions are in force. Confrontations with “professional” hunters have led many communities to live in a climate of fear. Safari operators have been known to evict Baka even from the ZICGCs on which they depend for subsistence, because they have acquired hunting rights there too.

\textsuperscript{23} See page 3 of the Bundle.
\textsuperscript{24} See page 50 et seq. of the Bundle.
\textsuperscript{25} \url{http://www.survivalinternational.org/films/baka-conservation} \url{http://www.survivalinternational.org/films/baka-wwf} \url{http://www.survivalinternational.org/films/baka}
\textsuperscript{26} \url{http://www.survivalinternational.org/news/10456} \url{http://www.survivalinternational.org/news/10564} \url{http://www.survivalinternational.org/news/10708} \url{http://www.survivalinternational.org/news/10943}
\textsuperscript{27} The Baka - hunters or poachers? - the film WWF doesn't want you to see. The video was initially withdrawn under pressure from WWF, which claimed to have evidence to refute the criticisms made of it. This evidence has never been produced, despite several requests. See page 11 of the Bundle.
70. It was on the basis of this and similar material that we stated in a letter to WWF in March 2014 that

In and around the Boumba Bek, Nki and Lobéké National Parks, the Baka people are a routine target of violence and intimidation, and sometimes of murder. They are victims of extortion. Their forest camps are regularly demolished and their belongings seized. Many live in constant fear, especially in the forest. They expect no help from the forces of law and order because their oppressors are often members of these forces – and especially of the Park ecoguards, aided and abetted by the BIR.

71. WWF has not challenged this account. On the contrary, it has explicitly accepted that:

There have undoubtedly been incidents of utterly unacceptable behaviour towards Baka and others by ecoguards and/or police and military – some appear to relate to underlying discrimination being taken to extremes, and some to the more militarised dynamic intruding into the area.  

72. The “more militarised dynamic” to which WWF referred is apparently the BIR, whose involvement in the PAs WWF has actively encouraged. This has taken Cameroon’s “guns and guards” approach to conservation to a new level, because the BIR is a heavily armed military unit and is almost wholly unaccountable for its actions.

73. It has joined the ecoguards in a series of “punch” operations which frequently target Baka villages. These are typically launched during the hours of darkness and without consulting the local authorities, and on both counts appear to fall foul of the Forest Code. Our enquiries confirm earlier reports that many Baka have been traumatised by the raids, and that in an attempt to escape them some have abandoned their villages altogether.

74. The risk of a further escalation of violence is likely to have increased with the issue of assault rifles in September 2015 to ecoguards at both Boumba Bek and Lobéké NPs.

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28 Email to Survival supporter, 9 July 2015 [see page 158 of the Bundle]
29 See, for example, page 46 of the Bundle.
75. The Baka lack the means to seek relief through the courts. Complaints to the COVAREFs achieve nothing, because they are powerless to intervene. Repeated reports of the torture and false imprisonment of Baka have passed largely unnoticed. Another mechanism is urgently required if ecoguards and BIR personnel are to be held to account when they misconduct themselves.

VII Breach of the Guidelines

Principles

76. Until 2011 WWF was expected to comply with the 2000 edition of the Guidelines, which did not spell out the duty to respect human rights in the detail now found in the 2011 edition. But the duty to respect human rights first introduced in 2000 has not fundamentally altered.\(^{31}\) We submit that the requirements explicitly set out in the current guidelines were necessarily implicit in the 2000 guidelines.

77. For example, an MNE could no more respect the human rights of a community in 2000 than it can now unless it first conducted human rights due diligence. WWF has itself recognised the need for due diligence since the adoption of its Statement of Principles in 1997.

78. It is also implicit in the 2000 Guidelines and explicit in the 2011 Guidelines that enterprises should conduct due diligence “as appropriate to their size, the nature and context of their operations and the severity of the risks of adverse human rights impacts.” MNEs can only discharge this duty if they have a system in place which triggers the exercise of due diligence whenever there is a potential risk to local communities.

\(^{30}\) See Annex IV

\(^{31}\) It has not altered at all the duty “to 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”: see Chapter VI(2)(b) of both the 2000 and 2011 Guidelines.
79. An enterprise which fails to conduct the “appropriate” due diligence must be taken to have constructive knowledge of the matters of which it would have had actual knowledge if it had conducted due diligence. It cannot rely upon its ignorance of facts of which it should have informed itself.

80. The UN Guiding Principles on Business and Human Rights make clear that the measures that can reasonably be expected of an enterprise to demonstrate its “respect” for human rights will depend partly on its “leverage” over the government or other entity which threatens those rights, and partly on the level of the threat.\(^{32}\)

81. The Guiding Principles also confirm that activities undertaken to support or promote some human rights cannot be offset against a failure to respect other human rights. Although WWF has told us in correspondence that it has assisted the Baka in a variety of ways, this is no answer to the complaints we summarise below.

The Land Issue

Failure to conduct due diligence [Chap IV(5)]

82. A prime purpose of WWF’s activities in southeast Cameroon has been to establish and maintain a network of PAs. These activities created not a “risk” but the certainty of adverse human rights impacts for the Baka unless adequate steps were taken to avoid them. Proper due diligence was plainly required to identify those steps.

83. In order to perform this due diligence WWF should have:

\(^{32}\) See also Commentary §42: “Where an enterprise contributes or may contribute to [an adverse human right] impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the practices of an entity that cause adverse human rights impacts.”
(1) collated “information about the Baka’s historic claims and current exercise of customary rights” in the areas that WWF now wanted to “protect,” as it had already committed to do under Principle 23

(2) enquired whether the Baka had given their FPIC to the PAs, given in particular that WWF knew or should have known that:

(i) it could not otherwise comply with Principle 30;

(ii) although FPIC was a central component in the international human rights law that it had ratified, Cameroon had not adopted any national law or policy to give effect to this commitment

(iii) on the contrary, the Forest Code and the Wildlife Decree would extinguish all Baka rights in the PAs as soon as they came into effect, unless in the meantime the Government had entered an agreement with the Baka to avoid this result; and

(iv) WWF had no reason to suppose that any such agreement had been made.

84. WWF failed to carry out due diligence under head (1). It ignored the warning we gave as long ago as 1991, that unless it took active steps to safeguard the Baka the creation of the protection areas would almost certainly lead to the “expropriation” of their traditional rights. This was not the only warning that WWF received, as we explain below.
85. It was only when its Regional Co-coordinator completed the 2007 survey, some two years after the Boumba Bek and Nki Parks had been formally declared, that WWF “discovered” that the Baka conducted “essential” activities over large parts of both Parks. WWF claims to have previously been unaware of this, because its previous surveys had relied on methods which could “only take into account the land used by sedentary farmers.” As a result, “the mode of occupation and exploitation by the semi-nomadic hunter-gatherers were largely invisible and ignored.”

86. WWF also failed to carry out due diligence under head (2). We have seen no evidence that the Baka gave their FPIC to any of the PAs, and it is difficult to see what reason they might have had for doing so. Given the importance that it has attached to FPIC in its Statement of Principles, WWF could reasonably be expected to have made and preserved a record of any discussions in which the Baka had given their FPIC. Our requests for copies of any such records have been ignored.

*Failure to engage in adequate and timely communications [Chap V (2)(b)]*

87. The Regional Coordinator has explained how the 2007 survey involved “focal group discussions and interviews” as well as direct observations. It is implicit in his report that WWF had not previously deployed any of these techniques. The failure to do so before the Parks were created or became operational was a failure to “engage in adequate and timely communication and consultation with the communities directly affected by the environmental policies” under Chapter V(2)(b) of the 2000 Guidelines.

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33 Supra, note 14
34 For a summary of our correspondence with WWF, see the Bundle at page 331 et seq. We also rely on the matters set out below in our discussion of FPIC
88. It was left to the 2007 survey to “vividly demonstrate” the need to “adjust” management plans so as to reflect “the actuality” of Baka use of land and resources. Even then WWF does not appear to have “communicated” to the Baka the fact that they could acquire “rights” under these plans only if and to the extent that the Government was prepared to grant them, and that the plans could be revoked or amended at any time. The Akwe: Kon Guidelines have not been applied even now.

*Failure to avoid adverse impacts and/or to address them when they occur [Chap IV(2)]*

89. WWF’s failure to exercise due diligence or to conduct timely consultations also led to its failure to avoid “adverse impacts” that could and should have been avoided, and/or adequately to address these impacts after they had occurred.

90. Even in the absence of due diligence and timely consultations, WWF knew that its operations would have adverse impacts on the Baka unless it took measures to avoid them. It knew this from reports that it commissioned from two anthropologists. One of them, Daou Joiris, specifically warned WWF in 2001 that the Baka depended on the land that was to be incorporated in the PAs, and that although monetary compensation could never be an adequate remedy it was the least that should be done. No compensation has ever been paid. We have spoken with another anthropologist who worked in a village north of the Nki National Park, who has informed us that she too repeatedly warned WWF officials on the ground that their plans for the PAs would have a disastrous impact on the Baka.

91. The most important adverse impact, obviously, was the loss of their customary rights in the PAs. As we have said, WWF knew this could only be justified if the Baka gave their FPIC, and should have helped the Baka to use their ability to give or withhold this so as to negotiate a sensible accommodation with the Government.
92. It would have been for the Baka to decide what this accommodation should be but, like the Endorois, there is every reason to suppose that they would have been “willing to work with the Government in a way that respected their property rights even if a [protected area] was being created.”³⁵ They might well have granted their FPIC in exchange for a secure right to continue to use the resources of their traditional lands.³⁶

93. This would have required the replacement of a nonsensical distinction between “traditional” and non-traditional forms of hunting with the only distinction that matters: that between local subsistence hunting and commercial poaching for export. Baka rights would have to have been incorporated in a legally binding instrument, and not simply consigned to a management plan which the Government could revoke or amend as and when it chose.

94. WWF could not have imposed any agreement on Ministers against their will. But it could have informed them that it could only support proposals which complied with its Statement of Principles. This would have been an entirely realistic stance to adopt, because WWF’s enormous contribution to conservation in southeast Cameroon has given it very considerable leverage. Without WWF, the Government lacked both the financial and human resources required to bring its plans to fruition.

The Ecoguards Issue

Failure to conduct due diligence [Chap IV(5)]

95. For the reasons we have already given, the deployment of ecoguards to police the PAs and their peripheries posed an obvious risk to the human rights of the Baka from the outset.

³⁵ See the discussion of the Endorois decision in Annex III
³⁶ It might or might not have been necessary to make a proviso to ensure that this did not jeopardise the legitimate interests of conservation. The Baka are likely to have accepted any arrangement shown to be necessary to combat poachers, who are as much a threat to the Baka as they are to the wider population.
96. Most Baka would continue to use the forest for subsistence hunting as they had always done, regardless of its legal classification. For their part the ecoguards would regard it as part of their job to “persuade” the Baka that they were no longer free to come and go as they pleased. There was a clear risk that they would regard the use of violence against Baka as a legitimate means of “law enforcement,” for which they were unlikely to be held to account even if they were caught.\(^{37}\)

97. WWF ought properly to have assessed this risk at the start, and considered whether and how it could be either eliminated or reduced to an acceptable level. It should have satisfied itself by enquiries at MINFOF that ecoguards would be properly vetted and trained before they joined the force, would be subject to an adequate and properly monitored disciplinary code, and would be dismissed from the service if they were found guilty of gross misconduct.

98. WWF does not appear to have taken any of these steps, or to have carried out any risk assessment at all before it assumed an active role in southeast Cameroon. It appears to have made no attempt either to assess the increased risk of violence that was likely to accompany the deployment of the BIR.

99. WWF seems to have preferred to hope for the best, in the belief that it can respond to particular problems on an ad hoc basis. This has been a recipe for disaster.

*Failure to avoid contributing to adverse human rights impacts or to address such impacts when they occur [Chap IV(2)]*

100. WWF has directly contributed to the adverse impacts that ecoguards have had on Baka human rights, because it has supported a more militarised approach to law enforcement and provided the logistical and financial support we have detailed.

\(^{37}\) See, for example, the attitude of the former head of the Protected Areas Division, still active in MINFOF, quoted at page 17 of the Bundle.
101. WWF could have avoided continuing to contribute to these adverse impacts by withdrawing its financial and logistical support to ecoguard patrols until MINFOF had put measures in place to reduce the risk of further abuse and/or by taking the other steps mentioned below. It appears to have done little or nothing.

*Failure to prevent or mitigate adverse human rights impacts that are directly linked to its own operations [Chap IV(3)]*

102. If WWF has not directly contributed to the adverse human rights impacts we have described, there is at least a “direct link” between these impacts and WWF operations. The ecoguards and BIR seek to “protect” conservation assets which are largely WWF’s creation, and often do so in conjunction with WWF personnel. Indeed, most Baka do not distinguish between WWF officers and ecoguards.

103. We recognise that WF could only have take steps to “prevent or mitigate” the adverse impacts if it knew about them. It would have known at an early stage if it had conducted due diligence, and was told anyway by others:

(1) In 2001 WWF personnel attended a conference in Kigali at which the propensity of ecoguards to focus their attention on the Baka was discussed

(2) In 2003 WWF started to receive letters of concern, and Forest Peoples Programme (FPP) reported that indigenous communities continue to rely on forest resources in the protected areas to fulfil at least part of their subsistence needs [and] have therefore become easy targets in the enforcement of measures which park guards are unable to impose on more powerful groups who are usually those causing the greatest harm to long-term biodiversity – a fact readily recognised by many protected area managers and wildlife specialists across Africa.

(3) In 2004 the World Rainforest Movement referred to:

... the persecution of indigenous communities by government ecoguards, contrasted against the unmolested traffic of bushmeat out of their areas by commercial operators.

29
In 2005 FPP specifically raised the issue in discussions with WWF.

In a joint submission to CERD in 2010, FPP and nine other NGOs collated evidence to the effect that Game wardens hired by the State are violently beating up and terrorising indigenous peoples in protected areas. In some cases, indigenous peoples have been forcibly expelled from these areas; and some continue to be denied access, in some cases through violent acts by State agents.

In 2012 a former WWF consultant witnessed a violent raid to the north of Nki which she reported to the WWF office in Yaoundé.

FPP staff in Cameroon have also reported incidents to WWF; so have other NGOs in Cameroon, including in particular CEFAID and Okani. In 2014 we ourselves wrote to WWF about ecoguard violence.

In 2014 and 2015 Baka communities wrote to WWF on at least three occasions, requesting recognition of their customary rights and the suspension of funding for ecoguards.38

104. In recent correspondence WWF has said that:

When unacceptable behaviour has come to WWF’s attention and can be verified to some extent, WWF has taken the issue up directly and emphatically with [MINFOF] and improved behaviour has seemed to follow.39

105. But the duty to prevent adverse impacts does not permit WWF to take steps only if and when unacceptable behaviour" is “brought to its attention.” It should have a system in place to ensure that it actively

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38 See page 58 et seq. of the Bundle. One letter uses the term, “ECOFAC” which, like “dobidobi,” is often used by the Baka to refer to ecoguards and WWF personnel alike.

39 See, for example, the letter from WWF to a Survival supporter at page 389 of the Bundle.
monitors the situation itself, and that it takes appropriate steps to verify or refute any apparent wrongdoing that this may uncover. As we have said, there is no such system.

106. Nor is it enough simply to “take up” incidents with MINFOF on an ad hoc basis, however “emphatically.” This leaves it entirely to MINFOF to decide what steps (if any) it is prepared to take to investigate an incident; and what sanctions, if any, it is prepared to apply to any ecoguard who has misconducted himself. There are no hard data, but we are aware of only one case in which an ecoguard may have been disciplined for his mistreatment of individual Baka or their property.

107. In 2014 WWF offered to “co-operate” with a government-led investigation into our allegations. When Survival pointed out that the Baka were most unlikely to trust such an investigation it appointed a member of an NGO in the DRC to conduct an enquiry on its behalf. We understand that he has now reported but our request for copy of his report has been ignored. We do not know why.

108. Even if WWF personnel have not themselves directly participated in acts of abuse, given the “direct link” to which we have referred WWF should have done significantly more than it has. We discuss below the ways in which it should positively seek “to prevent or mitigate adverse impacts” in accordance with Chapter IV (3).

*Failure to provide for the remediation of adverse human rights impacts [Chap IV(6)]*

109. WWF could and should have put into effect some or all of the remedial measures we also list below. It has had ample time to do so, but has not carried out any of them.
VIII Remedial Action

General

110. The apparently wilful disregard of its Statement of Principles is one of the most remarkable aspects of WWF operations in Cameroon to date. Further breaches of the Guidelines are inevitable unless WWF now puts in place a mechanism to monitor future compliance with these Principles. This should involve persons who do not work exclusively for WWF.

111. This mechanism will especially need to ensure that any future project likely to have a major impact on the Baka proceeds only with their genuine FPIC. There is now a wealth of material on how FPIC should be sought. We would be more than ready to provide appropriate references, but the Akwe: Kon Guidelines are an obvious place to start.

112. WWF should also place far more emphasis on the development of community conservation zones which can be managed by the Baka themselves, and push for legal recognition of their rights to this land.

Land Issue

113. The first priority is to establish whether and on what terms the Baka might be now prepared to give their free and informed if not their prior consent to some or all of the PAs that already exist. This ought also to be WWF’s priority, if it wants donors to take seriously its protestation that it “will not promote or support…interventions which have not received the prior free and informed consent of affected indigenous communities.”

114. If the Baka are prepared to give their FPIC on suitable terms (and it is hardly conceivable that they would give it unconditionally), WWF should provide the Baka with such financial and other assistance as they may reasonably require to negotiate these terms with the Government. It should be prepared to withdraw further support for the PAs if the Government unreasonably rejects the proposed terms.
115. If it is to be credible the process should be conducted by an independent body, and not by WWF. This body should be supplied with the participatory maps already prepared by the Baka and WWF, and should be given the resources to commission any further mapping that may be required.

Ecoguard Issue

116. Here the first priority should be to consult the Baka about how to prevent or reduce the risk of continued abuse by ecoguards or the BIR. This could be undertaken as part of an FPIC exercise.

117. We anticipate that many Baka will repeat a request they have already made, that WWF should withhold further funds from MINFOF until it has taken steps to exercise proper control over its employees. WWF has previously rejected this approach because it “would be highly likely to weaken, not improve, the position of the Baka,” but has given mutually inconsistent reasons in support of this claim.

118. One is that the withdrawal of financial support would bring an end to forest protection, and that this in turn would deny the Baka “access to forest resources.” It is unclear what “access” they are thought to enjoy at present. The other argument is that forest protection would not be lost, because WWF is only a “part funder of this service,” which would “would most likely continue with less emphasis on observance of human rights.”

119. The Baka must be allowed to express their views on these contentions, neither of which appears to be based on any empirical evidence. It is difficult to see that they could be in any worse off than they are now, whether the forests remain “protected” or not.

120. The only inference that could reasonably be drawn from the Government’s refusal to introduce effective safeguards against ecoguard abuse would be that it is indifferent to the problem – and therefore to its duties under international human rights law. If that is the case, WWF ought not to
require the NCP or anyone else to tell it that it should terminate its operations in southeast Cameroon. Only then could WWF hold true to Principle 32, and avoid allegations of complicity in future violations of Baka human rights.

121. We are ready to discuss what safeguards should be put in place, but they might for example include the adoption of

(1) the UN’s Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. These require that steps are taken to ensure that damage and injury are kept to a minimum, that assistance and medical aid are rendered to any injured or affected persons at the earliest opportunity, and that relatives are notified at the earliest possible moment

(2) a code of conduct which would result in the dismissal from the force of any ecoguard who participated in the abuse of Baka or who failed to report their alleged abuse by others

(3) a mechanism which would enable Baka to identify individual ecoguards and report apparent violations of the code, and to ensure that these reports were properly investigated

122. Unless and until these measures have been put in place and have demonstrated their effectiveness, WWF should itself monitor ecoguard conduct. It too will need a system to record the date and place of particular incidents and of the persons involved in them. Smart phone technology offers one way in which this might be done.

123. WWF should appoint an independent person to receive and analyse the information which this system generates. S/he should have the resources to investigate serious incidents and to compensate victims. S/he should, of course, offer those against whom complaints are made an opportunity to be heard. S/he should copy her or his reports to MINFOF and if
appropriate recommend the steps it should take to avoid similar problems in the future. S/he should have the power to discipline WWF employees who abuse Baka or to fail to report their alleged abuse by others.

124. WWF should organise workshops with the Baka to explain ecoguards' powers of arrest, entry and seizure under the Forest Code, and how it proposes to monitor observance of the Statement of Principles.

Signed: ........................................
Stephen Corry

Dated: 10 February 2016
Survival International
London