

FPIC in Messok Dja:



A report and assessment by FPP for WWF on the free, prior and informed consent process undertaken in respect of the proposed Messok Dja protected area in Republic of Congo

Final report

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1. Introduction and scope of report

For much of the last decade, WWF's Republic of Congo programme has been supporting and working towards (among other goals) the creation of a new protected area in northern Congo, known as the Messok Dja protected area. The protected area, which is not yet in existence, is proposed to cover 1,456 km² of forest land. This land is entirely located within two pre-existing forestry concessions, namely the Jua-Ikié and Tala-Tala Forest Management Units.

A number of communities, both indigenous and Bantu, also live in the vicinity of the proposed protected area and have traditionally used this area. As a result, in 2017 WWF began (7 years into the process of creating the park) a "free, prior and informed consent" process with affected (or potentially affected) communities. In this respect, it is noted that article 30 of WWF's indigenous peoples' policy provides that WWF will not "promote or support, and may actively oppose" interventions (including the creation of protected areas) which have not received the free, prior and informed consent of indigenous communities.

During the FPIC process carried out to date, WWF and/or its contractors have engaged with 67 communities in the vicinity of the proposed protected area, of which 3 declined entirely to participate in the process. Following participatory mapping, 36 communities have been identified as using lands that overlap directly with the proposed protected area. It is possible, although the scope of this fieldwork did not allow us to investigate this, that other communities may occasionally use areas of the proposed protected area that were not captured in the participatory mapping process, because these are not considered "community" lands (but rather are for shared use of a wider group) or because access has been restricted by other activities.

FPP was engaged by WWF Gabon to undertake an assessment of the free, prior and informed consent process that has been undertaken to date. In order to do this, FPP has reviewed a number of documents provided by WWF (minutes of community meetings, project descriptions, project reports), reviewed publications and communications by other actors (including media) regarding the situation of communities in the proposed Messok Dja protected area, spoken to a number of actors involved with (or critical of) the process (including WWF staff), and conducted a field visit of 8 days with WWF, visiting 19 communities.¹ Community meetings were held in the absence of WWF staff in order to ensure open communications by communities (some of whom nonetheless expressed suspicion because FPP arrived in a WWF vehicle).

This report summarises the findings of this desk and field review. The key sections include:

- An evaluative case study of our understanding of the process to date, with reference to WWF social policies;
- Recommendations for this FPIC process;
- Enabling conditions: strategies for obtaining government support, and obligations and options where such support cannot be obtained.

¹ Out of the 19 communities visited, 18 communities are directly affected by the proposed Messok-Dja project (i.e. their customary lands overlap the proposed park area) while the Bethel community, although visited, does not appear to be directly impacted by the project.

2. Executive Summary

Since our birth we have never heard of the park. Now we don't understand anything with all the talk about the Park. When we think about the actions of the ecoguards in the other parks we are afraid. We are afraid of the same beating, inhuman and degrading treatment and other forms of violence. This is the reason why we don't want to have a park here, and suffer the same fate as our brothers in other places.

-Community member

Pour les avantages nous restons sceptiques et ne les accepterons qu'à la réalisation. [As for the advantages, we remain sceptical and we will only believe them when we see them.]

-Community response, Consortium Questionnaire

Context

This report summarises the findings of a desk and field review, undertaken at the request of WWF, on the Free, Prior and Informed Consent (FPIC) process undertaken by its Republic of Congo office for the proposed Messok Dja protected area in the Republic of Congo. The report draws out and comments on points concerning the context in which the protected area has been conceived and details of the engagement with communities undertaken as part of this process. It then provides recommendations for the 'free, prior and informed consent' (FPIC) process and enabling conditions to allow a genuine FPIC process to be carried out.

A number of communities, both indigenous and Bantu, are known to live in the vicinity of the proposed Messok Dja protected area and have traditionally used this area. WWF has been working in this area, supporting the ETIC zone, for well over a decade. In 2017, seven years after the idea of creating the protected area was first floated, in 2017, WWF began a "free, prior and informed consent" process with affected (or potentially affected) communities.

The divergence between Congolese national law on the one hand, and both international law and WWF's own social policies on the other, poses a challenge to the implementation of an FPIC process. It means in effect that WWF is and was required to apply standards that are more demanding than, and different to, those required by the Congolese government, and of which the government may not be supportive. FPP considers this divergence to be one of the key root causes of many of the issues outlined in this report; addressing this forms the basis of the discussion of enabling conditions and strategies set out in section 8.

Summary and Recommendations

FPP has reviewed the process to date against international law standards, on the basis that these are equivalent to and required by WWF's policies (see section 4 for a brief explanation). Our views (based on the information we have seen) are that the process to date has several serious and fundamental flaws. These include (see fuller discussion in section 5):

- Engagement and consultation with communities started far too late in the process – more than seven years after the idea was first conceived, and well after discussions with the

government and logging concessionaires had begun and advanced. At the point where community engagement commenced, the Congolese government had already given provisional agreement to proposed boundaries for a protected area. This political buy-in, obtained before community engagement and in the particular context of Congo, creates pressures for continuation of the process, and risks to limit the real scope communities have to influence the process. It is also inconsistent with the requirement that indigenous peoples should be included at the earliest stages, including development of a concept and project design.

- The FPIC process has been treated in isolation as a guideline for community participation, but has not however really engaged with the underlying substantive rights which FPIC exists to protect, which in this case are the rights of indigenous peoples and local communities to their lands, territories and natural resources. There has been insufficient consideration, information or advice given to communities regarding the implications of this project for those rights.
- The framing of the process has in many respects – quite possibly unintentionally – meant that the creation of a protected area has been presented as a fait accompli or, at least, a likely outcome. The focus to date has been on considering and comparing different forms of protected area, but not on facilitating discussion of alternatives to a protected area (including the null option as well as potential other options). The lack of discussion of alternatives is in part caused by the late engagement with communities, when a specific proposal (for a protected area in a particular location) has already been developed. Even if this proposal is open to change, its existence significantly reduces the space for discussion of options.
- WWF has not – even when faced with community opposition to overlap with their lands – proceeded on the basis that lands should be excluded until and unless consent is obtained, but has rather maintained the proposed boundaries until a final refusal is given after further negotiations.
- WWF is closely engaged in supporting wildlife crime enforcement activities through support to ecoguards. However, communities experience ecoguards – which they associate (rightly or wrongly) with WWF – as violent and unjust. It is not clear that engagement can genuinely be free from risks of intimidation or coercion (including unintended) where these circumstances prevail.
- WWF has a collaboration agreement with the government, but this agreement does not include any conditions or requirements around human rights compliance. This is despite clear incompatibility in multiple respects between Congolese national law and internationally-recognised human rights of indigenous peoples, recognised equally by WWF's social policies.
- There was no evidence of explicit gender analysis or measures taken to promote effective participation by women.
- Information provided to communities has been incomplete and provided late. While we acknowledge that the process is ongoing, as a matter of sequencing it is important that communities are provided with key information at any early stage of the process (even more so where, as here, a specific proposal is on the table that has not been developed with their participation). It is particularly important that communities receive balanced information around the potential effects of any proposal on their rights.

More detailed consideration of areas where the process may have fallen short of specific provisions of WWF social policies is included in section 6.

Ways forward

Unfortunately, having reviewed the current FPIC process in its context, we do not consider that any remedial action would be able to render the process compliant in relation to the proposed protected area *in its current form* – that is, on the basis of the current boundaries. This is because multiple communities (including all of the 18 directly affected communities spoken to during the field trip) oppose the overlap of the protected area with their lands (and 8 of these oppose it entirely).

We propose two main options for a way forward:

1. Drop the protected area project, but design a new programme and strategy based on the underlying objectives of its predecessor – to protect biodiversity in the Messok Dja forest - this time together with communities.
2. Redesign the proposed protected area to exclude all lands which overlap with community lands.

Other recommendations include:

- Systematically carrying out rigorous human rights assessments before any project, and more broadly in relation to country programmes where there are human rights risks;
- Ensuring human rights conditions are set out (in sufficient detail to address the specific risks identified) in any agreement for collaboration with the national government.
- Ensure that local organisations engaged by WWF to assist with the FPIC process understand and apply WWF's policies and international law, and maintain appropriate oversight and review of that process within WWF.
- Ensure that, where organisations engaged by WWF are intended to provide independent support to communities, logistical and financial arrangements contribute to that independence both in appearance and in fact.

Strategies for engagement with government

Finally, in section 7 we have set out some of the enabling conditions for carrying out human rights-compliant conservation, and engaging with (potentially resistant) national governments over these areas. Critical among these strategies is that WWF must be prepared to (and must actually, in certain circumstances) walk away from close technical and financial collaboration with the government, where the government is unwilling to commit to compliance with WWF's policies, or where systematic or repeated unpunished abuses of human rights become apparent. We suggest also that progressive divestment from close government partnership and investment in community-aligned programming should also be considered.

On this point, we note that it is our view that, as explained in more detail in this section, WWF does have an obligation to sever collaboration agreements with governments where those governments cannot, do not or will not respect and protect human rights, in line with WWF's own commitments,

in connection with work to which WWF is giving financial, technical or other support. Failing to do so means that WWF is contributing to human rights violations, in contravention of its own policies and of international law.

3. Résumé Exécutif

Depuis notre naissance, nous n'avons jamais entendu parler du parc. Nous ne comprenons plus rien avec toutes ces discussions sur le parc. Lorsque nous pensons aux actions des écogardes dans les autres parcs, nous avons peur. Nous avons peur de subir les mêmes coups, les mêmes traitements inhumains et dégradants et d'autres formes de violence. C'est la raison pour laquelle nous ne voulons pas de parc ici, et subir le même sort que nos frères dans d'autres endroits.

- Membre de la communauté

Pour les avantages nous restons sceptiques et ne les accepterons qu'à la réalisation.

-Réponse de la communauté, Questionnaire du consortium

Contexte

Ce rapport résume les résultats d'une étude sur le terrain ainsi qu'une revue documentaire, entreprise à la demande du WWF, sur le processus de consentement libre, et éclairé préalable (CLIP) entrepris par son bureau de la République du Congo concernant l'aire protégée proposée de Messok Dja en République du Congo. Le rapport établit et commente des points concernant le contexte dans lequel le projet d'aire protégée a été conçu et les détails de l'engagement avec les communautés entrepris dans le cadre de ce processus. Il fournit ensuite des recommandations pour le processus de "consentement libre, et éclairé préalable " (CLIP) et les conditions permettant la mise en place d'un véritable processus de CLIP.

Un certain nombre de communautés, aussi bien autochtones que bantoues, vivent à proximité de l'aire protégée proposée de Messok Dja et ont traditionnellement utilisé cette zone. WWF travaille dans cette zone, en soutenant le programme ETIC, depuis plus d'une décennie. En 2017, sept ans après que l'idée de créer une aire protégée ait émergée, WWF a entamé un processus de CLIP avec les communautés affectées (ou potentiellement affectées).

La divergence entre le droit national congolais, d'une part, et le droit international et les politiques sociales de WWF, d'autre part, pose un défi à la mise en œuvre d'un processus CLIP. Cela signifie concrètement que WWF est tenu d'appliquer des normes plus exigeantes et différentes de celles exigées par le gouvernement congolais, et pour lesquelles ce dernier n'est peut-être pas favorable. FPP considère cette divergence comme l'une des principales causes profondes d'un grand nombre des problèmes décrits dans le présent rapport ; c'est cette question qui justifie la discussion sur les conditions et les stratégies habilitantes que nous élaborons dans la section 8.

Résumé et recommandations

FPP a examiné le processus à ce jour par rapport aux normes du droit international, en se fondant sur le fait que celles-ci sont équivalentes aux politiques de WWF et qu'elles sont requises par celles-ci (voir la section 4 pour une brève explication). Nous constatons que le processus à ce jour comporte plusieurs lacunes graves et fondamentales. Il s'agit notamment de (voir la discussion plus détaillée à la section 5) :

- L'engagement et la consultation avec les communautés ont commencé beaucoup trop tard dans le processus - plus de sept ans après la conception de l'idée, et bien après que les discussions avec le gouvernement et les concessionnaires forestiers aient commencé et progressé. Au moment où l'engagement communautaire débute, le gouvernement congolais avait déjà donné son accord provisoire sur les limites proposées pour une aire protégée. Cette adhésion du politique, obtenu avant l'engagement avec les communautés dans un contexte particulier comme celui du Congo, est susceptible de créer des pressions en faveur de la poursuite du processus, et risque de réduire la marge de manœuvre dont disposent les communautés pour influencer le processus. Elle est également incompatible avec l'exigence selon laquelle les peuples autochtones doivent être inclus dès les premiers stades, y compris l'élaboration d'un concept et la conception d'un projet.
- Le processus du CLIP a été traité isolément comme une ligne directrice pour la participation communautaire, mais il ne s'est pas véritablement engagé dans les droits fondamentaux sous-jacents que le CLIP vise à protéger, en l'occurrence les droits des peuples autochtones et des communautés locales sur leurs terres, territoires et ressources naturelles. Il n'y a pas eu suffisamment d'attention, d'informations ou de conseils donnés aux communautés concernant les implications de ce projet pour ces droits.
- L'encadrement du processus a signifié à bien des égards - très probablement involontairement - que la création d'une aire protégée a été présentée comme un fait accompli ou, du moins, comme un résultat probable. Jusqu'à présent, l'accent a été mis sur l'examen et la comparaison des différentes formes d'aires protégées, mais pas sur la facilitation des discussions concernant les alternatives à une aire protégée (y compris l'option nulle ainsi que les autres options potentielles). L'absence de discussion sur les solutions de rechange est en partie attribuable à l'engagement tardif avec les communautés, alors qu'une proposition précise (pour une aire protégée dans un endroit particulier) a déjà été élaborée. Même si cette proposition est ouverte au changement, son existence réduit considérablement l'espace de discussion des options.
- WWF n'a pas - même lorsqu'il a été confronté au refus de certaines communautés à un chevauchement avec leurs terres - procédé au retrait de ces zones jusqu'à ce que le consentement soit obtenu, mais a plutôt maintenu les limites proposées jusqu'au refus final après d'autres négociations.
- WWF soutient étroitement les activités de lutte contre la criminalité liée aux espèces sauvages en soutenant les écogardes. Cependant, les communautés considèrent les écogardes - qu'elles associent (à tort ou à raison) à WWF - comme violents et injustes. Il n'est pas certain que l'engagement puisse réellement être exempt de risques d'intimidation ou de coercition (même involontaire) lorsque ces circonstances existent.
- WWF a un accord de collaboration avec le gouvernement, mais cet accord ne comporte aucune condition ou exigence concernant le respect des droits de l'homme. Ceci en dépit d'une incompatibilité évidente à de multiples égards entre le droit national congolais et les droits humains internationalement reconnus des peuples autochtones, droits reconnus également par les politiques sociales du WWF.
- Rien n'indique qu'une analyse explicite sur le genre ait été effectuée ou que des mesures aient été prises pour promouvoir la participation effective des femmes.

- L'information fournie aux communautés a été incomplète et fournie tardivement. Bien que nous reconnaissons que le processus n'est pas achevé, il est important que les communautés reçoivent des informations clés à un stade précoce du processus (d'autant plus lorsque, comme ici, une proposition spécifique est sur la table et n'a pas été élaborée avec leur participation). Il est particulièrement important que les communautés reçoivent des informations équilibrées sur les effets potentiels de toute proposition sur leurs droits.

Un examen plus détaillé des domaines dans lesquels le processus n'a peut-être pas répondu aux dispositions spécifiques des politiques sociales du WWF est inclus dans la section 6.

Suggestions pour aller de l'avant

Malheureusement, après avoir examiné le processus actuel du CLIP dans son contexte, nous ne croyons pas que des mesures correctives permettraient de rendre le processus conforme à l'aire protégée proposée dans sa forme actuelle, c'est-à-dire sur la base des limites actuelles. Cela s'explique par le fait que de nombreuses communautés (y compris les 18 communautés directement affectées avec lesquelles on a échangé pendant la visite sur le terrain) s'opposent au chevauchement de l'aire protégée avec leurs terres (et 8 d'entre elles s'y opposent totalement).

Nous proposons deux options principales pour aller de l'avant :

1. Abandonner le projet d'aire protégée, mais concevoir un nouveau programme et une nouvelle stratégie basée sur les objectifs sous-jacents de son prédécesseur - protéger la biodiversité dans la forêt de Messok Dja - cette fois avec les communautés.
2. Réaménager l'aire protégée proposée afin d'exclure tous les espaces qui chevauchent les terres des communautés.

D'autres recommandations incluses :

- Procéder systématiquement à des évaluations rigoureuses des droits de l'homme avant tout projet, et plus généralement dans le cadre des programmes de pays présentant des risques pour les droits de l'homme ;
- Veiller à ce que les conditions relatives aux droits de l'homme soient définies (de manière suffisamment détaillée pour traiter les risques spécifiques identifiés) dans tout accord de collaboration avec le gouvernement national ;
- S'assurer que les organisations locales engagées par WWF pour aider au processus du CLIP comprennent et appliquent les politiques de WWF et le droit international, et maintenir une supervision et un examen appropriés de ce processus au sein de WWF ;
- Veiller à ce que, lorsque les organisations engagées par WWF sont supposées apporter un soutien indépendant aux communautés, les dispositions logistiques et financières contribuent à cette indépendance, tant en apparence qu'en fait.

Stratégies d'engagement avec le gouvernement

Enfin, dans la section 7, nous avons exposé certaines des conditions favorables à la mise en œuvre d'une conservation conforme aux droits de l'homme et à l'engagement avec les gouvernements nationaux (potentiellement résistants) dans ces domaines. Parmi ces stratégies, il est essentiel que

WWF soit préparer à (et doit dans certaines circonstances) renoncer à une étroite collaboration technique et financière avec le gouvernement, lorsque ce dernier refuse de s'engager à respecter les politiques de WWF, ou lorsque des violations systématiques ou répétées et impunies des droits humains apparaissent. Nous suggérons également que l'on envisage de se départir progressivement d'un partenariat étroit avec le gouvernement et d'investir dans des programmes axés sur la communauté.

Sur ce point, nous notons que nous sommes d'avis que, comme expliqué plus en détail dans cette section, WWF a l'obligation de rompre les accords de collaboration avec les gouvernements lorsque ces gouvernements ne peuvent, ne respectent pas ou ne protègent pas les droits humains, conformément à ses propres engagements, dans le cadre des activités auxquelles WWF apporte son soutien financier, technique ou autre. S'abstenir de le faire signifierait que WWF contribue aux violations des droits de l'homme, en violation de ses propres politiques et du droit international.

4. The process of preparation of this report

This report was prepared on the basis of a consultancy agreement between FPP and WWF, which include desk-based review of documents provided by WWF, further research by FPP, as well as a 15-day field trip to Congo by FPP staff member Lassana Koné. During this field trip, FPP visited 18 communities (a subset of 36 communities whose territories would be directly affected by the protected area on the basis of the boundaries currently provided).

FPP was also provided with various documents by WWF. Unfortunately, documents were provided quite late (only after FPP had already arrived in Brazzaville), which meant that they could not be fully reviewed until after the field trip. This delay was unfortunate, as it limited FPP's opportunity to seek clarification on details from the documents during field work. Some additional important documents were provided to FPP only after the draft report was prepared. There are evidently other documents touching on the project that we have not seen, but we are not aware of any other document that is likely to be critical that has not been provided to us.

During the course of the trip, FPP spoke to various staff from WWF's Republic of Congo programme, some administration officials, members of the consortium engaged by WWF to work with communities, the EU (currently financing a WWF project related to the proposed protected area); and others. Because of time constraints, planned meetings with forestry companies (SEFYD and SIFCO) in the area did not take place. An itinerary and list of meetings is attached in Annex IV.

In reviewing comments on the draft, it became apparent that there were a number of additional WWF staff who had in depth knowledge of the proposed Messok Dja protected area and its historical development (but who were not based in Brazzaville). It would have been helpful to have had the opportunity to speak to these staff during the course of the review, as there were gaps in the documentation (particularly in relation to the historical development), and their participation may have assisted to understand better factual elements as well as the approach adopted by WWF. However, although this opportunity was missed, we have benefited from further information contained in their comments, as well as documents referred to by them which we had not seen but have since obtained.

FPP also read reports and other information published by other organisations related to the Messok Dja project. FPP sought to contact organisations that had been involved with communities that may be affected by the proposed protected area (notably RFUK, Survival International and OCDH). FPP received some limited information from RFUK, but did not receive any information from Survival International or OCDH.

The consultants would like to thank WWF and ETIC project staff who accompanied Lassana Koné during the field mission and who provided consistent and helpful support, including WWF staff Sam N'ziengui-Kassa (Community conservation Advisor); Graniche Assa Passi (Community officer ETIC); Ehouasse Lack Marius (Social Facilitator ETIC); Tsengou Elenga Kevin (Technical assistant Tala-Tala ETIC).

We also wish to thank Martial Djinang (Brainforest) Lilian Barros and Inès Mvoukani (Comptoir Juridique Junior) members of NGO consortium running the FPIC process for agreeing to speak to FPP

consultant during the mission in Brazzaville. We are also grateful to Frederic Lambert Bockandza-Paco; Director of Agence Congolaise de la Faune et des Aires Protegees (ACFAP). And also Riset Regis Yembe-Yembe; Camille Pubill and Dr Piero Valabrega at the EU Delegation in Brazzaville.

5. A note on WWF social policies, international law and international best practice

When benchmarking the FPIC process under review, we have included reference both to WWF's social policies as well as international law. Having reviewed WWF's policies, we consider that WWF's obligations under these policies are, and should be understood by WWF to be, equivalent to and coterminous with international human rights law standards. Not only does this reflect international best practice, it is also indicated by WWF's policies themselves, notably:

- WWF has committed under the Conservation Initiative on Human Rights "to respect internationally proclaimed human rights" and "make sure we do not contribute to infringements of human rights while pursuing our mission", as well as to "support and promote the protection and realisation of human rights within the scope of our conservation practice";
- In its Indigenous Peoples' Policy, WWF acknowledges that it "fully endorses" provisions about indigenous peoples contained in Agenda 21, the Convention on Biological Diversity, ILO Convention 169, and the UN Declaration on the Rights of Indigenous Peoples.
- WWF's gender policy is stated to be "supportive of existing commitments to gender equality for those countries which are signatories to the United Nations Convention on the Elimination of All Forms of Discrimination against Women and the Universal Declaration of Human Rights".

For this reason, in this document we have generally referred to WWF's obligations under its policies and under international law, on the basis that these obligations are effectively equivalent in content.

For the purposes of this review, we have reviewed and considered all of WWF's social policies. Given the scope and context of the review, we have given particular attention to the Indigenous Peoples' Policy (**IPP**), since indigenous peoples are affected by this proposal and since this policy includes an explicit reference to free, prior and informed consent (paragraph 30), but we will also make reference to other policies where appropriate.

We have *not* included detailed reference to the international law standards and sources in this document (although the review is informed by our knowledge of them) as we took the view this would have made the report unnecessarily detailed and heavy. There are however significant existing reading materials available on these subjects. We have included a brief list of some materials in Annex 3; we can provide further materials on FPIC or other areas on request.

We note the request for detail of "best management practices" (BMPs). However, the legal obligations under FPIC cannot be appropriately described, categorised or reduced to BMPs. FPIC is based on a number of principles but must, as a matter of law, be responsive to context in many respects (e.g. the amount of time required to consult with communities). Similarly, although different actors have formulated practices which are referred to as "FPIC", it is frequently the case that these are not compliant with the international law framework. FPIC is not an instance where best practice is driving the content of obligations, it is rather one in which the obligations are prescribed by law and by WWF's own policies.

Understanding FPIC also requires understanding that it is a **process** right whose objective is to protect one or more of indigenous peoples' underlying **substantive** rights. FPIC may arise in relation to many different substantive rights, but it is most commonly raised, and is likely to be most relevant for WWF, in the context of indigenous peoples' right to own, occupy, manage and use lands, territories and natural resources. An FPIC process must never lose sight of the underlying right which it is designed to protect, and which is at risk of impairment, and discussion of this right must form an integral part of the consultation process. We will touch on this further in our report.

One final point to note is that the current application of WWF's policies in respect to non-indigenous local communities – relevant in Congo but also numerous other countries, particularly in Africa, in which WWF works – is ambiguous. Although they do not identify as indigenous (as this term is understood in international law), many of these communities – Bantu communities in the case of the Congo – also have customary relationships to land and resources.

There is now a significant corpus of material² which acknowledges that these non-indigenous groups are also entitled to the protection of their land and resource rights (sometimes on a differentiated basis from the protection offered to indigenous peoples), and we have adopted this approach in this report. However, the existing social policies do not provide explicit guidance on this situation. This is an area where WWF may wish to consider further and develop additional organisational guidance.

In this respect, it is positive that WWF has engaged with Bantu communities as well as indigenous communities. However, there was some evidence in the material reviewed that the process as designed may not have adequately taken account of the specificities, and the particular vulnerabilities, of indigenous communities, and especially their experience of marginalisation vis-à-vis Bantu communities. This may also be ameliorated by clearer processes for engagement with both indigenous and non-indigenous communities, which we suggest should be developed in collaboration with the affected communities (indigenous and Bantu communities separately).

² Including for example jurisprudence of the African Commission on Human and Peoples Rights and other human rights bodies, RSPO and FSC principles and criteria, COMIFAC declarations etc.

6. The proposed Messok Dja protected area – a case study and assessment

In the following section, we draw out some salient points concerning the context in which the proposal for the Messok Dja protected area has been developed to date, and the specific details of the engagement with communities undertaken as part of this process. We want to emphasise at the outset that weaknesses identified in the “FPIC process” in this section are not intended as a personal criticism of any individual WWF staff involved in delivering this project. Feedback from the communities during the fieldwork was that WWF staff were liked (even though the proposed protected area was not), and their discussions with communities had been appreciated. While we consider additional staff training and stronger human rights expertise within WWF’s Republic of Congo would be helpful, in our view the problems that we identify below are more fundamentally linked to structural issues of WWF’s strategy and approach in the Republic of Congo.

The proposed Messok Dja protected area in context

The Messok Dja forest is located in the north-west of the Republic of Congo and is part of the *Espace Tridom Interzone Congo (the ETIC zone)*. The area has been identified as an important biodiversity habitat for various species, in particular for the forest elephant, gorilla and chimpanzee. In order to protect this biodiversity, a process is underway, led by the Congolese government but with significant technical and financial support from WWF and others, to create a new protected area (PA). This proposed PA, the Messok Dja protected area or Park (its status is still to be decided), is envisaged to be 1,456 km² in size. Funding for this process has come in the past, or currently comes from several sources, including among others the European Union (EU), the US Fisheries and Wildlife Service, Arcus Foundation and the Global Environment Facility (GEF).

The land proposed for the protected area is, however, subject to other rights. In terms of formal rights, there are already two forestry concessions which overlap with (the entirety of) the proposed area – the Jua-Ikié forest management unit (FMU) managed by Chinese-owned forestry company SEFYD (924km² of which overlaps the proposed PA) and the Tala-Tala FMU managed by Lebanese-owned forestry company SIFCO (521km² of which overlaps the proposed PA). Some of this overlap area (all in the case of Tala-Tala) is already zoned for conservation under the respective concession management plans.

In addition to these formal rights, this area has also traditionally been owned and used by a large number of indigenous and Bantu communities (estimated at a population of around 8,000 in documents provided by WWF). Those communities have customary ownership and use rights to lands and resources in the Messok Dja forest. However, customary land and resource rights receive limited recognition under national law. Specifically, the situation is as follows:

- Communities are permitted to continue exercising customary rights to use lands and resources that are not allocated by the State. However, the State may allocate land for other purposes without reference to these (unregistered) rights. In those cases, communities are not entitled to any form of compensation for the State’s extinguishment of their customary rights of ownership, access and use.

- Where the State has allocated lands for a forestry concession, access and use rights (but not ownership rights) may continue to be exercised where this is negotiated and included in the management plan. When a management plan for a forestry concession is issued, part of the concession land must be set aside for communities (*a série de développement communautaire*). However, these privileges come into existence only after the management plan is validated (which can take years in some instances). In addition, these areas are vastly smaller than the lands traditionally used by communities, and are usually insufficient for their needs. This is particularly the case for indigenous communities who have greater reliance on forest resources, and traditionally have engaged to a limited extent if at all in agriculture to support their livelihoods.
- Where individuals have “developed” (*mise en valeur*) areas of land – i.e. by building houses or clearing land to create fields, they may (provided certain other conditions are met) apply for a certificate of title – *provided that* the lands have not already been allocated for another purpose. In practice, this procedure has been inaccessible for rural communities, with the result that almost no such certificates of title exist (and in most cases, could not now be obtained). In the absence of a title, many of these lands have been allocated by the government for something else. In addition, the requirement that lands be “developed” to obtain such a title has a disproportionate impact on indigenous communities – whose sustainable use of the forest has traditionally not involved clearing or development, and for whom it is therefore legally impossible to obtain a title for the vast part of their customary lands and resources, on which their livelihoods depend.

Contrary to the position under national law, under international law, and in accordance with WWF’s indigenous peoples’ policy³ (discussed further below), WWF is obliged to recognise, respect and protect the land and resource rights of indigenous communities and other local communities.⁴ This is not merely a right for indigenous peoples to use and access natural resources for traditional activities, it is a right to own, occupy, use and manage their lands, territories and natural resources.

The State has an obligation to recognise these rights, and to demarcate, delimit and title the territories of indigenous peoples. Such lands can be expropriated (or significantly encroached on) by the State for other uses only with free, prior and informed consent and upon payment of compensation, or otherwise under *exceptional* circumstances. This requires that the expropriation must be necessary for and proportionate to a legitimate purpose in a democratic society, must occur only after consultations aiming to seek FPIC have failed, and must be accompanied by compensation, preferably in the form of other lands of equal size and value. However, precisely because their lands and territories are so central to the physical and cultural survival of indigenous peoples and therefore the impacts of their loss are so serious, it is extremely difficult to satisfy the proportionality limb, which is why circumstances must be truly exceptional to justify expropriation or significant encroachment on these rights.

Moreover, where their lands have been unlawfully expropriated by the State, indigenous peoples retain a right to restitution, i.e. to have their lands returned to them. This means that in the present case, where forestry concessions granted over community lands without recognition of IP ownership rights, without FPIC, without compensation or satisfaction of other conditions, their property rights

³ This is explicitly noted in paragraph 8 of WWF’s Indigenous Peoples’ Policy, among others.

⁴ See our comments on this distinction in section 3 above.

subsist. Indigenous communities⁵ whose lands are affected by the proposed Messok Dja reserve therefore have subsisting property rights under international law. The divergence between Congolese national law and both international law and WWF's own social policies poses the first challenge to the implementation of an FPIC process. It means in effect that WWF is and was required to apply standards that are more demanding than, and different to, those required by the Congolese government, including if the government is not supportive.⁶ For example, under international human rights law, indigenous communities have the right to own, occupy, use and manage their traditional lands, territories and resources (including fauna and fauna resources). The State has the obligation to recognise these rights, and to delimit, demarcate and title those territories; however, there is no provision under national law for doing so.⁷

This divergence is likely to be one of the key root causes of many of the issues outlined in this report. However, this problem was strongly foreseeable. It does not appear⁸ that any human rights analysis or assessment was undertaken by WWF at the outset of its involvement in the Messok Dja protected area (or its Congolese work more widely) which would have flagged this problem, and considered how WWF's could approach its work in the country in a way that ensured compliance with its own policies and international law.

Going forward, we would suggest that WWF should systematically carry out a rigorous analysis of the human rights situation (as it relates to WWF's work) in countries where it is working, in particular focussing on gaps between national and WWF/international law policies and practices, and identifying potential risks and challenges. It is particularly important for this kind of analysis to be done around land, property rights and natural resource rights (both fauna and flora), which

⁵ At least: this may well apply also to Bantu communities but it has not been definitively tested in litigation as yet.

⁶ WWF has voluntarily engaged to comply with such standards through its own policies, notably art 1 of the Conservation and Human Rights Initiative, in which WWF undertakes to "respect internationally proclaimed human rights; and make sure we do not contribute to the infringement of human rights while pursuing our mission." Furthermore, this principle applies as a matter of international law and practice to non-state actors. For example, Principle 11 of the UN Guiding Principles on Business and Human Rights. The commentary to that principle states: "The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights." Similarly, paragraph 3.2 of the Voluntary Guidelines on the Governance of Tenure (VGGT) states: "Non-state actors including business enterprises have a responsibility to respect human rights and legitimate tenure rights. Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others. They should include appropriate risk management systems to prevent and address adverse impacts on human rights and legitimate tenure rights. Business enterprises should provide for and cooperate in non-judicial mechanisms to provide remedy, including effective operational-level grievance mechanisms, where appropriate, where they have caused or contributed to adverse impacts on human rights and legitimate tenure rights. Business enterprises should identify and assess any actual or potential impacts on human rights and legitimate tenure rights in which they may be involved. It is also consistent with other voluntary standards and practices, e.g. FSC principle 1, that compliance with both national and international standards is required.

⁷ We note that the law on indigenous populations of 2010 includes provisions which would permit indigenous peoples to own and occupy their lands and resources, and require the State to delimit these territories. However, almost ten years after its adoption, the law remains without implementing decrees (and therefore unimplementable) and no change has therefore occurred.

⁸ We asked WWF about this shortly before finalising the draft report but had not received a response in time to incorporate it.

are generally one of the central points of incoherence between national and international law, and are the underlying rights which FPIC is usually seeking to protect. This should include land tenure assessments (to identify rightsholders, whether recognised or not under national law) whose lands may be affected by any WWF activities. This should happen at a country level, but also specifically at the earliest possible stage of any proposed project. These assessments, and the mitigation measures and changes in approach they give rise to, should be revisited periodically (as needed) to ensure they remain up to date and that the measures proposed are adequate in practice.

The relationship between WWF and the Congolese government

In 2005, WWF signed an agreement with the Congolese government to provide technical and financial support to the ETIC zone. The agreement sets out the framework for a collaborative relationship between the Congolese administration and WWF for implementing activities to support conservation and sustainable management of biodiversity in the ETIC zone. The original agreement (which we have not seen) continued in force for five years. WWF then operated in Congo without a formal agreement in place until 2016, when a new agreement was signed.

The 2016 agreement (which we have reviewed) sets out several engagements on the part of WWF and the Congolese government, as well as describing the modalities for working together. What is notably absent from the agreement is any reference to the rights of local communities, WWF policies or conditions pertaining to human rights. The points at which the agreement could be said to make reference to communities or social issues are as follows:

- Article 18(d) indicates that WWF undertakes to support the implementation of responsible conservation and management in the ETIC zone in collaboration with forestry, mining and agricultural companies in the zone, “as well as local communities”.
- Article 18(f) indicates that WWF undertakes to support community development activities to benefit local communities, insofar as these activities have a positive impact on the conservation of forest and fauna;
- Article 18(h) indicates that WWF undertakes to contribute to village management of hunting, including the problematic “bush meat trade”.

These references to communities are weak and do not include any real stipulations around the basis for engagement with indigenous peoples and local communities who may be affected by the joint work of WWF and the Congolese government. There is furthermore references to anti-poaching enforcement activities, which carry a high risk to human rights for local and indigenous communities. Yet there is no reference to any human rights or other safeguards or conditions for WWF involvement.

What has happened in the event is that WWF has effectively accepted and followed national legislation on land ownership, use and access – which as noted above is not compliant with international law and its own policies - in conformity with government policy on these issues. The result is that its financial and technical support is contributing to the non-respect of indigenous peoples’ and local communities’ land, resource and participation rights. We accept WWF does not seek this outcome, and that WWF has sought to change government policy to be more respectful of

rights. However, when that has not been successful, WWF has nonetheless continued to provide financial and technical support to the government, in the knowledge that the government's implementation of its programme does not respect such rights.

We suggest that where WWF engages in formal collaboration with governments, human rights must be squarely integrated in any such agreements. Agreements should specifically stipulate compliance with its social policies as well as international human rights law in general within the areas of collaboration, as conditions of such engagement. This should be spelt out in detailed terms based on the specific risks and problems identified from a human rights assessment, so that it is very clear what compliance with these policies will look like in practice. It is particularly important to include these conditions, in sufficient detail, in circumstances where, as here, there is a significant divergence between international law/WWF policies on the one hand, and national laws.

Obviously, some governments may not be prepared to agree such terms. This is a clear a red flag that WWF's collaboration with that government will almost certainly cause and contribute to human rights violations. In those circumstances, WWF must be prepared to adopt a different strategy which does not involve such close technical and financial collaboration with the government in question.

The genesis of the Messok Dja protected area proposal

According to WWF staff, the idea to establish the Messok Dja protected area first arose in 2010, during the course of a GEF-funded project (implemented by UNDP) known as Tridom I.⁹ We imagine that the idea for this project was developed as part of the consideration of the “effective zoning of the TRIDOM” including development of land use plans of the ETIC zone in each of the three countries involved. It is not clear exactly what role WWF played in conceiving the initial idea, but it is evident from the documents that WWF was supportive of and provided technical assistance to the development of this idea from an early stage.¹⁰

⁹ Email communication from E Odaba. This appears to be GEF project no. 1583, implemented in Congo, Cameroon and Gabon, entitled “Conservation of Trans-boundary Biodiversity in the Minkebe-Odzala-Dja Inter-zone in Gabon, Congo, and Cameroon”, which ran from 2010-2017. This project included significant co-funding from WWF (upwards of \$4m), and WWF representatives were on the steering committee. Various documents for this project are available here: <https://www.thegef.org/project/conservation-transboundary-biodiversity-minkebe-odzala-dja-interzone-gabon-congo-and>)

¹⁰ WWF was an executing partner in the TRIDOM I project, contributed a significant amount to its budget, and was on the project steering committee: see [Project Executive Summary](#). A project review document from 2016 – an end-of-term review of a 3 year project called the WWF-ETIC project, which appears to be a WWF NL-funded project – included as a specific objective “creation of the Messok Dja protected area and, in collaboration with the mining companies, identification of new conservation areas via the zoning of the Djoua Ivindo Forest”: Bryan Curran (2016), *Evaluation of the ETIC project*, p 4. The evaluation (from January-February 2016) also noted that “serious negotiations between MEFDD, SEFYD and WWF are necessary in the immediate term to decide how best to reconcile the inevitable timber extraction with the creation of the Messok Dja NP”: p 4. The same report noted that “A series of TRIDOM Congo meetings (facilitated by GEF TRIDOM, with WWF participation) in 2011-2014 resulted in a draft management plan for the TRIDOM Congo”, a plan which included the proposed Messok Dja protected area (see page 5). Page 10 of the same report states: “The creation of Messok Dja PA is moving ahead at a reasonable pace. The required preliminary biological and socio-economic surveys have been completed and approved by MEFDD. The actual limits for the protected

We do not have any significant detail on the steps taken between 2010 and 2017 (although the final review of the GEF Tridom I project notes that significant advancement towards land use zoning of the Tridom was made, although a final plan was not adopted within the project timeframe).

Documents indicate that discussions over the site and size of the proposed Messok Dja protected area were held with the government as well as logging companies.¹¹ The proposed protected area was included in draft land use zoning sometime between 2011 and 2013. At least by early 2016, these proposed limits had been provisionally accepted by the government.¹² A biological and socio-ecological study were also completed. What is clear, however, is that throughout this 7-year period there was no attempt to consult with or seek the consent of the communities over the possibility of creating a protected area. This is a very serious, and almost certainly insuperable, flaw in the FPIC process for the Messok Dja PA – because integrating communities only at this stage, after several years of groundwork, including discussions with the government and logging companies have already been undertaken – particularly when bearing in mind their generally marginalised status and the lack of effective protection of their rights under national law - means that their opportunities to influence the process are significantly reduced. Having obtained buy-in from the Government and forestry companies, the sequencing has created a clear risk that any significant changes proposed, or outright opposition, by communities will be resisted or ignored, at least by the government, not least because there has already been an investment of time, resources and energies in the current proposal.

WWF in its comments on the draft report disputed this assessment, on the basis that the proposal was still in a very early stage and the FPIC process had many years still to go. However, in our view this is a significant underestimation of the importance of what has occurred in the political context. The proposal and its existing borders have already received provisional agreement by the Congolese government – a step of critical importance. Congo has an authoritarian, centralised and top-down government which, as noted above, does not as a general rule respect the rights of indigenous peoples and local communities. Regardless of WWF's intentions, there is at least a serious risk that the government, having now been convinced to move ahead with this project, will not be interested in taking into account communities' rights. This risk was evident in discussions with government representatives during the field trip, who were strongly supportive of the project and wanted to see it proceed.

It is critical that indigenous peoples and local communities are involved at the earliest possible stage of developing a conservation strategy or project. In this case, this would have meant that as soon as it was identified that (some form of) additional measures to protect biodiversity were being proposed in the Messok Dja area, WWF should have approached indigenous peoples and local communities to discuss the conservation concerns, and to discover whether there was a way

area have been proposed (1,456 km²), and these have also been provisionally accepted by the Ministry. A "road map" exists for next steps in the process that has been agreed upon by MEFDD and WWF. Unfortunately, one major potential roadblock is logging. SIFCO has agreed to set aside the portion of their FMU that overlaps with the proposed PA (550 km²), but in the 914 km² PA overlap controlled by SEFYD, only 578 km² are currently proposed as conservation set-asides (and 150 km² of this might be logged in the 2016 cutting allowance). SEFYD plans to log the remaining forest, so this issue needs to be addressed as soon as possible."

¹¹ Curran, op. cit., page 10.

¹² Curran, op. cit., page 10.

of negotiating a way forward that would achieve these objectives (a discussion which should not necessarily be limited to the creation of a protected area, but could include a range of other options, including but not limited to supporting communities to own and sustainably manage their lands, or some form of community conservation area). Not only is this approach required by human rights law as part of FPIC, it is also much more likely to be effective in practice, because it generates local appropriation and support for any initiative developed.

Such dialogue does not mean excluding other stakeholders, such as the government and the forestry companies (nor would it be realistic to envisage large-scale resolutions without these actors). However, it is important to recognise the reality of the power dynamics communities are faced with. Communities are marginalised and have low capacity, and their property rights are not effectively recognised or protected by the State. They are already in a weak negotiating position; this will only be weakened if they enter into a dialogue process only after there has already been discussion and agreement - even if this is provisional - between other, more powerful stakeholders who do not recognise their rights, or whose rights may prejudice their own interests. We suggest it would be more effective and equitable, when conservation ideas are being developed, for WWF (or organisations working with it) to commence by developing ideas and options with communities, which can then be brought to the table for discussion with other key stakeholders. This not only allows communities a greater voice in defining the process, it also allows them more time to understand the process and engage in internal discussions, which facilitates their effective participation in dialogue processes.

Since 2017, WWF has participated in a second GEF-funded project known as “Tridom II”. As part of that and other projects, WWF has now begun directly engaging with local and indigenous communities which are or may be affected by the creation of the proposed protected area. However, it is important to note that the creation of the Messok Dja PA, with a size of 144,000 hectares, is listed as an outcome of the Tridom II project. It is similarly listed as an outcome in an EU-supported project from 2018. Indeed, the report on the first scoping mission carried out by WWF in July 2017 to identify communities who would participate in mapping included within it a map showing the proposed location of the protected area.¹³ This reflects a fundamental problem – because in effect, it suggests that the decision over whether to create the protected area, as well as its size and to a significant extent its boundaries, had already been made by the Government before any consultations with the communities had been carried out.

In response to the draft of this report, WWF representatives stated that the process remains at an early stage and moreover that options for community management of areas have not been excluded. However, the possibility of including community management in some parts of a protected area – even if this was a concrete guarantee, which it is not – cannot obviate the need for communities to have the option of not proceeding with a protected area at all, and to be fully informed about that option.

WWF also responded strongly that that it was always WWF’s intention to give communities a free choice, and to respect their decisions. However, this response incorrectly understands the thrust of

¹³ S Nziengui-Kassa, *Mise en œuvre du Consentement Libre, Informé et Préalable (CLIP) des populations locales et Autochtones autour du futur Parc National du Messok-Dja : Mission prospective en vue de la réalisation de la cartographie participative des zones d’usage des communautés*, July 2017 : see page 5.

this report's concern. Contrary to what WWF staff have understood, FPP is not interrogating the *intentions* of WWF staff engaged in the process. Rather, FPP considers that, looking objectively at the manner in which the project was formulated, its sequencing, the timing and way in which communities were engaged and the information provided, marginalised, low capacity and repressed communities *would genuinely feel* that they had and could exercise a free choice.

Moreover, it is almost inevitable that the framing of the creation of the protected area as an outcome will influence – consciously or unconsciously – the way that information was presented to communities. There is evidence that this was the case. The FPIC protocol assumes that a process will continue from mapping to “sensibilisation” (notably not consultation) to negotiation and signature of agreement. There is no space in this process for the alternative – that communities do not agree to the proposal. Similarly, the Terms of Reference for the Consortium state that : « Following the participatory mapping, the next stages concern negotiations with communities to possibly revise the proposed boundaries and to define the type of protected area adapted to the situation of the population”.¹⁴ While this makes reference to revision of the protected area, it doesn't leave space for the possibility of no protected area (and indeed the second part explicitly suggests that is not an option). There is no clear discussion of the option of “no protected area” with the communities. It is not necessarily that there was absolutely no possibility for communities to say no (and indeed, many have now done so) -- it was that the process was circumscribed in a way that was likely to minimise and de-emphasise that possibility as much as possible.

A free, prior and informed consent process must genuinely leave space for communities to refuse, and/or significantly alter, the activities proposed. Where specific proposals have already been developed, even provisionally, together with more powerful stakeholders and are treated as desired outcomes, this substantially forecloses that possibility, or at a minimum reduces the space for negotiation, accommodation and development of alternatives, as well as creating strong incentives for staff and other actors to pursue this approach regardless of what communities say. This underscores the need to have community involvement at the earliest possible stage.

WWF's engagement with communities

This programme of community engagement commenced in mid-2017, and has been implemented to date in accordance with an “FPIC methodology” set out in a document developed by WWF's Congo office, and seen by FPP. The FPIC methodology document itself states that “there was no example of the implementation of FPIC in the creation of a protected area at least in the Central Africa subregion”. The author has clearly made an effort to identify an appropriate methodology, and we recognise that this was undertaken in good faith: it is equally clear however that it was not developed with a full understanding of the requirements of FPIC, and that it falls short in multiple respects. For example, it is described as an FPIC process “for the creation of a protected area” – a further indication of the protected area being treated as a pre-determined conclusion – and does not include any detail on the information to be provided to communities. We have set out more detailed comments on the contents of the FPIC methodology in Annex 2. We suggest that these

¹⁴ « A la suite de la cartographie participative, les prochaines étapes concernent les négociations avec les communautés afin de revoir éventuellement les limites proposées et définir le type d'aire protégée le plus adapté aux conditions des populations. »

weaknesses may be indicative of a generalised lack of subject matter support on human rights and social policy compliance within WWF.

It is important that, when WWF is developing tools for compliance with its own social policies and international human rights law, this is supported by appropriate human rights expertise. Ideally, this expertise would be located and mainstreamed within WWF to provide ongoing support and advice, but advice and assistance could also be sought from external organisations with appropriate expertise to develop key materials, deliver training and assess compliance where internal expertise is not available. It is perfectly acceptable for this to be led by local staff in WWF offices, but we suggest that it may also be necessary to have international human rights oversight and guidance to avoid differential or less robust understandings of human rights and social policy requirements being adopted in some offices (which will often be of particular risk in the countries where non-respect for human rights is most prevalent).

In the first (scoping) stage of implementing this methodology, WWF identified and visited 67 communities (of which 23 were indigenous communities) in the area, with a view to conducting participatory mapping with them. Three communities either refused to (2 communities¹⁵) or could not (1 community¹⁶) participate in the participatory mapping process. WWF, to its credit, respected those communities' decision not to participate in participatory mapping. However, this did not result in their lands being excluded from the proposal, rather just the community engagement process continued without them. We recognise, of course, that the absence of participatory mapping creates a dilemma, because in its absence WWF was unaware of which lands needed to be excluded. However, while this created additional complexity, it could also not simply be ignored. A number of options could and ought to have been considered, including:

- (a) offering again to the communities to map their lands *specifically for the purpose of excluding them from any protected area*. Given the reasons for resistance of two of the communities, this may well have been accepted.
- (b) supporting participatory mapping to be offered by another organisation, for the same reason.
- (c) estimating community use areas based on neighbouring community maps, to identify whether the communities in question were likely to be affected. If so, further discussions with a view to adjusting the boundaries to exclude their lands could have been held.

Moreover, this dilemma itself stems from an inappropriate premise on which to conduct mapping and indeed to commence engagement with communities. The starting premise should be that all community lands are excluded from a protected area unless and until community agreement is

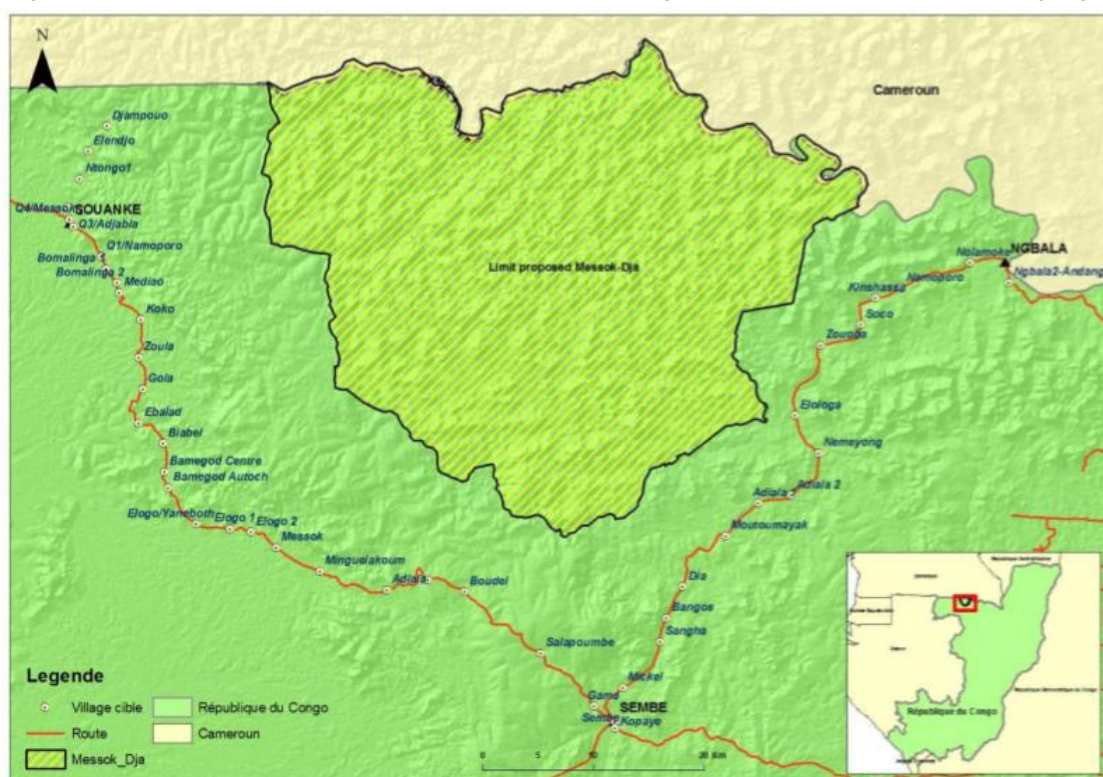
¹⁵ These were the communities of Dia Centre and one other. Dia Centre refused to participate because of the failure of the State to deal with the devastation to agriculture activities being caused by elephants in their village (Village DIA décide "de ne pas participer à la réalisation de la cartographie de nos zones d'usage des ressources naturelles à cause de la non prise en compte par l'Etat, des dévastations des cultures par les éléphants qui sévissent notre village » : PV, 03/07/2019).

¹⁶ The third community could not participate as multiple key members were absent (working in another area).

reached for some or all of their lands to be included. This makes clearer to communities that they have real control over whether their lands are included or not.

This dilemma also demonstrates a weakness in the FPIC protocol developed by WWF, which did not provide any guidance on how to deal with non-consenting and non-participating communities. Also, by presenting participatory mapping as forming part of “the process to create the Messok Dja protected area” – it is explicitly referred to as this in community minutes from the mapping process – WWF associated mapping with the creation of a protected area. It is possible (and indeed the reasons of two communities suggest) that communities refused to participate in this activity because of its specific association with conservation measures to which they were opposed.

As a matter of law and principle, where a community chooses not to engage in a process, that must be taken as an unequivocal indication of their non-consent to the proposal. If FPIC is to be respected, that means that the lands of that community should be excluded from the proposal.¹⁷



The remaining 64 communities did participate, and 64 maps were produced; 36 of these show community lands overlapping directly the proposed protected area. Community representatives (generally three per community) were chosen by the community to participate in the data collection

¹⁷ There are exceptional circumstances where, by law, the refusal of consent by an indigenous community may be overridden. That requires multiple other conditions to have been met, which have not been met in this case, so it is not applicable, and we will not explain this further here. For the same reason, we do not mention the requirement of compensation (because it arises only when FPIC has been achieved or in the limited circumstances in which activities may proceed without consent), but WWF should note that international law requires adequate and just compensation to be given – in general in the form of other lands – where indigenous communities land rights are encroached upon. There has been no suggestion of any compensation, adequate or otherwise, related to the creation of the park.

process. Women appear to have been very poorly represented among these representatives,¹⁸ although we understand that they were more involved at the validation stage in some communities. In general, we saw limited evidence of any specific efforts to engage women in the mapping process or more broadly,¹⁹ and it is unclear therefore whether women's views and knowledge have been adequately represented. We do note however that the WWF field staff team included female staff members, which is a positive factor in encouraging women's participation.

An inclusive free, prior and informed consent process involves ensuring that different groups within the community, who may be marginalised at community level, have an opportunity to participate. A gender analysis, and adoption of measures to promote women's participation, will almost always be required, and should be reported on so it can be demonstrated how this has been addressed. In some circumstances there may also be other groups (indigenous peoples in mixed communities, youth or elders – this will vary depending on context) who may also face barriers to participation and whose participation should be supported by specific measures.

It does not seem that a great deal of information, and certainly not a great deal of detail, was provided to communities about the project either during the initial scoping (which was not of long duration) or during the subsequent mapping exercise, despite the mapping being introduced as part of the process of creation of the Messok Dja protected area, as explained above. The minutes for a (second) meeting with the community of Souanké, for example, on 27 November 2017, regarding participatory mapping is recorded as having lasted only an hour.²⁰ While there had clearly been an earlier explanatory meeting during the scoping phase, the report of that scoping does not suggest the preliminary discussions were substantially longer. In any event, such a complex proposal was likely to require repeated explanations and responding to questions over multiple meetings.

It is not clear that communities went into the mapping process understanding the objectives, aims and possible consequences those maps may have later in the process.²¹ Any discussion or agreement on the methodology or purpose of the mapping process was necessarily limited given the short time provided. It equally does not appear that there was any comprehensive or objective discussion of the benefits and risks of the Messok Dja proposal for the community.²² In addition, particularly

¹⁸ Based on a review of the meeting minutes provided to us.

¹⁹ We note there was a brief analysis of gender relations included in the Socio-Economic Report completed by WWF in 2016, but this (limited) background analysis does not seem to have included or led to any concrete actions to facilitate women's participation. There were also questions on gender contained in the community questionnaire prepared by the Consortium, however on neither of the two example we saw had these sections been completed (whereas the rest of the questionnaire had been). There was no indication in the documents of any measures taken to ensure or encourage women's participation.

²⁰ This appears to be typical of, and even longer than, several other meetings where times were recorded.

²¹ During the field work communities at Zouoba; Adialla; and Elologa for example communities told us that they were not given all the information about the proposed PA. And most of them thought that the objective of the mapping was only to identify their sacred sites and use areas, without necessarily understanding what role these maps might later play in relation to the PA.

²² The report of the scoping mission carried out prior to the participatory mapping says (informal translation): In essence the message consisted of informing the communities about the project to create a protected area, as well as the area where the future park would be located. Then to ask them if they agreed to participate in the participatory mapping process which would lead to the creation of maps of their natural resource use, in order that they may better negotiate any spaces that were important for them. After having reminded the communities of the objectives of the activity and the importance of making a community use map for the target communities, our role was to facilitate, to help the communities to draw their maps on the ground and

because of the limited trust-building that occurred prior to their creation, there is a strong risk that some of these maps may not be comprehensive because communities were mistrustful and did not provide complete information to WWF.²³

It goes without saying that agreement by a community to participate in the mapping process does not under any circumstances equate to their consent to accept a protected area on their lands. It is also clear that even at this early stage, several communities were reticent or opposed to the idea (“on the Sembé-Souanké road, although they are further away from the zone proposed for the creation of the protected area and don’t necessarily have ancestral lands in that zone, the villages are generally reticent to the idea of a national park near to them. They associate it with an increase in repression on the part of ecoguards and hunting prohibitions on the periphery. Elogo 1 & 2 and Minguelakoum are the only villages that have clearly expressed their refusal to see the park, without having a clear idea of the advantages and disadvantages”²⁴). In contrast, those villages on the Sembé-Ngabala road (more directly affected by the proposed boundaries) were “*quasi-favorables*” to the idea of a protected area, hoping that this would stem the tide of youth unemployment and reduce human-animal conflict.²⁵ The report also noted however that almost all villagers, when they understand what a protected area means, associate it with restrictions on their access to the forest, and with the barriers of the Odzala national park.²⁶

It is important to note, however, it would not be safe to seek the consent of communities (or rely on expressed support) for the protected area at this stage, because communities did not have details of any overlap of the proposed protected area with their lands, nor a clear understanding of what benefits and costs it would have for them, meaning they could not have expressed an informed opinion.

It is of course perfectly legitimate to provide information to communities based on the real situation in which they are in – i.e. to compare what their situation may be if a protected area in comparison with the existing logging concession. However, that must also be contrasted with the backdrop of their rights, and the fact that communities have the right to own their lands outright, and could therefore reject both the logging concession *and* the protected area – noting that this is of course a difficult option. In addition, the pros and cons of these options need to be presented objectively and openly, not only from a legal but also from a practical (and realistic) perspective.

then transfer them to paper (original: “L’essentiel du message consistait à informer les communautés sur le projet de création de l’aire protégée ainsi que la zone d’emplacement du futur parc. Puis de leur demander, si elles étaient d’accord pour participer au processus de cartographie participative qui aboutira à l’élaboration de leurs cartes des zones d’usages des ressources naturelles afin de mieux négocier éventuellement des espaces importantes pour elles. Après avoir rappelé les objectifs de l’activité et l’importance de réaliser une cartographie des usages aux communautés villageoises cibles, notre rôle a été de faciliter, d’aider les communautés à élaborer leurs cartes au sol puis à la transférer sur papier.”: see S Nziengui-Kassa, *Mission prospective en vue de la réalisation de la cartographie participative des zones d’usages des communautés villageoises autour du futur Parc National Messok-Dja*, July 2017, (**Scoping Mission Report**), page 3.

²³ The reticence of communities to provide information is referred to the Scoping Mission Report, p 16.

²⁴ Scoping Mission Report, pp 15-16.

²⁵ Scoping Mission report, p 16.

²⁶ See Scoping Mission Report, p 15.

For an adequate FPIC process, and even more crucially where community engagement is commenced at such a late stage, we would expect significant amounts of information to be provided to communities during the (longer) initial consultation phase. Where, as here, the proposal will or may prejudice their legal or human rights, those rights (and the effect on them) should also be clearly explained to communities. Information given would include for example:

- Details of the proposed protected area, who was involved in supporting it, how it had been developed, what its objectives were, the duration, and how (if the protected area went ahead) the process would continue in the future;
- The potential impact the protected area could have on the use and access rights of the communities, including an open acknowledgement that this could restrict their use and access, result in it being made illegal (and entailing possible criminal prosecution and gaol time) or result in greater enforcement of existing laws criminalising use and access. If the extent of this was unknown prior to participatory mapping, it should be explained that the participatory mapping process was being undertaken in order for the community and the project proponents to understand more fully what the impacts of the protected area may be on the community;
- An explanation of uncertainties and risks for the communities in the process (e.g. that they may have to negotiate use and access only after the protected area was created, and that these elements could also easily be changed in the future to restrict their access beyond what was initially negotiated);
- An explanation of the community's legal rights under international law, reflected in WWF's policy, as well as under national law, and the consequences of the project on those rights, both as recognised in national law and international law. Critically, this explanation is not simply an explanation of "FPIC" as a process right, but must extend to an explanation of underlying rights which may be affected by the process, notably here the rights to lands, territories and natural resources, the right to culture, and others;
- A clear and unequivocal statement that the community had the right to say no to the project, and in that case, its lands would be excluded from the proposed protected area;
- An indication that the community could also propose changes and conditions, therefore negotiating the basis for the protected area in the future;
- Details of any compensatory or other measures that may be available to the community if the Messok Dja protected area went ahead, as well as the timing, amount and modalities of any such compensation;
- An offer to assist the community with obtaining independent support or advice (which the community could choose) for them to consider the protected area, and potentially engage in any negotiations.

During the validation of participatory maps, several communities whose lands would be directly affected by the project indicated their opposition to having a protected area on their lands. A non-exhaustive list²⁷ of examples include:

- Congo Moussala (Minutes of 16 May 2018): "After [map] validation, the boundary of the park which is foreseen at Meyebe was shown to the community. This incited their

²⁷ See also Elologa, Gama, Allangong, Kerembel, Bangos and others.

indignation, and the community proposed that the boundary should be at Namobak. It was then announced that OCDH would be coming to help them reflect on their negotiation strategy.”²⁸

- Adiala (indigenous) (Minutes of 16 May 2018), “The community showed an interest in the question of the boundary of the park, fixed at the Namozab river. They requested that the limit be pushed back to the Ekebe river, to enable them to carry out their activities (fishing, hunting, collecting)”.
- Adiala 1 (Bantu) (Minutes of 16 May 2018): “We are confronted with the problem of delimitation of the park, in respect of which the majority ... propose that the boundary be pushed back to beyond the river Ekepe for various reasons: fishing, hunting, collecting. For their survival, the village is required to go until the river Ekepe. In addition, the village of Adiala I also wants a *cahier de charges* (social contract) so they can understand their interest in the park”.
- Adiala II (Minutes 16 May 2018): “Following the validation, the community was indignant to see the boundary of the park at Namozab. They want the boundary to be at Difolo. Following this, it was announced that OCDH would come to help the community to reflect on their negotiation strategy.”

This clearly indicates that multiple communities were already expressing clear opposition to the overlap of any their lands with the proposed protected area. In response, according to the minutes, rather than indicating that their areas could and would be removed from the protected area if the communities so wished (which could have been done even if it was anticipated that discussions were still ongoing) the minutes record that WWF staff told communities that an NGO would come to assist them with their “negotiating strategy”. There was a strong risk that this gave the impression to communities that they would need to “negotiate” over whether their lands were included or not, rather than having the right to have them excluded.

Responses to the draft report suggested that communities accepted to delay a decision on whether to agree to their lands being inside the proposed protected area until they received full information. That is not documented in the minutes, and we have no way of verifying it at this stage. Even accepting this at face value, this approach is problematic. Explaining to communities what the implications of a protected area might be when it is already clearly proposed on their lands may well give communities the impression they have no real choice. This was a problem that was generated by poor sequencing of the FPIC process. It was important for communities to be provided with more and better information about what a protected area might mean for them, and whether they would be prepared to consider it on their lands, before the mapping confirmed whether it overlapped with the proposal. At the very least, even if communities agreed to hold off, WWF should have made absolutely clear that if, after hearing further explanations from an NGO, the communities continued to want the boundaries to be moved, this would be done.

In around June 2018, when the participatory mapping was completed, Survival International also visited communities in the area that would be affected by the proposed protected area. We were

²⁸ « Après validation [des cartes], la limite du parc qui est prévue à MEYEBE a été montrée à la communauté. Ceci a suscité leur indignation, cette dernière propose la limite à Namobak. C’est ainsi qu’il a été annoncé l’arrivée de l’OCDH, qui viendra les aider à réfléchir sur la stratégie de négociation. »

unable to obtain information directly from Survival about their work there, but we assume, on the basis of their organisational approach as well as their public pronouncements, that Survival's staff member spoke to the communities about their human rights and cautioned them against the protected area and WWF.

Local WWF staff appear to consider Survival to have "incited" communities against the proposed Messok Dja protected area. For example, one staff member said that *"The FPIC process started in good faith, but in the meantime, Survival came and started making communities changed their mind"*.²⁹ However, it is not clear that it was that communities changed their views because Survival "made them" do so. There were various indications prior to Survival's visit, as noted above, that communities were reticent about a proposed protected area, that they associated it with ecoguard abuses, and that they did not want it to overlap with their lands.

Moreover, to the extent that Survival's visit did cause communities to change their positions, it is not clear that should be considered manipulation. It is at least equally plausible that Survival provided affected communities with information with which they had not previously been (but ought to have been) provided, as well as explaining to communities that they had the right to oppose the proposed protected area. Armed with this information, communities decided that they did not (and do not) support the protected area of the size and location currently proposed.

When WWF started the consultation for the mapping we agreed to engage in it, and also we told them we are in favour of the Park. But the Bantus next door refused. It even destroyed our relationship with the Bantus who called us cowards and accused us of treason. But when the white lady³⁰ came, she explained to us the advantages and disadvantages better. Today we can tell you that there are more disadvantages than advantages in this Park. That's why we are now reluctant.

- Community member, Zouoba

A critical element of the FPIC process is that it provides communities with adequate information and sufficient time to consider this information, and their position on a proposal, as a community. It is also important to facilitate their access to independent advice of their choice where this is requested. Early indications from communities should not be treated as definitive, and changes of view should not be dismissed as manipulation.

Following the validation of the mapping data, WWF engaged a consortium of local civil society actors – Brainforest, the Comptoir Juridique Junior (CJJ) and the Association des populations autochtones de la Sangha – to conduct consultations with affected communities. In our view, this proposal to engage external civil society actors to work with communities is positive and indicates the desire by local staff to bring greater rigour to the process.

The Consortium (which has not yet completed its work) proposed three phases to its community engagement. The first was a field mission to make initial contact with the communities involved,

²⁹ FPP interview with Sam Nziengui-Kassa, WWF Program Manager on 9 April 2019.

³⁰ This is the term used by the communities to describe Fiore Longo from Survival International.

validate the proposed process, and plan the activities together with communities. This mission, which engaged with 36 communities³¹ over 19 days, took place in November-December 2018.

The second phase of engagement was sensitisation and consultation with communities, using materials developed by the consortium. This phase of engagement involved three field missions of 15 days each, with 12 communities visited in each mission (therefore including all 36 communities over the course of the three missions). A whole day was spent with each community.

The third phase of engagement, which had not yet occurred at the time of FPP's field visit, was a validation mission. The objective of this mission was to confirm that communities agree the contents of the (draft) consultation report (and propose modification if not).

We have not seen (and are not aware of the contents of) the draft consultation report, but we have reviewed the materials used by the Consortium during the second phase of engagement, as well as one completed community questionnaire. The materials show a good understanding of community engagement by the Consortium, and are also well prepared. It is clear that the Consortium spent significant time and effort on this work, which was impressive in many respects, and we have no reason to doubt their good faith. Moreover, the report of the Consortium has not yet been finalised, so we are unable to appreciate the full spectrum of the work they have done. However, looking at the documents we have seen, there are nonetheless elements of the materials that demonstrate significant problems for a free, prior and informed consent process. These include:

- The objectives and the expected results of the FPIC Guide created by the Consortium indicate expressly that the intention is not to consult communities as to whether they want a protected area or not, or its boundaries, but rather on the *form* of protected area that should be created. For example, one of the expected results is that "IPs and LCs are informed of the issues and challenges linked to different protected areas, and propose the creation of a type of protected area on that basis".³² There is nothing in these documents to suggest that the fundamental question of *whether* a protected area should be created was addressed, or that there was any discussion about the location, size and terms on which any form of conservation area might be acceptable to the communities.
- Consistent with this, although there is some material on free, prior and informed consent (which looks correct if brief), the vast majority of "sensitisation" material is focussed on explaining to communities the features of the different *types* of protected areas that may be adopted (e.g. fauna reserve, national park, etc). Posters on these different options refer to the advantages of this type of protected area as well as disadvantages of that type of protected area, in order to compare and appreciate the differences between them. However, no poster refers to the advantages and disadvantages (whether in law or in practice) of the current situation, i.e. no protected area, compared with what protected areas would offer for communities.³³ This approach strongly encourages communities to

³¹ We assume those whose lands overlapped the proposed PA.

³² In French: "Les CLPA sont informées des enjeux et défis liés aux différents AP et proposent la création d'un type d'AP sur cette base". See CCJ et al, *Guide de mise en œuvre du Consentement, Libre, Informé et Préalable (CLIP) en vue de la création de l'aire protégée de Messok-Dja: Kit de travail de l'équipe de terrain*, February 2019, page 8. To

³³ See e.g. Affiche Réserve Naturelle Intégrale; Affiche Réserve Faune; Affiche Parc National; Affiche Sanctuaire Faune.

consider and choose between different types of protected area, rather than to consider in detail the option of no protected area and/or other alternatives.

- Materials are focussed on communities' existing legal rights (under Congolese law), and indeed explaining the restrictions national laws impose on them.³⁴ Specifically, there is no information whatsoever about communities' rights to their lands, territories and natural resources under international law, including their right to restitution in light of the current logging concession. The creation of a protected area will almost certainly have legal implications for communities' property rights - particularly if they are said to have "consented" to it, which may be taken to constitute a waiver – and it is critical to explain this. Failure to do so is to provide incomplete information to communities. This further demonstrates how the FPIC process has been overly highlighted on community participation and has given insufficient attention to the underlying rights which FPIC exists to protect. Moreover, an uncritical (from a human rights perspective) focus on Congolese law requirements compounds the problem of the incompatibility of current national law with international law obligations and WWF policies. In effect, it reflects a tacit acquiescence in the non-respect and protection of indigenous peoples' and local communities' land and resource rights under Congolese law.
- Other materials suggest that the consortium's understanding of free, prior and informed consent was focussed on obtaining consent for communities *for their engagement with these NGOs*, or for the *process / programme of that engagement*.³⁵ While that forms part of a FPIC process, it is by no means the extent of it, nor even the most important part. We understand from WWF comments on the draft that this impression is incorrect, and that the Consortium explicitly sought the view of the communities as to the creation of the proposed protected area. That is therefore positive. However, in light of the broader concerns about the timing and scope of information provided to communities, and in the absence of information of this, we are not satisfied that any indication of agreement to the protected area can be considered safe.

FPIC exists to protect substantive underlying rights – in the case of the current process, rights to property, natural resources, culture and others – and the FPIC process must therefore be focussed on making communities aware of how the project might affect those rights, and accepting the decision of the community as to whether they will agree to limitations on their rights (and negotiating any changes which might avoid, lessen or mitigate the impact on those rights where this is agreed). That focus was unfortunately largely absent from this process.

It is not our intention to impugn the work of the Consortium, which in many respects is impressive and has undoubtedly been of benefit to the communities (and is also unfinished, meaning we are not capable of assessing it in full). **However, having reviewed the framework of their engagement, we do not consider that this work is sufficient for the process comply adequately with the information requirement for free, prior and informed consent as this is understood in international law, and in WWF's policies.** We make this comment bearing in mind

³⁴ See e.g. the documents "Présentation du context du Messok Dja", "Affiche Ecogardes", "Affiche Droits CLPA".

³⁵ See e.g. the document entitled "Liste de contrôle CLIP".

the stage the process is at – but the timing of provision of information, and particularly fundamental information about rights, is critical to the framing and success of an FPIC process.

In this respect, we note that particularly in countries in which the respect and protection of human rights is limited, and/or where civil society is relatively weak and underdeveloped - such as Congo - it may in some instances be difficult to find local organisations with a full understanding of international human rights law. This is even more the case with a principle such as free, prior and informed consent, which has been the subject of the development of multiple “local interpretations” that are called “FPIC”, but which significantly dilute or undermine its scope as compared to international law. These local interpretations may also in some instances influence the understanding of FPIC held by some local civil society organisations, who learn to understand “FPIC” to mean something lesser than what it is as a matter of law. This is of course not a rule – there are also many local organisations who have exceptional expertise in this area and indeed have been critical to its development as a principle of international law – but it is rather a risk which WWF needs to consider and manage in its engagement of external organisations to support engagement with communities.

It is positive for WWF to engage external organisations, and particularly local ones, to support community engagement, whether to conduct consultations in an FPIC process on behalf of WWF, or to act as independent advisers to the community. However, WWF remains ultimately responsible for compliance with its policies. It is important therefore that WWF:

- (a) Draws up terms of reference that indicate clearly the standards required by WWF (i.e. compliance with its own policies and international law), providing detail where possible of what is required;**
- (b) Takes steps to ensure that any local organisations engaged have the requisite capacity to explain and deliver compliance with international law standards. Where this is in any doubt, supporting additional technical assistance may be required.**
- (c) Reviews and has oversight of any work carried out by external organisations towards FPIC (and has appropriate internal capacity to do so), to ensure that compliance with its policies has been achieved.**

One other point to mention is that during FPP’s fieldwork, some communities commented on the fact that the Consortium arrived in WWF vehicles. It is not entirely clear whether the Consortium were intended to conduct this consultation on behalf of WWF (i.e. in fulfilment of WWF’s obligations), or rather as independent advisers to the communities. There may sometimes be a need for both, and particularly in cases such as this where there is evidence (acknowledged by WWF) that communities are afraid to speak to those who they perceive as allied with WWF. If it was intended that the Consortium were independent advisors to communities, in future it would be advisable to facilitate greater independence from WWF in travel and logistical arrangements, to ensure this independence is not compromised either in fact or in appearance.

There is a distinction between organisations hired to carry out FPIC on behalf of WWF – in which case we would expect WWF to have detailed oversight of the process – and organisations engaged to provide independent advice and support to communities (who would normally be chosen by communities) – in which their engagement with the

communities would normally be confidential, even if this advice were funded by WWF. It is important that the role and accountability of a consultant organisation in this respect is clearly defined. Where organisations are intended to be independent but are funded by WWF or by a project with which WWF is associated, WWF will need to ensure that arrangements put in place (including contracting, logistics etc) are adequate to ensure their independence both in fact and in appearance.

Looking globally at the interventions both of the Consortium and WWF, we observe that discussions of the protected area with communities have focussed on the legal and formalistic aspects rather than the practical reality of the protected area for community. For example, the posters created by the Consortium indicate how different types of protected area may permit certain types of access for communities. However, access arrangements are often contingent on the implementation of formal documents (such as plans of management or social agreements), which in practice can take years to put in place - *after* a protected area has been created. There is a strong possibility that communities find themselves excluded from these areas, or at least are in an ambiguous legal position which exposes them to increased risk, in the interim. There is evidence of this type of delay already in the zone: plans of management for the forestry concessions took some time to put into place.

It is equally well known (and recognised by WWF itself³⁶) that the behaviour of ecoguards does not always comply with the law. Communities report that ecoguards frequently do harass them not only for activities that are illegal under national law, but also use their power to extract meat and other resources without any legal justification.³⁷ In this context, whether access arrangements that exist on paper provide meaningful benefit to communities is thrown into doubt. In an FPIC process, consideration of these practical and factual realities (and how they might be mitigated), as well as the legal situation, is essential if there is to be an honest and unbiased discussion of the advantages and disadvantages for the community.

Our brother at Odzalla Kokoua told us there were no benefits for them since the creation of the national park.

Community member, Zouoba

Similarly, discussions on community benefits of these actions were focussed on possible benefits that might be negotiated: but that were far from certain. Even if such benefits were to be negotiated and agreed, they may not necessarily materialise. Again, there is substantial evidence in the zone of the lack of compliance with social obligations even when these have been agreed. These risks and difficulties, which are critical to the *actual* impacts of the protected area on indigenous and local communities, do not seem to have been specifically included for discussion with communities. Communities, however, recognise these risks, and it is one of the reasons for their opposition (other issues being poverty, human-animal conflict, fear of ecoguard abuses, belief that the project will not bring any benefits, fears of constraints on their traditional activities, among others).

³⁶ FPP interviews with WWF staff.

³⁷ See meeting notes from Ngomane, Annex 1; this was also reported by other communities.

Pour les avantages nous restons sceptiques et ne les accepterons qu'à la réalisation. [As for the advantages, we remain sceptical and we will only believe them when we see them.]

-Community response, Consortium Questionnaire

Although this is not referenced in detail in WWF's documents on the FPIC process, in other documents we have seen there is also a very strong and decontextualized focus on "wildlife crime" law enforcement, including e.g. the collaboration agreement with the Congolese government and the FY18 Technical Progress Report for the TRIDOM programme. The latter for example reports as an achievement 64 arrests, leading to 61 prosecutions, as a result of ETIC patrols, and lauds the improvement in court functioning and length of sentences given. The majority (41) of these are classified as "poachers" (i.e. the individuals physically hunting the animals), with the remainder reflecting other actors higher in the chain. In practice what this means is arrest and prosecution of a significant number of local community members. There is, as local WWF staff recognised, a negative relationship between this enforcement activity and the prospect of an open, frank engagement with communities.

The question of wildlife crime and enforcement raises further issues. WWF's documents show very limited understanding or willingness of the context in which poaching (i.e. hunting which is illegal under national laws) takes place. For example, in describing communities' hunting activities, the report of the preliminary scoping missions carried out by WWF in its participatory mapping states as follows (informal translation):

*Hunting is an activity practised exclusively by men. It is the second most important income generating activity after cacao. Illegal hunting of large mammals and elephants in particular is very strongly established, with the strong presence of elephants in the Messok Dja forest and proved by the arrests carried out by the ETIC project. Given the low number of elephants that remain this is very concerning.*³⁸

A similar approach, lacking in detail and showing no understanding of the community perspective on hunting or the dynamics behind it, is demonstrated in the socio-economic study.³⁹

In this respect, it is important to note various points that emerged from community discussions:

- Both Bantu and indigenous communities are generally aware of the prohibitions on hunting, but they overwhelmingly see the extensive restrictions on hunting (particularly those that affect traditional hunting, but also those related to "poaching" as it is more legitimately understood) as unfair to them. The current laws make it a criminal offence punishable by gaol time to engage in big game hunting for sale in national or international markets, but also restrict other hunting, including some that may be carried out for subsistence or small-

³⁸ "La chasse est une activité pratiquée exclusivement par les hommes. C'est la deuxième activité génératrice des revenus après le Cacao. La chasse illégale des grands mammifères et des éléphants en particulier est très bien implantée avec la forte présence des éléphants dans le massif forestier du Messok-Dja et prouvé par les arrestations effectués par le projet ETIC. Vu le faible nombre d'éléphants qui restent ceci est très pré-occupant." S Nziengui-Kassa, *Mission prospective en vue de la réalisation de la cartographie participative des zones d'usages des communautés villageoises autour du futur Parc National Messok-Dja*, July 2017, page 6.

³⁹ See République du Congo, *Projet de création d'une aire protégée dans le massif forestier de Messok-Dja: Rapport Socio-économique*, 2016, page 40.

scale commercialisation, which has always supported traditional livelihoods. At the same time, other activities in the region – such as logging – are further affecting or restricting traditional activities. Moreover, communities (particularly indigenous communities) experience restrictions in practice which go beyond the legal restrictions, because ecoguards are reported to confiscate meat from legitimate hunting. Communities see restrictions on hunting as merely depriving them of their livelihoods, with no or inadequate compensation. Participation in big game poaching is a risky activity, but is one of the few profitable activities open to communities whose other livelihood possibilities are being restricted on all sides.

- The relationship between Bantu and indigenous communities in the region is one of significant domination and marginalisation of indigenous communities (a reflection which is largely missing from the socio-economic report). There are historical relationships akin to slavery between these communities, and Bantu communities continue to exert a significant amount of control over indigenous communities. Indigenous peoples are also (a) the poorest groups and (b) the most skilled hunters (c) those who have been most affected by restrictions on hunting, as well as logging activities, that have reduced traditional livelihoods. In these circumstances, indigenous peoples are often sought out by Bantus to engage in illegal poaching of elephants. They usually receive very limited recompense for doing so – often not even the small sums agreed - and run very high risks. However, in a context of domination (which is sometimes enforced by violence), there is a real question about whether indigenous participation in these activities is entirely (or always) voluntary.

Our relationship with the Bantus is one of inferiority. They are the ones who dictate our conduct. When we work for them our salary is often reduced to alcohol. We also practice prohibited hunting at the request of the Bantu.

Indigenous community member

We depend on this forest. SEFYD has already cut all the medicinal plants. And we cannot afford the hospital fees.

Indigenous community member

The situation described above suggests that wildlife law enforcement on its current terms reflects little more than the criminalisation of marginalisation and poverty. This approach is therefore questionable both ethically but also in terms of effectiveness. WWF asserts that enforcement efforts are focussed on elephants – this may be the intention, but communities say that they experience restrictions and abuses related to their hunting much more broadly.

In circumstances where WWF is deeply involved in supporting enforcement activities which communities experience as unjust and violent, there is a real question about whether WWF can engage legitimately with communities in an FPIC process. It creates a significant power imbalance and risk that communities will be intimidated by WWF, and will not feel able to express freely their views. There was evidence of this during FPP's visit – on two instances, FPP's representative was told that most community members had fled before the meeting, when they had seen the WWF vehicle

arrive – and it has also been explicitly noted by WWF staff.⁴⁰ This fear appears to be particularly affecting indigenous communities.

Finally, although strictly outside the scope of this assessment, we note that to the extent that current laws have restricted traditional hunting without the free, prior and informed consent of communities, WWF's support of enforcement of these laws would almost certainly also amount to a violation of international law requirements and WWF policies.

We suggest WWF needs to consider the influence that its enforcement activities, and the broader focus on using criminal prosecution as a deterrent, have on its community engagement, and in particular the extent to which this creates an atmosphere of fear and intimidation in which such a process cannot be considered “free”. We suggest both that compliance with its policies and achieving its objectives requires WWF to develop a much more nuanced understanding of the dynamics of hunting and poaching in the zone, and to consider the compatibility between existing national laws criminalising hunting and human rights law principles embodied in its policies.

Multiple communities whose lands overlap with the protected area have now firmly indicated to WWF, including in meetings minuted by its own staff,⁴¹ that communities do not want the protected area on their lands. Across the board, communities have requested that the boundaries be moved (and some are opposed to the protected area regardless of its boundaries). However, WWF has indicated that if these lands were excised, WWF considers the protected area would not be viable (although we acknowledge it also states that it will accept the decision of the communities and is open to considering other options). However, FPP's discussions with the government figures (albeit limited) suggested that there is a desire to push ahead quickly with the project in its current form (and a preference for full national park status) and no indication of an intention to accept the communities' position if it does not correspond with that.

For an FPIC process to be genuine, WWF and other key actors (notably the government) must be open to change or even abandon the proposal if consent is not obtained from communities.

To sum up our assessment of the process: there have been many positive elements in the community engagement WWF has supported, directly and through the Consortium. Engaging with communities around the proposal is itself a positive step; it is also encouraging that WWF has engaged local NGOs to provide more independent support to communities, assisted communities to map their lands, is open to changing their proposal if consent is not obtained, and foresees a long-term process of engagement. It is clear that both WWF staff and the Consortium have been diligent and acting in good faith, and it certainly shows improved community engagement by WWF's team.

⁴⁰ See S Nziengui-Kassa, *Mission prospective en vue de la réalisation de la cartographie participative des zones d'usages des communautés villageoises autour du futur Parc National Messok-Dja*, July 2017, page 16.

⁴¹ For some examples, see the minutes (*procès verbaux*) from community meetings in Congo Moussala (16 May 2018) « Après validation [des cartes], la limite du parc qui est prévue à MEYEBE a été montrée à la communauté. Ceci a suscité leur indignation, cette dernière propose la limite à Namobak. C'est ainsi qu'il a été annoncé l'arrivée de l'OCDH, qui viendra les aider à réfléchir sur la stratégie de négociation »; Bangos (17 May 2018): « Ensuite, nous sommes attelés sur le problème de délimitation dont WWF veut cela soit à Libé or, M. Akameyong Benjamin et M. Kazduna Roméo appuyés par toute la communauté veulent que cela soit fixé à Bodifolo pour des raisons de chasse, piège, pêche et ramassage. Enfin, dans l'attente annoncée de l'OCDH pour les préparer à bien revendiquer leurs droits, la communauté de Bangos reste dans le processus malgré la limite proposée par WWF qui n'arrange pas la communauté de Bangos. »

We also do not doubt that WWF staff genuinely desire to put in place a protected area which will provide net benefits to communities when compared to the current situation. Nonetheless, this proposal has had limited real input from communities. The supposed “FPIC” process has ultimately been commenced late and has to date been limited in scope and quantity, in terms of the information provided and discussions held (at a stage when this would be expected). It has also been framed in such a way that there is a real risk that communities will be led towards consent without having fully understood or considered either the risks or the alternatives.

We mention one other point in passing (as it may arise): what effect does the existence of the forestry concessions – which are already encroaching upon communities’ rights – have on WWF’s obligations in relation to the Messok Dja proposal? The answer is that it does not diminish WWF’s responsibilities. It is true that the rights of indigenous and local communities to their lands and resources in this area are already impaired by the existence of two logging concessions - and it is likely that both Congolese government and the forestry companies in question are in breach of obligations and responsibilities in that respect (but we do not make any definitive finding on this as it is beyond the scope of our review). If it is indeed the case that communities’ rights have already been violated, this does not lessen WWF’s obligations under its policies and under international law to respect and protect those rights in full.

This does raise a separate compliance issue for WWF however. In particular, we understand from conversations with WWF staff that WWF is providing technical and/or financial support to the USLAB patrols – in effect ecoguards patrolling in the conservation areas of the existing FMUs. If these FMUs have indeed (as seems likely) been granted in violation of the rights of communities to their lands and their natural resources, involving criminalising communities’ use of fauna resources which under international law they are entitled to use, then WWF’s support of these activities may be contributing to these human rights violations, and further contravening its policies and international law. WWF may wish to consider this further.

Consultant’s field visit and the current position of communities

FPP (Lassana Koné) visited 19 communities, including 18 directly affected by the project, between 12 and 18 April. WWF accompanied FPP on this field trip and provided the logistical support, but did not attend any of the meetings with communities in order not to inhibit communities from sharing information freely with FPP’s representative. Despite this, some communities did raise questions about Lassana having arrived in WWF’s car; it may be therefore that some information was withheld from FPP by communities out of mistrust.

Some notes from the trip, which include some additional details and recommendations not included in this section, are contained in Annex 1. In summary, FPP’s field visit found (consistent with the positions outlined by many communities during mapping validation) that there is strong opposition to the proposed Messok Dja PA within the communities whose lands it is proposed to overlap. Of the 18 communities FPP visited, 8 of these indicated their outright opposition to having a PA at all. The other 10 were strongly opposed to the overlap of the protected area on their own lands; they

agreed – although not with enthusiasm – that the protected area could be created beyond their own lands, i.e. if its boundaries were adjusted.⁴²

“When they came to explain the project for the establishment of the proposed PA, we asked them what our fate will be?” Indigenous Baaka leader.



⁴² In this respect, we wish to raise one point that can often be overlooked in mapping processes, notably that some indigenous communities in the Congo Basin also use lands that are beyond those that are mapped as “community lands” in a participatory mapping process. These lands would not be considered belonging to or under use by the specific community, but are considered part of the broader forest “territory” which is shared by all indigenous peoples. The use of these lands – which are often at a significant distance from settlements – appears to be declining among indigenous communities as a consequence of sedentarisation policies, but it is not entirely impossible that indigenous communities in particular may continue to access and use forest areas that are beyond those mapped as community lands. We are not aware of whether this is the case in relation to the specific communities in question.

7. Assessment of compliance with WWF's policies

In the preceding section, we have reviewed the FPIC process conducted to date, and made some suggestions and recommendations about the process based on international law obligations. FPP was also asked to review the process from the perspective of WWF's policies (which, as noted above, we have interpreted consistently with international law where appropriate). We have set out what we consider to be the main examples where the process to date may have fallen short of WWF's policies.

Conservation Initiative on Human Rights

- **Paragraph 1, CIHR requires that WWF respect internationally proclaimed human rights, and not contribute to their infringement.**

In our view WWF has fallen short of this standard through various acts and omissions including: the absence of any human rights conditions in a collaboration agreement with the government; the absence of a full assessment of possible human rights risks associated with a proposed protected area or the programme of work more broadly; continued support to ecoguards despite repeated reports of physical abuses by them of community members; the proposal and support of a protected area on community lands without any clear guarantee that community's rights to their lands, territories and natural resources would be protected in the process (and faced with clear risks that they would not); commencing discussions with the government and logging companies about a proposed protected area overlapping with community lands, and advancing them to the point of reaching agreement on provisional boundaries with the government, without any prior or at least simultaneous consultation with communities.

- **Paragraph 2, CIHR requires that WWF support and promote the protection and realization of human rights within the scope of our conservation programmes.**

In our view WWF has fallen short of this standard through various acts and omissions including: the absence of human rights conditions in its collaboration agreement with the government; commencing discussions with the government and logging companies about a proposed protected area overlapping with community lands, and advancing them to the point of reaching agreement on provisional boundaries with the government, without any prior or simultaneous consultation with communities.

Indigenous Peoples Policy

- **In paragraph 8 IPP, WWF recognizes the rights of indigenous peoples to the lands, territories and natural resources that they have traditionally owned or otherwise occupied or used, and that those rights must be effectively protected. Under paragraph 22, "whenever it promotes conservation objectives, and in the context of its involvement in conservation activities affecting indigenous peoples' lands and territories, WWF will encourage governments to "take steps as necessary ... to guarantee effective protection of [indigenous peoples'] rights of ownership and possession" of those lands and territories". Under paragraph 27, "in instances where states or other stakeholders, including long-term residents, contest the rights of indigenous peoples, WWF will be**

ready to assist indigenous peoples to protect, through legally accepted mechanisms, their natural resource base, consistent with the achievement of WWF's Mission and subject to availability of resources."

We do not consider that the process has adequately complied with these standards, recognised or respected these rights, or made any effort to support indigenous peoples to obtain recognition of their full rights to own, occupy, use and manage their traditional lands, territories and natural resources. It has instead engaged with communities on the basis of the situation of non- or limited recognition of such rights by government – engaged with them as interested parties, but not as rightsholders. We have not seen any propositions made to the government for effective recognition or protection of the ownership rights of indigenous peoples, nor an acknowledgement that a protected area would encroach upon communities' property rights. There are some, limited, propositions put forward for assuring indigenous peoples' *access to resources* (Tridom Conservation Plan, section 5.2). However, the focus on assuring access to areas under ownership or control of others - which are described as legal rights to be created, rather than human rights that are already held but not respected - involves in effect non-recognition of the existing much more extensive rights of ownership, occupation, use and management of the lands, territories and natural resources.

- **In paragraph 23 IPP, WWF commits to exercise due diligence to seek out information about historic claims and current exercise of customary rights of indigenous peoples, and inform itself about relevant constitutional provisions, legislation and administrative practices affecting such rights and claims in the national context, prior to commencing conservation activities.**

WWF has been operating in the ETIC zone for some time, yet does not appear to have done any comprehensive analysis of the divergences between internationally respected rights and provisions of Congolese law (it has rather just applied principles of national law). This approach is not only apparent in respect to land ownership and use rights, but also in relation to wildlife and fauna regulation, which has almost certainly occurred without effective consultation and free, prior and informed consent of indigenous peoples affected by such measures.

- **Under paragraph 24 IPP, WWF undertakes to consult with indigenous peoples "at the earliest stage of programme development" where its conservation activities impinge on areas where historic claims or current exercise of customary resource rights of indigenous peoples are present. In paragraph 7 WWF recognises indigenous peoples as "rightful architects of and partners for conservation and development strategies that affect their territories".**

For the reasons identified in the report, FPP considers that consultations should have commenced much earlier than they did. These consultations could in no way be described as having started at "the earliest stage of programme development". Moreover, instead of working in partnership with indigenous peoples to develop conservation strategies, it seems much of this conception has been conducted by WWF (probably with good intentions but without real engagement).

- **Under paragraph 30 IPP, WWF will not promote or support, and may actively oppose, interventions which have not received the prior free and informed consent of affected**

indigenous communities, and/or would adversely impact - directly or indirectly - on the environment of indigenous peoples' territories, and/or would affect their rights. This includes activities such as: economic or other development activities; natural resources exploitation; commercially oriented or academic research; resettlement of indigenous communities; creation of protected areas or imposition of restrictions on subsistence resource use; colonization within indigenous territories.

As per our evaluation above and below, we consider that the free, prior and informed consent process carried out to date has flaws, particularly as regards to the timing and the incomplete provision of information to communities, and the framing of the process more generally which is likely to promote the desired outcome. We note that WWF's support to wildlife crime law enforcement, in circumstances in which restrictions on hunting (including e.g. of endangered species) by indigenous peoples has almost certainly not been the subject of consultation or FPIC, is also likely to involve non-compliance with this principle.

- **In paragraph 32 IPP, WWF commits to ensuring that its partnerships with national governments (among others) do not undermine, and if possible serve to actively promote, the basic human rights and customary resource rights of indigenous peoples.**

We consider the failure to include any human rights conditions in the MOU has failed to actively promote those rights, and may have undermined them.

- **In paragraph 34, IPP, WWF commits to “promoting nationally and internationally, whenever possible and appropriate, the implementation of all of these principles in the context of conservation actions within indigenous peoples’ lands and territories”.**

In our view, failing to include a reference to these principles in an MOU with the government falls short of this standard.

Gender policy

- **Commitment 1 requires WWF to “incorporate a gender perspective into programme and project development processes through the application of gender awareness and analysis in the project cycle, including design, implementation, monitoring and evaluation. Where appropriate, develop gender analysis and sex-disaggregated social and economic indicators and targets”;**

We have not seen any explicit gender analysis, notable consideration or proposals for monitoring in the documents we have reviewed. There were at least some indications that women have not been adequately involved (e.g. in mapping) – it was difficult to evaluate more broadly in the context of a short field trip. In our view more explicit analysis and attention, as well as specific measures to support women's effective participation, was required, particularly given that gender discrimination is widely recognised as an issue in Congo.

Poverty and Conservation

- **Commitment 3: “Engaging with resource-dependent communities in our programme planning, implementation and monitoring with the aim of identifying common interests,**

implementing collaboratively agreed activities, and producing outcomes that benefit both people and the environment. WWF will seek out and respond to the concerns, priorities and values of local people as they relate to natural resources (e.g. issues of access, control, management) and wellbeing.”

For the same reasons as stated above in relation to the timing of the FPIC process, we consider that WWF has not engaged with communities sufficiently in relation to “programme planning”. It is dubious whether many activities undertaken or proposed by WWF (including e.g. support for wildlife crime enforcement) could be described as “collaboratively agreed”, or whether WWF has responded to local peoples’ concerns on this score.

- **Commitment 1: Seeking to understand the poverty-environment linkages and the socio-cultural and economic context in each area where we work; this would include learning about the relationships between poverty and natural resource use and environmental quality.**

As noted in our report, the documents we have reviewed suggest a very limited and un-nuanced understanding of the drivers and dynamics of communities’ involvement in hunting that is illegal under national law, or engagement with communities’ perspectives on this. This does not prima facie seem to fulfil this commitment.

8. Recommendations for this process

In light of our assessment in section 6 above, we have considered what remedial actions might now be taken to rectify some of the issues that we have highlighted. Unfortunately, in all the circumstances of this particular proposal, **we do not consider that any remedial action would be able to render the process compliant in relation to the proposed protected area in the form in which it is currently proposed (i.e. on the basis that it is a protected area with the boundaries form.** Proceeding with the protected area in the current form, which was designed and developed with no community involvement and no real consideration of their rights, in the face of explicit, widespread non-consent from the affected communities, will inevitably involve direct violation of international law and of WWF's own social policies. Looking objectively at the proposal in its present form, it is also possible to see *why* a community with full information about the proposal may choose not to agree to it. Communities have had bad experiences with ecoguards, particularly in relation to protected areas, and are already suffering what they consider to be unjust constraints on their hunting activities. While it might be possible in theory to create a protected area that would promote and benefit communities when compared to their present situation, there are also serious constraints in practice to this occurring (and many examples of how it can go badly wrong). Communities have a long experience of promised benefits not materialising. **The PA is moreover being proposed by an organisation whom they (rightly or wrongly) associate with abuses of ecoguards, and whom they therefore mistrust.** There does not seem to be any real, and certainly no secure, benefits to them from the proposal as it stands, and even less any benefit which is commensurate with the significant costs (or risk of costs) to them which the proposal gives rise to. If their existing situation is not great, they may well consider that this change may not improve it, or could make it worse.

When the white lady came here, she told us if we let WWF take our forest, we will not get any benefit from it. Therefore, thinking about the explanations provided to us by the white lady we prefer to keep our forest.

Community member, Zouoba

Communities have indicated they do not want the protected area on their lands. That position ought to be respected, and community engagement should now focus on other options. It is unlikely that further community engagement around the protected area with the boundaries as currently proposed could lead to consent being achieved – unless that engagement, carried out with the specific objective of mobilising support, were improperly carried out, i.e. it is based on partial or false information, manipulation, incentives or bribery, intimidation, harassment or coercion by authorities or others.

We recognise that this recommendation may not be straightforward to implement. Given the range of actors involved, the delicacy of political arrangements, and the existing investment by government and others in the existing project, it may be difficult, financially and politically, to reconsider the project at this stage. We nonetheless see no way in which the proposed Messok Dja protected area can proceed on the boundaries as currently proposed without WWF being complicit in a serious and deliberate breach of international human rights law and its own policies.

There is no silver bullet as to how to take things forward in these circumstances. Apart from abandoning the programme of conservation work entirely – which we assume is the least preferred option – we see two possible ways through, neither of which will be easy.

1. Drop the project, but design a new programme based on the underlying objectives of its predecessor, this time together with communities

The first, and in our view ultimately the best, option, would be to give up the project in its current form: that is to say, to cease working towards the creation of a Messok Dja protected area, and return to the underlying objectives which that project sought to address: protecting critical biodiversity in an important area of the Congo Basin. That is to say, maintain the objectives, but abandon the specific measure proposed to date to achieve them.

WWF could then initiate genuinely open discussions with indigenous and local communities living in the vicinity of Messok Dja protected area, to explain the conservation issues and what the concerns were (including about communities' role), and have a real conversation with communities about what measures WWF, the Government and communities could adopt together which would on the one hand protect this critical biodiversity but on the other hand protect and promote communities' rights. In this respect, discussions around a community-owned and managed conservation zones could well be productive.

This would involve a substantial amount of additional work, time and resources, and would need to be undertaken without a clear outcome in mind. It would also obviously be likely to involve prolonged negotiations with the Congolese government and donors, and a significant shift of resources from government-focussed and law-enforcement activities towards community engagement and capacity building. However, if it were genuinely undertaken, this is the approach which we consider is most likely to result in accepted and lasting arrangements that support conservation in the Messok Dja forest.

2. Redesign the proposed protected area to exclude all lands which overlap with community lands.

A more limited change which may be possible would be to reduce the size of the protected area to reduce any overlap with community lands (including any lands used by the communities who declined to participate in the participatory mapping process). If this were done, and further discussions were held with communities to resolve additional issues around benefits, abuses by ecoguards and other points, it may be possible to proceed with the creation of a more limited formal protected area. Of course, this option would equally involve further negotiation with communities and other critical stakeholders, most notably the Congolese government but also key donors involved in the process.

We note however the indication from the WWF Congo team that, if such lands were excised, the protected area would not be viable, which may make this an unacceptable option from the perspective of the conservation objectives. If that is the case, WWF may be able to consider a mixed approach, which includes a smaller formal PA together with supporting community-based sustainable land management in the vicinity of the PA.

8. Enabling conditions and strategies for engaging with governments and obligations when support is not obtained

WWF has requested that we include details of some enabling conditions, strategies for engaging with governments, and a summary of obligations when government support is not obtained for a rights-based approach.

Some enabling conditions for rights-complying conservation

- **Government agreement to support human rights requirements (at least where collaboration with the government is anticipated):** One of the most critical conditions. This is obviously straightforward in contexts where governments are generally supportive of human rights. It is much more complex in cases such as Congo, where existing national laws are significantly non-compliant with human rights obligations, and where there is a strong likelihood of resistance to recognition and respect of rights that go beyond those recognised in national legislation. We set out some strategies on this below.
- **Recognition that communities have rights, not just an interest.** Much work on communities treats them as “stakeholders” that need to be engaged with as part of risk and conflict management. However, a rights-based approach involves recognising that their role is more than this – they have rights, and those rights can and often will place limitations on what WWF may do. Recognising and respecting this dynamic is critical to a respectful and rights-compliant engagement with communities.
- **In-depth understanding by local staff of WWF’s social policies, what they would look like in practice, and the constraints and difficulties of applying them in the national context** – and a commitment to uphold them. This is likely to be even more important in countries where there is conflict between national laws and practices and WWF’s policies/international law.
- **Flexibility in programming and early engagement with communities.** Genuine participation of communities in defining outcomes and measures adopted will be critical to ensuring that conservation measures are rights compliant (and is also likely to lead to more effective conservation practices). This will require that WWF programming is done from the earliest stages in collaboration with communities who will be affected, and that measures, strategies and approaches (a) are not defined in advance by WWF or others and (b) remain flexible to input from communities that is provided over time.
- **Support for community capacity.** Related to the above, communities affected by WWF’s work often have limited capacity – they are extremely poor (financially and in time), usually have received limited formal education, have limited access to basic services, and are often confronted by modern forces that are not of their making but which are generating serious threats to their livelihoods. Such communities, particularly at the beginning, will often need support and accompaniment, and usually facilitation and advice from external advisors, to be able to understand these dynamics and engage in an informed way with these processes.
- **Donor buy-in.** Donors for conservation work will also need to understand and accept the centrality of human rights (and the fact that it is a condition not a desirable but optional extra) in conservation work. WWF may need to engage in some sensitisation work with

donors, and also choose not to accept funding from donors who will not agree to this approach.

- **A willingness to exercise leverage on human rights, and to disengage from the government if necessary.** This does not necessarily mean ceasing conservation programmes in a country, but it may mean adopting fundamental shifts so that conservation initiatives shift away from, or substantially reduce, government collaboration. In this case, programmes may instead focus on more intensive work with communities to support community-led conservation initiatives.

Strategies for engaging with governments

It is obviously complex to engage with governments who may not be supportive of human rights, or not to the extent required for compliance with WWF's policies and international law. Some strategies for doing this include the following:

- **In engagement with governments, make clear upfront and in detail what the conditions of WWF's collaboration is in terms of human rights.** In any significant collaboration, it is important that there is an open conversation about the gaps between State laws and practice and WWF policies and international law, and that the State agrees that work related to the collaboration will be carried out in compliance with WWF's higher standards. Having this clearly set out in writing at the outset not only frames the work, it also gives WWF more leverage to raise human rights issues where they arise. **Where the State will not do this, it is almost certain that if WWF continues with the collaboration, it will end up providing technical and support to human rights violations.**
- **Renegotiate agreements.** Where (as is the case in Congo) a collaboration agreement exists already that does not make these conditions, WWF should indicate to the government as soon as possible that it should be renegotiated. WWF may wish to cite international and funding pressures, as well as potential liability, as reasons to do this.
- **Be prepared to walk away.** Where a Government refuses to accept human rights conditions or where, despite accepting them, abuses of human rights are reported without action and/or are systematic, WWF must be prepared to cease its engagement with the government. Without this, not only does WWF lose its leverage, it also effectively acquiesces in (and contributes to) human rights abuses committed in connection with work to which it is providing technical and/or financial support. We use the phrase 'be prepared to' advisedly, as there may be some instances where continued collaboration may be possible under certain conditions (see below).
- **Use current access to press for human rights and support community positions.** Where, as in Congo, WWF already has a relationship with the government (and subject to / as part of the process of any renegotiation), it should use this access to (a) support community positions and (b) press for human rights compliance by the government. WWF should offer technical support to the government on this area where necessary.
- **Consult with affected communities where there is a human rights problem.** Where WWF is engaging with governments that are not respecting rights, WWF should acknowledge the problem frankly with communities and seek their input on the best way forward. Communities may in some cases prefer that WWF continue its collaboration despite these

abuses, in conjunction with other strategies. This is likely to be the only case where WWF could continue collaborating with a government involved in repeated human rights abuses. This approach could only be adopted on the basis of free, prior and informed consent, and would require WWF to adopt any conditions proposed by communities, allow community oversight of the collaboration, and keep in continued contact with communities to ensure the approach continued to have their support.

- **Look for other allies within the government.** WWF has traditionally had strong relations with the departments associated with the environment. There may be other sections (or individual allies) within the government who would be more supportive of a rights-based approach. WWF should make a concerted effort to identify such department and/or individuals and ally with them to strengthen the pressure for the adoption of a rights-compliant approach.
- **Actively propose and “sell” rights-based solutions to the government.** For example, WWF could propose that the Messok Dja forest project should be rethought as a regional pilot for a community-led and -managed conservation area. This may be packaged to the government as an approach which would receive significant international support, which would make it a regional leader in the area etc. Focus also on the benefits in terms of effectiveness and enforcement of having significantly greater community support and buy-in.
- **Seek to engage with and create coalitions of donors and other conservation organisations.** Having donors (to WWF but also to the Congolese government) support WWF’s conditions will make it much more likely that the government will agree. Similarly, it is important that WWF reach out to other conservation actors and, if possible, that these actors present a united position on human rights to the government. This will prevent the government from simply replacing one conservation organisation who is becoming “difficult” on human rights with another one.

As noted above, it is our view that where WWF cannot obtain agreement from the government on human rights, such that there is a likelihood of human rights abuses ensuing, WWF is obliged to cease (or reduce in all affected areas) collaboration with the Congolese government. The only exception to this would be where, after appropriate consultation with communities, such communities gave their free, prior and informed consent for WWF to continue collaborating with the government (which they may do, for example, if they feel their rights may be even more vulnerable without WWF’s involvement).

This would not rule out any engagement with the government - there may be some areas of collaboration which do not involve human rights risks in the same way, and some lesser forms of engagement with the government (e.g. training of government staff on technical issues that are not linked to human rights violations) may still of course be possible.

Annex I: Field visit note and summary of selected community meetings**

****Note** that the information in this note reflects information received by FPP staff member Lassana Koné during his field trip, either from communities, WWF staff, or other actors with whom he spoke. The information is not necessarily complete or accurate (nor does it necessarily reflect the views of FPP), but rather records discussions that were held. We have sought to indicate in footnotes where corrections or clarifications have been provided by WWF in its review of the draft of this report.

This note contains a list of issues encountered as well as listing some of the reasons expressed by communities for their opposition to the protected area.

- **Endemic poverty**

The protected area is likely to add yet further restrictions, in law or in practice, to communities engaging in traditional livelihood activities. This is their livelihood and they do not want to give it up, nor can they without significant impoverishment.



- **Abuses and human rights violations by eco-guards**

One of the critical reasons that communities are against the protected area is because of the abuses and human rights violations by eco-guards. Communities told us during the field work we undertook from 12-19 April that the protected area has not yet been established but they are already suffering from eco-guard's misbehaviour. They can only imagine what will happen when there will be a protected area on their lands.

There is confusion among the different conservation entities recruiting eco-guards in the project area. In fact, there are four different entities supporting (not directly employing) eco-

guards in the region: (1) WWF; (2) African Park; (3) the US LAB⁴³ and the (4) *Eaux et Forêts* brigades. Communities are not able to make a clear distinction between these groups, and they are treated indistinguishably. Communities consider all violations to be committed by WWF eco-guards – this may be because WWF is the most active in the field, or because their logo is easily identifiable.⁴⁴

“We like WWF, but we don’t like the eco-guards”

This is a quote from one community member in the village of Ngomane. And also, this was a general feeling in all the communities we visited. By saying that communities are revealing the constant harassment and rights violations they face with eco-guards. And at the same time, they acknowledge that their relationship with WWF staff involved in the FPIC process has improved in recent years. Since the beginning of the FPIC process. The community might not know exactly that WWF staff and WWF [ETIC project] eco-guards⁴⁵ are part of the same entity, but they can recognise WWF logo and any time they see a WWF vehicle they run away. This situation was illustrated during the visit to Bethel an indigenous community of around 30-40 peoples. When we arrived, the village was almost empty, and we were only met by the chief his wife and a few people. But as we began the meeting peoples started to join us progressively. And this is always the same scenario any time WWF car parks in front of the village. Sam N- programme manager at WWF- acknowledged that this community has suffered a lot from ecoguard abuses. He said that it was known in the region to be host to notorious multi-recidivist poachers. And they allegedly hidden war weapons including AK47. But Sam acknowledged that there was some misconduct on the part of the eco-guards.

“The eco-guards came down here and beat us up. We went to take refuge in the forest under a heavy rainstorm. That day we spent the night in the forest for fear of reprisals. One of our sick brothers that day succumbed during this descent of the eco-guards since he couldn't run away with us because he was very weak”. (Zouaba, 15 April).

- **Lack of compensation for plantations destroyed by elephants**

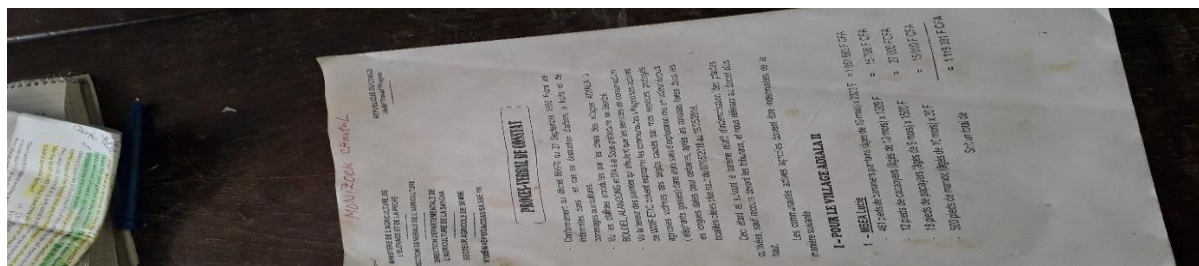
Nemeyong: communities said they filed several complaints and *PV de constat de devastation (declaration of destruction)* before the relevant authorities for compensation to damage caused to their fields by elephants. But they never received an answer. Three hectares of plantations were destroyed by elephants according to community members.

⁴³ Unité de surveillance de lutte anti-braconnage. US LAB are established inside the Forest Management Unit by the logging concessionaire.

⁴⁴ WWF notes that neither WWF nor African Parks directly engages eco-guards. Ecoguards are engaged by the government as part of the ETIC project, which is supported by WWF. Ecoguards are also engaged by the Odzala-Kokoua national park (i.e. the government management of that park), which is supported by African Parks through the Fondation Odzala.

⁴⁵ WWF does not consider it correct to ecoguards WWF eco-guards, although this term is used by communities.

At Adiala 1 communities said they paid 2,000 FCFA to stamp the declaration of destruction but they did not get any answer from authorities in charge.



- **Logging exploitation by SEFYD without a *cahier de charges***

SEFYD was awarded the Forest Management Unit (UFA) Jua-Ikié following an agreement between the Government and the forest company signed in 2005 and approved in 2008. The management plan was then approved recently on 18 July 2018, following a validation meeting in July 2017⁴⁶. But the management plan was not developed with community participation, despite the provisions of Arrêté No. 5053 (the national guidelines pertaining to the sustainable management of forest concessions). The *series de développement communautaire* (community areas within the concession) are not yet delimited.⁴⁷

Communities at Dia-centre mentioned that SEFYD exploited in their area for 1 year. And they only left 15 tables for the school. They did not recruit anyone from Dia.

- **Unfulfilled promises by conservation agencies in other places**

“Our brother at Odzalla Kokoua⁴⁸ told us there were no benefits for them since the creation of the national park” community member at Zouoba.

- **The NGO Consortium**

After the participatory mapping, a consortium of human rights NGOs was identified and entrusted to build capacity of local and indigenous communities and to conduct the rest of the FPIC process. The Consortium is a collective of three local human rights NGO based in Brazzaville and Libreville including the Comptoir Juridique Junior (CJJ); the Cercle des Peuples Autochtones de la Sangha and Brainforest. The Consortium was charged with the mission to engage with communities potentially affected by the proposed PA and start the FPIC process.

⁴⁶ Décret n° 2018-284 du 18 juillet 2018 portant approbation du plan d'aménagement de l'unité forestière d'aménagement Djua-Ikié, située dans la zone II Sangha du secteur forestier Nord.

⁴⁷ WWF states that, contrary to this statement, all the *series de développement communautaire* have now been identified in the management plan, and have been delimited on the ground.

⁴⁸ Odzala Park was initially created in 1935 on an area of 126,600 ha. Two others protected areas adjacent to this park were created in 1955: the Lekoli-Pandaka Wildlife Reserve (60,000 ha) and the Mboko Hunting Estate (90,000 ha). All this complex of areas is located in the *cuvette* region. The current Odzala-Kokoua Park, which includes these three initial protected areas, has been created by Presidential Decree No. 2001-221 of 10 May 2001, increasing its surface area to 1,354,600 ha.

The issue with the Consortium is that they only visited the communities twice in October 2018 and April 2019. FPIC is a continuous process. The presence of the Consortium on ground should have been more than the actual 2 visits/consultations meetings they held. For example, they could have hired a focal person permanently based in Sembe or Souanke. Another issue about the Consortium engagement with consulted communities is that they used WWF vehicle during the consultation. But because of the hostility against WWF and the eco-guards the communities in certain areas did not trust the Consortium members. And subsequently it was difficult for them to pretend they were an independent and neutral entity in the process. This has affected the trust and confidence the community could have showed towards them. This is something we also noticed during our consultation. On 13rd April we visited the indigenous community at Bethel. We met with very few peoples among the villagers including the chief and his wives. Later when we were about to close the meeting one young boy came and said the reason why the village was empty today is because the young men saw us coming with the WWF car. So, they ran away to hide from what they thought were WWF eco-guards.

- **Poaching, discrimination and marginalisation**

“The Bantus send us to hunt Elephants...”: the role of marginalisation and domination

The situation described by the quote here is an illustration of the marginalisation and domination of indigenous peoples by their neighbours' bantus. During one meeting at Adialla 2 with Bantu communities the secretary general of the village mentioned that WWF is treating them like “pygmies” which means that WWF are treating them like nothing. This shows how the Bantus perceived their neighbours Baakas considered as second-class citizens. In Bangos communities said that *“Our relationship with the Bantus is one of inferiority. They are the ones who dictate our conduct. When we work for them our salary is often reduced to alcohol. We also practice prohibited hunting at the request of the Bantu”*.

Due to their precarious situation and extreme poverty the Baaka are easy targets for the individuals engaged in illegal fauna trafficking or the bushmeat trade. Their desperation and marginalised position mean they are easily manipulated and imposed on by the latter, who use them to perform risky or illegal tasks. For example, an indigenous will accept to hide heavy weapons or AK 47 in their house to receive 5000 FCFA in return. Indigenous Baakas often engage in poaching for the benefit of the Bantu and do not receive the promised remuneration.

Double standards

When the ecoguards arrest a Bantu for poaching, after two days, the members of his community mobilise or contribute financially to get him out⁴⁹. But when it is an indigenous

⁴⁹ Sometimes local communities in remote areas have their relatives in Brazzaville or Ouesso who can get in touch with the Public Prosecutor to get their “brother” release.

who is arrested for poaching, he will serve his sentence to end. Sometimes he dies in prison, or he comes back sick and dies a few days later.



- **Hunting vs poaching**

Strict hunting rules and anti-poaching regulations

A judgment or sanction only has long-term deterrent effect if it has meaning for the community that suffers from it. The communities visited very obviously feel that the anti-poaching regulations and sanctions are simply unfair to them. Not only because they are the legitimate owners of the forests but also because they are poor and are living in difficult conditions, and hunting is one of their only forms of livelihood. The Government has not been able to provide them with concrete alternatives to alleviate their poverty. Those who engage in poaching do so because they don't have any alternatives.

Communities at *Messok Quartier 4* admit that the reason why some members of the community engage into poaching is poverty. According to them unemployment is one of the causes of poaching. Community members also described situation of self-defence⁵⁰ - sometimes people have no option than to kill an animal. For example, what will you do if you have a gun and a gorilla is attacking you? And they also described situation of "*fait accompli*" when for example, you make a trap that catches a protected species⁵¹. In this specific situation, the hunting rules provides that the person must declare to the competent administration. And in this case, it is strictly forbidden to eat the meat. The communities think

⁵⁰ According to article 65 of Law No. 37-2008 of 28 November 2008 on wildlife and protected areas, "*No proceedings may be brought against any person who hunts a wild animal in the immediate need of his defence or that of others, his livestock, his crops or his property (...)*".

⁵¹ According to article 63 of the Wildlife Law "*Any traditional hunter who slaughters an animal entirely or partially protected by mistake or in self-defence, must declare to the local water and forest service or the administrative authorities within seven days, failing which the slaughter is considered illegal*".

that the provision of the hunting law is not realistic. They said someone who has got nothing to feed his family will never give up this meat to the authorities⁵².

Article 35 of the Wildlife Law: *“Every year, the water and forest administration, after consulting the institutions concerned, sets the opening and closing dates of the hunt, the areas open for hunting, slaughter and capture latitudes by department or zone, as well as any other measures useful for the regulation of hunting”*.

The hunting season is opened from 1st May to 30th October and remains closed from 1st November to 31st April of each year⁵³. However, the law allows individuals to acquire hunting licences with which you can hunt in any season.

During the period of *ouverture de la chasse* communities can do the following:

- Hunt with a hunting licence
- Sport-hunting⁵⁴
- Big hunt⁵⁵

During the period of *fermeture de la chasse* communities are allowed to use:

- Nets
 - Traps⁵⁶
 - Other traditional means
-
- **Mistrust of communities’ motives**

All the communities visited have asked to push the limits of the proposed PA further away. At present the proposed protected area overlaps with sacred sites and symbolic places where communities often go for their traditional rituals. These are remote areas of the forest that are further away that they admit they also visit once or twice a year. Even if communities admit that they don’t go often to these places they say they do go sometimes, and for important reasons. However, according to WWF staff, the communities want to continue to have access to these remote areas so they can poach.

- **Lack of adequate grievance mechanisms**

WWF-Programme ETIC Congo has started the development of a grievance or complaint mechanism to assist communities’ victims of human rights violations by eco-guards. But the reality is that communities we consulted don’t think that it is an effective and credible

⁵² “After the animal has been slaughtered, the author shall inform the most appropriate authority close to the place of slaughter, which distributes its meat in accordance with local customs”. Article 65 section 2.

⁵³ Articles 1 and 2 of Arrêté No.3772/MAEF/DEFNR/BC, on the periods of hunting and closing of hunting in the Republic of the Congo.

⁵⁴ WWF notes this can be done only with a licence.

⁵⁵ WWF notes that this can be done only with a licence and only using traditional means.

⁵⁶ WWF notes that only traps with non-metallic cables can be used.

mechanism. For them a complaint to WWF for human rights violations committed by an eco-guard has no prospect of success.

- **Gender considerations in participatory mapping and consultation processes**

Women were not involved in forest mapping work but took an active part during the validation especially for the Baaka communities. We noticed that among the indigenous communities, it is women who have much more control over the areas of use. However, they have not always been associated with participatory mapping.

- **Intimidation**

At Zouoba Bantu communities told us that next time we visit them they want a joint meeting with the indigenous communities. To avoid that they take any decision without consulting them.

Recommendation for WWF

During the field work we slept in the villages – but we always slept with the Bantus, usually in the house of the Bantu chief. It would be good for future interaction to also spend the night with the Baakas in some cases. This can help to reduce the gap between WWF staff and indigenous communities.

Selected meeting notes:

Ngomane (IP) 13/04/2019

Communities at Ngomane said they rejected the limits initially suggested by WWF because this is too close, and it will not allow them to hunt and gather normally. From the sensitisation and consultations meetings they had with the Consortium they think that this project has more disadvantages than advantage. They asked the Consortium if they will be able to get hospitals and schools from the protected area managers, but their answer was no.

Relationship with WWF staff is good but the relationship with ecoguards is very bad. During the meeting communities presented two alleged victims of ecoguard abuses namely Manza Justin and Beko Magloire both victims of arbitrary searches by ecoguards (at 5h00 in the morning) and beatings. They both submitted complaints to WWF staff responsible for WWF newly established complaint procedure. They did not get any feedback yet. Communities members stated that eco-guards seize even the *porc-epics* which are not a protected species. Same thing with women who complained about ecoguards seizing their *kôkô*.

We explained to communities that if they are not confident with WWF's internal complaint system, they can seek for assistance from NGO in Ouessou or Brazzaville. But they said given the lack of means it's difficult for them to go to Ouessou and Brazzaville. Therefore, they suggested that it will be good if local and international NGOs could visit them regularly. For

example, NGOs can appoint focal points in Sembe or Ouessou to visit them on a regular visit and collect information and complaints.

We asked communities if they made false accusations against the ecoguards sometimes. But they said all their claims are true. But the only problem they have is about the identification of the ecoguard(s) involved. It is not easy for them to specifically identify the perpetrator for various reasons. They all have the same uniforms and no registration number.

Quartier 4 Messok (BA) – UFA Jua Ikie (Sunday 14 April)

The Bantu communities at Messok 4 said that they were not happy with the mapping process and they could not find an agreement with WWF on the limits of the proposed PA. They think that the space dedicated to communities for their subsistence activities is too small. They told us they want the limits to be push back until Zouabi Bolo. The assembly said that the people selected to do the participatory mapping did not do a good job. Women were not involved in the mapping, nor did they participate during the validation meeting. Women told us that there are remote places far away where they used to go to collect their Kôkô. Communities said Messok 4 is not considered by SEFYD in the *cahiers de charges* but SEFYD is still exploiting in this area.

Zouoba (PA) (Monday 15 April)

Indigenous Chief: *“Since our birth we have never heard of the park. Now we don't understand anything with all the talk about the Park. When we think about the actions of the ecoguards in the other parks we are afraid. We are afraid of the same beating, inhuman and degrading treatment and other forms of violence. This is the reason why we don't want to have a park here, and suffer the same fate as our brothers in other places.”*

“When the white lady came here, she told us if we let WWF take our forest, we will not get any benefit from it. Therefore, thinking about the explanations provided to us by the white lady we prefer to keep our forest”.

We told them they need to push the limits back to the river Libo.

According to the Baaka chief during an interview after the meeting most of the women fled because of the WWF vehicle when we arrived. The one we met was his wife. But in the end women greatly appreciated your message on IPs' rights.

Annex II: Some comments on the FPIC methodology

- The process is described from the outset as a process “for the creation of a protected area”. This is an indication that the process is being commenced far, far too late, when a project has already been substantially developed. The deleterious effect of this on the entire “consultation” process cannot be underestimated: it means engagement with communities is geared towards implementing a specific, well-developed concept rather than engaging in open consultation on the concept. It profoundly limits the scope of discussions with communities and restricts the possibility for them to influence the shape and form of a project, and more fundamentally, it creates strong incentives to provide subjective information (to “sell” the project), to ignore or distort the “consent” requirement, and to decline to accommodate community requests, because of the significant discussion, investment of time and delicate negotiation that have often already been undertaken to develop the concept to this point. (In the case in point, the “significant work” involved in negotiating land use zoning in the TRIDOM with three governments and the provisional acceptance by the Congolese government of boundaries for a protected area makes it much more difficult to revisit).
- The methodology of discussions and consultations should itself be the subject of discussion and agreement with the communities. The adequacy of this approach and the objectives ought to be agreed by communities themselves. Here, however, multiple objectives and outcomes (to give one example, the creation of a platform for the local governance of natural resources) are already defined as objectives, before there has been any discussion with communities as to whether this is useful or desirable for them.
- Detail on provision of information to communities in this document is fundamentally lacking. There is no indication of what information should be provided, in what form, and when. There certainly does not seem to be any clear requirement to explicitly inform communities of the negative consequences of the proposed protected area for them, to explain their rights and their ability to say no. At best, the methodology on explaining the project is very generic, which leaves substantial scope for variation in how it is applied in practice.
- The provision of information as described does not appear to be objective and open, but rather appears to involve informing communities of a *fait accompli*, persuade them to accept it (in part by presenting it as a *fait accompli*) and facilitate their compliance. This is suggested by describing the second stage as “sensitisation and training of communities”. Moreover, much of the training as described is aimed at telling communities what their obligations are under national law in respect of protected areas, fauna and forests, that is, clarifying and reaffirming restrictions imposed by them under national law (on traditional activities which they have rights under international law to pursue) rather than assisting them to understand and assess the implications of the proposal on their human rights.
- There is no guidance on what to do where communities indicate they do not want to participate in the process and/or refuse consent at an early stage.
- The methodology does not state explicitly the language of communication and specifically whether local languages were used (directly or in translation). As a general rule, information provided to communities should be presented in local languages, and certainly in languages

that everyone in the community understands. We understand this may have been done in practice, but it is important that this is set out clearly also in a methodology document.

- The methodology is focussed on communities being able to “express their opinions”, and to negotiate a compromise, but it does not indicate explicitly at any point that communities must be told that they have the right to say, definitively, yes or no to the protected area. Indeed, the only point at which the methodology indicates that community consent should be obtained is in order to undertake the participatory mapping. The entire methodology assumes that the protected area will proceed, supporting the perspective that consent is not genuinely sought.
- There is a lack of gender analysis, and specifically any identification of whether special or additional measures are needed to ensure adequate participation by women in the process.
- There is no clear indication that the process has considered and is taking account of (or how) the power relations between Bantu and indigenous communities in the area, and how this may affect the effective participation of indigenous communities.
- The methodology proposes engaging a support NGO to communities. The provision of (at least potentially) independent support to communities is positive – but (a) the NGOs in question were chosen by WWF, and not by the communities; (b) the mechanism for their independence was not assured, in a context where funding was scarce and (intentional or unintentional) NGO capture is a risk; (c) it is unclear how WWF can ensure, in the absence of its own human rights technical staff who can provide adequate oversight, that the NGOs engaged have the appropriate technical capacity to undertake this work with the communities, and that any checks were done to ensure that this work was in fact adequate.

Annex III: Some further reference materials on FPIC

AIPP, 2014. *Training Manual for Indigenous Peoples on Free, Prior and Informed Consent (FPIC)*, Asia Indigenous Peoples Pact, Chiang Mai, Thailand.

AIPP and IWGIA, 2012. *Training Manual on Free, Prior And Informed Consent (FPIC) In Redd+ For Indigenous Peoples*, Asia Indigenous Peoples Pact, Chiang Mai, Thailand.

Colchester and Ferrari, 2007. *Making FPIC Work: Challenges and Prospects for Indigenous Peoples*, Forest Peoples Programme, Moreton-in-Marsh.

Colchester and MacKay, 2004. *In search of Middle Ground: Indigenous Peoples, Collective Representation and the Right to Free, Prior and Informed Consent*, Paper presented to the 10th Conference of the International Association for the Study of Common Property, Oaxaca, August 2004.

Edwards, K, Triraganon, R, Silori, C. and Stephenson, J., 2012. *Putting Free, Prior, and Informed Consent into Practice in REDD+ Initiatives. A Training Manual*. RECOFTC, IGES and Norad, Bangkok, Thailand.

FPP, 2008. *Free, Prior and Informed Consent and the Roundtable on Sustainable Palm Oil: A Guide for Companies*, Moreton-in-Marsh.

Oxfam, 2014. *Guide to Free, Prior and Informed Consent*, Oxfam, Australia.

Oxfam, 2014. *Strengthening community understanding of free, prior and informed consent trainer's manual*, Oxfam, Australia.

SDI & Namati, 2013. *Community Guide: Getting a Fair Deal from Companies and Investors*, Liberia.

S Nounah and A Perram, 2019. *De la coupe aux lèvres - le CLIP dans la Réserve de faune de Ngoyla au Cameroun*. FPP, Moreton-in-Marsh.

FPP, 2018. *Les communautés aux commandes: un manuel sur le consentement libre, informé et préalable*. FPP, Moreton-in-Marsh.

Additional references and links to most of the above documents can be found [here](#). We can also provide details of legal source materials on request.

Annex IV: Itinerary and list of meetings from field visit

Itinerary and meetings

8 April 2019 – Departure from Abidjan

9 April 2019 – Arrival in Brazzaville

9-10 April 2019 – Preps meetings in Brazzaville at WWF office

11 April – Travel to Ouessou (by bus)

12 April – Departure to Souanke

12 April – Meeting with Sous-Prefet of Souanke

13 April – Meeting with IPs in Ngomane

13 April – Meeting with IPs in Bethel

14 April – Meeting with Bantu communities at Messok Quartier 4

15 April – Meeting with IPs at Zouoba

15 April – Meeting with Bantu at Zouoba

16 April – Meeting with Bantu at Kerembel

16 April – Meeting with IPs at Kerembel

16 April – Meeting with IPs at Sebek

16 April – Meeting with Bantu at Elologa

16 April – Meeting with Bantu at Nemeyong

17 April – Meeting with IPs at Adiala 2

17 April – Meeting with Bantu at Adiala 2

17 April – Meeting with Bantu at Dia-centre

17 April – Meeting with mixed communities (bantu and Baka) from Edege and Congo-Moussala

18 April – Meeting with IPs at Adiala 1

18 April – Meeting with Bantu at Adiala 1

18 April – Meeting with Tsengou Elenga Kevin (Technical assistant Tala-Tala) at Sembe

18 April – Meeting with Bantu at Bangos

18 April – Meeting with IPs at Bangos

19 April – Travel from Ouessou to Brazzaville (by plane)

22 April – Skype meeting with Martial Djinang (Brainforest)

22 April – Debriefing meeting with WWF Donors including Arcus and WWF-US

23 April – Meeting with EU Delegation

23 April – Meeting with Frederic Lambert Bockandza-Paco; Director of Agence Congolaise de la Faune et des Aires Protegees (ACFAP)

23 April – Meeting with CJI (Consortium member)

Field mission

FPP consultant Lassana Koné carried out the field mission together with WWF staff Sam N'ziengui-Kassa (Community conservation Advisor); Graniche Assa Passi (Community officer ETIC) and Ehouasse Lack Marius (Social Facilitator ETIC). However, Sam could only stay with us in the field from 11th to 14th April as he had to go back to Brazzaville to prepare meetings with WWF donors.