



Course
Global Environmental Litigation
2020

The Survival v. WWF case

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Webography

Survival International website on the Baka People and the WWF case: <https://www.survivalinternational.org/tribes/bakamessokdja>

Minority Rights Group website on the WWF case: <https://minorityrights.org/2020/12/17/wwf/>

OECD NCP website on the case Survival International v. WWF : https://complaints.oecdwatch.org/cases-fr/Case_457

WWF website on the 2020 Report, *Embedding Human Rights in Nature Conservation*, https://wwf.panda.org/wwf_news/wwf_independent_review/

BuzzFeed News Investigation: WWF’s secret war, <https://www.buzzfeednews.com/article/tomwarren/wwf-world-wide-fund-nature-parks-torture-death>

I- Factsheet

A- Where it started

The Baka people is a pygmy community of approximately 8.000 members, established in Cameroon, Gabon, and Congo. It has been living, since the 19th Century, of the subsistence exploitation of the forest. It has suffered from the presence of European settlers searching for natural resources, then from the instauration of independent African States gaining sovereignty over their territories. Forests have been cleared and/or invaded by foreigners to the community.

A further step was taken in the 90s' and early 2000s', with the creation of "protected areas" meant to preserve the wildlife and biodiversity. Cameroon adopted several regulations to protect certain areas from human activities, mainly the "forest code" ([Loi n°94/01 du 20 janvier 1994 portant régime des forêts, de la faune et de la pêche](#)), the decree on forests ([Décret n° 95/531/pm du 23 aout 1995 fixant les modalités d'application du régime des forêts](#)), and the decree on wildlife ([décret n° 95 /466/ pm du 20 juillet 1995 fixant les modalités d'application du régime de la faune](#)). Based on these regulations, four national parks were created in 2001 (Lokébé National Park) and 2005 (Boumba Bek National Park, Nki National Park and Ngoyla Wildlife Reserve).

The Baka territories were included in these protected areas. The regulation resulted in the strict prohibition of the living in, and the exploitation of, the forest. This prohibition applied to the Baka community, which was consequently deprived both of its living environment and of its only means of subsistence. For these reasons, the Baka community didn't strictly obey the law. Members of the community went on hunting and picking plants in the forest. "Trespassings" were brutally repressed both by ecoguards and official police authorities. Among the reported reprisals were: burning of houses, arrests, torture, rape, harassment, beatings...

WWF (World Wide Fund for Nature) is the main administrator of the protected areas, acting by delegation of the Cameroonian government. WWF is notably in charge of recruiting, training and supervising the ecoguards operating in the areas. WWF is an NGO dedicated to the protection of the environment and the promotion of sustainable development. The main headquarters of WWF international are located in Switzerland; WWF is also established in numerous countries through local entities.

Survival international is a British NGO working in partnership with tribal and indigenous peoples to protect their rights (human rights, political rights, land rights...). On the 19th of February 2016, Survival International filled a request (see part I and part II available at https://complaints.oecdwatch.org/cases-fr/Case_457) against WWF before the OECD National Contact Point in Switzerland, based on several violations of the human rights of the Baka pygmy community in Cameroon.

B- How the dispute evolved

The case is unique as the complaint has been filled by an NGO against an NGO, raising the issue of the applicability of the [OECD Guidelines for Multinational Enterprises](#) to NGOs.

1) 20 Dec. 2016 – Initial assessment of the Swiss NCP

The Initial Assessment of the Swiss NCP may be found on : https://www.seco.admin.ch/seco/fr/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/NKP/Statements_zu_konkreten_Faellen.html).

Two issues are of particular interest: firstly, is the Swiss NCP competent for treating the request? Secondly, are the guidelines applicable where the respondent is an NGO?

The Swiss NCP is competent

The Statement points out that the request should normally be filed “in the country in which the alleged breach occurred”. However, since Cameroon is not a signatory state of the OECD Guidelines, “the issue should be raised in the country where the multinational enterprise has its headquarters”.

Since WWF International, which was the entity operating in Cameroon, has its headquarters in Switzerland, the Swiss NCP finds itself competent for treating the request.

The guidelines are applicable

The Statement observes that the “*Guidelines do not provide a precise definition of the term “multinational enterprises”*”. For the Swiss NCP, “*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)*”.

Based on this assertion, the NCP operates a casuistic analysis of the WWF International’s activities. Although a non-governmental and non-profit making foundation under Swiss law, WWF International’s “*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*”.

Although “*unlike other enterprises, WWF International’s operations may not per se be qualified as being of commercial nature*”, “*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)*”.

This is sufficient to conclude to the submission of WWF International to the OECD guidelines.

2) 7 Sept. 2017 – Statement of the NCP regarding Survival’s breach of confidentiality

Having retained competence, the NCP then followed the normal proceedings, consisting in offering its good offices to help both parties reaching an agreement. A mediation process was hence started. An external mediator was appointed, and a joint agreement was reached by the parties. From June to September 2017, parties engaged in the drafting of a confidential joint outcome.

However, on the 4th of September 2017, Survival informed the NCP of its decision to withdraw from the amicable process, and of its intention to make a public statement. Despite the NCP's warning that such a public statement would probably constitute a breach of the applicable rules on confidentiality, Survival made its Public Statement on the 5th of September 2017. In this statement (available at https://complaints.oecdwatch.org/cases-fr/Case_457), Survival informed that the condition of the prior consent of the Baka “for how the conservation zones on their lands in Cameroon were managed in the future, in line with the (WWF) 's own indigenous peoples policy” was refused by WWF, which made useless any further discussion.

Survival's withdrawal from the negotiations, as well as its violation of confidentiality rules, was acknowledged in Statement of the Swiss NCP dated 7 Sept. 2017 (available at: https://complaints.oecdwatch.org/cases-fr/Case_457).

3) 21 Nov. 2017 – NCP's Final Statement

In its final statement (available at : https://complaints.oecdwatch.org/cases-fr/Case_457), the Swiss NCP acknowledges that discussions have mainly focused on the implementation of the WWF's Statement of Principles on Indigenous Peoples and Conservation and its application in line with the OECD Guidelines for future projects within Cameroon.

An agreement was reached regarding the necessity of having a continuous dialogue between WWF and Survival acting on behalf of the Bakas. The parties also agreed on the need for more transparency, as well as for improvement of “the consultation of the Baka in view of reducing the risk of abuse” and for the creation of a mechanism for addressing ecoguards abuses.

However, “the parties had divergent views on the extent of the responsibility of the different actors (e.g. WWF, government of Cameroon) regarding FPIC and possible actions to take in the case of an unsatisfactory consultation of the Baka”.

The final statement then relates Survival's withdrawal and breach of confidentiality.

The Statement, after acknowledging the participation of the parties to the discussions in good faith, concludes on several recommendations.

“The Swiss NCP recommends that:

- *the parties continue to engage in a constructive and output-oriented dialogue as held at the mediation meeting focusing on their common goal to collectively contribute to the protection of the human rights of the Baka;*
- *the parties implement the agreed actions set out in section 3.3, where relevant with local stakeholders, if possible in cooperation with each other in order to improve then respect of human rights of the Baka related to existing and possible future environmentally protected areas supported by WWF in southeast Cameroon;*
- *WWF continuously engages to help ensure open and transparent FPIC processes innCameroon including by pushing for the government to publish FPIC information online to demonstrate their compliance;*
- *SI respects the rules of the specific instance procedure under the OECD Guidelines for Multinational Enterprises when considering any future submission to an NCP, taking into account that the mechanism aims at fostering dialogue and reaching future orientated agreements between the parties”.*

The case was then closed by the NCP.

C- The follow-up of the case

1) Follow up from Human rights NGOs

In 2018 and 2019, several NGOs and information websites (such as BuzzFeed) led active information campaigns exposing WWF’s “cover-up” of rangers abuses.

In 2018, Survival lodged a [formal complaint](#) before the UN Development Programme against WWF’s project to turn the Messok Dja area of Congo into a national park. The UNDP Draft Report of 6 January 2020 concluded on the existence of major abuses against the Baka people, causing the UNDP to suspend the project.

See The Guardian Inquiry: <https://www.theguardian.com/global-development/2020/feb/07/armed-ecoguards-funded-by-wwf-beat-up-congo-tribespeople>

And also: <https://redd-monitor.org/2020/02/14/undp-investigation-confirms-that-wwf-funded-ecoguards-beat-up-indigenous-peoples-in-the-republic-of-congo/>

These news caused several countries (including the USA and the European Union) to suspend some of their financial supports to WWF.

See Survival’s website on the Baka people: <https://www.survivalinternational.org/tribes/bakamessokdja>

2) Follow-up from WWF

Facing major pressure, WWF commissioned an independent panel in 2019 to report on human rights abuses allegedly committed by rangers in India, Nepal and Central Africa. The report [Embedding Human Rights in Nature Conservation - from Intent to Action](#) was published in 2020.

The report acknowledges the reality of abuses, some of them major, for which WWF - although pointing out that the panel found no evidence “*no evidence that WWF staff directed, participated in, or encouraged any abuses*” – expressed its feeling of “horror” and “deep and unreserved sorrow”.

The panel concluded with several recommendations. WWF declared it would address “all of them” (see WWF website: https://wwf.panda.org/wwf_news/wwf_independent_review/).

However, Human Rights NGOs have criticized WWF’s reading of the Report, and its denial for responsibility. See: L. Dominguez, C. Luoma, *Violent Conservation: WWF’s Failure to Prevent, Respond to and Remedy Human Rights Abuses Committed on its Watch*, 2020 (<https://minorityrights.org/publications/violent-conservation/>).

II- Issued to be discussed

STRATEGY

Why is it relevant to resort to the OECD NCP instead of “regular” litigation?

- Are there available fora?
- Availability of proofs
- Effectiveness of remedies in NCP proceedings?

JURISDICTION OF OECD NCP

- Relevant territorial criteria

SUBSTANCE

- OECD Guidelines for Multinational Enterprises
- Material scope: behaviors covered by the Guidelines
- Personal scope: Criteria for application (application to NGOs).

RELIEF

- Are the OECD NCP Statements effective? Why?
- Does the NCP procedure lead to alternative remedies?
- Are reputational remedies effective?