

National Contact Point of Switzerland

Final Statement

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

Berne, 21 November 2017

1. Context

The OECD Guidelines for Multinational Enterprises (henceforth referred to as “OECD Guidelines”) represent a set of principles and standards for responsible business conduct, addressed as recommendations by the governments of the 35 OECD member and 14 other adhering states to multinational enterprises operating in or from their territories. The National Contact Point of Switzerland (henceforth referred to as “Swiss NCP”) for the OECD Guidelines has the mandate to raise awareness and promote observance of the OECD Guidelines. The Swiss NCP also contributes to the resolution of issues that arise relating to the implementation of the OECD Guidelines in specific instances by offering a forum for mediation, assisting concerned parties to deal with these issues and providing recommendations regarding the implementation of the OECD Guidelines.

On 19 February 2016, Survival International (henceforth referred to as “SI” or “submitting party”) submitted a written request to the Swiss NCP to consider a specific instance under the OECD Guidelines regarding WWF International (henceforth referred to as “WWF” or “responding party”), which is headquartered in Switzerland. The submission concerns the rights of the Baka people of southeast Cameroon related to the environmentally protected areas, which the government of Cameroon has introduced with the financial and logistical support of WWF. The submitting party alleges that the responding party has violated the OECD Guidelines by claiming WWF failed to conduct a due diligence and not making its support for the demarcation of the protected areas conditional upon the Free Prior Informed Consent (henceforth referred to as “FPIC”) of the Baka. As a consequence, it alleges the Baka has been denied or seriously curtailed access to their traditional territories and natural resources on which they depend. Moreover, the submitting party claims that WWF should have supported ecoguard patrols only if effective steps were taken to ensure that the patrols focused on commercial poachers rather than Baka hunting for subsistence, and that ecoguards should be held accountable if they used or threatened violence against the Baka. According to the submission filed by the submitting party, the result of the non-intervention of WWF has been a denial of Baka rights to their land and natural resources, and a conflict with the governmental forces.¹

¹ Further information is provided in the respective Initial Assessment:
https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/NKP/Statements_zu_konkreten_Faellen.html

2. Proceedings of the Swiss NCP

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

Time	Chronology
22 February 2016	Written confirmation to the submitting party to acknowledge receipt of the submission. Forwarding of the submission to the responding party.
3 and 8 March 2016	Preliminary discussion by phone with the responding party in order to explain the Swiss NCP proceedings.
21 March 2016	<p>According to the Information on Specific Instances Procedure of the Swiss NCP² an ad hoc working group was constituted, including representatives from the State Secretariat for Economic Affairs (SECO), the Federal Department of Foreign Affairs (Human Security Division and Swiss Development Cooperation) and the Federal Office for the Environment. This working group is involved in all steps of the procedure of the specific instance.</p> <p>The ad hoc working group held a meeting with the responding party to inform them about the NCP procedure. The responding party informed the NCP about its intention to contact the submitting party in order to try to resolve the issues raised in the submission outside the OECD NCP system. Upon request of the responding party and in order to provide the parties an opportunity to possibly resolve the issues raised in the submission outside the NCP system, the NCP agreed in March 2016 to put on hold the Initial Assessment.</p>
May - July 2016	The Swiss NCP discussed by phone and in the margins of the OECD Global Forum on Responsible Business Conduct in Paris with the responding party on its efforts to resolve the issues raised outside the NCP system. The Swiss NCP also discussed by phone with the submitting party the state of play of the discussions between the two parties and provided explanations on the Swiss NCP proceedings. Furthermore, the NCP informed the Swiss Embassy in Cameroon about the submission. After being informed by the submitting party that they prefer to resolve the issues raised within the NCP system, the NCP continued its Initial Assessment.
1 September 2016	The Swiss NCP received a detailed written statement by the responding party in response to the submission. The statement was forwarded to the submitting party, which commented in writing on 16 September 2016.
18 November 2016	The NCP sent its draft report on the Initial Assessment to both parties for comments on possible misrepresentations of factual information.

²www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/NKP/organisation-und-kontaktaufnahme.html

20 December 2016	The Swiss NCP concluded its Initial Assessment ³ and informed the parties concerned that it found the issues raised to be relevant under the OECD Guidelines, and to merit further examination. At the same time, the Swiss NCP recalled that accepting this specific instance should not be construed as a judgment of whether or not the corporate behaviour or actions in question were consistent with observance of the OECD Guidelines and should not be equated with a determination on the merits of the issues raised in the submission. The Swiss NCP offered its good offices to facilitate a dialogue between both parties and published the report on the Initial Assessment on its website. ⁴
22 December 2016 and 2 January 2017	WWF and SI accepted the offer of the Swiss NCP for mediation.
5 January to 3 February 2017	SI published several statements and media reports on the release of the report on the Initial Assessment by the Swiss NCP including on information exchanged in the NCP process. The NCP reminded both parties in a letter to maintain confidentiality about the proceedings and information exchanged therein.
16 February 2017	Both parties agreed to the appointment of an external mediator contracted by the Swiss NCP in order to facilitate their dialogue.
6 and 7 June 2017	Based on agreed terms of reference for dialogue, a mediation meeting led by the external mediator took place at the premises of the Swiss NCP in Berne with two representatives of the submitting party and four representatives of the responding party. A member of the NCP secretariat assisted the external mediator regarding procedural and logistical issues. A joint agreement was reached at the conclusion of the mediation meeting.
June to September 2017	Drafting of the Confidential Joint Outcome which sets out the results of the mediation meeting.
4 September 2017	SI informed the Swiss NCP about its decision to withdraw from the NCP proceedings and its intention to publish a statement on this process. The Swiss NCP informed SI that publishing information about an ongoing mediation process would be a breach of the rules on confidentiality set out in its Information on the Specific Instances Procedure and the Terms of References for Dialogue agreed and signed at the mediation meeting.
5 September 2017	SI made a public statement disclosing information about the ongoing procedure and informing about its withdrawal from the NCP process. ⁵ By this, it breached the rules of confidentiality as set out in the

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https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/NKP/Statements_zu_konkreten_Faellen.html

⁴ www.seco.admin.ch/ncp

⁵ See e.g.

www.theecologist.org/News/news_analysis/2989252/survival_international_abandons_complaint_against_wwf_for_violating_igenous_rights.html and www.survivalinternational.de/nachrichten/11802.

	Information on the Specific Instances Procedure of the Swiss NCP and the agreed and signed Terms of Reference for Dialogue.
7 September 2017	The Swiss NCP published a statement on the publication of confidential information by SI. ⁶
21 November 2017	The Swiss NCP closes the specific instance by publishing this Final Statement including recommendations to the Parties.

3. Outcome of the mediation process

3.1 *Intention of the parties for the mediation*

At the mediation meeting in Berne on 6 and 7 June 2017, both parties participated with senior level representatives having decision-making power. They engaged in a constructive manner and demonstrated their willingness to seek for a mutual satisfactory resolution of the issues raised in the submission, thereby contributing to the respect of the human rights of the Baka.

This is underpinned by the fact that the parties reached a common understanding at the beginning of the mediation meeting that the outcome of the mediation should constitute a crucial basis to collectively contribute to the protection of the human rights of the Baka (joint overall goal).

3.2 *Issues discussed*

In accordance with the Terms of Reference for Dialogue signed prior to the meeting the parties identified four areas of particular relevance to support changes in southeast Cameroon and to be addressed during mediation:

- 1) Actors and their role regarding the development and management of environmentally protected areas in southeast Cameroon;
- 2) Implementation of WWF's Statement of Principles on Indigenous Peoples and Conservation and its application in line with the OECD Guidelines for Multinational Enterprises for future projects within Cameroon;
- 3) WWF's role in future interaction with relevant stakeholders regarding the free, prior, informed consent (FPIC) of the Baka on the land on which they rely in Cameroon;
- 4) WWF's role in future interaction with relevant stakeholders regarding the protection of the Baka against ecoguard abuse in Cameroon.

3.3 *Outcome of the mediation meeting*

The parties concluded that there is a need to continue regular dialogue and information sharing between SI and WWF regarding southeast Cameroon to collectively contribute to the protection of the human rights of the Baka. In particular, they agreed on establishing a two-way information flow improving the sharing of experiences between SI and WWF regarding in particular the following issues:

- WWF's Project Complaint Resolution Process, whistleblower policy, the Cameroon civil society organisation's human rights abuse denunciation mechanism and ways to help ensure open and transparent FPIC processes in Cameroon including WWF's work to push for the Government to publish FPIC information online to demonstrate

⁶ www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/NKP/Statements_zu_konkreten_Faellen.html

their compliance;

- SI will provide regular feedback to WWF, based on its assessment of the situation of the Baka and information received by them. WWF will rely on guidance from Baka communities and take into consideration SI's feedback;
- This two-way information flow process should include regular meetings (twice a year approximately) where possible in Cameroon to update each other about the ongoing operational and advocacy efforts of each organisation and analyse possible recommendations for improving future activities.

Furthermore, they agreed on the following actions:

- The need jointly to promote enhanced transparency and accountability in FPIC procedures in Cameroon. The parties are aware of the complexity of this endeavour and will to address this shared responsibility in cooperation with their partners (WWF: all local stakeholders, incl. Government; SI: local communities).
- WWF will continue its operational and advocacy support to strengthen the Baka with regard to the land on which they rely. Furthermore, it will continue the elaboration of its Law Enforcement Guidelines and Support Principles.
- There is a need to improve the consultation of the Baka in view of reducing the risk of abuse. This is considered to be a shared responsibility of all stakeholders. Finally, the specific mechanisms for addressing ecoguard abuse will be further developed with key stakeholders (including the Government and CSOs).

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

3.4 Follow-up of the mediation meeting

After the mediation meeting where both parties reached an agreement on the issues mentioned above in section 3.3, a Joint Confidential Outcome between the parties was drafted by the mediator in consultation with both parties and the NCP secretariat. Whereas the agreements from the mediation meeting (see section 3.3.) were confirmed by both parties, no agreement could be found regarding further explanatory statements by both parties.

On 4 September 2017, SI informed the Swiss NCP about its decision to withdraw from the NCP proceedings. SI stated that it did not see any sense in continuing this mediation process as it could not see a possibility to find sufficient mutually satisfying actions to contribute to the improvement of the situation of the Baka. Furthermore, SI announced to the Swiss NCP its intention to inform the public about its withdrawal from the mediation process and to resume its campaign against WWF.

The Swiss NCP informed SI that publishing information about an ongoing mediation process would be a breach of the rules on confidentiality set out in its Information on the Specific Instances Procedure and the agreed and signed Terms of Reference for Dialogue. SI published a statement about the ongoing NCP procedure and informed the public about its withdrawal from this process on 5 September 2017. Consequently, the Swiss NCP

published a statement⁷, which sets out its regrets of this breach of confidentiality rules by SI and reminds that mutual trust is a very important aspect of successful mediation. Furthermore, the Swiss NCP made clear that it does not agree with the description of the mediation process by SI and the alleged lack of impartiality of the Swiss NCP. As SI is solely responsible for the content of its public statement, the Swiss NCP did not further comment on its accuracy. In view of SI's withdrawal from this process, the Swiss NCP decided to close this specific instance and publish the final statement.

4. Conclusions and recommendations

The Swiss NCP **welcomes** that both parties have participated with representatives having decision-making power at the mediation meeting on 6 and 7 June 2017 in Berne. They engaged in a constructive manner and demonstrated their willingness to seek for a mutual satisfactory resolution of the issues raised in the submission, thereby contributing to the human rights of the Baka. This effort resulted in particular in the agreement to share information between SI and WWF regarding southeast Cameroon.

However, the Swiss NCP **regrets** that no Confidential Joint Outcome document could be finalized, which would have formed the basis for their future collaboration. It also deplors the breach of confidentiality rules and the inaccurate description of the mediation process by SI.

The Swiss NCP **recommends** that:

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

The Swiss NCP will follow-up on this specific instance by asking the parties after six months to provide information about their efforts to implement these recommendations.

With this Final Statement, the Swiss NCP closes the specific instance.

⁷www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/NKP/Staemements_zu_konkreten_Faellen.html