

TESTIMONY OF JOHN H. KNOX

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“PROTECTING HUMAN RIGHTS IN INTERNATIONAL CONSERVATION”

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Chairman Huffman, Ranking Member Bentz, and distinguished Members of the Committee, thank you for inviting me to speak at this hearing.

I am the Henry C. Lauerman Professor of International Law at the Wake Forest University School of Law. In 2012, the UN Human Rights Council appointed me to be its first Independent Expert on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, and in 2015, the Council renewed my mandate for another three years and changed my title to Special Rapporteur. In that capacity, I visited countries around the world and issued reports on human rights in relation to environmental protection.

In 2019 and 2020, I served on an Independent Expert Panel commissioned by the World Wildlife Fund (WWF) to examine WWF's role in alleged human rights abuses in protected areas in Africa and Asia. I am speaking today in my individual capacity and not on behalf of the Panel, which ceased to exist upon the publication of its report in November 2020.

This hearing on human rights and international conservation comes at a critical time. It is now well understood that the world is facing a global biodiversity crisis, which threatens one-quarter of all species with extinction.¹ But it is far less well understood that the biodiversity crisis is also a human rights crisis. The best way to conserve the natural environment is to protect the human rights of those who live in nature: the Indigenous peoples and local communities who directly depend on forests and rivers for their material and spiritual well-being. But too often, their rights are being abused, not protected.

In my testimony today, I will first briefly describe the key role that Indigenous peoples and local communities play in the conservation of natural ecosystems. Second, I will review cases of human rights abuses in national parks in Africa and Asia. In this respect, I will focus on the report of the Independent Panel in which I participated. Third, I will suggest some steps that the United States should take to protect against such human rights abuses in the future. These steps would help to protect some of the most vulnerable human communities on Earth and lead to better conservation of endangered species and ecosystems.

I. Indigenous Peoples, Local Communities, and Conservation

The failure to protect biodiversity ultimately affects everyone. The loss of biodiverse ecosystems increases the incidence of disease,² reduces the world's storehouse of medicinal information,³ and decreases the stability of fisheries and crops, among many other adverse

¹ Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), *Global Assessment Report on Biodiversity and Ecosystem Services: Summary for Policymakers* (2019), p. 24.

² The development of normal immune responses, especially to allergens, requires exposure to diverse natural habitats. See P. Sandifer et al., "Exploring connections among nature, biodiversity, ecosystem services, and human health and well-being: opportunities to enhance health and biodiversity conservation", *Ecosystem Services*, vol. 12 (2015), pp. 1, 7; T. Haahtela et al., "The biodiversity hypothesis and allergic disease: World Allergy Organization position statement," *World Allergy Organization Journal*, vol. 6, No. 3 (2013), pp. 1, 12. In addition, the loss of biodiversity has been linked to increased human prevalence of some zoonotic diseases. See A. Bernstein, "Biological diversity and public health," *Annual Review of Public Health*, vol. 35 (2014), pp. 153, 159.

³ More than half of the 1,355 drugs approved by the United States Food and Drug Administration between 1981 and 2010 had natural origins. Famous examples of medicines derived from nature include *Cinchona officinalis*, a South

effects.⁴ But the loss of natural ecosystems is especially catastrophic for Indigenous peoples and others who depend directly on nature for their food, water, homes, and culture. The overexploitation of natural resources pollutes their rivers and aquifers, cuts down their forests, destroys their sacred places and displaces them from their homes.

Human rights treaties such as the International Covenant on Civil and Political Rights, to which the United States is a party, protect the rights of ethnic minorities to enjoy their own culture,⁵ as well as their homes and property.⁶ For Indigenous peoples and others whose culture depends on a close relationship with their ancestral territories, these rights should protect them from eviction and displacement from their lands without their free, prior and informed consent.⁷

Protecting their rights not only results in better lives for the communities; it also results in better conservation. Their traditional lands have much of the world's remaining natural ecosystems.⁸ In fact, the total land area managed by Indigenous peoples is almost double that of formal protected areas.⁹ Studies have often shown that Indigenous peoples are better than governments at protecting against deforestation and the loss of biodiversity,¹⁰ and that they do so far more cost-effectively.¹¹ However, they are under assault from the same forces that are destroying natural ecosystems, including enterprises and corrupt government officials profiting from logging, mining, poaching, and land-grabbing. Of the more than 200 environmental and land defenders killed every year around the world – an average of more than four every week – a disproportionate number are from Indigenous peoples and local communities. In 2020, over one-third of all such killings were of Indigenous people even though they make up only five percent of the global population.¹²

American tree whose bark produces quinine, a treatment for malaria; *Catharanthus roseus*, the Madagascar rosy periwinkle, first used as a traditional medicine and then as the basis for successful treatments of childhood leukemia and Hodgkin's lymphoma; and *Digitalis purpurea*, the purple foxglove, used to treat heart disease. Ten of the fourteen major classes of antibiotics are derived from microorganisms. See World Health Organization (WHO) and Secretariat of the Convention on Biological Diversity, *Connecting Global Priorities: Biodiversity and Human Health — a State of Knowledge Review* (Geneva, 2015).

⁴ See generally *ibid*; IPBES report *supra* note 1.

⁵ International Covenant on Civil and Political Rights (ICCPR), art. 27.

⁶ See American Convention on Human Rights; African Charter on Human and Peoples' Rights; International Labour Organization Indigenous and Tribal Peoples Convention (No. 169).

⁷ Human Rights Committee, *Poma Poma v Peru* (2009); *Oliveira Pereira v Paraguay* (2021); Inter-American Court of Human Rights, *Saramaka People v Suriname* (2007); African Court of Human and Peoples' Rights, *African Commission on Human and Peoples' Rights v Kenya* (2017). See United Nations Declaration on the Rights of Indigenous Peoples (2007).

⁸ IPBES report *supra* note 1, p. 32.

⁹ V. Tauli-Corpuz et al., "Cornered by PAs: Adopting rights-based approaches to enable cost-effective conservation and climate action," *World Development* 130 (2020) 104923, p. 2.

¹⁰ *Ibid*; FAO and FILAC, *Forest governance by indigenous and tribal peoples* (2021).

¹¹ Rights and Resources Initiative, *Rights-Based Conservation: The Path to Preserving Earth's Biological and Cultural Diversity?* (2020).

¹² Global Witness, *Last Line of Defense* (2021), p. 12, available at <https://www.globalwitness.org/en/campaigns/environmental-activists/last-line-defence/>.

II. Conservation and Human Rights Abuses

Governments and conservation organizations should be allies of the Indigenous peoples and traditional communities that fight to protect nature. However, rather than strengthen the rights of these defenders of nature in their ancestral lands, many governments have historically created national parks that exclude everyone, even the people who have lived there for centuries. They have treated the ideal national park as one without human beings, and to that end have often violently expelled the original inhabitants.¹³

Most governments and conservation organizations say today that they reject the idea of “fortress conservation.” They emphasize the importance of respecting and protecting the rights of Indigenous peoples and local communities. But in practice, many protected areas continue to keep out their original inhabitants.¹⁴ Pushed off their land, they struggle to survive. When they return to their ancestral homes to try to gather fruit and wood, to fish and hunt small animals, to visit their ancestors’ burial areas and their sacred places, they are often arrested – or worse. In the last three years, reports have described allegations that rangers at parks in Africa and Asia, for example, have committed grave abuses, including murder, rape, and torture, against people living around the parks.

Even if this is all there is to the story, the U.S. Congress should be concerned, both because these human rights abuses are horrific and because by alienating local communities, such abuses make it difficult or impossible to achieve conservation goals. But making matters worse is that U.S. funds have indirectly contributed to some of the perpetrators.

In March 2019, media outlets reported on allegations of human rights abuses in parks in central Africa, India, and Nepal. The parks were supported and in some cases co-managed by WWF.¹⁵ These allegations led to several investigations, including one by an Independent Expert Panel on which I served, which was commissioned by the WWF International Board.¹⁶ The Panel’s mandate, *inter alia*, was to review, examine and assess WWF’s role in connection with the alleged human rights abuses, and to make recommendations to prevent similar allegations and occurrences in the future. The alleged abuses included murder, rape, torture, physical beatings, unlawful arrest and detention, invasion of homes, and destruction and theft of personal property, all allegedly committed by park rangers and other law enforcement agents.

The Panel did not have the mandate or resources to, and did not seek to, determine whether each of these alleged abuses had actually occurred. Instead, the Panel focused on the

¹³ See D. Brockington and J. Igoe, “Eviction for Conservation: A Global Overview”, *Conservation & Society* 4(3) (2006); M. Dowie, *Conservation Refugees: The Hundred-Year Conflict between Global Conservation and Native Peoples* (2009).

¹⁴ Report of the UN Special Rapporteur on the rights of indigenous peoples, UN Doc. A/71/229 (July 29, 2016); D. Boyd and S. Keene, “Human rights-based approaches to conserving biodiversity: equitable, effective and imperative; A policy brief from the UN Special Rapporteur on Human Rights and the Environment (Aug. 2021).

¹⁵ T. Warren and K. Baker, “WWF’s Secret War,” *Buzzfeed News* (Mar. 4, 2019); T. Gurung, “Nepali park officials tortured a man to death. Then, the government and the World Wide Fund for Nature rewarded them,” *Kathmandu Post* (Mar. 3, 2019).

¹⁶ The former UN High Commissioner for Human Rights, Judge Navi Pillay, chaired the Panel. The third member was Dr. Kathy MacKinnon, Chair of the IUCN World Commission on Protected Areas.

allegations against WWF, including in particular that it knew about the alleged abuses but continued to support and collaborate with the rangers and other law enforcement agents, and that it failed to take effective steps to prevent, respond to and remedy the alleged abuses. In some cases, WWF was also accused of not respecting the rights of Indigenous peoples in their traditional lands, territories and resources.

With the assistance of a law firm that worked under the Panel's supervision, the Panel examined a large volume of documents and other material, conducted many interviews with current and former WWF staff, and spoke with many individuals and organizations in the locations where the abuses were alleged to have taken place.¹⁷ Throughout its investigation, the Panel worked independently; it did not seek or take any instruction from WWF or any other entity. The Panel provided its 160-page report to WWF in the fall of 2020, and WWF published the report, together with its 65-page response, on November 24, 2020.¹⁸

The Panel found that WWF's social policies generally had strong human rights commitments. In 1996, WWF became the first major conservation organization to adopt a Statement of Principles on Indigenous Peoples and Conservation. In 2009, it joined with BirdLife International, Conservation International, Fauna & Flora International, the Nature Conservancy, the International Union for the Conservation of Nature (IUCN), and the Wildlife Conservation Society to establish the Conservation Initiative for Human Rights. Together, they adopted a "Conservation and Human Rights Framework." The first of the Framework's ten commitments is: "Respect internationally proclaimed human rights; and make sure that we do not contribute to infringements of human rights while pursuing our mission."

The Panel found that the commitments in the Conservation and Human Rights Framework and WWF's other social policies are consistent with other international instruments on the responsibility to respect human rights, including the United Nations Guiding Principles on Business and Human Rights, which the UN Human Rights Council endorsed by consensus in 2011.¹⁹ The UN Guiding Principles are not a treaty and therefore not legally binding in themselves, but they have been widely accepted as reflecting societal expectations. Although the Guiding Principles were developed in the context of business enterprises, they had also been applied to other types of multinational enterprises, and to WWF in particular. The Panel stated that the expectation of respect for human rights cannot be lower for multinational conservation organizations than it is for multinational business enterprises.²⁰

The Panel concluded that in important respects, WWF had failed to meet its own commitments to respect human rights, as well as the general responsibility to respect human rights that all multinational conservation organizations, like multinational business enterprises, are expected to meet.

¹⁷ The Panel had aimed to travel to locations where the abuses were alleged to have taken place and to meet there with interested parties, but it was prevented from doing so by the Covid-19 pandemic.

¹⁸ The Panel report is entitled *Embedding Human Rights in Conservation*, and it is available at https://wwfint.awsassets.panda.org/downloads/independent_review_independent_panel_of_experts_final_report_24_nov_2020.pdf.

¹⁹ Human Rights Council Res. 17/4 (2011).

²⁰ See *Embedding Human Rights in Conservation*, chap. 3.

In the following sections, I describe findings from the Panel’s report in relation to four countries: (a) Cameroon; (b) the Democratic Republic of the Congo (DRC); (c) the Republic of the Congo; and (d) Nepal.²¹ I then outline the Panel’s main recommendations and evaluate WWF’s response.

A. Cameroon: Boumba Bek, Nki, and Lobéké National Parks²²

The WWF program office in Cameroon had heard for many years – since at least 2008 – of allegations of human rights abuses of members of local communities, including Baka people, by park rangers (called “ecoguards” in central Africa) in and around three national parks supported by WWF. WWF commissioned three reports, in 2015, 2016, and 2017, which found widespread allegations of beatings, torture, sexual assault, burning of huts, and seizure or destruction of possessions. The reports connected these abuses to the creation of the national parks in the early 2000s, which had resulted in the displacement of the Baka people from their traditional homes and criminalized access to the forests on which they relied for their material, cultural, and spiritual well-being. Many Baka indicated that they faced an untenable choice: either they continued trying to return to the parks to hunt, thereby risking arrest and beatings from ecoguards, or they stopped going into the forest and lost their culture and means of livelihood. WWF did not make these reports public.

WWF continued to provide substantial support to park rangers, including by paying salary bonuses, providing equipment, and rations and supplies for patrols. WWF officials were involved in reviewing plans and resources for patrols, and provided support for at least 63 raids on villages around the parks between 2014 and 2018, including 32 that were accompanied by army units. Sometimes WWF provided drivers and vehicles for missions, transporting the ecoguards. Occasionally, WWF staff accompanied the missions themselves. However, the Panel did not find any evidence, in Cameroon or elsewhere, that WWF staff themselves were alleged to have committed beatings or other human rights abuses.

The Panel found that until recent years, WWF had not taken adequate steps to fulfill its responsibility to respect human rights in relation to the national parks in Cameroon. WWF did support consultation with local communities in the period leading up to the establishment of the three national parks, but that consultation process was unsuccessful at protecting the rights of the Baka, especially in relation to their customary rights of access to and use of the forest. WWF had not incorporated its human rights commitments into its agreements with the Cameroon government, operationalized the commitments in its work, ensured that it had the necessary capacity to implement the commitments, or established processes to monitor and ensure compliance with them. It did not have a due diligence process to assess the human rights impacts of supporting ecoguard and army patrols, or to address any potential or actual impacts identified.

After WWF hired a community coordinator for the first time in September 2017, he took some positive steps, including establishing closer relationships with local civil society organizations, supporting local organizations to educate local communities about their rights, and

²¹ The Panel report also included chapters on the Central African Republic and India. Much of the following language describing the Panel’s findings is taken verbatim from the Report without the use of quotation marks.

²² Ibid chap. 4.

signing a partnership agreement with the Cameroonian Ministry of Social Affairs. WWF also supported efforts by CEFAID, a Cameroonian civil society organization, to establish a complaint mechanism for local Baka communities on a wide range of issues. In 2019, the Cameroon National Human Rights Commission and others, with WWF support, assessed the mechanism and found that communities generally were unaware of it; that its office was too far from the Baka communities; and that it lacked long-term funding. In 2020, the Commission and other stakeholders began to take steps to build the capacity of the complaints mechanism.

Efforts were less successful with respect to the Cameroon Ministry of Forests and Fauna (MINFOF), the government agency that oversees the protected areas. WWF drafted a new MOU with MINFOF in 2018 that would improve on the existing agreement, but as of the finalization of the Panel report in August 2020, MINFOF had yet to sign it. WWF supported the development of a Code of Ethics for ecoguards in Lobéké National Park, but Boumba Bek and Nki National Parks had not adopted the Code of Ethics for their ecoguards, and WWF had not pressed them to do so. The WWF position was that since those two parks did not have sufficient funding for payment of bonuses, the reduction or suspension of which is the chief practical incentive to comply with the Code of Ethics, adopting a Code of Ethics in those parks would be ineffective. Similarly, a recommendation of one of the previous reports that WWF and MINFOF develop a rapid response structure for responding to incidents and dealing with allegations also appeared not to have been implemented.

The long-standing underlying problem is that the local communities – in particular the Baka – do not have clearly defined and protected access to the forests that they have historically relied upon for hunting, fishing, gathering and sacramental purposes. Without such access, conflicts between them and the ecoguards will continue as long as the Baka continue to try to adhere to their customary ways of life. In February 2019, MINFOF entered into an MOU with a local Baka organization in which MINFOF agreed to give the Baka people access to the three national parks. However, rather than set out the terms of access, the MOU provided that the parties will draw up an action plan each year that will specify all activities to be undertaken in the protected areas and their vicinities. As of the finalization of the Panel report, 18 months later, no action plans had been adopted. My understanding is that they have still not been adopted to this day, and that the Baka still do not have effective access to the parks.

B. Democratic Republic of Congo (DRC): Salonga National Park²³

WWF has co-managed Salonga National Park in the Democratic Republic of Congo since 2015. WWF appoints the Park Director; the Institut Congolais pour la Conservation de la Nature (ICCN), the agency of the DRC responsible for overseeing national parks and protected areas, appoints the Deputy Director, who has responsibility for managing the ecoguards.

From at least 2016 to the present, WWF has provided technical and financial support to Salonga National Park for its general operations, including infrastructure and equipment such as vehicles, radios and GPS devices for the ecoguards. WWF began paying bonuses to ecoguards on patrol no later than December 2016. ICCN was nominally responsible for base salaries of

²³ Ibid chap. 5.

ecoguards, but a 2018 self-evaluation of the Park by Park authorities stated that bonuses were the sole source of revenue for the ecoguards.

Before signing the MOU in 2015, the WWF DRC office prepared a Risk Assessment and Mitigation Plan. Although the WWF Programme Office in the DRC, like the other WWF Programme Offices in the Congo Basin, is supposed to be under the supervision of WWF International, based in Gland, Switzerland, it does not appear that WWF International officials were engaged in or aware of this process. However, WWF DRC did receive input from WWF Germany and WWF United States, two of its major donors. The assessment did not evaluate the risks in detail or develop an effective plan to prevent or respond to abuses. WWF did not consult with representatives of the communities around the national park to identify the potential impacts of taking on the co-management role; it did not clearly identify or inform others of the human rights commitments in its social policies that would be relevant to its co-management of Salonga National Park; it did not identify or inform others of any “red lines” that, if crossed, would cause it to limit or withdraw support; and it did not establish, or partner with others to establish, a mechanism to hear complaints from local communities.

Before entering into the MOU, the only measure WWF DRC identified to address the potential for human rights abuses was to appoint a high-level Park Director. However, the first person WWF appointed to that position, in January 2016, was hampered by his lack of fluency in French or local languages, and in any event the MOU gave him and his successor, who took the position in early 2017, no control over ecoguards.

That WWF DRC did not anticipate and adopt measures to protect the rights of local residents and prevent potential abuses was due in large part to the fact that WWF International did not operationalize the policies and procedures necessary to ensure that WWF DRC could implement its human rights commitments. To do so, WWF International needed to provide the necessary expertise and staff support and set up clear lines of accountability. In this period and subsequently, it does not appear that anyone had the task of ensuring that the WWF social policies were understood and effectively implemented. Many of the senior employees in WWF DRC were not familiar with all of the relevant WWF social policies, and WWF DRC staff did not receive training on human rights before taking up their positions. For all of these reasons, WWF DRC was ill-equipped to anticipate and respond to allegations of human rights abuses.

Because WWF DRC was a Programme Office under the management authority of WWF International and dependent on funding from National Organisations such as WWF Germany and WWF US, these omissions were the responsibility not just of WWF DRC, but of the WWF Network as a whole. The Network had not, for example, established operational standards for park rangers that would have guided WWF DRC and other Programme Offices. In particular, it is unfortunate that WWF International was not involved in or even aware of the consideration of the risk assessment and mitigation measures, or the negotiation and approval of the MOU. Donor offices, particularly WWF Germany and WWF US, were directly engaged with WWF DRC, but they did not play a clear role in ensuring compliance with WWF human rights commitments.

In December 2016, a WWF DRC staff member reported to the WWF Country Director and Conservation Director in the DRC that each year, three to five Salonga ecoguards were tried

at a military tribunal for abuses committed on missions. In March 2017, the WWF DRC senior management team decided to investigate the allegations and to study the relationship of the Park with communities more generally. However, the Country Director and the Salonga Park Director decided not to proceed, and the actions were not taken.

The reasons that were presented for not inquiring further into the issue of human rights abuses do not stand up to scrutiny. One justification was that WWF DRC preferred to focus on steps it had proposed to address abuses going forward, such as developing an ecoguard code of conduct, putting in place better training, and establishing a grievance mechanism. However, these measures were not in place at the time. (Over three years later, when the Panel report was finalized, the code of conduct and the grievance mechanism were still not in place, and improvements to training had only been partially implemented.) Another objection was that it would not have been feasible to survey all of the hundreds of villages around the national park. But WWF DRC need not have visited every community to have a clearer sense of the scope of the problem. In 2018, and again in 2020, WWF DRC and some of its partners conducted socio-economic surveys of 1,300 households in communities around the national park that included questions about livelihood activities, sources and types of food consumed, sources and levels of income, availability and use of ecosystem services, access to education, and so on. It would have been possible to extend these surveys to include questions about relationships with the national park and its ecoguards.

The actual reason for not examining this issue more closely seems to have been a desire to avoid conflicts with ICCN, which senior officials at WWF DRC and WWF's Regional Office for Africa believed would react negatively to any efforts to look into allegations of past human rights abuses.

In March 2018, after learning that no action had been taken to implement the senior management team's decision taken the previous year, the WWF DRC Conservation Director escalated the issue to WWF's Regional Office for Africa, stating that ignoring human rights allegations could cause serious reputational damage to WWF. He also expressed concern that ICCN was refusing to work with him on other issues because it had been told that he had suggested investigating the allegations of human rights abuses. The Country Director disputed his statements and criticized him for raising the issue with the regional office.

In May 2018, a civil society organization, Rainforest Foundation UK (RFUK), sent a letter to WWF raising additional allegations, including of murder and rape by Salonga park rangers. WWF responded to the letter by telling RFUK that it needed more information to be able to address the allegations. In August 2018, with support from RFUK, investigators from Actions pour la Promotion et Protection des Peuples et Espèces Menacées (APEM), a civil society organization in the DRC, sought further information by visiting eleven villages near the national park. The investigators conducted village meetings and personal interviews with 231 community members. Of the individuals surveyed, 56 (24%) reported having been direct victims of physical violence by ecoguards or soldiers working with them. The APEM investigators received and documented allegations of specific instances of abuse, including several incidents of murder, rape, and torture between 2013 and 2017.

The RFUK/APEM report also stated that the communities had been adversely affected by restrictions on access to the national park, which curtailed their ability to engage in hunting, fishing and the collection of non-timber products, and to visit their sacred sites. The report stated that signs of malnutrition were visible in the villages, and a staff member from a local hospital was cited as confirming that malnutrition in the area is ubiquitous. The situation was described as having worsened since 2006 when restrictions on fishing were tightened. Finally, the report stated that communities felt they were not included in the decisions related to management of natural resources. Only 67 of the 231 people interviewed had ever attended a meeting held by park management or conservation NGOs, and they said that the primary purpose of these meetings was to inform them of conservation-related restrictions and sanctions, not to consult with them about management decisions or to seek their consent.²⁴

In June 2018, the Salonga park authorities went to the DRC regional Military Auditor with jurisdiction over ecoguards, and found that seven ecoguards had been convicted of looting in 2012, and eight others were accused of crimes including murder, rape, and torture, between 2013 and 2018. Of these fifteen ecoguards, fourteen were still working for the park at the time of the inquiry.

In late 2018, after this inquiry and the August 2018 investigation by APEM, WWF International commissioned two investigations, which went to the villages visited by APEM and interviewed the alleged victims and others. The first investigation team consisted primarily of investigators from Salonga National Park and ICCN. Because of the hostility within local communities to the park management, the investigators did not inform people that they were from the park or ICCN. The investigators found that all of the alleged victims confirmed their allegations. The investigators also met with village leaders who renewed their request to have periodic access to the Iyenge river in Salonga for subsistence fishing and gathering to improve their living conditions and fight against malnutrition. The report recommended consideration of a victim protection strategy and a protocol to recognize community fishing rights.

The second investigation was conducted between October and December 2019, by the Comité des Droits de l'Homme et Développement (CODHOD, a civil society organization in the DRC) and the Military Auditor's Office with criminal jurisdiction over many of the Salonga ecoguards. The investigators conducted more than 50 interviews with victims, witnesses and other sources. After the investigation, CODHOD presented a detailed report that concluded that there had been multiple incidents of murder, rape and torture committed by ecoguards. The investigative team also stated that the use by ecoguards and army soldiers of torture and other cruel, inhuman or degrading treatment was a regular part of their operations against people in the villages, encampments and forest in and around Salonga National Park who crossed the boundaries of the park to fish or hunt. The report stated that the most recurrent methods consisted of: beating the victims on various parts of the body with sticks or the butts of weapons; striking the victims with sharp objects such as bayonets; tying women's breasts with strings and then pulling on them; and extracting the victims' teeth. Such incidents were alleged to have occurred in every year from 2013 through 2017. The report identified the names of alleged

²⁴ RFUK and APEM, *Severe Human Rights Abuses Reported in and around Salonga National Park, Democratic Republic of Congo*, <https://www.rainforestfoundationuk.org/media/abf196ba-89da-4680-8df3-af5d382f7d5f>.

victims and perpetrators, dates and locations, of the murders, rapes, and acts of torture. The investigative team referred the cases to the Military Auditor for further action.

In its conclusion, the CODHOD report “identified the feeling of disappointment on the part of the population, which has had its forest appropriated for the public interest (the Park), but in return have received nothing”.

WWF has not published the investigative reports it commissioned in the DRC.

The initial WWF-supported investigation, in February 2019, was essentially limited to asking the alleged victims described in the 2018 RFUK/APEM report to confirm their allegations. The CODHOD investigation in late 2019 was much more thorough. However, like the February 2019 investigation, the CODHOD investigation revisited the same villages initially visited by APEM in August 2018, which represent under two per cent of all the villages around the national park. There is no reason to think that the communities visited were unusually likely to be subjected to human rights abuses. As a result, the CODHOD report almost certainly described only a small fraction of the problem.

At the time of the Panel report, none of the cases of alleged murder, rape or torture investigated by CODHOD had resulted in prosecution.²⁵ The Panel was told by WWF that the ecoguards named in the open cases at the Military Auditor remain suspended. The Panel did not see evidence that the accused ecoguards in the other cases referred to the Military Auditor by the CODHOD report were suspended or subjected to further disciplinary actions by the park management.

WWF announced that it would take a number of positive steps, including monitoring patrol missions, agreeing on procedures for investigating allegations and imposing disciplinary measures, establishing a complaint mechanism, and supporting victims. However, as of July 2020, the only measures implemented were that ecoguards ceased joint patrols with army units after 2018, and specific human rights training had begun to be provided in February 2020.

WWF’s action plans did not address the prohibition on access and resource use in the national park, even for subsistence hunting and fishing in accordance with customary rights of local communities, something that is a human rights issue in itself and also an important driver of conflicts between ecoguards and local communities.

The Independent Review Panel concluded that WWF had not fulfilled its human rights commitments in relation to activities it supports in Salonga National Park.

²⁵ However, it was subsequently reported that in December 2020, five Salonga park rangers accused of raping and torturing four women were convicted and sentenced to imprisonment for terms of five to twenty years. The court also ordered ICCN to pay USD 100,000 in reparations to survivors. See RFUK, “Huge Leap in Fight Against Impunity for Conservation-Related Abuses in DRC as Park Rangers are Sentenced for Rape and Torture” (Jan. 13, 2021), at <https://www.rainforestfoundationuk.org/huge-leap-in-fight-against-impunity-for-conservation-related-abuses-in-drc-as-park-rangers-are-sentenced-for-rape-and-torture>.

The Panel made a number of recommendations, including that: WWF should establish a system of monitoring of ecoguard patrols, which could include independent observers accompanying as many patrols as possible, GPS tracking, and regular debriefing of the patrols and the independent observers; WWF should accelerate the introduction of an effective independent complaint mechanism that is able to provide legal, technical and financial support to victims; and it should ensure that the Park authorities establish a procedure that provides for suspension of ecoguards against whom credible allegations are raised, independent investigation of allegations, remedies to victims, and disciplinary punishments by the Park management itself.

The Panel stated that WWF should make clear when and why it will use its leverage to push for systemic changes. In particular, WWF should make clear that it cannot continue to provide support for the ecoguards without effective mechanisms in place to monitor their behavior, investigate allegations fully and ensure appropriate disciplinary measures for confirmed cases of abuse.

As in Cameroon, all of the DRC investigations highlighted that an underlying cause of the conflicts between ecoguards and local communities is the restriction on access to the national park for subsistence hunting, fishing and gathering of non-timber forest products. The Panel stated that in addition to developing community forests, WWF should also influence the planning and zoning of the area to clarify boundaries and establish zones of community access and use in and around the park, in order to reflect customary rights and accommodate local needs. Measures should also be taken to sensitize local communities and ecoguards to the boundaries and local rights. The Panel stated that it is critical that WWF and the Park include the local communities in these processes, including through participatory zoning and community mapping.

C. Republic of Congo: Messok Dja²⁶

The focal point for WWF's work in the Republic of Congo is Messok Dja, a forested area on the northern border of the country that is subject to two long-term logging concessions. Messok Dja is part of a broader landscape, extending across northern Congo, Gabon, and Cameroon, called Tri-National Dja-Odzala-Minkébé, or TRIDOM. About one-quarter of TRIDOM is designated as protected areas, and about two-thirds are subject to logging concessions, including those covering the Messok Dja forest.

In 2005, WWF began working with the government on a conservation program called ETIC (Espace TRIDOM Interzone Congo), covering the Congolese portion of the TRIDOM landscape, including Messok Dja. ETIC is managed jointly by WWF and the Congolese Ministry of Forest Economy, Sustainable Development and Environment (MEFDD). WWF provides support to the ETIC ecoguards through salaries, bonuses, and equipment.

From at least 2016, WWF heard of allegations of human rights abuses by ecoguards in the ETIC/Messok Dja area. For example, in December 2016 Survival International (SI) published letters from villages in several countries in the Congo Basin, including four from Baka in the Congo. One of the letters, from an unnamed village in the Souanke region, in the north-west part of the ETIC area, stated that "WWF people" beat them, burn their houses and ruin their

²⁶ Independent Expert Panel, *Embedding Rights in Conservation*, chap. 7.

belongings. In September 2017, SI published a report that described alleged abuses in several countries of the Congo Basin, including more than a dozen separate incidents of beatings by ecoguards in the ETIC area between 2011 and 2017. One of the incidents, in 2011, allegedly resulted in two deaths. In each case, WWF became aware of the allegations soon after they were published.

WWF did not conduct a human rights impact assessment or adopt a mitigation plan before entering into the ETIC partnership. However, since 2018 WWF has taken some steps to try to prevent and address alleged incidents of abuse. For the most part, these steps were initiated and carried out by the WWF ROC staff and ETIC without direct intervention by WWF International.

For example, in early 2019, WWF began to implement a local complaints mechanism. Two community liaison officers at WWF visited local communities around Messok Dja to inform them that they could file complaints, and in 2019, they received 31 complaints concerning treatment by ecoguards, including eight relating to alleged incidents from 2012 or before, two between 2013 and 2016, six from 2017, eight from 2018, six from 2019 and one undated. Approximately 14 of the complaints alleged beating or physical violence by the ecoguards. Two of these complaints, from 2008 and 2017, alleged that the beatings had been so severe that they caused the subsequent death of the victim.

Investigation of the complaints is conducted by a team headed by the community liaison officer, which presents its findings to the ETIC National Coordinator and WWF. If the National Coordinator accepts the complaint as proven, the Coordinator convenes a disciplinary council, which includes the Coordinator and a person responsible for human resources. The disciplinary council may impose a range of sanctions and remedies, including suspension or full dismissal of ecoguards, and compensation for victims. As of July 2020, 12 of the cases raised through the complaints mechanism had been closed and 18 were still in progress. Some of the cases were closed because of lack of evidence about the circumstances of alleged injuries.

The Panel found that the new mechanism has some positive aspects, including in particular that the community liaison officers have facilitated the lodging of complaints through their visits to villages. The major shortcoming is that the WWF community liaison officers are also the principal investigators. The Panel stated that they appear to be conducting their tasks conscientiously and to have achieved an increased level of trust among local communities. However, they are not trained to conduct criminal investigations. In addition, they are not independent of the ETIC programme, which gives rise to potential conflicts of interest. A preferable approach would be for WWF to support an independent entity to receive complaints, as it has done in Cameroon and the Central African Republic.

In November 2018, WWF staff in the Congo drafted a code of conduct for ETIC ecoguards, but the code of conduct had not been formally validated by the Congolese government as of the finalization of the Panel report. In July 2019, the WWF office also took steps to have an observer join ecoguard patrols on a regular basis. The observer takes notes, has a camera that can be used to film arrests, and provides information to WWF ROC staff. However, because of the number of patrols, it is impossible for the observer to join every mission.

In addition to improving the complaints mechanism, the Panel recommended that WWF build on its initiatives to have independent observers accompanying ecoguard patrols and to carefully document arrests and interrogations with lawyers present. More generally, WWF should ensure that the ecoguards distinguish between poaching of endangered species such as elephants and the traditional subsistence activities of the Baka – activities that they have not given their free, prior and informed consent to restrict and that should not be criminalized. The Panel stated that WWF must make clear that adoption and effective implementation of the code of conduct are prerequisites for its continued provision of support to ecoguards. WWF must ensure, including through its participation in the ETIC disciplinary committee, that appropriate investigation and review of allegations and sanctions for misconduct are carried out, including the referral of criminal cases to local prosecutors.

The Congolese government recognized Messok Dja as a potential site for a protected area in 2011. In June 2017, WWF hired an independent consultant to begin the process of obtaining the free, prior, and informed consent (FPIC) of the local communities for the establishment of the protected area. The consultant reported that some communities in the area were somewhat favorable to the proposal, but others were resistant to the idea of a national park near them because they associated it with an increase in repression from ecoguards and a ban on hunting. The consultant also reported that the communities associated WWF with ecoguards and therefore with repression. As a result, many members of the communities hesitated before participating in meetings, and Baka would hide at the approach of WWF vehicles.

In 2018, WWF and the Congolese Agency for Fauna and Protected Areas jointly applied for and received funding from the European Union for conservation of Messok Dja, including for FPIC, and WWF identified a consortium of NGOs to conduct the next stage of the FPIC process. In June 2019, the consortium reported that of 37 local communities potentially impacted by the proposed protected area, three were unconditionally in favor, ten were categorically opposed, and 24 had set conditions that would have to be satisfied. The consortium recommended deferring the process of establishing the protected area and providing for further consultation.

WWF also commissioned the Forest Peoples Programme (FPP) to assess the FPIC process, and in June 2019 FPP reported that the process had several fundamental flaws, including that engagement with communities had started too late in the process and that the framing of the FPIC process had presented the creation of the protected area as a *fait accompli* or, at the very least, a likely outcome. In April 2020, the EU reallocated its funding of WWF in relation to Messok Dja, with a view to shifting the responsibility for the FPIC process from WWF to an external organization with experience in community consultation. In July 2020, the Congolese government stated that the FPIC process initiated by WWF was not following the laws and regulations of the country and had created some contradictions with the local populations. The government stated that it had decided to suspend the process in order to implement its internal law on procedures for consultation of indigenous populations.

The Panel found that the WWF office in the Congo developed its own FPIC process in a sincere effort to carry out a meaningful procedure. However, because it misunderstood basic aspects of indigenous rights and the FPIC process, the local office proposed and began to

implement an FPIC process that did not comply with WWF's own commitments. The Panel concluded that the responsibility for this must rest with WWF International and the Network as a whole, which had committed to provide FPIC guidelines but had not done so. The small WWF ROC office had received insufficient guidance from WWF International, or the National Organisations engaged in the Republic of the Congo, on how to carry out a proper FPIC procedure. As a result, the local WWF office tried to develop the process itself. The Panel stated that that is not how the system should work. WWF should have a consistent approach to these issues that it faces across its entire network, one that complies with human rights norms and WWF's own commitments. WWF should not leave questions of implementation of FPIC commitments to each Programme Office to work out on its own.

D. Nepal: Chitwan National Park²⁷

The WWF office in Nepal operates as a branch of WWF US. In Nepal, WWF works with several protected areas and surrounding communities, including Chitwan and Bardiya National Parks. WWF has no co-management agreements for national parks in Nepal. Park rangers and Nepal Army personnel are employed for law enforcement within the parks, and their salaries and bonuses are paid by the government. WWF does not provide financial support or pay salaries or bonuses to rangers or to Army personnel. WWF does provide support through the Nepal Department of National Parks and Wildlife Conservation (DNPWC) for field gear such as bicycles (for Army personnel) and items such as tents, sleeping bags, raincoats, water bottles, searchlights and first aid kits for the rangers. Most of WWF's work lies outside the protected areas, working with the Forestry Department and buffer zone communities.

The Panel report reviewed ten separate incidents of human rights abuses by park rangers and Army personnel between 2005 and 2016. The incidents included alleged murders, torture, and rape. The Panel stated that WWF Nepal did not appear to have been aware of the majority of the alleged abuses, and where such information was known, WWF Nepal adopted the attitude that any allegation relating to the government or the armed forces was a matter for the government to address, and it does not appear to have referred concerns to WWF US. The Panel was unable to find what action, if any, was taken by WWF after learning of these allegations. News updates related to the killing of suspected poachers during anti-poaching raids were circulated in some instances to WWF staff but there does not appear to have been any recognition within WWF US or WWF Nepal at the time that such scenarios raised concerns about the potential for human rights abuses. For example, Kamal Jung Kunwar, who was alleged to have been involved in abuses as the Assistant Warden and later Chief Warden of Chitwan National Park, authored a memoir in 2009, entitled *Four Years for the Rhino*, in which he documented methods of interrogation, including torture and waterboarding, used on suspects in anti-poaching arrests. No concerns were registered by WWF over the use of these unlawful methods of interrogation.

The Panel found that additional guidance and support should have been forthcoming from WWF US to WWF Nepal, especially when reports of human rights abuses in the national parks were escalated to them. The Panel stated that it was not clear on where WWF US or WWF Nepal's own "red lines" were in terms of the support that WWF provides to the government.

²⁷ Ibid chap. 8.

Senior staff of WWF Nepal recognized that when allegations relating to human rights abuses or compliance with FPIC arise, WWF could seek to leverage its position to address such issues and minimize the risk of recurrence. The Panel stated that it is essential that WWF US and the wider WWF Network develop guidance on when such steps can or should be taken, and that this position be clarified to staff so that they can learn to identify abuses and act appropriately in response.

The Panel stated that WWF must make greater effort to be seen to respect its human rights commitments. In that light, the Panel noted that a provision of Nepalese law had been criticized by the UN Office of the High Commissioner for Human Rights as enabling officers to open fire on alleged poachers in circumstances where there is no immediate threat to life, which has been characterized as authorizing a “shoot on sight” policy. The Panel stated that WWF should make clear that it would oppose any application of this law to enable officers to open fire on suspected poachers in circumstances where there is no immediate threat of death or serious injury, which would be inconsistent with applicable human rights standards.

E. Overall Conclusions of the Independent Panel²⁸

The Independent Review Panel found that WWF generally had strong commitments to human rights in its social policies, but that its implementation and monitoring of these social policies on the ground was inconsistent and, in many respects, ineffective.

For example, WWF has relied on a network of internal volunteers, called the Social Development for Conservation (SD4C) network, to implement its social policies. In practice, SD4C may have been effective in some country programmes but the Panel stated that support for SD4C seems to have been patchy and inconsistent. The SD4C volunteers took on this role in addition to their regular work and responsibilities at the country level, but with no authority (or resources) to ensure stronger implementation of social policies across national programmes. In the Congo Basin, for example, some countries, including the DRC, never had an SD4C representative at all.

The problems concerning implementation of social policies are illustrated by what happened with WWF’s Statement of Principles on Indigenous Peoples and Conservation, first published in 1996. An evaluation in 2007 of the implementation of the Statement of Principles revealed limited internal and external awareness of the policy, difficulties in translating its broad principles into locally relevant action, and a lack of resources, training and operational guidance. In response, WWF committed to take further steps to increase policy oversight and to support capacity and accountability at Country Office and Network levels. Unfortunately, the evidence gathered in the course of the Panel’s review indicated that these recommendations did not consistently translate into effective action on the ground. Programme Offices did not always have the appropriate expertise on staff to adequately implement social policies.

In short, the review suggested that there was a consistent pattern within WWF of identifying a problem, developing a policy, initiating a review and useful recommendations but then failing to follow up adequately. One of the principal difficulties in ensuring consistent social

²⁸ Ibid chap. 10.

policy implementation seems to have been a lack of ownership of the issue both within WWF International itself and at the country programme level in the Congo Basin offices that were under the purview of WWF International. There seems to have been parallel confusion between WWF US and WWF Nepal.

With respect to complaints procedures, the Panel found that it seemed that the development of in-country grievance mechanisms for affected parties had been slow and *ad hoc*. There had been no consistent process within WWF to identify and build on successful models, or to replicate them elsewhere.

The Panel stated that WWF's primary focus on promoting "good news" may have led to a culture in which Programme Offices were unwilling to share or escalate the full extent of their knowledge about alleged human rights abuses for fear of scaring off donors or offending state partners. Minimizing problems to internal as well as external audiences not only runs counter to the importance of transparency; it also makes it more difficult to develop coherent strategies. An example is the failure of the WWF DRC office to bring allegations of human rights abuses of which it had become aware to the attention of the WWF International office for more than a year, from December 2016 to March 2018, and the internal criticism that the DRC Conservation Director received in 2018 when he finally went over the head of the Country Director to do so.

That this "good news" culture affected even the highest levels of the organization is illustrated by the treatment of a consultant's 2018 report on the human rights situation in Cameroon. In May 2018, WWF International officials provided a briefing paper to the WWF International Board on the report. The briefing paper softened the statements in the report in some important respects. In particular, it did not include the statement from the report that allegations of human rights abuses were widespread and increasing; instead, it stated that most of the allegations raised related to the period 2009 to 2013. The briefing paper did not mention that the consultant had received new allegations of abuses. It repeated the conclusion in the report that there had been a comprehensive process of consultation and consent before the establishment of the protected areas, but it did not mention that the consultant reported that the local people interviewed now believed that the terms of the MOUs were not being complied with, including by WWF, and that these failures were the cause of the current abuses.

The Panel stated that WWF (at all levels) should be more transparent both internally and externally about the challenges it faces in promoting conservation and human rights agendas. Equally important, it must be more forthright about the effectiveness, or lack of effectiveness, of its efforts to overcome those challenges.

The Panel noted that in June 2019, WWF adopted a new Environmental and Social Safeguards Framework (ESSF) and as of 2020, was in the process of setting up an Ombudsperson's Office.²⁹ The Panel stated that the ESSF and the other measures are important steps for putting in place consistent processes across the Network to improve WWF project design and performance in relation to human rights, but that they are untested and will require a substantial investment to build capacity at both headquarters and country level to deliver an effective system. The Panel stated that since many of these safeguard measures are new – or are

²⁹ The Ombudsperson finally took office on August 1, 2021.

still to be put in place – it was not possible to assess yet how effective they will be in addressing and mitigating human rights concerns.

F. Panel Recommendations to WWF³⁰

The Panel made a number of detailed recommendations to WWF, including that:

1. WWF should integrate all of its human rights commitments into a single, easily accessible document, and make sure that the ESSF explicitly reflects and is fully consistent with its human rights commitments.
2. WWF should include clear statements of its human rights commitments in all of its country and management agreements with governments and other partners.
3. WWF should adopt detailed human rights commitments in relation to law enforcement and anti-poaching activities. When providing support for law enforcement activities in protected areas, WWF should ensure that there are effective systems of monitoring and enforcing human rights standards in place, including due diligence procedures for hiring, training and disciplining rangers. WWF should make clear that it cannot provide support for rangers without effective mechanisms in place to monitor their behavior, investigate allegations and provide appropriate disciplinary measures for confirmed violations. WWF should monitor and report on compliance by rangers and other law enforcement agents in sites to which WWF provides support.
4. WWF should build capacity at headquarters, home office and country level to effectively implement its human rights commitments, including through these measures:
 - (a) The International Board should review its membership and ensure that at least one member is a representative of Indigenous peoples, and at least one member has expertise in human rights.
 - (b) WWF International should appoint a Director of Human Rights Commitments and Compliance (HRCC), who would be part of the Senior Management Team and report directly to the Director General.
 - (c) WWF National Organisations and Programme Offices should each appoint or designate an individual with responsibility to ensure that the office fulfils its due diligence and other human rights commitments, and who has the necessary expertise and support.
5. WWF should clarify and institutionalize the steps required for its human rights due diligence process, including: (a) assessing all actual and potential human rights impacts of its proposed initiatives; (b) consulting with those who may be affected and taking into account their views; (c) ensuring action plans effectively address the human rights impacts identified; and (d) monitoring and evaluating implementation of the plans.

³⁰ Ibid chap. 11.

6. WWF must take more concrete steps to fulfil its human rights commitments on indigenous peoples and local communities (IPLCs), including through these measures:

(a) Each WWF National Organization and Programme Office in landscapes whose activities may affect IPLCs should have an IPLC coordinator who has expertise in indigenous rights and community consultation, and who has sufficient support to engage with IPLCs in the landscape and to ensure that they have input into the development and implementation of WWF activities.

(b) WWF should work to strengthen management and governance of protected areas to ensure that they include meaningful and effective participation by IPLCs.

(c) WWF National Organisations and Programme Offices should engage with, and where possible employ, indigenous people and members of local communities, especially in relation to conservation and protected area management.

(d) WWF's due diligence process should mainstream IPLC issues, including by carefully assessing potential impacts on IPLCs and their rights, ensuring full and effective participation of IPLCs throughout the development and implementation of proposed initiatives, and implementing mitigation and monitoring measures.

(e) In relation to protected areas in which customary rights of access and use existed historically but are not currently respected in law or practice, WWF should work with the authorities, the IPLCs and other stakeholders to promote and support mitigation measures and to develop a plan of action that describes the measures and the arrangements for implementation. These may include recognition of rights of use and access in park management plans, community forests and zoning of protected areas, and clarification of the boundaries of different zones to all interested parties, including rangers and IPLCs themselves.

(f) WWF International should identify an IPLC Coordinator, who has a mandate to develop and disseminate detailed guidance to all WWF offices on FPIC procedures, implementation of WWF commitments on IPLCs, and mainstreaming IPLC issues into the human rights due diligence process. The IPLC Coordinator should work in cooperation with the WWF HRCC Director.

7. WWF should provide for complaint mechanisms at the level of individual countries and at the level of the Network.

8. WWF must report honestly and transparently not only its progress in achieving compliance with its commitments, but also the challenges it faces and where it has not been able to meet its goals. Each National Office and Programme Office should report annually on that office's implementation of WWF's human rights commitments, and the WWF HRCC Director should publish an annual report on implementation of human rights commitments that incorporates the country-level reports. The key documents concerning WWF's involvement in programmes and projects, including agreements with governments, protected area management

plans, and codes of conduct for rangers should be provided to partners and stakeholders, including indigenous peoples and local communities, that are directly affected.

9. WWF Programme Offices should seek sufficient funding from National Organisations and other donors to implement their human rights commitments effectively. They must make clear to donors the level of resources needed, as a necessary component of conservation initiatives.

10. The WWF International Board should commit to appointing an independent expert or body to review, and report publicly on, the implementation of these recommendations by the end of 2022.

G. WWF Response to the Report of the Independent Expert Panel³¹

The WWF November 2020 response to the Panel report was disappointing. WWF did not apologize or accept responsibility for its failures to meet its own human rights commitments. Although it stated that it “embraced” the Panel’s recommendations, it primarily took the position that the ESSF and other measures that it had adopted in 2019 already sufficiently addressed them.

In 2021, WWF engaged in what it called a public consultation on its new ESSF policy, which includes revisions to its social policies and human rights commitments. To be effective, a consultation over WWF’s proposal to revise its social policies and to adopt new safeguards should have occurred before WWF drafted them, and long before it put them into practice. WWF should have begun by inviting indigenous peoples, local communities and other affected stakeholders to participate from the outset, listening to their views, developing tentative proposals, and receiving feedback on them. That did not occur. As noted above, WWF’s International Board approved the ESSF in June 2019 and they were launched in July 2019. WWF has been implementing them ever since.

As drafted, WWF’s new safeguards and social policies do not adequately respond to the Panel’s findings and recommendations. In fact, in important respects, they weaken WWF’s existing commitments.

1. Using the Wrong Model.

In its previous social policies WWF adopted strong human rights commitments, especially with respect to the rights of indigenous peoples (although it had a substantial gap with respect to standards for park rangers for which it provides support). These commitments, together with the UN Guiding Principles on Business and Human Rights, should have provided a strong basis for WWF’s efforts to adopt an integrated approach to human rights, including implementation through a safeguards mechanism.

³¹ This and the remaining sections of my testimony do not draw on the report of the Panel, which did not address WWF’s response to its recommendations. WWF’s response is available at https://wwf.panda.org/wwf_news/wwf_independent_review/.

Unfortunately, WWF instead adopted a safeguards assessment procedure based on that used by the World Bank Group. WWF appears to have treated the World Bank as the gold standard. Of the nine safeguards in WWF's ESSF, seven are based more or less directly on the World Bank Environmental and Social Standards.

There are two basic problems with starting with the World Bank model. First, WWF is not a development bank. In many cases, it is not deciding whether to fund various operations proposed by others, as the World Bank does, but rather whether to undertake projects itself, sometimes in partnership with governments or other entities. In this way, it is more similar to multinational corporations, and WWF would have done better to begin by looking carefully at approaches to human rights due diligence and compliance taken by multinational corporations, many of which draw on the UN Guiding Principles on Business and Human Rights.

Second, and more fundamentally, the World Bank safeguards are not the gold standard for implementing human rights commitments. On the contrary, the World Bank has been famously criticized for ignoring human rights almost entirely in its work. The World Bank approach to safeguards is to assess and manage risks that the projects that it funds may cause adverse environmental and social effects. It sets out a process for assessing these risks and then minimizing and mitigating them to levels that are acceptable to the Bank. Starting with the World Bank model means that WWF has used a framework that assesses and manages risks rather than one that seeks primarily to comply with human rights norms.

This approach is exemplified in the first WWF ESSF Standard, on Environmental and Social Risk Management. That Standard states that its objectives are “to (1) improve planning through the identification and selection of alternatives to enhance benefits, and to avoid or - if avoidance is not possible - minimize, mitigate, offset or compensate for adverse social and environmental impacts on affected communities; and (2) ensure effective management of environmental and social risks and opportunities within a landscape from conception to closure.”³²

WWF's responsibility under applicable human rights norms is not to just determine how much risk an activity might have of “adverse social and environmental impacts” and then to “minimize, mitigate, offset or compensate for” the adverse impacts that it decides it cannot avoid. Rather, to meet WWF's overarching responsibility to respect human rights, it must avoid causing or contributing to adverse human rights impacts through its own activities, and to address such impacts when they occur; and seek to prevent or mitigate adverse human rights impacts that are directly linked to its operations, products or services by its relationships, even if it has not contributed to those impacts.³³

An example illustrates the problem. Consistent with the World Bank approach, WWF's proposed Policies and Standards exclude only a small number of activities as completely ineligible for its management or support, including weapons, forced labor, and involuntary

³² WWF Standard on Environmental and Social Risk Management, *Policies and Standards*, p. 15.

³³ This is the standard set out in Principle 13 of the UN Guiding Principles on Business and Human Rights, UN Doc. A/HRC/17/31 (21 March 2011).

resettlement.³⁴ Otherwise, whether WWF conducts/supports an activity depends on its process for assessing and managing risk as set out in the Standards. Entire landscapes (not projects or specific activities) will be assessed and categorized as “high risk”, “medium risk” or “low risk.”³⁵ For medium and high risk landscapes, mitigation plans, called “environmental and social mitigation frameworks” or ESMFs, will be adopted.³⁶

So what happens, for example, if a landscape includes protected areas (or proposed protected areas) that restrict (or might restrict) the human rights of IPLCs, including their rights to tenure, access, and management? The only restriction on such rights categorically ruled out by WWF’s proposed Exclusion List is involuntary resettlement. For restrictions on access rights, WWF’s Standard on Restriction of Access and Resettlement states that “where the need for access restrictions is required, but opposed by other parties, WWF commits to working with all parties in order to find an agreement suitable for all (via mitigation measures, as detailed below).”³⁷ The mitigation measures include preparing “criteria for eligibility of affected persons to receive compensation benefits and development assistance,” and to assist them “to improve or at least restore their livelihoods.”³⁸ In other words, this Safeguard contemplates the possibility of access restrictions as long as their adverse effects on human rights are *mitigated*.

But WWF’s responsibility to respect human rights means that it cannot promote or support *any* programmes, activities, or policies that involve the involuntary curtailment of rights of Indigenous peoples and local communities, and cannot support the creation of new protected areas that will curtail the rights of IPLCs without their free, prior and informed consent. A safeguard that would allow such restrictions as long as they are satisfactorily (in WWF’s view) assessed and mitigated is not consistent with WWF’s human rights responsibilities.

2. Weakening WWF’s Human Rights Commitments

Making matters worse, WWF has replaced its previous Social Policies with a set of policies that in many ways are less detailed and specific regarding human rights. In particular, the proposed new social policies do not include many of the specific commitments in WWF’s previous social policies on Indigenous Peoples and conservation. For example, the redrafted WWF social policies ignore WWF’s Network Guidelines on Prevention of Restriction of Rights and Involuntary Relocation and Resettlement of Indigenous Peoples and Local Communities, which were adopted just three years ago, in 2018.

WWF may state that the previous social policies have all been incorporated, somehow, into its proposed new policies and standards. But this is simply not the case. Again, to take just one example, the Network Guidelines on Restriction of Rights and Involuntary Relocation and Resettlement explicitly set out important responsibilities of WWF with respect to access rights that are consistent with the human rights norms to which I referred in the previous section:

³⁴ Exclusion List, *Policies and Standards*, p. 51.

³⁵ Standard on Environmental and Social Risk Management, *Policies and Standards*, pp. 15-16.

³⁶ *Ibid*, p. 17.

³⁷ Standard on Restriction of Access and Resettlement, *Policies and Standards*, p. 31.

³⁸ *Ibid*, pp. 31-32.

“WWF should work proactively with Governments, private sector and relevant IPLCs to:

...

B. Not promote or support any programmes/activities and/or policies that lead to involuntary curtailment of rights of local communities. . . .

H. Not support the creation of new conservation areas/protected areas which will curtail the rights of local communities, unless voluntarily agreed. In circumstances of established protected areas that overlap wholly or partially with Indigenous territories and tribal lands, WWF will advocate together with potentially affected communities, for inclusive, equitable and community-based governance models and policies of natural resource management and conservation that recognize the rights of Indigenous Peoples and Local communities.”³⁹

These and many other commitments in the existing Social Policies are either softened or not included at all in the new proposed Policies and Standards. As a result, adopting the proposed language would actually weaken WWF’s human rights commitments.

3. Adopting Standards for Law Enforcement and Rangers

WWF has proposed new standards for law enforcement and anti-poaching, which are a welcome step forward, but these standards need to be tied clearly to international human rights standards such as the UN Code of Conduct for Law Enforcement Officials, and should be more detailed, especially in relation to the consequences of non-compliance. The report of the Independent Panel stated that “WWF should make clear that *it cannot provide support for rangers* without effective mechanisms in place to monitor their behaviour, investigate allegations and provide appropriate disciplinary measures for confirmed violations” (emphasis added).⁴⁰ The Principles should explicitly include this standard.

As currently written, WWF’s new law enforcement standards seem to regard WWF as a kind of interested bystander that is encouraging governments to do the right thing. But WWF is often actively engaged itself in supporting and managing protected areas and other anti-poaching activities. In such cases, WWF must ensure that it is not itself contributing to human rights abuses by providing financial or material support that enables them to occur. Even in cases where WWF is not directly contributing to the human rights abuses by its support to those committing them, it has a responsibility to seek to prevent or mitigate adverse human rights impacts that are directly linked to WWF because of its relationships with park authorities and government agencies. This means that in order to meet its human rights responsibilities, WWF must adopt standards for its own conduct in relation to law enforcement and anti-poaching, not just standards that it hopes the government authorities will meet.

For example, WWF cannot simply rely on third-party reports of how park authorities are meeting, or failing to meet, their human rights obligations. WWF has a responsibility itself to engage in active monitoring and oversight of law enforcement activities that it supports or to which it is otherwise directly linked. In such cases, WWF should establish a system of

³⁹ WWF Network Guidelines on Restriction of Rights and Involuntary Relocation and Resettlement, p. 3.

⁴⁰ *Embedding Human Rights in Nature Conservation: From Intent to Action*, p. 152.

monitoring of ecoguard patrols, which could include independent observers accompanying as many patrols as possible, GPS tracking, and regular debriefing of the patrols and the independent observers.⁴¹ When abuses are reported, WWF should not only do everything in its power to ensure that they are appropriately investigated and remediated, but it should also determine whether they are isolated instances or indicate a systematic failure. In the latter case, WWF has a responsibility to cease its support. If it has contributed to the abuses then it should provide for remediation itself.⁴²

4. Implementing the Standards

WWF's biggest problem in the past has not primarily been a failure to set standards or even to assess risks, but rather a lack of effective implementation. The focus on the ESSF obscures, to a large degree, the changes WWF needs to make in order to address this problem and to meet its human rights responsibilities.

For example, WWF officials knew for years that protected areas in the Congo Basin raise grave risks of widespread human rights abuses by park rangers and other law enforcement authorities.⁴³ The problem has been that, as the Panel report described, WWF has failed to adopt and implement the necessary institutional changes that would enable it to ensure that it does not contribute to human rights abuses and does all that it can to prevent or mitigate adverse human rights impacts that are directly linked to it through its relationships with governments and others. As proposed, the ESSF contemplates mitigation plans, or ESMFs, for entire landscapes. Developing these plans is apparently taking a long time. To my knowledge, which may be incomplete, none has yet been published two years after the ESSF was adopted. But the real challenge will come in implementing the mitigation plans after they are finally adopted.

As noted above, one of the Panel's recommendations was to increase WWF's institutional expertise and capacity on human rights compliance, including by appointing a new Director of Human Rights Commitments and Compliance with "appropriate experience and expertise in human rights," who would oversee the WWF office responsible for coordinating, promoting, and supporting implementation of WWF's human rights commitments. At the same time, WWF National Organisations and Programme Offices should each appoint or designate an individual with responsibility to ensure that the office fulfils its due diligence and other human rights commitments, and who has the necessary expertise and support.

WWF's response to the Panel report made clear that it did not accept these recommendations. Instead, it stated that the director of the WWF Safeguards office, whose background is managing safeguards for the World Bank Group's International Finance Corporation, would oversee the implementation of safeguards throughout the WWF Network.⁴⁴ The safeguards process is not, of course, equivalent to WWF's human rights responsibilities, and

⁴¹ See *ibid*, p. 85.

⁴² See UN Guiding Principles on Business and Human Rights, Principles 19, 22 and commentary; *Embedding Human Rights in Nature Conservation: From Intent to Action*, pp. 36-37.

⁴³ See generally A. Pyhälä, A.O. Orozco and S. Counsell, *Protected Areas in the Congo Basin: Failing Both People and Biodiversity?* (Rainforest Foundation UK, April 2016).

⁴⁴ WWF Management Response to Recommendations from Independent Panel Report, p. 2.

expertise in the World Bank safeguards approach is not equivalent to expertise in human rights. WWF also stated that it will continue to rely on the Social Development for Conservation (SD4C) community.⁴⁵ The SD4C program has proved inadequate to effectively implement human rights commitments for multiple reasons that the Panel set out in its report, including that WWF support for the program has been patchy and inconsistent, some countries lack any SD4C representatives at all, their time is volunteered to the SD4C program in addition to their regular jobs, and in any event they have no real authority to require compliance.⁴⁶

In short, WWF is still resisting the pressing need to add the necessary internal expertise and authority to ensure the protection of human rights. The proposed Safeguards contemplate that WWF will hire outside experts to develop landscape mitigation plans and then rely largely on the SD4C system of volunteers to ensure that they are implemented. WWF's Safeguards office will have its hands more than full in running the risk assessment process. Without substantial additional capacity, it will not be able to effectively oversee compliance with human rights commitments in the dozens of high-risk landscapes in which WWF works. This approach is therefore a recipe for disaster, as continuing failures of implementation lead to continuing human rights abuses.

WWF would never dream of having its organizational expertise on conservation and wildlife biology depend primarily on a combination of outside consultants, internal volunteers, and online staff training sessions. WWF's conservationists and biologists know very well how hard it is to develop expertise in those areas because they spent years doing so. WWF should recognize that expertise on human rights and on Indigenous peoples and local communities requires just as much education and practical experience as conservation and wildlife biology, and hire people who bring that level of expertise to the organization – including, of course, members of IPLCs themselves.

5. Listening to Indigenous Peoples and Local Communities

I have already stated that the proposed Policies and Standards would weaken WWF's existing human rights commitments, and explained why they do not adequately address WWF's core need of improving its ability to implement those commitments. As explained above, the weakened commitments are particularly problematic with respect to IPLC rights.

In the same way, the failure to build effective internal implementation mechanisms is especially concerning with respect to IPLCs. One of the Panel's recommendations was that each WWF National Organization and Programme Office should have an IPLC coordinator with expertise in indigenous rights and community consultation, who has sufficient support to engage with IPLCs in the landscape and to ensure that they have input into the development and implementation of WWF activities.⁴⁷ WWF did not accept this recommendation, instead stating that it would build its capacity by leveraging its existing staff and seeking to partner with representatives of IPLCs in the landscape.⁴⁸ But these goals are not mutually exclusive. Indeed, it

⁴⁵ Ibid, pp. 2, 16.

⁴⁶ *Embedding Human Rights in Nature Conservation: From Intent to Action*, pp. 132-33, 136.

⁴⁷ Ibid, p. 155.

⁴⁸ WWF Management Response to Recommendations from Independent Panel Report, p. 23.

is hard to imagine how WWF can effectively partner with local IPLCs without having IPLC experts on its own staff.

Perhaps most symbolic of WWF's failure to make the transformational change necessary is its decision to reject the Panel's recommendation "to ensure that at least one member [of its International Board] is a representative of Indigenous peoples, and that at least one member has expertise in human rights."⁴⁹ WWF stated that it decided that a single Indigenous representative "would have little traction with communities, given that they are not monolithic and their issues differ radically from place to place and country to country."⁵⁰ This completely misunderstands the point of adding Indigenous people to the Board, which would not be to help WWF with its need for "traction with [IPLC] communities," but to ensure that the highest levels of WWF are hearing Indigenous views. However, I agree that only one new voice would probably not be enough. WWF should add two or more representatives of IPLCs to the Board.

WWF also declined to add an expert on human rights to the Board, stating that one of the WWF Board members already has such expertise.⁵¹ This Board member also happens to be the chair of a WWF national organization, who was on the Board during part of the period in which WWF failed to effectively implement its own human rights commitments. If WWF wants to undertake transformational change and integrate a human rights approach into its conservation policies, then it must add voices that provide fresh perspectives.

6. Ensuring transparency and disclosure

The new WWF Standard on Environmental and Social Risk Management states that "the categorization memo, additional impact assessments, the mitigation framework and any supporting documents will be publicly disclosed."⁵² This is fine as far as it goes, but it does not go far enough. WWF should also make the other documents public that the Panel recommended, including reports on implementation of WWF's human rights commitments that fairly and accurately assessing progress and obstacles, as well as documents such as MOUs with governments, management plans for protected areas, and codes of conduct for rangers.

WWF should have a separate standard on transparency and disclosure that provides for the disclosure of these documents.

⁴⁹ *Embedding Human Rights in Nature Conservation: From Intent to Action*, p. 152.

⁵⁰ WWF Management Response to Recommendations from Independent Panel Report, p. 14.

⁵¹ *Ibid.*

⁵² Standard on Environmental and Social Risk Management, *Policies and Standards*, p. 18.

III. Role of the U.S. Government (and other funders)

My remarks have focused on WWF. But I want to emphasize that WWF is far from unique. Problem with implementing human rights commitments in conservation run throughout the world of international conservation, and they require more attention at all levels.

Next spring, the Conference of the Parties to the Convention on Biological Diversity will meet in Kunming, China, to adopt a new Global Biodiversity Framework, with the aim of setting goals in conservation for the next decade and beyond. One of the goals likely to be adopted is for each country to designate 30% of its territory as protected for conservation by the year 2030, which has become known as “30x30.”

The Global Biodiversity Framework has the potential to greatly improve the attention paid to human rights in international conservation; but it could also lead to greater human rights abuses. If targets such as 30x30 push governments to designate more protected areas without proper consultation and consent, and without respect for the rights of those who already live there, they will lead to catastrophe not only for Indigenous peoples and local communities, but also for the many endangered species with which we share this planet. But if the Framework incorporates human rights – if it leads States and conservation organizations to treat Indigenous peoples and local communities as rights-holders and allies rather than enemies – then it has the potential to transform conservation.

Donor governments like the United States play an absolutely critical role in this respect. As you well know, the U.S. government provides hundreds of millions of dollars to international conservation. If that money flows without appropriate oversight, then the United States is simply contributing to the problem. The Department of Interior investigation and report in 2020 confirmed that the Fish and Wildlife Service has not provided effective oversight in the past.⁵³

Again, the United States is not unique in this respect. Investigative reports by the UN Development Programme (UNDP) Social and Environmental Compliance Unit of projects in Cameroon and the Republic of the Congo found that as a donor, UNDP had failed to follow its own standards in relation to the protection of human rights in projects in the Republic of Congo (Messok Dja) and Cameroon – including projects that were also the subject of the report of the Independent Expert Panel. In November 2020, the UNDP Administration announced that it would close its support for the project in the Congo. In February 2021, he announced that no project activities in Cameroon would recommence until the project there was reformulated. He stated that the reformulation process will include, among other things, the existence of an effective grievance system, and consultation with indigenous Baka and other local communities according to the principles of free, prior and informed consent.⁵⁴

One important way that the U.S. government could improve the respect paid by conservation efforts to the rights of Indigenous peoples and local communities is to provide far more direct financial and technical support to Indigenous and local conservation organizations

⁵³ Memorandum from Deputy Secretary Katherine MacGregor on Programmatic Review and Implementation of Conservation Grants (Sept. 18, 2020).

⁵⁴ The reports are available at <https://info.undp.org/sites/registry/secu/SECUPages/SECUSummary.aspx>.

(ICCAs), which currently receive only a tiny percentage of total conservation funding. They are doing some of the best work in the field, while they operate on shoestring budgets. An organization that brings together many such groups, called the ICCA Consortium, publishes regular reports describing good practices of its members.⁵⁵

More generally, I encourage you to consider and propose legislation that would ensure that funds to WWF and other conservation organizations include basic human rights protections. The U.S. government, like other donors, has a responsibility to ensure that the funds they provide for international conservation are used consistently with its own human rights commitments.⁵⁶ The Leahy Amendment, which prohibits U.S. assistance under the Foreign Assistance Appropriations Act or the Arms Export Control Act to any unit of the security forces of a foreign country if the Secretary of State has credible information that such unit has committed a gross violation of human rights,⁵⁷ does not provide a clear and detailed enough standard in this respect – and may not apply at all to some types of international conservation funding.

Congress should make clear that U.S. funding for international conservation is available only if certain requirements are met. At a minimum, these requirements could include:

1. *Protections for the rights of Indigenous peoples and local communities:* To receive funding, a protected area or other conservation initiative must respect the title, tenure, access, and management rights of Indigenous peoples and local communities in their collective lands and territories, including the right of free, prior, and informed consent to any actions that affect them. Standards to implement this requirement could include:

- a. no funds are provided to a protected area being created in violation of IPLC rights;
- b. no funds are provided to an already-established protected area that denies the customary tenure rights of IPLCs to the area, unless (1) the IPLCs have effective rights of access to the area or there is a credible plan to provide such rights within two years; and (2) the IPLCs have meaningful input into the management of the areas.

2. *Protections against abuses by park rangers:* To receive funding, a protected area or other conservation initiative must provide effective protections against human rights abuses by rangers and other law enforcement agents:

- a. Rangers and other agents must be trained to international human rights standards.
- b. They must be subject to effective review and monitoring to ensure that they meet these standards.

⁵⁵ See ICCA Consortium, *Territories of Life: 2021 Report* (May 2021), available at <https://www.iccaconsortium.org/index.php/2021/05/29/territories-of-life-2021-report-launched/>.

⁵⁶ See *Embedding Human Rights in Conservation*, p. 158.

⁵⁷ 22 U.S.C. § 2378d.

c. Allegations of abuse must be reviewable by judicial or other independent bodies that have the authority to decide on the allegations and impose appropriate disciplinary sanctions, in accordance with human rights standards. Available disciplinary measures must include suspension, termination, and, as appropriate, criminal penalties.

3. *Provisions to ensure compliance by conservation organizations with human rights:* To receive funding, an international conservation organization must be in compliance with the UN Guiding Principles on Business and Human Rights, including the following:

a. It must explicitly commit to: avoid causing or contributing to adverse human rights impacts through its own activities, and to address such impacts when they occur; and seek to prevent or mitigate adverse human rights impacts that are directly linked to its operations by its relationships, even if it has not contributed to those impacts.

b. It must adopt and implement a due diligence process that (i) assesses potential and actual human rights impacts of its policies, programmes, projects and activities before they are initiated, including by consulting with those who may be affected; (ii) ensures that such initiatives reflect the prior assessments and effectively address any potential and actual human rights impacts identified; and (iii) monitors and reports on implementation of the initiatives. (For example, if it provides support to rangers, it must assess the human rights impacts of such support, ensure that the support has effective safeguards against human rights abuses, monitor compliance by the rangers with human rights norms without relying solely on government authorities, and report publicly.)

c. It must have sufficient personnel with the expertise and authority to ensure that it meets its human rights responsibilities, including staff who are experts in human rights and, in particular, in the rights of IPLCs.

4. *Ensuring independent grievance mechanisms:* For funding to be provided to a protected area or other conservation initiative, an independent grievance mechanism must be in place that can hear complaints by IPLCs of human rights abuses (by rangers, government agents, and employees of conservation organizations), and provide appropriate and effective relief. The grievance mechanism should be accessible, transparent and trustworthy, and able to consider complaints fairly without interference from the individuals or entities against which the complaints are directed.

5. *Requiring transparency:* For funding to be provided to a protected area or other conservation initiative, key documents must be made public, including protected area management plans, agreements between governments and conservation organizations, due diligence assessments by conservation organizations, and regular reports on compliance by the protected area or other conservation initiative with human rights norms.

IV. Conclusion

In conclusion, I would like to thank you again for the opportunity to speak with you today on this critically important issue. The last three years have demonstrated that the transformational change necessary in the international conservation community will not occur without strong leadership from the United States and other governments. I hope and trust that this hearing is a step towards the U.S. government charting a new course for international conservation, which respects and protects the human rights of some of the most marginalized people on the planet, and thereby safeguards the natural ecosystems on which they, and all of us, depend.