WWF in Messok Dja, Republic of Congo – WWF Management Response to Two Reports:

1) Support to the implementation of the Free, Informed and Prior Informed Consent (FPIC) of local and indigenous communities for the creation of the Messok-Dja Protected Area, by an NGO Consortium of Brainforest, Comptoir Juridique Junior and Cercle des Populations Autochtones de la Sangha dated June 2019

2) FPIC in Messok Dja: A report and assessment by Forest Peoples Programme (FPP) for WWF on the free, prior and informed consent process, 5 June 2019

Background

Present in the Republic of Congo since 2008, WWF has been working alongside partners including local and indigenous organizations and communities to protect the ecosystem from degradation and deforestation by threats such as logging, mining and wildlife poaching. The Messok Dja forests, in the Congolese part of TRIDOM known as ETIC (Espace TRIDOM Interzone Congo), are not only important in terms of the highly endangered forest elephants, western gorillas and central chimpanzees but also deliver numerous benefits - food and water security, health and climate resilience - to the local and indigenous communities living in the area. At the same time WWF is fully committed to helping promote and respect the rights of indigenous and local communities who depend on the Messok Dja forest for their livelihoods, and our donors have provided funding for biodiversity, forest protection and social development of the Messok Dja area.

A protected area is being proposed to cover 1,456 km2 of forest land in Messok Dja. This land is currently entirely located within two pre-existing forestry concessions run by private foreign companies: 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 a “free, prior and informed consent” process with affected or potentially affected communities¹. 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. 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 were identified as using lands that overlap directly with the proposed protected area.

Between November 2018 and June 2019, a consortium of NGOs, 2 local and 1 from Gabon, engaged by WWF worked with the 36 communities and consulted local administrative authorities to guide the FPIC process. The objectives of the NGO consortium were (See Annex 1 for methodology)

- Identify the decision-making body and their members in each community, and a village negotiation structure
- Inform local and indigenous communities on the social, economic, environmental impacts of a protected area;

¹ WWF took a broad approach to FPIC, normally applicable ONLY for IP’s, but in this case we looked at ALL potentially impacted communities including Bantu.
Identify and document community expectations for the future protected area and from the government;
- Produce a document with an assessment of community understanding;
- Propose a management framework for community activities in and around a protected area;
- Document the social, economic, environmental and cultural needs of communities vis-à-vis the protected area
- Make recommendations to the ETIC Project for the effective involvement of indigenous and local communities in the sustainable management of natural resources

the consortium concluded their activities in June 2019 and produced a final report with recommendations. While the FPIC process was ongoing in April 2019, WWF engaged FPP to assess the ongoing FPIC process up to date. The objectives of FPP’s evaluation were to:
- Based on the information learned during the field visit, develop a short case study of the process, intended to demonstrate and highlight complex issues, key decision points, and critical requirements, which can be used as a learning tool for conservation practitioners
- Review and assess the process to date through the lens of WWF’s social policies and international best practice;
- Make recommendations in relation to any remedial actions in relation to the process to date, if gaps have been identified;
- Provide advice and recommendations in relation to the remainder of the planned FPIC process, in line with WWF’s roles and responsibilities under international best practice; and
- Identify enabling conditions for a successful FPIC process, propose strategies for obtaining government support, and explain WWF’s obligations and options in circumstances where such support cannot be obtained.

As the final reports of both efforts coincided, the conclusions and recommendations of both are presented herein and a management response by WWF is formulated for both.

**NGO consortium Conclusions and Recommendations (excerpted from report in italics) and WWF responses**

“Despite many difficulties encountered, local communities have been involved in all stages of the process, including tool validation and activity planning, as well as outreach and consultation. This will be the same in the last step which is that of the validation, question of checking, modifying or completing the current data. This step is the last and is planned before the finalization of this report. The involvement of the communities allowed them to appropriate the process, to influence it and specially to give or refuse to give their consent to the creation of the protected area of Messok-Dja knowingly. It appears that three (3) communities agree ex officio for the creation of Messok-Dja, ten (10) communities are fiercely opposed and twenty-four (24) condition their acceptance of the project by the satisfaction of their prerequisites. Despite their divergence of opinion, the communities are all of the opinion that the creation of Messok-Dja will significantly affect their living conditions due to some of the future restrictions on access to land and resources and secondly overpopulation of animal species with the main consequence of the exacerbation of human-wildlife conflict. The participatory maps produced with the support of WWF allow to clearly identify several activities and interests (fishing, agriculture, hunting,
gathering, collection, old villages, sacred sites, customary land) of the communities within the provisional boundaries of Messok-Dja.

"... (T)he presence in this zone of logging, sometimes without benefits for the populations and the destruction of crops by animals without compensation from the administration, certainly do not contribute to improving the living conditions of these populations. The creation of Messok-Dja without a real mitigation strategy will reinforce this impoverishment of the populations. For this reason, the protection of their rights over land and resources remains the first demand of all the communities concerned, although compensations or remedial measures have also been solicited in certain cases.

"... (T)he context of Messok-Dja is peculiar and brings into play forest concessions within which there are series of conservation and a series of production already exploited to which the village soils are superimposed. In such a context, in the absence of the creation of the Messok-Dja Protected Area, the management of the conservation series will also undermine the rights and interests of the communities.

We make the following recommendations:

1. **Deferring the process of creating Messok-Dja and laying the foundations for concerted management of natural resources with all actors at the local level;**

**WWF Response:** Adjourn the process of creating Messok-Dja and first lay the foundations for concerted management of natural resources with all actors at the local level. We agree with a re-adjustment of strategy and focus on in depth engagement with communities on the questions of management and conservation of Messok Dja together with them, before we engage on the way this could be formally organized. **Action:** re-adjustment of strategy and focus on in depth engagement with communities.

2. **Provide for general consultation and further consultation with all stakeholders on Messok-Dja’s sustainable resource management models with a focus on taking into account and respecting the different rights of communities;**

**WWF Response:** We need to expand information given to communities on models of sustainable management including models that work elsewhere but at this moment are not recognized under law in the Republic of Congo. Our presence on the ground includes the respect and implementation of our social policies and we believe we can help improve awareness and access to rights through our conservation work. We agree that in our future engagement in Messok Dja we will place focus on taking into account and respecting the different rights of communities. **Action:** organize (a) workshop(s) with stakeholders on models for sustainable management and rights of communities.

3. **To define with the community’s mechanisms or modalities of concerted or participative management of the resources by establishing them as main actors: contract of management of soil, co-management etc.**

**WWF Response:** As mentioned above, we agree with a re-adjustment of strategy and focus on in depth engagement with communities on the questions of management and conservation of Messok Dja together with them. This includes discussing options for participative and co-management. This is an open-ended process and we do not know the outcome. **Action:** see above, re-adjustment of strategy,
workshops, further consultations, hire indigenous people officer to engage intensively with Baka communities around Messok Dja.

4. Provide a framework for ongoing dialogue at the local level for decision-making, planning, resource management and conflict resolution;

WWF Response: We agree Messok Dja needs a permanent platform for dialogue for all stakeholders to engage, share, and find common ground on the way forward. Action: Continue together with stakeholders to set up a multi-stakeholder platform in Messok Dja.

5. In the event of creation of a protected area, take into account the refusal of the ten (10) communities to integrate any local resource management process by excluding their traditional territories from the limits of these. Respect also the preconditions that have been posed by the other communities in this context in terms of compensation in particular with regard to socio-economic and cultural needs;

WWF Response: We agree that in an FPIC process, consent must be given by stakeholders before a proposal can be implemented and as such the above-mentioned limitations should be taken into account by any authority taking a final decision. Action: WWF will respect the outcomes of the FPIC process in any advice we would give to authorities regarding the future of Messok Dja.

FPP report Conclusions and Recommendations (excerpted from report in italics) and WWF responses

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. Our views are that the process to date has several serious and fundamental flaws. These include:

1. 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, particularly in an authoritarian State, 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.

WWF Response: With logging and mining being identified as the main threats to the Messok Dja forest, WWF’s initial efforts were focused on finding solutions to strengthen protections for the forest. As such, we were in discussions with the government and the two logging companies who held the concessions rights to Messok Dja on possibilities for better protection. In hindsight, we agree should have engaged earlier with the surrounding communities on the PA project and the broader issues of conservation and sustainable use by communities. Action: Share this conclusion with other WWF programs globally to ensure early participation in comparable cases.
2. 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.

**WWF Response:** We are taking note of this finding and commit to improving our internal understanding of FPIC. **Action:** We are undertaking an analysis of international law regarding IP and WWF’s social policies to better integrate in conservation action on the ground. We will also be strengthening our field team with a social policy officer to help integrate these policies into our field program.

3. 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 Response:** As a conservation NGO, our initial efforts were focused on finding solutions to strengthen protections for the Messok Dja forest against the looming significant threats of logging and mining. We do agree to a certain extent that alternative options to a PA beyond the current existing legal instruments, nor a continuation of the status quo as commercial logging concession, may not have received sufficient attention. **Action:** We are planning to discuss conservation and sustainable use of Messok Dja Forest in depth with communities, without direct relation to the possible creation of a PA. This will give more consideration to alternative management models or the null option. This process will involve the community liaison officer for Messok Dja, as well as the IP officer and Policy officer (both to be hired).

4. **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 Response:** We are in process of increasing stakeholder understanding of the realities of a PA and this takes time. For WWF, knowing the overlap of the proposed PA with community use zones, our preference as a stakeholder is to support a PA with community access, to counter the significant and common threat of mining and logging. This will benefit nature but ALSO and importantly communities. It is also important to note that the NGO consortium clearly explained to communities that they could refuse the PA, and also refuse to participate in the consultation process. **Action:** As a consequence of 10 communities refusing the PA project and 23 communities indicating only accepting it if their conditions are satisfied, WWF will adjourn its conservation strategy towards in depth community engagement that focuses on conservation and sustainable use of Messok Dja Forest, without direct relation to the
possible creation of a PA.

5. **WWF is closely engaged in supporting wildlife crime enforcement activities through support to Eco guards. 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 Response:** We completely understand the importance of independence and that is why an independent NGO consortium has been recruited to ensure communities that they can engage freely and without fear of coercion. We agree that it would have been better if the consortium was not dependent on ETIC vehicles for transport but the alternative of hiring a 4WD was quite expensive and cumbersome. **Action:** We will try to ensure independent logistics for the NGO consortium supporting community capacity building in the field moving forward.

6. **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-recognized human rights of indigenous peoples, recognized equally by WWF’s social policies.**

**WWF Response:** We take note of the concerns raised by FPP. The negotiations around the ETIC agreement were very time and resource heavy and at present, we are not in a position to renegotiate though we will integrate this learning into future agreements. Our presence on the ground includes the respect and implementation of our social policies and we believe we can help improve awareness and access to rights through our conservation work. **Action:** in future renewal of country agreement, include conditions or requirements on human rights compliance.

7. **There was no evidence of explicit gender analysis or measures taken to promote effective participation by women.**

**WWF Response:** There has been no explicit gender analysis, but this does not mean that women were not sufficiently present in community meetings and the mapping exercise. In addition to requesting the presence of men, women, young and old in community meetings, the consortium has also organized focus groups (animated by women) with women during the community capacity building. **Action:** Moving forward, we will look at producing explicit documents that show how gender was considered and we will be recruiting a social policy officer to help implement WWF’s social policies.

8. **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.**
**WWF Response:** This problem was also identified under 1, 2 and 3. **Action:** We are taking note of this finding and commit to integrating this learning in our future work.

**Main FPP Recommendation:**

We propose two main options for a way forward:

1. **Drop the protected area project, but design a new program 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 programs 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 organizations 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.**

**WWF’s response.** The absence of a PA makes Messok Dja vulnerable to increased logging, mining and road building/infrastructure development, which holds no guarantees for improved local livelihoods whilst insuring further degradation of the biodiversity. So we do not agree with completely dropping the option of establishing a PA. This said, we agree with a re-adjustment of strategy and focus on in-depth engagement with communities on the questions of management and conservation of Messok Dja together with them, before we engage on the way this could be formally organized. This is an open-ended process and we do not know the outcome. We are concerned by the 2nd recommendation: by excluding an area where today people are not active, we may in the future have a situation where people do want to enter. Would this mean they would be excluded? It is better to agree on protection, access and use rights for the whole of the Messok Dja to be prepared for this future.

**WWF Final Remarks**

In its findings, FPP outlined that ‘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.

We are committed to hold ourselves to the highest standard to safeguard the rights and well-being of the communities we work with and will discuss with FPP and our donors on solutions to addressing such divergences in the field.
We thank FPP and the NGO Consortium of Brainforest, Comptoir Juridique Junior and Cercle des Populations Autochtones de la Sangha for their reports and the valuable learnings. We agree with a re-adjustment of strategy and will focus on in depth engagement with communities on the questions of management and conservation of Messok Dja together with them. This is an open-ended process and we do not know the outcome, but we hope that together we arrive at a kind of solution that protects the forest as well as safeguards the rights and access of the communities that depend on it.

To this end, we resolve to undertake:

- In depth exchange and collaboration with communities on conservation and sustainable use of Messok Dja;
- Increase investment in intensifying community relations, in creating community benefits from conservation, and building trust with communities (including for e.g. credible grievance system followed by sanctions as needed, operational community platforms for participatory decision making);
- Improved ecoguard training on human / community rights and relationships and behavior with communities.
- Strengthen the community program by recruiting an IP officer to engage intensively with the Baka communities around Messok Dja and a social policy officer to help implement WWF’s social policies.
- Invest in community surveillance/monitoring of the forest (thus creating community benefits).
- Address human elephant conflict around Messok Dja

On other recommendations, we will endeavor to ensure that local organisations contracted by WWF are trained in WWF’s social policies and international law (role for the proposed social policy officer for northern Congo) and ensure that these policies are respected by the local organisations (and they understand the process within WWF). We will also 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.

The report was co-written by:

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- Jaap van der Waarde, WWF TRIDOM Deputy Landscape Leader - Network Coordination
- Sam Nziengui-Kassa, WWF Programme Manager, ETIC, WWF-Gabon (for Republic of Congo)
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Date 02 October 2019
1) NGO Consortium

In order to continue the implementation of the FPIC (Free, Informed and Prior Informed Consent) initiated by WWF with Local Communities and Indigenous Peoples (CLPA) bordering Messok-Dja, a consortium of three (3) Civil society working on the themes of Human Rights and Natural Resources Management has been involved. These organizations are Brainforest (Libreville in Gabon), Junior Legal Counter (Brazzaville in Congo-Brazzaville) and Circle of Indigenous Populations of Sangha (Ouesso in Congo-Brazzaville). This support comes as a result of the socio-economic study and participatory mapping carried out for the benefit of the riparian Indigenous and Local Communities of Messok-Dja, which were decisive for the identification of thirty-seven (37) communities as likely to be impacted in their activities and interests by the creation of the Messok-Dja Protected Area. This situation made it necessary to continue the FPIC with all these communities with the aim of ensuring that they understand the different issues and impacts of the project on their daily lives and that they freely give their consent, or not, conscious of the creation, or not, of Messok-Dja.

With FPIC focused on community participation, the consortium took an approach that put communities at the center of the process. To this end, support was organized around three main phases: a preparatory phase, one on capacity building and consultation of CLPAs, and one on CLPA validation of all the data and information obtained from the consultations. The related activities covered the period from November 2018 to June 2019. Although the CLPAs concerned were given priority, the local authorities of the districts of Souanké, N’gala and Sembé were regularly informed and consulted throughout the process.

2) FPP

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. 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). ... 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 program, 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. 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 OCDH2). FPP received some limited information from RFUK, but did not receive any information from Survival International or OCDH.

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2 Observatoire congolais des droits de l’homme - Congolese observatory on human rights,