

TESTIMONY OF JOHN H. KNOX

Henry C. Lauerman Professor of International Law
Wake Forest University School of Law

Former United Nations Special Rapporteur on
Human Rights and the Environment

BEFORE THE HOUSE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON WATER, OCEANS, AND WILDLIFE

HEARING ON
“ADVANCING HUMAN RIGHTS-CENTERED
INTERNATIONAL CONSERVATION ACT OF 2022”
(H.R. 7025)
AND OTHER PROPOSED LEGISLATION

MARCH 29, 2022

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

I am the Henry C. Lauerman Professor of International Law at the Wake Forest University School of Law, and the former UN Special Rapporteur on human rights and the environment.

When I testified before this subcommittee in October 2021, at its hearing on “Protecting Human Rights in International Conservation,” I welcomed your attention to this crucial issue and expressed the hope that it would result in new legislation clarifying and strengthening U.S. standards for the protection of human rights in conservation. I believe that such legislation is necessary to ensure that U.S. funds cannot be used in ways that contribute to the types of human rights abuses that were described at that hearing.

I am therefore delighted that you have introduced a bill that would provide for exactly that kind of protection. I hope that the committee will report favorably on H.R. 7025, the “Advancing Human Rights-Centered International Conservation Act of 2022,” and that it will be enacted as soon as possible.

The timing of this bill is especially important because governments are currently negotiating a new Global Biodiversity Framework with the aim of setting targets for international conservation for 2030 and beyond. One of the specific goals expected to be included is for each country to designate 30% of its territory as protected for conservation by the year 2030. If met, the 30x30 goal would effectively double – in less than a decade - the area of the planet designated for conservation.

Strengthening international conservation is vital to addressing the global biodiversity crisis, but, as I and other speakers explained in our testimony in October, the most effective way to do so is by respecting the rights of the Indigenous peoples and local communities who are already working to protect natural ecosystems from destruction. Unfortunately, rather than protect their rights, many governments and conservation organizations have violated them, by excluding Indigenous peoples and local communities from their ancestral lands and territories in the name of conservation. This approach has directly led to further human rights abuses: when they have tried to return to their homes, they have been treated as criminals and subjected to beatings and detention, and even torture, rape, and murder.

While the direct perpetrators of such human rights violations are the park rangers, ecoguards, and other law enforcement officials in these countries, others are implicated as well. International conservation organizations such as the World Wildlife Fund (WWF) have provided, and continue to provide, hundreds of millions of dollars in financial and technical support to national parks and protected areas. Moreover, conservation organizations often co-manage these protected areas, including areas where many abuses have occurred.

As the investigation conducted by this Subcommittee has shown, conservation organizations have not had sufficient safeguards in place to prevent human rights violations and

to respond effectively to them. Making matters worse, conservation organizations like WWF have refused, and continue to refuse, to take responsibility for their failures – including before this Subcommittee at its hearing in October 2021.

Donors to international conservation, including the U.S. Fish and Wildlife Service (USFWS) and other U.S. agencies, also have a responsibility to ensure that their funds are not being used to support human rights violations. Indeed, donor governments play a critical role in ensuring that the recipients of funding use grants for their proper purposes and never employ them to support those committing human rights violations.

Nevertheless, donors have often failed to conduct effective oversight and monitoring of their grants. In 2020, the Department of Interior expressed significant concerns over what it called “inadequate controls ... to monitor and hold accountable awardees and their partners in many countries in Africa and Asia.”¹ Similarly, the UN Development Programme (UNDP) reported in 2020 that it, too, failed to follow its own standards in relation to the protection of human rights in projects in Cameroon and the Republic of Congo.

Therefore, this proposed law is extraordinarily timely. Once enacted, it would greatly help to ensure that recipients of U.S. funding must respect and protect the human rights of the Indigenous peoples and local communities that live in and around national parks and protected areas, in some of the most biodiverse areas in the world. It would send an extremely powerful signal that human rights abuses in the name of conservation will not be tolerated by the U.S. government, and that recipients of U.S. funds must protect against such abuses or lose their funding. Moreover, the law would immediately become a model for other donor governments and international organizations.

This legislation would thereby contribute to a fundamental shift in how conservation goals are pursued, away from exclusionary “fortress conservation” towards inclusionary rights-based conservation. Of course, by itself, the law could not end all human rights abuses against these marginalized communities, or ensure that international conservation organizations center Indigenous peoples and other place-based communities in their work. In that respect, another important way that the U.S. government could support rights-based conservation would be to provide far more financial and technical support directly to Indigenous and local conservation organizations (ICCAs). Although many ICCAs are doing phenomenal work, often under very difficult conditions, they currently receive only a tiny percentage of total conservation funding.²

In my testimony today, I will focus on the main features of the proposed legislation, which is aptly named the “Advancing Human Rights-Centered International Conservation Act.” I will explain how the law would address the human rights violations that were discussed at the October 2021 oversight hearing and the underlying conditions that give rise to such violations.

¹ Memorandum from Deputy Secretary Katherine MacGregor on Programmatic Review and Implementation of Conservation Grants (Sept. 18, 2020), p. 15.

² An organization that brings together many such groups, called the ICCA Consortium, publishes regular reports describing good practices of its members. See *Territories of Life: 2021 Report* (May 2021), available at <https://www.iccaconsortium.org/index.php/2021/05/29/territories-of-life-2021-report-launched/>.

Specifically, my testimony will address:

(1) application of the Leahy Amendment to the USFWS

(Section 3 of the proposed legislation);

(2) requirements that recipients of funding have effective safeguards in place in order to receive funding

(Sections 4(a), 4(b), and 4(c));

(3) provisions on reporting and investigating alleged human rights violations

(Sections 4(d) through 4(h)); and

(4) the requirement for annual reports by USFWS to Congress

(Section 4(j)).

As always in legislation of this kind, the effective implementation of the legislation by the implementing agency will be of critical importance. I will therefore note where it would be useful to include in the legislative record a clear understanding of how certain provisions should be interpreted by the Department of the Interior and the USFWS.

1. Applying the Leahy Amendment to USFWS funding (Section 3)

Perhaps the central provision in the proposed law is section 3(a), which would require the Director of the USFWS to ensure that no international financial assistance it provides may be furnished to any unit of a foreign security force if the Director or the Secretary of State has “credible information that such unit has committed a gross violation of internationally recognized human rights.”

Simply put, this provision would make clear that the Leahy Amendment applies to international funding provided by the USFWS. As this Subcommittee well knows, the Leahy Amendment takes its name from Senator Patrick Leahy, who first introduced it in the late 1990s in connection with foreign operations appropriations acts. In 2008, the provision was added to the Foreign Assistance Act of 1961, which is codified in Chapter 32 of Title 22 of the U.S. Code. In its current form, the Leahy Amendment states that “No assistance shall be furnished under this chapter or the Arms Export Control Act to any unit of the security forces of a foreign country if the Secretary of State has credible information that such unit has committed a gross violation of human rights.”³

The proposed bill defines the term “gross violation of internationally recognized human rights” as having the meaning given that term in section 502B(d)(1) of the Foreign Assistance Act of 1961, which states that it “includes torture or cruel, inhuman, or degrading treatment or

³ Foreign Assistance Act of 1961, § 620M(a), 22 U.S.C. § 2378d(a). In 2014, a very similar version of the Leahy Amendment was enacted with respect to the Department of Defense, as part of Title 10 of the U.S. Code. It states: “Of the amounts made available to the Department of Defense, none may be used for any training, equipment, or other assistance for a unit of a foreign security force if the Secretary of Defense has credible information that the unit has committed a gross violation of human rights.” 10 U.S.C. § 362(a)(1).

punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty, or the security of person.”⁴ This provision would therefore cover exactly the types of abuses that were the principal focus of the Subcommittee’s oversight hearing in October 2021, including murder, rape, and torture.

Section 2(9) of H.R. 7025 defines “unit of a foreign security force” to include units of a foreign military, a foreign police force, a foreign paramilitary group, any other person providing security services to a foreign government, and such other organizations as the Secretary of State determines appropriate. This broad language should obviously be interpreted to include park rangers and ecoguards, as well as any other units of law enforcement or security tasked with patrolling national parks or otherwise enforcing conservation laws.⁵ To avoid any doubt, however, it may be useful to make that explicit in the legislative history of the bill.

There is an undoubted need to clarify that the Leahy Amendment applies to funding provided through USFWS no less than it does to funding provided through the U.S. Agency for International Development (USAID). The September 2020 memo from then-Deputy Secretary Katharine S. MacGregor describing the programmatic review by the Department of Interior of international conservation grants through USFWS drew attention to the fact that since funds directly appropriated to USFWS “are not provided under the Foreign Assistance Act, they are not necessarily subject to and may not receive *Leahy* vetting. This is a gap in oversight that should be addressed.”⁶

To fill this gap, much of the language of Section 3 of the “Advancing Human Rights-Centered International Conservation Act of 2022” is taken almost verbatim from the equivalent language in the Leahy Amendment to the Foreign Assistance Act. To implement the Section 3(a) standard, Section 3(d) of H.R. 7025 requires the Director of the USFWS, in consultation with the Secretary of State, to establish, and periodically update, specific procedures that are virtually identical to the procedures required by the Leahy Amendment to the Foreign Assistance Act.⁷ In addition, Section 3(d)(1) requires the USFWS Director, in consultation with the Secretary of State, to “avoid duplication of effort” with respect to Leahy vetting.

⁴ 22 U.S.C. § 2304(d)(1). This section states that “a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries, and that with specified exceptions, “no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights.” Id. § 2304(a)(1).

⁵ According to the Government Accountability Office (GAO), “State and USAID generally consider park rangers to operate within units of a foreign security force – authorized to use force, search, detail, or arrest – and therefore subject to Leahy vetting, according to agency officials.” U.S. GAO, “Combating Wildlife Trafficking: Agencies Work to Address Human Rights Abuse Allegations in Overseas Conservation Programs” (Oct. 2, 2020), p. 4.

⁶ Memorandum from Deputy Secretary Katharine MacGregor on Programmatic Review and Implementation of Conservation Grants (Sept. 18, 2020), pp. 9-10. See also U.S. GAO, “Combating Wildlife Trafficking,” p. 4 (“Funds directly appropriated to FWS for similar conservation efforts internationally but not provided under the Foreign Assistance Act are not subject to Leahy vetting, according to [FWS] officials.”).

⁷ For example, Section 3(d)(3) of H.R. 7025 would require that the Director of the USFWS and the Secretary of State “have a current list of all units of foreign security forces receiving training, equipment, or other types of assistance through covered recipients or subgrantees,” language taken from the equivalent provision of the Foreign Assistance Act of 1961, § 620M(d)(1), 22 U.S.C. § 2378d(d)(1).

Like the Leahy Amendment to the Foreign Assistance Act, the proposed bill includes an exception. Section 3(b) of H.R. 7025 states that the prohibition in Section 3(a):

“shall not apply if the Director, in consultation with the Secretary [of State], determines and reports to the appropriate Congressional committees that the applicable national government, and covered recipient or subgrantee as appropriate, is taking effective steps to bring the responsible members of the unit of a foreign security force to justice *and to prevent gross violations of internationally recognized human rights by the unit in the future*” (italics added).

This language is almost identical to the Leahy Amendment to the Foreign Assistance Act, except that H.R. 7025 adds the italicized language. In my opinion, this addition is an important improvement to the original provision. While this requirement may be implicit in the original Leahy Amendment, it is better to make explicit that the prohibition on funding units that have committed a gross violation of human rights should not be lifted unless and until the Director determines that the appropriate entities are taking effective steps not only to bring the responsible members of the unit to justice, but also to prevent further violations by the unit. As the subcommittee’s October 2021 hearing made clear, in the context of conservation, at least, these types of abuses typically arise from systemic, underlying problems in the law enforcement unit, and the abuses will continue unless and until the underlying problems are successfully addressed.

2. Requiring recipients to have effective safeguards to receive funding (Sections 4(a) and 4(b))

As important as the application of the Leahy Amendment to USFWS is, it is equally important that the proposed bill sets out clear standards for what recipients of conservation funding must do to receive funding in the first place. After all, suspending funding after the human rights violation has occurred comes too late to prevent it from occurring, which should be the primary goal. This is why the provisions of Sections 4(a) and 4(b) of H.R. 7025 are so critical. They provide a clear and firm basis for requiring that applicants for funding must have human rights protections in place in order to receive the funds in the first place.

Under Section 4(a)(1), every agreement for financial assistance from the Director of the USFWS for international activities must include, and every recipient of such financial assistance must certify, the following:

(A) the recipient will not commit, fund, or support gross violations of internationally recognized human rights in carrying out the activities under the award;

(B) the recipient has informed FWS of each of its subgrantees, and the recipient has provided such a certification from each of them;

(C) the recipient has provided the Director with its own, and each of its subgrantee’s, “written policy on maintaining standards for conduct consistent with recognized international human rights standards,” including not only the Universal Declaration of

Human Rights but also the two UN standards specific to businesses and to indigenous peoples, respectively;

(D) the recipient has implemented and is enforcing a social safeguards plan, as described in Section 4(b);

(E) the recipient has implemented procedures to detect, investigate, discipline or terminate a subgrantee, employee, or agent of the recipient that fails to comply with applicable human rights policies in connection with the award; and

(F) the recipient will comply with the requirements of the section.

These provisions not only set out requirements for the recipients themselves. They also address the excuse that conservation organizations sometimes give – and that the representative of WWF gave at the October hearing -- that they have no legal responsibility in relation to the actions of their subgrantees, no matter how much they know about those actions or how much effective control over those actions they may have. Section 4(a) of H.R. 7025 makes clear that all recipients of international conservation funding have specific responsibilities, including with respect to their subgrantees (which could include government agencies and other non-governmental entities).

These responsibilities include that each recipient must have written policies on compliance with the applicable human rights norms, and that it has adopted and be enforcing a social safeguards plan. In particular, it is important that Section 4(a) of the bill includes the responsibility for each recipient to investigate and impose proper disciplinary action on its subgrantees, as well as its own employees and agents, for failures to comply with the applicable human rights policies, and that the available response actions can include termination.

Section 4(b) further elaborates on the requirement that each recipient have a social safeguards plan. Section 4(b) defines the plan as one “consistent with the principles of” the Universal Declaration of Human Rights, the UN Declaration on the Rights of Indigenous Peoples, and the UN Guiding Principles on Business and Human Rights, to implement appropriate human rights standards and prevent gross violations of human rights. Moreover, the social safeguards plan must include six specific requirements, “as determined appropriate by the Director, taking into consideration the location, size, complexity and scope of the award.”

It is important for the legislative history of this provision to make clear that the Director’s discretion here is not unlimited. While the precise application of these requirements may be adjusted in light of the considerations of “location, size, complexity, and scope” of the award, it would not be consistent with this language for the Director to decide that the requirements could simply be waived in any case where there is any possibility of human rights abuses in connection with the activities funded under the award.

By emphasizing the importance of respecting the rights of Indigenous peoples and local communities, the requirements for a social safeguards plan address the underlying conditions

that often give rise to conflicts between park rangers, on the one hand, and the Indigenous peoples and local communities who live in and around these protected areas, on the other.

The hearing in October 2021 discussed the links between human rights violations such as murder, rape, and torture, and the underlying human rights violations that occur when governments exclude Indigenous peoples and other place-based local communities from their ancestral homes in the name of conservation. International human rights standards, including the UN Declaration on the Rights of Indigenous Peoples, make clear that such exclusion violates the rights to self-determination and property, among others, of the Indigenous peoples and local communities. It is also worth noting that exclusionary conservation typically also fails to meet conservation goals. Many studies have confirmed that conservation is more effective when it occurs in partnership with – and ideally with the leadership of – the Indigenous peoples and local communities who actually live in and depend on the natural ecosystems.⁸

Section 4(b) sets out the characteristics that social safeguards plans must have. In the following paragraphs, I will set out these requirements and briefly explain why each is vital. The requirements are:

(1) “a process for meaningful consultation and engagement with Indigenous Peoples and local communities to safeguard their rights, including obtaining their free, prior, and informed consent for any new land-use restriction and, if applicable, procedures for the fair resolution of existing land and resource claims, in the area in which the project will be conducted”

This requirement is in many ways the most fundamental. Protecting affected peoples and communities requires protecting their right to free, prior, and informed consent to any new land-use restrictions. This requirement draws directly on international human rights standards. It is also consistent with the stated policies of WWF and many other conservation organizations, but it has often not been implemented in practice. In cases where national parks or other protected areas have been created without the consent of the Indigenous peoples and local communities, it may not always be possible to restore their land completely, but it should be possible, as the provision contemplates, to have appropriate procedures for the fair resolution of their claims. Such a resolution might include, for example, agreements to allow access for hunting and fishing certain species, and access to spiritual and cultural sites.

(2) “requirements for internal review of research involving human subjects”

Although this issue was not a topic of discussion at the October 2021 hearing, conservation projects have often given rise to research not only into wildlife and ecosystems, but also into human subjects, including Indigenous peoples and local communities. Such research should never take place without appropriate protections to ensure that it is accordance with the

⁸ See, e.g., FAO and FILAC, *Forest governance by indigenous and tribal peoples* (2021); IPBES, *Global Assessment Report on Biodiversity and Ecosystem Services: Summary for Policymakers* (2019); J. Geldmann et al., “A global-level assessment of the effectiveness of protected areas at resisting anthropogenic pressures,” *Proceedings of the National Academy of Sciences* (2019, vol. 116, no. 46, pp. 23209–15).

rights of the people involved, including their rights to information and to give or withhold consent.

(3) “measures to improve governance, increase the agency and protect the rights and needs of Indigenous Peoples and local communities, and address the potential adverse impacts of a project on the well-being and security of Indigenous Peoples and local communities”

Beyond the core requirement of consulting and engaging with Indigenous peoples and local communities and obtaining their free, prior, and informed consent for any new land-use restrictions, this language would require conservation organizations and other recipients to take concrete steps to protect their rights and needs more broadly, including in particular by improving their ability to participate in the governance of the conservation project. Again, this is what many conservation organizations already say that they are doing. As a result, it will be important for USFWS to take seriously the requirement of Section 4(a)(1)(D) that the recipient not only has adopted a social safeguards plan that includes this element, but also that it “has implemented and is enforcing” the plan in practice

(4) “a grievance redress mechanism to redress gross violations of internationally recognized human rights”

This is a crucial element of any social safeguards plan. Grievance mechanisms should meet basic requirements, including independence and transparency, as set out in the UN Guiding Principles on Business and Human Rights. In particular, grievance mechanisms must be responsive to local conditions and accessible to local residents. Mechanisms that require access to telephones and the internet are of no use to people who have access to neither. To ensure that a grievance mechanism is appropriate for local conditions, the affected Indigenous peoples and local communities should be consulted closely before the mechanism is established.

(5) “human rights training and effective monitoring by the recipient for law enforcement personnel and units of a foreign security force”

This is another critical requirement. Often, park rangers and other officials charged with enforcing the applicable laws are poorly trained and paid. Often, they receive little or no screening before being hired. Before U.S. funds are used to pay their salaries or bonuses, or provide equipment for their use, appropriate employment and training standards should be in place. In addition, as the provision requires, the recipient itself should conduct and/or provide for effective monitoring of their activities. Too often, conservation organizations have simply relied on self-reporting by the rangers or other government officials, which is obviously ineffective.

(6) “publication of documents, such as park management plans and ranger codes of conduct, that are relevant to potential impacts of the project on Indigenous Peoples and local communities”

It is often remarkably difficult for those most affected by conservation projects to have access to basic information about the projects themselves, including such fundamental

documents as park management plans and codes of conduct for park rangers. This provision would require that the social safeguards plan ensures that such documents are made public.

3. Investigating and reporting on alleged human rights violations (Sections 4(d) through 4(h))

The next several subsections of Section 4 would provide for investigating and reporting on alleged human rights violations in relation to international conservation projects funded by the USFWS. These provisions are crucial, especially because they do not rely solely on self-reporting by conservation organizations and other recipients of U.S. funding. One of the most troubling findings of the investigations by this Subcommittee, the GAO, and the Department of the Interior is that recipients of U.S. funding for international conservation funding did not report allegations of human rights abuses when they came to their attention.⁹ For example, State Department officials told GAO investigators that “they were surprised to hear of the allegations in articles from the news organization *BuzzFeed News*, especially because they expected embassies and NGOs to have reported these allegations directly to them.”¹⁰ Even after the allegations were reported by media outlets, conservation organizations did not provide thorough responses to requests from USFWS for more information.¹¹

Moreover, when Leahy vetting was conducted by the State Department, it apparently relied on organizations such as WWF to conduct their own internal investigations “to determine whether fault can be assigned to government-funded actors or whether misconduct occurred.”¹²

It is clear that conservation organizations such as WWF cannot be trusted to self-report on their involvement in or knowledge of human rights abuses in parks and protected areas that they support. Over the last several years, they have refused to publish their internal reports detailing such abuses. As the U.S. investigations demonstrate, they have refused to be forthcoming about abuses even with their own donors. When the abuses are reported anyway, their strong tendency is to provide narratives about the protected areas that do not acknowledge the depth or severity of the problems that they face.

I will provide two recent examples to illustrate this point.

The first example concerns access of the Baka to national parks in southeast Cameroon. In her written testimony and oral presentation to the subcommittee at its October 2021 hearing, a Senior Vice President at WWF said repeatedly that WWF “successfully advocated to reestablish the access rights of the BaKa in three national parks” in Cameroon.¹³ To understand why this statement is misleading, it is first necessary to briefly review the history of the parks. They were

⁹ Memorandum from Deputy Secretary Katherine MacGregor on Programmatic Review and Implementation of Conservation Grants (Sept. 18, 2020), pp. 1-3.

¹⁰ U.S. GAO, “Combating Wildlife Trafficking,” p. 4.

¹¹ Memorandum from Deputy Secretary Katherine MacGregor on Programmatic Review and Implementation of Conservation Grants (Sept. 18, 2020), pp. 1-3.

¹² *Id.*, p. 4.

¹³ See Written Testimony of Ginette Hemley, Senior Vice President-Wildlife Conservation, World Wildlife Fund-United States, pp. 3, 9.

established by the government of Cameroon, with WWF assistance, in 2001 (Lobéké) and 2005 (Boumba Bek and Nki National Parks), in the ancestral lands of the Baka people, who relied on the forests for their material and spiritual needs. In consultations before the creation of the parks, the Baka were promised that they would still have access to them. Indeed, it was understood that access to the parks would be necessary for the Baka to be able to maintain their livelihoods and well-being.¹⁴ Nevertheless, as WWF staff recognized at the time, the consultations did not adequately take into account Baka needs and viewpoints.¹⁵

Between 2006 and 2008, after the creation of the parks, WWF supported a mapping project to identify the Baka uses of the parks, so that they could be recognized in the park management plans.¹⁶ But when the management plans for the parks were finalized, they provided for little (Lobéké) or no (Boumba Bek/Nki) access. Lobéké's plan included a "community zone" of 15% of the park. The plans for the other parks did not provide for access at all. Even Lobéké's community zone was ineffective, because it required Baka to apply for written permits at one inconvenient location, and many Baka found it difficult to understand and use the process. Moreover, because the zone is in the west of the park, those living in the north or south could not use it. In fact, a 2019 academic study found that most local Baka communities did not know about the Lobéké community zone.¹⁷

This denial of access to the parks led directly to the abuses by the poorly trained and paid ecoguards against the Baka. Baka that continued to try to use their own ancestral lands were violating Cameroon law, despite the promises that they had received for years. Ecoguards received bonuses for seizing weapons and (allegedly) poached material, which effectively provided them incentives not just to patrol the parks, but also to raid the surrounding villages and seize what they could find. WWF staff heard about these abuses for many years – at least since 2008.¹⁸ And yet WWF continued to provide extensive financial and material support for the ecoguards, including their village raids.

After Survival International raised claims more visibly, including by filing a case with the OECD National Contact Point in Switzerland, WWF commissioned three reports in 2015-2017, all of which confirmed that allegations of human rights abuses were widespread.¹⁹ WWF did not publish the reports, and in at least one case even denied its existence.²⁰

¹⁴ Shiho Hattori, "Nature Conservation and Hunter Gatherers' Life in Cameroonian Rainforest," *African study monographs*. Supplementary issue (2005), 29:41-51.

¹⁵ O. Njounan Tegomo, L. Defo, & L. Usongo, "Mapping of Resource Use Area by the Baka Pygmies Inside and Around Boumba-Bek National Park in Southeast Cameroon, with Special Reference to Baka's Customary Rights,"

¹⁶ Id.

¹⁷ C.K. Lambini et al., *Conflicts, participation and co-management in protected areas: A case study of Lobéké National Park*, Cameroon (Centre for Rural Development (SLE), 2019).

¹⁸ See J. Nelson & M. Venant, *Indigenous peoples' participation in mapping of traditional forest resources for sustainable livelihoods and great ape conservation* (Forest Peoples Programme, 2008), p. 12.

¹⁹ See Independent Review Panel, *Embedding Human Rights in Conservation*, Chapter 4 (Cameroon), available at https://wwfint.awsassets.panda.org/downloads/independent_review_independent_panel_of_experts_final_report_24_nov_2020.pdf.

²⁰ Shreya Dasgupta, "Survival International files formal complaint against WWF for allegedly violating human rights of Baka 'Pygmies'," *Mongabay* (Feb. 22, 2016).

In February 2019, the government of Cameroon entered into an MOU that again committed to provide access to the Baka. This is the MOU to which the WWF representative was probably referring in her testimony to this subcommittee. However, the MOU states that the actual access will be worked out later, through the adoption of annual action plans. A previous draft of the MOU did include specific rights to access, but the Cameroon government removed that language at the last minute. The government then signed a truncated version of the MOU with the Association Sanguia Baka Buma’a Kpode (ASBABUK), a Baka organization that does not claim to represent all Baka in the region.²¹

In February 2022, the Forest Peoples Programme – a highly respected civil society organization that researches and reports on issues of human rights in conservation – issued a detailed report on Baka access to Lobéké National Park. On the basis of extensive research, including interviews with Baka and others in the area, the report concluded that:

- o The central commitment under the MOU – the development of annual action plans to enable community access – has not been met.
- o Communities have not experienced any actual improvements in access to the park.
- o Awareness and understanding of the MOU remains extremely low in communities, despite subsequent awareness-raising activities carried out by WWF and other actors, and levels of distrust of conservation actors (and the MoU process) remain high.²²

In addition, buffer zones around the park are increasingly under the control of forestry or safari companies, making it even more difficult for Baka to have access to their ancestral land. The Forest Peoples Programme found that this “prolonged lack of access to the Parks has limited Baka practice of various traditional activities – this has had negative impacts on the transmission of cultural and ecological knowledge to younger generations, among other things. Despite this, Baka communities continue to express a strong commitment to the conservation of the forest and its ecosystem and have expressed the desire to explore ways to be more involved in park management.”²³

It is simply false to portray this history as a success, as the WWF representative did to this Subcommittee. By any measure, this is a prolonged, twenty-year failure to respect and protect the rights of the Baka. WWF is not the only responsible party here; but it is certainly responsible for how it describes the situation. It obviously cannot be trusted to provide a complete and truthful description of the nature of the problem and of its own involvement in it.

²¹ See *In and Around Cameroon’s Protected Areas: A rights-based analysis of access and resource use agreements between Indigenous Peoples and the State* (Forest Peoples Programme, 2019).

²² *Indigenous Peoples’ Access to and Participation in Lobeke National Park: An independent evaluation of the effectiveness of current access arrangements for Baka communities, and investigation of community understanding of Park management arrangements and their perspectives on future co-management* (Feb. 2022), available at <https://www.forestpeoples.org/en/report/2022/indigenous-peoples-access-and-participation-lobeke-national-park>.

²³ Id.

The second example to illustrate this point concerns another area supported by WWF, in the Messok Dja region of the Republic of Congo, across the border from the three national parks in southeast Cameroon. WWF co-manages a conservation program in this area together with the Congolese government. The government is interested in designating Messok Dja as a national park, but has not yet done so; nevertheless, it has put in place ecoguards with a mandate to enforce Congolese conservation laws. As in Cameroon, there have been serious, repeated allegations of human rights abuses by the ecoguards against the local residents, including in particular the Baka.

WWF invited a research group based in University College London to work in the Messok Dja area, as well as the area around Lobéké National Park in Cameroon.²⁴ The research group, called Extreme Citizen Science (or ExCiteS), works with local communities to develop bottom-up techniques that draw on their knowledge and practices. For example, it works with them with respect to hand-held devices (running the Sapelli program) through which the communities can record and communicate information such as mapping important resources in the forest, reporting poaching, and documenting cases of abuse.

As part of this research, one of the UCL graduate students, Fabien Moustard, was to work with indigenous communities in the area, first in Cameroon and then in the Republic of Congo.²⁵ His experience in Cameroon in 2021 was generally positive; the ecoguards there did not interfere with his work, and he characterized the collaboration there with both WWF and the ecoguards as based on mutual trust and good-will.

However, after he moved to Messok Dja in early 2022, the local WWF staff and the local chief of the ecoguards blocked his access to the field. Specifically, they refused to let him visit Baka villages to conduct interviews with them. In his words, “It seems that they were extremely afraid of what the Baka communities could have told me and of what I would report to newspapers. I have faced allegations of spying and I have been threatened to be denounced to the National Security of Congo notwithstanding that I was working with them for two months on an everyday basis, that all my official necessary papers, such as the research permit, were up to date and that WWF were aware that I had to conduct interviews for my research that focuses on the social recognition of Baka people in the Congo Basin.”

He and his supervisor at UCL raised this issue at higher levels of WWF, but without success. Instead, WWF staff suggested that he should sign a confidentiality agreement as a condition of his conducting interviews with the Baka. The UCL team immediately rejected this proposal, which – in his words – would “jeopardize scientific independence and academic impartiality but also the voice of Baka people. . . . Keeping Baka indigenous communities away from scientists and maintaining scientists away from Baka people results in discrimination against both.”

I do not need to belabor the point. As long as conservation organizations are so concerned about their reputation that they are unwilling to provide information about human rights abuses –

²⁴ Information about the program is available at <https://www.geog.ucl.ac.uk/research/research-centres/excites>. The program’s blog is here: <https://uclexcites.blog/>.

²⁵ I have his permission to describe his experience.

or even, in cases such as this, let independent observers into areas to interview indigenous people – donor agencies like USFWS cannot rely on them to report accurately on themselves.

The subsections of Section 4 of H.R. 7025 address this issue in several ways.

- o Sections 4(d) and 4(e) require recipients of USFWS funding to investigate and report on alleged human rights violations;
- o Sections 4(f), 4(g), and 4(i) provide for investigation of credible allegations of abuse by the Inspector General of the Department of Interior; and
- o Section 4(h) provides for regular auditing of grants.

All of these provisions are valuable and important. I will say a few words about each.

Section 4(d)(1) requires all recipients of USFWS funding for international conservation to refer “all credible information” of gross violations in connection with USFWS awards to USFWS and to the U.S. diplomatic or consular post as soon as reasonably practicable, but in any event no later than 30 days after the date on which the recipient knew or should have known such information. This provision would directly address the failure of conservation organizations to let the U.S. government know of such allegations.

Section 4(d)(2) requires the recipient to then submit to the USFWS contracting officer, no later than 60 days after the notification, a report describing the specific steps taken to address the violation and enforce the requirements of the social safeguards plan, and “all relevant information relating to the allegation.” This would put on record, in a reasonable amount of time, all information that the conservation organization or other recipient has about the allegation.

Section 4(d)(5) requires the USFWS contracting officer, no later than 30 days after the receipt of the report, to complete an investigation of the allegation and submit the report on the investigation, as well as the report by the recipient and the information initially received, to the Director of the USFWS.

Section 4(e) provides a critical alternative way for USFWS to receive information of alleged human rights violations: if the Director receives credible information from any source of a gross violation of human rights in connection with an USFWS award, then the Director is required to notify the relevant recipient and require it to submit a report under Section 4(d)(2). This is of vital importance, because it allows others than the recipient of the funding to come forward with information about alleged human rights abuses, and thereby trigger the above process of reporting and investigation.

Under Section 4(f)(1), after receiving a report by the USFWS contracting officer on an alleged violation, the Director of the USFWS must refer the allegation to the Inspector General (IG) of the Department of Interior within 30 days, unless the Director determines that the recipient has submitted information showing that the alleged violation “has been resolved, abated, or did not occur.” The IG must then determine whether the referral requires an

investigation under Section 4(f)(2)(A). If the IG determines that an investigation is required, the IG shall complete it within 180 days after the referral.

Under Section 4(f)(2)(C), the investigation is required to produce a report, which includes the IG's conclusions regarding whether or not any allegations that the covered recipient or any subgrantee has committed a gross violation of human rights in connection with the award are substantiated, and regarding the effectiveness of the actions of the recipient and any subgrantee in preventing and responding to such violations.

The term "substantiated" should be understood as requiring something less than "proved beyond a shadow of doubt." It will often be impossible for the IG to determine with absolute certainty what happened in relation to an allegation, but that should not be the test. Instead, the "substantiated" standard would ask only whether there is credible evidence that supports the allegation. It is also worth emphasizing that the proposed law would require the IG investigation not only to examine whether the allegations were substantiated, but also the effectiveness of the actions of the recipient and any subgrantee.

As a result, the IG investigation report directly relates to the core requirement of the Act, set out in Sections 3(a) and 3(b): that USFWS not provide financial assistance for funding or supporting any unit of a foreign security force if there is credible information that the unit has committed a gross violation of human rights, unless the government and the covered recipient or subgrantee (as appropriate) are taking effective steps to bring the responsible members of the unit to justice *and* to prevent further gross violations of human rights in the future.

For obvious reasons, it is very important not to wait until allegations of human rights violations are made to monitor and oversee compliance with these requirements. Section 4(h)(1) requires the Director of USFWS to carry out periodic audits of covered recipients, and appropriately prioritizes programs that are especially likely to give rise to conflicts and abuses: programs that have new land-use restrictions, are in fragile or conflict-affected states, or are in regions that otherwise have an elevated risk of internationally recognized human rights. Many of the programs that have been the subject of recent investigations and reports, such as those in Cameroon and the Democratic Republic of the Congo, fall in two or even three of these categories at the same time.

4. Annual reports by USFWS to Congress (Section 4(j))

The final provision of H.R. 7025 that I would like to emphasize is Section 4(j), which would require the Director, in consultation with the Secretary of State, to report annually to the appropriate committees of Congress on the reports of alleged abuses received, the investigations concluded, and other relevant information. This reporting requirement would enable this Committee, as well as other interested committees of Congress, to stay involved in these issues and ensure that this law has the desired effects.

Conclusion

In conclusion, I would like to thank you again for the opportunity to speak with you today on this pathbreaking new legislation. As I said when I spoke to you last fall, the last three years have demonstrated that the transformational change necessary in the international conservation community will not occur without strong leadership from the United States and other governments. If enacted, this law would demonstrate exactly the kind of leadership that is needed. It would help to set a new direction for international conservation that would protect both nature and the human rights of those who most closely depend on it.