

Report No. 40746 - ZR

The Inspection Panel 

Investigation Report

**DEMOCRATIC REPUBLIC OF CONGO:
Transitional Support for Economic Recovery
Grant (TSERO) (IDA Grant No. H 1920-DRC)
and Emergency Economic and Social
Reunification Support Project (EESRSP) (Credit
No. 3824-DRC and Grant No. H 064-DRC)**

August 31, 2007

About the Panel

The Inspection Panel was created in September 1993 by the Board of Executive Directors of the World Bank to serve as an independent mechanism to ensure accountability in Bank operations with respect to its policies and procedures. The Inspection Panel is an instrument for groups of two or more private citizens who believe that they or their interests have been or could be harmed by Bank-financed activities to present their concerns through a Request for Inspection. In short, the Panel provides a link between the Bank and the people who are likely to be affected by the projects it finances.

Members of the Panel are selected “*on the basis of their ability to deal thoroughly and fairly with the request brought to them, their integrity and their independence from the Bank’s Management, and their exposure to developmental issues and to living conditions in developing countries.*”¹ The three-member Panel is empowered, subject to Board approval, to investigate problems that are alleged to have arisen as a result of the Bank having ignored its own operating policies and procedures.

Processing Requests

After the Panel receives a Request for Inspection it is processed as follows:

- The Panel decides whether the Request is *prima facie* not barred from Panel consideration.
- The Panel registers the Request—a purely administrative procedure.
- The Panel sends the Request to Bank Management, which has 21 working days to respond to the allegations of the Requesters.
- The Panel then conducts a short 21 working-day assessment to determine the eligibility of the Requesters and the Request.
- If the Panel recommends an investigation, and the Board approves it, the Panel undertakes a full investigation, which is not time-bound.
- If the Panel does not recommend an investigation, the Board of Executive Directors may still instruct the Panel to conduct an investigation if warranted.
- Three days after the Board decides on whether or not an investigation should be carried out, the Panel’s Report (including the Request for Inspection and Management’s Response) is publicly available through the Panel’s website and Secretariat, the Bank’s Info Shop and the respective Bank Country Office.
- When the Panel completes an investigation, it sends its findings and conclusions on the matters alleged in the Request for Inspection to the Board as well as to Bank Management.
- The Bank Management then has six weeks to submit its recommendations to the Board on what actions the Bank would take in response to the Panel’s findings and conclusions.
- The Board then takes the final decision on what should be done based on the Panel’s findings and the Bank Management’s recommendations.
- Three days after the Board’s decision, the Panel’s Report and Management’s Recommendation are publicly available through the Panel’s website and Secretariat, the Bank’s Project website, the Bank’s Info Shop and the respective Bank Country Office.

¹ IBRD Resolution No. 93-10; IDA Resolution No. 93-6.

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Table of Contents

About the Panel	i
Acknowledgements	ii
Table of Content	iii
Abbreviations and Acronyms	vii
Executive Summary	ix
Chapter 1 – Introduction	1
A. Forests and Post-Conflict Situation	1
B. The World Bank Projects	2
1. Initial Activities and Strategy	2
2. Emergency Economic and Social Reunification Support Project (EESRSP)	5
3. Transitional Support for Economic Recovery Grant Operation (TSERO)	9
4. Links with Other World Bank Projects and Other Donor Activities	11
C. Events leading to the Investigation	13
1. Request for Inspection	14
2. Management Response	16
3. Eligibility of the Request	19
4. Investigation	19
5. Bank Operational Policies and Procedures Applicable to the Project	20
Chapter 2 – Forests, Indigenous Peoples and Bank Engagement	21
A. Context: Social, Economic and Environmental	21
1. Forests and Sustainable Development	21
2. Industrial and Other Forms of Forestry and Logging	25
B. Ethnographic Context: the Pygmy Peoples and other Groups	31
C. Bank Engagement and Continuity	37
D. Focus on Concessions and Potential Revenues	38
E. Legal Framework with Regard to Forests	41
1. General Legal Framework Related to Forests	42
2. World Bank Role in the Development of the Legal Framework	43
3. Moratorium on New Concessions (May 2002)	43
4. Forest Code (August 2002)	44
5. Implementing Decrees	49
6. General Conclusions	49
F. Institutional Capacity, Governance and Concerns of the People	50

Chapter 3 – Planning for Forest Protection and Use: Social Issues	52
A. Indigenous Peoples	52
1. Presence of Pygmy People in Project Area	54
2. Pygmy People as Indigenous People under Bank Policy	57
3. Failure to Develop an Indigenous Peoples Development Plan (IPDP)	58
4. Importance of an IPDP for the Pygmy People	59
(i) Baseline Data	60
(ii) The Legal Framework, Customary Rights, and Institutional Capacity	62
(iii) Sources of Income and Livelihood	64
(iv) Avoiding Adverse Impacts	66
(v) Strategies for Local Participation	67
B. Cultural Property	69
C. Poverty Reduction	71
D. Lessons from Cameroon	75
E. Information Disclosure and Consultation	77
1. Efforts at Outreach and Information Disclosure	77
2. Special Issues relating to Consultation with Pygmy People	79
F. Concerns Presented to the Panel during its Investigation	80
Chapter 4 – Planning for Forest Protection and Use: Environmental Issues	82
A. Environmental Assessment	82
1. Classification and Preparation of an EA	83
(i) The Pilot Forest Zoning Plan (PFZP)	83
(ii) The Logging Concession Conversion Review Process	85
(iii) Policy and Institutional Strengthening, Technical Assistance	86
2. Delay in Release of the EA	88
B. Forests	89
C. Obligations Under International Environmental Treaties and Agreements	93
D. Natural Habitat	95
E. Nature and Impacts of the Choice of DPL for the TSERO	96
1. Choice of Development Policy Loan for TSERO	96
2. Normative Framework of OP 8.60 – Environmental Issues	97
3. Potential Environmental Effects of DPLs	98
4. DPLs with a Component on Forests – Experience and Practice	100
F. Application of OP 8.60 to the TSERO	103
Chapter 5 – Project Implementation	105
A. Post-Moratorium Concessions and “Swaps”	105
1. Reports of “By-Passing” of the Moratorium	105

2.	Bank Documentation and Supervision	107
B.	Concession Conversion Process - - How it Works	110
1.	Presidential Decree of October 2005 (No. 05/116)	110
2.	The Implementation of the Process so far	113
C.	Problems and Concerns relating to the Conversion Process	116
1.	Treatment of Existing Concessions	116
2.	Time Constraints	117
3.	Race to Extract and Swap for Higher Value Forest Areas	119
4.	Lack of Meaningful Participation by Pygmy Peoples and Local Communities	121
5.	Asymmetrical Rights to Contest the Results of the Process	123
6.	Duration of the Moratorium	123
7.	Additional Observations	124
D.	Zoning and Land Use	125
E.	Status of Adoption of Implementing Decrees	127
F.	Concluding Observations	129

Annexes

Annex 1:	Table of Findings
Annex 2:	Note on Ethnographic Background of the Pygmy People in DRC
Annex 3:	List of Applications for Concession Conversion
Annex 4:	Biographies

Boxes

Box 1.1:	The Forest Carbon Partnership Facility (FCPF)
Box 2.1:	Recent Developments – Post-Conflict
Box 2.2:	“ <i>Apakumandura</i> ” – Father of Forest
Box 2.3:	Conservation Concessions
Box 2.4:	Community Forests – Lessons from Cameroon.
Box 3.1:	In Their Own Words – Pygmy People at Different Locations
Box 3.2:	In Their Own Words – Local Civil Society

Tables

Table 1.1:	Summary of Relevant World Bank Lending Operations
Table 2.1:	Rough Estimate of Current Consumption of Some Products for the Forests of DRC

Figures

Figure 3.1:	Participatory Map of Use of Forest Resources, Bagbadia
Figure 3.2:	Participatory Map of Use of Forest Resources, Bavazana

Charts

- Chart 4.1: DPLs including a Forest Component
Chart 5.1: Conversion Chart as per the October 24, 2005 Presidential Decree

Maps

- IBRD 35653: Concessions under Review and World Heritage Sites
IBRD 34464R: Areas of Pygmy Presence and Concessions under Review

Pictures

- Picture 1: Panel meeting with Pygmy People community
Picture 2: Panel visit to concession
Picture 3: Panel meets with elder of Pygmy People community
Picture 4: Panel visit into forest Kisangani area
Picture 5: Logs at concession
Picture 6: Panel meeting with Pygmy People community
Picture 7: Panel listening to concerns of Pygmy People and local representatives - Mbandaka

Abbreviations and Acronyms

BP	Bank Procedures
CBFP	Congo Basin Forest Partnership
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CRON	Coalition Network of NGOs
CSOs	Civil Society Organizations
DGF	Direction de la Gestion Forestière
DGRAD	Direction Générale de Recette Administratives, Judiciaires, Domaines et de la Participation
DPL	Development Policy Lending
DRC	Democratic Republic of Congo
EA	Environmental Assessment
ECOFAC	Ecosystèmes Forestiers d’Afrique Centrale
EESRSP	Emergency Economic and Social Reunification Support Project
EMRRP	Emergency Multi-Sector Rehabilitation and Reconstruction Program
ESMF	Environmental and Social Management Framework
FAO	Food and Agricultural Organization of the UN
FCPF	Forest Carbon Partnership Facility
GDP	Gross Domestic Product
GEF	Global Environmental Facility
GIS	Geographic Information Systems
GFA	Global Forest Alliance
GTT	Group Technique de Travail (Technical Working Group)
IDA	International Development Association
IO	Independent Observer
IMC	Inter-Ministerial Commission
IPDP	Indigenous Peoples Development Plan
IRIN	Integrated Regional Information Networks
ISDS	Integrated Safeguards Data Sheet
MECNEF	<i>Ministère de l’Environnement, Conservation de la Nature et Eaux et Forêts</i> ; Ministry of Environment, Nature Conservation and Waters and Forests (Ministry in charge of Forests)
MONUC	<i>Mission d’Observation des Nations Unies au Congo</i> ; United Nations Mission to DRC
NGO	Non-Governmental Organization
NTFPs	Non-Timber Forest Products
OP	Operational Policy
PFZP	Pilot Participatory Forest Zoning Plan
PRSC	Poverty Reduction Support Credit
PRSO	Poverty Reduction Support Operation
REDD	Reduced Emissions from Deforestation and Degradation
SDR	Special Drawing Rights
SNV	Netherlands-based International Development Organization

SPIAF
TORs
TSERO
TSS

Service Permanent d'Inventaire et d'Aménagement Forestier
Terms of Reference
Transitional Support for Economic Recovery Credit Operation
Transitional Support Strategy

Executive Summary

Introduction

Democratic Republic of Congo (DRC) is one of the world's largest countries, has great natural resource wealth, yet is one of the world's poorest countries. Forests cover about sixty percent of the country (or about 134 million hectares). Together with forests in neighboring countries, they form the Central African Rain Forest, the second largest tropical forest in the world after the Amazon.

The matters raised in the Request for Inspection relate to the closed, broad-leaved rainforest in DRC, which is estimated to cover 86 million hectares. These forest lands are the home and source of livelihood and cultural identity of many people, including large numbers of Pygmy peoples who have depended on the forests for millennia. The forests are also, in many other ways, an invaluable resource.

The present Report presents the findings of the Inspection Panel in response to a Request for Inspection of two Bank-financed operations involving DRC forests and forest concessions. The claims in the Request, Bank Management Response, and the findings of the Panel, are summarized below.

The Request

On November 19, 2005, the Inspection Panel received a Request for Inspection (hereinafter "the Request") from the Organisations Autochtones Pygmées et Accompagnant les Autochtones Pygmées en République Démocratique du Congo (Indigenous Pygmy Organizations and Pygmy Support Organizations in DRC). The Requesters submitted the Request on their own behalf and on behalf of affected local communities living in DRC. Representatives of local communities of several provinces in DRC signed the Request.

On January 13, 2006, Management submitted its Response to the Request for Inspection. The Board approved the Panel's recommendation to conduct an investigation into the matters alleged in the Request for Inspection on February 28, 2006.

The Bank-Financed Projects/Operations

The Request relates to two Bank-financed operations: the Emergency Economic and Social Reunification Support Project ("EESRSP" or "the Project") and the Transitional Support for Economic Recovery Grant Operation ("TSERO") development policy loan.

The EESRSP is aimed at supporting implementation of economic reforms in DRC, and has five components. The Request focuses on Component 2 which, *inter alia*, has the objective of helping to restore effective institutions in the forestry sector in DRC provinces, improve local governance over natural resources, bring the new DRC Forest Code into practice, and address the problem of illegal logging. This Component

originally set out two priorities: (1) to prepare a forest zoning plan with a focus on the most forested provinces, in particular Equateur and Orientale; and (2) to “[l]ay the ground for implementation of the new law’s forest concession system - with a focus on converting old forest contracts into the new concession regime.”

The subsequent TSERO is a budget support operation, disbursed in a single-tranche with a medium-term policy framework. It is defined by the Bank as Development Policy Lending (DPL). It constitutes the third operation to support the economic recovery of DRC.

One of the TSERO’s objectives is to improve governance in the natural resources sector. Two of its nine Board approved conditions relate to forests. These are: (1) initiation of the legal review of forest concessions, through various steps; and (2) extension of a 2002 Moratorium on new logging concessions until “*new auction procedures are adopted; legal review of existing procedures is completed; and a 3 year plan for future concessions is adopted based on a participatory process.*” The TSERO also sets forth several indicators of progress, including: completion of the legal (concession) review in accordance with specified procedures; continued compliance with the 2002 Moratorium; recruitment of an independent observer to assist in monitoring and other activities; enactment of key implementation decrees under the 2002 Forest Code; and continued implementation of fiscal reforms.

The Claims of Requesters

The Requesters claim that they have been harmed and will be harmed by the forest sector reform activities supported by the EESRSP and the TSERO. The Requesters fear that the design and implementation of a new commercial forest concession system may cause irreversible harm to the forests where they live and on which they depend for their subsistence. They contend that these developments are taking place without giving them information, consulting with them, or providing them with an opportunity to participate.

The Requesters are also concerned about negative effects of a forest zoning plan, which they believe is being prepared with IDA support without consultation or consideration of interests of indigenous peoples.

The Requesters claim that implementation of the EESRSP will lead to violations of their rights to occupy their ancestral lands, manage their forests and resources according to traditional knowledge and practices, and protect their cultural and spiritual values. They claim this would then lead to the loss of their living environment and their means of subsistence and force change in their way of life, causing serious social conflict. They claim that they were not consulted and are concerned that the zoning of the forests could occur without consideration of the indigenous peoples’ interests.

The Requesters assert that their grievances result from the Bank’s failure adequately to address and implement applicable safeguards and from the World Bank’s “*hastily adopt[ing] a Congolese Forest Code*” without the participation of civil society or the

indigenous communities. In particular, they claim that the Bank failed to comply with its policies and procedures regarding environmental assessment (“EA”), indigenous people, and forests. The Request also raises issues of compliance with Bank policies and procedures relating to cultural resources, involuntary resettlement and supervision. The Requesters further claim that the Bank’s use of certain lending instruments (an Emergency Recovery Loan for the EESRSP and a Development Policy Loan for the TSERO), led to the circumvention of its safeguard policies.

Response from Bank Management

Management claims that it has made every effort to apply Bank policies and procedures and that the Requesters’ rights or interests have not been and will not be directly and adversely affected by a failure of the Bank to implement its policies and procedures.

With regard to the EESRSP, however, Management recognizes that it was not in full compliance with OP 4.01 on Environmental Assessment and acknowledges that OP 4.20 on Indigenous Peoples should have been triggered during project preparation once the zoning element was included in the Project, even if it was dropped from the Project before implementation.

Management believes that the Bank’s forest work in DRC since 2002 has enhanced public participation and allowed for dialogue with local NGOs. The Response notes that the Bank helped organize the first multi-stakeholder forest forum in DRC in November 2004. With regard to outreach to Pygmy people, Management acknowledges that a more proactive outreach might have enabled the Bank to establish more direct lines of communication with indigenous Pygmy leaders and communities.

Management indicates that it plans to undertake the following: consider activities to strengthen institutions and provide an overall framework for other Bank-supported forest activities in DRC; establish a proactive forest information and outreach program as well as more direct lines of communications with indigenous communities, including Pygmies, to make certain that in future Bank operations they receive social and economic benefits that are culturally appropriate; and ensure that future Bank lending in the forest sector and other initiatives such as the zoning plan include measures that strengthen the legal and customary rights and preserve the cultural heritage of indigenous communities, including the Pygmies.

The Investigation Report and Applicable Policies and Procedures

This Report concludes the Panel’s investigation into the matters alleged in the Request for Inspection. Panel Chairperson Edith Brown Weiss and Panel Member Werner Kiene led the investigation. Three internationally recognized experts/advisers on social and indigenous people’s issues and on forestry and environmental issues assisted the Panel in its investigation.

In its investigation, the Panel reviewed relevant Bank documents and other materials from the Requesters, Bank staff, the Government of DRC, nongovernmental organizations, local communities, concessionaires, and other sources, including scholarly literature. The Panel interviewed Bank staff, both in Washington, D.C. and in Kinshasa. It also met with the Independent Observer, various nongovernmental organizations, experts, and other private parties. The Panel visited DRC and areas affected by the Bank's EESRSP and TSERO in January 2006 and in January/February, 2007. The Panel team traveled to Equateur and Orientale Provinces, including Kisangani and nearby areas, Mbandaka, Bikoro, Ingende, Bafawsende and other areas. During the visits, the Panel met with the Requesters and locally affected people, Bank staff, national and provincial authorities, the Technical Working Group and the Independent Observer, nongovernmental organizations, representatives of the forest industry association and concessionaires, local and international technical experts, and other concerned people. The Panel is grateful to all those who have assisted in the investigation.

Bank Operational Policies and Procedures Applicable to the Project

With respect to this Project, the Panel assessed whether the Bank complied with the following applicable operational policies and procedures:

OP/BP 4.01	Environmental Assessment
OP 4.12	Involuntary Resettlement
OD 4.15	Poverty Reduction
OD 4.20	Indigenous People
OP/BP 4.36	Forests
OP/BP 8.50	Emergency/Recovery Assistance
OP/BP 8.60	Development Policy Lending
OPN 11.03	Cultural Property
OP/BP 13.05	Project Supervision
World Bank Policy on Disclosure of Information	

Forests and Sustainable Development in DRC

It is difficult to fully comprehend the present situation of the country, the people and the forest. DRC is emerging from a decade of war and civil disturbance. The conflict was dispersed, multi-sided and chaotic, often taking place in forested areas. It left nearly 4 million people dead and millions more displaced from their homes.

There are to date very few usable roads in DRC, and the population has very little or no access to modern facilities for health, education or governance. The rural population of some 40 million people has developed a great reliance on traditional and subsistence uses of the forest for survival, particularly during and after the civil conflict of the last decade.

The Pygmy people have inhabited DRC forests for millennia. Their way of life, culture, and strong attachment to these forests and the forest world, and the threats they face from

logging and exploitation of the forests by others, are described in detail in this Report and its Annex (Ethnography of the Pygmy Peoples).

Forest Concessions

DRC has a history of granting concessions to special interests for exploitation of natural resources. Timber has been no exception. The country has used forest concessions to tap forest resources for export markets and to extract needed revenues for national and provincial governments.

Most concession logging activities originally took place along the country's rivers, while remote forests were largely left untouched. In the recent years of conflict many of the deeper forest areas became part of the war theater and commercial forest activities in some areas came to a complete standstill.

During the final years of the conflict, however, huge tracts of high-quality forest land were allocated to parties with various economic and political interests. When the international community returned to DRC in 2001, there were many concession agreements, under various names, that had allegedly been granted on paper by various previous governments. According to the Bank, a good number of these agreements were speculative.

Bank Management states in its Response that it advised the Government on measures aimed at returning forest concessions to the State that had expired or were illegally held. Management notes that in 2002 (prior to the EESRSP) the Government cancelled 163 concessions, which Management claims reduced the total area under concessions from 45 million hectares to 20 million hectares. **The Panel notes the importance of the Bank's intervention, before the start of the EESRSP, to advise the Government to cancel concessions that were illegal or had expired. This was consistent with the Bank's Forest Policy.**

However, the Panel also observes that the cancellations do not mean that that the full reduction of some 25 million hectares contained forest cover. The Panel was informed, during its investigation, that substantial areas in these concessions were not covered by forests, but had been previously logged and/or were agricultural lands, swamp lands and even villages. Moreover, a substantial portion of the concession areas cancelled in 2002 that did have forest cover appears to have re-emerged as concession areas under consideration for validation in the concession conversion process supported by the EESRSP.

During its investigation, the Panel was told by many sources that new entities and operations may enter DRC forests in the post-conflict environment with an interest in large-scale logging and associated activities that, people fear, will be unsustainable and will fail to take into account the rights and interests of local people living in or near the forests, including the Pygmy peoples.

The Panel observes that one can expect strong pressures for industrial logging, because the resource is enormous and the profit potential great. **In this light, many people, including some who are critical of World Bank actions, indicated to the Panel their hope that the World Bank will stay engaged in the sector to support and help ensure that critical social and environmental needs are protected, while supporting needed economic development and progress in the country.**

Bank Engagement and Focus

The large-scale and non-transparent licensing of forest concessions in the final years of the conflict, alarmed both DRC leadership and its development partners, and was a major factor leading to the involvement of the World Bank in this sector.

Within the context of plans for post-conflict rehabilitation and development, the Bank focused attention on the forests, with particular emphasis on generating higher tax revenues through a substantial increase in the level of concessional logging. Early Bank documents highlighted the gap between actual levels and much higher potential levels of timber production, and the very high tax revenues that could be generated *“if all the concessions in the DRC were granted in conditions of the open market.”* The documents also highlighted other benefits that would arise at substantially higher levels of concession logging, and stated that *“DRC is to become the premier producer of wood in Africa.”*

A key indicator of success of the EESRSP forest element of Component 2 in the original Project documents was the number of concessions that would be transparently approved. Management acknowledged in its Response that this was not an appropriate indicator and would be removed. Nevertheless, the presence of this indicator in the Project documents reinforces the view that the mindset at Project design was to provide support for increased industrial logging as a means to increase tax and revenue generation and support local employment.

The Panel notes that there is wide agreement that industrial logging in DRC has profound social and environmental impacts. There is also widespread awareness that DRC lacks basic institutional, technical and field capacity to address social, environmental and other issues relating to logging in its forests. A 2007 Report on Forests in Post-Conflict DRC, in which several Bank staff participated, notes that *“Industrial timber production has a poor track record in Africa. Over the past 60 years, there is little evidence that it has lifted rural populations out of poverty or contributed in other meaningful and sustainable ways to local and national development.”*

The Project documents presented to the Board upon approval of the EESRSP contain virtually no information or analysis on critical social and environmental issues and risks that would inevitably arise in connection with a Bank project involved with tropical forest concession operations, especially one which was built on analysis that foresaw the value and need to increase industrial logging concession operations.

The Panel finds that the Bank's early interest in the potential tax and revenue-generating value of increased industrial logging led to a focus on developing a Project that would facilitate increased levels of industrial forest exploitation. The Panel finds that there was inadequate consideration of the many important socio-economic and environmental issues of forest use, embedded within Bank safeguard policies, and that this distorted the actual economic value of the country's forests. This, in turn, contributed to problems of Bank compliance with its social and environmental policies at the stage of Project design and appraisal.

The Legal Framework and Institutional Capacity

The EESRSP in Component 2 and the TSERO sought to support implementation of the legal framework in DRC relating to forests, including the 2002 Forest Code and the 2002 Decree creating a Moratorium on the awarding of new forest concessions. The Panel notes that developing a good quality legal framework is a high priority and is consistent with Bank policy. **Much still needs to be done as of the date of the Panel's Report to develop the regulations implementing the Forest Code.**

The Panel also notes, however, DRC lacks capacity to implement the legal framework, including its provisions designed to benefit local communities. During its investigation, the Panel saw little evidence of enhanced government capacity to enforce the law and respond to social and environmental issues posed by logging. **The Panel is concerned about the Project's potential impact in supporting actions to validate long-term concession contracts when the capacity to ensure sustainable forest concession operations does not exist.** The Panel also notes that the lack of capacity is likely to jeopardize the collection and distribution of hoped-for revenues from logging.

Social Compliance: The Pygmy People and Other Groups

Indigenous Peoples

A major claim of the Requesters is that, despite the presence of indigenous Pygmy people in the Project implementation area, the Bank did not apply OD 4.20 on Indigenous Peoples. The Requesters indicate that the Indigenous Peoples' existence, survival, cultural identity, and traditional knowledge are intimately linked to the forests. They assert that the Bank prepared terms of reference ("TORs") for a pilot zoning plan covering the axis Maringa-Lopori-Wamba, which recognized the presence of Pygmies' indigenous communities in these forests, yet ignored OD 4.20 on Indigenous Peoples.

In its Response, Management explains that the design of the Project as reviewed at concept stage did not reveal the existence of Indigenous Pygmy communities in Project-affected areas. Thus OD 4.20 was not triggered. However, Management states, in its Response to the Request for Inspection that *"in view of the likelihood that Pygmies would be present in whatever tract of forest in Equateur was selected for the pilot, OD 4.20 should have been triggered."*

OD 4.20 on Indigenous Peoples requires the Bank to ensure that indigenous people “do not suffer adverse effects during the development process, particularly from Bank-financed projects, and that they receive culturally compatible social and economic benefits.” The policy requires the Bank, in the early phases of Project preparation, to identify whether indigenous peoples are present in an area affected by a proposed project.

While no reliable census data are available, the Panel’s expert estimates that DRC is home to between 250,000 and 600,000 Pygmy people. The Panel’s expert notes that the size of the Pygmy population may be larger than claimed because of discrimination against Pygmies. The distribution of the Pygmies is described in detail in the Panel’s Report. In addition, the map produced by Management in its Response to the Request (January 2006) shows that Pygmies are dispersed over wide areas of the country, even though this map under-represents the presence of Pygmies. On the other hand, the map indicates that the concentration of Pygmy people is highest in areas where forests have been thus far least exploited, but where an increasing number of concessions have been granted.

The Project documents presented to the Board for approval of the EESRSP do not mention the Pygmy Peoples, or assess potential issues or risks to them posed by Project activities, even though the presence of Pygmy peoples in the forest areas of DRC was well known and documented. **The Panel finds that Management did not carry out appropriate screening as required in the early stage of the Project to determine the possible presence of indigenous peoples. Management failed to identify the existence of Pygmy communities in areas affected by the Project. This does not comply with OD 4.20.** This failure was detrimental to the interests of the Indigenous Peoples, and to ensuring that they and other vulnerable people would not be harmed by but rather would benefit from actions affecting the forests and forest concessions.

Even by the time of Management Response to the Request for Inspection, some Pygmy groups affected by the Project had not identified. Moreover, only limited attention was given to the fact that, as a consequence of conflict and economic breakdown, the current rural population of about 40 million people relies heavily on the forest for subsistence.

The Panel reviewed whether Pygmy People qualified as indigenous people under OD 4.20. **The Panel observes that most of the Pygmy people satisfy the criteria, with the possible exception of the language criterion.** They have a close attachment to their ancestral lands and the forest resources. They identify themselves as a distinct group or groups and follow their own long-established customs and social patterns, and have continued for centuries to follow primarily a subsistence-based way of life that is adapted to and relates to the forests around them. While speaking languages similar to those of their neighboring Bantu-or Sudanic-speaking agricultural peoples, they use different intonation in their speech, by which they are easily identified as Pygmies in a local context. **The Panel observes that Pygmies in DRC should be considered as Indigenous People under OD 4.20.**

Where the presence of indigenous people is confirmed, OD 4.20 requires a number of actions. It provides for development of a culturally appropriate Indigenous Peoples Development Plan (IPDP) “*based on full consideration of the options preferred by the indigenous people affected by the project.*” Any project “*that affects indigenous peoples and their rights to natural and economic resources*” is expected to include components or provisions that incorporate such a plan, and studies “*should make all efforts to anticipate adverse trends likely to be induced by the project and develop the means to avoid or mitigate harm*” (emphasis in original).

The Panel finds that the Bank’s failure to trigger OD 4.20 for the EESRSP’s Component 2 and to prepare an IPDP does not comply with OD 4.20 on Indigenous Peoples. As a result, potentially critical interests and needs of the indigenous Pygmy people in relation to these Project activities have been left unaddressed.

A policy-consistent IPDP would have provided the framework for improved baseline data on the Pygmy people in the DRC. It would have identified the needs of the people in terms of their livelihoods and culture and would have provided a strategy for effective local participation. It would have assessed the legal framework in relation to potential vulnerabilities and issues of importance to the Pygmy people. **The absence of an IPDP appears to have been a major contributing factor to problems that arose in the early efforts to initiate a Pilot Forest Zoning Plan (PFZP) and in the implementation of the concession review process.**

The Panel notes that it was only after this Request for Inspection that the Bank paid more attention to the plight of the Pygmy people and the many others dependent upon the forests. To its credit, Bank Management is now devoting attention to the livelihood and cultural problems faced by people living in the forest or dependent upon it.

Cultural Property

The Requesters claim that if the forest concession allocations and pilot zoning are carried out without consulting the indigenous people or taking their interests into account, it would “*result in (...) the violation of their cultural and spiritual values.*” In Response, Management states that “*The pilot zoning plan does not threaten physical cultural property (...) indigenous and other forest dwelling peoples would have been consulted had the zoning proceeded.*”

Bank Policy OPN 11.03 on Management of Cultural Property in Bank-Financed Projects adopts the United Nations definition of “cultural property”, and states that it includes “*sites having archaeological (prehistoric), paleontological, historical, religious, and unique natural values*” The policy further provides that the Bank “*will assist in the protection and enhancement of cultural properties encountered in Bank-financed projects, rather than leaving that protection to chance.*”

The forest to the Pygmy people is not merely the place where they obtain material benefits. Forest plants and animals are useful both in direct and indirect ways, for material as well as spiritual purposes. The forest provides the people with the basis of their cultural identity. Certain areas are of particular cultural and spiritual significance. The Panel notes that under OP 11.03, the Bank is required to “*assist in the protection and enhancement of cultural properties.*”

The Panel finds, however, that Project documents at design and appraisal did not identify the cultural property and spiritual value of forest areas to the Pygmy peoples or the appropriate measures to avoid impacts to areas that might fall within the definition of cultural property under Bank policy. This did not comply with OP 11.03 on Cultural Property. For reasons outlined in the present Report, it was foreseeable that the zoning proposal and the concession conversion process could potentially harm these areas, even if such harm was not intended.

The Panel considers that it is not sufficient under the relevant policies to defer consideration of these issues and impacts, and consultations with local indigenous people more generally, to later stages of Project implementation, e.g., at such time that the zoning proposal is implemented, and/or after the conversion of concessions during the development of concession management plans. **While consultation and appropriate action at these later stages would still be important, a safeguard postponed in the design and appraisal stages may become a safeguard denied.**

Poverty Reduction

The Requesters claim that the Project would not alleviate the poverty of the people of DRC. Instead, they claim that the Project’s “*negative impacts would further impoverish the poorest and most marginalized segments of the Congolese population and jeopardize all prospects for sustainable development.*”

In its Response, Management indicates that the impacts of forest reform on poverty alleviation will be brought about through innovations such as (1) economic benefits from logging concessions and (2) community forest programs. Management notes that the Bank is conducting a Poverty and Social Impact Analysis (PSIA) “*on the impact of forest reforms on poverty alleviation (forest revenue shares to local entities, cahiers des charges, community forests)*” and that fieldwork and local consultation are being carried out in partnerships with local NGOs.

OD 4.15 on Poverty Reduction states that sustainable poverty reduction is the Bank’s overarching objective, and summarizes Bank procedures and guidelines for operational work on poverty reduction.

Management states that institutional reforms through the Project will contribute to poverty reduction and rural development. The Panel observes, however, that there have often been cases where local people have not really benefited from logging industries, except for a short term benefit limited to a small number of people. Instead, as seen in the

case of Cameroon (described in the Report), local people, in particular Pygmy peoples, are suffering from increased poverty. **As noted previously, the 2007 Report on Forests in Post- Conflict DRC also comments that industrial logging has a poor track record in Africa, and that there is little evidence that it has lifted people out of poverty.**

In addition, during its field visit the Panel heard from local people that the promised sharing of the revenue of timber production with local communities in DRC has not been done. This likely is linked to the continuing lack of capacity to enforce the legal framework. **Unless strong measures are taken to ensure that the benefits reach local people, the concession system will not make the expected contribution to poverty alleviation of the local people.**

The Panel also observes that the economic value from timber production is only a minor part of the total economic value produced from the forest. The market value of timber production, both formal and informal, is estimated at US\$160 million per annum, whereas the total economic value of the resources used by local people, such as firewood, bushmeat, forest fruit, honey, plant medicines and other non-timber forest products, amounts to over US\$ 2 billion per annum.

The Panel notes that if access to these non-timber resources were to be considerably restricted by timber operations, there would be no way of compensating for the loss. The Panel's expert further notes that forest-living people want an ample subsistence base, which can also provide means of fulfilling their social and cultural needs, rather than short-term economic benefits from industrial logging and related activities, which may risk their subsistence base in the longer term.

The Panel observes that the establishment of "community forests" could have significant positive impacts, if they are designed to take into account the needs of the local people and to incorporate lessons learned from problems in other settings (e.g., Cameroon). Local people expressed fear that community forests would be available only on relatively small land areas left over from large-scale concession operations.

The Panel finds that there is a possibility that the Project, in its present form, may not contribute significantly to alleviating poverty of the forest people, because of the risks mentioned above, and may instead contribute to adverse impacts on poverty to the extent that logging practices are unsustainable. The Panel is especially concerned in this regard about the delay in developing implementing regulations concerning customary forest rights, including for "community forests," and in supporting small-scale forest-based enterprise.

Environmental Compliance

Environmental Assessment

Under OP 4.01 the Bank requires environmental assessments of projects proposed for Bank financing *"to help ensure that they are environmentally sound and sustainable."*

The Policy provides that the EA is a process “*whose breadth, depth and type of analysis depend upon the nature, scale and potential environmental impact of the proposed project.*” A proposed project is classified as Category A “*if it is likely to have significant adverse environmental impacts that are sensitive, diverse or unprecedented.*”

The Requesters claim that the EESRSP was erroneously classified as Category B under OP 4.01 on EA. Because of the sensitive impacts of the policies to be implemented under the Project and the existence of indigenous communities, the Requesters contend that the Project (Component 2) should have been classified as Category A. They note that a zoning plan would have significant environmental and social impacts.

Management asserts that the EESRSP was correctly classified as Category B. Management notes that “[*t*]echnical assistance operations for institutional strengthening are usually classified as Category C. Where such operations result in designs or plans that when implemented may have potential impacts, they may be given a classification higher than C, normally Category B.” According to Management, the preparation of a PFZP and the existence of indigenous communities do not *per se* require a Project to be placed in Category A.

The Panel notes that a “Category B” EA originally was prepared under the Project. Documents presented to the Board at the time of Project approval state that the Project is classified as Category B “*because no activity funded under the Project is expected to have a significant negative environmental or social impact.*”

This “Category B” EA, however, covered the road-construction elements contained in Component 3 of the Project. When the Project team later upgraded this EA to Category A, it still applied only to Component 3. **Under the Project, there was no EA analysis ever completed (whether of Category A, B or C) of the pilot zoning and logging concession elements contained in Component 2 of the Project. The Panel finds that the failure to prepare an environmental assessment for Component 2 of the Project does not comply with OP 4.01**

The Panel considered what type of EA analysis should have been prepared under Bank Policy for each of these two elements in Component 2 of the EESRSP: the pilot zoning element and the logging concession element.

(i) Assessment of the Zoning Element.

The Panel notes that at the time the EA was completed, the zoning element was an integral part of Component 2 of the Project. **The Panel considers that forest land use planning should have been anticipated to have a potentially fundamental impact on land, forests, and people.** Such a process involves, among other things, the physical allocation of forest areas for different purposes. The potential impacts could be diverse and sensitive, meaning, again according to OP 4.01, that they may be irreversible and raise issues covered by OP 4.04 *Natural Habitats* and OP 4.10 *Indigenous People*.

The extent and nature of these impacts would likely depend to a very large degree on how the land use planning was done - - which is one of the reasons that a proper environmental assessment and analysis is so important. In addition, the basic concept of a “pilot” approach suggests setting the foundation, principles and methodologies for an even broader scale initiative on land use planning throughout the DRC.

The Panel finds that the potential impacts of land use planning in DRC should have been analyzed as part of a “Category A” EA. The failure to develop an environmental (and social) assessment which addressed these issues, at the time when the forest zoning plan was part of the Project, does not comply with OP 4.01. Dropping the zoning element from the Project has had important consequences, as detailed in the Panel’s report. While Requesters expressed concerns about the zoning process, they also have strongly indicated that an appropriate land use planning process is needed to ensure that their rights and interests in the forest are recognized and protected.

(ii) The Logging-Concession Review Process

As noted above, Component 2 of the EESRSP also included a process to review the validity of logging contracts in the DRC, and convert old forest contracts, covering millions of hectares, into the new concession regime.

A Ministerial Decree in October 2005 established the process to review forest concessions. As described in detail in the Report, the process, consists of several steps that will eventually lead to recommendations on whether or not individual logging concession arrangements should be validated as legal and converted into 25 year titles to engage in industrial logging. After the concession review process has been completed, the Moratorium can be lifted and new concessions allocated. The Panel notes that all parties to the forest concession review process associate the Bank intimately with it.

The Panel finds that it should have been clear at Project design that the Project’s involvement in the review of logging concessions carried very significant environmental and social implications. The existing logging concessions cover vast stretches of forest, including many areas that are home to the Pygmy peoples. **The forests also have world-class biodiversity value and include large areas of habitat of endangered species of fauna, such as the bonobo. The Panel finds that the failure to prepare an EA for this Component does not comply with OP 4.01.**

The Panel notes, in this regard, a distinction suggested by Management between the direct environmental impacts of an “investment” activity versus the presumably more indirect impacts of a “technical assistance” or “policy and institutional reform” activity. **The Panel observes that the financing of policy and institutional reforms in a sensitive sector like the forests of DRC, and related advice and technical assistance, can lead to highly significant environmental and social impacts, even if it does not involve direct financing of the mechanical and organizational tools for industrial logging.**

For such activities, an EA promotes informed decision-making based on consultation with affected people, consideration of potential impacts and alternatives to address the difficult problems in relation to the areas under forest concessions, and an examination of strategic parameters and elements of an overall policy reform. The failure to carry out this analysis may mean that even the best-intentioned “reform” initiatives can fall out of line with Bank social and environmental policy objectives, and even lay the basis for significant harms.

If the Bank had done an EA, it would have identified relevant DRC obligations under at least two international environmental agreements: the Convention for the Protection of the World Cultural and Natural Heritage (World Heritage Convention) and the Convention on the International Trade in Endangered Species of Flora and Fauna (CITES). DRC is party to both. Five DRC natural sites are included on the World Heritage List, all on the Endangered List. One of the large sites appears to be adjacent to two forest concession areas subject to review in the conversion process and close to other areas under review. The World Heritage site is also recognized as a protected area under national law. EA 4.01 provides that the Environmental Assessment needs to take into account the country’s “*obligations, pertaining to the project activities, under relevant international environmental treaties and agreements*” and states that “*the Bank does not finance project activities that would contravene such country obligations, as identified in an EA.*”

The Panel finds that a “Category A” EA would have been the appropriate, policy-consistent tool to assess these issues and to comply with OP 4.01. Even if the project were classified as Category B, OP 4.01 requires an environmental (and social) assessment for the forest related activities.

(iii) Delay in Release of the EA.

With respect to the concerns raised by Requesters about the delay in releasing the EA, the Panel notes the difficulties of working in an emergency and post-conflict environment. In this regard, the Panel notes Management’s statement “*OP 4.01 thus provides some latitude for completion and disclosure of the safeguards instruments required for a project prepared under OP 8.50 and has been interpreted in this case to allow for EA preparation during its implementation. This is typically a period of between 6 and 12 months after project effectiveness. According to the legal agreement the EA and ESMF were to be completed 12 months after the date of effectiveness.*” In the present case, however, the preparation and public distribution of the EA was finalized more than 24 months after the effectiveness of the Project, and the EA ultimately prepared did not address the forest-related elements in Component 2, as described above. **The Panel finds that this does not comply with OP 4.01.**

Forest Policy

The Requesters assert that Bank activities pertaining to the forestry sector in DRC do not comply with Bank OP 4.36 on Forests. They claim that the activities are being implemented without adequate consultation and do not respond to indigenous peoples' concerns or to the requirements for sustainable management. They fear that the EESRSP will lead to the revival of the logging industry without mechanisms for effective control or transparency, and that the Bank supports the idea that "*development will come from industrial logging.*" The Requesters note that, according to the Bank's own estimates, the policies supported by the Bank will ensure 60 million hectares, or three-quarters of the tropical forests, in DRC are available for timber production. The Requesters claim that if zoning of the forests were to be completed and new concessions allocated without consulting affected people and incorporating their interests, it would violate various of their rights.

Management considers the Pilot Forest Zoning Plan component to be an important element of its strategy. However, Management underscores that the PFZP was dropped from the EESRSP in July 2005. Concerning the Forest Code, Management asserts that it introduced innovations such as: traditional users' rights, including those of indigenous peoples; contributions to rural development; enhancement of the rights of local communities; and transparent allocation of future logging rights. Management is mainly concerned with the Government's capacity to develop and enforce the implementing regulations and states that many of these regulations are still lacking.

The 2002 Operational Policy on Forests (OP 4.36) states that the "*Bank does not finance projects that, in its opinion, would involve significant conversion or degradation of critical forest areas or related critical natural habitats.*" The term "*critical natural habitats*" includes existing protected areas and areas initially recognized as protected by traditional local communities (e.g., sacred groves).

Large scale, generalized maps indicate that existing forest harvesting concessions do not overlap with existing national protected areas, although. As noted above, one of the World Heritage Sites appears to be adjacent to two concession areas and close to others. In addition, **the Panel heard numerous statements by indigenous communities that existing operating concessions were felling trees and building roads in sacred groves (local community recognized protected areas).** From the Panel's observations of operating concessions, it appears that they may often not respect local community sacred groves.

Given the focus of the Project to improve institutional and policy capacity, the Bank could consider that it is not financing a Project that involves significant conversion of critical forest areas or natural habitats and that it is thus in compliance with OP 4.36. The Panel agrees that this view has merit to date, but notes that there are important factors that could affect and alter this assessment with respect to the outcome of this Project, even in the short run. Project design put a strong focus on harvesting and the revenue it generates. The question of whether and how the Project

might contribute to impacts on critical forest areas will depend, *inter alia*, on how the concession review process is implemented and the eventual related questions of land use and zoning.

Natural Habitats Policy

The Natural Habitats Policy (OP 4.04) of 2001 contains requirements similar to OP 4.36 on Forests, including a provision that the Bank “*does not support projects that, in the Bank’s opinion, involve the significant conversion or degradation of critical natural habitats.*” For reasons similar to those described above, the Panel notes that the Bank may have judged that it is not financing such a Project in the present case, but there are some potential considerations to the contrary, and much will depend on how key elements of the Project are implemented in the future.

OP 4.04 also provides that the Bank does not support projects involving significant conversion of natural habitats (as distinguished from critical natural habitats) unless a comprehensive analysis demonstrates that the overall benefits from the project substantially outweigh the environmental costs. **The Panel notes that no such comprehensive analysis has been completed even though (as noted above) the Project had the potential to affect how logging operations take place in areas of very significant natural habitat. The potential risks in the Project are not addressed.**

The Natural Habitat policy also provides that the Bank expects the borrower to “*take into account the views, roles, and rights of groups (...) affected by Bank-financed projects involving natural habitats, and to involve such people in planning, designing, implementing, monitoring and evaluating such projects.*” **Until the time of the Request, however, the Panel found very little evidence of attempts to take into account or involve the local communities likely to be affected by the Project. This does not comply with OP 4.04.**

Development Policy Loans and Forest Components

The EESRSP was a traditional project loan. However, the subsequent TSERO is a Development Policy Loan (DPL), a component of which relates to the forest issues at the core of Component 2 of the EESRSP. Since the TSERO is a DPL, it is not subject to safeguard policies in the same way as investment projects. DPLs are “*rapidly disbursing policy-based financing*” instruments to support “*a country’s economic and sectoral policies and institutions.*” Financing is usually done in a single-tranche disbursement. The TSERO loan was disbursed in a single-tranche of \$90 million on December 29, 2005. Policy-based lending comprised about 30 percent of the Bank’s lending for FY 03-FY06.

OP/BP 8.60 on Development Policy Lending, enacted in August 2004, replaced OD 8.60 on Adjustment Lending. OP 8.60 requires the Bank to determine “*whether specific country policies supported by the operation are likely to cause significant effects on the country’s environment, forests, and other natural resources.*” If the determination is

made that there may be a significant impact, country level diagnostic work, particularly Country Environmental Assessments (CEAs) and Strategic Environmental Assessments (SEAs) are indicated as appropriate analytical instruments for assessing the effects of DPLs on the environment. OP 8.60 also contains guidance regarding the social impact of DPLs.

The Panel notes that the Bank determined that the TSERO is not likely to cause significant adverse environmental effects. **The Program Document of the TSERO initially relied on the analysis under EESRSP in making that determination, but the EA for EESRSP was not available until February 2006, after the determination had to be made, and even then the EA did not address the forest-related activities under the Project, i.e. Component 2.**

Prior to the Board's discussion of the TSERO on December 8, 2005, Management issued a corrigendum on December 7, 2005 to revise statements in the Program Document on environmental impacts of the forest and mining sector measures. The corrected statement includes Bank staff's determination that the measures under TSERO are not likely to cause significant effects on the country's environment, forests and other natural resources, or on poor people and vulnerable groups (including indigenous people). The statement also indicates that the assessment is consistent with a "*series of analyses and consultations held within the context of the preparation of a forest sector review.*" At that time, neither a formal Country Environmental Assessment (CEA) nor a Sector Environmental Assessment (SEA) had been prepared.

The main argument for "no significant effects" of the operation is that the TSERO required as conditions an extension of the Moratorium on new concessions and a legal review of the existing concessions. However, the Panel notes that forest concessions as practiced in DRC may be detrimental to indigenous people, to other local communities, and to sensitive forest environments. Moreover, the Panel finds that the system for determining whether there will be significant effects on the environment and natural resources is flawed. Little time is available for the initial assessment, and it would be difficult to reverse an initial assessment that there are no significant effects. The CEA and SEA for assessing effects may not have been completed, as in the case of the TSERO in DRC.

The TSERO is not subject to safeguard policies because it is a DPL instrument. However it was concerned with related actions that were being funded by the EESRSP which was subject to those policies. Furthermore, given significant social or environmental impacts in the DPL, analysis and assessment in the Program Document is required. OP 8.60 emphasizes the need to consider "the borrower's systems for reducing such adverse effects." The Panel observes that a fair description of that would have concluded that the systems were non-existent or extremely debilitated and ineffective. That might have led to some difficult discussions in the approval process. **The Panel finds that the Bank's determination that there were no significant environmental or social effects of the forest Component of the TSERO is not consistent with the objective of Bank**

policies, especially when the Component essentially carries forward Component 2 of the earlier investment project, which was subject to the full Bank safeguard policies.

The Panel acknowledges that analysis of environmental and social effects could have taken time, but the assessment could have proceeded in tandem with any critical actions. The Panel does not agree that systematic assessment would have caused delays that, in turn, would have caused greater social and environmental harm in the field.

The chaotic situation in the DRC forest sector merited and still merits the Bank's committed engagement. The Panel also recognizes that the DPL can be attractive because it engages the Finance Ministry. **In light of the issues raised above, however, the Panel notes that it is questionable whether the choice of a DPL under its present guidelines was the right instrument for achieving the agreed-upon goals of reforming this sector with its many social and environmental complexities.**

To better understand the choice of this instrument for the forest Component of the TSERO, the Panel reviewed past practice with DPLs. The Panel notes that there appears to be a trend in the Bank that DPLs are very frequently determined to have no significant environmental and social impacts. Various Bank documents argue that their effects, if any, on the environment will be "*felt only indirectly*." The best practice guidance describing incorporation of environmental concerns into development policy lending reaches the same conclusion on the basis that the majority of DPLs are solely focused on areas such as the public sector, financial, health, and education sectors, which are not directly linked to the environment. This trend is evident in the 27 DPLs which include forest sector reform, most of which have been in Africa. This is rather surprising because the forest sector has long been identified as one of the most likely sectors to cause environmental impact, and the need for careful analysis in such sectors appears to be well understood.

The Panel notes that up-front and accurate assessment of environmental and social impacts is important for DPLs, as DPLs are usually single-tranche operations and any meaningful supervision for such DPLs takes place in the preparation phase for future DPLs, if any. Only with an accurate and clear assessment of environmental impact, could Management include an environmental conditionality among the limited number of conditions for a single-tranche DPL. **The Panel finds that there are potential risks of including components such as forests in DPLs, which lack safeguards. The Panel notes that formerly such forest components were generally handled as projects, subject to safeguard policies. The Panel observes that the use of DPLs for other natural resource components could raise similar issue.**

The Panel recognizes that the DPL is an instrument that can engage high-level attention of the Finance or other influential Ministry, which in the specific country context can be important. The Panel finds that in using a DPL, it is critical that the process for assessing whether there are significant environmental and social effects be rigorous and thorough and that there be a willingness to undertake the prudent

assessments in order to avoid subsequent unforeseen impacts and unwelcome developments.

Project Implementation

During Project implementation, important issues have arisen relating to, *inter alia*, the Moratorium, the concession conversion process under the EESRSP, the decision to drop the pilot zoning component from the Project, and related issues of Project supervision.

Post-Moratorium Concessions and “Swaps”

During its investigation, the Panel heard repeatedly that the 2002 Moratorium on the allocation of new forest concessions has been “bypassed” on a large scale. Reportedly, new concessions were granted by certain Government authorities and “swaps” took place in which logging companies exchanged forest areas that they deemed unproductive or that had been already logged for new, higher quality forest areas.

The 2007 report *Forests in Post-Conflict DRC*, referred to earlier, confirms these problems. It indicates that 32 contracts covering 4.6 million hectares were reported to have been awarded in 2003, and similar transactions took place in 2004 and 2005. Furthermore, some of the contracts cancelled in 2002 were rehabilitated in 2004. These transactions affect an estimated 15 million hectares and involve areas where Pygmies and other vulnerable peoples live. Reportedly a third of the contracts are inside areas identified as priority landscapes for conservation. The Panel observes that Bank Management in its Implementation Completion and Results Report on the TSERO to the Bank’s Board of Executive Directors, dated May 1, 2007, characterizes these developments as follows: “Between 2002 and 2005, this moratorium has been largely respected, although some violations are reported.”

The Panel recognizes the difficulties of working in a post-conflict environment. The Bank, in Aide-Memoires through July 2005, recognized that there were **new contracts for concessions in violation of the Moratorium, many of which were “swaps” of old contracts for new ones**, and indicated that it did not believe the contracts conformed to the new Forest Code. It requested the Government to take certain steps to address the problem. **The Panel finds that the Bank’s recognition of this problem and its response in the Aide-Memoires through July 2005 were consistent with Bank policy on supervision. However, the Panel also finds that Management apparently did not make timely follow up efforts at a sufficiently high level to ensure necessary action in response to its findings. The Panel also notes that none of the supervision documents after July 2005 refer to the “swaps” or potential violations of the Moratorium.**

As described above, the Bank played a central role in initiating the current concession review process, and is directly involved in supporting and supervising its implementation. The post-Moratorium swaps and allocations of new concessions raise significant concerns about the entire concession conversion process.

The Concession Conversion Process

Presidential Decree 50/116 of October 24, 2005 sets forth the process and the criteria for the legal review by which former logging titles are to be converted into forest concessions, valid for 25 years. Those who hold old forest concession titles must apply for conversion to the Ministry in charge of Forests. A new Inter-Ministerial Commission will review the applications. There are 156 concessions covering about 20 million hectares under consideration in this process.

The conversion process takes place in several stages. Initially, a Technical Working Group, assisted by an Independent Observer, conducts a technical review and verification of information relating to each concession, including whether it meets the legal criteria. These criteria include whether the current title is legally valid, whether forest taxes have been paid in full, and whether a sawmill exists in the concession area. The report of the Technical Working Group, with findings as to which titles satisfy the criteria, and the interim report of the Independent Observer are sent to the Inter-Ministerial Commission. The Inter-Ministerial Commission then is to recommend whether or not individual logging concession arrangements should be validated as legal and converted into long-term 25 year titles to engage in industrial logging. These recommendations go to the Minister in charge of Forests for formalization, and then transmission to the applicants.

If a concession is converted, the concessionaire has four years to prepare a forest management plan. However, it can continue logging operations during this period. All concessions that apply for conversion can continue operations until they are cancelled. The Moratorium on new concessions is to be lifted by Presidential Decree after the publication of the results of the concession conversion process, including the cancellation of non-converted concessions, the adoption of auction procedures, and adoption of a three year plan for future concessions developed through a participatory process.

While the Technical Working Group has reportedly completed its review and recommendations, the Inter-Ministerial Commission has not become operational. As of August 2007, a new Decree specifying the names of the current members of the Commission still needs to be approved.

The Panel notes the potential importance of the concession conversion process. It appreciates the role of the Technical Working Group and the assessments provided by the Independent Observer of problems that have occurred during this process. **The Panel recognizes the Bank's efforts to establish the role for such an Observer, which the Panel finds is consistent with Bank policy. The Panel also finds, however, that the concession conversion process set forth in the October 2005 Presidential decree has been beset by considerable and significant problems.** These are noted below. Some of these shortcomings may be due to an overly optimistic Project design that did not properly assess the risks inherent in the chosen approach. Others may be partly attributed to weakness in the supervision process which, of course, was severely influenced by the post conflict situation and the difficulties of dealing with the Borrower's institutions in a fragile political environment.

(i) Treatment of Existing Concessions

The first stage of the concession conversion process is to assess and check the validity of the existing logging contracts. During this stage, it could be envisioned that contracts that on their face do not comply with the criteria could be screened out of the process and not validated.

As described above, many large concessions were either allocated or swapped for after the 2002 Moratorium. Such post-Moratorium concessions, involving millions of hectares of DRC forests, are listed among the concessions being considered for approval in the concession conversion process. **The Panel has been informed that an initial screening-out of such concessions that would appear to be invalid on their face will not, however, be done. If this continues to be so, it means that despite the review and recommendation of the Technical Working Group, the Inter-Ministerial Commission might decide to recommend such concessions for approval.**

(ii) Time Constraints

The conversion process follows a rather short time frame, which does not leave much time for field verifications and consultation. **Experts involved in the technical report indicated that they were not given nearly enough time for these activities.**

One of the criteria for validation, for example, is that the concession company has been “*respecting the limits of the concession.*” This is difficult to determine in a few months for 156 concessions in the vast area of DRC, with the considerable transport and information gathering difficulties.

One of the objectives of the EESRSP was that through the concession conversion process, adjustments would be made as appropriate to concession boundaries. These adjustments could be of great importance to local and indigenous peoples living in or near concession areas, as well as for biodiversity and environmental conservation. Consultations with them will be difficult in the compressed time period allowed.

The Panel notes that there are villages and camps, roads, fields, fallow lands found in many of the concession areas under legal review. However, in most of these concessions, neither the mapping of customary use of forests nor the compensation for the loss of such rights has been made. In some concessions, the usage rights of Indigenous People are not recognized at all, and they are obliged to pay 25-50% of the products to the Bantu farmers and concession owners as “entry fee” to the forest.

During its field investigation, the Panel heard about social conflicts regarding the logging concessions. For example, Pygmy people at one village told the Panel about conflicts with the logging company and with the Bantu (Baoto) farmers. They complained that consultation about the logging concessions and negotiations of the ‘*cahier de charge*’

(social contracts with communities) were made only between the logging company and Bantu farmers.

The Batwa people from another village and its neighboring areas also reported to the Panel that the logging company had been cutting their important medicinal and caterpillar-bearing trees, destroying their fields of crops and sacred sites, building roads penetrating their settlements and field sites, without any consultation or compensation.

The Panel is concerned that such claims and conflicts could not be properly assessed during the short time given for field verification, and reflected in the Report submitted for review by the Inter-Ministerial Commission.

(iii) Race to Extract and Swap for Higher Value Forest Areas

The Panel further notes that the initiation of this process may have inadvertently created incentives for actions that increased potential impacts in the forests in some areas. In particular, the process may have created an incentive for the “swaps” by companies of “unproductive” or already logged area in exchange for higher quality forest areas, noted above, so that these could be considered for conversion to legal titles in the review process. There is also substantial anecdotal information to suggest that the process has contributed to accelerated logging within some existing concessions, in advance of determinations as to their legality.

Announcing a future deadline after which some claimants will no longer be able to exploit the resource encourages a race by those who may not be able to log in the future to exploit as much as possible before the deadline, although the lack of adequate transport capacity for the logs allegedly limits this. The Panel observes that it is important to address this problem, and that there is a risk of irreversible damage to the forests and the local communities which depend on the forests.

(iv) Lack of Meaningful Participation by Pygmy Peoples and Local Communities

The Panel examined the extent to which locally-affected people have been involved in this conversion process. The Inter-Ministerial Commission includes two permanent representatives of national nongovernmental organizations (NGOs). The October 2005 Decree setting forth the composition of the Inter-Ministerial commission did not refer explicitly to indigenous peoples representation. **After the November 2006 Decree, the Commission will now include a local representative of indigenous people for each concession under review, if the concession is in proximity to indigenous people. The Panel also understands that under new draft legislation a permanent representative and alternate representative of indigenous peoples’ organizations may be included in the Commission.** The Panel heard testimony that these measures are important symbolically as recognition of the status and rights of these people in such a process. **The Panel commends the Bank for its efforts to encourage participation of indigenous people in the process and notes that this is consistent with Bank policy.**

The Panel also notes, however, that there are significant issues and problems regarding how to choose a local representative from indigenous people who have been living in a number of scattered groups without much contact with one another and with little experience with a political system of representation. A recent progress report by the Independent Observer describes current difficulties in regard to the process of selecting such representatives, including inadequate funding.

The Panel is also concerned that these approaches may produce consultation processes that are inconsistent with basic Bank policy objectives and requirements described in other sections of this report. The Panel is especially concerned that those who are selected may find themselves in a very weak situation in the Commission meeting. The Panel understands that the local representatives will not have access to the Technical Working Group Report and to the concession file under review until their arrival in Kinshasa the previous day, or even the same day, and will be expected to participate in the consideration and review of a rather technical file with other powerful permanent Commission members, who are familiar with the process and may also have had additional opportunities to become familiar with the file. **Unless these concerns are addressed, the Panel is concerned that the inclusion of a local indigenous representative may legitimize a process under which the more powerful members of the commission would take decisions that could run contrary to the interests of locally-affected people.** There is the potential that individual representatives in turn could be blamed by their own communities for participating in such a process. **In light of these problems, the addition of a permanent representative and an alternate representative of indigenous peoples to the Inter-Ministerial Commission could be regarded as particularly positive.**

The Panel also heard concerns expressed regarding the extent to which this decision-making process will operate transparently. The Panel was informed that the Report prepared by the Technical Working Group and the Report of the Independent Observer will not be made public before the Commission's recommendations are made. It is not clear whether the information and minutes of the meeting will be made publicly available at a later time.

(v) Asymmetrical Rights to Contest Concession Decisions

The Panel notes that the October 2005 Decree reserves a right to logging companies to contest the decisions notified by the Minister in charge of forests. **It is not apparent, however, that communities have parallel means of recourse to contest decisions.** The conversion process outlined in the October 2005 Presidential decree does not have an explicit provision to enjoin logging operations of cancelled contracts during an appeal. Civil society has expressed concerns that cancelled logging operations might continue while appeals are pending, which could be a long time.

(vi) Additional Observations

While the legal review and conversion processes may be flawed and involve various problems, the Panel finds that it contains elements that are important in Bank policies. The process involves elements of information disclosure, consultation, implementation of a political system of representation, and may stimulate activities of participatory mapping, sensitization and capacity building of the indigenous people.

The Panel wishes to underline the extraordinarily high stakes involved in the forest concession conversion process, and in ensuring that the relevant legal requirements and criteria are properly applied to concessions under consideration - - including those granted (or “swapped”) after the Moratorium on new concessions in May 2002. The Bank has been a very active proponent of and advisor on this legal conversion process, and will thus face close scrutiny with respect to how the process unfolds and the final results. Its supervision and follow-up to any problems that arise in this process is of great significance to its work in the DRC forest sector and to compliance with Bank policies.

The Panel also wishes to note the extremely difficult institutional setting in which the process takes place. The Panel has been repeatedly informed that there is weak capacity at the national level to implement the reforms and that at the provincial and local levels, the institutional capacity is either minimal or non-existent. The Panel heard testimony and saw visual evidence that those with responsibilities for implementing and enforcing regulatory measures on logging lack the resources and capacity to do so effectively. **The Panel notes the critical importance of building capacity within the vast tropical forest area to monitor and implement forest reform measures.**

In addition, the Panel notes that while some concessions are said to be in the hands of companies known for following laws in other countries, other companies may be different. The Panel has received disturbing reports and information about abuses committed against local communities and forests in certain concession areas.

Zoning and Land Use

As previously described, the proposed forest zoning plan (referred to as the PFZP in Management Response) was an important initial element of the EESRSP. Many of its elements met the highest technical standards. However the PFZP became a major issue in the Request because the Requesters claimed that it did not sufficiently include the stakeholders (notably the Pygmies) for whom the results of zoning decisions were extremely important.

Management dropped the pilot zoning component from the Project around the time that these concerns were being raised. Although the rationale for this decision was not fully transparent at the time, the Panel observes that the proposed pilot zoning did not yet comply with applicable Bank policies, namely, OP 4.01 on environmental assessment and OP 4.20 on indigenous peoples.

Dropping the pilot zoning element instead of bringing it into compliance with Bank policies and procedures delayed the gathering of important information, and may not have furthered the objectives of the Bank's overall strategy in the DRC forest sector. The zoning proposal originally included in the Project, as approved by the Board, envisioned addressing land tenure rights of stakeholders.

The Panel notes that, in this context, the forest concession conversion process serves as *de facto* zoning under which the legal and economic interests of the logging companies will be considered for long-term recognition, while consideration and recognition of the land tenure and livelihood rights of the people living in the forests or dependent upon them will be delayed.

The Requesters worry about the fate of their forest. They state that *“we fear, therefore, that the moratorium will be lifted once this conversion operation has been completed, and result, in the short term, in the granting of new forest concessions, even though the zoning plan would not yet have been prepared.”*

The Panel found during its investigation that participatory mapping of the indigenous Pygmy peoples customary forest uses has already been attempted in some areas of Oriental and Equateur Provinces with support of NGOs. The Panel notes the recommendation in the Forests in Post-Conflict DRC report that local communities' uses be mapped and their rights secured. Many people during the Panel's investigation highlighted the importance of participatory measures to ensure that their rights and interests are properly identified and addressed.

Implementation Decrees under the Forest Code

EESRSP Project documents indicate that the timely adoption of decrees to implement the Forest Code was an important element of the Bank's strategy to address forest-sector reform. This same element was included as one of five indicators of success for the TSERO.

Some thirty implementation decrees are to be issued in due course. Most of the Decrees adopted to date relate to forest concessions. The Panel was informed that as of the date of this Report, implementing decrees on the issue of community forests, sustainable management plans, as well as many other key decrees have not yet been adopted.

Various reasons have been cited for this delay, including that the decree on community forests requires innovation, studies and other preparatory work. **The Panel recognizes that basic legal and administrative steps may take longer than usual in the context of difficulties facing the DRC. However, the delay in preparing the decrees on community rights has given the impression that Bank support has been biased toward institutional reforms for reopening logging operations in DRC, while lacking a holistic vision.**

The Panel has been informed that two draft decrees related to community forests were prepared in March 2007, and that they are now being revised. Concerns have been expressed that the limit on the total area available for each community forest is very restrictive and that the decrees do not appropriately reflect the structures and interest of communities on the ground. The Panel underscores the provisions for involving affected local communities and indigenous peoples in OD 4.20 and other Bank policies in this process.

The Panel learned during its investigation that the Bank and others are interested in developing new approaches and mechanisms to promote conservation and sustainable use of the forest areas in DRC. The Panel also notes recent efforts by Management to recognize the needs and interests of local communities. **The Panel recognizes the important recent Bank effort to provide for monitoring of illegal logging, and the DRC's decision to have a well-known international NGO study how to provide an independent monitoring capability for illegal logging.** These efforts are consistent with Bank policy.

Concluding Observations

The Panel recognizes that the tropical forests in the DRC are a critical resource for the country. They are both a source of revenue and a home and source of livelihood for the many indigenous and other local people who inhabit the forests. The people in DRC have a critical interest in ensuring that all citizens benefit from the forests.. The forests in DRC are also an invaluable resource for their biodiversity and potential contribution to mitigating climate change.

In its investigation, the Panel noted that when the Bank initially became engaged in the DRC and decided to support work in the forest sector, it provided estimates of export revenue from logging concession that turned out to be much too high. This had a significant effect, for it encouraged a focus on reform of the forest concession system at the expense of pursuing sustainable use of forests, the potential for community forests, and conservation. For the most part, foreign companies or local companies controlled by foreigners have been the beneficiaries of this focus. Those whose concessions are confirmed in the concession review process will be the beneficiaries of the new 25 year leases.

The Panel found that the Bank underestimated the social and environmental implications of the forest-related components of the EESRSP, and failed to meet core Bank safeguard policy requirements relating to indigenous peoples and environmental assessment, among others. The Panel was particularly concerned that the Project documents presented at the time of Board approval failed even to identify the existence of the Pygmy peoples in the forests of the DRC where logging concessions and (originally) land use planning - - influenced or supported by the Project - - would be considered for approval. This led to a series of significant shortcomings in Project design that may yet contribute to serious harms to these people and the forests in which they live. The Panel also noted a

significant failure in assessing and planning to prevent or mitigate potential impacts on the rich and unique biodiversity present in DRC forests.

The Panel is concerned that the benefits from the industrial harvesting of trees, which is at the core of the policy and administrative reform, are not going to the people living in and around the forest. The Panel found evidence that the promised benefits to the communities from the concessions, such as schools, clinics, and other facilities, have not materialized. This is not consistent with the objective of the Bank's policy of poverty reduction.

The forests are an enormously important and valuable resource for the Congolese people. The Panel notes that there is a real danger that the highest quality forests will be depleted and valuable fauna exhausted with little benefit to local populations, or even to the general population in the country. People may lose access to forests and their products, on which they depend. This issue affects not only those living today, but the welfare of future generations. In this connection, **the Panel notes the potential importance of developing a more balanced approach by emphasizing appropriate models of community forests as well as other actions to support community participation, land tenure and use rights in the forests and by linking to the recently proposed Bank administered fund to pilot instruments for reducing carbon emissions from deforestation and forest degradation.**

The Panel observes that the Bank dropped its initial component on land use zoning in favor of a priority to concession reform and thereafter possible development of land use zoning. The Panel finds that as a result of the forest concession reform effort, which results in 25 year titles to extract timber, the Bank will in fact have supported de facto land use zoning. Any zoning that takes place thereafter will be against the backdrop of the confirmed concession titles, which may severely limit application of models for alternative uses of DRC forests.

The Panel also expresses its concern about the instruments of a Moratorium on new concessions combined with a reform process for confirming or canceling concessions to take place at a future unspecified date. **In the absence of institutional capacity to implement and enforce a Moratorium or to ensure prompt review of the concessions, there is the danger that some of those exploiting the forests will expand their concessions, swap some areas for others with higher value forests, or obtain new concessions and harvest as rapidly as possible.** This is particularly troublesome, where the existing legal and institutional structure did not provide an effective way to hold title to tropical forest areas for conservation purposes.

The Panel understands that the Bank has been intent on avoiding the holding of concessions for purposes of speculation. Consistently with the existing Decrees, the Bank has therefore insisted that the holder of a concession must demonstrate harvesting, as by the presence of a sawmill, and the payment of taxes on harvested logs. Bank staff have stressed that if a party wanted to conserve forests, it could return its concession to the Government and have the Government allocate it for that purpose. But that assumes that

the Government would be willing to do so and has the capacity to enforce its protected areas, both of which are questionable. **The Panel observes the potential importance of encouraging the Borrower to explore conservation concessions or comparable instruments consistent with the new Forest Code.**

The Panel notes that the forest concession reform process has many positive elements, which have been identified earlier: the gathering and disclosure of information on the forest and the concessions, the initiation of consultation with local communities about their forests and their initial rudimentary participation in the allocation process, and the anticipated stimulation of participatory mapping, sensitization and capacity building of indigenous peoples and their communities.

The Panel also notes its concern, though, that in the end it may be difficult to cancel effectively some of the concessions that the Technical Working Group, assisted by the Independent Observer, might recommend in its Report to the Inter-Ministerial Commission as not qualifying for confirmation. Those who extract the resources have very substantial resources to try to contest decisions not in their favor, while the country is still struggling to build its institutional capacity to implement and enforce its laws, regulations, and policies. The Panel notes the potential importance of the Bank's role in helping build the country's institutional capacity in the forest sector.

The Panel observes that Bank staff have attached high importance to getting the appropriate legal framework in place for forests and have contributed significantly to this process. **The Panel recognizes the importance of a solid legal framework and the difficulty of developing and establishing it. But an almost overwhelming problem in the forest sector in DRC is the lack of institutional capacity to implement and enforce the laws and regulations, especially at the provincial and local levels. Until this is developed, the legal framework, although an essential step, cannot be relied upon to ensure sustainable development in the forest sector or to ensure that the people benefit from the forests.**

The Panel also notes its concern that Development Policy Lending is being used for supporting activities which in earlier times have been financed as projects. This effectively bypasses the environmental and social safeguard policies that apply to projects. The Panel understands that Development Policy Lending may sometimes be the preferred instrument. However, since DPLs are usually disbursed in a single tranche, it is difficult to ensure that attention is paid to environmental and social issues. Moreover, in the case of DRC and increasingly most other DPLs in Africa with forest components, the Bank determines that there are no significant environmental and social effects, or alternatively that any effects would be positive. The Panel is concerned that these determinations are cursory with little time available to assess the proposed endeavor and with an implicit assumption that technical assistance programs affect only the targeted government program. **Activities such as support for a forest concession program have very broad and very significant social and environmental effects in the country that cannot be ignored and need to be assessed.**

The Panel found that the various parties with whom it spoke, including the Requesters and other donors, believed it important, if not essential, that the Bank continue to be involved in the forest sector in the DRC. Many view the Bank as a powerful institution in this context. **The Panel recognizes that it is important for the Bank to remain engaged in the forest sector in DRC. It is also essential that the Bank comply with its social and environmental safeguard policies, as well as its other policies, to ensure that the forests benefit the people in DRC and that they be available for both present and future generations.**

Chapter 1 - Introduction

A. Forests and Post-Conflict Situation

1. The Democratic Republic of Congo (DRC) has the second largest land area in Sub-Saharan Africa and the third largest population, approximately 58 million people.¹ It is home to a wealth of natural resources, including extensive forest lands. Agriculture remains central to the lives of many people, and accounts for 56 percent of the gross domestic product (GDP).²
2. DRC is an extremely diverse country. More than 200 African ethnic groups are estimated to live in DRC and approximately 700 local languages and dialects are spoken. However, French, Kikongo, Tshiluba, Swahili, and Lingala are considered the main languages.³ DRC is also home to a large number of Pygmy People, who live in and depend upon its forests.⁴
3. Today, DRC is gradually emerging from a decade of political instability and conflict. Much of the conflict took place in the country's forests, and was both chaotic and deadly. In the words of Ambassador William Swing, Special Representative of the Secretary General of the United Nations and head of United Nations Mission (MONUC) in DRC *“six foreign armies and Congolese factions ravaged the country the size of Europe in the most deadly conflict since the Second World War. Nearly 4 million people died, 800,000 refugees were scattered [in] the 9 neighboring countries, and some 3 million Congolese were internally displaced, and although many of them have come back, displacements continue. State services collapsed, and in an ironic twist, an ironic and cruel twist of history, one of Africa's potentially richest countries became one of the world's poorest.”*⁵

¹ DRC at a glance, dated August 25, 2005, World Bank website.

² Mining of copper, cobalt, diamonds, gold, zinc and other base metals as well as petroleum extraction account for about 75 % of total export revenues and about 25 % of the country's GDP. Coffee, palm oil, rubber, cotton, sugar, tea, and cocoa are the main cash crops. Background Note: Democratic Republic of Congo; U.S. Department of State.

³ Background Note: Democratic Republic of Congo; U.S. Department of State.

⁴ The name “Pygmy” derives from a Greek word meaning the measure of length from elbow to the fist, and used to refer to people of short stature. It was avoided by some anthropologists and by the people themselves, for its pejorative connotation. However, it recently became to be used by the people themselves who have been called by this name, particularly in the context of establishing their identity as a group of hunter-gatherer and post hunter-gatherer people who are scattered extensively in central African region and called by different names, such as the Mbuti, Efe, Twa, Aka and Baka, in different regions of Africa. According to some indigenous activists, this is because of the lack of a common name for designating all these groups, and the name is used only transitionally until some other appropriate name will be available to them. An ethnographic note on the Pygmy People is provided in Chapter 2 and Annex 2.

⁵ Remarks of Ambassador William Swing, Special Representative of the Secretary General to the DRC, made at the Brookings Institution, Washington, D.C., December 18, 2006.

4. The collapse of the country's formal economy also illustrates the magnitude of devastation the conflicts caused. Currently, the Congolese economy is dominated by the "informal" sector. For example, by 1960 per capita GDP reached US\$ 380 but shrunk to about US\$ 100 in 2004.⁶ DRC is one of the world's poorest countries.
5. Following the end of immediate hostilities, the new government launched measures to stabilize the economy in 2001. Government revenues have since grown and steps have been taken to centralize expenditures and improve budget execution. In 2002, economic growth returned and the GDP increased at a rate of 3 %. In 2004, the GDP continued to grow at a rate of 6.8 %.⁷
6. The social situation, however, remains fragile and poverty is prevalent throughout the country. Ninety percent of the population is considered poor and 70 percent live in rural areas. DRC has the lowest urbanization rate in Central Africa. Life expectancy at birth is only 44 years and infant mortality is the highest on the African continent.⁸ As a result, poverty reduction is the country's prevailing concern. Still, despite the grim statistics, it was noted that after the recent election process, *"although there is a long road ahead, the country is full of hope and promise. There is a new spirit alive."*⁹
7. As described in more detail in subsequent Chapters of this Report, the internal war and confusion associated with it during the last decade also contributed to patterns of illegal or inappropriate exploitation of natural resources in the country. In this regard, UN resolution 1457 (2003) *"strongly condemned the illegal exploitation of the natural resources of the Democratic Republic of Congo, and reiterated that the natural resources of the Democratic Republic of Congo should be exploited transparently, legally and on a fair commercial basis, to benefit the country and its people."*¹⁰ In today's post-conflict situation, the country's forests, people, and government will be subject to new political and economic forces.

B. The World Bank Projects

1. Initial Activities and Strategy

8. In 1993, the World Bank¹¹ suspended its financial assistance to DRC. However, the Bank maintained dialogue with the government, which enabled the Bank to re-engage early in 2001 after the reconciliation process and early economic reforms.

⁶ TSERO Program document, p. 1, para. 4.

⁷ TSERO Program Document p. 3, para 11.

⁸ DRC at a glance, dated August 25, 2005, World Bank website, DRC World Bank Country brief, p. 2.

⁹ DRC at a glance, dated August 25, 2005, World Bank website, DRC World Bank Country brief, p. 2.

¹⁰ UN Resolution 1457, adopted by the Security Council at its 4691st meeting, on 24 January 2003.

¹¹ In this report the term "Bank" refers to the International Development Association.

9. The Bank resumed its activities in DRC in several ways. In 2001, the Bank funded a Transitional Support Strategy (TSS), which aimed to support economic reforms, financed rehabilitations works, and provided policy advice in several different sectors.
10. Since then, the Bank has financed both project-based lending and policy-based lending. Policy-based lending approved after August 2004 was disbursed through Development Policy Lending (DPL) operations, a relatively new mechanism that replaces Structural Adjustment Policies (SAPs). DPLs are rapidly disbursed policy-based financing that the Bank provides in the form of loans or grants to help a borrower address actual or anticipated development financing requirements.¹² The Bank financed the following policy-based lending operations:
 - The Economic Recovery Credit, approved in June 2002, was the first policy-based lending operation in DRC.¹³ This operation, administered as a structural adjustment loan, included a forest tranche of \$15 million USD and a condition related to forestry: the submission of the draft new Forest Code to the Assembly.
 - The Post Reunification Economic Recovery Credit was approved in February 2004.¹⁴ The Credit's main objective was to "*assist the Government with foreign exchange in the post-reunification context.*" It supported reform implementation in several areas, such as economic reforms, civil service reform, and reforms in the process of debt reduction.¹⁵ This second Credit did not include any component relating to the forest sector.
 - The third policy-based operation, the Transitional Support for Economic Recovery Grant Operation (TSERO), was approved in November 2005 as a DPL. The TSERO included forest related components and was a concern in the Request for Inspection.
11. In addition to the policy-based lending, the Bank also financed project-based lending. The Emergency Economic and Social Reunification Support Project (EESRSP), also a subject of the present investigation, was approved in September 2003. A more complete summary of Bank operations is set forth below:

¹² See OP 8.60.

¹³ Economic Recovery Credit No. 3660-DRC.

¹⁴ Post-Reunification Economic Recovery Credit No. 3862-DRC.

¹⁵ International Development Association Program Document on a Proposed Credit in the Amount of SDR 135.2 Million (US\$200 Million Equivalent) to the Democratic Republic of the Congo for a Post-Reunification Economic Recovery Credit, January 30, 2004, p. 14, para 53. SDR are Special Drawing Rights.

Table 1.1: Summary of Relevant World Bank Lending Operations

<u>Policy-Based Lending Operation</u>		<u>Project-Based Lending Operation</u>	
<i>Name & Project Details</i>	<i>Objectives</i>	<i>Name & Project Details</i>	<i>Objectives</i>
<u>Economic Recovery Credit</u> Bank Approval: 6/13/2002 Closing Date: 6/30/2003 Forest Related: SDR 12 million Amount: SDR 360.4 million	Forest Related: Specific Conditions for the Release of the Forest Sector Tranche: The Borrower has submitted to its Parliament the draft Forest Code, in form and substance satisfactory to the Association	<u>Emergency Economic and Social Reunification Support Project (EESRSP)</u> Bank Approval: 9/11/2003 Closing Date: 9/30/2008 Forest related activities financed out of the grant	Forest Related: Strengthening of the Borrower's forest management agencies and enhancement of local governance of natural resources including: (1) preparation of a national forest zoning plan; and (b) developing the administration's capacity in the provision of forestry services.
<u>Post Reunification Economic Recovery Credit (PRERC)</u> Bank Approval: 2/26/2004 Closing Date: 12/31/2005 No forest related activities Amount: SDR 135.2 million	No Forest Related Objectives The main objective of the proposed Post-Reunification Economic Recovery Credit is to provide the Government with balance of payments support in the post-reunification context.	Total Amount: SDR 35,700,000 (Credit) SDR 117,000,000 (Grant)	
<u>Transitional Support for Economic Recovery Grant (TSERO)</u> Bank Approval: 12/08/2005 Closing Date: 12/31/2006 One-tranche operation Amount: SDR 62.1 million	Forest Related: A presidential decree dated October 24, 2005, has been adopted and published in the <i>Journal Officiel</i> defining criteria and transparent procedures to review all existing forestry titles, and extending the moratorium on issuing new titles until the legal review is completed, new auction procedures are adopted, and a 3-year plan for future concession is adopted; the list of existing titles providing the basis for the legal review has been published jointly by the Ministry of Environment and Ministry of Finance on November 1, 2005; and an independent expert has been recruited to assist the legal review and assess compliance with the procedures, all in accordance with paragraphs 94 and 95 of the Letter of Development Policy.		

12. The next two sections describe the EESRSP and the TSERO, the subjects of the present investigation.

2. Emergency Economic and Social Reunification Support Project (EESRSP)

13. **Project Objectives:** The EESRSP is a multi-sector project that aims to help the Government implement its economic and social reunification programs and thus to contribute to the stability of the country.
14. The EESRSP's objectives are three-fold: to “*help restore or introduce a sound economic governance system throughout the country*”; to “*complement actions currently underway to address urgent needs (...) by financing rehabilitation activities in reunified provinces;*”¹⁶ and to “*prepare for the rapid extension of the EMRRP [Emergency Multi-Sector Rehabilitation and Reconstruction Program] to all parts of the country.*”¹⁷
15. **Project Components:** The EESRSP has five components, aimed at supporting implementation of economic reforms in DRC and at addressing urgent needs and activating implementation mechanisms in reunified provinces. These components include: 1. Balance of Payments Support; 2. Institutional Strengthening; 3. Infrastructure Rehabilitation; 4. Urban Rehabilitation; and 5. Community Empowerment.
16. The Request for this Inspection focuses on the “Institutional Strengthening” Component of the EESRSP (Component 2), which, *inter alia*, has as an objective helping to restore effective institutions in the forestry sector in the provinces that have been reunified. It is intended to help improve local governance over natural resources, and in particular to help bring the new Forestry Code into practice and to address the problem of illegal logging.
17. This institutional Component sets out two priorities, both of which are highlighted as subjects of particular concern and importance in the Request for Inspection.
18. The first priority is the preparation of a forest zoning plan focusing on Equateur Province and Orientale Province. According to the EESRSP Technical Annex, “*this is critical to secure land rights and transparent access to forest resources for all stakeholders. The Project will finance mapping services and verifications on the ground, socio-economic assessments, facilitation of local consultations to help Government and local stakeholders organize rural areas in three broad categories according to their primary objectives (rural development, sustainable*

¹⁶ During the course of the Panel's investigation, a new constitutional provision was developed relating to the territorial reorganization of DRC Provinces. This Report refers to the Provinces as of the date of the Request for Inspection's registration.

¹⁷ Memorandum and Recommendation of the President of the International Development Association to the Executive Directors on a Proposed Grant in the Amount of SDR 117.0 Million (about US\$164 Million equivalent) and a Proposed Credit in the amount of SDR 35.7 Million (about US\$50 Million equivalent) to Democratic Republic of Congo for an Emergency and Social Reunification Support Project, August 14, 2003, Report No: P7601-ZR, p. 10.

*production, environmental production). The project will also provide basic training and equipment for forestry services to lead the planning process.*¹⁸ In its Response, Management expected the zoning plan, referred to as the Pilot Forest Zoning Plan (PFZP), to cover about 2.7 percent of DRC's total area and 4.6 percent of its forest area.¹⁹ This translates into a forest area of over 6 million hectares, roughly equivalent to the size of Ireland, or Sri Lanka.²⁰

19. In its Response, Management stated that the decision to drop the PFZP was “*made internally*” in May 2005 and formally agreed with the Government in July 2005.²¹ However, Management notes that the Bank provided support for preparing the Terms of Reference (TORs) of the PFZP.
20. Management indicates that work on the PFZP had not yet begun at the time it was dropped. Management explains that the PFZP was dropped for the following reasons: (a) it considered the supervision arrangements under the EESRSP unsuitable to support a zoning operation that would require intensive follow-up by the Bank and consensus-building among stakeholders, and stated that this activity would better be addressed by a more comprehensive forest sector operation; (b) it believed that little time would be left to conclude the PFZP in a satisfactory manner under the EESRSP because of initial procurement delays and additional delays likely to occur from the then upcoming elections; and (c) it stated that the Minister of Environment was reluctant to collaborate with NGOs operating in the PFZP region and his commitment to the PFZP had decreased, although this had been agreed upon in the preparation of the TORs.
21. The institutional component's second priority involves support for a process to review and convert existing forest concessions into a new concession regime (the “concession conversion process”). Specifically, it is to “*[l]ay the ground for implementation of the new law's forest concession system - with a focus on converting old forest contracts into the new concession regime.*”²²
22. According to the EESRSP Technical Annex, “*the Project will finance methodological support and field verifications to: assess compliance with past obligations; re-design concessions boundaries where appropriate; and monitor preliminary steps by concession holders towards developing sound forest management plans. The Project will also support the setting up of a forest information system, and the re-activation of communication between central and*

¹⁸ EESRSP Technical Annex for the Proposed Grant in the amount of SDR 117.0 million (about US\$164 million equivalent) and the Proposed Credit in the amount of SDR 35.7 million (about US\$50 million equivalent) to Democratic Republic of Congo for an Emergency Economic and Social Reunification Support Project, August 14, 2003, Report No:T7601-ZR, pp. 28-29 [hereinafter “EESRSP Technical Annex”].

¹⁹ Management Response, p. 14, para 30. The Management Response states that the DRC rainforest covers about 86 million hectares. Management Response, p. 4, para. 8.

²⁰ State of the World's Forests. FAO 2007.

²¹ Management Response, p. 9, para 16 and p. 14 para 30.

²² EESRSP Technical Annex, p. 29.

*local forestry services, as well as basic training and equipment to strengthen capacity of forestry services.”*²³ Management’s Response notes that this component includes support for an independent observer in the legal review of logging contracts.²⁴

23. The details of this concession conversion process have been developed during Project implementation. As set forth in a Ministerial Decree adopted in October 2005, key elements of this process include:
- provision for existing concession holders to apply for conversion within three months after the adoption of the Decree;
 - creation of a technical working group to assess and verify the legal validity of forest concession titles, including through field work and analysis, according to criteria set forth in the Decree;
 - designation of an independent expert to assist the technical working group in the administration of its verification work and preparation of reports, as well as to provide advice and make recommendations;
 - establishment of an Inter-Ministerial Commission, under the authority of the Minister in charge of Forests, to review the reports and recommendations of the Technical Working Group, assisted by the Independent Observer, and make recommendations regarding conversion of the concession titles to the Minister in charge of Forests; and
 - elaboration of provisions regarding who has the right to contest actual decisions on the validity of the existing concessions, and what happens to concessions in cases of approval, on the one hand, or cancellation on the other.

A more detailed discussion and analysis of how this process works and has unfolded to date, who participates in its various phases, and how it affects or might affect concessions operations, the forests, and the people who live in or near concession areas, is provided in subsequent chapters of this Report.

24. The EESRSP’s “Infrastructure Component” (Component 3) includes the rehabilitation of highways between Kisangani and Beni and between Bukavu and Mbuji-Mayi. These roads pass through forest areas. Component 4 focused on urban rehabilitation in reunified provinces to provide social stability through employment in key urban areas, and Component 5 supported community development in isolated rural areas through block grants, “managed through broad participatory processes”²⁵ in five selected pilot areas

²³ EESRSP Technical Annex, p. 29.

²⁴ Management Response p. 9, para 16.

²⁵ EESRSP project memorandum p.12

25. **IDA Credit.** The EESRSP is supported by an IDA Credit of SDR 35.7 million²⁶ and an IDA Grant of SDR 117.0 million²⁷ to DRC, approved on September 11, 2003. The Development Financing Agreement became effective on December 5, 2003. The closing date is set for September 30, 2008.
26. **Emergency Recovery Assistance and OP 4.01.** The EESRSP was prepared in accordance with OP 8.50 on *Emergency Recovery Assistance*. OP 4.01 on *Environmental Assessment* states that the requirements of OP 4.01 normally apply to emergency recovery projects processed under OP 8.50. OP 4.01 further indicates that when compliance with any requirement of this policy would prevent the effective and timely achievement of the objectives of an emergency recovery project, the Bank may exempt the project from such a requirement. OP 4.01 requires that the justification for any such exemption is recorded in the loan documents. BP 4.01 indicates that any exemption with respect to the application of this policy to any emergency recovery project processed under OP 8.50 is subject to approval by the Regional Vice President, in consultation with the Chair of the Environment Sector Board and with the Legal Department.
27. The Bank classified EESRSP as a category B operation stating that no activity funded under the Project is expected to have a significant environmental or social impact. The Integrated Safeguards Data Sheet (ISDS), dated August 5, 2003, triggered the following safeguard policies: Environmental Assessment, Involuntary Resettlement and Forestry. As for the Policy on Indigenous Peoples, the ISDS indicated that “*the Project is not expected to include activities in areas inhabited by indigenous peoples.*”²⁸
28. The Project documents indicated specific steps to be taken for components 3, 4 and 5, namely the preparation of: (i) an Environmental and Social Assessment (EA) for Component 3, which is expected to trigger safeguard policies on forestry, natural habitats and involuntary resettlement; and (ii) an Environmental and Social Management Framework (ESMF) and a Resettlement Policy Framework for components 4 and 5.
29. Management indicates in its Response that the provision of OP 4.01 regarding projects processed under OP 8.50 has been interpreted under EESRSP to allow for the preparation of an EA during the implementation of the Project. Management states that this period is typically between 6 and 12 months after the date of effectiveness.²⁹ Following this interpretation and practice, the Project documents indicated that EA, ESMF, and a Resettlement Policy Framework would be

²⁶ US\$ 50 million equivalent at the time of Credit approval.

²⁷ US\$ 164 million equivalent at the time of Grant approval.

²⁸ ISDS August, 5, 2003, p. 5.

²⁹ Management Response p. 28, Annex 1, Item 2.

prepared, approved by the Bank and disclosed in country and in the Infoshop within one year of effectiveness.³⁰

30. In its Response, Management acknowledges that it did not comply with OP 4.01 and indicated its intention to comply by February 2006. The preparation and disclosure of the above noted documents was finalized in January 2006, more than 24 months after the effectiveness of the Project. This issue is discussed in Chapter 4.

3. Transitional Support for Economic Recovery Grant Operation (TSERO)

31. The TSERO is a budget support operation in the form of a single-tranche and a medium-term policy framework. Hence, the TSERO is what the Bank defines as Development Policy Lending (DPL), as noted above.
32. The TSERO constitutes the third operation to support the economic recovery of DRC.³¹ The operation builds on several pre-negotiation conditions (“prior actions”) which are considered to be crucial steps towards the development of policy goals and relies upon monitoring and evaluation of reform progress indicators.
33. The TSERO aims to support the government’s economic program to fight poverty. The grants’ immediate aims are helping the government sustain macroeconomic stability, strengthening efficiency of public expenditure and civil service management, providing governance in natural resources sectors, and resuming the delivery of social services.³²
34. **Objectives:** One of the TSERO’s objectives is to improve governance in the natural resources sector. The Program Document for the TSERO states that *“prior to and during the conflict, the majority of the country’s forests with commercial potential were allocated to rent seekers and interest groups: logging contracts were signed without transparency or local consultation, and yielded little or no benefits to rural communities or to the country as a whole. With the return of peace and rehabilitation of infrastructure, activities in the forestry industry are likely to resume and intensify. The challenge for the country is to ensure that these activities bring tangible benefits to the population at large, and especially to the poor.”*³³

³⁰ EESRSP Technical Annex, ¶ 143; Development Financing Agreement between Democratic Republic of Congo and IDA dated September 22, 2003, Schedule 4 ¶ 7(b) (Credit No. 3824 DRC and Grant No. H 064 DRC).

³¹ Following the Economic Recovery Credit (Cr. 3660-DRC) in 2002 and the Post Reunification Economic Recovery Credit (CR. 3862-DRC) in 2004.

³² TSERO Program Document, p.1 para 2.

³³ Program Document for a Proposed Grant in the Amount of SDR 62.1. Million (US\$ 90 Million equivalent) to Democratic Republic of the Congo for a Transitional Support for Economic Recovery Operation, November 8, 2005. Report No. 33785-ZR, p. 10 [hereinafter “Program Document”].

35. **Program Elements, Conditions and Indicators:** The TSERO includes nine pre-negotiation conditions, two of which relate to forests. The TSERO also includes seventeen progress indicators, five of which are related to forests.
36. The two forest-related prior actions are:
- (1) Initiation of the legal review of forest concessions, through (a) the publication of the Presidential Decree in the Journal Officiel with clear criteria and transparent and non-discretionary procedures; (b) the publication of the list of all existing concessions; and (c) recruitment of an independent expert to assist the Inter-Ministerial Commission’s review; and
- (2) Extension of the 2002 Moratorium on new logging concessions through publications of a presidential decree in the Journal Officiel, stating that the Moratorium will be maintained until three conditions are met: *“new auction procedures are adopted; legal review of existing procedures is completed; and a 3 year plan for future concessions is adopted based on a participatory process.”*³⁴
37. The TSERO’s indicators of progress are, *inter alia*, the:
- *“completion of the legal review in accordance with procedures set forth in the presidential decree dated October 24, 2005 (...) including the cancellation of invalid concessions and publication of result”;*
 - *“continued compliance with the forest moratorium until (i) new auction procedures are adopted; (ii) legal review of existing titles is completed; and (iii) a 3-year plan for the future concessions is adopted based on a participatory process.”;*
 - *“recruitment of an independent observer (technical assistance) to assist the Government in monitoring logging activities, and ensuring transparency and dissemination of information”;*
 - *“enactment of key implementation decrees”;* and
 - *“continued implementation of the March 2004 fiscal reforms including the transfer of 40% of area tax to provinces and territories for socio-economic development purposes.”*³⁵ Management notes in its Response that this includes the cancellation of concessions that did not comply with the area tax in 2004 after the published deadline.
38. The TSERO was approved on December 8, 2005 and is supported by an IDA Grant of SDR 62.1 million to DRC.³⁶ The Grant Agreement became effective on December 27, 2005 and was disbursed in a single-tranche on December 29, 2005.

³⁴ Management Response, p. 16, para 41. Compare Program Document for the TSERO, Annex 1, paras. 95 and 97 (noting two conditions with additional explanation).

³⁵ Program Document for the TSERO, para. 65.

³⁶ US\$ 90 million equivalent at the time of Grant approval.

4. Links with Other World Bank Projects and Other Donor Activities

39. In recent years, the World Bank, other donors and countries have provided assistance to DRC. These relate to, *inter alia*, forests, natural resources and biodiversity. Some illustrations are noted in the following paragraphs.
40. The European Commission and a number of countries such as Belgium, Canada, France, and the United States have restarted economic assistance and funded a number of rehabilitation activities.³⁷
41. With regard to forests, the ECOFAC (Ecosystèmes Forestiers d’Afrique Centrale) program funded by the European Commission covers six Central African countries and started in 1992. The program focuses on the conservation of biodiversity and protected areas, and on the promotion of sustainable use of forests resources. In 2003, the FAO and World Bank jointly funded an information and awareness-raising campaign on the new DRC Forest Code.³⁸
42. Central African countries intensified their regional coordination with an aim to ensure biodiversity conservation and sustainable forest management across the Congo basin. In 1999 the Heads of six states signed the Yaounde Declaration “*that created a framework to achieve forest conservation goals and that endorsed the development of new transboundary and regional conservation efforts*”.³⁹
43. The US is supporting a number of forest related activities.⁴⁰ For example, in 1995, USAID initiated the Central African Regional Program for the Environment (CARPE) which is a 20 year regional initiative that aims to increase knowledge about forests and biodiversity in Central Africa and to build institutional and human resources capacity in the region.
44. In 2002, the United States and South Africa together with 27 public and private partners launched the Congo Basin Forest Partnership (CBFP) at the World Summit on Sustainable Development. The CBFP builds on the Yaounde Declaration from the forest summit that took place in Yaounde, Cameroon in March 1999⁴¹ and on other existing programs in the region.⁴² It aims to improve communication between members and coordination between their projects,

³⁷ DRC-Country Brief, World Bank website.

³⁸ Management Response, p. 5.

³⁹ The Forests of the Congo Basin. A Preliminary Assessment, (1995) p. 1.

⁴⁰ DRC-Country Brief, World Bank website.

⁴¹ The Yaounde Declaration set forth political commitments, such as the creation of new forest protected areas; plans to combat illegal logging and illegal poaching of wildlife; broadened application of sustainable forest management strategies; establishment of a new trans-border conservation initiative between Cameroon Congo-Brazzaville and Gabon which protects 3.5 million hectares of forest; recognition and endorsement of the bold act to create a one million hectare tri-national park by Cameroon, the Central African Republic and Congo-Brazzaville; and the creation of two new forest reserves in Cameroon.

⁴² Among them are COMIFAC, CEFDHAC, ECOFAC and CARPE, and the programs of IUCN, the ITTO, and the World Bank.

programs and policies in order to enhance the sustainable management of the Congo Basin forests and improve on the standard of living in the region.⁴³ More specifically, the CBFP's goal is to "*promote economic development, alleviate poverty, and improve governance and natural resource conservation through support for a network of protected areas and well-managed forestry concessions – and through assistance to communities that depend on the conservation of the outstanding forests and wildlife resources*" in the six Central African Countries.⁴⁴

45. Currently, the partnership focuses on some main priority areas which include, *inter alia*, the strengthening of regional consensus-building and consultation; setting up of a working group on funding mechanisms; building human capacity of the forest and environment sector of the region; improving governance in the forest sector; and promotion of a communication on the activities of the CBFP and partners.
46. The World Bank together with the IMF and the African Development Bank and other key donors are encouraging the international community to continue their support to DRC. The World Bank has held several donor meetings to discuss the further process.⁴⁵ This included two Consultative Group meetings, which took place in December 2002 and December 2003. Follow-up meetings took place in Kinshasa in June 2004 and November 2004.
47. In addition, at the global level, the World Bank has recently proposed a Bank administered fund to pilot instruments for reducing carbon emissions from deforestation and forest degradation. This is described in Box 1.1, below.

Box 1.1: The Forest Carbon Partnership Facility (FCPF)

The World Bank has developed a proposal for a Bank administered \$ 250 million fund,⁴⁶ which would pilot instruments for reducing emissions from deforestation and forest degradation with the aim of generating payment to developing countries related to sustainable forest management.⁴⁷ Deforestation is estimated to account for about 20 % of global carbon emissions and is the major cause of greenhouse gases in some developing countries.

The proposed Forest Carbon Partnership Facility (FCPF) would set the stage for a future, large-scale system of positive incentives for reducing emissions from deforestation and degradation. It would leverage private investor money and donor contributions to help countries develop strategies for avoiding forest degradation and secure payment for forest-related emissions reduction through the creation of tradable carbon credits. The G-8 encouraged the development of the World Bank's project and recognized the importance of stopping deforestation and mitigating greenhouse-gas emissions.

The FCPF "aims to assist developing countries in their efforts to reduce emissions from deforestation and degradation ("REDD") by piloting a system of policy approaches and positive

⁴³ Congo Basin Forest partnership website <http://www.cbfp.org>.

⁴⁴ The Forests of the Congo Basin. A Preliminary Assessment, (1995) p. 1-2.

⁴⁵ DR Congo - Country Brief, World Bank website.

⁴⁶ At the time of this report, the Fund had not been approved.

⁴⁷ Collaborative Partnership on Forests Panel, Statement by the World Bank, United Nations Forum on Forests, Seventh Session.

incentives,” according to the FCPF’s draft term sheet from July 25, 2007.⁴⁸ The World Bank will work with governments, local communities and NGOs to develop guidelines on how to monitor projects and make sure money will be channeled only to those that protect forest areas. To qualify, governments will have to sign up to nationwide action plans combating issues such as illegal logging.

The FCPF would complement the Global Forest Alliance (GFA), a multi-stakeholder partnership that is made up of 14 major forest-related organizations, institutions and convention secretariats, including the World Bank, the GEF, FAO and the World Conservation Union. The partnership would aim to reverse forest loss in developing countries, contribute to poverty reduction, and contribute to the mitigation of climate change, secure provision of other forest environmental services and create a partnership framework for joint action. The targets of the GFA will be to scale-up with partners to archive four bold targets by 2015, which include: to improve and sustain the livelihoods of 500 million poor, forest dependent people by supporting sustainable forest management and agro-forestry based farming systems; conserve 1 billion tons of CO₂ by engaging in avoided deforestation initiatives; bring 300 million ha of production forests under independently certified sustainable management; and create 50 million ha of new protected areas and bring 120 m ha of existing areas under improved management.⁴⁹

C. Events Leading to the Investigation

48. On November 19, 2005, the Inspection Panel received a Request for Inspection,⁵⁰ dated October 30, 2005, related to two Bank funded initiatives regarding Democratic Republic of Congo (DRC): the Emergency Economic and Social Reunification Support Project (“EESRSP” or “the Project”) (IDA Credit No. 3824-DRC and IDA Grant No. H 064-DRC) and the Transitional Support for Economic Recovery Grant Operation (“TSERO”) (IDA Grant No. H 192-DRC). These are part of a series of Bank funded operations to support, *inter alia*, forest sector reform in DRC, as described above. The Panel received the Request in French.
49. The Organisations Autochtones Pygmées et Accompagnant les Autochtones Pygmées en République Démocratique du Congo⁵¹ submitted the Request on their own behalf and on behalf of affected local communities living in the Democratic Republic of Congo. Representatives of local communities of Kisangani in the Orientale Province, of Béni and Butembo in Nord-Kivu Province, of Kinshasa/Mbandaka and Lokolama in Equateur Province, of Inongo in the Bandundu Province, of Kindu in the Maniema Province, and of Bukavu in the Sud-Kivu Province, are signatories to the Request.⁵²

⁴⁸ Forest Carbon Partnership Facility Term Sheet, Draft for Discussion, The World Bank Carbon Finance Unit, July 25, 2007, http://carbonfinance.org/docs/Term_sheet_for_FCPF_7_25_07.pdf (Accessed August 1, 2007).

⁴⁹ “Global Forest Alliance (GFA) and the Forest Carbon Partnership Facility (FCPF)” World Bank Presentation for the SDN Forests and Carbon Finance teams, May 2007.

⁵⁰ Hereinafter called “the Request.”

⁵¹ Indigenous Pygmy Organizations and Pygmy Support Organizations in the Democratic Republic of Congo.

⁵² The Request for Inspection includes 32 annexes.

50. The Panel registered the Request on December 1, 2005, and notified the World Bank Board of Executive Directors (“the Board”) and the President.
51. On January 13, 2006, Management submitted its Response to the Request for Inspection.⁵³ On February 28, 2006, the Board approved the Panel’s recommendation to conduct an investigation into the matters alleged in the Request for Inspection.

1. Request for Inspection

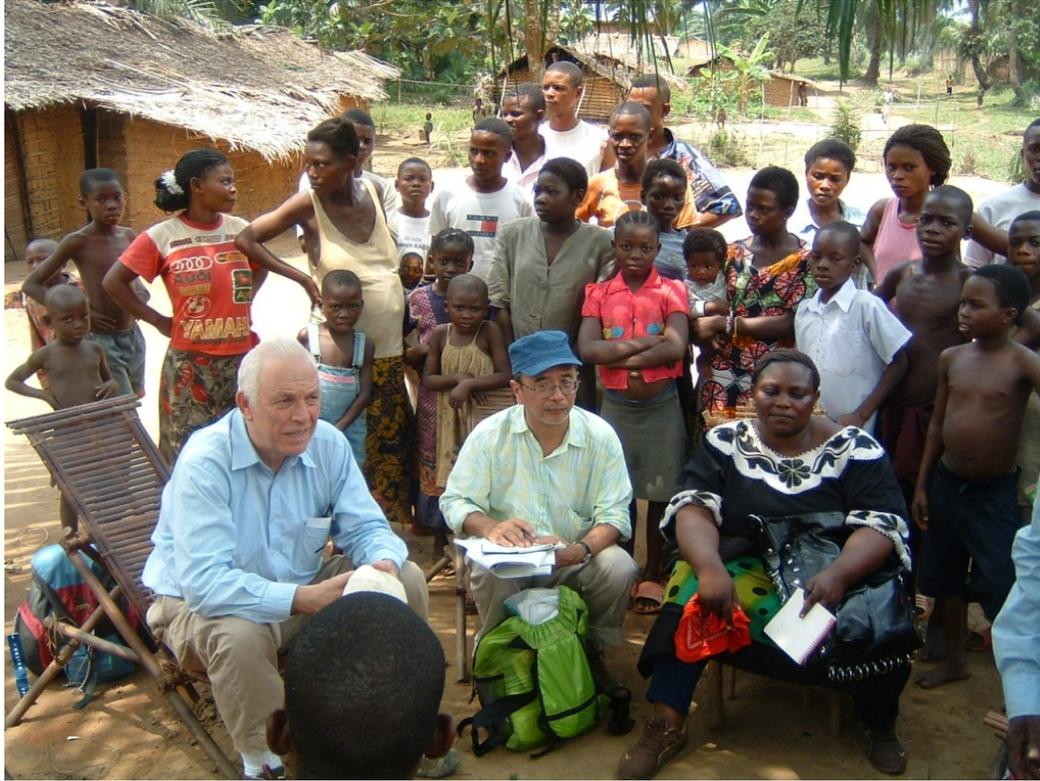
52. The following paragraphs briefly summarize the Request. The Requesters claim that they have been harmed and will be harmed by the forestry sector reform activities supported by the EESRSP and the TSERO. The Requesters fear that the implementation of a new commercial forest concession system may cause irreversible harm to the forests where they live and on which they depend for their subsistence. They are also concerned about possible negative effects of a forest zoning plan which they believe is being prepared with the Bank’s support.
53. The Requesters claim that, if the zoning of the forests occurs without the consultation and consideration of the indigenous peoples’ interests and if new forest concessions are assigned as a result, the Bank will be ignoring its own forestry policies and procedures and will be supporting the violation of indigenous peoples’ rights.
54. The Requesters claim that the implementation of the EESRSP will lead to violations of their rights to occupy their ancestral lands, manage their forests and resources according to traditional knowledge and practices, and protect their cultural and spiritual values. They claim this would then lead to the loss of their living environment and their means of subsistence and force change in their way of life, causing serious social conflict.
55. The Requesters assert that their grievances result from the Bank’s failure to adequately address and implement applicable safeguards and from the World Bank’s “*hastily adopt[ing] a Congolese Forest Code*” without the participation of civil society or the indigenous communities.⁵⁴ In particular, they claim that the Bank failed to comply with its policies and procedures regarding environmental assessment (“EA”), indigenous people, and forests.
56. **Environmental Assessment.** The Requesters claim that the EESRSP was erroneously classified as Category B under OP 4.01 on EA. Because of the sensitive impacts of the policies to be implemented under the Project and the

⁵³ Bank Management Response to Request for Inspection Panel Review of the Democratic Republic of Congo: Transitional Support for Economic Recovery Operation (Grant No. H 192-DRC) and Emergency Economic and Social Reunification Support Project (Credit No. 3824-DRC and Grant No. H 064-DRC) [hereinafter “Management Response”].

⁵⁴ Request, p. 4.

- existence of indigenous communities, the Requesters contend that the Project should have been classified as Category A. They note that since a zoning plan is being prepared for all forests in DRC, this would have a significant environmental and social impact.
57. The Requesters note that the preparation of the EA was delayed more than twelve months after the Development Financing Agreement for the Project became effective (December 5, 2003), and that the EA is still not available as of the time of the Request.
 58. **Forests.** The Requesters believe that Bank activities pertaining to the forestry sector in DRC do not comply with Bank OP 4.36 on Forests. They claim that the activities lack popular legitimacy, as they are being implemented without adequate consultation and do not respond to indigenous peoples' concerns or to the requirements for sustainable management.
 59. The Requesters fear that the Bank plans to lay the foundation for implementing a new forest concession system under the EESRSP will lead to the revival of the logging industry without mechanisms for effective control or transparency. According to the Requesters, this would seriously undermine the rights and interests of the Indigenous Peoples.
 60. The Requesters believe that the Bank supports the idea that "*development will come from industrial logging.*"⁵⁵ The Requesters note that, according to the Bank's own estimates, the policies supported by the Bank will ensure 60 million hectares of forests are available for forest production, constituting three-quarters of the tropical forests in DRC.
 61. The Requesters claim that if a zoning of the forests was completed and new concessions allocated without consulting affected people and incorporating their interests, this would result in various violations of their rights.
 62. **Indigenous Peoples.** A major claim of the Requesters is that, despite the presence of indigenous Pygmy people in the Project implementation area, the Bank ignored the application of OD 4.20 on Indigenous Peoples.
 63. According to the Requesters, OD 4.20 should apply to the EESRSP. They indicate that the Indigenous Peoples' existence, survival, cultural identity, and traditional knowledge are intimately linked to the forests.
 64. The Requesters assert that the Bank prepared terms of reference ("TORs") for a pilot zoning plan covering the axis Maringa-Lopori-Wamba which recognized the presence of Pygmies' indigenous communities in these forests.

⁵⁵ Request, pp. 9-10.



Picture 1: Panel meeting with Pygmy People community

65. **Consultation and Participation.** One of the Requesters' overall claims is that they were not consulted and their interests not taken into account. They refer to several instances in which they claim that they were not consulted. For example, they state that the Bank adopted a Forest Code without "*any input from civil society or involvement of the indigenous communities.*"⁵⁶
66. The Requesters also express their concerns that the zoning of the forests could occur without the consultation and consideration of the indigenous peoples' interests.
67. **Further Claims.** The Requesters argue that the Bank's use of certain lending instruments (an Emergency Recovery Loan for the EESRSP and a Development Policy Loan for the TSERO), led to the circumvention of its safeguard policies and procedures related to environment, forestry, and indigenous peoples.

2. Management Response

68. On January 13, 2006, Management submitted its Response to the Request. In its Response, Management states that it has made every effort to apply Bank policies and procedures. It also claims that the Requesters' rights or interests have not

⁵⁶ Request, p.4.

- been nor will they be directly and adversely affected by a failure of the Bank to implement its policies and procedures.
69. However, with regard to the EESRSP, Management recognizes that it was not in full compliance with OP 4.01 and acknowledges that OP 4.20 should have been triggered during project preparation, when the Pilot Forest Zoning Plan (“PFZP”) was added.⁵⁷
 70. **Environmental Assessment.** Management asserts that the EESRSP was correctly classified as Category B and that Category A would not have been appropriate. Management notes that *“technical assistance operations for institutional strengthening are usually classified as Category C. Where such operations result in designs or plans that, when implemented, may have potential impacts, they may be given a classification higher than C, normally Category B.”*⁵⁸
 71. According to Management, the preparation of a PFZP and the existence of indigenous communities do not *per se* require a project to be placed into Category A. Management states that the zoning plan was part of a policy package aimed at stopping illegal use of forests and promoting participatory conservation as well as sustainable management of forest resources.
 72. **Forests.** Management considers the PFZP to be an important element of its strategy. However, Management underscores that the PFZP was dropped from the EESRSP in July 2005. According to Management, the TORs of the dropped PFZP emphasized the role of consultation as a means to identify and preserve the customary rights that local communities enjoy over the forests.
 73. Regarding new concessions, Management notes that the Moratorium was established to avoid their inappropriate allocation, adding that it will replace the indicator of transparently awarding new concessions with a more appropriate one. Management claims that the Bank is *“trying to introduce good governance in a system that has suffered from corruption, and where the majority of the production forests were under some form of logging contract,”*⁵⁹ adding that its efforts have led to an unprecedented decrease of the areas under concessions.
 74. Concerning the Forest Code, Management asserts that it introduces innovations such as: traditional users’ rights, including those of indigenous peoples; contributions to rural development; enhancement of the rights of local communities; and transparent allocation of future logging rights. Management is mainly concerned with the Government’s capacity to develop and enforce the

⁵⁷ Management Response, ¶31.

⁵⁸ Management Response, p. 25, Annex 1, Item 1. Management states that Components 3 (infrastructure rehabilitation), 4 (urban rehabilitation, and 5 (community empowerment) were all correctly classified as Category B.

⁵⁹ Management Response, p. 32, Annex 1, item 5.

implementing regulations and states that many of these regulations are still lacking.

75. **Indigenous Peoples.** As to the Requesters' criticism of the Bank's decision not to apply OD 4.20 on Indigenous Peoples to EESRSP activities, Management explains that the design of the Project as reviewed at concept stage did not reveal the existence of Indigenous Pygmy communities in Project-affected areas. Thus OD 4.20 was not triggered. However, Management states, in its Response, that OD 4.20 should have been triggered when the PFZP was added to the Project later in the preparation process.⁶⁰
76. **Consultation and Participation.** Management believes that the Bank's forest work in DRC, since 2002, enhanced public participation and allowed for dialogue with local NGOs. Management's Response also notes that the Bank helped organize the first multi-stakeholder forest forum in DRC in November 2004.
77. With regard to outreach to indigenous peoples, Management claims that its efforts were restricted to policy dialogue and to contacts with stakeholders in Kinshasa because the forest areas were inaccessible. Management acknowledges that a more proactive outreach might have enabled the Bank to establish more direct lines of communication with Indigenous Pygmy leaders and communities.
78. **Further Issues.** Management challenges the Requesters' claims regarding the application of OP 8.50 and the direct effect of the delay in implementing OP 4.01 on EA and OP 4.36 on Forests. Management explains that OP 4.01 allows the Bank to exempt a project from safeguard requirements when compliance with these provisions would prevent the effective and timely achievement of an emergency recovery project's objectives. Management emphasizes that there was no explicit decision not to implement safeguard policies. According to Management, completion of the EA and the Environmental and Social Management Framework ("ESMF") were delayed because of procurement issues. Management acknowledges that it did not comply with OP 4.01 in this respect, but states that it intends to be in compliance by February 2006.
79. In response to the Requesters' concerns about violations of cultural and spiritual values, Management asserts that the Project does not threaten physical cultural property. Also, concerning the supervision of the EESRSP, Management notes that four to five technical missions have taken place annually since 2002. It further states that since November 2004, a full-time environmental economist based in Kinshasa contributes to supervision.⁶¹
80. Management states that with regard to the forest sector work, it will plan the following steps: consider activities to strengthen institutions and provide an

⁶⁰ Management Response, p. 33, Annex 1, item 6.

⁶¹ Management Response, p. 23, para. 28. Management's Response in Annex 1 refers to the person as a "forest expert." Annex 1, item 11.

overall framework for other Bank-supported forest activities in DRC; establish a proactive forest information and outreach program as well as more direct lines of communications with indigenous communities, including Pygmies, to make certain that in future Bank operations they receive social and economic benefits that are culturally appropriate; and ensure that future Bank lending in the forest sector and other initiatives such as the zoning plan include measures that strengthen the legal and customary rights and preserve the cultural heritage of indigenous communities including the Pygmy People.⁶²

3. Eligibility of the Request

81. To determine the eligibility of the Request and the Requesters the Panel reviewed the Request for Inspection and Management Response. The Panel Chairperson, Edith Brown Weiss, together with Panel Member Werner Kiene, Executive Secretary Eduardo Abbott and Operations Officer Serge Selwan visited DRC from January 19 through January 26, 2006. During their visit, the Panel Members met with the signatories of the Request for Inspection, Government officials, nongovernmental organizations, representatives of the forest industry association, and local and international technical experts. The Panel visited Equateur and Orientale provinces and met with Requesters and other affected people in Kisangani, Mbandaka, Bikoro and nearby areas.
82. The Panel determined that the Request fulfilled the eligibility requirements for inspection. The Panel recommended an investigation to the Board of Executive Directors because the Request and the Management Response contained conflicting assertions and interpretations of the issues, facts, compliance with Bank policies and procedures, and actual and potential harm.
83. On February 28, 2006, the Board approved the Panel's recommendation to conduct an investigation into the matters alleged in the Request for Inspection. The Request, Management Response, and the Panel's Report and Recommendation were made public shortly after the Board authorized the inspection sought by the Requesters.

4. Investigation

84. The Panel conducted a two-part investigation. The first part involved detailed research into Bank records related to the Project, interviews with Bank Staff, and a review of other relevant documents. The second part took the form of an in-country fact-finding visit. To assist in its investigation, the Panel hired two consultants, who are internationally recognized experts on social and indigenous people's issues and on forestry and environmental issues: Mitsuo Ichikawa and Ralph Schmidt.⁶³

⁶² Management Response, p. 23 ¶ 62.

⁶³ See Annex 4 of this Report for the expert consultants' biographies.

85. Panel Chairperson Edith Brown Weiss together with Panel Member Werner Kiene, Executive Secretary Peter Lallas, Operations Officer Serge Selwan, and the two expert consultants visited DRC from January 30 to February 17, 2007. During the visit, the Panel met with local and national government authorities, Bank Staff, Requesters and other people in Project-affected places.
86. The Panel interviewed Bank Staff in Washington, D.C. before and after visiting the Project-affected area, and in the Bank office in Kinshasa. In its investigation, the Panel identified and carefully reviewed all documents relevant to the case that the Requesters, Bank Staff, and other sources provided to the Panel. The Panel also analyzed other evidence gathered during the field visits or otherwise in its research, including scholarly literature.
87. This Report presents the results of the Panel's investigation regarding the different sets of forest-related, environmental, and social issues the Requesters raise in their submission to the Panel.

5. Bank Operational Policies and Procedures Applicable to the Project

88. With respect to this Project, the Panel assessed whether the Bank complied with the following applicable operational policies and procedures:

OP/BP 4.01	Environmental Assessment
OP 4.12	Involuntary Resettlement
OD 4.15	Poverty Reduction
OD 4.20	Indigenous People
OP/BP 4.36	Forests
OP/BP 8.50	Emergency Recovery Assistance
OP/BP 8.60	Development Policy Lending
OPN 11.03	Cultural Property
OP/BP 13.05	Project Supervision
World Bank Policy on Disclosure of Information	

Chapter 2 - Forests, Indigenous Peoples and Bank Engagement

89. This Chapter provides an overview of social, economic and environmental factors in DRC relevant to the present investigation, including the context of the country emerging from a period of intense war and conflict. This overview is followed by a more detailed description of the ethnography and way of life of the Pygmy people, including their relationship to and reliance on DRC forests (Section B).
90. In this context, the Chapter examines the approach and focus of the World Bank as it engaged in the forest sector in DRC and prepared for the Projects under investigation and briefly reviews the relevant legal and institutional framework. These considerations provide the basic foundation to analyze questions raised regarding Bank compliance with its operational policies and procedures in relation to the Projects under investigation.

A. Context: Social, Economic and Environmental

1. Forests and Sustainable Development⁶⁴

91. With a surface of 2.3 million square kilometers, DRC spans an area the size of Western Europe. Fifty nine percent of the country (1.34 million square kilometers or 134 million hectares) is still covered with forests. This puts DRC in the top seven countries in the world in terms of forested area. This forest, in the heart of Africa, joins with forests in several neighboring countries to form the Central African Rain Forest, the second largest tropical forest in the world after the Amazon. An estimated 40 million people who live in the rural areas in DRC depend on the forest for their livelihoods.⁶⁵
92. These forest lands are the home and source of livelihood and cultural identity for many people, including the indigenous Pygmy peoples who have lived in and depended on the forests for millennia (see Section B). They are also, in many other ways, a resource of incalculable value. The project activities involved in the Request focus on the closed broadleaved rain forest in DRC, which is estimated to cover 86 million hectares.

⁶⁴ This section is presented for the benefit of readers not previously closely involved with the DRC. It draws on background reviews produced by World Bank staff and other involved partners; particularly the review, *Forests in Post-Conflict Democratic Republic of Congo: Analysis of a Priority Agenda* CIFOR, The World Bank and CIRAD, 2007, [hereinafter “Forests in Post-Conflict DRC”] http://www.cifor.cgiar.org/publications/pdf_files/Books/BCIFOR0701.pdf. That document is a product of collaboration amongst many partners.

⁶⁵ “Questions and Answers – World Bank support sustainable management of forests in the Democratic Republic of Congo,” www.worldbank.org.

93. It is difficult to fully comprehend the present situation of the country, the people and the forest. As noted in Chapter 1, the conflict was dispersed, multi-sided and chaotic. It was often located in forested areas, and ravaged the country, leaving nearly 4 million people dead and millions more displaced from their homes.
94. As a result of the war and conflict, government services collapsed. There are, to date, very few useable roads in the country, and there are enormous forested areas with no passable roads (and no vehicles). While the ancient river transportation network is still present, there are very few operable boats larger than canoes. The population of 58 million has very little or no access to modern facilities for health, education or governance. The situation of deprivation is of enormous scale and is one of the most extreme found anywhere.

Box 2.1: Recent Developments – Post-Conflict

In July 1999, DRC Government, the major rebel groups, and the foreign countries involved in the conflict signed a cease-fire agreement in Lusaka. In January 2001, Laurent Kabila was assassinated and was succeeded by his son Joseph Kabila. Since then the country has started to improve and the political and military situation has gradually stabilized. In 2002, a UN peacekeeping force, the Mission d'Observation des Nations Unies au Congo (MONUC), was deployed throughout the country. In the same year the withdrawal of foreign troops was completed. However, the eastern part of the country is still characterized by ongoing armed conflicts.

In June 2003 the Inter-Congolese dialogue led to the establishment of a transitional government of national unity, which was set up for a 24-month period leading to elections. Multi-party elections in DRC had not been held since 1960.

A new constitution was passed by the transitional parliament on May 2005. The D.R.C. held a constitutional referendum on December 18-19, 2005. Official results indicated that 84% of voters approved the constitution. The new constitution was promulgated in a ceremony on February 18, 2006. The 500-member lower house of parliament was elected in the July 2006 national elections. Provincial Assemblies elected the Senate in October 2006. The Senate elected provincial governors.

Sources: U.S. State Department and World Bank.

95. A key consequence of the economic breakdown in DRC has been that the current rural population (about 40 million people) has developed a tremendous reliance on the forest for subsistence and survival.⁶⁶ The uses are traditional. Food comes from small scale clearing for shifting cultivation, hunting wild animals, fishing and collecting wild plants. Wood is used for cooking, sterilizing water, and light.
96. Usually subsistence populations with readily available wood resources use about one cubic meter per person for fuel wood per year, giving a conservatively estimated total national annual consumption of 45 million cubic meters. Medicines and building materials are taken from the forest.

⁶⁶ The particular way of life and reliance on the forest of the Pygmy peoples over long periods of time is described separately in Section B, below.

97. Bushmeat (wildlife) hunting, consumption, and marketing is ubiquitous in the forested areas of DRC. Annual consumption estimates of 1.4 million tons per year compute to over 25 kilograms per person per year, making it, with fish and insects, the predominant protein source.⁶⁷ The economic value of this bushmeat extraction is estimated “*at an order of magnitude of over 1 billion dollars a year.*”⁶⁸
98. It is reported that two thirds of the bushmeat consumed in Kinshasa comes smoked from forest provinces of Orientale, Equateur and Bandundu. It is a major source of income for hunters and traders. These very high levels of wildlife extraction are far beyond that traditionally done by Pygmy people, and raise questions of sustainability. The average of about 15 kilograms per hectare of forest raises a definite danger of exhausting wildlife population levels, especially with local over-hunting.
99. There is little or no quantitative information on what is referred to as informal forest harvesting. Poles and rough cut boards are easily produced on an artisanal level, and universally needed for subsistence. Estimates of the numbers of small scale loggers operating indicate that they process 1.5 to 2.4 million cubic meters per year.
100. There has been very little outside access to the forests for many years and consequently there is very little recent technical or scientific information available. It is quite clear, however, that the environmental and biodiversity level and value of the forests are extremely high:
- “The DRC is also a unique reservoir of biodiversity: it ranks fifth in the world for plant and animal diversity. Its natural habitats range from mangroves to glaciers to volcanoes (...). In Africa, it ranks first for mammal and bird diversity (...). The DRC contains five Natural World Heritage Sites, more than the rest of Africa combined.”*⁶⁹
101. The forests of the Congo Basin also play an important role in the world’s climate process. In general, forests have a substantial role in the global carbon cycle. According to the FAO, forests safeguard more carbon, in biomass and soils, than the entire Earth’s atmosphere.⁷⁰

⁶⁷ Forests in Post-Conflict DRC, p. 9 notes that duikers (types of small antelopes), monkeys and rodents account for most of this bushmeat consumption, although people also consume wild pigs, buffaloes, reptiles, birds, caterpillars and other insect species. Domestic animals are limited by diseases and lack of infrastructure. See also Chapter 3.

⁶⁸ Id., p. 22.

⁶⁹ Forests in Post-Conflict DRC, pp. xii and 13. Attached to this Report, map IBRD 35653, shows the the World Heritage Sites and the concessions under review.

⁷⁰ “*Forests and Climate Change Working Paper 5 – definitional issues related to reducing emissions from deforestation in developing countries*”, Schoene, Killmann, von Luepke, Loyche Wilkie, FAO, 2007, p. i., citing the FAO Global Forest Resource Assessment, FRA 2005.

102. Deforestation is a major contributor to climate change.⁷¹ Tropical deforestation, in particular, has a strong effect on climate change because tropical trees store about 50 percent more carbon per hectare than trees elsewhere.⁷² The Intergovernmental Panel on Climate Change (IPCC) reports that the largest of the anthropogenic land cover changes involves deforestation, and that during the past two decades, “*the CO₂ flux caused by land use changes has been dominated by tropical deforestation.*”⁷³
103. The Congo Basin’s forests have been estimated to contain between 25-30 billion tons of carbon, which is considered equivalent to about 4 years of current global anthropogenic emissions of CO₂. More than half of this carbon is stored within the forests of DRC.⁷⁴
104. DRC forest areas face significant threats, including many which are linked to the years of war and conflict:

*“The impact of war, anarchy, displacements and institutional collapse was devastating. Today, most(if not all) of the parks and reserves officially are reduced to “paper parks” under threat from poaching, mining, logging and encroachment.”*⁷⁵

The report continued:

*“The IUCN’s (1996) Red List of Threatened Animals contains a total of 325 species found in the DRC.”*⁷⁶

⁷¹ See Forster Denman, K.L., G. Brasseur, A. Chidthaisong, P. Ciais, P.M. Cox, R.E. Dickinson, D. Hauglustaine, C. Heinze, E. Holland, D. Jacob, U. Lohmann, S Ramachandran, P.L. da Silva Dias, S.C. Wofsy and X. Zhang, 2007: Couplings Between Changes in the Climate System and Biogeochemistry. In: *Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* [Solomon, S., D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M.Tignor and H.L. Miller (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA (Chapter 7) (noting that since 1750, the “*increase in atmospheric CO₂ concentrations results from human activities: primarily burning of fossil fuels and deforestation, but also cement production and other changes in land use and management . . .*”Chapter 2 of the Report notes that deforestation releases CO₂ and reduces the uptake of CO₂ by plants.

⁷² *The Economics of Climate Change: The Stern Review*, Nicholas Stern, 2007, Appendix 7.f.

⁷³ See Hegerl, G.C., F. W. Zwiers, P. Braconnot, N.P. Gillett, Y. Luo, J.A. Marengo Orsini, N. Nicholls, J.E. Penner and P.A. Stott, 2007: Understanding and Attributing Climate Change. In: *Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* [Solomon, S., D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M. Tignor and H.L. Miller (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA (Chapter 9), pp. 682 and 683.

⁷⁴ “Clouds on the Horizon: The Congo Basin’s Forests and Climate Change”, The Rainforest Foundation, Alison L. Hoare, February 2007, Executive Summary, also citing FAO (2006) estimates of 63 % of total Central Africa.

⁷⁵ Forests in Post-Conflict DRC, p. xiii.

⁷⁶ Forests in Post-Conflict DRC, p. 13.

The activities and implications of industrial logging operations by concession companies, a subject of central concern to the present Request, are described below.

2. Industrial and Other Forms of Forestry and Logging

105. **Logging in DRC Forests.** The exploitation of DRC forests has been an important political and economic factor in the colonial and post-colonial history of the country. The Government encouraged logging as a source of tax revenue and as a driver to open up the country to new settlement and resulting development activities.
106. At the time of independence in 1960, it has been estimated that about 575,000 cubic meters of logs were being produced and exported per year.⁷⁷ This is about the same as the level estimated in 1990. By 2002, as the country was emerging from the years of war and conflict, this had dropped to 90,000 cubic meters. By 2005, the level of harvesting and export had risen gradually to 300,000 cubic meters.⁷⁸ These estimates (indeed, almost all data regarding DRC) should be treated with considerable caution; they are rough estimates based on general observations.
107. The substantially lower level of commercial logging in the years 1990-2002 correlates closely with lack of security and access. During the recent years of conflict and political turmoil, many of the deeper forest areas became part of the war theater, and overall commercial forest activities slowed and came to a complete standstill in some areas. In addition, due to formidable logistical challenges and the more attractive economics, most of these concession-level logging activities have taken place along the rivers, while remote forests have largely been left untouched.
108. It is instructive to show a rough comparison of current wood uses in DRC (see Table 2.1). The fuelwood use, by volume, is 150 times the current industrial (mostly export) use. The local, largely handsawn, use is more than six times the industrial sawmill use. However, the fuelwood use is almost all smaller pieces. Much of the artisanal use is poles; the current industrial use is based on very large logs that require many decades of growth. The biomass of edible wildlife in a forest is orders of magnitude lower than the wood biomass, indicating that the wildlife use reflected in the Table is very intensive compared to wood use .

⁷⁷ Id.

⁷⁸ A large log – 70 centimeters in diameter and 3 meters long – contains about 1 cubic meter of timber. Many of the large commercial trees in DRC might contain 3 to 5 cubic meters of timber. Current industrial logging in the DRC is highly selective, possibly about 3 cubic meters per ha on average, so that current logging probably covers about 100,000 ha per year (there is considerable uncertainty on this latter estimate). This area refers to actual recently unlogged forest, which is often found in mosaic with villages, farms, logged areas or non-forest eco-systems so that the total area affected would be considerably greater.

Table 2.1: Rough Estimate of Current Consumption of Some Products for the Forests of DRC⁷⁹

Use	Annual Consumption
Fuelwood	45,000,000 cubic meters
Local lumber and poles	2,000,000 cubic meters
Industrial timber	300,000 cubic meters
Bushmeat	1,400,000 tons

109. Central African forests are known by those in logging operations for their occasional huge and highly valuable timber trees. Industrial timber operations in all the Central African countries have been based on the highly selective harvesting of these trees. This kind of operation, where one to two percent of the volume is removed, results in less direct damage to the forest than in other regions where a greater proportion of the volume is removed. However there are significant damages, as discussed below.
110. The 2007 report, “*Forests in Post-Conflict Democratic Republic of Congo- Analysis of A Priority Agenda*” (Forests in Post-Conflict DRC), estimates that of the 86 million hectares of high closed forest, 60 million currently are physically suitable for “*timber production.*”⁸⁰



Picture 2: Panel visit to concession

⁷⁹ Data is from Forests in Post-Conflict DRC, compiled in the chart by the Panel’s expert.

⁸⁰ Forests in Post-Conflict DRC, p. 1.

111. **Granting of Forest Concessions.** DRC has a history of granting concessions to special interests for exploitation of all kinds of resources. Timber has been no exception, although the levels of harvesting have not been that high relative to the size of the resource.
112. Forest harvesting concessions are used in many countries where the forest land is publicly owned, and the government wishes to involve the private sector in timber harvesting and processing. When the international community returned to DRC in 2001, there were more than one hundred forest concession agreements, under various names, that had allegedly been granted on paper by various previous governments.
113. Very few, if any, of these agreements represented operations that were functioning in actual timber harvesting and processing at that moment, but the agreements existed. According to the World Bank, a good number of these agreements were to have been speculative, i.e. acquired with no intention of operating a timber harvesting company, but in order to gain some control over a resource for future financial benefit.⁸¹
114. These concessions and actions concerning them play a central role in the Request and in this Report. One main point to appreciate is that there was a variable level of timber harvesting for export over many years, as briefly reviewed above, but that during the conflicts of the 1990s there was almost a total break in this. In April 1999 an Inter-Ministerial Committee on Wood recommended the cancellation of *“all conventions and attribution contracts for non-inventoried forests, abandoned forest and/or non-exploited forests.”*⁸²
115. This suggests that by the year 2002 there were many of what might be referred to as *“paper concessions.”*⁸³ It should be appreciated that with a new post-conflict government, the legal status of these contracts was uncertain at best and the functioning of the judicial system itself was uncertain.
116. Management states, in its Response, that the Bank advised the government on basic governance measures aimed at, among other things, returning to the state

⁸¹ See, e.g., 2002 Aide Memoire of the World Bank, “Prise de Contact” Mission in DRC, stating that *“operators are acquiring these long-term (25 year) concession contracts that are not very attractive at the time, but on the speculation that in a few years they will be able to sub-lease the same concessions [at a much higher price].”* The Panel notes that the holder of a large number of hectares contends that the purpose is conservation.

⁸² Management Response, Annex 5, p.76.

⁸³ This expression originated with “paper” national parks, those drawn on maps but with no effective protective measures in the field. “Paper” forest concessions would have a somewhat contrary meaning: existing in contracts or maps but with no physical presence or certainly no industrial equipment operating in the field.

those forest concessions that had expired or were illegally held.⁸⁴ Management asserts that in 2002 the Government cancelled 163 concessions, reducing the total area under concessions from 45 million hectares to 20 million hectares.⁸⁵ Management notes that many contracts had been allocated before and during the war with no transparency, no local consultation, “*no adequate compensation for local people and for the country.*” and no consideration of alternative forest uses, and that these concessions overlapped with villages, agricultural lands and biodiversity hotspots.⁸⁶

117. The Panel notes that this implies a huge reduction in surface area covered by concession contracts. The Panel has learned, however, during its investigation of other factors relevant to a full understanding of this initial situation and action. Firstly, as alluded to in the Management Response, and confirmed in meetings with staff, there are very substantial areas in these initial concessions that were not covered by forest at all, but rather were agricultural lands, swamp lands and even villages. While it is difficult to have an exact measure on this, it is very sizable.
118. Secondly, a substantial portion of the areas, cancelled in 2002, that did have forest cover appear to have re-emerged as concession areas under consideration for validation in the concession conversion process support by the EESRSP. This issue is addressed in more detail in Chapter 5. Thirdly, Management notes that the evacuation of old contracts started in 2002, and the concession conversion process, were “*in conformity*” with the 1999 recommendation, noted above, to cancel contracts for non-inventoried, abandoned, and non-exploited forests.
119. **The Panel notes the importance of the Bank’s intervention, before the start of the EESRSP, to advise the Government to cancel concessions that were illegal or had expired. This was consistent with the Bank’s Forest Policy. However, the Panel also observes that the cancellations do not mean that the full reduction of some 25 million hectares contained forest cover.** The Panel further observes that some areas have re-emerged in the concession conversion process.
120. **Social and Environmental Impacts.** In general, industrial logging in DRC has been and is highly selective, with one to a few large trees, on average, being removed on each hectare; thus there should be little clear-cutting or total forest destruction caused by the logging itself. Even so, the haul roads, loading docks, skid trails and felling gaps do result in substantial physical damage to the forest. In addition, the removal of large trees with large crowns has substantial impacts.

⁸⁴ Management Response, ¶ 11-12. The Response states that it also provided advice on other governance measures, “*in line with the 2002 Bank Forest Policy and Strategy . . .*”, including the establishment of a moratorium, increasing the annual area taxes on concessions, and the adoption of the new Forest Code to replace the 1949 colonial regulation.

⁸⁵ Management Response, p. 31.

⁸⁶ Management Response, p. 7, ¶ 9.

As discussed in other parts of this Report, large trees often provide very important non-timber benefits to local communities, including acting as sources of edible insects, honey and nectar. With careful management of operations and enough time, the forests may be able to recover from these impacts if they were effectively protected. The induced, or the so-called indirect, damage from logging is much more serious.

121. The major indirect impact in Central Africa of logging operations to date results from the trucking roads that are built into the forests. This causes very important changes. Some villages may welcome a new road for access to markets and services in the exterior, but logging workers and other outsiders may cause all kinds of disruptions in local communities. A major impact may be greater demand for, access to and transport of bushmeat, including endangered species, out of the forest. In addition, as reviewed in Chapter 3, the impact on indigenous communities can be severe. Industrial logging can conflict directly with traditional non-timber uses of the forest. The specifics will vary in complex patterns across the many different ethnic communities and the many different forest types of DRC.
122. In a huge, well-populated country where there are very few roads because they have been destroyed or simply let go, and almost everyone is living in destitution, the presence of a passable new road draws cultivators in. The Panel observed many burned over new farm plots along the sides of the new logging roads. There is no reason to believe that this is not occurring on nearly all the logging roads. The roads and the presence of workers obviously also dramatically increases the wildlife hunting pressure.⁸⁷ The Panel heard several reports of fishing streams and ponds being contaminated by logging activity, and claims by local people that they are denied access to forests in some concession areas. The social aspects of this are treated in Chapter 3.
123. It should not come as surprising news to anyone involved in this Request that the potential impacts of industrial logging in tropical rain forests are very serious, and can often be sensitive. In respect to Africa in particular, it has been noted that:

“Industrial timber production has a poor track record in Africa. Over the past sixty years, there is little evidence that it has lifted rural populations out of poverty or contributed in other meaningful and sustainable ways to local and national development. Any policy option that would deal with forest industry should openly discourage ‘business as usual’, be selective, ensure that companies integrate more socially and environmentally responsible practices, and that the forest rent is shared equitably.”⁸⁸

⁸⁷ The report is commenting on the impacts of current logging roads in DRC, not on rural roads in general. Well planned rural roads are needed in many instances and desired by many communities.

⁸⁸ Forests in Post-Conflict DRC, p. xi.

124. Although little quantitative information is available, **the Panel notes that there is wide agreement that industrial logging in DRC has profound environmental and social consequences.** The nature of these impacts is reviewed in more detail in Chapters 3 and 4 (analysis of application of Bank social and environmental policies).
125. A brief comment on the nature of timber harvesting in tropical forests may be useful. When very large valuable trees are available, and the potential for processing and transport is low, there is a strong economic incentive to harvest only the most valuable species. That is what has generally happened, and what one would expect to happen in DRC for a number of years. As the large examples of the most valuable trees are depleted, other species can begin to be harvested and processed, and over one hundred species with commercial properties have already been identified in DRC forests. For many years, perhaps decades, the critical issues in forest management will involve social and equity aspects, as well as political/community decisions on how the forests are to be used.
126. The transportation situation is a major factor imposing limits on any possible industrial forest use in DRC. The road system in the area of the country with industrial forest potential is nonexistent, and any transportation will require building and rebuilding from practically nothing. The Congo is a very large river system, but because of the cataracts between Kinshasa and the mouth of the river, all cargo has to be unloaded and transported by land and reloaded at the ocean port. At this time the port of Matadi can not handle more than 500,000 tons of timber per year (about 700,000 cubic meters). However, there could be significant exports to neighboring countries to the east, north and south if roads were rebuilt in those sections.
127. Despite all this, if peace and stability are maintained, and infrastructure rehabilitation continues, **the Panel observes that one can expect that pressures for industrial logging will be strong and expanding, because the resource is so enormous and the profit potentials are so great.**
128. The Panel was told by many different sources that new entities and operations may enter DRC forests in the post-conflict environment, seek means to enhance roads and infrastructure, and carry out large-scale logging (or other activities) in the forest in a manner that, people fear, will be unsustainable and will fail to take into account the rights and interests of local people living in or near the forests, including the Pygmy People. **In this light, many people, including some who are critical of World Bank actions, indicated to the Panel their hope that the World Bank will stay engaged in the sector to support and help ensure that critical social and environmental needs are protected, while supporting needed economic development and progress in the country.**

B. Ethnographic Context: the Pygmy Peoples and Other Groups

129. The Request for Inspection was submitted by the *Organisations Autochtones Pygmées et Accompagnant les Autochtones Pygmées en République Démocratique du Congo* on their own behalf and on behalf of affected Pygmy communities in DRC whom they represent. Representatives of local communities in several Provinces of DRC are signatories to the Request.
130. The discussion below provides information on the Pygmy People. It is drawn from the more detailed ethnographic and background information in Annex 2 to this Report.⁸⁹
131. **Evidence for Early Existence in the Forest.** According to early studies,⁹⁰ Pygmy People are thought to be the original inhabitants of DRC forests, who lived there by hunting and gathering before the Bantu and Sudanic-speaking agriculturalists immigrated into the forest areas. Recent studies, however, have posed a question as to whether it is possible to sustain a hunting and gathering life in tropical rain forest areas. There are two main reasons for this difficulty, the first is that there is no hunter-gatherer group which actually lives solely by hunting and gathering in the humid tropics, and the other is that there is no sufficiently starchy food to sustain their subsistence throughout the year. Thus it is asserted that without agriculture, hunter-gatherers could not survive in the tropical rain forest.⁹¹
132. Recent archaeological studies, however, suggest the existence of hunter-gatherers in the Ituri Forest in northeastern DRC, dating back several millennia, before farming appeared in the region,⁹² though the area was probably covered with a drier type of forest, and it is not clear if they were the ancestors of the present Pygmy People. Whether or not the Pygmies were the sole inhabitants of the forests, they have been living in the forest for centuries, even millennia, which is exemplified by their physical characteristics adapted to the equatorial forest environment.⁹³

⁸⁹ Among the topics covered in the Annex, but not below, are: the etymology of the name “Pygmy”; its anthropological definition and issues relating to its current use; Pygmies as an ethnic group and their distribution in Central Africa; the concept of “indigenous peoples” in an African context; Pygmies as a minority group and their “legal” status; and the unequal relationship between Pygmies and agricultural villagers.

⁹⁰ For example, see Turnbull, C., 1965. *The Mbuti Pygmies: An Ethnographic Survey*, New York: American Museum of Natural History, p.162-163.

⁹¹ Bailey, R. C., Head, G., Jenike, M., Owen, B., Rechtman, R. and Zechenter, E. 1989. *Hunting and Gathering in Tropical Forest: Is It possible?*, *American Anthropologist* 91(1):59-82; Bailey, R. C. and Headland, T. N. 1991. *The Tropical Rain Forest: Is It a Productive Environment for Human Foragers?*, *Human Ecology*, 19(2): 261-285.

⁹² Mercader, J., Runge, F., Vrydaghs, L., Doutrelepon, H., Ewango, C. E. N. & J. Juan-Tresseras 2000. Phytoliths from archaeological sites in the tropical forest of Ituri, Democratic Republic of Congo. *Quaternary Research*, 54: 102-112; Mercader, J., M. Garcia-Heras, & I. Gonzalez-Alvarez 2000. “Ceramic tradition in the African forest: Characterisation analysis of ancient and modern pottery from Ituri. D. R. Congo.” *Journal of Archaeological Science*, 27: 163-182.

⁹³ Hiernaux, J., 1975 *The People of Africa*, p. 117.

133. **Pygmy Population.** Estimates on the size of the Pygmy population in DRC vary greatly depending on the source. The low end estimates that 50,000 Pygmies live in DRC,⁹⁴ but others place the number of indigenous peoples in DRC closer to 250,000.⁹⁵ A recent study by LINAPYCO-Kanpupu suggested that Pygmies were living in 47 out of 144 territories in DRC, with a total number of around 450,000 to 600,000.⁹⁶ The Panel's expert notes that these estimates are difficult at best because no reliable census data exists on the Pygmy People and no criteria exists for clearly categorizing a group as "Pygmies." However, the Panel's expert also notes that the size of the Pygmy population may be larger than claimed because of discrimination against Pygmy People. Once the discrimination is reduced and the baseline research is completed, a larger figure may appear. For example, people the panel met with during its visit, informed the Panel that the Figure may be in the range of 900,000. Also, one recent report suggested the total number of Pygmies is actually as high as four million, though this might be an over-estimate.⁹⁷
134. **Culture with Strong Attachment to Forest.** To illustrate how the Pygmy People use and depend on the forest and its resources, an example is given on the relationships of the Mbuti Pygmies with the forest in the Ituri region. Similar relationships are found among Pygmy communities throughout the country.
135. While there are many aspects of human relationships with the forest world, one of the best ways to illustrate these diverse and multiple relationships is to examine the use of forest plants. A series of ethnobotanical research conducted in the Ituri forest has revealed how heavily the Mbuti people depend on the forest plants for their survival and culture. First, the plants are used for food. While almost 60 to 70 percent of their present diet is comprised of cassava, plantain and other agricultural crops, they still use more than 100 species for food, out of approximately 750 species collected in the Ituri Forest.⁹⁸ These include various nuts with high lipid contents, such as those of *Irvingia* spp. and *Ricinodendron heudeloti*, both widely used in central Africa, and often sold at local markets, as materials of sauce in pot-au-feu style cooking. Energy-rich starchy food like *Canarium* fruit and wild yams are eagerly collected, and the sweet and sour fruits of *Landolphia*, *Annonidium*, and *Aframomum* are also frequently eaten.

⁹⁴ Bahuchet, S. ed., *The Situation of Indigenous peoples in Tropical Forests*, http://lucy.ukc.ac.uk/Sonja/RF/Ukpr/Report_c.htm

⁹⁵ Lewis, J., 2000; *The Batwa Pygmies of the Great Lake Region*. Minority Right Group International, London; Jackson, D., 2004 *Implementation of International Commitments on Traditional Forest-related Knowledge: Indigenous Peoples' Experience in Central Africa*. Forest Peoples Programme, p. 18.

⁹⁶ Forest and Post-conflict DRC, p.10.

⁹⁷ ARD, Inc. 2003 *Conflict Timber: Dimensions of the Problem in Asia and Africa, Volume III: African Cases –Final Report Submitted to the United States Agency for International Development*, Vermont, USA, page 17.

⁹⁸ Terashima, H. and M. Ichikawa, 2003 A Comparative Ethnobotany of the Mbuti and Efe Hunter-gatherers in the Ituri Forest of DRC. *African Study Monographs*, 24(1-2), p.1-168.

136. Many plants in tropical rain forest accumulate various secondary compounds, some of which, if administered properly, could be used as medicine for curing diseases, or as poison for hunting and fishing. About 200 species have so far been recorded for such purposes. Also important is the use of plants for material culture, with about 350 species so far recorded in the Ituri Forest. Their traditional material culture is simple, consisting of less than 100 items in total, including small semi-spherical huts and simple beds made of wooden poles, tools for hunting, gathering, transporting, cooking and dining, as well as for dress and decoration. Of these, more than 80 percent are made, either totally or in part, of plant material that is obtained from the forest.⁹⁹ Other than those used for material purposes, several dozen are used for rituals related to hunting, gathering, weather and other natural phenomena, funerals, ancestor spirits and other supernatural beings in the forest.
137. In addition to the plants directly used, hundreds of plants are useful in indirect ways, as nectar sources of honey and food of animals which are hunted, fished and collected. Pygmies have precise knowledge of the food plants of wild animals, and ambush the animals which approach to feed on the plants in their fruiting seasons. While many of the high trees have no direct use, they are important sources of honey, a highly prized food. They also collect various edible insects feeding on these forest plants, some of which, like *Entandrophragma* spp, are important to commercial logging.
138. The Mbuti believe that the forest is imbued with a supernatural being called “*Apakumandura*” who controls all the life in the forest, as described in Box 2.2 below.

Box 2.2: “*Apakumandura*” – Father of Forest

The Mbuti believe that the forest is imbued with a supernatural being called “*Apakumandura*” (literally meaning the father of forest), who controls all the life in the forest. They attribute the continued failure in hunting or gathering to *Apakumandura*, saying that he has made the forest ‘cool’ or ‘closed’. In order to make the forest ‘hot’ or ‘open’ again, it is necessary to please him by *sulia* ritual followed by intensive singing and dancing. Sometimes they make on the way to the interior forest a small shrine, *endekele*, in which some offerings of cola nuts or tobacco are placed for *Apakumandura*. There is also a small cauliflorous tree species called “*akobisi*” (*Uvariopsis congolana*, Annonaceae) which grows only in the dense forest. It is strictly forbidden to cut or break this tree. If someone carelessly cuts this tree, the Mbuti must sing and dance on the spot, beating a buttress root in place of a drum, in order to appease the anger of *Apakumandura*.¹⁰⁰

⁹⁹ Tanno, T., 1981 Plant Utilization of the Mbuti Pygmies: with Special Reference to Their Material Culture and Use of Wild Vegetable Foods, *African Study Monographs*, 1:1-53.

¹⁰⁰ Ichikawa, M., 1996 The Coexistence of Man and Nature in the Central African Forests, in, Ellen, R. and K. Fukui, eds., *Redefining Nature*, Berg Publishers, p. 472.

¹⁰¹ Turnbull, C., 1965 *Wayward Servants: The Two Worlds of the African Pygmies*. Eyre & Spottiswoode, London, p. 19.

¹⁰² Sawada, M., 2001 Rethinking Methods and Concepts of Anthropological Studies on African Pygmies' World View: The Creator-God and the Dead, *African Study Monographs*, supplementary Issue, No.27, p. 31. Efe is a Sudanic-speaking subgroup of the Ituri Pygmies.

According to Turnbull (1965), “the Mbuti recognize their dependence upon the forest and refer to it as ‘Father’ or ‘Mother’ because (...) it gives them food, warmth, shelter and clothing, just like their parents.”¹⁰¹ He also states in the same book that the Mbuti conceive the forest covered with canopy as the ‘womb,’ that is, the place they come from. According to Sawada (2001) who studied spiritual life of the Ituri Pygmies, they believe, the dead people go to the interior forest and roam there; he wrote “the land of the dead is situated deep in the forest, but still in the same forest which the living Efe usually use.”¹⁰² This means the forest is also the place where they go after death. Moreover, they often learn songs and dances from the ancestors during dream encounters with them in the forest.

139. The forest and its resources are useful both in direct and indirect ways, for material as well as spiritual purposes. The forest also provides the people with the basis of their cultural identity. Therefore, the forest in its entirety is necessary for their life and culture, and the destruction of forest would result in the deterioration of their unique forest-based culture.
140. It should be noted that some of these forest resources are commoditized in local markets. The forest fruit such as *Landolphia* spp. and *Canarium schweinfurthii* are often sold at local markets; the cola nuts are eagerly sought after as stimulants, as well as *Irvingia* nuts as oily condiments; various mushrooms and a variety of edible insects, including caterpillars and termites are also found at markets in their seasons. Honey is highly valued by all the people in the forest region. Other than food, there are important materials for manufacturing and construction, such as young leaves of raffia palm (*Raphia* sp.) for weaving mats, large Marantaceae leaves (*Megaphrynium macrostachyum*) for thatching and wrapping materials, and palm lianas (*Eremospatha haullevilleana*) for making baskets. All of these forest products comprise important trade items.¹⁰³
141. The most important forest resource with high commercial value is the bushmeat hunted in the forest. Since the 1950s, there has been an increasing demand for the bushmeat to supply cheap protein source to the people living in newly formed local population centers.¹⁰⁴ In particular, in the 1970s to 1980s when the economic situation of former Zaire had been worsening, the bushmeat trade was rapidly growing as an easy means of earning cash in the southern and eastern parts of the Ituri forest. The bushmeat hunted by the Mbuti were bartered with the traders for starchy food, such as rice and cassava flour, and for clothes and cooking pans; otherwise it was sold for cash in order to pay taxes, fines, for marriage, childbirth, funeral service and other social and cultural obligations. In the 1970s and 1980s, nearly a half (in weight) of their catch was traded, and the ratio of the traded meat was increasing. As bushmeat trade became more intensive, hunting pressures increased accordingly. An integrative management

¹⁰³ See also, Ichikawa, M., 1992 Diveristy and Multiplicity in the Forest Use by the African Hunter-gatherers. *Tropics* (Japanese Journal of Tropical Ecology), vol.2 (2):107-121.

¹⁰⁴ Hart, J. 1978 From Subsistence to Market: A case Study of the Mbuti Net Hunters, *Human Ecology*, 6(3):325-353; Ichikawa, M., 1991 The Impact of Cash and Commoditization on the Life of the Mbuti Hunter-gatherers, Eastern Zaire. *Senri Ethnological Studies*, 30:135-162.

plan in which both conservation and sustainable use of animal resources could be attained is needed.¹⁰⁵

142. **Territoriality, Nomadism and Customary Rights to Land.** Most of the Pygmy groups have been managing the forests in a customary manner. Namely, they have a loose territorial system which has contributed to preventing inter-group conflicts over land use. Through extensive nomadic movements in the forest, they also keep the procurement activities in a particular area at a low level, which has contributed to maintaining the resource base. Such a customary management and extensive forest use is illustrated in Annex 2, taking the example of the Mbuti Pygmies in the Ituri forest.
143. While their loose territorial system and extensive land use pattern seem to have functioned fairly well among themselves, such a system does not work in a wider social and political framework. On the regional or state level, their customary land use system has not been formally recognized, and there is no statutory right given to it. This seems odd, because *“under almost all African customary systems, occupancy is generally the key to ‘ownership’ and land is allocated by those claiming prior occupancy through lineages and clans.”*¹⁰⁶ Hunter-gatherer Pygmy People who are in most areas thought to be the first occupants of the land are not readily given the “ownership.” Instead, *“throughout the Congo Basin, governments have ignored politically weak hunter-gatherer groups because they do not make investments in land generally recognized by authorities, such as clearing, farming, or mining.”*¹⁰⁷
144. In the areas where Pygmy People are found today, there are also agricultural villagers who use the forest for hunting, fishing and other procurement activities, and they also have strong attachment to the forest. In such areas, customary rights to the forests are usually overlapping. According to the view of some of the agriculturalists, it is the clan or lineage of the “patron” villagers who “own” the forests, and under this “umbrella,” the Pygmies “belonging” to the villagers are allowed to use the forest. While this interpretation is not accepted by the Pygmy People themselves, the opinion of more powerful villagers is liable to be respected in a wider society, and the rights of the Pygmy People are often neglected.
145. The overlapping territorial claims by the Pygmies and the Bantu villagers do not make much trouble when the forest area is large enough for the people to use it, or when the economic opportunity is limited for exploiting the resources in the area. There has not been documentation of any serious problem accruing from such overlapping claims to the forest. As a Mbuti man once told, *“there is no reason to*

¹⁰⁵ Ichikawa, M., 2006 Problems in the Conservation of Tropical Rainforests in Cameroon, African Study Monographs, supplementary Issue, 34, p.5.

¹⁰⁶ Colchester, M. ed., 2001 *A Survey of Indigenous Land Tenure: a Report for the Land Tenure Service of the Food and Agriculture Organization*, p.57.

¹⁰⁷ IRIN, 2006 *Minorities Under Siege: Pygmies Today in Africa*, p.10.

refuse other people who want to use our forest, because the forest is large enough.” However, once the forest resources are commercialized and become scarce resources, such an inclusive attitude will turn out to be disadvantageous to the Pygmy people, and in most cases, more powerful agriculturalists will stand in a more advantageous position.

146. The egalitarian social relationship among the Pygmies themselves has not favored the representation system in general. As the report of the Integrated Regional Information Networks (IRIN) aptly pointed out: *“The representative institutions based on power structure is entirely foreign to Pygmy society, as hierarchy has never played an important role in their society. Decisions of a residential group are often made through discussion of elders. Consensus, rather than imposition, is the general way of their governance. This often collides with the protocols of modern administration, which call for a delegate, spokesman or leader to centralize decision-making after consultation. A ‘flat’ power structure is hardly adapted to project-management frameworks, which now permeate most development programmes.”*¹⁰⁸
147. The modern political system of representation may, therefore, threaten the society of Pygmy Peoples who have been practicing egalitarian social relationships. They would be caught in a dilemma, if they could only be represented in the national political process at the risk of weakening their unique social system.

¹⁰⁸ IRIN, 2006 *Minorities Under Siege: Pygmies today in Africa*, p. 12. IRIN is part of the UN Office for the Coordination of Humanitarian Affairs, but its services are editorially independent. Its reports do not necessarily reflect the views of the United Nations and its agencies, not its member states.



Picture 3: Panel listening to concerns of Pygmy People and local representatives - Mbandaka

C. Bank Engagement and Continuity

148. Once major hostilities ended in DRC, the Bank proved to be quick in organizing its initial support and to participate in the post-conflict rehabilitation of the country. As described in Chapter 1, the Bank re-engaged in DRC in 2001 with a Transitional Support Strategy, and then developed an initial emergency support DPL operation, the Economic Recovery Credit, approved in June 2002.
149. Realizing that the peace would bring not only prospects for development but also risks of large-scale and unsustainable depletion of natural resources, the Bank inserted a forest policy component into this initial DPL initiative in 2002. It was during this period that many of the valuable conceptual foundations on how to tackle forest management in DRC were laid. The DPL included a condition that the draft Forest Code would be submitted to the National Assembly (it was approved in August 2002), and the Bank also supported development of a Moratorium on the granting of new logging concessions, issued in May 2002.
150. During this investigation, Bank Management indicated to the Panel that the DPLs were intended to play an important role in complementing Project-based initiatives in the forest sector, by reinforcing country-level commitment to the sector and to particular actions. Bank Management explained that DPL's substantial financial support would be linked to the country development

- priorities to ensure a strong basis for continued Bank engagement and follow-through.
151. The EESRSP, which was prepared as an emergency operation and approved in September 2003, as explained above, included forestry-related activities, namely, assistance for the preparation of a forest zoning plan and the implementation of the new forest law's concession system. In 2004, the Bank initiated a forest sector review in DRC and a forest forum, including NGOs, was held in Kinshasa in November 2004. The TSERO DPL (which was approved in December 2005) included a forest Component which was intended to support the extension of the Moratorium on issuance of new concessions and initiation of a legal review of the existing concessions.
 152. As will be described in more detail in later sections of this Report, serious issues emerged regarding the handling of logging concessions in DRC during this period. These issues included: (1) the apparent issuance of a number of new logging concession titles after the Moratorium of May 2002 on the granting of new concessions; and (2) reports of major "swap" transactions in which companies exchange poor-quality ("unproductive") forest land concessions for higher-quality forest land concessions. These new or swapped forest concessions issued after the Moratorium on new concessions are included in the list of concessions seeking approval under the legal conversion process supported by the EESRSP. They cover millions of hectares of forest lands, including lands inhabited by Pygmy Peoples and lands of extraordinary biodiversity value.¹⁰⁹

D. Focus on Concessions and Potential Revenues

153. As noted previously, there is a long history of exploitation of DRC forests by industrial and other forms of logging, including for the purpose of generating taxes and revenues for the government. Forest concessions have been the instrument of choice to get hold of this resource for export markets and to extract needed revenues for national and provincial treasuries. During the years of war and conflict, however, commercial logging activities slowed significantly.
154. This situation changed dramatically during the final years of the conflict, when huge tracts of high-quality forest land were allocated to various economic and political interests who intended to use these forests once peace and stability would allow large-scale commercial exploitation. The concession areas now extend over very large sections of still largely intact and inhabited Congo forests.
155. This large scale and non-transparent licensing of forest concessions alarmed both DRC leadership and its development partners, and was a major factor leading to the involvement of the World Bank in this sector within the framework of several related actions.

¹⁰⁹ See Chapter 5 ("Post-Moratorium Concessions and 'Swaps'").

156. Within the context of plans for post-conflict rehabilitation and development, the Panel's investigation indicated that a major focus of attention by the Bank initially was on using the potential of the forest's riches for the country's reconstruction process, with particular emphasis on the possibility of generation of higher tax revenues through a very substantial increase in the level of concession logging in the country. The Panel notes, in this regard, the Aide Memoire of the Bank relating to its Forest Sector "*Prise de Contact*" Mission, which took place from February 17 to March 7, 2002.
157. **Projected Levels of Logging and Revenues.** The World Bank Aide Memoire in 2002 contains a synthesis of constraints and recommendations regarding Bank intervention in the forest sector. The discussion notes the size of the natural hardwood forest, and highlights the "gap" (*décalage*) between the potential production of the sector and the actual level of activity. Under this heading, the document states that while the actual level of production is 80,000 m³, the possible national level is between 6 million and 10 million m³.
158. The document provides income and revenue figures for this much higher level of logging. It notes that at an average value of US\$ 150 per m³, this converts to a value of US\$ 0.9 billion to US\$ 1.5 billion. It further notes, correspondingly, that the taxes on logging permits and exports totaled "only" US\$ 91,000 in 2001, and the annual area tax "*barely amounted to*" US\$ 5,381 whereas, by comparison, "*the tax revenues by itself could reach between US\$ 60 million and US\$ 360 million per year*" if all the concessions in DRC were granted in the open market.
159. The same document indicates that it is foreseen that in the next 5 to 10 years the political stabilization and rehabilitation of infrastructure will make the forest industry more active, stating that "***DRC is to become the premier producer of wood in Africa.***" The industry "*at full speed*" should lead to the employment of 50,000 people and an annual income of about US\$ 1 billion per year.¹¹⁰
160. **The Project at Approval of Financing.** The EESRSP, including its concession review process, was approved the following year, in September 2003. As noted in Chapter 1, the EESRSP Technical Annex refers to "*Lay[ing] the ground for implementation of the new law's forest concessions system - - with a focus on*

¹¹⁰ Aide Mémoire, 2002. The document proposes to reinforce national institutions in the sectors of forest and nature conservation, and the regulatory framework. It adds that the new (forest) law, in its final stages, includes several positive innovations: (a) community development, specifically that the law foresees that the forest concessions will be managed directly by rural collectives, and that 30% of the concession area taxes will be redistributed directly to the riverine communities; (b) management plans, in particular that all forests utilized for wood production would be the subject of a sustainable management plan; (c) fiscal reform, in particular to facilitate the putting in place of a new fiscal regime in light of the absence of coordination among the some 60 different taxes and related services; and (d) auction of concessions, in particular that the concessions would be attributed by auction. Under this last item, the mechanism to adjudicate concessions would guarantee: equal opportunities for operators, selection of the best companies, and optimization of revenues of the State (70%) and the rural collectives (30%). The Aide Memoire notes that its principal preoccupation is the fact that 40 million hectares of "*productive forest*" already has been allocated, or was in the process of being allocated before the adoption of the new law.

- converting old forest-contracts into the new concession regime.”*¹¹¹ A key indicator of success of the EESRSP forest element of Component 2 in the original Project documents was the number of concessions that would be “*attributed in a transparent manner*” during the concession review process. **Management acknowledged in its Response to the Request that this was not an appropriate indicator, and stated that it would suggest to the Government to replace it.**
161. Nevertheless, the presence of this indicator in the basic Project documents reinforces the view that the mindset at Project design was to provide support for increased industrial logging as a means to increase tax and revenue generation and support local employment.
162. The Panel notes that the zoning element of the Project documents, by comparison, referred to the need to secure land rights and transparent access to forest resources for all stakeholders. As described elsewhere in this Report, however, this element was dropped from the Project in 2005 before its implementation.
163. Apart from this, the Panel notes that the Project documents presented to the Board upon approval of the EESRSP contain little information or analysis on critical social and environmental issues and risks that would inevitably arise in connection with a Bank project involved with tropical forest concession operations, especially one which was built on analysis that foresaw the value and need to increase industrial concession operations.¹¹²
164. The Panel notes that the uncontrolled granting of concessions posed, and still poses, an enormous danger to the sustainable management of the DRC forests. The Panel considers that the Bank's willingness to become engaged in this difficult and controversial field was commendable.
165. The Panel notes, however, that a central focus in including this sector in early Bank programming was to increase tax and revenue streams through increased industrial logging in the country, supported by the controlled granting of forest concessions. **The Panel finds that the Bank's early interest in the potential tax and revenue-generating value of increased industrial logging led to a focus on developing a Project that would facilitate increased levels of industrial forest exploitation.**
166. **The Panel finds that there was inadequate consideration of the many important socio-economic and environmental issues of forest use, embedded within Bank safeguard policies, and that this distorted the actual economic**

¹¹¹ EESRSP Technical Annex, p. 29.

¹¹² As noted earlier in this Chapter, the current rural population has developed a tremendous reliance on the forest for subsistence, particularly as a consequence of the period of war and conflict. See also Chapters 3 and 4 (addressing specific claims relating to lack of Environmental Assessment, Social Assessment and Indigenous Peoples Development Plan for the forest-related components of the EESRSP).

- value of the country's forests.** This, in turn, distorted the design and the implementation of the Bank's important engagement in this vital sector, and appeared to contribute to major issues and problems of Bank compliance with its social and environmental policies at the stage of Project design and appraisal. These policy issues, and related issues of harm to local communities and the environment, are addressed in Chapters 3 and 4.
167. Even taking into account the absence of information and the post-conflict nature of the Bank's interventions, the Panel considers that Bank Management paid insufficient attention at the stage of Project design to the potential social consequences of this new Project affecting the management and use of the DRC forests. As described in subsequent Chapters, this lies at the core of many problems of non-compliance with Bank policies. This was a major shortcoming of the concepts underlying the Bank's good intentions to deal with the difficult issues of bringing order into the forest concession system.
168. **The Panel notes that it was only after the Request for Inspection that the Bank paid more attention to the plight of the Pygmy People and the many others dependent upon the forests. To its credit, Bank Management is now devoting attention to the livelihood and cultural problems faced by people living in the forest or dependent upon it.** The Forests in Post-Conflict DRC report is an example of this new approach.

E. Legal Framework with Regard to Forests

169. As noted above, during Project development in early 2002, Bank Management highlighted innovations contained in the draft Forest Law under consideration in DRC at that time. Building on this analysis, a core element of the EESRSP - - approved after the new Forest Code was adopted in DRC in 2002 - - was, in fact, to promote implementation of the new law. The second priority of the institutional element of the Project was to "*lay the ground for implementation of the new law's forest concessions with a focus on converting old forest contracts into the new concession regime.*"
170. In addition, one of the five core indicators of the TSERO - - the other Project subject to this Request for Inspection - - is enactment of key implementation decrees under the new Forest Code.
171. In this light, and given the importance of this subject in the Request for Inspection, the discussion below provides an overview of the new Forest Code and the associated legal framework in DRC with regard to forests. The discussion includes consideration of the Moratorium issued in May 2002, the status of implementing decrees, and the Bank's role in developing the legal framework.

1. General Legal Framework Related to Forests

172. Until 2002, forest management in DRC was governed by a Decree dating from 1949. In practice, implementation was based on a technical paper called “*The Logger’s Guide*”. This guide lacked clear legal status. It focused on the timber industry without providing a balanced overall view or providing a focus on forest conservation. As noted above, in April 1999, an Inter-Ministerial Committee on Wood recommended the cancellation all contracts for “*non-inventoried, abandoned and/or undeveloped forests.*”¹¹³
173. State ownership over the forest lands was established by a series of laws: the Forest Decree of 1949, the Bakajika Land Law of 1966, the 1973 Land Law and the 1980 Revised Land Law.¹¹⁴ The new Forest Code of 2002 (see below) also stipulates the state ownership of the forests in DRC.¹¹⁵ There are, however, customary land tenure and usage systems in the Congo Basin.
174. In May 29, 2002, the government of DRC imposed a Moratorium on the issuance of new concessions¹¹⁶ until new rules for the awarding of forest concessions had been published. Following the Moratorium, the Forest Code, law 11/2002, dated August 29, 2002 was published in DRC’s Journal Officiel in November 2003. Among several other issues, the Forest Code deals with forest concessions (defined as rental contracts without transfer of ownership) but not with land concessions.¹¹⁷
175. The Forest Code only sets general principles. It refers to a number of Arrêté and Decrees (“implementation Decrees”). While most of these implementation decrees are still in draft form or under revision, a Presidential Decree, dated October 24, 2005 (published in the Journal Officiel of November 1, 2005) was issued to address the legal review of old logging titles and to extend the 2002 Moratorium.
176. Additionally, the government is reviewing the Law on Nature Conservation, which dates back to 1969 with a view to ensuring harmonization of the national legal framework with the 1992 Convention on Biological Diversity.

¹¹³ Management Response, Annex 5, p.76.

¹¹⁴ <http://www.fao.org/forestry/site/30816/en/cod/page.jsp>. See also, Counsell, S., 2006 “*Forest governance in the Democratic Republic of Congo: An NGO perspective*” at: http://www.illegal-logging.info/papers/Forest_Governance_in_DRC.pdf, and http://www.photius.com/countries/congo_democratic_republic_of_the/economy/congo_democratic_republic_of_the_economy_national_land_law_sy~37.html.

¹¹⁵ The Forest Code, Article 7.

¹¹⁶ Arrête Ministériel No. CAB/MIN/AF.F.E.T/MAS/02.

¹¹⁷ Land tenure is still covered by the Land Law of 1973 which establishes several categories of land concessions. However, many of the necessary implementation decrees for the land law were never adopted.

2. World Bank Role in the Development of the Legal Framework

177. According to Management, the Bank did not finance the drafting or legal work on the Moratorium and the Forest Code. The Forest Code was financed by the FAO. However, the Bank assisted the Government by providing input and advice to the drafting of the legal texts and is now, among other donors, funding some of the drafting of the implementing decrees for the Forest Code.¹¹⁸ Furthermore, as mentioned above, the 2002 Bank DPL included a condition that the Forest Code would be submitted to the National Assembly for approval. The Forest Code was approved in August 2002.

3. Moratorium on New Concessions (May 2002)

178. In May 2002, a Ministerial Arrêté established a Moratorium on the awarding of new forest concessions.¹¹⁹ The Arrêté stipulates that “*the awarding of new Guarantees of Supply and Letters of Intent, as well as renewing or extending of such Guarantees and letters, shall be suspended. This suspension shall remain in effect until the publication of new auction regulations.*”¹²⁰ The Arrêté explicitly provides that it takes effect upon the signature date.¹²¹

179. After the Moratorium was issued, the Environment Ministry sorted through the previous forestry contracts that had been approved prior to May of 2002. The Ministry apparently reviewed the extant contracts and organized them into different categories: contracts that remained valid, abrogated contracts, and contested contracts. The November 2002 aide-memoire of the Bank indicates that this list of previous forestry contracts was made available to the Congolese Press Agency for publication. Following the May 2002 Moratorium, no new contracts were to have been issued.

180. A Presidential Decree of October 2005 confirms that the May 2002 Moratorium remains in effect and covers all concessions that were allocated, exchanged or reinstated. In addition to the condition mentioned in the May 2002 Arrêté for the lifting of the Moratorium, the publication of new auction rules, the Presidential Decree of October 2005 adds two new conditions. Those conditions are: (1) the publication of the final results of the conversion process, including the cancellation of non-converted concessions; and (2) the adoption of a geographic plan for future allocations over the following three years, based on a consultative

¹¹⁸ Chapter 1 briefly notes the role of other donors in regard to these and other important activities.

¹¹⁹ The Arrêté does not put a moratorium on the operation of existing concessions.

¹²⁰ Translation of Article 1 of the “*Arrêté Ministeriel N CAB/MIN/AF.F-E.T/ 19c/MAS/02 Du 14 Mai 2002 Portant Suspension de l’octroi des allocations forestieres*”.

¹²¹ Arrêté May 14 2002 “*Portant Suspension de L’Octroi des Allocations Forestieres.*” Article 3. In November 2002, the Bank noted that: “*the moratorium is in force.*” See Aide-mémoire, November 2002, p. 2. Original French: “*Ce moratoire est en vigueur.*” The Bank also notes, in an earlier document, that the Ministerial Arrêté establishing the moratorium was published in local media. See Special Note on Forestry Sector of the economic mission dated August 19 to 26, 2002.

process.¹²² Article 23 of the Presidential Decree also specifies that the Moratorium is to be lifted by a new Presidential Decree after the above-mentioned conditions have been fulfilled. The October 2005 Presidential Decree, which also establishes the concession conversion process, is further discussed in Chapter 5.

4. Forest Code (August 2002)

181. The Forest Code is dated August 2002.¹²³ The discussion below notes certain important elements of the Code relevant to the Project and the present investigation, and also addresses related issues of capacity and implementation.
182. **Objective.** Article 2 of the Forest Code (“the Code”) describes its objective: to “*foster rational and sustainable management of forest resources with a view to increasing their contribution to the economic, social and cultural development of today’s generations, while preserving forest ecosystems and forest biodiversity for future generations.*” The Code provides several major concepts that generally apply to all categories of forests addressed under the Code. Additionally, the Forest Codes provides for the classification of different types of forests, and includes provisions that differ according to the category of the forest.
183. **Categories of Forest Uses.** Article 10 establishes three broad categories of forest uses: (1) “gazetted forests” which are devoted to conservation; (2) “permanent production forests” where timber can be harvested based on forest concession contracts and forest management plans; and (3) “protected forests” devoted to rural development. The Code states that these are priority uses, but not necessarily exclusive ones.
184. **Consultations.** Article 15 provides for prior consultations with local people before a forest is designated for conservation or production: “*Gazettement takes place by Ministerial Order after due notification from the Provincial Forest Advisory Council based on prior consultations with local populations*”. And Article 84 states: “*Forest concession contracts shall be preceded by a public inquiry (...). The inquiry aims to establish any rights third parties might have on the forest to be granted for the purposes of compensation, if any.*”
185. **User Rights.** According to Article 44: “*Populations neighboring a forest concession shall continue to exercise their traditional users’ rights on said concession insofar as it is compatible with forestry exploitation, with the exclusion of agriculture. The concession holder shall not claim any sort of compensation following the exercise of such rights*” (see discussion, paragraph 44 of Chapter 3.) In the case of indigenous people, Article 84 calls for inquiries to determine any “third party” rights that might be compensated. These provisions

¹²² Presidential Decree No. 05/116, October 24, 2005.

¹²³ This section on the Forest Code draws on the useful discussion of the law in section 2A in Forests in Post-Conflict DRC.

- and related issues of relevance to this investigation are considered further in Chapter 3 (social issues).
186. **Sustainable Forest Management Plans.** Articles 71, 99 and 100 refer to implementation of sustainable forest management plans in all production forests with the last stipulating: “*loggers must comply with the legal provisions pertaining to nature protection, hunting and fishing.*” And Article 14 requires that: “*Gazetted forests must account for at least 15% of the national territory’s total area.*”
 187. **Concession Allocation System.** The Forest Code also establishes, in Articles 83, 85 and 86, a concession allocation system based on transparent auctions rather than arbitrary decisions. In Article 122 it provides that 40 % of the concession fees will be transferred to provincial governments.
 188. Articles 83 and 86 of the Code state that, under exceptional circumstances, sole sourcing may be used to allocate concessions. Sole sourcing can be authorized by the Minister, but the Code does not indicate under which criteria sole-source can be authorized. This may leave considerable room for discretionary decision-making. In addition, the Code creates no framework for the informal sector made up of smaller scale local loggers.
 189. **Cahier de Charges.** Article 89 makes the ‘*cahier de charge*’ (social contracts with local communities) mandatory. These social contracts are typical components of forest concession agreements in Central Africa. They vary from place to place, but call for the logging company to build facilities directly for the community. These could include roads, bridges, schools or health clinics, or others. In principle, private companies should pay their taxes and fees and government should provide these services. In DRC at present, government capacity to do so is very limited, so that the social contracts are one way for communities to receive benefits. These issues will receive further consideration below.
 190. **Consultations, Conservation Concessions, Other.** In several articles the Forest Code refers to a system of consultation including Provincial Forest Advisory Councils and regular public information on forest allocations and concessions. It refers numerous times to including the private sector, local communities and NGOs in consultations. It also refers explicitly to conservation concessions, biological prospecting, tourism, and environmental services.
 191. Article 119 states that Articles 115 to 118 (relating to forest exploitation) do not apply to “*conservation concessions*”¹²⁴ (see Box: 2.2). Under Article 115, a concession holder has the obligation to exploit the forest in the 18 months after the signing of the contract. Article 116 addresses the case in which the concession

¹²⁴ Forest Code Art. 119 “*Les concessions de conservation et de bioprospection ne sont pas concernées par les disposition des articles 115 à 118 de la présente loi.*”

holder does not use his concession and states that if the concession is not used for 2 years then it goes back to the government. Article 117 deals with the case in which the concession stops. Article 118 addresses the case of non-payment or insolvency of the concession holder.

192. The Code thus specifies the need to exempt conservation concessions from obligations that would, presumably, be at odds with their creation and use (e.g. to exploit the forest). As noted in Chapter 2, however, the Forest Code only sets forth a general legal framework in the sector, to be elaborated through implementing decrees. Various other provisions of the Forest Code may be considered relevant in this regard.¹²⁵

Box 2.3: Conservation Concessions

The concept of “conservation concessions”, mentioned in the 2002 Forest Code of DRC, has been applied in a number of settings internationally, and is seen as a powerful (if relatively new) tool for biodiversity conservation. Some countries such as Costa Rica, Peru and Guyana have passed laws or enabled the purchasing of conservation concessions.¹²⁶

The concept usually encompasses the leasing of forest areas with the objective to protect the area. Typically, under a conservation concession agreement, national authorities or local resource users agree to protect natural ecosystems in exchange for a steady stream of structured compensation from conservationists or other investors.¹²⁷ Unlike a traditional concession, the holder of a conservation concession will not engage in logging, but instead allow for forests to stay intact. These arrangements also have the potential to generate revenue both for governments and people and provide for the needs of communities. During its visits, the Panel was informed of difficulties that exist for those interested in trying to establish conservation concessions.

193. **Community Forests.** Another important issue that has been raised in the context of the legal framework is the recognition of community forests in DRC.¹²⁸ Article

¹²⁵ For example, Article 121 of the Code provides for different taxes to be paid by the exploiter, such as a “logging tax, an exportation tax, a deforestation tax, a reforestation tax,” and a surface tax. Some aspects of these taxes may apply both to conservation concessions and production concessions, although the types of operations are vastly different.

¹²⁶ “*A Role for effective, Efficient, and Equitable Conservation Concessions in Conserving Natural resources in Indonesia*”, Vth IUCN World parks Congress, South Africa 2003; written by Merkl, Claussen and Thompson, August 2003, p.2.

¹²⁷ “*Conservation Concessions – Concept Description*”, Richard Rice, Center for Applied Biodiversity Science at Conservation International, November 2002

¹²⁸ The term “community forests” refers to a system of forestry management in which local communities are responsible for the maintenance and exploitation of a forest area. Community forest initiatives vary significantly in different countries across the world; the amount of land available to local communities, the rights of the local communities to exploit certain forest resources, and the procedures for allocating community forests are all somewhat controversial issues. Typically, the goal of community forests initiatives is to avoid the marginalization of local populations in the forestry sector by granting local communities rights to manage certain forest. In practice, however, successful implementation of community forest initiatives has proved challenging. For a good discussion of the difficulties facing community forest projects globally see, “*Etude sur l’Etat des Lieux e la Forestriere Communautaire en RD Congo: Zone 2:Provinces du Nord-Kivu, Sud Kivu, Maniema et Katanga, Goma*, by Reseau CREF, May 2006; Sunderlin, William. “Community Forestry and Poverty Alleviation in Cambodia, Lao-PDR, and Vietnam: An Agenda for Research.” Center for International Forestry Research Publication, September

22 opens some possibilities for forest management by local communities: *“Upon request, a local community may obtain as a concession part or all of the protected forests among the forests properly owned according to custom.”* The Forest Code defines *“local communities”* as *“people organized in a traditional manner according to custom and united by bonds of tribal or parental solidarity that establish its internal consistency. A local community is further characterized by its attachment to a specific territory.”*

194. Community forest initiatives have been recognized as a means toward securing local community rights over forests, depending on how they are structured. A 2004 report by Dorothy Jackson notes the potential benefits community forests can provide for Pygmy communities, and related issues: *“By acquiring their own community forests Pygmy communities can gain the official recognition as communities in their own right that they seek. Although the present community forest model is problematic for Pygmy peoples, securing control over some of their forest resources potentially gives them a breathing space in which to develop more culturally appropriate management skills.”*¹²⁹
195. While it is seen as a positive sign that the DRC Forest Code recognizes measures that enable communities, many sources have warned that the concept of community forests poses challenges and thus has to be applied carefully to the realities on the ground.¹³⁰ The Panel has also heard concerns about an approach to community forests that follows a model of a “timber extraction” management system, rather than a more open and tailored approach that recognizes local community rights over the forests and is designed to reflect the actual and varied uses that communities might maintain.
196. The Forests in Post-Conflict DRC report argues that community forests are a key element for the reform of the DRC forestry sector but notes a number of difficulties that affect the development of community forests. It emphasizes that there is little experience of legally recognized community forests in DRC and notes that the challenge will be to *“develop simple systems, accessible to village communities, including indigenous groups, but not easily diverted by unscrupulous brokers, especially in forest areas where timber attracts major financial interests.”*¹³¹

2004. For a specific case study in Cameroon see, Djeumo, André. “The Development of Community Forests in Cameroon: Origins, Current Situations, and Constraints.” The Rural Forestry Development Network, Network paper 25b, July 2001.

¹²⁹ Jackson, D., 2004 *Implementation of International Commitments on Traditional Forest-related Knowledge: Indigenous Peoples’ Experience in Central Africa*. Forest Peoples Programme, p. 40. While Jackson’s report discusses Pygmy communities in the larger Congo Basin region, this specific citation is in reference to Pygmy communities in Cameroon. Jackson notes, however, that the DRC Pygmy communities suffer from many of the same difficulties facing communities in Cameroon and that their situations are comparable.

¹³⁰ Jackson, D., 2004 *Implementation of International Commitments on Traditional Forest-related Knowledge: Indigenous Peoples’ Experience in Central Africa*. Forest Peoples Programme, p. 5.

¹³¹ Forests in Post-Conflict DRC, p. xvi.

197. Some have suggested that the approach to forests in Cameroon should be a model for DRC. However, the Panel has heard a number of concerns that the approach in Cameroon should not be applied to DRC. Some of these concerns are noted in the textbox below:

Box 2.4: Community Forests – Lessons from Cameroon.

The Panel heard many comments that while “*community forest*” offer a potentially valuable means to promote and secure local community rights over forests, the approach to community forests used in Cameroon should not be followed in DRC. One study notes, for example, that the Cameroon restriction on the area of community forests at 5,000 hectares does not address the realities of Pygmy communities and people, who gather and hunt in significantly larger geographic regions.¹³² It was also noted that “*a central issue is that the Pygmy groups claim customary rights in permanent forest areas (logging areas), where community forests are not permitted, while the non-permanent estate, where community forests may be established, is under Bantu ownership.*”¹³³

Even in “*non-permanent areas*” where Pygmy communities might have the opportunity to apply for community forest concessions, it is reported in Cameroon that “*pygmy communities have not had equal opportunities to benefit from the 1994 forest law and establish their own community forests, because their settlements and their customary lands are not officially recognized as separate from Bantu settlements and lands.*”¹³⁴

Another study indicates that as of 2001, seven years after the adoption of the new Cameroon Forestry Code, out of 104 applications for community forest concessions in Cameroon, only 12 had been granted.¹³⁵ It is reported that local communities in Cameroon have expressed frustration due to the difficulty in drafting and submitting requests for a community forest concession.

198. The Forest Code, consistent with francophone legal systems, sets a legal framework. It is quite general, and for certain provisions it requires the development of implementation Decrees. Some of these have been adopted, including the October 2005 Presidential Decree on the legal review of old logging titles. Many key Decrees, however, have yet to be drafted and approved (see Chapter 5).
199. The Panel also notes that the existence of the law does not necessarily reflect the realities of how things work in the vast rural areas. The Panel observed many problems relating to capacity to enforce and support implementation of the Forest Code during its visit.

¹³² Jackson, Dorothy. “Implementation of international commitments on traditional forest related knowledge: Indigenous peoples’ experiences in Central Africa.” Published by The Forest Peoples Programme, October 2004.

¹³³ Jackson, Dorothy. “Implementation of international commitments on traditional forest related knowledge: Indigenous peoples’ experiences in Central Africa.” Published by The Forest Peoples Programme, October 2004. p. 38

¹³⁴ Jackson, Dorothy. “Implementation of international commitments on traditional forest related knowledge: Indigenous peoples’ experiences in Central Africa.” Published by The Forest Peoples Programme, October 2004. p. 40

¹³⁵ Djeumo, André. “The Development of Community Forests in Cameroon: Origins, Current Situations, and Constraints.” The Rural Forestry Development Network, Network paper 25b, July 2001, p 4-5.

5. Implementing Decrees

200. The Forest Code refers to the need to elaborate about thirty implementation Decrees. It is important to note that many of the most important issues are left to be dealt with through implementing Decrees. Their importance is also reflected by the fact that one of the indicators of progress to be monitored under the TSERO refers to the adoption of key application decrees to implement the Forest Code.¹³⁶
201. In particular, major issues such as community forests, procedures for sole-sourcing, national and provincial consultative forest councils, procedures for gazetting and prior consultations, standard concession contracts, ‘*cahier de charges*,’ procedures and criteria for auctioning concessions, as well as guidelines for sustainable management plans have to be addressed in implementing Decrees.¹³⁷ The status of adoption of these Decrees is addressed in Chapter 5.

6. General Conclusions

202. The creation of a legal framework that regulates concessions is important. However during the past years the reality of log extraction in the field has had little to do with the legal framework developed in the capital. Rather, international logging companies, nearly all with previous experience in DRC or Central Africa, have moved into areas where logging appears to be profitable. Some of them have “legal” contracts and some do not. The 2002 Forest Code has been adopted, but the implementing decrees to give it full effect have not been adopted. This leaves the sector open to a considerable degree of legal uncertainty, and creates the potential for unsustainable and inequitable practices.
203. The Panel and many of the parties interviewed by the Panel have observed that many large concessions are operating openly, and that the Government is collecting fees from them. At a time when government capacity to regulate and monitor situations in the field is so low, and very few foreigners (except UN Peace-Keeping Forces) are present in these remote rural areas, international logging companies have moved their heavy equipment and personnel upriver with barges. Logistically, they have merely to unload their heavy equipment anywhere along the extensive river system, build extraction roads and begin operations.
204. The Panel has been informed that there is a mix of types of actors amongst the existing concessionaires. Some are reported to be companies known for following laws in other countries. Others are reported differently. **Indeed, the Panel received some disturbing reports and information about abuse committed against local communities and forests in some areas.**¹³⁸

¹³⁶ Management Response, p. 17, para 42.

¹³⁷ See also Forests in Post-Conflict DRC p. 28 (discussing process and issues).

¹³⁸ See e.g. “*Discrimination raciale persistante et généralisée à l’égard des peuples autochtones en République démocratique du Congo*,” October 30, 2006, submitted to the African Commission for Human

205. The Panel observed companies that are well advanced in preparing the kind of forest management plans that could, if properly implemented, qualify a company for independent certification. It also heard many complaints from local people who feel harmed and believe that the local community is not receiving anything approaching a satisfactory system for sharing benefits and decisions, and this would usually preclude independent certification.¹³⁹ As discussed in the section which follows, the Panel notes that there are major problems relating to capacity to implement the legal framework, and that economic, security and physical factors have been determining the extension and intensity of industrial forestry operations. Nevertheless, the Panel agrees that developing a good quality legal framework is a high priority.

F. Institutional Capacity, Governance and Concerns of the People

206. The difficult realities facing the forests in DRC may also be expressed in terms of problems of institutional capacity, governance, and legacies of past problems. These issues and problems as they relate to forest policy are illustrated in a number of reports by international organizations and NGOs.¹⁴⁰
207. **In relation to the forest sector, there is widespread awareness that DRC lacks basic institutional, technical and field capacity to address social, environmental and other issues relating to logging in its forests.** Consistent with other reports and studies, the Panel observed, for example, that local authorities have little or no resources to check operations in the field, monitor log transport and, more generally, the operations of concession companies. The extreme lack of capacity is repeatedly recognized in the 2007 Forests in Post-Conflict DRC report, and in the original project documents: “*institutions are in shambles, and monitoring systems do not exist;*” “*emergencies are affecting all sectors;*”¹⁴¹ “*widespread corruption and misuse of public resources, both natural and financial, are widely recognized as major obstacles.*”¹⁴²
208. **In this context, the Panel is concerned about the Project’s potential impact in supporting actions to validate long-term concession contracts when the capacity to ensure sustainable forest concession operations does not exist.**

and Peoples’ Rights on Populations and Indigenous Peoples, at http://www.forestpeoples.org/documents/africa/drc_achpr_report_oct06_fr.pdf.

¹³⁹ See Chapter 4 (Social Issues).

¹⁴⁰ Carving up the Congo, Greenpeace, 2007; Forest Monitor, 2001. Forest Monitor states in its report for example, “*the more powerful people tend to expropriate the land from those less powerful. Logging simply replicates on a large-scale the continual expropriation of land and resources from the poor. This is a form of wealth accumulation by the powerful which is based not on the accumulation and investment of capital, nor the maintenance of a strong political structure, but on the intentional creation and perpetuation of insecurity at all levels of society. This occurred during Mobutu’s regime and did not appear to have changed.*” Sold Down the River, by Forest Monitor, 2001, part II Country Profiles: Democratic Republic of Congo, http://www.forestmonitor.org/uploads/2e90368e95c9fb4f82d3d562fea6ed8d/sold_1_.pdf.

¹⁴¹ Forests in Post-Conflict DRC, p.xiii. Problems include lack of basic means of transport to conduct visits.

¹⁴² Forests in Post-Conflict DRC, p. 4.

209. There also are reports of illegal activities in the forest sector over a period of many years. As noted previously, UN Resolution 1457 adopted in 2003 “*strongly condemned the illegal exploitation of the natural resources of the Democratic Republic of Congo (...)*.”¹⁴³
210. The problem of lack of good governance has been the subject of much study and attention, both within the Bank and outside. As Larry Diamond pointed out “*in a context of rotten governance, individuals seek to...accumulate personal wealth to convert public resources into private goods. There is no commitment to the public good and no confidence in the future. Every actor is motivated by the desire to get what can be gotten now, by any possible means.*”¹⁴⁴
211. A number of people, including Requesters, indicated to the Panel that they appreciate the World Bank’s engagement, its efforts to enhance transparency in the system and to address illegal logging and, especially, its increased efforts more recently to recognize and address issues facing indigenous peoples. However, they are deeply concerned about what will happen to the forests and to the vulnerable people.
212. The Panel heard during its investigation that many people in the country are still very suspicious about whether the legacy of mismanagement will end. They are concerned about what will happen once the initiatives reach the stage of granting or validating new concessions. They also want measures to ensure that the processes to support the interests of the people will, in fact, take place, even after such time as the Bank may leave DRC. These concerns are noted in greater detail in Chapter 3, which follows.

¹⁴³ UN Resolution 1457, adopted by the Security Council at its 4691st meeting, on 24 January 2003.

¹⁴⁴ Larry Diamond , 2003 *Moving up out of poverty: what does democracy have to do with it?* Prepared for the World Bank Workshop “Moving Out of Poverty: Growth and Freedom from the Bottom Up,” July 15-17, 2003, Washington, D.C.

Chapter 3 - Planning for Forest Protection and Use: Social Issues

213. In light of the claims raised in the Request for Inspection, and the discussion above, this Chapter examines whether the Bank complied with its operational policies and procedures on Indigenous Peoples, Cultural Property, Poverty Reduction and Disclosure of Information during the design and appraisal of the EESRSP, and whether any instances of non-compliance have led or might lead to harm to affected people or the environment. Chapter 4 addresses Bank policies on Environmental Assessment, Forests, Natural Habitat, and OP 8.60 on DPLs. Chapter 5 considers compliance issues and related issues of potential harm during implementation, including with respect to Bank Policy on Supervision.
214. In presenting this analysis, the Panel reiterates the fact that at the stage of Project design and appraisal, DRC was emerging from a devastating period of conflict and turmoil that cost millions of lives, ravaged large sections of the country, and caused the effective collapse of Government services. The Panel wishes to take note of the difficulties and even risks facing Bank staff and others working in this environment, and the quick nature of their response in offering assistance to DRC in this uncertain post-conflict environment.
215. The Panel also notes again (see Chapter 2) that many people whom it met in DRC remain very concerned and suspicious about whether past periods of mismanagement in the forest areas will end, and whether statements of good intentions to address their needs will turn into reality.

A. Indigenous Peoples

216. The Requesters state that in the EESRSP the Bank did not apply OD 4.20 on Indigenous Peoples, despite the presence of indigenous Pygmy people in the Project implementation area. They explain that the Pygmies' *"existence, survival, cultural identity, and traditional knowledge are intimately linked to the forest, their element and life source which they revere."*¹⁴⁵ The Requesters reject the Bank's claim that the Project is not expected to include activities in Indigenous People's areas, and state that this does not correspond to the reality on the ground. They note that the Pygmies were the first inhabitants of the region and have lived and traveled in the forests of DRC for centuries, even millennia.
217. In its Response, Bank Management acknowledges its decision not to trigger OD 4.20 under the EESRSP. Management explains that *"OD 4.20 was not triggered because the design of the project as reviewed at concept stage did not reveal the existence of Pygmy communities in project-affected areas."*¹⁴⁶ However, Management states that *"OD 4.20 should have been triggered when the PFZP was added to the project later in the preparation process, and states that "the TORs for the forest zoning pilot of the EESRSP did provide for full consultation*

¹⁴⁵ Request, p. 5.

¹⁴⁶ Management Response, p. 33, Annex 1, Item 6.

- with the Pygmies in any case.*”¹⁴⁷ Management adds that it decided to trigger OD 4.20 for the road infrastructure element of the Project (Component 3) in December 2005. They did not, however, decide to apply OD 4.20 to cover the forest and logging concession elements of the Project (Component 2).
218. OD 4.20 on Indigenous Peoples requires the Bank to ensure that indigenous people “do not suffer adverse effects during the development process, particularly from Bank-financed projects, and that they receive culturally compatible social and economic benefits.”¹⁴⁸ The policy requires the Bank, in the early phases of Project preparation, to identify whether indigenous peoples are present in an area affected by a proposed project, and sets forth criteria to identify indigenous people. The policy notes, in this regard, that “[i]ssues related to indigenous peoples are commonly identified through the environmental assessment or social impact assessment process. . . (see OD 4.01, *Environmental Assessment*).”¹⁴⁹
219. If the presence of indigenous people is confirmed, OD 4.20 requires a number of actions to address issues relating to them in order to ensure that its basic objectives are met. It states that “[t]he Bank’s policy is that the strategy for addressing issues pertaining to indigenous peoples must be based on the informed participation of the indigenous people themselves.” The policy adds that
- “identifying local preferences through direct consultation, incorporation of indigenous knowledge into project approaches, and appropriate early use of experienced specialists are core activities for any project that affects indigenous peoples and their rights to natural and economic resources.”*¹⁵⁰ (emphasis added).
220. The policy also contains provisions for the development of an Indigenous Peoples Development Plan (IPDP), as a key action for projects that affect indigenous peoples, and specifies the prerequisites for and contents of such a plan (discussed below).

¹⁴⁷ Management Response, p. 33, Annex 1, Item 6.

¹⁴⁸ OD 4.20, ¶6.

¹⁴⁹ OD 4.20, ¶ 10. OD 4.01 on Environmental Assessment, reviewed in Chapter 4, provides guidance for the size and spatial boundaries of environmental impacts to be considered within the Environmental Assessment (EA). Within the text of this policy, it is clear that many social dimensions are included. For example, the “Checklist of Potential Issues for an EA” (OD 4.01, Annex A) includes “Induced Development and Other Sociocultural Aspects” (paragraph (h) and also cross-references other relevant ODs and OPs on involuntary resettlement, indigenous peoples, cultural properties, etc., within the checklist of issues that should be assessed.

¹⁵⁰ OD 4.20, para. 8.



Picture 4: Panel meets with elder of Pygmy People community

1. Presence of Pygmy People in Project Area

221. As indicated above, a critical first step in meeting OD 4.20 is to identify whether there are indigenous people in the Project area.
222. The Panel found, however, a surprising lack of mention in early Project documents concerning the presence of Pygmy people in the DRC forests, the importance of the forests to them, and how Bank-financed actions related to industrial-scale logging operations and - - at the time - - pilot forest zoning plans - - might affect them. The Panel notes, for example, that the Project documents presented to the Board for approval of the EESRSP do not mention the Pygmy People, or assess potential issues or risks to them posed by Project activities.
223. **As indicated above, Management states in its Response that it did not know of the presence of Pygmy people in the project area at the time of Project concept review.** The presence of Pygmy people in the forest areas of DRC, however, is well known and documented from the works by Turnbull (1961, 1965)¹⁵¹ and other anthropologists and writers (cf. Putnam, 1954).¹⁵² The presence of Pygmy people also is clearly mentioned in the reports of World Bank-

¹⁵¹ Turnbull, C., 1961 *The Forest People*. New York:Simon & Schuster, pp.250.

¹⁵² Putnam, A. E., 1954 *Madami: My Eight Years of Adventure with the Congo Pygmies*, New York: Prentice-Hall, pp. 303.

- related projects and publications¹⁵³ (see, Cleaver, et al, 1992; Curran, 1992, for example), and was widely known at the time of Project concept review. DRC is home to between 250,000 and 600,000 Pygmy people, an estimate that reflects the uncertainty in the data (see Chapter 2).
224. The Panel also notes that the maps produced by Management in its Response (January 2006), while under-representing the presence of Pygmies in the country, do show that Pygmies are dispersed over wide areas of the country.¹⁵⁴ These maps indicate that the concentration of Pygmy people is highest in areas where forests have been thus far least exploited, but where an increasing number of concessions have been granted. More specifically, the Management map in its Response shows the distribution of Pygmy people over an extensive area in DRC, including the area for proposed pilot forest zoning plan, a triangle area of Maringo-Lopori-Wamba, and in the very expansive areas of logging concessions.
225. There are, in addition, other Pygmy groups not indicated in the Management map. One is the group called Jofe (or Batswa) living in the area to the east of Ikela,¹⁵⁵ and another is the Aka along the Ubangi river south of Dongo, northern part of Equateur Province (this latter group is finally indicated in the more recent map issued in the 2007 Forests in Post-Conflict DRC report. The latter group is related to the Aka (BaAka) Pygmies in the Likouala Region of Congo-Brazzaville on the other side of the Ubangi river.¹⁵⁶ Recent research by the NGO RAPHY is revealing even wider distribution of Pygmy or Pygmoid people, extending over the southeastern part of the country.¹⁵⁷
226. The exact location of Pygmy communities is in some cases known to researchers and in others uncertain. The Panel notes, however, that the logging concession review, the Moratorium and other key elements of Component 2 of the Project applied to the vast area of forests covered by logging concessions. In this context, there should have been no question that the project would affect many areas that are the homes and lands of the Pygmy people.
227. **The Panel finds that Management did not carry out appropriate screening research in the early stage of the Project to determine the possible presence of indigenous peoples,** and as a result lacked sensitivity to the presence of the

¹⁵³ Cleaver, K., M. Munasinghe, M. Dyson, N. Egli, A. Peuker, F. Wencelius, eds. 1992 *Conservation of West and Central African Rainforests*, The World Bank; Curran B., 1992. *Appraisal of the Okapi Wildlife Reserve Management Plan*, Report submitted to World Bank.

¹⁵⁴ IBRD 34464 attached to the Management Response. This map is reproduced in this report, IBRD 34464R, with the concessions under review super-imposed.

¹⁵⁵ Hulstaert, G., 1986 La Langue des Jofe. *Annales Aequatoria*, 7:227-228. See also, Schultz, M., 1986 Economic Relations between the Batua and Baoto of Bibelo Village, Bikoro Zone, Republic of Zaire: A Preliminary Report on New Fieldwork. *Sprache und Geschichte in Afrika*, 7(2), attached map.

¹⁵⁶ Dyson, 1992: Concern for Africa's forest peoples: a touchstone of a sustainable development policy, in Cleaver, et al, p. 214.

¹⁵⁷ Adrian Sinafasi Makelo, personal communication. See also, Terashima, H., 1980, Hunting of the BaMbote: An anthropological study of hunter-gatherers in a wooded savanna. *Senri Ethnological Studies*, 6:223-268.

- Indigenous People in the Project area. **Management failed to identify the existence of Pygmy communities in areas affected by the Project. This does not comply with OD 4.20.**
228. This failure was detrimental to the interests of the Indigenous Peoples, and to ensuring that they and other vulnerable people were not harmed by and benefited from actions affecting the forests and forest concessions.
229. The failure to prepare an EA for Component 2 of the Project (see Chapter 4) should also be noted in this context. One of its elements would have been to more clearly identify the physical area affected by the Project, and the population of affected people within that area. This, however, was not done.
230. The Panel further notes that Management, in its Response, appears not to have properly reflected information on the presence of Pygmy people set forth in the EA for Component 3 of the Project, the Road infrastructure Component (rehabilitation of RN4).¹⁵⁸ The assessment made on Component 3 revealed the presence of Pygmy people in the project area. The description of the Mbuti Pygmies in this assessment was not properly reflected in the Management response, however, even though the draft report had been available before the Management Response to the Request.¹⁵⁹ Moreover, the IPP for the Component 3 (road rehabilitation), drafted by an expert sociologist, gave a total of 165 settlements along the RN4 route between Bafawasende and Beni.¹⁶⁰
231. It is not clear how Management could arrive at such an underestimation of the distribution and population of the Mbuti Pygmies in the Project area at the time of their Response to this Request. **The Panel observes that even by the later date of the Management Response, there are some Pygmy groups not identified which are affected by the Project in its Response.**

¹⁵⁸ Management notes “*the presence of a community of sedentary Pygmies along the route at Mambasa,*” The Social and Environmental Assessment Report on Component 3 of the Project compiled by Buursink, however, describes that they encountered Pygmy people from 5 km from Beni, and that their estimated population living within 50 meters from the RN4 was 25,000. Evaluation environnementale et sociale de la composante 3, vol.1, annex p.82. The description in this report on the Mbuti population is as follows: “*Dans la zone du projet et plus particulièrement sur le tronçon de la route nationale N°4 NIANIA-BENI, vivent des populations pygmées. Appelés les “Mbuti” en langue locale, on les rencontre en petits groupes 5 km à partir de Beni jusqu’au niveau du village Mambasa (vol.1, p. 20), les pygmées vivant dans des villages situés à une cinquantaine de mètres de la route nationale 4 sont estimés à environ 25.000.*”

¹⁵⁹ The number given for the Mbuti population seems larger than that estimated in previous studies (30,000 to 35,000 for the entire Ituri Forest, Curran and Tshombe, 2001). Curran, B. and R. K. Tshombe, 2001 Integrating Local Communities into the Management of Protected Areas. Lessons from DR Congo and Cameroon. In Weberm W. , A. J. T. White, A. Vedder and L. Naughton-Treves eds., *African Rain Forest Ecology and Conservation*, New Haven: Yale University Press, P. 513-514. It is still not clear, however, how the description in the Assessment Report could be converted to such statements in the Management Response.

¹⁶⁰ Kai Schmidt-Soltau, 2006 *Plan de Peuples Autochtones*, p.8.

2. Pygmy People as Indigenous People under Bank Policy

232. Given that the presence of Pygmy peoples in areas affected by the Project is confirmed, the Panel examined whether or not Pygmy peoples fit the category of Indigenous People as defined in the OD 4.20 of the Bank Policy.
233. OD 4.20, which was replaced by OP 4.10 in July, 2005, defines Indigenous People in particular geographic areas by the presence, in varying degrees, of the following characteristics:
- “(a) a close attachment to ancestral territories and to the natural resources in these areas;
(b) self-identification and identification by others as members of a distinct cultural group;
(c) an indigenous language, often different from the national language; (d) presence of customary social and political institutions; and
(e) primarily subsistence-oriented production. (OD 4.20, ¶5)”*
234. As explained in detail in the Annex, the Pygmy People have a close attachment to their ancestral lands and the forest resources, they identify themselves as a distinct group or groups and follow their own long-established customs and social patterns, and have continued for centuries - - even millennia - - to follow primarily a subsistence-based way of life (with exchange relationships with their agricultural neighbors) that is adapted to and in interrelation with the forests around them. **The Panel observes that most of the Pygmy People satisfy the above criteria, with the possible exception of the language criterion.** Most, if not all, of the Pygmy People in DRC speak the languages that are similar to those of their neighboring Bantu- or Sudanic-speaking agricultural peoples, at least in grammatical structure of language. But even in such cases, the Pygmy People use different intonation in their speech, with which they are easily identified as Pygmy men or women in a local context.
235. This different manner of speech, coupled with some different words used for certain animal and plant species, has probably been maintained, in spite of their centuries-long contacts with neighboring agriculturalists. Moreover, none of the languages of these agriculturalists are included in the dominant national and official languages of DRC, which consist of French as official language, and Lingala, Kingwana (a Swahili dialect), Kikongo, and Tshiluba as national languages.
236. The Panel also notes that there are other Bantu and Sudanic-speaking agriculturalists in the same forest areas who have been living side by side with Pygmy people for many centuries, mainly by subsistence-based agriculture. They also have strong attachment to the forests. All these peoples *“are indigenous to Africa,”* but *“some are in a structurally subordinate position to the dominating groups and the state leading to marginalization and discrimination. It is this*

situation, which the indigenous concept in its modern analytic form, and the international legal framework attached to it, addresses.”¹⁶¹

237. While most of the Bantu- and Sudanic-speaking agricultural peoples living in the forests do not form the dominant group in DRC’s political process, they still occupy the dominant position over the Pygmy people in the local political and economic contexts. The Panel, therefore, finds it necessary to take into consideration the unequal social relationships among the co-existent local peoples, in order to consider the Indigenous People with respect to the OD 4.20 of the Bank policy. Namely, most Pygmy people in the Project area are more or less marginalized and underprivileged, paid less for their service, have less access to modern health and education facilities, and are much less represented in a wider political arena than their agricultural neighbors. In this sense, they conform to the definition of Indigenous People in its “*modern analytic form*,” and in the narrow sense. **The Panel observes that the Pygmy People in DRC should be considered to be Indigenous People under OD 4.20.**
238. Management does not appear to contest this finding. According to OD 4.20, “*task managers (TMs) must exercise judgment in determining the populations to which this directive applies and should make use of specialized anthropological and sociological experts throughout the project cycle.*” From various statements in the Management Response, it appears that the Management has viewed the Pygmy people as Indigenous People of DRC.

3. Failure to Develop Indigenous Peoples Development Plan (IPDP)

239. OD 4.20 provides that a key step in Project design, to meet the basic objectives of the policy, is the preparation of a culturally appropriate indigenous peoples development plan (the IPDP) “*based on full consideration of the options preferred by the indigenous people affected by the project.*” Any project that affects indigenous peoples is expected to include components or provisions that incorporate such a plan.
240. OD 4.20 specifies the prerequisites for and contents of an IPDP. As suggested by the above, a key prerequisite is to involve the indigenous people affected by the Project in developing the IPDP. Studies “*should make all efforts to anticipate adverse trends likely to be induced by the project and develop the means to avoid or mitigate harm.*”¹⁶² (emphasis in original). During Project identification, the approximate number of potentially affected people and their location should be determined and shown on maps of the Project area, and their legal status should

¹⁶¹ *The African Commission on Human and Peoples’ Right and Indigenous Peoples*. Presentation by the Commissioner (Karnel Rezag Bara) to the UN Permanent Forum on Indigenous Issues, 1.5 - 25 May 2006. New York. USA.

¹⁶² OD 4.20, para. 14(b).

be discussed. Task Managers should initiate anthropological studies necessary to identify local needs and preferences.¹⁶³

241. The contents of an IPDP include, *inter alia*:
- (a) **an assessment of the legal framework** in the country relevant to the groups covered by the policy, including the ability of such group to obtain access to and effectively use the legal system to defend their rights;
 - (b) **baseline data** on the area of project influence and the areas inhabited by the people, an analysis of social structures and income sources;
 - (c) **land tenure** - - when local legislation needs strengthening, the Bank should offer to advise and assist the borrower in establishing **legal recognition of the customary or traditional land tenure systems of indigenous peoples**;
 - (d) **a strategy for local participation by indigenous people** in decision making throughout project planning, implementation and evaluation.
242. The Panel considers that the forest-related elements of Component 2 of the EESRSP have the potential to have highly significant impacts on the forests that are home to the Pygmy people and, by direct extension to the Pygmy people themselves. The issues include how the Project will affect the course of industrial logging in the forests in which they live, impacts associated with such logging and, more fundamentally, the possible loss of control by Pygmy People over their traditional and customary rights in and uses of the forests which are central to their identity, culture and livelihood, but which are now increasingly controlled by industrial logging companies.¹⁶⁴ In addition, the Panel observed that people of other areas and backgrounds have flooded into the recently opened-up areas. The conflicts they have among themselves, and with the indigenous Pygmy populations, pose another problem, and are a potential breeding ground for further civil strife.¹⁶⁵
243. **The Panel finds that the failure to trigger OD 4.20 for EESRSP's Component 2 and to prepare an IPDP does not comply with OD 4.20 on Indigenous Peoples.** Because OD 4.20 was not triggered during Project design, and has to this date not been triggered in relation to the Component of the Project relating to the logging concessions, no IPDP was prepared. **As a result, potentially critical interests and needs of the indigenous Pygmy People in relation to these Project activities have been left unaddressed.**

4. Importance of an IPDP for the Pygmy People

244. As noted above, a proper IPDP for the Project would have examined, *inter alia*, the legal framework within DRC, a key foundation of Project-related activities, questions relating to sources of income and livelihoods, strategies to ensure

¹⁶³ OD 4.20, para. 16.

¹⁶⁴ These issues are considered in more detail below and in Chapter 4 (Environmental Assessment).

¹⁶⁵ See also discussion of this issue in Chapter 2 (indirect effects of industrial logging).

effective local participation by indigenous peoples in decision-making, and other matters. This analysis, however, was not carried out.

245. While the Panel does not seek to provide such an analysis, it is important to provide general contextual observations to indicate why the failure to develop IPDP was important and adverse to the interests of the Pygmy people.

(i) Baseline Data

246. Other sections of this Report provide basic ethnographic and other information regarding the Pygmy people in DRC. The Report also has noted the lack of information on these subjects in Project preparation documents presented to the Board for Project approval, as well as shortcomings in information developed by Management regarding distribution of Pygmy People presented at the subsequent date of the Management Response.
247. To address these issues and help put the Project into compliance, the Panel's expert notes that it would be necessary to conduct baseline research on the distribution, demography and customary use of forests of Pygmy people in DRC, since there is not reliable information available at present. In this regard, the Panel learned during its investigation that there are significant efforts underway by communities and NGOs in DRC to gather more reliable demographic information, including through a process of participatory mapping.
248. Set forth below are two examples of maps presented to the Panel. These illustrate participatory mapping attempts in the Bagbadia and Bavazana areas in Orientale Province. The figures show how the areas are currently used by the Pygmy People in the Ituri Forest, including for hunting, gathering, agriculture, traditional rites, cemeteries, etc:

Figure 3.1: Participatory Map of Use of Forest Resources, Bagbadia

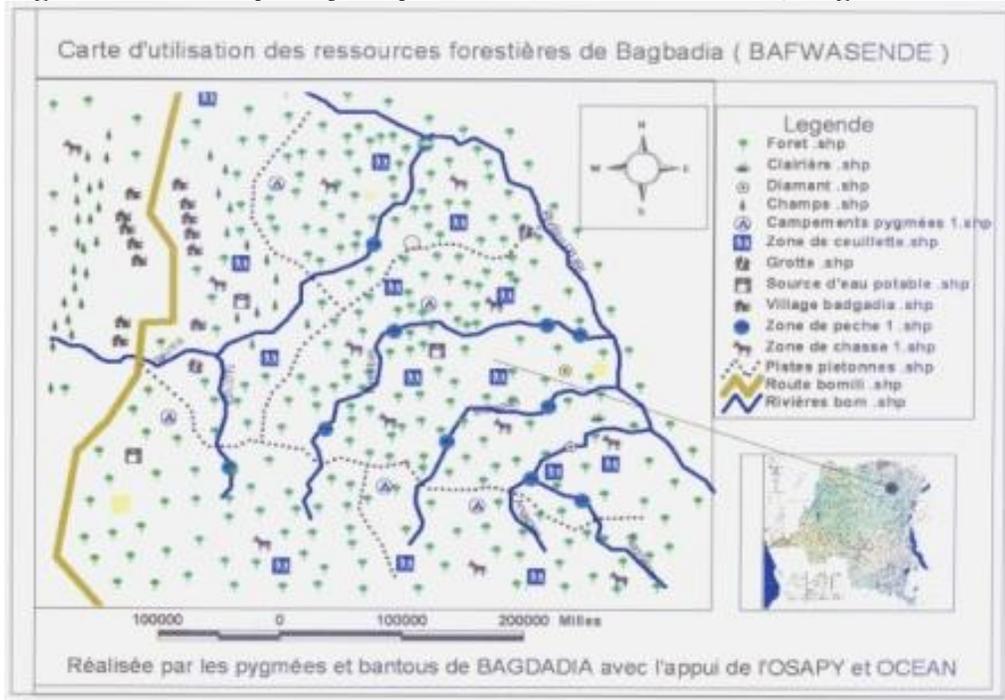
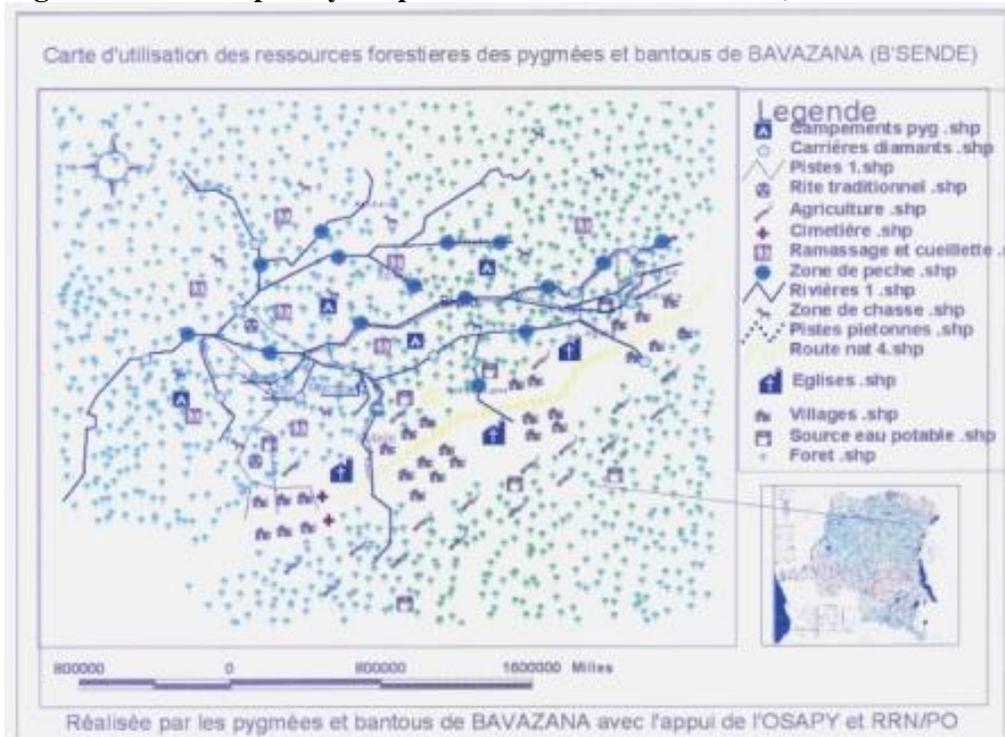


Figure 3.2: Participatory Map of Use of Forest Resources, Bavazana



249. The Panel considers that these mapping exercises are of great value as a step toward recognition of the rights and interests of Pygmy people in the forests.

They also illustrate the scale of potential impacts upon Pygmy people and the forests posed by industrial logging concessions.

250. During its investigation, the Panel asked Management if funding under the EESRSP or other Projects was being used to support this type of participatory mapping. Management indicated, however, that this was not the case.
251. **A policy-consistent IPDP would have provided the framework for improved baseline data on the Pygmy People in DRC. This data would have assisted the Project and its decision-making process in multiple ways:** by providing a stronger basis to anticipate and address issues facing the Pygmy people; by helping to identify potential actions, such as support for participatory mapping, that would have supported action on land use planning; and by providing a stronger basis to achieve effective participation of the Pygmy people in actions under the Project that might affect them.

(ii) The Legal Framework, Customary Rights and Institutional Capacity

252. The Panel notes that the 2002 Forest Code contains certain innovations on the customary rights of forest residents and local communities (see Chapter 3). The Panel's expert observes that if these are firmly established for the indigenous Pygmy people, their traditional use of forest resources can be secured to some extent. While forest resources were used until recently with *de facto* right by the forest-dwelling Pygmy people, there was no legal basis for preventing outsiders from encroaching and exploiting the forest in which Indigenous People have been living for many centuries.
253. In this context, there has often been an influx of migrant hunters into the forest, and in some other areas of the Congo Basin it has resulted in over-exploitation of forest resources. The forest people, in particular Pygmy people who are most heavily dependent on the forest, were unable to manage forest resources on a long-term sustainable basis, which might have been possible if there had not been encroachment by outsiders.
254. In addition, the lack of legal recognition of customary rights, coupled with the law stipulating state ownership of forest lands in DRC, had often resulted in granting logging titles by the government without any consultation with local people who were dependent on the forest for their subsistence and income.
255. The Panel notes, therefore, that some innovations in the Forest Code concerning the customary rights of the local people (including Indigenous People), have a potential to contributing to the welfare of the forest people of DRC.
256. The Panel wishes to highlight, however, that these innovations would need to be implemented, for example through additional decrees and *arêtes*, in which the rights of particularly vulnerable Indigenous People need to be clearly established.

- The effective implementation of these provisions, however, as well as the effective regulation of logging concession activities that might, in the near future, be validated and confirmed, depends to a crucial extent on the existence of adequate institutional capacity to ensure enforcement of laws within the country, both at the national and local levels. As discussed in Chapter 2, however, there is a stark lack of capacity to implement such measures and enforce the law in favor of the rights of local communities within DRC.
257. Other provisions of the Forest Code also address related questions of critical importance to the Pygmy people. For example, another provision, Article 37, appears to allow the customary uses in the forest only for subsistence purposes, “*except certain fruits and products, a list of which is fixed by the Governor of the province.*” Related to this question, Article 44 of the Forest Code stipulates that “*the forest residents of a concession continue to exercise their traditional usage rights for that concession insofar as it is compatible with the forestry exploitation.*” (emphasis added)
 258. The Panel notes that while most of the high, hard-wood trees, the targets for logging, are not directly used by the forest people for subsistence purposes, they are important sources of edible insects and honey, such as *Entandrophragma* spp., which accommodate a large quantity of edible caterpillars in their seasons, and many *Caesalpinaceae* tree species which comprise major nectar sources in the forest.
 259. Actually, one of the most frequent complaints about logging operations made by the Indigenous People during the Panel’s field investigation was that logging destroys the sources of edible fruit, honey and caterpillars, and seriously affects their livelihood in the forest. Other adverse impacts of logging include over-hunting of animals by outside poachers who come to the interior forest using logging roads, rapid infiltration of cash economy and consumerism, alcoholism accelerated by the sale of bushmeat, disappearing of game animals from the forest frightened by the noise, and other indirect influences of logging operations. In addition, the Panel heard reports that Pygmy people in some areas are denied access to forest areas which they traditionally have used for cultivation.
 260. If these negative influences are taken into consideration, the Panel understands that active logging operations impose adverse impacts and are mostly incompatible with the customary use of the forest by local and Indigenous Peoples if they take place simultaneously in the same area. **The Panel finds that the explanation by Management of the nature of these risks was insufficient at the time of Project design and approval under OD 4.20, and could not remove the fear of the Requesters.**
 261. **An IPDP under the Project would and should have assessed this legal framework and potential vulnerabilities and issues of importance to the Pygmy people.** On this basis, it could have developed a more informed basis,

with the consultation and participation of the Pygmy people, to determine whether and in what way “*local legislation needs strengthening*”, and how to advise and assist the borrower “*in establishing legal recognition of the customary or traditional land tenure systems of indigenous peoples.*”

262. **The Panel notes that Management, in its more recent documents, is developing more specific information on these questions, and considers that further efforts in this regard could be of considerable value.**

(iii) Sources of Income and Livelihood

263. As noted above and described in studies, present-day Pygmy and other forest peoples depend for their income on non-timber forest products (NTFPs). The Mbuti Pygmies in the Ituri Forest, for example, were exchanging or selling about a half of the meat hunted in the late 1970s to 1980s, and the amount of traded meat must have increased considerably since then. They exchange meat for agricultural starchy food, such as plantain, rice and cassava flour, and for clothes and other manufactured goods brought by traders. They also sell it for cash, which is used for paying tax, fines, school fees, modern medical treatment, and expenses for marriage (bridewealth), childbirths, funerals and other social and cultural needs. Restriction of commercial use of the forest resources would thus undermine their important source of income and livelihood.
264. It is clear from the 2007 Forests in Post-Conflict DRC report, in which Bank staff participated, that the Bank’s technical team is now well aware of the economic importance and potentials of forest-related activities other than industrial logging. The report also notes “*shortcomings*” of the Forest Code including its lack of specific reference to the “*user rights of indigenous people*” and the need for implementing Decrees to include specific provisions to take into account cultural and socioeconomic aspects.¹⁶⁶
265. The Panel’s field investigation in February 2007 and previous studies in DRC also showed that a variety of other forest products were used for the Indigenous Peoples’ own consumption and for earning cash. These include: honey, forest fruit such as *Landolphia* spp. and *Canarium schweinfurthii*; the cola nuts which are eagerly sought after as stimulants, oil-rich *Irvingia* nuts, various mushrooms and a variety of edible insects, including caterpillars, grubs and termites. Most of these products are also sold at local markets in their seasons.
266. The forest also provides important materials for manufacturing and construction, such as young leaves of raffia palm (*Raphia* sp.) for weaving mats, large

¹⁶⁶ Forests in Post-Conflict DRC, pp. 23 and 28. According to the report, the total economic value of bushmeat alone, produced annually in the entire DRC, amounts to over a billion US dollars, which is much more than the total economic value of the expected timber production, estimated at 160 million US\$ per annum, formal and informal timber production combined. Issues relating to the hunting of bushmeat are noted in Annex 2.

- Marantaceae leaves (*Megaphrynium macrostachyum* (Benth.) K. Schum.) for thatching and wrapping materials, and palm liana (*Eremospatha haullevilleana* De Wild.) for making baskets and as binding material. All of these comprise important trade items at local markets.¹⁶⁷
267. The most important forest resource with high commercial value is the bushmeat hunted in the forest. In northeastern parts of the Congo Basin, there have been increasing demands for the bushmeat since the 1950's, to supply cheap protein source to the people living in newly formed local population centers. In particular, in the 1970s to 1980s when the economic situation of former Zaire had been worsening, the bushmeat trade was rapidly growing as an easy means of earning cash income.¹⁶⁸
268. **The Panel finds that an awareness of non-timber benefits and importance to forest people, which the Bank has demonstrated in more recent studies, did not manifest itself in the design of the Project.** Rather, at that time, the focus was more on revenues and exports from logging production (see Chapter 2). Leaving aside the proposed zoning plan (discussed below), the Project design contained little, if any, provision to support these alternative uses of the forests, **and there seems to have been little action to support alternative uses of the forest resources, such as those of the Pygmy peoples, under the Project.**
269. **The development of a proper IPDP, in consultation with the Pygmy People, would likely have helped to ensure that these benefits and related issues of concern and importance to the people of the forest would have been identified and considered in Project design.**
270. The Panel further notes, in this regard, that the Forest Code raises another critical issue that might have been examined and addressed in an IPDP. Specifically, Article 84 of the Forest Code stipulates that “*the forest concession contract is preceded by a public investigation, executed following the procedure laid out by ministerial decree. The investigation has the goal of laying out the rights of third parties in the forest and figuring out their eventual remuneration.*” This raises, among other things, the question of how such remuneration might be determined in the case of the Pygmy people in the event that they lose access to sources of livelihood and benefits in the forests as a result, even if partly, of concession titles and operations.
271. The non-timber forest product value estimates in the 2007 report, Forests in Post-Conflict DRC, noted elsewhere in this Report,¹⁶⁹ are indicative of the enormous

¹⁶⁷ See also, Ichikawa, M., 1992 Diveristy and Multiplicity in the Forest Use by the African Hunter-gatherers. *Tropics (Japanese Journal of Tropical Ecology)*, vol.2(2):107-121.

¹⁶⁸ Hart, J. 1978 From Subsistence to Market: A case Study of the Mbuti Net Hunters, *Human Ecology*, 6(3):325-353; Ichikawa, M., 1991 The Impact of Cash and Commoditization on the Life of the Mbuti Hunter-gatherers, Eastern Zaire. *Senri Ethnological Studies*, 30:135-162.

¹⁶⁹ The total estimated value of NTFPs is over US\$ 3 billion per annum. See p. 22, Table 2; Section on Poverty Reduction, below.

values of these resources to the people. These values, however, were not brought into consideration at Project design, and there remains to this date no IPDP to provide a framework for their consideration.

272. **Applicability of OP/BP 4.12 on Involuntary Resettlement** In light of the considerations that Pygmies and other forest people depend on non-timber forest products for their livelihood and that the Bank was aware of the economic importance of forest-related activities other than industrial logging, it is the Panel's view that Management should have considered whether Component 2 of the EESRSP triggered the policy on Involuntary Resettlement (OP/BP 4.12). As already noted, implementation of Component 2 of the EESRSP may have the effect of restricting or preventing access to the Pygmy people to non-timber forest products on which they depend for their sources of livelihoods. The Bank policy on Involuntary Resettlement provides, among other things, for compensation and assistance to improve, or at least restore, living standards for people who lose income sources or means of livelihood as a result of a project. **The Panel finds that Management did not analyze whether a resettlement framework was needed to provide for the potential case that Pygmy People lose access, even partially, to sources of livelihood as a result of concession titles or operations.**

(iv) Avoiding Adverse Impacts

273. From various statements, Management appears to believe that the adverse impacts associated with concession granting could be avoided by ensuring implementation of innovations under the Forest Code, which would contribute to maintaining the unique culture and livelihood of Indigenous People through respecting customary rights. Referring to Articles 44 and 84, cited above, Management states in its Questions and Answers (Q&As) on the Bank's forest projects in DRC that:

*“The new Forest Code takes into account the customary rights of local communities, including those of indigenous peoples. It provides that customary rights are maintained in all production forests, and that local communities be consulted before any allocation of a forest to biodiversity conservation (such as a protected area) or to timber production.”*¹⁷⁰

274. The Panel finds, however, that the problem is not simple because,

*“Few, if any, unoccupied lands exist in central Africa. For the purposes of planning the development or protection of any area of land, it should be assumed a priori that any forest is occupied or claimed by some person, or some clan, lineage or group.”*¹⁷¹

¹⁷⁰ Questions and Answers on World Bank support to sustainable Management of forests in the Democratic Republic of Congo, No. 15. <http://web.worldbank.org/>

¹⁷¹ Bailey, Bahuchet and Hewlett, 1992, p.207-8

275. Actually, many of the concessions under the current legal review and conversion process contain roads, fields, fallow lands and village sites. Most of the concession granting processes, therefore, naturally involve the problems of “*laying out the rights of third parties in the forest and figuring out their eventual remuneration.*”

(v) Strategies for Local Participation

276. Another fundamental element of an IPDP, as noted above, is to develop strategies to ensure effective participation by indigenous peoples in relation to Project activities that affect them.

277. At the time of Project design, Management should have anticipated that both the proposed zoning plan and the logging concession review process posed significant issues and potential impacts upon the Pygmy people. Ways to achieve their effective participation in these actions should have been considered and developed in an IPDP. Such an analysis would have provided an understanding of particular difficulties in achieving effective participation by Pygmy people due to the structure of their societies and many other factors, and would have laid the basis for a better and more informed Project. **The failure to develop such a strategy for local participation, at the time of Project design, does not comply with OD 4.20.**

278. The Panel notes, in this regard, that while the 2002 Forest Code requires consultations with civil society in various aspects of forestry legislation at different levels, it does not specifically require participation of Indigenous People, except in the recent Presidential decree concerning the composition of Inter-Ministerial Commission for the legal review and conversion of old forest titles.¹⁷² Hence, some of the indigenous groups and their supporters complain that, “*the 2002 Forest Code contains no requirements that indigenous peoples be meaningfully consulted about or participate in decision making or give their free, prior and informed consent to activities on their traditionally owned lands and territories.*”¹⁷³

279. In fact, there are many significant concerns relating to the inclusion of Indigenous People in most of the major forest-related decision-making processes, such as the

¹⁷² The Presidential Decree dated Nov. 10, 2006 states that “In the case of the presence of *indigenous communities* among the local communities in proximity to the titles under consideration, the Commission will be open to an additional representative of these *indigenous communities*.” This is the first case in which the term “*indigenous communities*” is used in the legal text of DRC.

¹⁷³ *Persistent and Pervasive Racial discrimination against Indigenous Peoples in the Democratic Republic of Congo: Formal Request to Initiate an Urgent Action Procedure to Avoid Immediate and Irreparable Harm*, by Centre d’Accompagnement des Autochtones Pygmées et Minoritaires Vulnérables (CAMV), Association Pour le Regroupement et l’Autopromotion des Pygmées (ARAP), Collectif pour les Peuples Autochtones au Kivu (CPAKI/RDC), Action Pour la Promotion des Droits des Minorités Autochtones en Afrique Centrale (PDMAC), Solidarité pour les Initiatives des Peuples Autochtones (SIPA), Union Pour l’Emancipation de la Femme Autochtones (UEFA), *Forest Peoples Programme (FPP)*, p.20-22.

elaboration of the forestry legislation and subsequent implementation, the procedure to convert forestry title into new concessions, gazetting forests for nature conservation and granting new forestry concessions, and elaborating, implementing, monitoring and evaluating forestry concession management plans. While Management states that the Forest Code “*recognizes the rights of local people, which also includes indigenous people,*”¹⁷⁴ and that “*management understood the importance of reaching out to Pygmy groups and taking their specific needs into account since the beginning of its engagement with DRC forest work,*”¹⁷⁵ the Panel notes the importance of concrete measures to recognize the customary rights to the forest-users specifically for the Indigenous People and to facilitate their participation in the various stages of decision-making processes. This is especially important given the underprivileged status, weak political power and non-recognition of Indigenous People in the DRC legislations,¹⁷⁶ including the Forest Code.

280. In most areas of Equateur and Oriental Provinces which the Panel visited February 2007, information disclosure of the new forest code was actually undertaken for the first time when administrative staffs and national NGOs were working or collecting the information and selecting representatives necessary for the legal review and conversion of old forest titles.
281. It is noteworthy in this context that the 2007 Report, noted previously, briefly mentioned that “*The DRC should consider a system that allows local communities a right of refusal before any logging permit is allocated in their neighbourhood.*”¹⁷⁷ If a local community could have such a right of refusal, their customary right could be better respected. There has, however, been no actual development along this line yet.
282. **The Panel notes that the failure to seek and achieve effective participation by local indigenous peoples under the EESRSP has become a subject of much controversy for the Bank and in the present Request. Among other things, this appears to have been a major contributing factor to problems that arose in the early efforts to initiate a PFZP under the Project, and in implementation of the concession review process that persist to this day.**

¹⁷⁴ Management Response, p.7, ¶12.

¹⁷⁵ Management Response, p.21-22, ¶58.

¹⁷⁶ While Article 13 of the DRC’s new Constitution guarantees the fundamental rights and equality for all its citizens, including culturally minority peoples, no reference has been made to a particular group, or Pygmies, who are indigenous to the vast forest areas in DRC. Where particular groups suffer from systematic inequality and disadvantages, some measure should be taken in order to alleviate such a situation and to conform to the Constitution. See, Article 13 which stipulates “*Aucun Congolais ne peut, en matière d’éducation et d’accès aux fonctions publiques ni en aucune autre matière, faire l’objet d’une mesure discriminatoire, qu’elle résulte de la loi ou d’un acte de l’exécutif, en raison de sa religion, de son origine familiale, de sa condition sociale, de sa résidence, de ses opinions ou de ses convictions politiques, de son appartenance à une race, à une ethnie, à une tribu, à une minorité culturelle ou linguistique.*”

¹⁷⁷ Forests in Post-Conflict DRC, p.54.

B. Cultural Property

283. The Requesters claim that “*if zoning of these forests were to be carried out, as the Bank’s current actions and failings appear to indicate, without consulting the indigenous peoples, without taking their interests into account, and after the new forest concessions have been allocated, this operation would result in the violation of their cultural and spiritual values.*”¹⁷⁸
284. In Response, Management states that “*the pilot zoning plan does not threaten physical cultural property (...) indigenous and other forest dwelling peoples would have been consulted had the zoning proceeded.*”¹⁷⁹
285. OPN 11.03 on Cultural Property states that “*The United Nations term “cultural property” includes sites having archaeological (prehistoric), paleontological, historical, religious, and unique natural values. Cultural property, therefore, encompasses both remains left by previous human inhabitants (for example, middens, shrines, and battlegrounds) and unique natural environmental features such as canyons and waterfalls.*”¹⁸⁰
286. The Policy states that the Bank normally declines to finance projects “*that will significantly damage non-replicable cultural property, and will assist only those projects that are sited or designed to prevent such damage.*” It further provides that the Bank “*will assist in the protection and enhancement of cultural properties encountered in Bank-financed projects, rather than leaving that protection to chance.*”¹⁸¹ The policy pertains to “*any project in which the Bank is involved, irrespective of whether the Bank is itself financing the part of the project that may affect cultural property.*”¹⁸²
287. The forest to the Pygmy people is not merely the place where they obtain material benefits. Forest plants and animals are useful both in direct and indirect ways, for material as well as spiritual purposes. Even if these resources have little commercial value, they are indispensable to maintaining their life and culture.
288. According to Turnbull (1965), “*the Mbuti recognize their dependence upon the forest and refer to it as ‘Father’ or ‘Mother’ (...) because (...) it gives them food, warmth, shelter and clothing, just like their parents.*”¹⁸³ He also states that the Mbuti conceive the forest covered with canopy as the “*womb,*”¹⁸⁴ that is, the place they come from. According to Sawada (2001), the Efe Pygmies believe the

¹⁷⁸ The Request, p.9.

¹⁷⁹ Management Response, Annex 1, p. 37.

¹⁸⁰ OP 11.03, para. 1.

¹⁸¹ Id., paras. 2(a) and 2(b).

¹⁸² Id., para. 2(d).

¹⁸³ Turnbull, C., 1965 *Wayward Servants: The Two Worlds of the African Pygmies*. Eyre & Spottiswoode, London, p. 19, p. 253.

¹⁸⁴ Turnbull, C., 1978 *The Politics of Non-Agression*. In, Montagu, A., ed., *Learning Non-Agression*, Oxford University Press, p.167, 215.

dead people go to the interior forest and roam there; he wrote “*the land of the dead is situated deep in the forest, but still in the same forest which the living Efe usually use.*”¹⁸⁵

289. During the Panel’s field investigation at Ingende in Equateur Province, the Batswa (also called Batwa) people told about sacred part of their forest, called *djembo* in their language. When, for example, they lose an important ritual object, they go to such places to regain supernatural power from the forest. The Mbuti people living near Bafwasende also mentioned about the existence of a similar sacred part of their forest, to which entry is prohibited under normal conditions. In these cases, the forest clearly comprises cultural property of the indigenous forest peoples. In addition to a diversity of material values, it has spiritual value for them.
290. In these ways, the forest provides the people with the basis of their cultural identity. Therefore, the forest is necessary for their life and culture, and the destruction of forest would result in the deterioration of their culture that is heavily dependent on the forest.
291. It is clear from the foregoing that the forests comprise their cultural property and certain areas are of particular cultural and spiritual significance. If such forests would be logged and lost without their consultation and approval, it would cause not only harm to their physical cultural property, but also the spiritual values embedded in the forests. The Panel notes that under OP 11.03, the Bank is required to “*assist in the protection and enhancement of cultural properties.*” To implement this policy, it is first necessary to identify the presence of such cultural properties in areas potentially affected by the Project, and to identify and take appropriate measures to avoid harm, at the least, to the parts of forest that are most important to maintaining their culture. This would, in the present case, require in-depth consultation with the forest people whose cultural property might be at risk.
292. **The Panel finds, however, that Project documents at design and appraisal did not identify the cultural property and spiritual value of forest areas to the Pygmy People, or identify appropriate measures to avoid impacts to areas that might fall within the definition of cultural property under Bank policy. This did not comply with OP 11.03 on Cultural Property.** For reasons outlined throughout this Chapter, it was foreseeable that the zoning proposal and the concession conversion process could, in fact, affect and potentially contribute to harms to these areas - - even if such harm was not intended.
293. The Panel considers that it is not sufficient under the relevant policies to defer consideration of these issues and impacts, and consultations with local indigenous

¹⁸⁵ Sawada, M., 2001 Rethinking Methods and Concepts of Anthropological Studies on African Pygmies' World View: The Creator-God and the Dead, *African Study Monographs*, supplementary Issue, No.27, p. 31. Efe is a Sudanic-speaking subgroup of the Ituri Pygmies.

people more generally, to later stages of Project implementation, e.g., at such time that the zoning proposal is implemented, and/or after the conversion of concessions during the development of concession management plans. **While consultation and appropriate action at these later stages would be critical, the Panel considers that a safeguard postponed in the design and appraisal stages may become a safeguard denied**, due to the central importance, as described above, of assessing and planning for social and environmental issues during Project design and preparation.

C. Poverty Reduction

294. With respect to the question of poverty of people in DRC, the Chairman of the Forest Forum held in November, 2004 stated: *“The Congolese forest is the world’s second tropical forest block and an incomparable biodiversity reservoir. But the Congolese people are also among the poorest in the world. It’s a paradox that needs to be reconciled.”*¹⁸⁶
295. According to the Management this is because *“DRC’s forests have been managed poorly in the past, and have yielded few benefits to the Congolese people as a whole.”*¹⁸⁷ Therefore, Management states *“by including forest issues in the ERC and EESRSP, Management gave a strong signal as to the extent of its engagement in natural resources especially as these relate to governance and poverty alleviation.”*¹⁸⁸
296. The Requesters claim, however, that the Project would not lead to poverty alleviation of the people of DRC. Instead, they stated that the project’s *“negative impacts would further impoverish the poorest and most marginalized segments of the Congolese population and jeopardize all prospects for sustainable development.”*¹⁸⁹
297. In its Response, Management indicates that the impacts of forest reforms on poverty alleviation will be brought about through the innovations such as (1) economic benefits by logging concessions and (2) community forest program.¹⁹⁰ According to Management, *“the Bank is now conducting a PSIA on the impact of forest reforms on poverty alleviation (forest revenue shares to local entities, cahiers des charges, community forests). All fieldwork, including surveys and local consultation are being carried out in partnerships with local NGOs.”*¹⁹¹

¹⁸⁶ Management Response: Annex 6: *Concluding Remarks of the Chairman, Forest Forum, November 2004.*

¹⁸⁷ Management Response, p. 7, ¶9.

¹⁸⁸ Management Response, p.21 ¶55.

¹⁸⁹ The Request, p. 8.

¹⁹⁰ Management Response, Annex 1, p. 39; Annex 5, p.77.

¹⁹¹ Management Response, Annex 1, p. 39.

298. A review report by the Bank Management estimated the likely economic benefits of the timber sector as follows:¹⁹²

- (1) Employment: 10,000-15,000 jobs produced for the entire forest sector plus 9,000 to 15,000 more jobs in the informal sector,
- (2) Spill-over effect on the economy: stimulate consumers of services and transportations throughout the northern half of the country,
- (3) Revenues to the State and local entities: Forest revenues (tax) may reach 10 million US\$ in 2007, reaching 20 to 40 million US\$ within 5 - 10 years, from the tax of 20 US\$ /m³ for a total of 1-2 million m³ of timber production. Through the revenue sharing system established by Article 122 of the Forest Code, forest could also become a significant source of revenue for local entities; each of the provinces of Bandundu, Equateur and Orientale could receive approximately half a million US\$ per annum, obtained from 40% of concession fee, which is 0.5 US\$ /ha for 2-3 million ha concession area in 2007,
- (4) Direct support for rural development (*'cahier de charges'*): Obligation of concession holders to improve infrastructure (school, health care center, roads, etc).

299. However, the report also points out the risk, and states that “*without an appropriate and well implemented sector policy, benefits risk ending up in the hands of only a few people.*”¹⁹³

300. OD 4.15 on Poverty Reduction summarizes Bank procedures and guidelines for operational work on poverty reduction. It states that “*sustainable poverty reduction is the Bank’s overarching objective.*” The Directive provides that Bank supported investment operations focus specifically on poverty reduction based on country circumstances. These operations are aimed at increasing the poor’s income and productivity of their physical assets, improving their living conditions by providing social services and basic infrastructure and developing human capital by improving access to health, nutrition and education.¹⁹⁴

301. While Management states that institutional reforms through the projects will contribute to poverty reduction and rural development of the people of DRC, there have often been cases where local people have not really benefited from logging industries, except for a short term benefit limited to a small number of people. Instead, as seen in the case of Cameroon (see below), local people, in particular Pygmy people, are suffering from increased poverty, resulting from the decrease in animal population caused by influx of traders and poachers arriving through newly opened logging roads, and restricted access to the protected areas,

¹⁹² Forests in Post-Conflict DRC, pp.30-31. The text notes that “*this is only an estimated order of magnitude to be considered with the greatest of care.*”

¹⁹³ Forests in Post-Conflict DRC, p.28.

¹⁹⁴ OD 4.15, ¶27.

- such as conservation and sport hunting zones, which had long been used for their hunting and gathering grounds.¹⁹⁵
302. In addition, the 40 % of the concession fees, earmarked in Article 122 of the Forest Code to provincial governments, might not be properly distributed to the local entities, nor used for the benefits of local people. It has been noted that this was the case in Cameroon,¹⁹⁶ and the Panel heard claims and statements that this promised sharing of the revenue of timber production also have not reached local communities in DRC. Accordingly, unless strong measures are taken to ensure that the benefits reach local people, the concession system would not make the expected contribution to poverty alleviation of the local people.
303. **The Panel also observes that the economic value from timber production comprises only a minor part of the total economic value produced from the forest.** The review report by the Management estimated the market value of timber production, both formal and informal production combined, at 160 million US\$ per annum, whereas the total economic value of the resources used by local people, such as firewood, bushmeat, forest fruit, honey, plant medicines and other NTFPs, is by far the more important, amounting to over 2 billion US\$ per annum.¹⁹⁷
304. The Panel also notes that while the primary focus of the Request and this Report is on claims relating to indigenous peoples who use the forest, large numbers of non-indigenous people are also affected by the Project. These include those likely to be affected by secondary effects, including all those persons who currently rely on “bushmeat” or forest products gathered by indigenous peoples and sold in villages.
305. Thus, as stated in the 2007 Forests in Post-Conflict DRC report:

“The vast majority of rural people in the DRC rely on the forest for their livelihoods. From it they derive most of their protein, medicine, energy, materials, and cash income (...). Some groups, especially the Pygmies, rely on forests almost entirely. Wood and charcoal provide 80 per cent of all domestic energy consumed in the DRC. Small-scale informal loggers produce most of the timber used locally. Bushmeat is a vital source of food. Annual consumption is estimated at over one million tonnes. The Congolese people also use hundreds of forest plants for food and condiments, and even more for medicines. Slash-and-burn agriculture depends on forest to reconstitute soil

¹⁹⁵ Yasuoka, H. 2006. The Sustainability of Duiker (*Cephalophus* spp.) Hunting for the Baka Hunter-gatherers in Southeastern Cameroon, *Africa Study Monographs*, supplementary issue, no.33: pp.109-110; Hattori, S., 2003 *Relationships of the Baka Pygmies with the Forest World: Preliminary Report*, pp.1-41; Hattori, S. (2005) Nature Conservation Project and Hunter-gatherers’ Life in Cameroonian Rain Forest. *African Study Monographs, Supplementary Issue*, No. 29, pp.41-51.

¹⁹⁶ Forests in Post-Conflict DRC, p.47, Box 6.

¹⁹⁷ Forests in Post-Conflict DRC, p.22. Table 2.

fertility. The social and cultural significance of forests for forest people is almost immeasurable.”¹⁹⁸

306. Based on these understandings, the report further states:

“Given the importance of non-timber products and environmental services for the poor and for the international community, it is crucial that any additional forest use, such as logging, does not jeopardise the sustainability of these pre-existing values. In practice, participatory land-use mapping should help to organise the geographical mosaic of multiple forest uses, to consider how some can coexist or overlap, and to mitigate the risks of incompatibility. The timber industry must be regulated so that it doesn’t alter other forest functions.”¹⁹⁹

307. **In fact, if access to these non-timber resources were considerably restricted by the timber operations, there would be no way of compensating for the loss.** The Panel’s expert notes that for the forest-living people who find difficulties in satisfying their subsistence needs, the promotion of logging industry, or commercialization for export products, is by no means the only way, nor the best way, to solve the problem of poverty. Instead, it is of vital importance in the first place to secure ample subsistence-oriented life. They need by all means healthy life with nutritionally adequate food supply, which is obtained in culturally appropriate ways. What they want first is an ample subsistence base that can also afford means of fulfilling their social and cultural needs, rather than short-term economic benefits from industrial logging and related activities, which may risk their subsistence base in the longer term.

308. The Panel observes that the establishment of “community forests” (see Chapter 2) potentially has significant positive impacts, if they are designed and managed properly with this purpose in mind. While Article 22 of the new Forest Code mentions the possibility for local communities to manage forests, the application decrees for this still need to be developed, and the important question of “*if these ‘community forest’ should be located in the permanent forest domain or in the agro-forestry domain (non permanent)*”²⁰⁰ is still to be settled. Local people expressed fear that community forests would be available only on relatively small land areas left over from large-scale concession operations.

309. As described above, some of the non-timber forest products have potentials for economic development. The Forests in Post-Conflict DRC also mentions that:

“Small-scale gathering and small-scale businesses are currently producing more benefits for the Congolese people than any other forest use (...). While

¹⁹⁸ Forests in Post-Conflict DRC, pp.iii-iv.

¹⁹⁹ Post-conflic Agenda. 2007, p.22.

²⁰⁰ Management Response, Annex 4, TOR, annex, p. 66. See also discussion of Community Forests in Chapters 2 and 5.

*they are desirable in many respects, there is no evidence that they do not exhaust the resource base and are sustainable in the long term. Lack of regulations and incentives would then create risks of damage for the forests and of missed opportunities for local livelihoods and the national economy.*²⁰¹

310. The 2007 Forests in Post-Conflict DRC report further points out that:

*“The challenge is to help these small businesses establish their sustainability without depleting the natural resource base they rely on (...). The DRC (...) will have to learn from experiences in other countries, and develop its own solutions.”*²⁰²

311. While these notions and statements are important, and exemplify a new awareness or emphasis on the importance of these activities to the livelihood of forest people, and to their poverty alleviation, the Panel observes that there seems to have been little done actually to support these alternative uses of the forest resources under the Project.

312. **The Panel finds that there is a possibility that the Project, in its present form, may not contribute much to alleviating poverty of the forest people, because of the risks mentioned above, and may instead contribute to adverse impacts on poverty to the extent that unsustainable logging-related practices are encouraged. The Panel is especially concerned in this regard about the delay in developing implementing regulations concerning customary forest rights, including for “community forests,” and in supporting small-scale forest-based enterprise.**

D. Lessons from Cameroon

313. The extent to which the Bank approach in DRC is following a past approach in Cameroon is a subject addressed both in the claim of Requesters and the Management Response. This past experience also provides insights into policy-based issues as they arise in the context of DRC. In this light, the Panel reviews this issue below.

314. Specifically, the Requesters claim that *“by failing to implement any safeguards, the World Bank, without any input from civil society or involvement of the indigenous communities, opted to hastily adopt a Congolese Forest Code that was based on the Forest Law it had developed in Cameroon in 1994. The adoption of a Cameroonian law for the indigenous peoples in the DRC is synonymous with a denial of their traditional rights, and the boundaries of their traditional territories. This failure to consider the interests of the local communities and indigenous peoples from the early stages of development of a new policy, and a*

²⁰¹ Post-conflic Agenda 2007, p.iii.

²⁰² Post-conflic Agenda 2007, p.vii.

*new forestry legislation, resulted in numerous social conflicts in Cameroon that persist to this day.*²⁰³

315. In response, Management states that “*Cameroon’s and DRC’s development challenges are profoundly different, including in the forest sector and no attempt has been made to replicate policy from one country to the other.*”²⁰⁴
316. The Cameroon case may not be applicable directly to DRC, but the Panel observes that there are still good reasons for the Requesters’ fear that a similar situation may be brought about also in DRC. According to the map on the forest concessions in southeastern Cameroon²⁰⁵, large parts of the forest were allocated to forest concessions and conservation areas, and logging operations were considerably accelerated within a short period after the forest zoning had been made in southeastern Cameroon. Following the newly constructed logging road networks, a large number of poachers and meat traders rushed to the interior forest. In some areas, the influx of poachers and traders resulted in an abrupt increase in hunting pressure on the forest animals of almost three-fold between 2001 (or before the construction of logging roads which reached to the interior forest) and 2003 (after the construction).²⁰⁶
317. The hunting activities of the Baka Pygmies have also been accelerated by the traders’ and by the Baka’s pursuit of a short-term benefit from commercial meat trading, at the expense of long term sustainable use of the game resource. Moreover, most of the money they earned from hunting was immediately spent on consumer goods, such as purchased food, tobacco, sugar, and in particular, alcoholic drinks which accounted for more than a half of the total expenditure. “*The logging road actually brought in the traders with hundreds of liters of alcoholic beverages, and took out hundreds of bushmeat to the market*” from a village of 150 Baka Pygmies in southeastern Cameroon.²⁰⁷
318. The animal population in the forest seemed to be decreasing, and the Ministry of Forest and Wildlife in Cameroon and their counterpart NGO promoting the conservation project in the area have taken measures to stop commercial hunting being afraid that forest animals would soon be depleted. They also banned entering the remote forest areas designated for conservation, in which the Baka have long been carrying out a long-term foraging expedition (*molongo*), one of

²⁰³ The Request, p. 4.

²⁰⁴ Management Response, Annex 1, p.31.

²⁰⁵ *Global Forest Watch, 2005 Situation de l’Exploitation Forestière au Cameroun, Répartition des Unités Forestières d’Aménagement par concessionnaire et localisation de leur unités de transformation de bois dans le Sud-Est Cameroun*, WWF-GTZ, No Date.

²⁰⁶ Yasuoka, H. 2006a The Sustainability of Duiker (*Cephalophus* spp.) Hunting for the Baka Hunter-gatherers in Southeastern Cameroon, *Africa Study Monographs*, supplementary issue, no.33: pp.109-110.

²⁰⁷ Yasuoka, H. 2006a, p.107.

- their important traditional activities.²⁰⁸ They are now obliged to hunt in the nearby forest where there are fewer animals, and find difficulty in getting sufficient amount of game meat from hunting. All these measures were taken without any meaningful consultation with the Baka people.²⁰⁹
319. Moreover, while “*Cameroon decided to transfer 50 per cent of the area fee to local entities: 40 per cent to rural counties (‘communes’) and 10 per cent to villages (...). How these funds are actually used by local elites remains obscure. The audit showed that less than 20 per cent of the funds were spent on schools, health centres and development projects, while most were used for administration expenditures such as buildings and official meetings; and that mismanagement of these funds is still widespread...In practice, this system still contributes little to the intended local development, and the discrepancy between the amount transferred and the outcome in the field is worrying.*”²¹⁰
320. This experience provides an important reference for analyzing potential policy issues and impacts that might arise under the Project in DRC. The Panel’s expert underlines the importance of implementing regulations and measures that firmly establish the institutional reforms, and put them into practice for the benefits of forest peoples and in line with Bank policies. Key elements include free, prior and informed consultation and participation at different levels and in various aspects of current institutional reforms, respect for customary rights to the forest, equitable benefits, and in particular empowerment of their representation system. The Panel observes, however, that there has been little progress on these types of measures as compared with progress in reforms relating to logging concessions. This gives reason for the Requesters in DRC to fear negative impacts of the current reforms.

E. Information Disclosure and Consultation

1. Efforts at Outreach and Information Disclosure

321. The Requesters stated that EESRSP is based on DRC Forest Code, which was adopted without the participation of civil society or the involvement of the indigenous population. More generally, the Requesters claim that the Bank activities pertaining to Forest sector in DRC are not consistent with Bank policies and lack popular legitimacy because they are implemented without adequate consultation and do not respond to Indigenous Peoples’ concerns or sustainable development requirements.

²⁰⁸ Yasuoka, H., 2006b, Long-Term Foraging Expeditions (Molongo) among the Baka Hunter-Gatherers in the Northwestern Congo Basin, with Special Reference to the “Wild Yam Question” *Human Ecology*, Vol. 34, No. 2, pp.275-296.

²⁰⁹ Hattori, S., 2003 *Relationships of the Baka Pygmies with the Forest World: Preliminary Report*, pp.1-41; Hattori, S. (2005) Nature Conservation Project and Hunter-gatherers' Life in Cameroonian Rain Forest. In (K. Shigeta & Y. D. Gebre, eds.) *Environment, Livelihood and Local Praxis in Asia and Africa. African Study Monographs, Supplementary Issue*, No. 29, pp.41-51.

²¹⁰ *Forests in Post-Conflict DRC*, p.47, Box.6.

322. Management states that the Forest Code was published in the Journal Officiel in November 2003, and an information campaign is underway to popularize it, hold workshops, and translate it into local languages. With respect to information disclosure and consultation more generally, Management is aware that the “*Bank needs to undertake more proactive efforts to inform interested Governments and NGOs.*”²¹¹
323. With regard to outreach to Indigenous People, Management claims that it understood the importance of reaching out to Pygmy groups but states that its efforts were restricted to policy dialogue and to contacts with stakeholders in Kinshasa because the forest areas were still inaccessible. At the same time, they stressed that a Pygmy representative was included in the Commission in charge of reviewing draft forest decrees and that “*a more substantive dialogue on Pygmy issues started in 2004.*” They acknowledge, however, that “*a more proactive outreach would have perhaps enabled the Bank to (...) establish more direct lines of communication with Pygmy leaders and communities.*”²¹²
324. Bank policies contain requirements to disclose relevant information in an appropriate way in order to carry out meaningful consultations.²¹³ The policies concerning disclosure of information fall under BP 17.50 Disclosure of Operational Information (2002) and the 1994 version of the World Bank Policy on Disclosure of Information. The 2002 policy was in effect when the Request for Inspection was made. One of its objectives states as follows: “*[T]imely dissemination of information to local groups affected by the projects and programs supported by the Bank, including nongovernmental organizations, is essential for the effective implementation and sustainability of projects.*”²¹⁴
325. **The Panel recognizes the high logistical challenges to disclosure and distribution of information in DRC, due to its sheer size and scale, as well as enormous constraints relating to transportation, communication and, in many cases, security. Bearing this in mind, the Panel expresses its concern that information relating to the Forest Code, a foundation for actions under the EESRSP and TSERO, has not yet reached many of the indigenous Pygmy people living in the forest.**
326. The Panel heard testimony on this matter during its field investigation in February 2007. A brief interview with three Mbuti people (one woman and two men from a nearby village) in Orientale Province revealed that they had no knowledge of the new Forest Code. In addition, indigenous Batswa (also called Batwa) people

²¹¹ Management Response, p 21 para. 57.

²¹² Management Response, p 22 para. 58.

²¹³ See OP 4.01, para 15 on public consultation (for Category A and B projects, “*the borrower provides relevant material in a timely manner prior to consultation and in a form and language that are understandable and accessible to the groups being consulted.*”)

²¹⁴ Bank policy on disclosure requires that most Bank documents be made available to the public upon request. This does not mean that Management distributes these documents widely or always free of charge.

in Equateur Province interviewed by the Panel stated that, while they had knowledge of the forest code and actually had a booklet of its Lingala version, they had not been consulted at all by the logging company operating in the forest which they had been utilizing for hundreds of years.

327. They added that consultation about the logging concessions and negotiations of the *'cahier de charges'* (social contracts with local communities), called for under the 2002 Forest Code, were made only between the logging company and Bantu farmers (Baoto, or Mongo people). Without any consultation or compensation, the loggers built roads penetrating their settlement sites, and cut trees even in burial sites and sacred parts of their forest. When they made complaints to the loggers about these ill-mannered acts, the loggers told that they (the Batswa) should go to Kinshasa for appealing to the administration, for which they have no means to do so.²¹⁵

2. Special Issues relating to Consultation with Pygmy People

328. The Panel also notes that indigenous Pygmy peoples generally have a disadvantage in relation to information and systems of “consultation”. As described in previous studies²¹⁶, they have been keeping inter-dependent but unequal relationship with their particular Bantu-speaking agricultural neighbors, who are called “*kpala*” among the Mbuti in Ituri, and “*nkolo*” among the Batswa in Equateur Province; both words have a connotation of “patron” or “boss.” While this relationship may have changed recently, particularly during the last few decades with social and economic changes in DRC, the long-term influences of this relationship still remain in the political structure of a regional community.
329. Moreover, the society of Pygmy people is characterized by non-hierarchical, egalitarian social relationship, which would not fit a modern representation system that requires a leader or spokesman to express their voice²¹⁷. They are thus often represented by more powerful agricultural neighbors in a wider political context (like the case in Ingende), and rarely have a chance to have their voice heard in wider society.

²¹⁵ A recent report by a Government consultant also describes issues that could be linked to lack of information disclosure. In some parts of the Equateur Province, the Indigenous People are obliged to pay “entry fee (*frais d'entrée*),” 25-50% of the products, to the Bantu villagers who consider the forest as their property, AND to the logging companies. This is notwithstanding provisions of the Forest Code which stipulates customary rights to the forest and free (without payment) access to the forest resources in the logging concessions.

²¹⁶ Ichikawa, M. 1978 The residential groups of the Mbuti Pygmies. *Senri Ethnological Studies*, pp.131-188; Pagey, H., 1985 Coping with uncertainty in food supply among the Oto and the Twa living in the equatorial flooded forest near Lake Tumba, Zaire. In, De Garine, I. and G. A. Harrison, eds., *Coping with Uncertainty in Food Supply*. Clarendon Press, Oxford: 175-209.

²¹⁷ IRIN, 2006 *Minorities Under Siege, Pygmies Today in Africa*, p.12; see also, Lewis, J., 2001 Forest People or Village People, Whose Voice will be heard? In Barnard, A. and J. Kenrick, *Africa's Indigenous Peoples: “First Peoples” or “Marginalized Minorities?”* Center for African Studies, University of Edinburgh, pp.61-78. Also see Kai-Schmidt, 2006, P. 13.

330. **This social dynamic with their neighbors, coupled with overlapping customary rights to the same forest areas, makes the situation more difficult for the Pygmy people to express their interest.** These factors also underline the importance of a proper IPDP analysis and social assessment, as discussed above, to ensure that such characteristics are taken into account in actions to achieve consultation and participation by the Pygmy people in accordance with the relevant Bank policies.
331. The relationship of Pygmy and Bantu people deserves elaboration in this regard. In spite of the widespread popular belief that Pygmy people are the first inhabitants of the forest, agricultural people and their lineages (or clan) have the rights to the forest land in most customary systems in the Congo Basin, and according to them, under this “umbrella” Pygmy People are “allowed” to use the land. At least this is the understanding of the agriculturalists as “master” and “patron,” though the Pygmy People oppose this view. They insist on their own rights to the forest, but their rights are not properly recognized, due mainly to their weak power and lack of representation in a wider political framework. Based on this understanding, the villagers, as well as the logging companies, are liable to think that consultation with Pygmy people may not be necessary.
332. The overlapping territorial claims by the Pygmy People and the Bantu villagers did not result in much trouble when the forest areas were large enough for the people to use them, or when the economic opportunity for exploiting forest resources was limited. When the forests are allocated to logging concessions, however, the overlapping rights over the forests often develop into extremely severe conflicts, as in the case reported from the Panel’s visit to a village in Equateur Province.²¹⁸ **In most cases, Pygmy people are placed in disadvantageous position by the more powerful agriculturalists who try to monopolize the benefits from such an opportunity.** The lack of disclosure to the local people, in particular the Pygmy people, of information regarding forest reform and their legal rights – to the extent this has occurred - - means that legal reforms and policy initiatives supported by the Bank may not as a practical matter be applied in the many remote areas where these people live.

F. Concerns Presented to the Panel during its Investigation

333. During its investigation, the Panel received statements and testimony from Pygmy people in the forests. Some of these are recorded below.

Box 3.1: In Their Own Words – Pygmy People at Different Locations

“The life of the Pygmies is tied to the Forest, all the activities of the primitive man, living off hunting and catching game, building huts of leaves thanks to the Forest. We practice traditional medicine by using tree skins, roots, and leaves because it carries the Original Divine Power. The water, rivers and streams, our Heritage and our Richness, is charmed by other closer ethnic groups because of custom and the exploitation of the indigenous man as labor. We are made poor in

²¹⁸ During the field investigation, the Batswa Pygmy People complained that they were even denied the access to land for cultivation by the Bantu (Mongu) villagers.

every aspect.”

“We are victims of the annoyances; arbitrary object of arrest by the established legal institutions... including wrongful judgments of forced labor, roads maintenance... transport of policemen packages at crossings are always the task of Pygmies.”

“The [concession] company prevents us from going into the forest with security guards. The company says that they have already purchased the forest land, so Pygmy people cannot enter.”

“The company does not respect the rights of the people, and has done nothing for the people.”

“The noise of the machines scares the animals away.

“The company prevents us from cultivating on the concession lands. Only the Bantu have enough power to do this. We cannot cultivate manioc because the company has the land, so we have to buy it at the market.”

“The interior forest is a source of power. Some sacred places are places to go only when someone has a need. Cemeteries are absorbed to the ground, the people remember where. Companies are destroying these places.”

“The indigenous people living in economic, intellectual, and spiritual pauperism, recommends that the World Bank ensures the education of Pygmies. It is only by education that we will be able to manage our business and have the capacity to withdraw from the domination of other ethnic groups.”

“Because of the lack of knowledge concerning various diseases and lack of financial means to remedy such diseases Pygmies die like caterpillars. They are attached to their traditional medicinal ways, and this is why in certain provinces of DRC indigenous people have become rare. We request the creation of health centers for the care of these people.”

334. The Panel also received statements and testimony from other local civil society groups on behalf of locally affected communities. Some of these are recorded below.

Box 3.2: In Their Own Words – Local Civil Society

“We recommend that the World Bank, as a partner of the Congolese Government puts its weight for a sustainable and rational exploitation of the forest resources whose finality is the improvement of the socio-economic well-being of local communities and indigenous people.

We recommend that preliminary consultation of the local communities and indigenous people be undertaken prior to any action of any concession in order to take into account their interests in accordance with the recommendations of the new Congolese forest law. This would take place through NGOs that are living in symbiosis with these communities.

We recommend that any concession activity gives priority to the creation of jobs of value for the indigenous and local communities.

We recommend that the respect of labor laws be rigorous in all concessions.

We recommend that the standards of a sustainable exploitation of forest resources be respected by concessionaires.

Chapter 4 - Planning for Forest Protection and Use: Environmental Issues

335. The Requesters claim that the forest components of the EESRSP and TSERO have significant effects on the protection and use of the forest as well as on the people who inhabit it and who rely on its resources. This chapter examines whether the Bank has complied with its operational policies and procedures on Environmental Assessments, Forests, Natural Habitat, and Development Policy Lending.

A. Environmental Assessment

336. The Requesters claim that an environmental assessment needs to be prepared for the forest element of Component 2 of the EESRSP and that the project was erroneously classified as Category B under OP 4.01 on Environmental Assessment (EA). They state that because of the sensitive impacts of the policies to be implemented under the Projects, in particular the proposed forest zoning and the existence of indigenous communities within the areas, the Project should have been classified as Category A. According to the Requesters, *“the type of management and, in the long term the survival of the forests in DRC, will depend on the forest zoning activity.”* They also note that the preparation of any EA was delayed more than twelve months after financing became effective.

337. Management asserts that the EESRSP was classified correctly as Category B. In its Response, Management states that the zoning plan was not expected to have widespread or adverse impacts because it was planned at a pilot scale and as part of a *“policy package aimed at halting illegal use of forests and promoting participatory conservation and sustainable management of forest resources.”* Management asserts that *“technical assistance operations for institutional strengthening are usually classified as category C”* and that *“category A would not have been appropriate for this component.”* The Project team decided to prepare a *“full EA”* for Component 3 (covering the road elements) *“to ensure that any environmental or social impacts not envisioned during project preparation would be identified and mitigated.”*²¹⁹

338. Under OP 4.01 the Bank requires environmental assessments of projects proposed for Bank financing *“to help ensure that they are environmentally sound and sustainable, and thus to improve decision making.”*²²⁰ The Policy provides that the EA is a process *“whose breadth, depth and type of analysis depend upon the nature, scale and potential environmental impact of the proposed project.”* A proposed project is classified as Category A *“if it is likely to have significant adverse environmental impacts that are sensitive, diverse, or unprecedented.”*²²¹

²¹⁹ Management Response, Annex 1, p. 25. The Response also notes that *“An Environmental and Social Impact Management Framework was to be prepared for Components 4 and 5.”* Ibid.

²²⁰ OP 4.01, paragraph 1.

²²¹ OP 4.01, paragraph 8(a) (footnote omitted).

339. The Panel notes that there are three issues related to the EA, which were not clearly distinguished in the Request or in Management’s Response: whether an EA needed to be done for the forest element of Component 2 of the Project, in addition to the EA confined to the separate Infrastructure Rehabilitation Component of the Project in the northeast; whether the Project for purposes of the EA should be a category A,B, or C project; and whether the significant delay in issuing the EA for the Infrastructure Rehabilitation Component was consistent with OD 4.01. The Panel will address these issues below.

1. Classification and Preparation of an EA

340. The Panel notes that a “Category B” EA originally was prepared under the Project. Documents presented to the Board at the time of Project approval state that the Project is classified as Category B “*because no activity funded under the Project is expected to have a significant negative environmental or social impact.*”²²²

341. **This “Category B” EA, however, covered the road elements contained in Component 3 of the Project.** When the Project team later upgraded this EA to Category A, it still applied only to Component 3. **Under the Project, there was no EA analysis ever completed (whether of Category A, B or C) of the pilot zoning and logging concession elements contained in Component 2 of the Project.**

342. The Panel considered what type of EA analysis should have been prepared under Bank Policy for each of these two elements in Component 2 of the EERSP: the pilot zoning element and the logging concession element.

(i) The Pilot Forest Zoning Plan (PFZP)

343. The Panel notes that at the time the EA was completed, the proposed forest zoning plan was integral to the Project’s Component 2. The zoning proposal covered vast areas of forest land, which Pygmy People and other vulnerable people inhabit.²²³ Forest land use planning may involve, among other things, the physical allocation of forest areas for different purposes, such as community forests, strict protection, industrial logging or other uses, as well as critical issues of land tenure and access for local people and communities.²²⁴

²²² EERSP Technical Annex p. 57, ¶143.

²²³ Management Response states and a project map indicates that the proposal covered 4.6% of forested areas of the DRC or some 6 million hectares (Management Response, p. 14, ¶30). Project documents stated and the map shows that the zoning proposal would have a “*focus on the most forested provinces (in particular Equateur and Province Orientale).*” See also EERSP Technical Annex, p. 28, ¶54.

²²⁴ Project documents state that the zoning proposal was designed to address issues relating to land rights and access to forest resources for all stakeholders. EERSP Technical Annex, p. 28.

344. The Panel would define the potential impacts of a proposal for forest land use planning in the moist tropical forests of DRC, as diverse and sensitive, meaning, again according to OP 4.01, that they may be irreversible and raise issues covered by OP 4.04 Natural Habitats and OP 4.10 Indigenous People. In particular, in the context of DRC, land use planning even at a “*pilot scale*” could readily be anticipated to lead to major impacts on the environment and the people living in the forest.
345. Crucially, the extent and nature of these impacts would likely depend to a very large degree on how the land use planning was done - - which is one of the reasons that a proper environmental assessment and analysis is so important. In addition, the basic concept of a “pilot” approach suggests setting the foundation, principles and methodologies for an even broader scale initiative on land use planning throughout DRC.
346. **The Panel considers that forest land-use planning should have been anticipated to have a potentially fundamental impact on land, forests, and people. The Panel finds that the potential impacts of land use planning in DRC should have been analyzed as part of a “Category A” EA. The failure to develop an environmental (and social) assessment which addressed these issues, at the time when the forest zoning plan was part of the Project, does not comply with OP 4.01.**
347. The Panel recognizes that the zoning plan of the Project was dropped shortly before the receipt of the Request for Inspection. This does not, however, mean that the failure to comply with the EA policy on this item is moot. Rather, the Panel is concerned that the absence of sufficient steps to achieve policy compliance for this element early in the Project made it much more difficult to carry out the process successfully and in accordance with Bank policies. The Panel notes, in light of Management’s Response and other information gathered, that Management realized that a forest land use planning process was much more sensitive and involved than they had thought during Project planning, and had already caused enough apprehension within civil society groups in DRC to generate the Request.
348. **Dropping the zoning element from the Project has had important consequences because it meant that future zoning would take place against the backdrop of the logging concessions that would be confirmed in the concession review process.** While Requesters expressed concerns about how the zoning process was taking place, they have also expressed strongly that an appropriate land use planning process is needed to ensure that their rights and interests in the forest are recognized and protected.

(ii) The Logging Concession Review Process

349. Component 2 of the EERSP included a process to review the validity of logging concessions in DRC under the Forest Code of 2002 and a Moratorium on new logging concessions of the same year. Specifically, it envisaged “*implementing the new law's forest concession system – with a focus on converting old forest contracts into the new concession regime.*” The concession areas under consideration cover tracts of forests numbering millions of hectares. Through its support of this process, the Bank became financially involved in the Government’s administration of industrial harvesting in the DRC tropical rain forests.
350. The Panel also notes that the environmental and social implications of the actions and decisions taken under this process are very significant. Through this concession review process, and as designed in the Project, concessions covering large areas could be validated under existing laws, and thus pass a major step toward long-term continuation of their logging operations.²²⁵ Those concessions which are converted will have four years to develop a management plan. However, they will be able to continue logging operations during that time. The concessions cover enormous stretches of forest, including areas that are home to the Pygmy peoples. They cover a large portion of the forests that are essential to the people of DRC for many elements of their subsistence and survival. **The forests have of world-class biodiversity value and include large areas of habitat of endangered species of fauna, such as the bonobo.** They also play a crucial role in the world’s climate system.²²⁶ **The Panel finds that the failure to prepare an EA for the forest-related Component, does not comply with OP 4.01.**
351. Project documents state that the Project will finance methodological work and field verifications to, among other things, “*re-design concessions boundaries, where appropriate.*”²²⁷ This type of activity, just one of many functions of the concession conversion process, could have direct and extensive implications for people and the environment inside or near concession areas and boundaries.
352. The type and nature of social and environmental issues raised by this process are illustrated by a series of issues and concerns that have arisen during its implementation. These are detailed in Chapter 5. They include: concerns that the process has inadvertently created incentives for concession companies to accelerate logging in some areas and to swap already-logged areas for high-quality forests; problems of participation by Pygmy peoples in the process; and failure to screen out a number of very large concessions, dated after the Moratorium, from the list of concessions for possible approval.

²²⁵ See Chapter 5 (discussing details of the concession review process as it has unfolded during implementation).

²²⁶ See Chapter 2 describing importance of DRC forests in terms of climate.

²²⁷ EERSP Technical Annex, p. 29.

353. In addition, during the Panel’s field investigation, indigenous people and other local people complained about adverse impacts of logging, such as over-hunting of animals by outside poachers who come to the interior forest using logging roads, rapid infiltration of cash economy and consumerism, alcoholism accelerated by the sale of bushmeat, disappearance of game animals frightened by the noise from the forest, and other indirect influences of logging operations. Logging roads are (in other areas of the world as well) frequently a path followed by squatters on the land or other traders, having effects on the wider market and network of social systems in the area. Such secondary effects can be self-reinforcing, as more settlers follow the first ones and the area that had already been logged is unable to recover while the effects of population increase and changed conditions spreads to nearby areas. A proper environmental analysis would have included a careful analysis of these secondary social impacts. Chapter 3 developed these points in detail.
354. **The Panel considers that it should have been clear, at Project design, that the Project’s involvement in the review of logging concessions carried very significant environmental and social implications.** It was apparent that the World Bank would be, and the Panel has found that indeed it is now, deeply associated with and involved in the process. Local communities, indigenous people’s groups (although not all are aware), national NGOs, international NGOs, the forest concession companies, elements of the Government, and other donors all associate the Bank intimately with the approval of some “new” concessions.

(iii) Policy and Institutional Strengthening, Technical Assistance

355. The Panel also would like to address an observation by Management, in its Response, regarding the classification of projects that involve technical assistance and institutional strengthening. With regard to the institutional strengthening Component of the EESRSP (Component 2), Management asserts that: *“technical assistance operations for institutional strengthening are usually classified as Category C. Where such operations result in designs or plans that, when implemented, may have potential impacts, they may be given a classification higher than C, normally Category B.”* In some Panel interviews, it was suggested to the Panel that because such a project does not have direct “physical impacts” on the ground, as in the construction of a road, the project is therefore a category “C.”
356. **The Panel observes that the financing of policy and institutional reforms in a sensitive sector like the forests of DRC, and related advice and technical assistance, can lead to highly significant environmental and social impacts, even if it does not involve direct financing of the mechanical and organizational tools for industrial logging.** It was evident from the Panel’s field visits that the concession review process will have a

very concrete impact on what is happening in the forests both to the environment and the people depending on it. Technical advice and support for the administration and regulation of a large-scale logging concession system can have much wider-scale impacts than other types of initiatives. They provide the basis to approve, disapprove, or otherwise limit or restrict operations at a horizontal level across an entire field and - - in the present case - - vast stretches of forest in the country. Similarly, the initiation of a forest-land zoning process can have very significant effects on forest land use and, by direct extension, the forest environment. As highlighted by the Request, even the process by which such zoning is carried out carries enormous stakes.

357. For these types of activities, an EA promotes informed decision-making based on consultation with affected people.²²⁸ It provides the tool to identify and assess potential impacts and problems that could arise, including through examination of strategic parameters. OP 4.01 contains specific provisions which envision such an analysis, stating that a sectoral EA is “*an instrument that examines environmental issues and impacts associated with a particular strategy, policy, plan, or program.*”²²⁹ The Panel notes here the potential relevance of strategic environmental assessments or SEAs and best practice tools.
358. In the present case, an environmental assessment would have provided information and insights relevant to the design and implementation of Project activities, including how they should take into account land tenure claims that might conflict with those of concession companies, the uses of the forest by the Pygmy peoples, and environmental and biodiversity values likely to be affected by concession operations. This would likely have illuminated difficulties that would arise in the event (as has happened) that the concession review process goes forward while the zoning process is deferred, and steps to avoid that result.
359. Environmental assessment may have added importance in a post-conflict environment like in DRC, where there is a lack not only of institutional capacity but also of basic information about the affected lands and about people who have an interest in these reforms, and might be affected by the regulated activities. **The failure to carry out this analysis may mean that even the best-intentioned “reform” initiatives can fall out of line with Bank social and environmental policy objectives, and indeed lay the basis for significant harms.** The Panel also notes that from the perspective of the people who depend on the forest environment, such a difference between so-called “investment” actions and “policy and institutional reform” actions does not exist.

²²⁸ OP 4.01, ¶14 (public consultation).

²²⁹ OP 4.01, Annex A, ¶ 8.

360. **The Panel finds that the Project was closely involved in a process which could end up officially approving industrial concession rights in millions of hectares of primary tropical forest where many local communities and indigenous people are found. These concessions undoubtedly have severe environmental and social impacts.**
361. **The Panel finds that a “Category A” EA would have been the appropriate, policy-consistent tool to assess these issues and to comply with OP 4.01. Even if the project were classified as Category B, OP 4.01 requires an environmental (and social) assessment for the forest related activities.**
362. The Panel notes that these findings do not necessarily preclude the possibility that the Project will diminish the negative impacts of some of the industrial concessions. The Panel findings, rather, indicate that the way the Project was developed does not comply with OP 4.01, and that the consequences could be significant for the effect on the forests and people living in or near it. **The requirements of a Category A project, namely, careful ongoing assessments by independent experts, might have helped the Project avoid shortcomings and controversy through better design and communication at the design and appraisal stages.**

2. Delay in Release of the EA

363. The Requesters state that the preparation of the EA was delayed until after financing for the Project became effective (December 5, 2003). As it happened, the delay was for two years. In this regard, the Panel notes Management’s statement *“OP 4.01 thus provides some latitude for completion and disclosure of the safeguards instruments required for a project prepared under OP 8.50 and has been interpreted in this case to allow for EA preparation during its implementation. This is typically a period of between 6 and 12 months after project effectiveness. According to the legal agreement the EA and ESMF were to be completed 12 months after the date of effectiveness.”* Management also stated that completion of the EA and the Environmental and Social Management Framework (“ESMF”) were delayed because of procurement issues. Management acknowledged that it did not comply with OP 4.01 in this respect, but stated that it intended to be in compliance by February 2006. Management subsequently finalized the EA in January 2006.
364. According to the Integrated Safeguards Data Sheet (ISDS) prepared in August 2003 and Management Response, Management had agreed to complete a full environmental assessment within one year after the effective date of the Project. However Management did not regard Component 2 on forests as requiring an EA.
365. The Panel also notes that OP 8.50 states, *“Emergency recovery loans do not attempt to address long-term economic, sectoral or institutional problems,*

and do not include conditionality linked to macro-economic policies.” If the EESRSP was governed by OP 8.50, its Component 2 on forests clearly addresses long-term economic, sectoral and institutional problems (all three), and would not, in that sense appear to fall within the intended ambit of OP 8.50. In any case, the implementation of Component 2 on forests (reviewed in Chapter 5), which has been characterized by delays that persist to this day, suggests that this Component provided no urgent actions that would have been delayed by compliance with OP 4.01.

366. With respect to the delay regarding the road component, the Panel notes the serious difficulties of working in an emergency and post-conflict environment, and the fact that external missions were sometimes suspended for security reasons during this period. In this regard, Management had apparently agreed internally at the time of project approval that the development of the environmental assessment might justifiably be delayed for one year.²³⁰ Thus rather than exempt the project from the EA requirement as provided in OP 4.01, it was decided to delay the EA preparation one year. In actuality it took more than two years after effectiveness, and the EA ultimately prepared did not address the forest-related elements of the Project in Component 2, as noted above.
367. Management agrees that the delay in the preparation of the EA (and IPDP) for the Infrastructure Rehabilitation Component (Component 3) is not consistent with OP 4.01, because of the length of the delay. **The Panel finds that the delay does not comply with OP 4.01.** With regard to the forest related component of the Project, the issue of delay is different because, as described above, no EA analysis or IPDP has ever been prepared or even planned.

B. Forests

368. **Decision to Engage.** As described previously, the Bank was beginning to re-engage in DRC in the period of 2002-2003. Background information clearly indicated that DRC harbored one of the greatest expanses of intact tropical forest left in the world, and, even more importantly for the Bank, that the very poor population was extremely dependent on that forest and had a tremendous stake in its future management.
369. In that context, Bank Management in its Project documents and Response indicated that the 1993 OP 4.36 Forest Policy was applicable. However, the Panel notes that the 2002 Forest Policy indicates that it applies “*to all projects for which a Project Concept Review takes place after January 1, 2003.*” The EESRSP Concept Review Meeting was dated January 14, 2003.

²³⁰ EESRSP Integrated Safeguards Data Sheet. 2003.



Picture 5: Panel visit into forest Kisangani area

370. **Critical Forest Areas or Related Critical Natural Habitat.** The 2002 Operational Policy on Forests, OP 4.36, which should apply to the EESRSP, states in one of its core provisions, that the “*Bank does not finance projects that, in its opinion, would involve significant conversion or degradation of critical forest areas or related critical natural habitats.*” The term “*critical natural habitats*” includes existing protected areas and areas initially recognized as protected by traditional local communities (e.g., sacred groves).²³¹
371. The Panel notes that the intended focus of the Project was to improve institutional and policy capacity, as a means to - - among other things - - ensure a proper application of national law and the cancellation of illegal logging concessions. **Given the focus of the Project to improve institutional and policy capacity, the Bank could consider that it is not financing a Project that involves significant conversion of critical forest areas or natural habitats and that it is in compliance with OP 4.36. The Panel agrees that this view has merit to date, but notes that there are important factors that could affect and alter this assessment with respect to the outcome of this Project, even in the short run.**

²³¹ The term “*critical natural habitats*” is referenced to the definitions of the Natural Habitats Policy. OP 4.04, Annex A, Definitions, ¶ 1 (b).

372. Depending on how the relevant policies are implemented, the Panel observes that the Project could pose the possibility of significant impacts upon highly important natural habitat and areas of cultural and spiritual significance to the Pygmy people. This concern is reinforced by the fact that early Project documents and design appeared to put a strong focus on the harvesting of trees and the revenue it generates, as described previously (see also discussion on Natural Habitat, below).
373. The Panel also heard numerous statements by indigenous communities that existing operating concessions were felling trees and building roads in areas of cultural and spiritual significance to the Pygmy people, including areas of the interior forest (see Chapter 3 and Annex 2). From the Panel's observations of operating concessions, it appears that the concessionaires may often not know about such "*areas initially recognized as protected by traditional communities.*"
374. In addition, the logging concessions under review in the concession conversion process supported by the Project cover vast expanses of forest lands of high biological and biodiversity value. DRC forest lands are home to rare species such as bonobos, lowland gorillas, okapis and many other species. In Africa, DRC ranks first for mammal and floral diversity and third for floral diversity.²³²
375. **At the present juncture, the question of whether and how the Project might contribute to significant impacts on critical forest areas will depend, *inter alia*, on how the concession review process is implemented and the eventual related questions of land use and zoning.**
376. The 2002 Policy also requires that in the case of commercial harvesting operations, Bank is required to determine "*that the areas affected by the harvesting are not critical forests or related critical natural habitats.*" This determination is taken "*on the basis of the applicable environmental assessment or other relevant information.*"²³³ The Panel notes that such an analysis was not undertaken.
377. The 2002 Forests Policy also requires that industrial-scale commercial harvesting operations, to be eligible for Bank financing, must "*be certified under an independent forest certification system acceptable to the Bank as meeting standards of responsible forest management and use; or where a pre-assessment under such an independent forest certification system determines that the operation (...) adhere to a time-bound phased action plan acceptable to the Bank for achieving certification to such standards.*"²³⁴
378. While some of the forests of Congo may be considered "*critical natural habitats,*" much of it under concessions may not meet this definition. Had the Bank applied

²³² Forests in Post-Conflict DRC, p. 13.

²³³ OP 4.36, para. 8.

²³⁴ OP 4.36, para. 9(a) and (b).

the new forests Policy, it probably would have had to include the certification system as a condition for the title conversion process. Concessions currently operating in DRC are industrial-scale commercial harvesting operations. None of the concessions were certified at the time of the Panel's field visits. The social conflicts and early stage planning and data would presumably preclude certification at this time.

379. **Bank's Reference to Older Forest Policy.** The Panel observes that OP 4.36 on Forestry (1993) provides that "*the Bank does not finance commercial logging operations (...) in primary tropical moist forests.* It further provides that in borrowing countries where logging is being done in such forests, the Bank seeks the commitment of the Government to move toward sustainable management of those forests. Paragraph 1(d) provides that "*such a commitment (...) requires a client country to:*

- (i) adopt policies and a legal and institutional framework to (a) ensure conservation and sustainable management of existing forests, and (b) promote active participation of local people and the private sector in the long term sustainable management of natural forests (...)*
- (ii) adopt a comprehensive and environmentally sound forestry conservation and development plan (...)*
- (iii) undertake social, economic, and environmental assessments of forests being considered for commercial use (...)*
- (iv) set aside adequate compensatory preservation forests (...) to safeguard the interests of forest dwellers (...)*
- (v) establish institutional capacity to implement and enforce these commitments."*

380. The new Forest Policy (2002) does not contain this set of requirements. Rather, it provides, *inter alia*, that for projects involving the management of forests proposed for Bank financing, "*the borrower furnishes the Bank with relevant information on the forest sector including the borrower's overall policy framework, national legislation, institutional capabilities, and the poverty, social, economic, or environmental issues related to forests. This information should include information on the country's national forest programs or other relevant country-driven processes. On the basis of this information and the project's EA, the borrower, as appropriate, incorporates measures in the project to strengthen the fiscal, legal, and institutional framework to meet the project's economic, environmental and social objectives.*"²³⁵

381. The Panel observes, however, that an adequate institutional framework to ensure sustainable management and active participation of local people does not yet exist at the national, provincial and local levels. There is no comprehensive forestry plan. The social and environmental assessments of forests under commercial use are absent or inadequate. The forests set aside for forest dwellers are non-existent

²³⁵ OP 4.36, 1993, ¶ 14.

or seriously inadequate. The Panel observed during its visit, as confirmed by information from other sources, that the institutional capacity to implement and enforce any rules or regulations in the remote forest areas is minimal

382. The Panel does not hold the Bank responsible for these regrettable realities. The Bank and the new Government, as noted above, are working in a post-conflict situation where government institutions have been destroyed. Moreover, the Panel also considers that it is reasonable to conclude that the Bank was “seeking” those kinds of commitments when the EESRSP was designed, and has continued to seek them, under very difficult circumstances.
383. On the other hand, the Panel observes that many of the elements set forth in paragraph 14 of OP 4.36, noted above, appear not to have been in place at the time of Project design and appraisal.
384. The Panel expresses its concern on this point, given that the Bank evidently viewed itself as operating under the provisions of this 1993 Policy. The Panel wishes to underscore that, at the very least, this should have led the Bank to take a comprehensive and highly careful approach to achieve compliance with Bank policies in areas such as Environmental Assessment, Indigenous Peoples and Supervision, in light of absence of the required plans, assessments, set-asides, and institutional capacities.
385. The Panel has found in other sections of this Report, however, that the Bank did not comply with certain other policies in important respects. The Panel observes that the present situation may offer useful insights into the application of forest policy on the question underlying commitment toward, and capacity to ensure, sustainable management.

C. Obligations under International Environmental Treaties and Agreements

386. According to paragraph 3 of OP 4.01 EA “*obligations of the country, pertaining to project activities, under relevant international environmental treaties and agreements. The Bank does not finance project activities that would contravene such country obligations, as identified during the EA.*”
387. Had the Bank performed a policy-consistent EA, it would have found that the obligations of DRC under at least two international environmental agreements pertained to the project: the Convention for the Protection of the World Cultural and Natural Heritage (World Heritage Convention) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).
388. DRC ratified the World Heritage Convention on September 23, 1974. The World Heritage Convention designates specific natural and cultural sites “World Heritage Sites” to be conserved for present and future generations. States nominate their own sites and parties to the Convention then jointly determine

- which sites are to be included on this list. Once the sites are listed, states are obligated to protect the sites and may be able to obtain some funds to assist in their protection.
389. DRC contains five listed natural sites, all five of which are currently listed on the List of World Heritage in Danger.²³⁶ One of these sites, Salonga National Park, appears to be directly adjacent to two areas and very close to many other areas held by concessions. This site is also recognized as a protected area under national law, and is recognized for its environmental and biodiversity values.
390. Additionally, DRC Environment Minister and the Belgian Development Cooperation Minister jointly stressed the importance of protecting the World Heritage Sites in the Brussels Declaration on Sustainable Forest Management adopted on February 27, 2007.²³⁷ Salonga is Africa's largest tropical rainforest reserve, and the site has been inscribed on the list of World Heritage in Danger twice.²³⁸ Salonga was first listed from 1984-1992 because of a severe drop in the white rhinoceros population. In 1999, the site was re-listed because of a breakdown in civil order and threats to the park's infrastructure.²³⁹ The relationship of this site to concession areas is shown in Map IBRD35653, attached to this Report.
391. DRC acceded to CITES on July 20, 1976 and the Convention entered into force on October 18, 1976.²⁴⁰ CITES was established to ensure that international trade does not threaten the survival of flora or fauna species. Species may be listed under Appendix I, II, or III. Appendix I lists endangered species threatened with extinction. These species may only be traded in exceptional circumstances. Species listed under Appendix II are not necessarily threatened by extinction, but the trade of these species requires control lest they come under threat. Appendix

²³⁶ Virunga National Park (inscribed 1979, listed in danger 1994), Garamba National Park (inscribed 1980, listed in danger 1996), Kahuzi-Biega National Park (inscribed 1980, listed in danger 1997), Salonga National Park (inscribed 1984, listed in danger 1999, previously listed on danger list 1984-1992), and Okapi Wildlife Preserve (inscribed 1996, listed in danger 1997). Convention for the Protection of the World Cultural and Natural Heritage, done at Paris on 16 November 1972, entered into force 17 December 1972, 1037 UNTS 151. Also available at <http://whc.unesco.org/en/statesparties/cd>

²³⁷ The Declaration reads "La protection des espèces et les écosystèmes les plus menacés, la réhabilitation des parcs nationaux et Sites du Patrimoine Mondial, l'identification de nouvelles aires protégées tout en privilégiant des approches participatives et le respect des droits traditionnels et, garantissant qu'aucune concession forestière ne puisse être attribuée ou confirmée dans les zones tampons des aires protégées." "The protection of spaces and ecosystems most endangered: the rehabilitation of national parks and World Heritage Sites the identification of new protected areas all the while privileging participative approaches and the respect of traditional rights, and guaranteeing that no forest concession can be attributed or confirmed in the zones bordering the protected areas." "International Conference on Sustainable Forest Management in the Democratic Republic of Congo: conclusions and commitments." Belgium. Foreign Affairs, Foreign Trade, and Development Cooperation. <http://www.diplomatie.be/EN/press/homedetails.asp?TEXTID=66763>.

²³⁸ "Salonga National Park," *UNESCO World Heritage Sites*, <http://whc.unesco.org/en/list/280>.

²³⁹ "Salonga National Park," *UNESCO World Heritage Sites*, <http://whc.unesco.org/en/list/280>.

²⁴⁰ "List of Contracting Parties," *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, <http://www.cites.org/eng/disc/parties/alphabet.shtml> (Accessed 10 July 2007).

- III contains species protected in at least one country listed by a party as endangered in its own country in order to enlist the help of other countries in controlling its trade.²⁴¹
392. Under the Convention, each Party is required to submit an annual report on its CITES trade and a biennial report covering their overall progress in implementing the Convention. Biennial reports are available through the CITES website²⁴² and the data from the annual reports are accessible through a public database maintained by the UNEP-WCMC.²⁴³ DRC has filed annual reports for the years for which data is available, 2000-2006, with the exception of 2001, when only CITES permits were filed.²⁴⁴ The last Biennial Report, for the years 2003-2004, was filed 26 June 2006.²⁴⁵
393. The Bank notes that DRC rainforests are rich in timber assets, including two high-value species, *wenge* and *afromosia* (*Pericopsis elata*).²⁴⁶ *Pericopsis elata* is also listed under CITES Appendix II and has been limited to a CITES export quota of 50,000 m³.²⁴⁷ While the Bank has identified this species as an important Congolese timber resource, the CITES Species database also identifies other listed flora and fauna known to be found somewhere in DRC, including the *Prunus africana*, known commonly as the African cherry, and gorillas among other species.²⁴⁸
394. The Panel observes that the Project Documents did not address the potential implications of the forest-related components of the EESRSP on any of the World Heritage Sites or on any CITES-listed species.

C. Natural Habitat

395. The Natural Habitats Policy (OP 4.04) of 2001 contains certain requirements that are similar to OP 4.36 on Forests (2002). These include a provision that the Bank

²⁴¹ Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington on 3 March 1973, entered into force 1 July 1975, 993 UNTS 243.

²⁴² CITES website, <http://www.cites.org>.

²⁴³ *CITES Trade Database*, UNEP World Conservation Monitoring Centre, Cambridge, UK, <http://www.unep-wcmc.org/citestrade/> (Accessed 19 July 2007).

²⁴⁴ Reports filed 10 July 2001 (For year 2000), 24 February 2004 (2002 and 2003), 27 December 2004 (2004), 11 November 2005 (2005), and 15 December 2006 (2006). Information from CITES website, http://www.cites.org/common/resources/annual_reports.pdf (Accessed 19 July 2007).

²⁴⁵ The next Biennial Report, for the years 2005-2006 is due by 31 October 2007. <http://www.cites.org/eng/resources/reports/biennial.shtml>, last updated 22 May 2007 (Accessed 19 July 2007).

²⁴⁶ *Forests in Post-Conflict DRC*, p. 16.

²⁴⁷ *CITES Species Database*, CITES website, <http://www.cites.org/eng/resources/species.html> (Accessed 18 July 2007). The DRC's annual reporting figures for the export of *Pericopsis elata* are available through the *CITES Trade Database*, UNEP World Conservation Monitoring Centre, Cambridge, UK, <http://www.unep-wcmc.org/citestrade/> (Accessed 19 July 2007).

²⁴⁸ *Species Database*, CITES website, <http://www.cites.org/eng/resources/species.html> (Accessed 18 July 2007).

“does not support projects that, in the Bank’s opinion, involve the significant conversion or degradation of critical natural habitats.”

396. For reasons similar to those described above, the Panel notes that the Bank may have judged that it is not financing such a Project in the present case, but there are some potential considerations to the contrary, and much will depend on how key elements of the Project are implemented in the future. The Panel also is very concerned about reports that at least some logging operations may be affecting areas of cultural and religious importance to the Pygmy people.
397. OP 4.04 also provides that the Bank does not support projects involving significant conversion of natural habitats (as distinguished from critical natural habitats) unless a comprehensive analysis demonstrates that the overall benefits from the project substantially outweigh the environmental costs. **The Panel notes that no such comprehensive analysis has been completed even though (as noted above) the Project had the potential to affect how logging operates in areas of very significant natural habitat.**
398. The Natural Habitat policy also provides that the Bank expects the borrower to *“take into account the views, roles, and rights of groups (...) affected by Bank-financed projects involving natural habitats, and involve such people in planning, designing, implementing, monitoring and evaluating such projects.”* **Until the time of the Request, however, the Panel found very little evidence of attempts to take into account or involve the local communities likely to be affected by the Project. This does not comply with OP 4.04.**

D. Nature and Impacts of the Choice of DPL for the TSERO

399. The TSERO, approved by the Bank in December 2005, is very closely linked with the EESRSP. As described above, the TSERO encompasses forest-related actions and indicators of progress linked to the forest-related activities under the EESRSP. The two forest-related prior actions of TSERO are the continued enforcement of the Moratorium and the initiation of a legal review of existing forest concessions.
400. Since the TSERO is a Development Policy Lending loan (DPL), it is not subject to safeguard policies in the same way as investment projects. In presenting the results of its investigation into the TSERO as well as the EESRSP, the Panel believes that it is important to begin with a review of the nature and impacts of the choice of a DPL for the TSERO.

1. Choice of Development Policy Loan for TSERO

401. Development Policy Loans (DPLs) are *“rapidly disbursing policy-based financing”*²⁴⁹ to support a *“country’s economic and sectoral policies and*

²⁴⁹ OP 8.60, ¶ 1.

*institutions*²⁵⁰ with the purpose of accelerating sustainable growth. OP/BP 8.60 on *Development Policy Lending*, enacted in August 2004, replaced OD 8.60 on *Adjustment Lending* and included all policy based lending in a single operational framework.

402. The number of policy-based lending operations, including adjustment lending and the new OP 8.60 on development policy lending, increased dramatically from 30 in FY01 to 51 in FY06, with a corresponding increase in funding from \$17 billion in FY01 to almost \$24 billion in FY06.²⁵¹ Policy-based lending comprises approximately 30 percent of the Bank’s lending for FY03-FY06.²⁵²
403. The TSERO aimed at supporting the economic recovery of DRC and one of its express policy goals was the improvement of governance in the forest sector.²⁵³ The TSERO loan was disbursed in a single tranche of \$90 million on December 29, 2005. It was the third policy-based “budget and balance of payments support operation” since 2002 for DRC.²⁵⁴

2. Normative Framework of OP 8.60 - Environmental Issues

404. OP 8.60 requires the Bank to determine “*whether specific country policies supported by the operation are likely to cause significant effects on the country’s environment, forests, and other natural resources.*”²⁵⁵ For policies with likely significant effects, the program document should assess the relevant analytic knowledge of these effects and of the borrower’s systems for reducing adverse effects and enhancing positive effects associated with the specific policies being supported. If there are significant gaps in the analysis or shortcomings in the borrower’s systems, then the program documentation should describe how such gaps or shortcomings would be addressed before or during program implementation, as appropriate. OP 8.60 also contains guidance regarding the social impact of DPLs.²⁵⁶

²⁵⁰ OP 8.60, ¶ 2.

²⁵¹ Development Policy Lending Retrospective, World Bank, August 2006, ¶ 12.

²⁵² FY03-FY06 data from Development Policy Lending Retrospective ¶13, updated with FY07 data from World Bank website. When OP 8.60 was approved, the ceiling imposed on policy-lending—limiting funding to 25 percent of the Bank’s operations—was lifted. Currently, there is no ceiling imposed on the percentage of funding distributed in DPLs.

²⁵³ TSERO Program Document, p. ii.

²⁵⁴ TSERO Program Document, p. ii.

²⁵⁵ OP 8.60, ¶ 11. According to the Good Practice Notes for Development Policy Lending, significant effects are “*environmental changes of sufficient magnitude, duration and intensity as to have non negligible effects on human welfare.*” Good Practice Notes for Development Policy Lending, World Bank, 2004, p. 5, FN 3).

²⁵⁶ OP 8.60 contains a standard for assessment of potential social issues of DPLs which states that “The Bank determines whether specific country policies supported by the operation are likely to have significant poverty and social consequences, especially on poor people and vulnerable groups. For country policies with likely significant effects, the Bank summarizes in the Program Document relevant analytic knowledge of these effects and of the borrower’s systems for reducing adverse effects and enhancing positive effects associated with the specific policies being supported. If there are significant gaps in the analysis or shortcomings in the borrower’s systems, the Bank describes in the Program Document how such gaps or

405. This represents a significant departure from the previous policy requirements under OD 8.60, where much of the guidance on environmental impact assessment was in the form of ‘good practice’ in structural adjustment loans. This policy change was a result of consultations with Bank’s shareholders and external stakeholders that concluded that past weaknesses of adjustment lending should be addressed through more stringent and precise requirements and that policy based lending should be set in the context of the Millennium Development Goals, contribute to sustainable development, and, in particular, take account of the potential impact on forests and other natural resources.
406. During the application of the policy, it is suggested that Management must employ “*reasonable due diligence*” to determine whether DPLs will have a significant impact on the environment or natural resources.²⁵⁷ Then, Management must provide a “*clear and unequivocal statement on the likelihood of significant effects on the environment*” in the Program Document, supported by a clear discussion of the “*analytic underpinnings of this determination.*”²⁵⁸
407. Country level diagnostic work, particularly Country Environmental Assessments (CEAs) and Strategic Environmental Assessments (SEAs) are indicated as appropriate analytical instruments for assessing the effects of DPLs on the environment.²⁵⁹ When OP 8.60 was introduced, it was anticipated that a total of 16 CEAs would be completed by the end of FY 2006.²⁶⁰ Such analytical studies form the basis for Management to make an informed determination on potential impact on environment and natural resources.

3. Potential Environmental Effects of DPLs

408. In order to better understand the choice of this instrument for the TSERO, the Panel reviewed experience and practice with DPLs. There appears to be a trend in the Bank that DPLs rarely have significant impact on the environment, reflected

shortcomings would be addressed before or during program implementation, as appropriate.” (OP 8.60, ¶10). The Bank has prepared good practice recommendations to provide advice to Bank staff and their government counterparts in promoting Poverty and Social Impact Analysis (PSIA). PSIA’s are to provide a framework to help staff and governments better understand the possible poverty and social consequences of planned policies.

²⁵⁷ Mani, M. “Implementation of Environment and Natural Aspects in Development Policy Lending: First Year Review.” January 2006, ¶5.

²⁵⁸ Adams, J. and Jorgensen, S. Office Memorandum on the “Implementation of Environmental, Forests, and other Natural Resource Aspects in Development Policy Lending (OP/BP 8.60): First Year Review.” 19 April 2006, p. 2.

²⁵⁹ See Box 2 in *From Adjustment Lending to Development Policy Lending: Update of World Bank Policy* (R2004-0135), August 2004. During consultations, CSOs also urged for continued progress on this front.

²⁶⁰ See Box 2 in *From Adjustment Lending to Development Policy Lending: Update of World Bank Policy* (R2004-0135), August 2004. During consultations, CSOs also urged for continued progress on this front.

- in various Bank documents.²⁶¹ These documents argue that their effects, if any, on the environment will be “*felt only indirectly*.”²⁶² The best practice guidance describing incorporation of environmental concerns into development policy lending reaches the same conclusion on the basis that the majority of DPLs are solely focused on areas such as the public sector, financial, health, and education sectors, which are not directly linked to the environment.²⁶³
409. Despite this trend, the Panel observes that a large number of DPLs include components supporting policies or reforms that may significantly affect environment, forests or other natural resources. The conclusion regarding the lack of environmental impact may be the result of Management’s lack of sufficient analytical resources (such as CEAs and SEAs) to properly measure the impact of policy reforms on environment, forests and other natural resources.
410. In this regard, Bank documents acknowledge that in most cases there is a “*paucity of environment-related analytical work*,”²⁶⁴ and projections for completed CEAs and SEAs are “*below the level anticipated in 2004 when the new policy was introduced*.”²⁶⁵ As of March 2007, eleven countries completed CEAs, eight CEAs are in progress, and only nine new CEAs are planned. When OP 8.60 was introduced, it was anticipated that a total of 16 CEAs would be completed by the end of FY 2006.²⁶⁶ Even if CEAs were widely available, they may not be sufficient to assess the environmental impact of DPLs and additional sectoral work may be necessary.
411. The lower than anticipated number of completed is especially problematic because the lack of analytical work may prevent Management from reaching an informed decision on whether a specific DPL will have significant environmental effects. The Panel observes that the relatively low availability of CEAs and SEAs may be the reason why so many DPLs with forest sector reform components do not identify any significant environmental effects.
412. Accordingly, it is possible that for DPLs with environment, forest and other natural resource sector related components, Management may fail to identify

²⁶¹ As examples, see Development Policy Lending Retrospective, World Bank. August 2006, ¶ 57 and also see Mani, M. “Implementation of Environment and Natural Aspects in Development Policy Lending: First Year Review.” January 2006, ¶13.

²⁶² Good Practice Notes for Development Policy Lending, World Bank, 2004, ¶9. In contrast to institutional and policy reforms, DPLs that include investment lending subcomponents – involving a physical investment -- are “more likely” to have effects on the environment. Id. ¶ 4. These loans are also subject to safeguards. However, consultations with Bank staff suggest that there is little guidance on how to distinguish investment lending subcomponents from policy based reform. As of March 2007, no DPLs had been approved that included an investment lending subcomponent.

²⁶³ Mani, M. “Implementation of Environment and Natural Aspects in Development Policy Lending: First Year Review.” January 2006, ¶ 12.

²⁶⁴ Development Policy Lending Retrospective. World Bank. August 2006, ¶ 59.

²⁶⁵ Development Policy Lending Retrospective. World Bank. August 2006, ¶ 60.

²⁶⁶ From Adjustment Lending to Development Policy Lending: Update of World Bank Policy, August 2004. Box 2, p.25.

project components that may potentially cause significant effects on the environment. Therefore, the Panel observes that there is a need to further research the assertion that DPLs rarely cause significant adverse environmental effects.

4. DPLs with a Component on Forests - - Experience and Practice

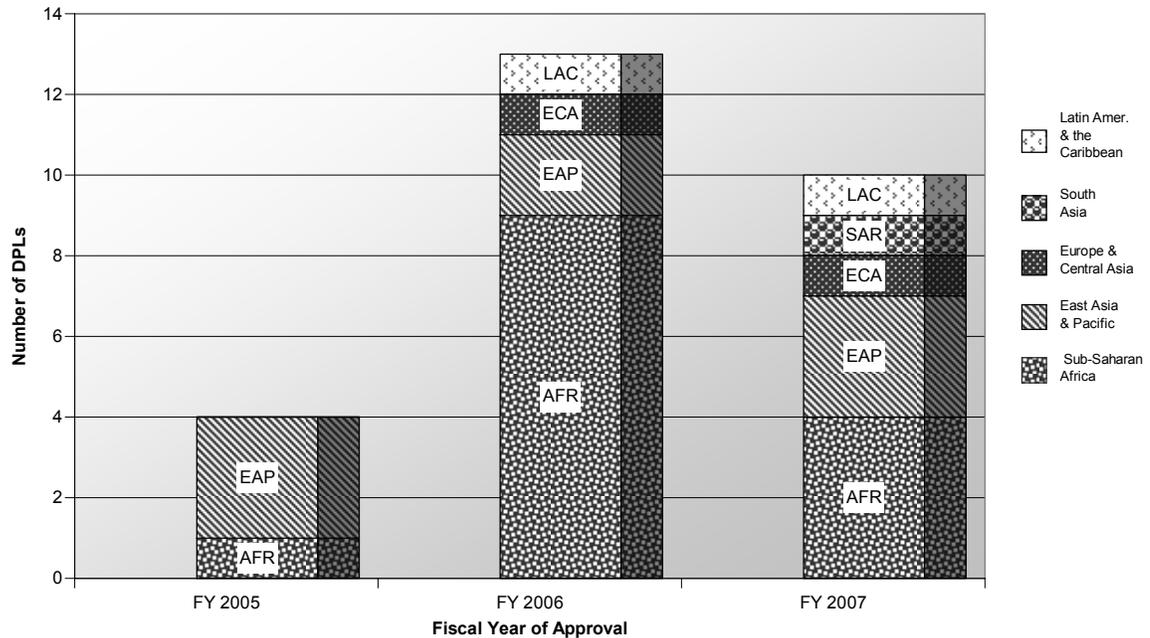
413. As of June 30, 2007 (FY07), approximately 27 out of a total of 124 DPLs approved after OP 8.60 came into effect included measures related to the forest sector.²⁶⁷ It appears that “forestry-related actions have gained more prominence under the new policy as compared to previous adjustment lending.”²⁶⁸ As the following two tables show, the majority of forest-related DPLs are for countries in sub-Saharan Africa.

²⁶⁷ Forest sector reform is an objective listed in the Program Documents for the following DPLs: Armenia (P093460): PRSC -3, Benin (P083313): PRSC-3, Benin (P096928): PRSC-4, Burkina Faso (P078995): PRSC-5, Cameroon (P070656): Forest and Environment DPL, Central African Republic (P102576): Reengagement and Institutional Building Support Program, Colombia (P095877): Sustainable Development DPL, Democratic Republic of Congo (P091990): TSERO, Gabon (P070196): Natural Resource Management, Ghana (P078619): PRSC-3, Ghana (P095730): PRSC-4, Ghana (P099287) – PRSC -5, India (P097036): Orissa Socio-Economic Development Loan/Credit II, Indonesia (P092663): First Development Policy Loan, Lao PDR (P075287): PRSC-1, Lao PDR (P096635): PRSO-2, Lao PDR (P096710): PRSO-3, Madagascar (P083326): PRSC-2, Mexico (P079748): Environmental DPL II, Senegal (P091051): PRSC-2, Tanzania (P087256): PRSC-3, Uganda (P090881): PRSC-5, Ukraine (P079316): DPL, Vietnam (P086360): PRSC-4, Vietnam (P086361): PRSC-5, Vietnam (P104097): VN Program 13, Vietnam (P101724): PRSO -IV.

²⁶⁸ Development Policy Lending Retrospective. World Bank. August 2006, ¶ 58.

Chart 4.1

Total DPLs including a Forest Component
by region and fiscal year



414. Only ten of the 27 DPLs which included forest sector reform identified likely significant effects on the environment (DPLs for Cameroon, Gabon, India, Vietnam, Mexico, Ghana, and Colombia).²⁶⁹ The Program Documents of the remaining DPLs asserted that the project will not cause significant effects on the country’s environment, forests or natural resources.²⁷⁰ Furthermore, in several

²⁶⁹ See Vietnam (PRSC-4), Mexico (Environmental DPL II), Gabon (Natural Resource Management), Cameroon (Forest and Environment DPL), Vietnam (PRSC-5), India (Orissa Socio-Economic Development Loan), Vietnam (PRSC-5), Ghana (PRSC-5), Colombia (Sustainable Development DPL II), and Vietnam (PRSO IV).

²⁷⁰ See Burkina Faso, Ghana (PRSC-3 and 4), Indonesia, Lao PDR (PRSC-1 and PRSO-2), Madagascar, Senegal, Tanzania (no *direct* significant effects), Uganda, Central African Republic, and Benin. The determination that the above projects will not have adverse effects on the environment does not wholly fulfill requirements of OP 8.60 because guidance documents suggest that the necessary analysis in accordance with Management’s due diligence obligations should include an additional determination as to whether significant *positive* effects are likely. “New Proposed Framework for Treatment of Environment in Policy Lending,” Powerpoint from Development Policy Lending Academy, October, 2006, p.4. Hamilton, Kirk and Muthukumara Mani. “Toolkit for Analyzing Environmental and Natural Resource Aspects of Development Policy Lending,” Preliminary Draft, September, 2004, p. 5, ¶ f. See also OP 8.60 ¶11. “For country policies with likely significant effects, the Bank assesses (...) systems for reducing such adverse effects and enhancing positive effects.” The plain language of the OP is ambiguous as to whether both positive and negative effects must be addressed. Good Practice Notes for Development Policy Lending, World Bank, 2004, ¶11. This paragraph states that when effects on the environment are likely and significant, there is question of how to reduce adverse effects. Although the absence of discussion about the treatment of positive effects in this paragraph perhaps suggests that the PD need only address adverse

- DPLs, likely adverse effects are determined to be insignificant because the government has adequate laws and the institutional competency to conduct environmental assessments of proposed policy reforms, such as in the DPL for Uganda.²⁷¹
415. This is rather surprising because the forest sector has long been identified as one of the most likely sectors to cause environmental impact,²⁷² and the need for careful analysis in such sectors appears to be well understood.²⁷³
 416. Many DPLs with forest sector related measures that identified significant environmental effects did not take markedly different approaches from DPLs that did not identify significant environmental effects. For example, both Gabon and Ghana PRSC-3 implemented extensive forest concession reforms. Gabon's Program Document acknowledged significant effects were likely and "*a potential negative impact (...) relat[ed] to the possible increase of illegal logging (...) as the proposed policy measures may lead to increasing the costs of access to timber.*"²⁷⁴ On the other hand, Ghana's Program Document indicated that Management was not able to identify any negative outcomes arising from activities by the lending operation.²⁷⁵
 417. As described above, a substantial majority of DPLs with significant forest sector reforms conclude that they will not have significant impact on the environment and natural resources.
 418. Up-front and accurate assessment of the potential for significant environmental impacts is particularly important for DPLs because many are single-tranche operations, so that supervision takes place after disbursement. An accurate and clear assessment of environmental impact is central to the development of any needed environment-related conditions, indicators or actions in such a context.

effects, the explicit directions provided in the above "New Proposed Framework" and "Toolkit" clearly demonstrate that positive effects must be addressed.

²⁷¹ Uganda PD, "PRSC-5," P090881 (01/17/2006) p.30. Compare Tanzania, "PRSC-3," P087256 (09/08/2005) p.52. Ghana, "PRSC-3," P078619 (08/25/2005) p.72. The loan builds upon "Ghana's robust environmental institutional framework and considerable capacities to set, regulate, and enforce environmental management standards," with Ghana, "PRSC-4," P095730 (06/15/2006) p.86 (quoting identical language). Conversely, the PD for the Orissa DPL finds that the weak institutional capacity of the Government of Orissa may cause the forest department to fail to perform their appropriate functions, leading to adverse effects. Similarly, the PD for Cameroon says, "institutional weakness make [adequate environmental laws] irrelevant on the ground." Considering the fact that the impetus for funding a DPL is premised upon weak institutional capacity, the findings in the Orissa and Cameroon DPLs most realistically identifies the most probable impacts of the loan.

²⁷² "New Proposed Framework for Treatment of Environment in Policy Lending." Powerpoint from Development Policy Lending Academy, October, 2006, p. 8. Other sectors likely to have significant environmental effects include energy, transport and urban/water. A sector least likely to have significant effects is financial/banking.

²⁷³ Mani, M. "Implementation of Environment and Natural Aspects in Development Policy Lending: First Year Review." January 2006, ¶ 10.

²⁷⁴ Gabon (P070196): Natural Resource Management, Program Document, 2005, ¶136.

²⁷⁵ Ghana (P078619): PRSC-3, Program Document, ¶114.

419. Even if Management possessed adequate analyses to make the initial judgment, little direction is provided in OP 8.60, and the Good Practice Note, on how to compensate for likely significant adverse effects on the environment and natural resources. The Good Practice Note directs Management to address this in the broader country program.²⁷⁶

B. Application of OP 8.60 to the TSERO

420. The Program Document of the TSERO initially relied on the analysis under EESRSP in determining that the TSERO is not likely to cause significant adverse environmental effects. The Panel observes that the EA for EESRSP was not available before February 2006, and did not address the forest-related activities under the Project in Component 2.

421. Prior to the discussion of the operation by the Board on December 8, 2005, Management issued a corrigendum on December 7, 2005 to revise statements in the Program Document on environmental impacts of the forest sector measures and mining sector measures. The corrected statement includes Bank staff's determination that the measures under TSERO are not likely to cause significant effects on the country's environment, forests and other natural resources, nor on poor people and vulnerable groups (including indigenous people). The statement also indicates that the assessment is consistent with a "*series of analyses and consultations held within the context of the preparation of a forest sector review.*"²⁷⁷

422. At that time, a formal Country Environmental Assessment or Sector Environmental Assessment, however, had not been prepared.²⁷⁸ The Management Response to the Request for Inspection states that "*Reforms supported by the TSERO will not have adverse social or environmental effects; they were deliberately selected to improve environmental and social outcomes for forest management in DRC.*"

423. The main argument for no significant effect of this DPL is that the DPL required a Moratorium on new concessions and a legal review of the existing concessions, which may potentially result in a reduction in the number of existing concessions. Put differently, without the DPL actions, the situation could have only been worse. The Panel has found, not surprisingly, that forest concessions as actually practiced in DRC may be detrimental to indigenous people, to other local communities and to sensitive forest environments.

²⁷⁶ Good Practice Notes for Development Policy Lending, World Bank, 2004, ¶11, ¶26.

²⁷⁷ TSERO, Program Document ¶ 75.

²⁷⁸ As of November 16, 2006, Country Environmental Assessments had been completed for only eleven countries, eight are ongoing, and nine are planned for the future. A CEA for the DRC was not completed nor planned as of the above date.

424. In brief summary, the TSERO is not subject to safeguard policies because it is a DPL instrument. However it was concerned with related actions that were being funded by the EESRSP which was subject to those policies. Furthermore, given significant social or environmental impacts in the DPL, analysis and assessment in the Program Document is required. **OP 8.60 emphasizes “the borrower’s systems for reducing such adverse effects.” The Panel observes that a fair description of that would have concluded that the systems were non-existent or extremely debilitated and ineffective. That might have led to some difficult discussions in the approval process.**
425. It is granted that the analyses and assessments would have taken some time, and that some actions were urgent. However, a careful examination of the forest concession situation does not support the premise that instant action was critical. All parties interviewed by the Panel agree that neither the Government, nor any other party, has, to this day (March 2007), any real capacity to monitor or control the actions of the operating concessionaires. And any controlling presence may be subverted. Necessary analysis and assessments could even have proceeded in tandem with any critical actions. The Panel does not agree that more methodical and public analysis and assessments would have caused any delays that, in turn, would have caused greater social and environmental damages in the field.
426. The chaotic situation in DRC forest sector merited and still merits the Bank's committed engagement. **In light of the issues raised above, however, the Panel notes that it is questionable whether the choice of a DPL under its present guidelines was the right instrument for achieving the agreed-upon goals of reforming this sector with its many social and environmental complexities. The Panel finds that there are potential risks of including components such as forests in DPLs, which lack safeguards. The Panel notes that formerly such forest components were generally handled as projects, subject to safeguard policies. The Panel observes that the use of DPLs for other natural resource components could raise similar issue.**
427. **The Panel recognizes that the DPL is an instrument that can engage high-level attention of the Finance or other influential Ministry, which in the specific country context can be important. The Panel finds that in using a DPL, it is critical that the process for assessing whether there are significant environmental and social effects be rigorous and thorough and that there be a willingness to undertake the prudent assessments in order to avoid subsequent unforeseen impacts and unwelcome developments.**

Chapter 5 – Project Implementation

428. This Chapter assesses issues that have arisen during Project implementation. These include, among others, the development and operation of the concession conversion process initiated under the EESRSP, the decision to drop the pilot zoning component from the Project, and related issues of Project supervision and harm and potential harm. The Chapter begins with details on a particular concern that has arisen in connection with the Project in general and the concession conversion process in particular - - namely, the reported acquisition of and swaps of large concession areas after the 2002 Moratorium (See Chapter 2 of this Report).

A. Post-Moratorium Concessions and “Swaps”

1. Reports of “By-Passing” of the Moratorium

429. The Panel heard repeatedly that the Moratorium reportedly has been “bypassed” on a large scale. The Panel found indications and general agreement that after its issuance, and possibly up until this year, new concessions (or cutting permits or other instruments which allow “legal” extraction) were granted by some Government authorities, and large-scale “swaps” by concession companies took place of some lands for others that had higher quality forests.²⁷⁹

430. The Panel notes that it is difficult to obtain specific information in the field on the overall situation on forest concessions from 2002 to present. The information and papers developed by the Independent Observer and Technical Working Group working on the concession conversion process, however, are of significant interest in this regard.

431. As noted previously, these papers include an overall table of the 156 concession contracts submitted for conversion, covering over 15 million hectares. The table includes, among other details, the name of the concession company/applicant for conversion, the type of title, the area covered (in hectares), the Province and territory and - - of particular interest here - - the date on which the concession was obtained (*date d’obention*). This table is included as an Annex 3 List of Applications for Concession Conversion.²⁸⁰

432. This information indicates that 107 out of 156 concessions appear to have been obtained after the May 2002 Moratorium on the granting of new concessions, which cover a surface land area of 15 million hectares. These concessions are in Bandundu, Equateur, Orientale, Bas-Congo and Kasai Occidentale Provinces.

²⁷⁹ World Resources Institute (WRI) 2006. Overview of WRI Involvement in Legal Review and Conversion of Old Forest Titles to New Concessions in the DRC.

²⁸⁰ The list of available concessions comes from public sources. <http://www.rdc-conversiontitresforestiers.org/wrapper/index.php>. Map IBRD 35653, attached to this Report, shows the concessions under review and the World Heritage Sites.

They include vast stretches of forest, and lands that have been home to Pygmy peoples for millennia.²⁸¹

433. The scale and nature of this problem is confirmed in the 2007 report on Forests in Post-Conflict DRC, in which Bank staff participated. In referring to the May 2002 Moratorium, the Report states that “*it seems that this moratorium was bypassed in several ways.*” According to the report, a new list of contracts published in November 2005 “*reported 141 contracts totaling 20.4 million hectares, including 100 contracts dated after May 2002 totaling 15 million hectares,*” (emphasis added). The Report later states that “*the gross volume of transactions between 2002 and 2005 appears to be 15 million hectares, and the net difference under contract in 2002 and 2005 appears to be 2.4 million hectares. The total number of contracts appears to have increased by 19.*”²⁸²



Picture 6: Logs at concession

²⁸¹ According to a review conducted by the NGO Greenpeace, 107 out of 156 contracts were signed after the May 2002 moratorium. Greenpeace states that only 40 of those signed prior to the moratorium appeared to have paid the area tax in 2004. Greenpeace also emphasized that nearly half of the 156 titles are located in intact forest landscape, which are critical for carbon storage and wildlife protection “Carving up the Congo”, by Greenpeace, April 2007, p. 3-4.

²⁸² Forests in Post-Conflict DRC, p. 43.

434. The 2007 report on Forest in Post-Conflict DRC cites several developments to explain these figures and changes after the Moratorium. First, despite the existence of the Moratorium, the then Minister of Environment appears to have allocated new concessions. According to Management, some of these concessions were subject to “*taxes applied by the Ministry of Finance.*” The official list of concessions published in November 2005 lists 14 contracts covering 2.3 million hectares that were not listed in the Ministry’s internal compendium in 2002.²⁸³
435. Importantly, **the report also notes that a number of so-called “swaps” took place in which logging companies exchanged forest areas that they deemed unproductive or that had been already-logged for new, higher quality forest areas.²⁸⁴ About 32 contracts covering 4.6 million hectares were reported to have been awarded in 2003 in such transactions.²⁸⁵ Similar transactions took place in 2004 and 2005.** Furthermore, some of the contracts that were cancelled in 2002 were rehabilitated in 2004.²⁸⁶ According to a report by Greenpeace, two-thirds of the contracts overlap areas inhabited by Pygmy hunter-gatherers and a third of the contracts are inside areas identified as priority landscapes for conservation.²⁸⁷

2. Bank Documentation and Supervision

436. These problems were noted in a July 12, 2003 Aide-Memoire produced by the Bank, as they were emerging on the ground. This Aide-Memoire notes a number of apparently “new concessions” that seem to have been acquired in March-April 2003, during the period of the Moratorium. These consist of 23 new concessions covering almost 6 million hectares, presented as “re-acquisitions” or “exchanges” of the earlier titles. These contracts cover allocations for over 6 million hectares of forest. **The July 12, 2003 Aide-Memoire notes that these transactions appear to be in contradiction with the Forest Code and regulations.**²⁸⁸
437. The same Aide-Memoire notes that any exceptions to the rules would render the system inequitable to other investors who follow the rules. It notes that the new Forest Code requires all concessions in excess of 400,000 hectares to be approved by a special law for each case. It also notes that 17 new contracts (*lettres d’intention*) appeared on the official list of contracts published by the Environment Ministry in May of 2003. These contracts concern 3.5 million

²⁸³ Forests in Post-Conflict DRC, pp. 41-43.

²⁸⁴ Forests in Post-Conflict DRC, p. 43 and Panel interviews.

²⁸⁵ These swap-transactions are also referred to as “remapping” or “exchange” of old titles.

²⁸⁶ Covering about 2.4 million hectares, from Forests in Post-Conflict DRC, p. 28. The Panel heard corroboration of the overall figure of 15 million hectares as well from other sources.

²⁸⁷ Carving up the Congo, Greenpeace, April 2007, p 3-4.

²⁸⁸ July 12, 2003 Aide-Mémoire.

- hectares and are located within the geographical boundaries of bonobos' environment in the district of Befale.²⁸⁹
438. The July 2003 Aide-Memoire encouraged the Government to reconsider the 23 “swap” contracts and the 17 new contracts. It suggested that they be reviewed in light of the new Forest Code and the Moratorium of May 2002. The Aide-Mémoire stipulated that this examination must be completed before the end of September 2003.²⁹⁰
439. The next available Bank Aide-Mémoire that addressed the “échanges” appeared **in September 2004. In this report the Bank expressed its displeasure that the “échanges” had not been dealt with effectively.** It regarded the Moratorium as essential to the revitalization of the forest sector. The Bank also stated that it had received information that a new concession of 80,000 hectares had been issued to the SAFBOIS group and noted that it had been agreed that the Government would confirm or repudiate this information.. The Bank indicated that the government must enforce the Moratorium and also enact a full-legal review of all the existing concessions in order to address the potential violations of the Moratorium. **The Panel notes that the Bank was firm in indicating its understanding that obtaining any new concession contract, even a “swap” (échange) of the previous areas, appears not to be consistent with the Moratorium, would raise questions also for the new Forest Code, and would not be equitable to those who had followed the rules.**
440. The September 2004 Aide-Mémoire appears to have been the last available Aide-Mémoire written independently by the Bank’s Forest Project group in DRC. However, Bank expertise remained involved in the sections of the Bank’s TSERO that concerned the forestry sector. The next mention of the swaps in a Bank supervision document appeared in the May 2005 TSERO Aide-Mémoire. In this document, the Bank briefly refers to the “échanges,” by noting that the Government has confirmed that the 2002 Moratorium is still in force and that the validity of exchanges and readjustments of concessions that took place after the Moratorium was in place will be reexamined in the context of the legal review.
441. In the July 2005 TSERO Aide-Mémoire there is no specific mention of the “swaps” or “échanges.” The Bank does, however, continue to insist that a list of all the existing contracts be published and that a legal review of all the contracts take place. The report also refers to information it has received that the Ministry of the Environment in 2004 re-established or “rehabilitated” a number of concessions totaling about 2.4 million hectares after they had been cancelled in 2002. The Bank makes clear that it is troubled by this development and expresses

²⁸⁹ July 12, 2003 Aide-Mémoire. Bonobos are a highly endangered species of Great Ape. They are only found in the DRC and share over 98.4% of their DNA with humans. The Bonobos Conservation Initiative (BCI), a US based non-profit, notes that research is needed to determine current population.

<http://www.bonobo.org/whatisabonobo.html>.

²⁹⁰ July 12, 2003 Aide-Mémoire.

the wish that, before the negotiations of new budgetary support, the government confirm or repudiate this information. The Bank also asked the government to confirm that the Moratorium of 2002 does not permit the re-establishment of old contracts, and that the eventual appeal against termination of contracts from 2002 will be treated transparently in the context of the legal review.

442. **The Panel recognizes the many difficulties that Bank staff and their partners encounter when they have to develop initiatives in a post-conflict situation.** The Panel is also fully aware of the lack of political stability that existed in DRC during the implementation of the activities that have become subject to the Request for this inspection.
443. The Panel finds that the Bank in its Aide-Memories through July 2005 noted the violations of the Moratorium, expressed its concern and displeasure, and sought to end the violations. **The Panel finds that the Bank’s recognition of this problem and its response in the Aide-Memoire through July 2005 were consistent with Bank Policy on Supervision. However, the Panel also finds that Management apparently did not make timely follow up efforts at a sufficiently high level to ensure necessary action in response to its findings. The Panel notes that none of the supervision documents after July 2005 refer to the “swaps” or potential violations of the Moratorium.** This includes the next available TSERO Aide-Mémoires from March 2007 and May 2007, which do not make any reference to the “swaps” or any potential violations of the Moratorium. The Panel notes that Management does not seem to have pursued the earlier warnings.
444. The above-noted transactions affect an estimated 15 million hectares and involve areas where Pygmies and other vulnerable peoples live. The Panel regards this as significant. **The Panel observes that Bank Management, however, in its Implementation Completion and Results Report on the TSERO to the Bank’s Board of Executive Directors, dated May 1, 2007, characterizes these developments as follows: “Between 2002 and 2005, this moratorium has been largely respected, although some violations are reported.”**²⁹¹
445. The Forests in Post-Conflict DRC report, in which Bank staff participated, refers to the issues and concludes that:

*“These acquisitions of new areas since 2002 seem to contradict the moratorium. They also seem to contradict the regulations in effect before the new Forest Code, as they were not preceded by an Authorisation to Prospect. Furthermore, they seem to contradict the new Forest Code itself on five counts”*²⁹²(emphasis added).

²⁹¹ Implementation Completion and Results Report for the Transitional Support and Economic Recovery Operation (IDA-H 1920), dated May 1, 2007, p. 9.

²⁹² Forests in Post-Conflict DRC. p. 43.

446. In addition, the Bank helped to initiate the current concession review process, and is directly involved in providing support for, and supervising, its implementation. A recent news report also indicates that the International Finance Corporation (IFC), part of the World Bank Group, “*has invested millions*” in a Singaporean-based logging company that obtained two timber concessions in May 2005, three years after the date of the Moratorium.²⁹³
447. **Questions relating to the handling of the large-scale post-Moratorium concessions and swaps will, justifiably, be the subject of great attention and scrutiny in this process. They will have a direct bearing on issues of compliance and harm and, concretely, on many affected local people.** These issues are discussed in more detail below.

B. Concession Conversion Process - How it Works

1. Presidential Decree of October 2005 (No. 05/116)

448. As mentioned above, Article 155 of the Forest Code stipulates that former logging titles must be converted into Forest Concessions “*as long as they meet the terms provided by this law.*” The concession will replace all other forestry titles. The criteria for the legal review that takes place before the conversion are defined in the Presidential Decree. The Presidential Decree No. 05/116 dated October 24, 2005 was published in the Journal Officiel of November 1, 2005. The Decree includes provisions, *inter alia*, regarding the following issues:
- Criteria for evaluating conversion requests
 - Criteria for forest titles that are eligible for conversion
 - Time frame for conversion process
 - Decision-making mechanism within process
 - Composition of the Inter-Ministerial Commission (IMC)
 - Elements (including the conversion process) that will trigger the lifting of the Moratorium on issuance of new forest concessions in DRC.
449. In the Panel’s understanding of the October 2005 Presidential Decree, the Concession Conversion Process takes place in several stages. These stages could be identified as: (i) application for conversion; (ii) technical review of titles and verification of files; (iii) meetings and recommendations of the IMC; and (iv) steps and recourse following the IMC’s recommendation.
450. **Application for conversion.** Holders of old forest concession titles have three months from the publication of the Presidential Decree to apply for conversion. The application is made to the Ministry in charge of Forests, with a copy to the

²⁹³ The Los Angeles Times, August 17, 2007. The news report also indicates that the Bank’s website states that the IFC “*has no client in the field of forests in DRC.*” According to the same report, a Bank staff – forestry specialist – stated that “*the moratorium was widely ignored, however, and some contracts were negotiated by people with no authority to do so.*”

Secretary General in charge of Forests. Within seven days after the end of the three months period, the forestry administration publishes the list of titles for which a request for conversion was received.

451. **Technical review of titles and verification of files.** Titles will be evaluated for conversion by a Technical Working Group (TWG), which has four months to complete its evaluation. The group is composed of representatives from the Service Permanent d'Inventaire et d'Aménagement Forestier (SPIAF) which operates under the Ministry of Environment, the Direction de la Gestion Forestière (DGF) and the Direction Générale des Recettes Administratives, Judiciaires, Domaines et de la Participation (DGRAD), which is under the Ministère des Finances.
452. The TWG will check the validity of the old contracts based on a limited number of criteria set forth in the Presidential Decree. Article 4 provides that the verification of the files is based on, *inter alia*: the legal validity of titles for which the conversion is requested and whether the title was transferred to a third party; compliance with legal, environmental, social and fiscal obligations attached to the title; the existence and maintenance of a sawmill in conformity with the terms of the '*garantie d'approvisionnement*' and/or '*lettre d'intention*'. Article 5 stipulates that the legal validity of the titles will be assessed on the basis of the rules and regulations that were in place at the time of signing.
453. The assessment of whether the applicant has respected his obligations is based on the following criteria: full payment of forest tax since 2003; respect of the limits of the concessions; and the operation and maintenance of a sawmill in conformity with the title. Article 5 makes clear that non-compliance with any of these contractual obligations leads to the rejection of the application and the cancellation of the title.
454. The TWG is assisted by an Independent Observer (IO).²⁹⁴ The mandate of the IO is "*to help the administration in the verification and in the preparation of reports and the forest concession contracts*" (Art. 6 and 10). The IO participates in all working meetings and missions on the ground. The IO is to prepare an interim report with advice on the regularity of the technical verification and the conformity of the verification to the rules of the Presidential Decree. The IO also provides his independent report including recommendations to be submitted to the IMC through the Minister in charge of Forests. The Minister in turn transmits the applications for conversion, the TWG's verification reports, and the IO's interim report to the IMC.
455. **Meetings and recommendations of the IMC.** The IMC not more than 4 months after the receipt of the applications for conversion. The Commission's mandate is to review the results of the TWG's evaluation, the report of the independent observer, and to make recommendations on whether the application for

²⁹⁴ The Presidential Decree refers to an Independent Expert.

conversion should be rejected or approved. The IMC has 45 days to complete its work. The IMC's composition is described below.

456. The IO prepares a final report on the consistency of IMC's work and on whether its conclusions conform to the spirit and letter of the Forest Code and the Presidential Decree, including his recommendations (Art. 10). The Commission decides by consensus. If consensus is not reached, it decides by a majority of two thirds of the members present. Seven days after the IMC finishes its work, its Chair sends to the Minister in charge of Forests the minutes of the meetings. In addition, the IO sends its report to the Minister in charge of Forests. At the end of the IMC's task, the verification report and both reports of the IO are made public.
457. The October 2005 Presidential Decree includes detailed provisions regarding the composition and members of the IMC. According to the Presidential Decree, the IMC, which acts under the authority of the Minister in charge of Forests is composed of several Government representatives, two representatives of the private sector, two representatives of national NGOs, a representative of local communities living in proximity of the concession area, and the IO with no voting right.
458. The original composition of the IMC did not have an explicit reference to indigenous peoples' representative but only referred to a representative of local communities neighboring the concession area. The Decree No. 06/141 dated November 10, 2006, changed this by stating that an indigenous peoples' representative will sit at the IMC, in case the local community, in proximity of a concession under review, include indigenous peoples. In addition to the representative of the indigenous communities, as mentioned above, Management informed the Panel that legislation still in draft may include a permanent representative and an alternate representative of indigenous peoples' organization at the IMC.
459. **Steps and recourse following the IMC's recommendation.** Within fifteen days, following IMC's recommendation, the Minister in charges of Forests informs the applicant of the recommendation. Within the same delay, a summary table of titles and respective recommendations is published. The applicant has the right to object the recommendation (Art. 14). Based on this objection, the Minister in charge of Forests reconvenes the IMC, which within fifteen days submits its final recommendation. Then again the Minister transmits IMC's recommendation to the applicant within fifteen days.
460. In case of an unfavorable recommendation, the Minister in charge of Forests notifies the applicant of his application's rejection and cancels the title. In case of a favorable recommendation, the Minister in charge of Forests will invite the applicant to sign a forest concession contract. The forest concession contract is signed for 25 years and is renewable. Titles that are not converted are cancelled within one year of the date of the Presidential Decree.

461. Once the legal review is completed, the holders of converted concession contracts will have a transitional period of four years to prepare forest management plans. The contractual arrangements pertaining to social infrastructure and socioeconomic services, to be reached in consultation between local communities and concessionaires, are annexed to the concession contract. These arrangements can be amended through agreement between the concessionaire and the local communities during the preparation of the management plan. The concessions will be cancelled if the applicant does not present a forest management plan.

2. The Implementation of the Process so Far

462. As of the July 2007, the Panel was informed that the conversion process had not finished and it was unclear when it would be finalized. The importance of completing the legal review of concessions and the cancellation of non-valid concessions has also been emphasized by the Declaration of Brussels that was adopted in February 2007.²⁹⁵
463. The Panel learned from the IO that the TWG had completed its verification work concerning the conversion process in February of 2007. The IO informed the Panel that it had received a copy of the TWG's findings and included comments on the TWG's work in its own interim report.
464. The Panel notes that the initial stages for the conversion process have, thus far, failed to conform to the timetable set out in the October 25, 2005 Presidential Decree. The Presidential Decree states that four months after the application deadline, the TWG's report should be delivered to the IMC for review. The Panel learned from the IO²⁹⁶ that, as of August 1, 2007, more than a year since the applications had been submitted, the IMC is yet to be established and thus the TWG's and the IO's reports could not be submitted. The new legislation, which would change the composition of the IMC and set a new timetable for the conversion process, is still in draft form, which is causing the delay in the IMC's establishment.

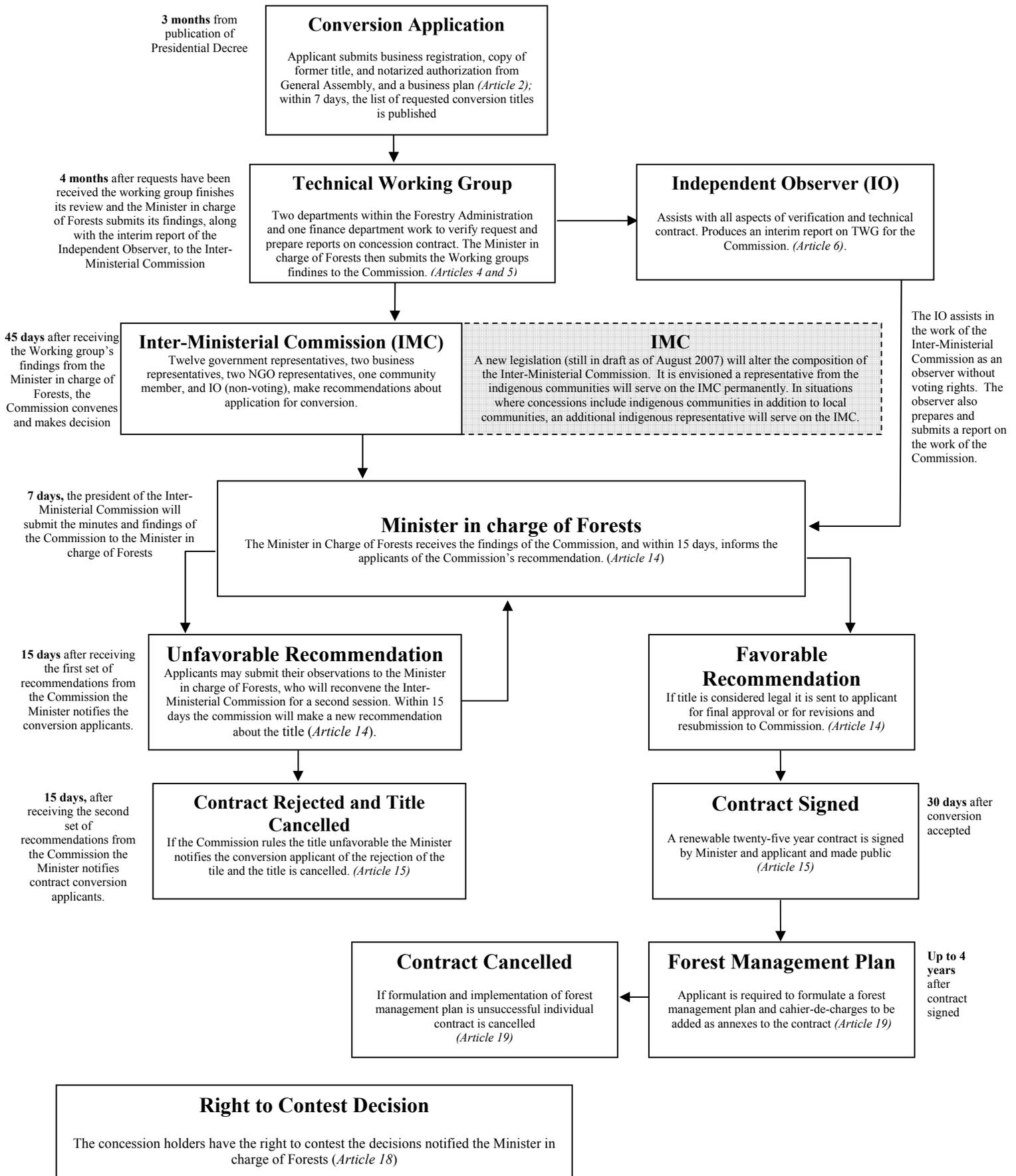
²⁹⁵ *Declaration of Brussels on Sustainable Forest Management in the Democratic Republic of the Congo*, Brussels, The Egmont Palace, February 2007. In February 2007, a major international conference was held in Brussels on the topic of sustainable management of forests in the DRC. A wide range of officials, experts and stakeholders participated in the conference. The topics ranged from the state of the forests and forest policies, sustainable timber production and efforts toward certification, community-based management of forests, innovative finance systems, nature conservation and carbon. The conference concluded with a reading of the "Declaration of Brussels on sustainable forest management in the Democratic Republic of Congo." Information on the Conference and the text of the declaration is available at <http://www.confordrc.org/view.php>.

²⁹⁶ See June 25, 2007, update on the conversion process on the Independent Observer's website, http://www.rdc-conversiontitresforestiers.org/notes-d-information-de-l-expert-independant/situation-au-25-juin_2.html.

465. The IO also informed the Panel that the Coalition Network of NGOs, known as CRON (created by a DRC government mandate and financed by the Bank), has completed the nomination process for representatives of local populations for 116 of the total 156 forest concessions. CRON has not completed its selection process for the other 44 representatives due to lack of funding.
466. The Panel also learned from the IO that the Government has not finalized the necessary legislation including procedures and mechanisms to challenge the recommendations of the IMC. The IO notes, however, that two independent legal experts have been mandated to deal with this issue and already begun work for the Ministry of Environment. The IO states that it is necessary to provide adequate funding and human resources to put in place the legal strategy to deal with potential legal matters arising from the conversion process.
467. In addition, in April 2007 the Ministry of the Environment annulled 22 concessions.²⁹⁷ These concessions were cancelled because the holders of the original concession contracts did not submit an application for conversion. In total, the cancelled concessions covered an area of 2,783,146 hectares.
468. The concession review process may be depicted as in Chart 5.1 below:

²⁹⁷ See Arrête No. 0003/CAB/MIN/ECN-EF/2007.

Chart 5.1: Conversion Chart as per the October 24, 2005 Presidential Decree



C. Problems and Concerns relating to the Conversion Process

469. **The Panel appreciates the assessments provided by the Independent Observer of problems that have occurred during this process, including those noted above. The Panel considers that such assessments are part of the value of an independent observer, commends the Bank for efforts to establish their use, and notes the importance of follow-up to address issues raised.**
470. **The Panel found, however, that the concession conversion process set forth in the October 2005 Presidential decree has been seen as beset by considerable and significant problems.**²⁹⁸ These are noted below.

1. Treatment of Existing Concessions

471. The first stage of the concession conversion process, noted above, is to assess and check the validity of the existing logging contracts. During this stage, it could be envisioned that contracts that on their face do not comply with the criteria could be screened out of the process and not validated.
472. As described in detail in Section A of this Chapter, one of the critical issues that has arisen in this regard relates to concessions that have apparently been granted or swapped for after the Moratorium on the granting of new concessions of May 2002. These post-Moratorium concessions reportedly cover some 15 million hectares (see above).
473. **The Panel has been informed, however, that such an initial screening-out of concessions that would appear to be invalid on their face has not, however, been done.** Rather, while field verification was carried out for 57 forest titles out of 156, it was decided that selection of a local representative should be made from all of the 156 titles. This also is apparent from the list of concessions developed by the technical review team. As described above, this list - - which is a summary of files that will be submitted to the Inter-Ministerial Commission for review, includes over 100 post-Moratorium concessions covering close to 20 million hectares.²⁹⁹

²⁹⁸ For detailed documentation of these concerns refer to the reports from the independent observer cited in the previous section. Also the Panel notes that it also heard concern about the deficiencies of the decree during its many field interviews with local populations, NGO and government representatives.

²⁹⁹ In its June 2007 update, the Independent Observer notes that “at the beginning of April 2007 the Ministry of Environment signed a law that annulled the forestry concessions that were not indexed on the official list of title conversions on the April 5, 2006 by MECNEF or that were in violation of the decree 05/11 of October 2005 that related to the rules for the conversion of titles. In total, 22 titles covering an area of 2,783,146 ha were annulled by this law.” The Observer indicated that it supports this effort and encourages the Ministry to uphold only those concessions that made a request for conversion which also conform to the conditions established for the conversion of titles in the Presidential Decree. The Observer noted that all titles that do not meet this standard must be annulled as well.

2. Time Constraints

474. As noted above, the conversion process follows rather short timeframes which do not leave much time for extensive field verifications and consultation. The decision not to conduct an advance screening of post-Moratorium concessions also has made the work of the independent observer and NGOs responsible for field verification and selection of local representatives, even more difficult, given the limited time, financial resources and information. **The experts involved in the technical report complained that they were not given nearly enough time for these activities.**
475. The Panel notes, in particular, that it may be extremely difficult to assess properly whether or not the title holder “*respect...the legal, environmental, social and fiscal obligations attached to the existing titles...*” by using remote sensing and GIS technologies combined with field verification during such a short period of time.
476. For example, one of the criteria for validation is that the concession company has been “*respecting the limits of the concession.*” In a country the size of DRC, with the challenges it poses relating to transport, information gathering, and the like, the difficulties in assessing this criterion in a few months period for 156 concession areas in vast expanses of forest seem readily apparent.
477. The Panel also notes that an expressed objective of the EESRSP was that through the concession conversion process, adjustments would be made as appropriate to concession boundaries. These adjustments, one might expect, might be of great importance to the local and indigenous peoples living in or near concession areas, as well as for environmental and biodiversity reasons. Again, however, the very compressed period of time for carrying out the technical assessment seems at odds with the achievement of this potentially critical objective. This difficulty is compounded by the problems, noted below, in achieving any kind of meaningful participation by local communities, including the Pygmy people, in the concession conversion process.
478. The Panel notes in this regard, for example, that there are villages and camps, roads, fields, fallow lands found in many of the concession areas under legal review, as illustrated by the attached map showing the distribution of the concessions. The report by a (DRC government) consultant also confirms the presence of Indigenous People in 64% of the concessions (covering 73% of the areas) under legal review. However, in most of these concessions, neither the mapping of customary use of forests nor the compensation for the loss of such rights has been made. In some concessions, the usage rights of Indigenous People are not recognized at all, and they are obliged to pay 25-50% of the products to

- the Bantu farmers and concession owners as “entry fee” to the forest.³⁰⁰ This directly raises issues of contradiction with the provisions of the forest code.
479. During the field investigation in February 2007, the Panel heard about cases of social conflicts regarding the logging concessions, which may raise issues as to their compliance with relevant legal requirements as reviewed under the concession conversion process.
480. The Batswa people at a village in Equateur Province told the Panel about the conflicts between them and the logging company, and between them and the Bantu (Baoto) farmers. They complained that they had not been consulted at all by the logging company operating in the forest which they had been utilizing for hundreds of years, and that consultation about the logging concessions and negotiations of the ‘*cahier de charges*’ were made only between the logging company and Bantu farmers (Baoto of the Mongo group).
481. Without any consultation with, or compensation for, the indigenous Batua people who occupy the majority of the population in the area, the loggers built roads penetrating their settlement sites, and cut useful fruit- and caterpillar- bearing trees, even in burial sites and sacred parts of their forest³⁰¹. They also complained that the logging company does not provide them with any job opportunities. When they made complaints to the loggers about these ill-mannered acts, the loggers told them that they (the Batua) should go to Kinshasa to appeal to the administration, for which they have no means to do so.
482. The Batua people from another village and its neighborhood areas also complained to the Panel that the logging company had been cutting their important medicinal and caterpillar-bearing trees, destroying their fields with crops and sacred sites, building roads penetrating their settlements and field sites, and non-respect of forest code, all without any consultation or compensation.
483. Furthermore, Batua people in the first village told the Panel that they were ill-treated by the Baoto (Bantu) farmers and the authority. In addition to the money received from the logging company, the Baoto villagers monopolize the rights to all the lands for cultivation, leaving almost nothing for the Batua, except tiny plots in the immediate proximity of their houses. Moreover, the Baoto force the Batua to provide labor service for their own benefits in the name of *salongo*, “obligatory civic work” program introduced during the Mobutu regime. Even when they are employed by the Baoto (Bantu) villagers for *par jour* (day-based labor for agricultural work), they are paid extremely low, only 150-200 FC a day, whereas a bunch of bananas costs three to four times as much as that. The Batua

³⁰⁰ Kai Schmidt-Soltau. *Protocole de consultation et participation communautaire au processus de conversion des garanties d’approvisionnement et des lettres d’intention en contrats de concession forestière*. October, 2006, p .6.

³⁰¹ Such a sacred place is called “*djembo*,” and important to acquiring supernatural power from the forest.

also reported of the violence done by the local police who had made a false charge against the Batua.

484. **The Panel is very concerned that such conflicts and appeals could not be properly assessed during a short period of field verification, and reflected in the report submitted for the review by the Inter-Ministerial Commission.** It is important, therefore, that Management states *“the conversion process provides an opportunity for resolving conflicts in land uses (...), but it also embodies the risk that the indigenous peoples are further marginalized in decision making processes and lose access to forest traditionally used by them. The key to success in that effort is a workable arrangement for ‘free, prior and informed consultations’ for the local population in view of OP4.36 and indigenous peoples in view of OP4.10. The arrangement should include specific measures to ensure the participation of indigenous peoples.”*³⁰²
485. The Panel sees in this statement that Management has improved the awareness of and attitudes toward the Indigenous People’s issue, since it made its Response to the Request in January, 2006, and welcomes the decision of the Management to prepare a “Protocol for Community Consultation and Participation” to ensure that the rights and interests of forest-dependent people are taken into account in this legal review/conversion process. However, the Panel also finds that actual situation does not seem to proceed as this statement suggested, and that the conversion process still *“embodies the risk that the indigenous peoples are further marginalized in decision making processes and lose access to forest traditionally used by them.”*
486. The foregoing is another basis of the Panel’s concern that the legal review and conversion of old forest titles may affect the Indigenous People who live in or around these concession areas, unless appropriate measures are taken for them.

3. Race to Extract and Swap for Higher Value Forest Areas

487. **The Panel further notes that the initiation of this process may have, inadvertently, created incentives for actions that increased potential impacts in the forests in some areas.** In particular, the process may have created an incentive for the “swaps” by companies of “unproductive” or already logged area in exchange for higher quality forest areas, noted above, so that these could be considered for conversion to legal titles in the review process. There is also substantial anecdotal information to suggest that the process has contributed to accelerated logging within some existing concessions, in advance of determinations as to their legality.

³⁰² Kai Schmidt-Soltau. *Protocole de consultation et participation communautaire au processus de conversion des garanties d’approvisionnement et des lettres d’intention en contrats de concession forestière*. October, 2006, Terms of Reference for an assignment to enhance the participation of indigenous peoples in the implementation of PUSPRES [EESRSP].

488. This should not be surprising. Experience in managing other finite natural resources such as ground water indicates that by announcing a future deadline after which some claimants will no longer be able to extract the resource encourages a race to exploit as much as possible before the deadline. Conceptually a Moratorium on new concessions should have prevented this, but this assumes institutional willingness and capacity to implement and enforce the Moratorium, not only nationally but also at the provincial and local level. When this does not exist, the incentive to extract rapidly can prevail. In the instant case, constraints on the quantity of logs that can be transported at any one time out of the country may arrest the rate of harvesting.
489. The Panel observes that in the concessions allocated after the Moratorium of 2002, logging operations are actually underway. Some of these concessions are reportedly infringing the concession boundaries, breaking the promises of ‘*cahier de charges*,’ and producing serious environmental and social problems. The Panel observes that there is a critical need to address this situation, and that there is a risk of irreversible damages to the forests and the local communities which depend on the forests.



Picture 7: Panel meeting with Pygmy People community

4. Lack of Meaningful Participation by Pygmy People and Local Communities

490. As stated above, the composition of the IMC originally did not have an explicit reference to indigenous peoples' representative. The Decree of November 2006 revised the IMC's composition and added an indigenous peoples' representative in case the local community, in proximity of a concession under review, includes indigenous peoples. It stated that, "*in case of presence of autochtone communities [pygmy communities] (...) in proximity of the title under consideration, the Commission will include a representative of these autochtone communities.*"
491. **The Panel welcomes this recent provision to include a representative of Indigenous People in proximity to titles under consideration by the Commission.** The Panel heard testimony that this provision is important symbolically as recognition of the status and rights of these people in such a legal document. In addition to the representative of the indigenous communities, as mentioned above, Management informed the Panel that a draft legislation may include a permanent representative and an alternate representative of indigenous peoples' organization at the IMC.
492. **The Panel understands that if the draft legislation is enacted the Inter-Ministerial Commission will include: two permanent representatives of national NGOs; a representative of local communities; a representative of the indigenous community, if the concession area is in proximity to indigenous peoples; and a permanent representative and an alternate representative of indigenous peoples' organization.**
493. **The Panel notes, however, that there are significant issues and problems regarding how to choose only one representative properly from Indigenous People who have been living in a number of scattered groups without much contact with one another.** As noted in Chapter 2, the Pygmy people have little experience with a political system of representation, and special issues and difficulties arise in seeking their participation in a decision-making process.
494. The most recent Report by the Independent Observer describes current difficulties in regard to the process to select such representatives. The Observer states that the Coalition Network of NGOs (CRON), created by a DRC Government mandate and financed by the Bank,

“has completed the nomination process for representatives of local populations for 116 of the total 156 concessions. CRON has yet to be able to complete its selection process for the other 44 representatives due to a lack of funding and thus has submitted a request in collaboration with the Ministry of Environment to acquire the necessary funding to allow the representatives of

*the local populations to participate in the work of the CIM (Interministerial Commission).”*³⁰³

495. The Panel notes that the selection of representatives to attend the Inter-Ministerial Commission from each of the 156 contract areas is made even more difficult given the extremely limited time and resources.³⁰⁴ During its field investigation, the Panel was informed that the task was to be completed within 21 days with 150,000 US dollars reallocated from the dropping of PFZP. The task was given to a Netherlands-based International Development Organization (SNV), which has completed the task for the 116 titles as noted above, with the support of national NGOs. For the remaining 42 titles located in remote areas, the Panel was informed that another 21 days had been given, but heard reports from those running the process that these resources are still insufficient. The decision not to carry out an initial screening as noted above has compounded the problems and time requirements.
496. The Panel is concerned that these approaches may produce rough and hasty consultation processes that fall out of line with basic Bank policy objectives and requirements described in other sections of this report. This is a concern especially given the time and resources as compared with the size of the country, lack of information, extremely inconvenient access to the concession areas, and difficulty in proper information disclosure to the people who are not familiar with such a representation system. In most cases, the NGOs must have started with explanations of the forest code, concessions, and what the “representation” means, before facilitating for the local community to select their representative in three weeks’ time.
497. The Panel also notes concerns that those who are selected may find themselves in a situation of weak political capacity as they arrive in the capital city and join other permanent Commission members who may have had additional opportunities to become familiar with the process and the file. **Unless these concerns are addressed, the Panel is concerned that the inclusion of an indigenous representative might somehow legitimize a process under which the more powerful members of the Commission would take decisions that could run contrary to the interests of locally-affected people.**

³⁰³ June 25, 2007, update by the Independent Observer.

³⁰⁴ According to the consultant’s report (Kai-Schmidt, 2006), “*The process (...) will be held in 5 stages: 1. to inform everyone...on the general process (forest code, requests for conversion, obligations of the concession company etc), the process of decision-making, the options, their possible impacts and the importance to send a representative; 2. to grant populations necessary time...to have a common position and to choose a representative; 3. to check if all segments of population (old people, young etc) agree with the position taken and on the representative to be sent; 4. to ensure that the representative presents the common position before the interministerial commission; 5. to organize a meeting of general feedback during which the representative will inform the whole population on the decision taken and the following stages.*” The last two stages seem extremely difficult, since the final report of the Independent Observer will not be consulted before the representative attends the Inter-Ministerial Commission. The NGOs to whom the task was mandated also complained about the difficulty, shortage of time and resources, in particular, to follow this process faithfully.

498. There is the potential that individual representatives in turn could be blamed by their own communities for participating in such a process. **In light of these problems, the addition of a permanent representative and an alternate representative of indigenous peoples to the Inter-Ministerial Commission could be regarded as particularly positive.**
499. The Panel also heard concerns expressed regarding the extent to which this decision-making process will operate transparently. The Panel was informed that **the report compiled by the Independent Observer would not be published before the decision is made. The Panel is very concerned that the community representative sitting at the Inter-Ministerial Commission, will not have access to the file before the meeting is held over the concession affecting his/her community.** In addition, it is not clear whether the information and minutes of the meeting will be made publicly available at a later time.

5. Asymmetrical Rights to Contest the Results of the Process

500. Article 18 of the decree reserves a right to logging companies to contest the decision of the IMC notified by the Minister in charge of Forests. **It is not apparent, however, that communities have parallel means of recourse to contest decisions.**
501. The Panel notes that the October 2005 Decree reserves a right to logging companies to contest the decisions notified by the Minister in charge of forests. The conversion process outlined in the October 2005 Presidential decree does not have an explicit provision to enjoin logging operations of cancelled contracts during an appeal. Civil society has expressed concerns that cancelled logging operations might continue while appeals are pending, which could be a long time.³⁰⁵
502. In addition, the recent update of the Independent Observer notes that *“the procedures related to the collection of forestry titles that are declared ‘non-convertible’ have not been defined.”*

6. Duration of the Moratorium

503. A Presidential Decree of October 2005 confirms that the May 2002 Moratorium remains in effect and covers all concessions that were allocated, exchanged or reinstated. In addition to the condition mentioned in the May 2002 Arrêté for the lifting of the Moratorium, the publication of new auction rules, the Presidential Decree of October 2005 adds two new conditions. Those conditions are: (1) the publication of the final results of the conversion process, including the cancellation of non-converted concessions; and (2) the adoption of a geographic

³⁰⁵ E.g. letter from Greenpeace to the World Bank, dated May 16, 2007.

plan for future allocations over the following three years, based on a consultative process.³⁰⁶

504. The Forests in Post-Conflict DRC report describes the condition on the adoption of a geographical plan as requiring *“the government to identify the number, location and size of concessions it intends to allocate over the next three years, and to justify those choices on technical grounds. This allocation plan would take the form of a map and a table. It should be prepared jointly with the private sector, civil society, and on the basis of local consultations in concerned areas.”*³⁰⁷
505. According to Management Response, this is also reflected in one of the two forest-related prior actions of the TSERO that refers to the *“extension of the 2002 forest moratorium on new logging concessions by publication in the Official Journal of a presidential decree stating that the moratorium will be maintained until three conditions are met: new auction procedures are adopted; legal review of the existing concessions is complete; and a 3-year plan for future concessions is adopted based on a participatory process.”*³⁰⁸ The July 2005 TSERO aide-memoire notes that the Ministry of the Environment seems to be in agreement with these conditions, but the proposed Decree or Arrêté were not yet prepared.³⁰⁹
506. Article 23 of the October 2005 Presidential Decree specifies that the Moratorium is to be lifted by a new Presidential Decree after the above-mentioned conditions have been fulfilled.

7. Additional Observations

507. **While the legal review and conversion processes may be flawed and involve various problems, the Panel finds that there are some positive elements as well. The process will eventually involve information disclosure, consultation, implementation of a political system of representation, and may stimulate activities of participatory mapping, sensitization and capacity building of the indigenous people.**
508. **The Panel wishes to underline the extraordinarily high stakes involved in the forest concession conversion process, and in ensuring that the relevant legal requirements and criteria are properly applied to concessions under consideration - - including those granted (or “swapped”) after the Moratorium on new concessions in May 2002.** As noted previously, these concessions cover millions of hectares of forest land in DRC. The Bank has been a very active proponent of and advisor on this legal conversion process, and will thus face very close scrutiny with respect to how the process unfolds and the final

³⁰⁶ Presidential Decree No. 05/116, October 24, 2005.

³⁰⁷ Forests in Post-Conflict DRC, p. 51.

³⁰⁸ Management Response, p. 16, ¶ 41.

³⁰⁹ July 2005, TSERO Aide-Memoire pp. 8-9.

results. Its supervision and follow-up to any problems that arise in this process is of great significance to its work in the DRC forest sector and to compliance with Bank policies.

509. **The Panel wishes to highlight the extraordinarily difficult institutional setting in which the process takes place.** The Panel has been repeatedly informed that there is weak capacity at the national level to implement the reforms and that at the provincial and local levels, the institutional capacity is either minimal or non-existent. The Panel heard testimony and saw visual evidence that those with responsibilities for implementing and enforcing regulatory measures on logging lack the resources and capacity to do so effectively. **The Panel notes the critical importance of building capacity within the vast tropical forest area to monitor and implement forest reform measures.**
510. The Panel also notes the growing significance of artisanal logging, particularly in the eastern part of the country, where those harvesting timber may have it transported by road to neighboring countries, where laws ban the cutting of such trees, or further to ports for shipment elsewhere. These developments adversely affect the sustainable use of the forests and are not known to result in benefits to indigenous and other vulnerable peoples in the area.

D. Zoning and Land Use

511. As described previously, an important initial element of the EESRSP's engagement in the DRC forest sector dealt with the preparation of a forest zoning plan (PFZP) focusing on major provinces (Equateur and Orientale). Many of the elements of this zoning plan met the highest technical standards. However the pilot zoning plan became a major issue in this Request for inspection because, it was claimed, it did not sufficiently include the stakeholders (notably the Pygmy People) for whom the results of zoning decisions were extremely important.
512. Management dropped the pilot zoning from the Project around the time that these concerns were being raised. Although the rationale for this decision was not fully transparent at the time, an important factor may have been that the proposed actions were not yet in compliance with Bank Policies. As discussed below, there had been no EA analysis of the zoning element under the Project, nor an indigenous peoples development plan (IPDP) or framework, as required under OP 4.20, to ensure full and meaningful consultation with the Pygmy people to understand how the zoning might affect them, why it is important to them, and how it should be carried out to protect their rights and interests.
513. **The Panel notes that dropping the crucial pilot zoning element instead of bringing it into compliance delayed the gathering of important information, and might not have been in the best interest of achieving the Project objectives** and the objectives of the Bank's overall strategy for remaining engaged

- in DRC's forest sector. It is notable, in this regard, that the zoning proposal originally included in the Project, as approved by the Board, envisioned addressing land tenure rights of stakeholders.³¹⁰
514. **The Panel further notes that, in this context, the concession conversion process may act as a type of *de facto* zoning under which the legal and economic interests of the logging companies will be considered for recognition, while consideration and recognition of the land tenure and livelihood rights of the people living in the forests will be delayed.**
515. The resulting delay in a “zoning” program thus stands in contrast to the progress in institutional reforms concerning forest concessions. This has caused the Requesters worry about the fate of their forest. They state that *“We fear, therefore, that the moratorium will be lifted once this conversion operation has been completed, and result, in the short term, in the granting of new forest concessions, even though the zoning plan would not yet have been prepared.”*
516. The Panel notes that granting or approving concessions without long-term perspectives on land uses and tenure is likely to lead to mismanagement and potentially irreversible damages to the forests and the life of the people who depend on them. **It is noteworthy in this context that the Panel found during its investigation, as described above, that participatory mapping of their customary forest uses had already been attempted in some areas of Oriental and Equateur Provinces with support of NGOs.** The Panel notes the recommendation in the Forests in Post-Conflict DRC report that local communities’ uses be mapped and their rights secured.³¹¹ The Panel also notes that if areas for new parks, logging, or other forest uses were identified, they would be in “non-disputed zones.”
517. The Panel also notes that the dropped zoning element envisioned such activities. Specifically, the EESRSP Technical Annex states, in relation to the zoning element, that: *“the Project will finance mapping services and verifications on the ground; socio-economic assessments; facilitation of local consultations to help Government and local stakeholders to organize rural areas.”*³¹²
518. At the same time, the Panel notes that the eventual impact of zoning activities will depend very much on how they are carried out and with what results. In Cameroon, for example, extensive forest areas of southeastern Cameroon were allocated to logging companies within several years after they had been divided into forest management units and zones with different purposes. The areas

³¹⁰ The EESRSP Technical Annex states that the proposed forest zoning plan *“is critical to secure land rights and transparent access to forest resources for all stakeholders.”* During its investigation, the Panel was informed that part of the funding which had been reserved for PFZP was allocated to the concession conversion process.

³¹¹ Forests in Post-Conflict DRC, p.33

³¹² EESRSP Technical Annex, p. 28-29.

allocated to local people were mainly confined to the narrow strips along the major roads, whereas vast stretches of forest were designated either for industrial logging or for wildlife conservation. As a result of restricted access to forests that they had been using, the local people, in particular the Baka Pygmies, are suffering from a shortage of forest land from which they obtain subsistence and cash income. **This highlights the importance of carrying out any such land use planning activities in full consultation with locally-affected people.**

E. Status of Adoption of Implementing Decrees

519. As described in Chapter 2, EESRSP Project documents indicate that the timely adoption of decrees to implement the Forest Code was an important element of the Bank's strategy to address forest-sector reform. This same element was included as one of five indicators of success for the TSERO. Important topics such as community forests, procedures for sole-sourcing, '*cahier de charge*' (social contracts with local communities), conservation concessions, and guidelines for sustainable management plans need to be addressed in implementing decrees.
520. According to Management, "*with the help of FAO, consultations are ongoing with civil society to prepare these decrees. CSOs, private sector and government agencies participate in the Steering Committee that reviews these decrees before their adoption. The Bank is providing advice in order to ensure that these decrees protect the interests of local communities and meet internationally accepted standards, as outlined in the Bank's new forest sector strategy and operational policy.*"³¹³
521. The Panel did not receive an exact overview of the status of all Decrees. It appears that some Decrees were adopted before 2003 and are now under review. Two new Decrees were enacted in 2004 and 2005: the Inter-Ministerial Decree on fiscal reforms of March 2004, and the Presidential Decree on the legal review of old logging titles and the extension of the Moratorium dated October 2005. However, **the Panel was informed that, at the time of this Report, implementing Decrees on the issue of community forests, sustainable management plans, as well as many other key decrees had not been adopted.**³¹⁴
522. **The Panel observed that while some thirty implementation decrees are to be settled in due course, most of the decrees so far passed seem to relate to forest concessions whereas "the decrees required in order to establish community**

³¹³ "Questions and Answers on World Bank support to sustainable Management of forests in the Democratic Republic of Congo," No. 14. available online through World Bank website.

³¹⁴ The June 25, 2007 Report by the Independent Observer, notes that the arête required to specify the new models for concessions and the *cahier de charges* is not yet available, and adds that "*two independent legal experts have been mandated to deal with this issue and have already begun work for the Ministry of Environment.*"

*rights, community forestry, environmental protection etc, are amongst those still awaiting development.”*³¹⁵

523. In fact, the Panel found during its investigation in February, 2007 that one of the most important Decrees directly related to local communities, on community forests, was still in a stage of preparation. Such a delay may result from Management’s notions that “*pragmatically, it seems reasonable to focus first on the most urgent decrees, those needed to avoid irreversible damage, and then to continue by order of priority (...)*,”³¹⁶ and that “*Several important decrees, including the one on community forests, cannot easily be prepared in the short term as they require innovation, studies and other preparatory work.*”³¹⁷
524. Subsequently, the Panel was informed that two draft decrees³¹⁸ related to community forests were drafted in March 2007, but that the texts had been sent back to a “Drafting Committee” for revisions. The Panel is not aware that the Committee has met again since March, and it is unclear when the decrees will be published.³¹⁹
525. The Panel received reports that there has been a substantial critique on the draft decrees. One concern was that they were drafted without awaiting the outcomes of an FAO-financed background study on community forests. Concerns were also expressed that the draft decrees limit the total area that is available for each community forest to a maximum of 5000 hectares,³²⁰ and do not appropriately reflect the structures and interest of communities on the ground. The Panel also heard that the draft approach by-passes the fundamental need to identify and recognize land tenure rights
526. **The Panel recognizes that basic legal and administrative steps may take longer than usual periods of time in the context of difficulties facing DRC. The Panel also notes the importance of taking the necessary time to follow a participatory process. At the same time, the delay in preparing the decrees on issues of community rights, as compared to those on concession operations, may have produced the impression that the Bank particularly emphasizes institutional reforms for reopening logging operations in DRC. In**

³¹⁵ Simon Counsell. *Forest Governance in the Democratic Republic of Congo: An NGO Perspective*. 2006, p. 23.

³¹⁶ Forests in Post-Conflict DRC, p. 25.

³¹⁷ The debate on this subject illustrates the importance of these decrees and the process through which they are developed. It also reveals a number of challenges that the DRC is likely to face as it endeavors to develop a decree and system of community forests. While community forests initiatives have the potential to give local communities control over their forests and decrease their marginalization, their design and implementation must be closely monitored and structured in such a way that the rights and needs of Pygmy communities are adequately addressed.

³¹⁸ “Arrête Ministériel portant dispositions relatives a la gestion des forets des communautés locales” and “Ordonnance fixant les modalités d’attribution des forets aux communautés locales.”

³¹⁹ The Panel was also informed by the observer that initially, the decrees should have been drafted about 2-3 years ago.

³²⁰ Draft “Ordonnance fixant les modalités d’attribution des forets aux communautés locales,” Art. 16.

addition, it remains unclear what level of progress has been made as to how to make inputs from a multi-stakeholder consultative group, or how to involve local communities and Indigenous People in this implementation process. Unless more efforts are made for preparing decrees concerning people's customary rights to the forests, the Bank may find much difficulty in defending itself against the criticism made by the Requesters.

527. The Panel finds that, in line with Bank policies, it is critical to carry out prior and informed consultation with local communities in the process of implementation decrees of the Forest Code. **The Panel notes that the Indigenous People would be particularly vulnerable to the adverse influences of forest concessions and exploitation by outside agents, and the corresponding importance to them of effective consultation and follow-up for those people who have been poorly represented due to their lower, underprivileged status in multi-ethnic local settings.**
528. The Panel observes, in this regard, that it learned during its investigation that the Bank and others are expressing much interest to develop new approaches and mechanisms to promote conservation and sustainable use in the DRC forest areas.³²¹ The Panel also notes that the Bank is exploring a new Project in DRC that may include a specific component on participatory land use planning. The Panel notes recent efforts by Management to identify new opportunities to promote conservation of DRC forests in a way that recognizes the needs and interests of local communities. The Panel expresses its hope that these may be carried forward in a way that identifies the issues and concerns raised above.
529. **The Panel would highlight efforts by the Bank to help DRC monitor the problem of illegal logging, and DRC's recent decision to have a well-know international NGO study how to provide an independent monitoring capability for illegal logging.** This is consistent with Bank policy.

F. Concluding Observations

530. The Panel recognizes that the tropical forests in the DRC are a critical resource for the country. They are both a source of revenue and a home and source of livelihood for the many indigenous and other local people who inhabit the forests. The people in DRC have a critical interest in ensuring that all citizens benefit from the forests.. The forests in DRC are also an invaluable resource for their biodiversity and potential contribution to mitigating climate change.
531. **In its investigation, the Panel noted that when the Bank initially became engaged in the DRC and decided to support work in the forest sector, it provided estimates of export revenue from logging concession that turned out to be much too high. This had a significant effect, for it encouraged a focus**

³²¹ Some of these are reflected in Forests in Post-Conflict DRC. Many important ideas also were noted at recent Brussels Conference on Forests in February 2007.

- on reform of the forest concession system at the expense of pursuing sustainable use of forests, the potential for community forests, and conservation. For the most part, foreign companies or local companies controlled by foreigners have been the beneficiaries of this focus. Those whose concessions are confirmed in the concession review process will be the beneficiaries of the new 25 year leases. In this connection, the Panel notes that the standard practice of 25 year leases was developed for areas with renewable forests, and the species most prized in DRC are not renewable on those time-scales.
532. The Panel found that the Bank underestimated the social and environmental implications of the forest-related components of the EESRSP, and failed to meet core Bank safeguard policy requirements relating to indigenous peoples and environmental assessment, among others. The Panel was particularly concerned that the Project documents presented at the time of Board approval failed even to identify the existence of the Pygmy peoples in the forests of the DRC where logging concessions and (originally) land use planning - - influenced or supported by the Project - - would be considered for approval. This led to a series of significant shortcomings in Project design that may yet contribute to serious harms to these people and the forests in which they live. The Panel also noted a significant failure in assessing and planning to prevent or mitigate potential impacts on the rich and unique biodiversity present in DRC forests.
533. **The Panel is concerned that the benefits from the industrial harvesting of trees, which is at the core of the policy and administrative reform, are not going to the people living in and around the forest. The Panel found evidence that the promised benefits to the communities from the concessions, such as schools, clinics, and other facilities, have not materialized. This is not consistent with the objective of the Bank’s policy of poverty reduction.**
534. The forests are an enormously important and valuable resource for the Congolese people. The Panel notes that there is a real danger that the highest quality forests will be depleted and valuable fauna exhausted with little benefit to local populations, or even to the general population in the country. People may lose access to forests and their products, on which they depend. This issue affects not only those living today, but the welfare of future generations. In this connection, **the Panel notes the potential importance of developing a more balanced approach by emphasizing appropriate models of community forests as well as other actions to support community participation, land tenure and use rights in the forests and by linking to the recently proposed Bank administered fund to pilot instruments for reducing carbon emissions from deforestation and forest degradation.**
535. The Panel observes that the Bank dropped its initial component on land use zoning in favor of a priority to concession reform and thereafter possible development of land use zoning. The Panel finds that as a result of the forest

- concession reform effort, which results in 25 year titles to extract timber, the Bank will in fact have supported de facto land use zoning. Any zoning that takes place thereafter will be against the backdrop of the confirmed concession titles, which may severely limit application of models for alternative uses of DRC forests.
536. The Panel also expresses its concern about the instruments of a Moratorium on new concessions combined with a reform process for confirming or cancelling concessions to take place at a future unspecified date. **In the absence of institutional capacity to implement and enforce a Moratorium or to ensure prompt review of the concessions, there is the danger that some of those exploiting the forests will expand their concessions, swap some areas for others with higher value forests, or obtain new concessions and harvest as rapidly as possible.** This is particularly troublesome, where the existing legal and institutional structure did not provide an effective way to hold title to tropical forest areas for conservation purposes.
537. The Panel understands that the Bank has been intent on avoiding the holding of concessions for purposes of speculation. Consistently with the existing Decrees, the Bank has therefore insisted that the holder of a concession must demonstrate harvesting, as by the presence of a sawmill, and the payment of taxes on harvested logs. Bank staff have stressed that if a party wanted to conserve forests, it could return its concession to the Government and have the Government allocate it for that purpose. But that assumes that the Government would be willing to do so and has the capacity to enforce its protected areas, both of which are questionable. **The Panel observes the potential importance of encouraging the Borrower to explore conservation concessions or comparable instruments consistent with the new Forest Code.**
538. The Panel notes that the forest concession reform process has many positive elements, which have been identified earlier: the gathering and disclosure of information on the forest and the concessions, the initiation of consultation with local communities about their forests and their initial rudimentary participation in the allocation process, and the anticipated stimulation of participatory mapping, sensitization and capacity building of indigenous peoples and their communities.
539. **The Panel also notes its concern, though, that in the end it may be difficult to cancel effectively some of the concessions that the Technical Working Group, assisted by the Independent Observer, might recommend in its Report to the Inter-Ministerial Commission as not qualifying for confirmation.** Those who extract the resources have very substantial resources to try to contest decisions not in their favor, while the country is still struggling to build its institutional capacity to implement and enforce its laws, regulations, and policies. The Panel notes the potential importance of the Bank's role in helping build the country's institutional capacity in the forest sector.

540. The Panel observes that Bank staff have attached high importance to getting the appropriate legal framework in place for forests and have contributed significantly to this process. **The Panel recognizes the importance of a solid legal framework and the difficulty of developing and establishing it. But an almost overwhelming problem in the forest sector in DRC is the lack of institutional capacity to implement and enforce the laws and regulations, especially at the provincial and local levels. Until this is developed, the legal framework, although an essential step, cannot be relied upon to ensure sustainable development in the forest sector or to ensure that the people benefit from the forests.**
541. **The Panel also notes its concern that Development Policy Lending is being used for supporting activities which in earlier times have been financed as projects. This effectively bypasses the environmental and social safeguard policies that apply to projects.** The Panel understands that Development Policy Lending may sometimes be the preferred instrument. However, since DPLs are usually disbursed in a single tranche, it is difficult to ensure that attention is paid to environmental and social issues. Moreover, in the case of DRC and increasingly most other DPLs in Africa with forest components, the Bank determines that there are no significant environmental and social effects, or alternatively that any effects would be positive. The Panel is concerned that these determinations are cursory with little time available to assess the proposed endeavor and with an implicit assumption that technical assistance programs affect only the targeted government program. **Activities such as support for a forest concession program have very broad and very significant social and environmental effects in the country that cannot be ignored and need to be assessed.**
542. The Panel found that the various parties with whom it spoke, including the Requesters and other donors, believed it important, if not essential, that the Bank continue to be involved in the forest sector in the DRC. Many view the Bank as a powerful institution in this context. **The Panel recognizes that it is important for the Bank to remain engaged in the forest sector in DRC. It is also essential that the Bank comply with its social and environmental safeguard policies, as well as its other policies, to ensure that the forests benefit the people in DRC and that they be available for both present and future generations.**

**Annex 1
Table of Findings**

ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
<i>FORESTS AND SUSTAINABLE DEVELOPMENT IN DRC</i>		
<p>Bank Focus on Forest Concessions</p>	<p>Prior to and during Congolese conflict, majority of country's productive forests had been allocated to rent seekers; by 2002, over 43 million hectares (twice the size of the United Kingdom) were already locked up for industrial logging. About 285 logging contracts had been allocated before and during war with no transparency, no local consultation, no adequate compensation for local people and for country, and no consideration for alternative forest uses. These concessions overlapped with villages, agricultural lands and biodiversity hotspots.</p> <p>In 2002, Government cancelled 163 concessions – bringing the total area under concessions from 45 million hectares to 20 million hectares – and it established a ban on new concession allocations. A review of the legality of remaining concessions and others possibly awarded or exchanged illegally between 2002 and 2005 is now being conducted with a view to rescinding those not in compliance with prevailing legislation. Those found compliant will be transformed into long-term logging concessions, provided that holders will develop management plans and meet other obligations involving consultation with local people on issues pertaining to concession boundaries, traditional uses and companies' social obligations.</p>	<p>Panel notes importance of Bank's intervention, before start of EESRSP, to advise the Government to cancel concessions that were illegal or not valid. This was consistent with the Bank's forest policy.</p> <p>Panel also observes that cancellations do not mean that full reduction of some 25 million hectares contained forest cover. Panel was informed, during its investigation, that substantial areas in these concessions were not covered by forests, but had been previously logged and/or were agricultural lands, swamp lands and even villages. Substantial portion of concession areas cancelled in 2002 that did have forest cover appear to have re-emerged as concession areas under consideration for validation in the concession conversion process supported by EESRSP.</p> <p>Panel observes that one can expect strong pressures for industrial logging, because resource is enormous and profit potential great. In this light, many people, including some who are critical of World Bank actions, indicated to Panel their hope that World Bank will stay engaged in the sector to support and help ensure that critical social and environmental needs are protected, while supporting needed economic development and progress in the country.</p>
<p>Bank Engagement and Focus</p>	<p>Bank support to DRC forestry sector is based on Government's 2002 Forest Reform agenda. Presented in the form of a policy matrix and adopted by all major development partners as foundation of their support to forestry sector, agenda lists measures aimed at protecting resource base, disposing of legacy of illicit forest appropriation and mismanagement, protecting forests from vested interests, strengthening rights of Congolese people, including forest dwellers, and requiring fiscal and environmental responsibility from private sector. Bank support to this agenda is channeled through various Bank instruments including, but not limited to, EESRSP.</p> <p>Bank's advice focused primarily on basic governance measures aimed at returning to state forest concessions that had expired or were illegally held, at improving transparency and</p>	<p>Bank's early interest in potential tax and revenue-generating value of increased industrial logging led to focus on developing a Project that would facilitate increased levels of industrial forest exploitation. Panel finds that there was inadequate consideration of many important socio-economic and environmental issues of forest use, embedded within Bank safeguard policies, and that this distorted actual economic value of country's forests. This, in turn, contributed to problems of Bank compliance with its social and environmental policies at Project design and appraisal.</p> <p>Panel notes that there is wide agreement that industrial logging in DRC has profound social and environmental impacts. There is also widespread awareness that DRC lacks basic institutional, technical and field capacity to address social, environmental and other issues relating to logging in its forests.</p>

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	<p>laying the ground for sustainable, equitable and participatory management of forests, and improving management of protected areas and establishing new areas. These measures included: cancellation of invalid forest concessions totaling over 25 million hectares; establishment of a moratorium on the award of new concessions; increase of annual area taxes on concessions to curb forest land speculation; adoption of a new Forest Code in replacement of 1949 colonial regulation.</p>	<p>Project documents presented to Board upon approval of EESRSP contain virtually no information or analysis on critical social and environmental issues and risks that would inevitably arise in connection with a Bank project involved with tropical forest concession operations, especially one which was built on analysis that foresaw the value and need to increase industrial concession operations.</p>
<p>Legal Framework and Institutional Capacity</p>	<p>Preparation of Forest Code preceded Bank's re-engagement in DRC in 2002. Initiated in 1988, preparation of Forest Code was interrupted several times, before gaining momentum in final 1998-2002 period. Preparation of Code also benefited from support by FAO. Prior to parliamentary approval, Code was discussed with various stakeholders in national workshops held in May and July 2000. Bank commented upon a draft version of Forest Code in 2002. Its involvement helped strengthen Code's provisions regarding transparency, protection of local people's rights, and alternative forest uses. Draft Code was submitted to Parliament in August 2002 for consideration as part of overall policy package supported by first Economic Recovery Credit (ERC). Forest Code was promulgated in August 2002 and widely publicized.</p> <p>Bank's concerns regarding Forest Code are focused on Government's capacity to develop, enact, and enforce necessary implementation regulations, many of which are still lacking.</p>	<p>EESRSP in component 2 and TSERO sought to support implementation of legal framework in DRC relating to forests, including 2002 Forest Code and 2002 Decree creating a Moratorium on the awarding of new forest concessions. Panel notes that developing a good quality legal framework is a high priority and is consistent with Bank policy. Much still needs to be done as of the date of Panel's Report to develop regulations implementing Forest Code.</p> <p>Panel also notes, however, DRC lacks capacity to implement legal framework, including its provisions designed to benefit local communities. During its investigation, Panel saw little evidence of enhanced government capacity to enforce the law and respond to social and environmental issues posed by logging. Panel is concerned about Project's potential impact in supporting actions to validate long-term concession contracts when capacity to ensure sustainable forest concession operations does not exist. Panel also notes that lack of capacity is likely to jeopardize collection and distribution of hoped-for revenues from logging.</p>

SOCIAL COMPLIANCE: THE PYGMY PEOPLE AND OTHER GROUPS

<p>Indigenous Peoples</p>	<p>OD 4.20 was not triggered because design of Project as reviewed at concept stage did not reveal existence of Pygmy communities in project-affected areas. OD 4.20 should have been triggered when PFZP was added to Project later in preparation process. TORs for forest zoning pilot of the EESRSP did provide for full consultation with Pygmies in any case. PFZP was dropped from project before being implemented. Component 4 is limited to urban centers where Pygmies are unlikely to be found. None of the locations selected for Component 5 is in a Pygmy area.</p> <p>One of the roads to be rehabilitated in Component 3, RN4, traverses a region inhabited by Pygmies. Reports obtained by project team during preparation suggested that Pygmies lived</p>	<p>While no reliable census data are available, Panel's expert estimates that DRC is home to between 250,000 and 600,000 Pygmy people. Panel's expert notes that size of Pygmy population may be larger than claimed because of discrimination against Pygmies.</p> <p>Project documents presented to Board for approval of EESRSP do not mention Pygmy Peoples, or assess potential issues or risks to them posed by Project activities, even though presence of Pygmy peoples in the forest areas of DRC was well known and documented. Panel finds that Management did not carry out appropriate screening as required in early stage of the Project to determine possible presence of indigenous peoples. Management failed to identify existence of Pygmy communities in areas affected by Project. This does not comply with OD 4.20.</p>
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ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
	<p>in forest remote from the road. Congolese authorities, including Minister of Public Works and Office of Routes, informed the team that there were no Pygmy-related issues along RN4. Areas were not accessible to Bank staff at the time – security conditions were dangerous and local administration was non-existent – and the team therefore could not verify in the field presence or absence of Pygmies. That task was left for the EA.</p> <p>Draft of the EA for Component 3 that was received on December 23, 2005, reveals presence of a community of sedentary Pygmies along route at Mambasa and documents consultations held with them. (Draft EA also reports presence of a camp of nomadic, forest-dwelling Pygmies in vicinity, but points out that they are some distance away from RN4 and will not be affected by rehabilitation work.) OD 4.20 is thus being triggered in response to this new information. Before road rehabilitation progresses as far as Mambasa, an Indigenous Peoples' Plan will be prepared that will contain an array of measures including free, prior, and informed consultation, to ensure that Pygmies' interests are protected and that they receive social and economic benefits from EESRSP that are culturally appropriate, to the extent that they wish to do so.</p>	<p>Even by the time of Management Response to Request for Inspection, some Pygmy groups affected by Project had not identified. Moreover, only limited attention was given to the fact that, as a consequence of conflict and economic breakdown, current rural population of about 40 million people relies heavily on forest for subsistence.</p> <p>Panel reviewed whether Pygmy people qualified as indigenous people under OD 4.20. Panel observes that most of Pygmy people satisfy the criteria, with possible exception of language criterion. Panel observes that Pygmies in DRC should be considered as Indigenous People under OD 4.20.</p> <p>Panel finds that Bank's failure to trigger OD 4.20 for EESRSP's component 2 and to prepare an IPDP does not comply with OD 4.20 on Indigenous Peoples. As a result, potentially critical interests and needs of indigenous Pygmy people in relation to these Project activities have been left unaddressed.</p> <p>A policy-consistent IPDP would have provided framework for improved baseline data on Pygmy people in DRC. Absence of an IPDP appears to have been a major contributing factor to problems that arose in early efforts to initiate a PFZP and in implementation of the concession review process.</p> <p>Panel notes that it was only after this Request for Inspection that Bank paid more attention to plight of Pygmy people and many others dependent upon forests. To its credit, Bank Management is now devoting attention to livelihood and cultural problems faced by people living in forest or dependent upon it.</p>
<p>Cultural Property</p>	<p>Pilot zoning plan does not threaten physical cultural property. Indigenous and other forest dwelling peoples would have been consulted had the zoning proceeded.</p>	<p>Forest to Pygmy people is not merely the place where they obtain material benefits. Forest plants and animals are useful both in direct and indirect ways, for material as well as spiritual purposes. Forest provides people with basis of their cultural identity. Certain areas are of particular cultural and spiritual significance.</p> <p>Panel finds, however, that Project documents at design and appraisal did not identify cultural property and spiritual value of forest areas to Pygmy peoples or appropriate measures to avoid impacts to areas that might fall within the definition of cultural property under Bank policy. This did not comply with OP 11.03 on Cultural Property.</p> <p>Panel considers that it is not sufficient under relevant policies to defer consideration of these issues and</p>

ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
		<p>impacts, and consultations with local indigenous people more generally, to later stages of Project implementation, e.g., at such time that zoning proposal is implemented, and/or after conversion of contracts during development of concession management plans. While consultation and appropriate action at these later stages would still be important, a safeguard postponed in design and appraisal stages may become a safeguard denied.</p>
<p>Poverty Reduction</p>	<p>By including forest issues in the ERC and EESRSP, Management gave a strong signal as to the extent of its engagement in natural resources especially as these relate to governance and poverty alleviation.</p> <p>Bank is now conducting a PSIA on impact of forest reforms on poverty alleviation (forest revenue shares to local entities, cahiers des charges, community forests). All fieldwork, including surveys and local consultation are being carried out in partnerships with local NGOs.</p> <p>Important additional steps need to be taken for commercial logging in the DRC to bring social and economic benefits to Congolese people. This is why Bank is supporting a series of reforms aiming to: improve transparency, participation and accountability in forest resources management; end speculative behaviors; attract socially, fiscally and environmentally responsible investors; and set up transparent mechanisms for sharing forest revenues between private investors, local communities and State. New Forest Code establishes that 40 percent of tax revenues from legal logging will go directly to local authorities so that benefits of forestry activities will be shared by local population. In addition, forest communities are expected to obtain additional benefits through formal contracts with central government and forest companies. Benefits will include investments such as dispensaries, schools and feeder roads.</p>	<p>Panel observes that there have often been cases where local people have not really benefited from logging industries, except for a short term benefit limited to a small number of people. Instead, as seen in the case of Cameroon, local people, in particular Pygmy peoples, are suffering from increased poverty. 2007 Report on Forests in Post-Conflict DRC also comments that industrial logging has a poor track record in Africa, and that there is little evidence that it has lifted people out of poverty.</p> <p>Unless strong measures are taken to ensure that benefits reach local people, concession system would not make expected contribution to poverty alleviation of local people. Panel also observes that economic value from timber production is only a minor part of total economic value produced from forest. Panel notes that if access to these non-timber resources were considerably restricted by timber operations, there would be no way of compensating for loss.</p> <p>Panel observes that establishment of “community forests” could have significant positive impacts, if they are designed to take into account needs of local people and to incorporate lessons learned from problems in other settings (e.g., Cameroon).</p> <p>Panel finds that there is a possibility that Project, in its present form, may not contribute significantly to alleviating poverty of forest people, because of risks mentioned above, and may instead contribute to adverse impacts on poverty to the extent that logging-related practices are unsustainable. Panel is especially concerned in this regard about delay in developing implementing regulations concerning customary forest rights, including for “community forests,” and in supporting small-scale forest-based enterprise.</p>
ENVIRONMENTAL COMPLIANCE		
<p>Environmental Assessment</p>	<p>EESRSP was classified as Category B for environmental assessment. This classification is fully consistent with Bank-wide practice for projects supporting infrastructure rehabilitation and community-level improvements in service delivery.</p>	<p>Documents presented to Board at the time of EESRSP’s approval state that Project is classified as Category B “because no activity funded under the Project is expected to have a significant negative environmental or social impact.”</p> <p>This “Category B” EA, however, covered the road-</p>

ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
	<p>Since component with the highest classification determines classification for entire investment operation, EESRSP was placed in Category B. Preparation of forest zoning plan and/or presence of Indigenous Peoples in portion of territory to be covered by zoning plan are not per se criteria that place project in Category A automatically. Full EA was therefore not required; however, in view of the geographical extent of Component 3, the project team decided to have one prepared for that component to ensure that any environmental or social impacts not envisioned during project preparation would be identified and mitigated. Environmental and Social Impact Management Framework (ESMF) was to be prepared for Components 4 and 5.</p> <p>OP 4.01, normally applies to emergency recovery projects processed under OP 8.50, <i>Emergency Recovery Assistance</i>. Paragraph 13 of OP 4.01 states that when compliance with any requirement of this policy would prevent the effective and timely achievement of objectives of an emergency recovery project, Bank may exempt project from such a requirement.</p> <p>OP 4.01 thus provides some latitude for completion and disclosure of the safeguards instruments required for a project prepared under OP 8.50 and has been interpreted in this case to allow for EA preparation during its implementation. This is typically a period of between 6 and 12 months after project effectiveness. According to legal agreement EA and ESMF were to be completed 12 months after date of effectiveness. Completion was delayed because of procurement issues. Management has not complied with OP 4.01, but anticipates being in full compliance by February 2006. In order to mitigate consequences of delay, the team requested the Borrower to instruct all actors involved in implementation to follow the guidelines and recommendations of an earlier EA, ESMF, and Resettlement Policy Framework (RPF) prepared for Emergency Multi-Sector Rehabilitation and Reconstruction Program (EMRRP, a project that was financing similar types of activities). Borrower complied with this request.</p>	<p>construction elements contained in Component 3 of the Project. When Project team later upgraded this EA to Category A, it still applied to Component 3. There was no EA analysis ever completed (whether of Category A, B or C) of the pilot zoning and logging concession elements contained in Component 2 of Project. Panel finds that failure to prepare an environmental assessment for Component 2 of Project does not comply with OP 4.01.</p> <p>Panel considered what type of EA analysis should have been prepared under Bank Policy for each of these two elements in Component 2 of EESRSP: pilot zoning element and logging concession element.</p> <p>Panel notes that at the time EA was completed, zoning element was an integral part of Component 2 of Project. Panel considers that forest land use planning should have been anticipated to have a potentially fundamental impact on land, forests, and people.</p> <p>Panel finds that potential impacts of land use planning in DRC should be analyzed as part of a “Category A” EA. Failure to develop an environmental (and social) assessment which addressed these issues, at the time when PFZP was part of Project, does not comply with OP 4.01. Dropping zoning element from Project has had important consequences, as detailed in Panel’s report.</p> <p>Component 2 of EESRSP also included a process to review validity of logging concessions in DRC, and convert old forest contracts, covering millions of hectares, into new concession regime. Panel finds that it should have been clear at Project design that Project’s involvement in review of logging concessions carried very significant environmental and social implications. Forests also have world-class biodiversity value and include large areas of habitat of endangered species of fauna, such as the bonobo. Panel finds that failure to prepare an EA for this component does not comply with OP 4.01.</p> <p>Panel observes that financing of policy and institutional reforms in a sensitive sector like forests of DRC, and related technical assistance, can lead to highly significant environmental and social impacts, even if it does not involve direct financing of mechanical and organizational tools for industrial logging.</p> <p>The Panel finds that a “Category A” EA would have been the appropriate, policy-consistent tool to assess these issues and to comply with OP 4.01. Even if the project were classified as Category B, OP 4.01</p>

ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
		<p>requires an environmental (and social) assessment for the forest related activities.</p> <p>Preparation and public distribution of the EA was finalized more than 24 months after the effectiveness of the Project, and the EA ultimately prepared did not address the forest-related elements in Component 2, as described above. The Panel finds that this does not comply with OP 4.01.</p>
<p>Forest Policy</p>	<p>In line with 2002 Bank Forest Policy and Strategy, and recognizing the fundamental nature of the challenges at hand, the Bank promoted a progressive approach to help the Government re-establish the sector's policy and regulatory framework, restore the rule of law on forests, set the stage for participatory governance, and strengthen institutional capacity. As for other Bank forest efforts, the ultimate goal was harnessing the potential of forests to reduce poverty, integrating forests in sustainable development and protecting vital local and global environmental values. In applying this strategy to the context of Congo, Bank noted that major risks existed if logging were to expand in the absence of strong regulation and oversight.</p> <p>Core of Bank's advice to DRC since 2002 has been not to expand industrial forestry hastily and not to allocate new concessions. This has resulted in a decrease of areas under concessions (scale of this decrease is unprecedented in Africa and worldwide); a review of legal validity of remaining concessions, and establishment of a ban on issuing new concessions (moratorium) until good transparency and governance conditions are established.</p>	<p>Large scale, generalized maps indicate that existing forest harvesting concessions do not overlap with existing national protected areas, although one of World Heritage Sites appears to be adjacent to two concession areas and close to others.</p> <p>Panel heard numerous statements by indigenous communities that existing operating concessions were felling trees and building roads in sacred groves (local community recognized protected areas). From Panel's observations of operating concessions, it appears that they would often not respect local community sacred groves.</p> <p>Given the focus of Project to improve institutional and policy capacity, Bank could consider that it is not financing a project that involves significant conversion of critical forest areas or natural habitats and that it is thus in compliance with OP 4.36. Panel agrees that this view has merit to date, but notes that there are important factors that could affect and alter this assessment with respect to outcome of this Project, even in short run. Project design put a strong focus on harvesting and the revenue it generates. Question of whether and how the Project might contribute to impacts on critical forest areas will depend, <i>inter alia</i>, on how concession review process is implemented and eventual related questions of land use and zoning.</p>
<p>Natural Habitats Policy</p>	<p>During preparation of projects cited in Request, Bank did anticipate social and environmental issues associated with project, incorporated processes to address these issues, and supervised project appropriately. Management believes that Requesters' rights or interests have not been, nor will they be, directly and adversely affected by a failure of Bank to implement its policies and procedures.</p>	<p>OP 4.04 provides that Bank does not support projects involving significant conversion of natural habitats (as distinguished from critical natural habitats) unless a comprehensive analysis demonstrates that overall benefits from project substantially outweigh environmental costs. Panel notes that no such comprehensive analysis has been completed even though Project had potential to affect how logging operations take place in areas of very significant natural habitat. Potential risks in the Project are not addressed.</p> <p>Natural Habitat policy also provides that Bank expects borrower to "<i>take into account the views, roles, and rights of groups. . . affected by Bank-financed</i></p>

ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
		<p><i>projects involving natural habitats, and involve such people in planning, designing, implementing, monitoring and evaluating such projects.</i>" Until the time of Request, however, Panel found little evidence of attempts to take into account or involve local communities likely to be affected by Project. This does not comply with OP 4.04.</p>
<p>Development Policy Loans and Forest Components</p>	<p>TSERO is a development policy operation and, as such, is processed under OP 8.60, Development Policy Lending. OP 8.60 requires staff to review environmental, social, and poverty implications of such operations prior to approval, to identify issues, and to explain how these issues are being managed. Forestry ESW, along with relevant inputs from stakeholders, is meant to serve this purpose, providing advice to Government and Bank on further developing DRC forest policies and institutions, notably by taking into account customary rights of local communities, including Indigenous Peoples. TSERO was approved by the Board on December 8, 2005. A corrigendum was issued prior to Board submission to correct an inaccuracy regarding steps taken by the project team to ensure compliance with environmental and social provision of OP 8.60.</p> <p>Management believes that placing natural resources management high in the Bank agenda at the time of re-engagement with DRC proved useful to avert misappropriation of forest resources during the period that followed reunification. This experience is in line with previous Bank experience which suggests that post conflict settings may offer a window of opportunity to address fundamental sector and governance reforms. By including forest issues in the ERC and EESRSP, Management gave a strong signal as to the extent of its engagement in natural resources especially as these relate to governance and poverty alleviation. Country team chose appropriately not to start with a self standing forest operation but rather to use other vehicles of support: policy lending to secure political backing for fundamental policy changes, and multipurpose lending and other initiatives to test the ground for further engagement.</p>	<p>TSERO is a Development Policy Loan (DPL), a component of which relates to forest issues at core of component 2 of EESRSP. Since TSERO is a DPL, it is not subject to safeguard policies in same way as investment projects. OP 8.60 on Development Policy Lending requires Bank to determine "<i>whether specific country policies supported by the operation are likely to cause significant effects on the country's environment, forests, and other natural resources.</i>" Panel notes that Bank determined that the TSERO is not likely to cause significant adverse environmental effects. Program Document of TSERO initially relied on the analysis under EESRSP in making that determination, but EA for EESRSP was not available until February 2006, after determination had to be made, and even then EA did not address forest-related activities under Project, i.e. Component 2.</p> <p>OP 8.60 emphasizes need to consider "the borrower's systems for reducing such adverse effects." Panel observes that a fair description of that would have concluded that systems were non-existent or extremely debilitated and ineffective. That might have led to some difficult discussions in approval process. Panel finds that Bank's determination that there were no significant environmental or social effects of the forest component of the TSERO is not consistent with objective of Bank policies, especially when component essentially carries forward component 2 of earlier investment project, which was subject to full Bank safeguard policies.</p> <p>In light of issues raised above, however, Panel is questionable whether choice of a DPL under its present guidelines was the right instrument for achieving agreed-upon goals of reforming this sector with its many social and environmental complexities.</p> <p>Panel finds that there are potential risks of including components such as forests in DPLs, which lack safeguards. Panel notes that formerly such forest components were generally handled as projects, subject to safeguard policies. Panel observes that use of DPLs for other natural resource components could raise similar issue.</p> <p>Panel recognizes that DPL is an instrument that can</p>

ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
		engage high-level attention of the Finance or other influential Ministry, which in specific country context can be important. Panel finds that in using a DPL, it is critical that process for assessing whether there are significant environmental and social effects be rigorous and thorough and that there be a willingness to undertake prudent assessments in order to avoid subsequent unforeseen impacts and unwelcome developments.
PROJECT IMPLEMENTATION		
Post-Moratorium Concessions and "Swaps"	<p>Given that a specific forest sector lending instrument has not yet been established, multipurpose operations such as the ERC, EESRSP, and TSERO operations have been used as vehicles for Bank interventions. These interventions have focused on analytical work, policy dialogue, studies, workshops, and field assessments. These activities have been followed up by frequent technical missions from headquarters, plus the financing of a full-time Kinshasa-based forest expert since November 2004.</p> <p>This supervision work has been instrumental in sustaining the Government's commitment to moratorium and legal review of old concessions during particularly difficult transitional context from 2002-2006. It has helped renew presidential commitment to clean up all logging concessions that were awarded before and during war without consulting local people and without considering other possible uses of the forests. This work also succeeded in forging consensus and partnerships with local and international NGOs, and donor community.</p>	<p>During its investigation, Panel heard repeatedly that 2002 Moratorium on allocation of new forest concessions has been "bypassed" on a large scale. Reportedly, new concessions were granted by certain Government authorities and "swaps" took place in which logging companies exchanged forest areas that they deemed unproductive or that had been already logged for new, higher quality forest areas.</p> <p>2007 Report on Forests in Post-Conflict DRC, referred to earlier, confirms these problems. It indicates that 32 contracts covering 4.6 million hectares were reported to have been awarded in 2003, and similar transactions took place in 2004 and 2005. Furthermore, some of contracts cancelled in 2002 were rehabilitated in 2004. These transactions affect an estimated 15 million hectares and involve areas where Pygmies and other vulnerable peoples live.</p> <p>Bank, in Aide-Memoires through July 2005, recognized that there were new contracts for concessions in violation of Moratorium, many of which were "swaps" of old contracts for new ones, and indicated that it did not believe contracts conformed to new Forest Code. It requested Government to take certain steps to address the problem. Panel finds that Bank's recognition of this problem and its response in Aide-Memoires through July 2005 were consistent with Bank policy on supervision. However, Panel also finds that Management apparently did not make timely follow up efforts at a sufficiently high level to ensure necessary action in response to its findings. Panel also notes that none of supervision documents after July 2005 refer to "swaps" or any potential violation of Moratorium.</p>
Concession Conversion Process	Core of Bank's advice to DRC since 2002 has been not to expand industrial forestry hastily and not to allocate new concessions. This has resulted in a decrease of areas under concessions (the scale of this decrease is unprecedented in Africa and worldwide); a review of the legal validity of the remaining concessions, and the establishment of a ban on issuing new concessions	Presidential Decree 50/116 of October 24, 2005 sets forth process and criteria for legal review by which former logging titles are to be converted into forest concessions, valid for 25 years. Those who hold old forest concession titles must apply for conversion to the Ministry in charge of Forests. A new Inter-Ministerial Commission will review the applications. There are 156 concessions covering about 20 million

ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
	(moratorium) until good transparency and governance conditions are established.	<p>hectares under consideration in this process.</p> <p>While the Technical Working Group has reportedly completed its review and recommendations, Inter-Ministerial Commission had not become operational. As of August 2007, a new Decree specifying names of current members of the Commission still need to be approved.</p> <p>Panel notes potential importance of concession conversion process. It appreciates the role of Technical Working Group and assessments provided by Independent Observer of problems that have occurred during this process. Panel recognizes Bank's efforts to establish the role for such an Observer, which Panel finds is consistent with Bank policy. Panel also finds, however, that concession conversion process set forth in the October 2005 Presidential decree has been beset by considerable and significant problems. These are noted below.</p>
<ul style="list-style-type: none"> • Treatment of Existing Concessions 	<p>In 2002, Government cancelled 163 concessions – bringing the total area under concessions from 45 million hectares to 20 million hectares – and it established a ban on new concession allocations. A review of the legality of remaining concessions and others possibly awarded or exchanged illegally between 2002 and 2005 is now being conducted with a view to rescinding those not in compliance with prevailing legislation. Those found compliant will be transformed into long-term logging concessions, provided that holders will develop management plans and meet other obligations involving consultation with local people on issues pertaining to concession boundaries, traditional uses and companies' social obligations.</p>	<p>Many large concessions were either allocated or swapped for after the 2002 Moratorium. Such post-Moratorium concessions, involving millions of hectares of DRC forests, are listed among concessions being considered for approval in concession conversion process Panel has been informed that an initial screening-out of such concessions that would appear to be invalid on their face will not, however, be done. If this continues to be so, it means that despite the review and recommendation of Technical Working Group, Inter-Ministerial Commission might decide to recommend such concessions for approval.</p>
<ul style="list-style-type: none"> • Time Constraints 	<p>Not addressed explicitly.</p>	<p>Conversion process follows a rather short time frame, which does not leave much time for field verifications and consultation. Experts involved in technical report indicated that they were not given nearly enough time for these activities.</p> <p>Panel notes that there are villages and camps, roads, fields, fallow lands found in many of the concession areas under legal review. However, in most of these concessions, neither mapping of customary use of forests nor compensation for loss of such rights has been made. During its field investigation, Panel heard about social conflicts regarding logging concessions. Panel is concerned that such claims and conflicts could not be properly assessed during the short time given for field verification, and reflected in Report submitted for review by Inter-Ministerial Commission.</p>

ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
<ul style="list-style-type: none"> • Race to Extract and Swap for Higher Value Forest Areas 	<p>Not addressed explicitly.</p>	<p>Panel further notes that initiation of this process may have inadvertently created incentives for actions that increased potential impacts in forests in some areas. The process may have created an incentive for “swaps” by companies of “unproductive” or already logged in exchange for higher quality forest areas, noted above, so that these could be considered for conversion to legal titles in review process. There is also substantial anecdotal information to suggest that the process has contributed to accelerated logging within some existing concessions, in advance of determinations as to their legality.</p>
<ul style="list-style-type: none"> • Lack of Meaningful Participation by Pygmy Peoples and Local Communities 	<p>Management understood importance of reaching out to Pygmy groups and taking their specific needs into account since beginning of its engagement with DRC forest work. Given that Bank had no forest sector projects on the ground, and that important forest areas were still inaccessible, this effort was necessarily restricted to policy dialogue and to contacts with stakeholders in Kinshasa. Beginning in 2003, Bank stimulated emergence of an open debate among all stakeholders on forest management. Along with other representatives of civil society, government and private sector, Pygmy representatives participated in several meetings held in country office, as well as in videoconference with President Wolfensohn, and Forest Forum in November 2004. The fact that Congolese Pygmies use the same language as Bantus and that their representatives speak French facilitated participation. A Pygmy representative was included in the newly created committee in charge of reviewing draft forest implementation decrees, and the TORs for the Pilot Forest Zoning Plan placed a special emphasis on consultation with Pygmies and other forest dwellers. A more substantive dialogue on Pygmy issues started in 2004 with meetings and exchanges of correspondence between Bank staff stationed in Kinshasa and Pygmy representatives. More recently, in November 2005, Bank team met with Pygmies directly in the field, in Béni and Mutsora. During these preliminary exchanges, Bank efforts were hampered by the difficulty in eliciting a unified response from various interlocutors who claimed to represent Pygmies. A more proactive outreach would have perhaps enabled Bank to rely less on advocacy groups and, instead, establish more direct lines of communication with Pygmy leaders and communities. It is, however, unclear whether this would have actually been possible given the many competing demands on the Bank team and</p>	<p>Inter-Ministerial Commission includes two permanent representatives of national nongovernmental organizations (NGOs). October 2005 Decree setting forth composition of Inter-Ministerial commission did not refer explicitly to indigenous peoples’ representation. After November 2006 Decree, Commission will now include a representative of indigenous people for each concession under review, if concession is in proximity to indigenous people. Panel also understands that under new draft legislation a permanent representative and an alternate representative of indigenous peoples’ organizations may be included in the Commission. Panel commends Bank for its efforts to encourage participation of indigenous people in the process and notes that this is consistent with Bank policy.</p> <p>Panel also notes, however, that there are significant issues and problems regarding how to choose a local representative from indigenous people who have been living in a number of scattered groups without much contact with one another and with little experience with a political system of representation.</p> <p>Panel is also concerned that these approaches may produce consultation processes that are inconsistent with basic Bank policy objectives and requirements described in other sections of this report. Panel is especially concerned that those who are selected may find themselves in a very weak situation in the Commission meeting.</p> <p>Unless these concerns are addressed, Panel is concerned that the inclusion of a local indigenous representative may legitimize a process under which the more powerful members of the commission would take decisions that could run contrary to the interests of locally-affected people. There is the potential that individual representatives in turn could be blamed by their own communities for participating in such a process. In light of these problems, the addition of permanent representative(s) of indigenous peoples to</p>

ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
	the difficulties of access which prevailed at the time of Bank re-engagement in DRC.	<p>the Inter-Ministerial Commission could be regarded as particularly positive.</p> <p>Panel also heard concerns expressed regarding extent to which this decision-making process will operate transparently. Panel was informed that report prepared by the Technical Working Group and report of the Independent Observer will not be made public before the Commission's decisions are made.</p>
<ul style="list-style-type: none"> • Asymmetrical Rights to Contest Concession Decisions 	Not addressed explicitly.	Panel notes that the October 2005 Decree reserves a right to logging companies to contest decisions that have been taken by the Minister in charge of Forests. It is not apparent, however, that communities have parallel means of recourse to contest decisions.
<ul style="list-style-type: none"> • Additional Observations on Concession Conversion Process 	Not addressed explicitly.	<p>While legal review and conversion processes may be flawed and involve various problems, Panel finds that it contains elements that are important in Bank policies.</p> <p>Panel wishes to underline the extraordinarily high stakes involved in the forest concession conversion process.</p> <p>Panel also wishes to note extremely difficult institutional setting in which the process takes place. Panel notes critical importance of building capacity within vast tropical forest area to monitor and implement forest reform measures.</p> <p>Panel notes that while some concessions are said to be in hands of companies known for following laws in other countries, other companies may be different. Panel has received disturbing reports and information about abuses committed against local communities and forests in certain concession areas.</p>
<p>Zoning and land use</p>	<p>Reasons for dropping the PFZP were: (a) team realized that supervision arrangements under EESRSP were unsuitable to support a zoning operation that was going to require intensive follow-up by Bank and consensus-building by stakeholders, and that this activity would better fit within a more comprehensive forest sector operation; (b) initial procurement delays and additional delays and interruptions likely to occur due to forthcoming extended election process would leave little time to undertake and complete PFZP satisfactorily under the EESRP; and (c) Minister of Environment was showing reluctance to collaborate with NGOs operating in the PFZP region—despite the fact that this had been agreed upon when preparing the TORs—and his commitment to Bank-supported forest reform package was weakening.</p>	<p>Dropping pilot zoning element instead of bringing it into compliance with Bank policies and procedures delayed gathering of important information.</p> <p>Panel notes that, in this context, forest concession conversion process serves as <i>de facto</i> zoning under which legal and economic interests of logging companies will be considered for long-term recognition, while consideration and recognition of land tenure and livelihood rights of people living in forests or dependent upon them will be delayed.</p> <p>Panel found during its investigation that participatory mapping of indigenous Pygmy peoples customary forest uses has already been attempted in some areas of Oriental and Equateur Provinces with support of NGOs.</p>

ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
<p>Implementation Decrees under the Forest Code</p>	<p>Management believes Forest Code is a good foundation for improving forest management, but that it needs to be complemented by an equally important Law on Nature Conservation covering protected areas, drafting of which is well advanced. This Law is now being prepared with GEF-Bank support. Bank's concerns regarding Forest Code are focused on Government's capacity to develop, enact, and enforce the necessary implementation regulations, many of which are still lacking. Thrust of Bank advice in this respect is on the following main areas: (a) regulating strictly commercial and industrial use of forests; (b) clarifying roles and mandates of central and local government and communities in forest management and allocation; (c) restricting discretionary right of government to allocate forest estates while ensuring that forest rights allocation be done under transparent and fair processes and that no allocation take place unless preceded by consultation of local communities and forest dwelling populations; (d) clarifying revenue and benefit-sharing mechanisms among government and communities; (e) harmonizing legal and regulatory framework, notably by reviewing existing laws and regulations that directly or indirectly have a bearing and impact on forestry activities, such as existing laws on nature conservation, land tenure, and taxes, among others; and (f) recognizing explicitly customary rights of communities and forest dwelling populations.</p>	<p>Panel was informed that as of the date of this Report, implementing decrees on issue of community forests, sustainable management plans, as well as many other key decrees have not yet been adopted. Panel recognizes that basic legal and administrative steps may take longer than usual in the context of difficulties facing the DRC. However, delay in preparing decrees on community rights has given the impression that Bank support has been biased toward institutional reforms for reopening logging operations in DRC, while lacking a holistic vision.</p> <p>Panel recognizes important recent Bank effort to provide for monitoring of illegal logging, and DRC's decision to have a well-known international NGO study how to provide an independent monitoring capability for illegal logging.</p>
<p>Concluding Observations</p>	<p>Management believes that Bank made every effort to apply its policies and procedures and to pursue concretely its mission statement in context of the projects. Management recognizes that, with respect to EESRSP, Bank was not in full compliance with processing provisions of OP 4.01, and OD 4.20 should have been triggered during project preparation, even if component in question, PFZP, was subsequently dropped from project before being started. Management has received draft EA and is working with Government to expedite review and disclosure. OD 4.20 is being triggered with respect to Infrastructure Rehabilitation component of EESRSP in light of presence of a group of non-nomadic Pygmies identified in draft EA. It should be noted that during preparation of projects cited in Request, Bank did anticipate social and environmental issues associated with project, incorporated processes to address these issues, and supervised project appropriately.</p>	<p>In its investigation, Panel noted that when Bank initially became engaged in DRC and decided to support work in forest sector, it provided estimates of export revenue from logging concession that turned out to be much too high. This had a significant effect, for it encouraged a focus on reform of forest concession system at expense of pursuing sustainable use of forests, potential for community forests, and conservation. For most part, foreign companies or local companies controlled by foreigners have been the beneficiaries of this focus. Those whose concessions are confirmed in concession review process will be beneficiaries of new 25 year leases.</p> <p>Panel is concerned that benefits from industrial harvesting of trees, which is at the core of policy and administrative reform, are not going to people living in and around forest. Panel found evidence that promised benefits to communities from concessions, such as schools, clinics, and other facilities, have not materialized. This is not consistent with objective of</p>

ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
	<p>Management believes that Requesters' rights or interests have not been, nor will they be, directly and adversely affected by a failure of Bank to implement its policies and procedures.</p> <p>Management notes that, on substance, same consensus that has been achieved with many local and international NGOs also exists with Requesters, including on matters such as: need to maintain the moratorium on new concessions; to conduct a truly participatory multi-purpose forest zoning; to regulate the restarting of industrial logging; and to simultaneously promote alternative models such as community management and the valorization of environmental services.</p> <p>Management notes further that, on substance, complaint focuses on an activity (pilot participatory forest zoning) that has not started in the field. Complaint is based on two hypothetical assumptions that prove to be unfounded (i.e., the Bank-supported zoning will not be participatory, and the Bank pushes for rapid allocation of new concessions). Indeed TORs for zoning activity emphasize local consultations, and Bank's core advice to Government since 2002 has been to set up and maintain a moratorium on new concessions. Bank's forest work in DRC since 2002 proactively pursued same objectives as those highlighted by the Requesters: protecting forest peoples' rights, enhancing public participation in forest management and opening the way to alternative uses of forests.</p>	<p>Bank's policy of poverty reduction.</p> <p>Panel notes potential importance of developing a more balanced approach by emphasizing appropriate models of community forests as well as other actions to support community participation, land tenure and use rights in forests and by linking to recently proposed Bank administered fund to pilot instruments for reducing carbon emissions from deforestation and forest degradation.</p> <p>Panel also expresses its concern about instruments of a moratorium on new concessions combined with a reform process for confirming or cancelling concessions to take place at a future unspecified date. In the absence of institutional capacity to implement and enforce a moratorium or to ensure prompt review of concessions, there is danger that some of those exploiting forests will expand their concessions, swap some areas for others with higher value forests, or obtain new concessions and harvest as rapidly as possible. This is particularly troublesome, where existing legal and institutional structure did not provide an effective way to hold title to tropical forest areas for conservation purposes.</p> <p>Bank staff have stressed that if a party wanted to conserve forests, it could return its concession to Government and have Government allocate it for that purpose. But that assumes that Government would be willing to do so and has capacity to enforce its protected areas, both of which are questionable. Panel observes potential importance of encouraging Borrower to explore conservation concessions or comparable instruments consistent with new Forest Code.</p> <p>Panel also notes its concern that in the end it may be difficult to cancel effectively some of the concessions that Technical Working Group, assisted by the Independent Observer, might recommend in its report to the Inter-Ministerial Commission as not qualifying for confirmation.</p> <p>Panel recognizes importance of a solid legal framework and difficulty of developing and establishing it. But an almost overwhelming problem in forest sector in DRC is lack of institutional capacity to implement and enforce laws and regulations, especially at provincial and local levels. Until this is developed, legal framework, although an essential step, cannot be relied upon to ensure sustainable development in forest sector or to ensure that people benefit from the forests.</p>

ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
		<p>Panel also notes its concern that Development Policy Lending is being used for supporting activities which in earlier times have been regarded as projects. This effectively bypasses environmental and social safeguard policies that apply to projects. Activities such as support for a forest concession program have very broad and very significant social and environmental effects in country that cannot be ignored and need to be assessed.</p> <p>Panel recognizes that it is important for Bank to remain engaged in forest sector in DRC. It is also essential that Bank comply with its social and environmental safeguard policies, as well as its other policies, to ensure that forests benefit people in DRC and that they be available for both present and future generations.</p>

Annex 2

Note on Ethnographic Background of the Pygmy People in DRC

1. Etymology of “Pygmy”

The name “Pygmy” derives from a Greek word meaning the measure of length from elbow to the fist,³²² and used to refer to people of short stature. It was avoided by some anthropologists and by the people themselves, for its pejorative connotation. However, it recently became to be used by the people themselves who have been called by this name, particularly in the context of establishing their identity as a group of hunter-gatherer and post hunter-gatherer people who are scattered extensively in central African region and called by different names, such as the Mbuti, Efe, Twa, Aka and Baka, in different regions of Africa. According to some indigenous activists, this is because of the lack of a common name for designating all these groups, and the name is used only transitionally until some other appropriate name will be available to them.

2. Anthropological definition of “Pygmy”

In the field of physical anthropology, the name “Pygmies” have been applied to a group of people of whom the average height of adult males is shorter than 150 cm.³²³ Cavalli-Sforza, however, disputed this definition on the grounds that this definition fits only part of the Pygmy groups, particularly the Mbuti and Efe in the Ituri Forest, and that many other so-called Pygmy groups in central Africa, who are in other characteristics very similar to the Ituri groups, are excluded from this categorization.³²⁴ He also stresses that such a definition is based on the statistical analysis for a large number of people, and that there are some who are taller than 150cm even among the “purest Pygmies” in the Ituri Forest. Among the groups who have had intermarriages with Bantu agricultural groups, their physical characters must have changed accordingly. These people of mixed physical characters are often called “Pygmoids,” and they are particular common in the western part of DRC.³²⁵

3. “Pygmy” as ethnic group

Apart from physical anthropological definition, there is a notion of “Pygmies” as ethnic group, which is partly based on their physical characteristics, but not always consistent with them. It is rather a grouping based on the common characteristics in their cultural, social and economic aspects, as well as on the social requirement for establishing their common identity. While there are similarities in their forest-oriented culture, egalitarian social relationship, and socially and economically underprivileged position in local multi-ethnic situations, there has been no common name used by the Pygmies themselves who are distributed extensively in the central African forests, and they have been called by different names respectively used in the areas in which they live. In recent years, however, in their struggle with the problems and predicaments that they are facing, they

³²² <http://www.etymonline.com>, p-39, ¶1382; also see Luigi Luca Cavalli-Sforza, ed, *African Pygmies*, p. 19.

³²³ Gusinde, 19xx; Vallois, H. V., 1971 ; Hiernaux, 1975, *The People of Africa*, Scribner's , New York, p.113)

³²⁴ Cavalli-Sforza, L. L.,1986, *African Pygmies*, Academic Press, New York:p17-18.

³²⁵ Hiernaux, J. 1975 *The People of Africa*, Scribner's , New York, p.118-125.

have come to use tentatively the name “Pygmy” strategically, while recalling the common cultural and social characteristics among the hunter-gatherer and post-hunter-gatherer groups in the central African forest region. The present Request also seems to reflect such a change in their perception and social dynamics.

4. Distribution of Pygmy groups in central Africa

The distribution of “Pygmy” people extends over the central African forest zone, from southern Cameroon to the western Uganda. According to a rough estimation, a total number of Pygmy peoples is estimated at 500 to 600 thousands for the entire central African forests.³²⁶ There is however, no reliable census data on their population; there is also a lack of clear criteria for identifying a group with “Pygmies,” who are actually interbred at varying degrees with Bantu and other agricultural groups. Furthermore, in most post-independent African states, nation building has been of prime concern, which made the census even more difficult, because ethnic names, in particular those for the Pygmies, were not recorded nor questioned in the census takings.

5. Ethnic composition of DRC and Pygmy People as minority group

DRC is a country composed of peoples belonging to more than 200 different ethnic groups. The Bantu peoples constitute a majority and occupy more than two-thirds of the national territory. They entered the region of modern Congo during the first millennium,³²⁷ and later established kingdoms, including kingdoms the Kongo, Luba, Lunda, with which the Europeans encountered after the 16th century. Major cultural clusters found in DRC today include the Mongo (in the centre), Kongo (west), Luba (south-central), Lunda (south), and Kasai (southwest). There are other small non-Bantu African populations, including the Sudanese groups who settled in the north, and the Nilotic peoples living in the northeast. In the oral traditions of forest-living Bantu peoples, the Pygmy People are considered the earliest inhabitants of the Congo basin. The present-day Pygmy People inhabit the forests of Ituri and the regions of Lakes Kivu and Tanganyika, and the Tshuapa, Sankuru and other tributaries of Congo and Ubangi rivers.³²⁸

Of the total DRC’s population of about 58 million, Pygmies constitute a small minority group, accounting for 1% or several percent at most of the total population. Their total population in DRC is estimated at 50,000³²⁹ or 250,000,³³⁰ whereas a recent survey by LINAPYCO-Kapupu showed the existence of Pygmy People in 47 territories out of 144 in DRC, and estimated their total number at 450,000 to 600,000 people.³³¹ When the

³²⁶ Jackson, D. 2004, *Implementation of International Commitments on Traditional Forest-related Knowledge: Indigenous Peoples’ Experience in Central Africa*. Forest Peoples Programme, p. 18. She gave this figure based on several other studies.

³²⁷ Vansina, J., 1990 *Path in the Rainforests*, The University of Wisconsin Press, p.51.

³²⁸ Encyclopædia Britannica (on-line), <http://www.britannica.com/eb/article-40795>

³²⁹ Bahuchet, S. ed., *The Situation of indigenous peoples in tropical forests*, http://lucy.ukc.ac.uk/Sonja/RF/Ukpr/Report_c.htm

³³⁰ Lewis, J., 2000; *The Batwa Pygmies of the Great Lake Region*. Minority Right Group International, London; Jackson, D., 2004 *Implementation of International Commitments on Traditional Forest-related Knowledge: Indigenous Peoples’ Experience in Central Africa*. Forest Peoples Programme, p. 18

³³¹ Forests in Post-Conflict DRC, p.10.

discrimination against them is lifted and baseline research completed, their number will probably increase; one recent report, for example, gives the total number of Pygmies as many as four millions.³³²

6. Legal status of “Pygmies” as indigenous people

While the Pygmy groups are widely distributed to central African countries, most of them were not, until recently, legally recognized as “indigenous people” in these countries. In 2005, however, Burundi adopted “*its new constitution that includes guaranteed representation for indigenous Batwa people in both the Parliament and Senate.*” Moreover, “*Gabon and Cameroon formally recognize the presence of indigenous peoples in their respective countries and have signed World Bank Operational Directive*” concerning the Indigenous people. “*The new constitution for the Democratic Republic of Congo (DRC), adopted in 2005, guarantees the protection of fundamental rights and equality for all its citizens (Article 13),*” but “*no reference has been made on a particular group, or Pygmies, who are indigenous to this vast and verdant Central African country.*”³³³

The Pygmies in DRC were once called “*premier citoyens (First Citizens)*” under the former Mobutu regime,³³⁴ but they were not legally recognized as “indigenous people” by the former Zairian legislation, nor are they by the new Congo legislation.³³⁵ There is, however, a sign toward better recognition of their indigenous status, which has been emphasized during the UN’s First and Second International Decades of the World’s Indigenous People.

Recent Presidential Decree for legal review and conversion of old forest titles, dated 10th November, 2006, identifies (under Article 2) 12 categories of members of the inter-Ministerial Commission. It states on the 11th category of the members, “*[I]n the case of the presence of indigenous communities ...in proximity to the titles under consideration, the Commission will be open to an additional representative of these indigenous communities..*” This is the first case in which the term “indigenous communities (*communautés autochtones*)” is used in a legal text of DRC, though it is not clear that *communautés autochtones* in this Decree exclusively denotes the Pygmy communities.

³³² ARD, Inc. 2003 *Conflict Timber: Dimensions of the Problem in Asia and Africa, Volume III: African Cases –Final Report Submitted to the United States Agency for International Development*, Vermont, USA, page 17.

³³³ <http://www.irinnews.org/webspecials/pygmy/52582.asp>.

³³⁴ Grinker, R. R., 1994 *Houses in the Forest*. Berkely: University of California Press, p. 27.

³³⁵ According to IRIN (2006), “*The new constitution for the Democratic Republic of Congo (DRC), adopted in 2005, guarantees the protection of fundamental rights and equality for all its citizens, including minority indigenous peoples, no reference has been made on a particular group, or Pygmies, who are indigenous to this vast and verdant Central African country.*” Article 13 of the new constitution stipulates that “*Aucun Congolais ne peut, en matière d’éducation et d’accès aux fonctions publiques ni en aucune autre matière, faire l’objet d’une mesure discriminatoire, qu’elle résulte de la loi ou d’un acte de l’exécutif, en raison de sa religion, de son origine familiale, de sa condition sociale, de sa résidence, de ses opinions ou de ses convictions politiques, de son appartenance à une race, à une ethnie, à une tribu, à une minorité culturelle ou linguistique.*”

However, the higher international attention has sometimes made the Pygmies themselves politicized in DRC and even manipulated for a political end, as a report by IRIN shows on the allegedly cannibalism acts by specific political groups.³³⁶ A group of Pygmy People were brought to the capital by a particular political group to declare before the public that they had witnessed acts of cannibalism by the political rivals. The incident was condemned by human right activists, but the same group of Pygmy People were brought again to the capital by the criticized group to state that they had been bribed to make such cannibalism claims.

7. Distribution of Pygmy groups in DRC

Major groups relatively well known by previous studies are the Mbuti and Efe in the Ituri Forest, Orientale and North Kivu Provinces, Batwa (also called Western Batwa or Bacwa) in Equateur and Bandundu Provinces, and the Batwa (Eastern Batwa) in South Kivu Province. The distribution of these groups is shown in the map attached to the Management Response.

However, in the vast forest areas of DRC, there are other groups of Pygmy People not shown in the management's map; one is the group called Jofe found to the east of Ikela,³³⁷ and another is the Aka along the Ubangi river south of Dongo, northern part of Equateur Province. The latter group is related to a much larger group of the Aka (BaAka) Pygmies in the Likouala Region of Congo-Brazzaville on the other side of the Ubangi river.³³⁸ Recent research by NGO (RAPY) is revealing even wider distribution of Pygmy or Pygmoid people, extending over the southeastern part of the country.³³⁹ It is necessary to conduct baseline research on the distribution and demography of Pygmy people in the forest areas of DRC, since there is not enough reliable information on them.

While the Management confirms “*the presence of a community of sedentary Pygmies along the route at Mambasa,*”³⁴⁰ the social and Environmental Assessment Report on the Component 3 of the Project compiled by Buursink, describes that they encountered with Pygmy people from 5km from Beni, and that their estimated population living within 50 meters from the RN4 was 25,000.³⁴¹ Moreover, IPP for the Component 3 (road rehabilitation) gave a total of 165 settlements along the RN4 route between Bafawasende and Beni.³⁴²

³³⁶ IRIN NEWS , Aug. 30, 2006; <http://www.irinnews.org/webspecials/pygmy/52600.asp#top>; <http://www.npwj.org/?q=node/1806>, see also, IRIN, 2006, *Minority under Siege: Pygmies Today in Africa*, p.23.

³³⁷ Hulstaert, G., 1986 La Langue des Jofe. *Annales Aequatoria*, 7:227-228. See also, Schultz, M., 1986 Economic Relations between the Batuá and Baotó of Bibelo Village, Bikoro Zone, Republic of Zaïre: A Preliminary Report on New Fieldwork. *Sprache und Geschichte in Afrika*, 7(2), attached map.

³³⁸ Dyson, 1992: Concern for Africa's forest peoples: a touchstone of a sustainable development policy, in Cleaver, K., M. Munasinghe, M. Dyson, N. Egli, A. Peuker, F. Wencelius, eds., *Conservation of West and Central African Rainforests*, The World Bank, p. 214.

³³⁹ Adrian Sinafasi Makelo, personal communication. See also, Terashima, H., 1980, Hunting of the BaMbote: An anthropological study of hunter-gatherers in a wooded savanna. *Senri Ethnological Studies*, 6:223-268.

³⁴⁰ Management Response, Annex 1, p.3.

³⁴¹ Buursink, 2006, Evaluation environnementale et sociale de la composante 3, vol.1, annex p.82.

³⁴² Kai Schmidt-Soltau, 2006 *Plan de Peuples Autochtones*, p.8

The presence of Pygmy people in the forest areas of DRC is a well known fact from the writings by Turnbull³⁴³ and other anthropologists and writers (cf. Anne Putnam, 1954).³⁴⁴ The presence of Pygmy people is also clearly mentioned in the report of the World Bank related projects and publications.³⁴⁵

8. “Indigenous People” in African context

As anthropologists often point out, it is much clearer to distinguish “indigenous people” in Australia or North or South America, whereas the question is not easy to answer with regard to Africa.

First, in the context of colonial rule, African people who had lived there prior to the arrival of European colonizers are considered to be indigenous people. Secondly, in a regional or local context within Africa, the Africans who had lived there prior to the immigration into the area of other Africans could be called indigenous people, if the latter as a group has eventually stood in a dominant and advantageous position to the former in political, social and economic terms.

Moreover, there are areas in DRC, where agricultural groups have been coexisting with hunter-gatherers for many centuries, mostly by subsistence-based agriculture, and maintaining unique forest-based culture. In these areas, an inter-dependent exchange relationship has been maintained between these two groups. It is difficult in such a case to say which of the two groups are “indigenous” to the area, since both groups has similarly long history of habitation in, and strong attachment to, the forest. Both groups could be considered to be “indigenous peoples” in the area.

However, there exist differences, or inequality, in their social, economic and political aspects between the two, and indigenous people could be defined in this regard. The following statement by African Commission of Human and Peoples’ Right is particularly relevant to this case: *“almost all African states host a rich variety of different ethnic groups, some of which are dominant and some of which are in subordinate positions. Basically all of these groups are indigenous to Africa. However, some are in a structurally subordinate position to the dominating groups and the state leading to marginalization and discrimination. It is this situation, which the indigenous concept in its modern analytic form, and the international legal framework attached to it, addresses.”*³⁴⁶

Namely, in the areas where two groups have had an interdependent relationship which has historical depth, it is not enough to define indigenous people based on their

³⁴³ Turnbull, C., 1961 *The Forest People*. New York:Simon & Schuster, pp.250.

³⁴⁴ Putnam, A. E. , 1954 *Madami: My Eight Years of Adventure with the Congo Pygmies*, New York: Prentice-Hall, pp. 303.

³⁴⁵ Cleaver, K.,M. Munasinghe, M. Dyson, N. Egli, A. Peuker, F. Wencelius, eds. 1992 *Conservation of West and Central African Rainforests*, The Wolrd Bank; Curran B., 1992. *Appraisal of the Okapi Wildlife Reserve Management Plan*, Report submitted to World Bank.

³⁴⁶ African Commission of Human and Peoples’ Right: *Presentation to the UN Permanent Forum on Indigenous Issues*, 15 - 25 May 2006.

attachment to the forest, or other independent cultural variables, but on the social and economic criteria, such as power relationship, opportunities for political representation, access to modern social and medical facilities, and economic benefits. Special attention should be paid on the underprivileged groups which do not enjoy equal social status, political representation, and economic opportunities.

Even if these points are taken into consideration, it is still necessary to be careful about the recognition of indigenous people in a particular area, because like in other parts of the world, formal and informal interbreeding relationships among different ethnic groups have been occurring, which usually makes it difficult to draw clear boundary between the Pygmy group from non-Pygmy groups, either on biological or cultural criteria. Contrary to the earlier understanding that the genetic relation between the Pygmy People and Bantus is slight and one-sided, and that “no gene flow enters the Pygmy communities,”³⁴⁷ there are examples of intermarriages, at least in some parts of DRC, where a quarter to a third of the total marriages among the villagers occur between the Pygmy People and villagers.³⁴⁸ As mentioned below, these are mostly one-sided; Pygmy women marry into the villagers’. The children born to such marriages belong in principle to the fathers’ side, if they have a patrilineal descent system. There are, however, some cases in which the mother returns to her natal group with some of her dependent children, who will eventually be brought up as the member of mother’s group. There is, in the Ituri Forest, even a Pygmy clan’s name which indicates the members are descended from a villager ancestor.³⁴⁹ It is important, therefore, to note that the Pygmy People and neighboring agricultural people are more or less mixed biologically, and that biological differences are only of statistical nature.

9. Evidences for Early Existence in the Forest

According to early studies,³⁵⁰ Pygmy People are thought to be the original inhabitants of the DRC forests, who had lived there by hunting and gathering before the Bantu and Sudanic-speaking agriculturalists immigrated into the forest areas. Recent studies, however, posed a question on the possibility of hunting and gathering life in tropical rain forest areas, mainly for two reasons; one is that there is no hunter-gatherer group which actually lives solely by hunting and gathering in the humid tropics, and the other is that there is no sufficient starchy food which would sustain their subsistence throughout the year. They insist, thus, without agriculture, hunter-gatherers could not survive in the tropical rain forest.³⁵¹

³⁴⁷ Brues, A. M., 1977 *People and Races*, Macmillan Publishing Co., INC., New York, p.286.

³⁴⁸ Terashima, H., 1987 Why Efe Girls Marry Farmers?: Socio-ecological Backgrounds of Inter-ethnic Marriage in the Ituri Forest of Central Africa. African Study Monographs, supplementary Issue, 6: 68-69.

³⁴⁹ The clan name “Bandimakpa” means “those descended from the villager (*kpa*).” See Ichikawa M., 1978 The residential Groups of the Mbuti Pygmies, *Senri Ethnological Studies*, no.1, p.154.

³⁵⁰ For example, see Turnbull, C., 1965. *The Mbuti Pygmies: An Ethnographic Survey*, New York: American Museum of Natural History, p.162-163.

³⁵¹ Bailey, R. C., Head, G., Jenike, M., Owen, B., Rechtman, R. and Zechenter, E. 1989. *Hunting and Gathering in Tropical Forest: Is It possible?*, American Anthropologist 91(1):59-82; Bailey, R. C. and Headland, T. N. 1991. The Tropical Rain Forest: Is It a Productive Environment for Human Foragers?, *Human Ecology*, 19(2):261-285.

Recent archaeological studies, however, suggest the existence of hunter-gatherers in the Ituri Forest in northeastern DRC, which dates back several millennia, before farming appeared in the region,³⁵² though it is not clear if they were the ancestors of the present Pygmies. Whether or not the Pygmy People were the sole inhabitants of the forests, they have been living in the forest for centuries, even millennia, which is exemplified by their physical characteristics adapted to the equatorial forest environment.³⁵³

10. Culture with Strong Attachment to Forest

To illustrate how the Pygmy people use and depend on the forest and its resources, an example is given on the relationships of the Mbuti Pygmies with the forest in the Ituri region.

While there are many aspects of human relationships with the forest world, one of the best ways to illustrate these diverse and multiple relationships is to examine the use of forest plants. A series of ethnobotanical research conducted in the Ituri forest has revealed how heavily the Mbuti people depend on the forest plants for their survival and culture. First, the plants are used for food; while almost 60 to 70 percent of their present diet is comprised of cassava, plantain and other agricultural crops, they still use more than 100 species for food, out of approximately 750 species collected in the Ituri Forest.³⁵⁴ These include various nuts with high lipid contents, such as those of *Irvingia* spp. and *Ricinodendron heudeloti*, both widely used in central Africa, and often sold at local markets, as materials of sauce in pot-au-feu style cooking. Energy-rich starchy food like *Canarium* fruit and wild yams are eagerly collected, and the sweet and sour fruits of *Landolphia*, *Annonidium*, and *Aframomum* are also frequently eaten.

Many plants in tropical rain forest accumulate various secondary compounds, some of which, if administered properly, could be used as medicine for curing diseases, or as poison for hunting and fishing. About 200 species have so far been recorded for such purposes. Also important is the use of plants for material culture, with about 350 species so far recorded in the Ituri Forest. Their traditional material culture is simple, consisting of less than 100 items in total, including small semi-spherical huts and simple beds made of wooden poles, tools for hunting, gathering, transporting, cooking and dining, as well as for dress and decoration. Of these, more than 80 percent are made, either totally or in part, of plant material that are obtained from the forest.³⁵⁵ Other than these used for material purposes, several dozens are used for rituals related to hunting, gathering, weather and other natural phenomena, funeral, ancestor spirits and other supernatural beings in the forest.

³⁵² Mercader, J., Runge, F., Vrydaghs, L., Doutrelepont, H., Ewango, C. E. N. & J. Juan-Tresseras 2000. Phytoliths from archaeological sites in the tropical forest of Ituri, Democratic Republic of Congo. *Quaternary Research*, 54: 102-112; Mercader, J., M. Garcia-Heras, & I. Gonzalez-Alvarez 2000. Ceramic tradition in the African forest: Characterisation analysis of ancient and modern pottery from Ituri. D. R. Congo. *Journal of Archaeological Science*, 27: 163-182.

³⁵³ Hiernaux, J., 1975 *The People of Africa*, p. 117.

³⁵⁴ Terashima, H. and M. Ichikawa, 2003 A Comparative Ethnobotany of the Mbuti and Efe Hunter-gatherers in the Ituri Forest of DRC. *African Study Monographs*, 24(1-2), p.1-168.

³⁵⁵ Tanno, T., 1981 Plant Utilization of the Mbuti Pygmies: with Special Reference to Their Material Culture and Use of Wild Vegetable Foods, *African Study Monographs*, 1:1-53.

In addition to the plants directly used, hundreds of plants are useful in indirect ways, as nectar sources of honey and food of animals which are hunted, fished and collected by the people. They have precise knowledge of the food plants of wild animals, and ambush the animals which approach to feed on the plants in their fruiting seasons. While many of the high trees have no direct use, they are important sources of honey, highly prized food as concentration of natural sweet. They also collect various edible insects feeding on these forest plants, some of which, like *Entandrophragma* spp, are important to commercial logging.

The Mbuti believe that the forest is imbued with a supernatural being called “*Apakumandura*” (literally meaning the father of forest), who controls all the life in the forest. They attribute the continued failure in hunting or gathering to *Apakumandura*, saying that he has made the forest ‘cool’ or ‘closed’. In order to make the forest ‘hot’ or ‘open’ again, it is necessary to please him by *sulia* ritual followed by intensive singing and dancing. Sometimes, they make on the way to the interior forest a small shrine, *endekele*, in which some offerings of cola nuts or tobacco are placed for *Apakumandura*. There is also a small cauliflorous tree species called ‘*akobisi*’ (*Uvariopsis congolana*, Annonaceae) which grows only in the dense forest. It is strictly forbidden to cut or break this tree. If someone carelessly cuts this tree, the Mbuti must sing and dance on the spot, beating a buttress root in place of a drum, in order to appease the anger of *Apakumandura*.³⁵⁶

According to Turnbull (1965), “*the Mbuti recognize their dependence upon the forest and refer to it as ‘Father’ or ‘Mother’ because (...) it gives them food, warmth, shelter and clothing, just like their parents.*”³⁵⁷ He also states in the same book that the Mbuti conceive the forest covered with canopy as the “womb,” that is, the place they come from. According to Sawada (2001) who studied spiritual life of the Ituri Pygmies, they believe, the dead people go to the interior forest and loam there; he wrote “*the land of the dead is situated deep in the forest, but still in the same forest which the living Efe usually use.*”³⁵⁸ This means the forest is also the place where they go after the death. Moreover, they often learn songs and dances from the ancestors during dream encounters with them in the forest.

The forest and its resources are useful both in direct and indirect ways, for material as well as spiritual purposes. The forest also provides the people with the basis of their cultural identity. Therefore, the forest in its entirety is necessary for their life and culture, and the destruction of forest would result in the deterioration of their unique forest-based culture.

³⁵⁶ Ichikawa, M., 1996 The Coexistence of Man and Nature in the Central African Forests, in, Ellen, R. and K. Fukui, eds., *Redefining Nature*, Berg Publishers, p. 472.

³⁵⁷ Turnbull, C., 1965 *Wayward Servants: The Two Worlds of the African Pygmies*. Eyre & Spottiswoode, London, p. 19.

³⁵⁸ Sawada, M., 2001 Rethinking Methods and Concepts of Anthropological Studies on African Pygmies' World View: The Creator-God and the Dead, *African Study Monographs*, supplementary Issue, No.27, p. 31. Efe is a Sudanic-speaking subgroup of the Ituri Pygmies.

It should be noted that some of these forest resources are commoditized in local markets. The forest fruit such as *Landolphia* spp. and *Canarium schweinfurthii* are often sold at local markets; the cola nuts are eagerly sought after as stimulants, as well as *Irvingia* nuts as oily condiments; various mushrooms and a variety of edible insects, including caterpillars and termites are also found at markets in their seasons. Honey is highly valued by all the people in the forest region. Other than food, there are important materials for manufacturing and construction, such as young leaves raffia palm (*Raphia* sp.) for weaving mats, large Marantaceae leaves (*Megaphrynium macrostachyum*) for thatching and wrapping materials, and palm lianas (*Eremospatha haullevilleana*) for making baskets. All of these forest products comprise important trade items.³⁵⁹

The most important forest resource with high commercial value is the bushmeat hunted in the forest. Since the 1950s, there has been an increasing demand for the bushmeat to supply cheap protein source to the people living in newly formed local population centers.³⁶⁰ In particular, in the 1970s to 1980s when the economic situation of former Zaire had been worsening, the bushmeat trade was rapidly growing as an easy means of earning cash in the southern and eastern parts of the Ituri forest. The bushmeat hunted by the Mbuti were bartered with the traders for starchy food, such as rice and cassava flour, and for clothes and cooking pans; otherwise it was sold for cash in order to pay the tax, fines, for marriage, childbirth, funeral service and other social and cultural obligations. In the 1970s and 1980s, nearly a half (in weight) of their catch was traded, and the ratio of the traded meat was increasing. As bushmeat trade became more intensive, hunting pressures increased accordingly. It is urgently needed to design an integrative management plan in which both conservation and sustainable use of animal resources could be attained.³⁶¹

11. Territoriality, Nomadism and Customary Rights to Land

Most of the Pygmy groups have been managing the forests in a customary manner. Namely, they have a loose territorial system which has contributed to preventing the inter-group conflicts over the land use. Through extensive nomadic movements in the forest, they also keep the procurement activities in a particular area at a low level, which has contributed to maintaining the resource base. Such a customary management and extensive forest use is illustrated below, taking an example again from the Mbuti Pygmies in the Ituri forest.

The Mbuti settlements consist of 1) a semi-sedentary settlement, serving as a base, near the agriculturalists' village on roadside or in the forest behind the roads, 2) nomadic hunting camps in the forest, and 3) small camps for collecting honey and other forest products. The size of a semi-sedentary base camp ranges from 10 to 25 families, or 40 to 100 people. These camps are mostly composed of kin-related extended families, whereas

³⁵⁹ See also, Ichikawa, M., 1992 Diveristy and Multiplicity in the Forest Use by the African Hunter-gatherers. *Tropics* (Japanese Journal of Tropical Ecology), vol.2(2):107-121.

³⁶⁰ Hart, J. 1978 From Subsistence to Market: A case Study of the Mbuti Net Hunters, *Human Ecology*, 6(3):325-353; Ichikawa, M., 1991 The Impact of Cash and Commoditization on the Life of the Mbuti Hunter-gatherers, Eastern Zaire. *Senri Ethnological Studies*, 30:135-162.

³⁶¹ Ichikawa, M., 2006 Problems in the Conservation of Tropical Rainforests in Cameroon, African Study Monographs, supplementary Issue, 34, p.5.

two or more such groups occasionally form a larger joint camp, in particular for performing collective net hunting in a large scale.³⁶²

The Mbuti's semi-sedentary camp (base camp) is usually located near or behind the farmers' villages at a distance of several dozen meters to 2 km in the forest. A hunting path extends from there toward the interior forest, and along this path situated are 5-7 hunting camps at an interval of 3-7 km (see, attached Figure). When hunting in the forest, they move from one camp to another for every two weeks to two months depending on the catch. The hunting path and its surrounding area comprise their hunting territory, which covers an area of 150 to 250 km². While the boundary of a territory is not always clear, they distinguish their own territory from others by saying "we use our own paths."³⁶³ All the members of the same residential group, often called "the band" by anthropologists, have a free access to the resources in this territory, and there is no private ownership of the land. Individual members have, however, rights over the natural beehives or termite mounds which are found and marked by them. The products from hunting and gathering also belong to specific individuals. There are, therefore, collective rights to the forest, as well as individual rights over the specific resources that are procured or found by the individuals. These rights are not, however, really exclusive; visitors to the camp are allowed to use the resources, and the resources thus procured are widely distributed to the camp members, including the visitors.³⁶⁴

Turnbull³⁶⁵ stated that there is a 'no-man's-land' which is not utilized by the Mbuti. In fact, the farthest part of their territory is seldom used for hunting and gathering, except for hunting big game with a spear. It consequently serves as a "natural reserve" for animal and plant populations. Such a center for resource regeneration has shifted with the band migration which has taken place over a period of several decades.³⁶⁶ It is largely due to the high mobility of Mbuti residential groups, frequent movement of campsites and the shifting of territories both resulting in extensive land use, along with their low population density of 0.4 /km² on average, that the forest resource base has been maintained, despite their long history of forest occupation.

While their loose territorial system and extensive land use pattern seem to have functioned fairly well among themselves, such a system does not work in a wider social and political framework. On the regional or state level, their customary land use system

³⁶² Ichikawa, M., 1978 The residential Groups of the Mbuti Pygmies. *Senri Ethnological Studies*, no. 1, p. 131-188.

³⁶³ Ichikawa, M., 1978 The residential Groups of the Mbuti Pygmies. *Senri Ethnological Studies*, no. 1, p. 171. Such territorial arrangements in the Ituri Forest may have been influenced by the colonial rearrangement of land use patterns and resettlements of agriculturalists' villages to the roadside, from which hunting territories of the Mbuti extend toward the interior forest. See also, Roessler, M., 1997 Shifting Cultivation in the Ituri Forest: Colonial Intervention, Present Situation, Economic and Social Prospects, *Civilisations*, vol. XLIV, No.1-2, pp.44-61.

³⁶⁴ Ichikawa, M., 2005 Food sharing and Ownership among Central African Hunter-gatherers: an Evolutionary Perspective, in Widlok, T. and W. G. Tadesse, eds., *Property and Equality*, vol., 151-164.

³⁶⁵ Turnbull, C., 1972 Demography of Small-scale Societies, in: G. Harrison and A. Boyce (eds.), *The Structure of Human Population*, Oxford, Clarendon Press, pp. 283-312.

³⁶⁶ Ichikawa, M., 1986 Ecological Bases of Symbiosis, Territoriality and Intraband cooperation among the Mbuti Pygmies, *SUGIA (Sprache und Geschichte in Afrika)*, Vol. 7 (1): 161-188.

has not been formally recognized, and there is no statutory right given to it. This seems odd, because “*under almost all African customary systems, occupancy is generally the key to ‘ownership’ and land is allocated by those claiming prior occupancy through lineages and clans.*”³⁶⁷ Hunter-gatherer Pygmy people who are in most areas thought to be the first occupants of the land are not readily given the “ownership.” Instead, “*throughout the Congo Basin, governments have ignored politically weak hunter-gatherer groups because they do not make investments in land generally recognized by authorities, such as clearing, farming, or mining.*”³⁶⁸

In the areas where Pygmy people are found today, there are also agricultural villagers who use the forest for hunting, fishing and other procurement activities, and they also have strong attachment to the forest. In such areas, customary rights to the forests are usually overlapping. According to the view of some of the agriculturalists, it is the clan or lineage of the “patron” villagers who “own” the forests, and under this “umbrella,” the Pygmies “belonging” to the villagers are allowed to use the forest. While this interpretation is not accepted by the Pygmy people themselves, the opinion of more powerful villagers is liable to be respected in a wider society, and the rights of the Pygmy people are often neglected.

According to the Social Assessment of the World Bank’s infrastructure rehabilitation Component (Component 3) of EESRSP, the Mbuti Pygmies in the Ituri Forest complained that the Bantu chief sold the concession of the forest which they have been inhabiting without any consultation with Mbutis. Such disregard of the Mbuti’s rights may have partly based on the Bantu’s notion that they have priority rights to the forest. When the gold mining was liberalized in the 1980s, it was also the Bantu *chef de collectivité* who collected “entry fee” to the mining areas in the forest. The Mbuti, who had been inhabited the forest for centuries, had nothing to say for the encroachment on their territories by outsiders. It is necessary to take these complications into consideration when the customary rights of the indigenous Pygmy people is considered.

The overlapping territorial claims by the Pygmy People and the Bantu villagers do not make much trouble, when the forest area is large enough for the people to use it, or when the economic opportunity is limited for exploiting the resources in the area. In fact, there had been no serious problem accruing from such overlapping claims to the forest. As a Mbuti man once told, “*there is no reason to refuse other people who want to use our forest, because the forest is large enough.*”

However, once the forest resources are commercialized and become scarce resources, such an inclusive attitude will turn out to be disadvantageous to the Pygmy people, and in most cases, more powerful agriculturalists will stand in advantageous position.

Thus, “*despite provisions made by the African Commission on Human and Peoples’ Rights, such as the African Charter on Human and Peoples’ Rights of 1981, most hunter-*

³⁶⁷ Colchester, M. ed., 2001 *A Survey of Indigenous Land Tenure: a Report for the Land Tenure Service of the Food and Agriculture Organization*, p.57.

³⁶⁸ IRIN, 2006 *Minorities Under Siege: Pygmies Today in Africa*, p.10.

*gatherers are denied land rights. Hunting and gathering is not considered a legitimate or sustainable use of land – as opposed to agriculture and deforestation, practised by Bantu Africans.”*³⁶⁹

12. Unequal Relationship between Pygmy People and Agricultural Villagers

According to recent research,³⁷⁰ Pygmy people in DRC came into contact with Bantu and Sudanic agricultural peoples at least more than 1,000 years ago, much earlier than previously supposed. During this long period of contact, the Pygmies and agriculturalists have formed an interdependent relationship, while differentiating their roles and exchanging mutual products and services. The Pygmies mainly provide the agriculturalists with meat and other forest products, and labor for agricultural and other miscellaneous works, whereas the latter supply energy-rich agricultural food, salt, iron, clothes and other manufactured implements. They also show different patterns of settlements and land use; the Pygmies lead a nomadic life in the interior forest at least for a part of the year, while the agriculturalist mainly lead sedentary life along the roads and major communication routes, concentrating their efforts to agriculture.

Similar tendencies toward differentiation and interdependence are also seen in their social and cultural life. There are cases of intermarriage between the villagers and the Pygmies. In some area of the Ituri Forest, ratio of Pygmy women reaches as high as 30 % of the villagers’ wives.³⁷¹ The intermarriage is, however, one-sided, and Pygmy women marry into villagers, often as their second wife, but not vice versa. This also exemplifies the existence of inequality between the two groups.

Each Pygmy group has a close relationship with a particular agricultural village, and within this intergroup relationship, each Pygmy man establishes individual relationship with a specific villager, called *kpala*³⁷² among the Mbuti in Ituri, and *nkolo*³⁷³ among the Batua in Equateur Province. Both words have a connotation of “patron” or “boss.” Regardless of actual kinship relationship between the two, they call each other by kinship terms, like father and son, and in this fictive kinship framework they have exchanged mutual products and service, though such traditional exchange system have changed recently. While in the Ituri Forest, Pygmy people use grammatically the same language as the neighboring agricultural groups, it is, in the local context, easily recognized from their speech which of the two groups they belong to, because their pronunciations and

³⁶⁹ [http://www.africa-](http://www.africa-union.org/official_documents/Treaties_%20Conventions_%20Protocols/Banjul%20Charter.pdf)

[union.org/official_documents/Treaties_%20Conventions_%20Protocols/Banjul%20Charter.pdf](http://www.africa-union.org/official_documents/Treaties_%20Conventions_%20Protocols/Banjul%20Charter.pdf).

³⁷⁰ Bailey, R. C., Head, G., Jenike, M., Owen, B., Rechtman, R. and Zechenter, E. 1989. *Hunting and Gathering in Tropical Forest: Is It possible?*, American Anthropologist 91(1):59-82.

³⁷¹ Terashima, H., 1987 Why Efe Girls Marry Farmers?: Socio-ecological Backgrounds of Inter-ethnic Marriage in the Ituri Forest of Central Africa. *African Study Monographs*, supplementary Issue, 6: 68-69. Note, however, that there are areas where intermarriage between the Pygmies and agriculturalists occur very rarely, due to discrimination against Pygmies.

³⁷² Ichikawa, M. 1978, p.137.

³⁷³ Pagzey, H., 1985 Coping with uncertainty in food supply among the Oto and the Twa living in the equatorial flooded forest near Lake Tumba, Zaire. In, De Garine, I. and G. A. Harrison, eds., *Coping with Uncertainty in Food Supply*. Clarendon Press, Oxford: 175-209.

speech manner are different from each other, and they use different names for certain forest animals.

Of particular relevance to the contemporary socio-political situation is the difference in the social space, which is exemplified in their settlement patterns; the villagers' settlements are situated on the road side and oriented toward the communication routes with the outside world, whereas those of Pygmies are often located behind the agricultural settlements, sometimes 1-2 km away from the roadside, and connected by narrow footpaths with the interior forest where their major activities, hunting and gathering, take place. When villagers enter the forest for hunting or fishing, they are usually accompanied by Pygmy men who help them in the forest. By contrast, when the Pygmies get in troubles outside the forest, or with other Pygmy groups, the villagers play a role of mediator. In these ways, they have formed an interdependent relationship, while maintaining differences in their economic, social and cultural practices.

It should be noted that this relationship is not formed on equal terms, which is clearly seen in the political representation and economic disparity. Traditional chief, *chéf de collectivité*, and their assistants, *notables*, have always been chosen from the villagers' clan. Moreover, the Pygmies are always paid less, a half to two thirds of the villagers' wage for the same kind of work, or, given a lower position if a mixed working group is formed. The unequal relationship between the two groups, often called patron-client relationship, provides a basis for such an inequality. The villagers play a role of "father," and the Pygmies that of a "son." The political representation in a wider society has been almost monopolized by the patron villagers who do not regard the Pygmy People as full-fledged men.

Such traditional inter-group and inter-individual relationships have been weakened to some extent since the 1970s, as new forms of employment and exchange were introduced; day-based wage labor paid either in cash or in kind (called *par jour*) and commercial exchange of forest products, bushmeat in particular, have become increasingly common forms of transaction in most parts of the Ituri Forest.³⁷⁴ Some missionary have even attempted to separate Pygmy People from their patron villagers, through introducing various income-generating projects for the Pygmies.³⁷⁵ However, the underprivileged status of Pygmy people in the regional community have not changed much, and they are still poorly represented in the regional political arena.

The egalitarian social relationship among the Pygmies themselves has not favored the representation system in general. As IRIN's report aptly pointed out: "*The representative institutions based on power structure is entirely foreign to Pygmy society, as hierarchy has never played an important role in their society. Decisions of a residential group are*

³⁷⁴ Ichikawa, M., 1999 "Interest in the Present" in the Nationwide Monetary Economy: The Case of Mbuti Hunters in Zaire, in, Schweitzer, P., M. Biesele and R. K. Hitchcock (eds.), *Hunters and Gatherers in the Modern World*. Berghahn, Oxford, pp.263-274.

³⁷⁵ Funao, O., 1999 Mbuti Pygmies in the Wave of Modern Change. *Ethnological Quarterly*, no.88, pp.32-42 (in Japanese); also see, Funao, O., 2006 A report from the forest of circulation and coexistence: the world of the Mbuti Pygmies in the Ituri Forest. Sinhyoron, Tokyo.

often made through discussion of elders. Consensus, rather than imposition, is the general way of their governance. This often collides with the protocols of modern administration, which call for a delegate, spokesman or leader to centralize decision-making after consultation. A “flat” power structure is hardly adapted to project-management frameworks, which now permeate most development programmes.”³⁷⁶

The modern political system of representation may, therefore, risk the society of Pygmy people who have been enjoying egalitarian social relationships. They would be caught in a dilemma, if they could only be represented in the national political process at the risk of their unique social system.

13. Uses of Non-Timber Forest Products

The major reasons for restricting commercial exploitation of forest resources, hunting in particular, are the possible deterioration of the resource base by overexploitation, as stated above, and the threat to the rare and endangered animals, such as great apes, elephants, okapis, and leopards. The overexploitation, however, could be avoided, through effective resource management for sustainable use by the forest people themselves, which they would try, if they would be given exclusive rights to the forest and its resources.

In fact, if sustainable management is possible at all for logging operations, there would be little reason to deny the possibility of sustainable use of other NTFPs by local communities. Basic research on the wildlife with the participation of Indigenous People who are most sensitive to the wildlife ecology and population dynamics, and governmental as well as non-governmental support both from within and from outside DRC, would be necessary for its realization. Without efforts to explore such a possibility, it is difficult to avoid the criticism that the Bank is going to prepare the foundation for further marginalization of the Indigenous People through implementation of the new Forest Code.

The conservation of rare and endangered animal species is an important task that deserves a global attention, but there is much experience to indicate that it could not be attained only by strict prohibitive measures, i.e., prohibiting the forest people from any form of hunting in the forests where these animals live. Lessons from experiences in various African countries clearly show that the understandings by and cooperation with local people are key to the success of conservation.³⁷⁷ To gain support from the local inhabitants, it is necessary for conservation promoters to understand the needs of local people for forest resources, and not to apply excessively prohibitive measures to the use of forest resources by local people.

³⁷⁶ IRIN, 2006 *Minorities Under Siege: Pygmies today in Africa*, p. 12.

³⁷⁷ Curran, B. and R. K. Tshombe, 2001 Integrating Local Communities into the Management of Protected Areas. Lessons from DR Congo and Cameroon. In Weberm W. , A. J. T. White, A. Vedder and L. Naughton-Treves eds., *African Rain Forest Ecology and Conservation*, New Haven: Yale University Press, P. 513-514 in p.513-534.

In this context, if non-timber forest resource uses would be totally banned either for nature conservation or for timber production the economic compensation for such a measure would be enormous. According to the report co-authored by the World Bank in 2007, total economic value of bushmeat alone, produced annually in the entire DRC, amounts to over a billion US dollars, which is much more than the total economic value of formal and informal timber production in recent years, estimated at 160 million US\$ per annum.³⁷⁸

³⁷⁸ Forests in Post-Conflict DRC, p. 22 (timber), 23 (bushmeat).

Annex 3
List of Applications for Concession Conversion³⁷⁹

N°	Réf. titre	Exploitant	Date	Superficie (ha)	Province	Date requête
1	GA 028/94	AMBASSADEUR NKEMA LILOO	05/02/1994	240 000	Equateur	25/01/2006
2	GA 029/94	AMBASSADEUR NKEMA LILOO	05/02/1994	185 000	Equateur	25/01/2006
3	GA 030/94	AMBASSADEUR NKEMA LILOO	05/02/1994	95 000	Equateur	25/01/2006
4	GA 031/94	AMBASSADEUR NKEMA LILOO	05/02/1994	73 280	Equateur	25/01/2006
5	GA 007/87	APC/TEMVO	29/04/1987	25 664	Bas-Congo	02/03/2005
6	LI 048/04	BALU FUTI MALILA	20/12/2004	44 096	Equateur	25/01/2006
7	GA 039/94	BALU FUTI MALILA	05/02/1994	230 000	Equateur	25/01/2006
8	GA 038/04	BBC	07/07/2004	133 854	Equateur	16/12/2005
9	GA 021/05	BEGO CONGO	21/04/2005	63 250	Orientale	20/01/2006
10	GA 014/84	BIMPE AGRO	19/09/1984	198 400	Bandundu	26/01/2006
11	GA 0114/00	BIMPE AGRO	04/10/2000	76 250	Bandundu	26/01/2006
12	LI 028/97	BOIS KASAÏ	04/04/1997	254 400	Kasaï Oriental	25/01/2006
13	LI 089/03	BOKANGA	31/03/2003	107 000	Equateur	25/01/2006
14	LI 013/05	CFBC	11/03/2005	208 000	Equateur	25/01/2006
15	LI 053/05	CFBC	04/10/2005	150 000	Equateur	25/01/2006
16	GA 032/96	CFE	06/08/1996	127 300	Equateur	25/01/2006
17	GA 012/03	CFT	25/03/2003	250 000	Equateur	25/01/2006
18	GA 013/03	CFT	25/03/2003	70 000	Equateur	25/01/2006
19	GA 014/03	CFT	25/03/2003	100 000	Equateur	25/01/2006
20	GA 015/03	CFT	25/03/2003	200 000	Orientale	25/01/2006
21	GA 036/04	CFT	07/07/2004	79 300	Orientale	25/01/2006
22	GA 050/05	COCAF	26/09/2005	195 000	Equateur	17/11/2005
23	GA 051/05	COCAF	26/09/2005	250 000	Equateur	17/11/2005
24	GA 052/05	COCAF	26/09/2005	30 300	Equateur	17/11/2005
25	GA 018/95	COMPAGNIE DES BOIS	20/09/1995	120 000	Bandundu	25/01/2006
26	LI 004/94	CONCEKA	13/04/2002	137 408	Equateur	25/01/2006
27	GA 027/05	ECODECO	04/05/2005	46 400	Equateur	23/01/2006
28	GA 006/92	ENRA	17/08/1992	52 192	Orientale	20/01/2006
29	GA 020/05	ENRA	19/04/2005	28 800	Orientale	20/01/2006
30	GA 056/05	ERCO SPRL	10/10/2005	131 264	Equateur	23/01/2006
31	LI 025/97	ETS GRAND-JO	02/04/1997	250 000	Equateur	13/03/2006
32	GA 003/01	ETS SENGE SENGE	31/12/2001	228 800	Bandundu	13/01/2005
33	GA 009/03	FORABOLA	25/03/2003	190 700	Equateur	25/01/2006
34	GA 010/03	FORABOLA	25/03/2003	205 000	Orientale	25/01/2006
35	GA 011/03	FORABOLA	25/03/2003	250 000	Orientale	25/01/2006
36	GA 004/05	FORABOLA	21/01/2005	14 644	Bas-Congo	25/01/2006

³⁷⁹ “Liste des requêtes de conversion introduites auprès du MECNEF.” Provided by the Independent Observer of the concession conversion process in DRC. <http://www.rdc-conversiontitresforestiers.org/wrapper/index.php> .

37	GA 005/05	FORABOLA	21/01/2005	19 264	Bas-Congo	25/01/2006
38	GA 006/05	FORABOLA	21/01/2005	24 576	Bas-Congo	25/01/2006
39	GA 007/05	FORABOLA	21/01/2005	30 336	Bas-Congo	25/01/2006
40	GA 008/05	FORABOLA	21/01/2005	41 500	Bas-Congo	25/01/2006
41	GA 009/05	FORABOLA	21/01/2005	62 232	Bas-Congo	25/01/2006
42	LI 141/03	GROUPE LA SEMENCE	10/10/2003	205 072	Equateur	24/01/2006
43	GA 055/05	ICHWA	10/10/2005	100 500	Bandundu	07/01/2006
44	LI 002/81	IKOMBELE	28/06/1981	60 000	Orientale	26/03/2005
45	GA 037/94	IKUMBELINGA	05/02/1994	185 000	Equateur	25/01/2006
46	GA 043/05	INTERBUS CONGO	25/08/2005	250 000	Equateur	25/01/2006
47	GA 002/01	ITB	31/12/2001	147 000	Bandundu	24/01/2006
48	GA 001/04	ITB	18/01/2005	214 700	Equateur	24/01/2006
49	GA 002/05	ITB	18/01/2005	224 140	Orientale	24/01/2006
50	GA 030/05	ITB	16/05/2005	80 064	Equateur	24/01/2006
51	GA 037/04	KTC	02/07/2004	43 700	Orientale	20/01/2006
52	GA 002/92	LA FORESTIÈRE	17/03/1992	151 800	Orientale	20/01/2006
53	GA 003/92	LA FORESTIÈRE	17/03/1992	140 224	Orientale	20/01/2006
54	GA 002/93	LA FORESTIÈRE	03/07/1993	84 740	Orientale	20/01/2006
55	GA 024/05	LA FORESTIÈRE DU LAC (EX MPUTU KANGA)	27/04/2005	179 300	Bandundu	24/01/2006
56	GA 044/05	LEYDIA	16/09/2005	123 000	Equateur	23/01/2006
57	GA 045/05	LEYDIA	16/09/2005	250 000	Equateur	23/01/2006
58	GA 015/05	LUGERERO ZAWADI	14/03/2005	264 000	Equateur	25/01/2006
59	GA 018/05	LUGERERO ZAWADI	12/04/2005	242 000	Orientale	25/01/2006
60	GA 016/05	LUMOO EMILE	14/03/2005	222 336	Equateur	25/01/2006
61	GA 019/05	LUMOO EMILE	12/04/2005	230 000	Orientale	25/01/2006
62	GA 041/05	MAISON NBK SERVICE	22/08/2005	64 464	Bandundu	23/01/2006
63	GA 042/05	MAISON NBK SERVICE	22/08/2005	72 600	Kasaï Occidental	23/01/2006
64	GA 101/87	MALIBA	13/11/1987	5 278	Bas-Congo	01/02/2006
65	GA 001/91	MALIBA	12/01/1991	23 744	Bas-Congo	01/02/2006
66	GA 088/03	MEGA BOIS	31/05/2003	121 216	Equateur	20/01/2006
67	LI 017/05	MILLETIA SPRL	28/03/2005	75 465	Bandundu	09/11/2005
68	GA 035/94	MOF CONGO	05/02/1994	98 400	Equateur	25/01/2006
69	LI 047/04	MOF CONGO	20/12/2004	100 000	Equateur	25/01/2006
70	LI 090/03	MOJOB	26/05/2003	53 120	Bandundu	14/07/2005
71	LI 036/03	MOTEMA	26/03/2003	250 000	Equateur	24/01/2006
72	LI 037/03	MOTEMA	26/03/2003	250 000	Equateur	24/01/2006
73	GA 005/91	MWANA MBUJI TRADING	01/07/1991	78 262	Kasaï Occidental	25/11/2005
74	GA 046/05	NOUVELLE STÉ DE BOIS YANG SHUSHAN	20/09/2005	188 672	Equateur	25/01/2006
75	GA 054/05	NTEEKO SPRL	10/10/2005	80 000	Equateur	15/12/2005
76	GA 047/05	OLAM CONGO	22/09/2005	54 400	Bandundu	25/01/2006
77	GA 048/05	OLAM CONGO	22/09/2005	75 900	Orientale	25/01/2006

78	GA 049/05	OLAM CONGO	22/09/2005	175 400	Bandundu	25/01/2006
79	GA 004/91	ONATRA	21/03/1991	74 023	Bandundu	26/01/2006
80	GA 014/05	PARCAFRIQUE	14/03/2005	235 432	Bandundu	24/01/2006
81	GA 022/05	PIW	21/04/2005	63 000	Equateur	25/01/2006
82	GA 046/04	RIBA CONGO	26/11/2004	48 256	Bandundu	25/01/2006
83	LI 031/05	RÉSERVE STRATÉGIQUE GALE	01/07/2005	203 850	Orientale	23/01/2006
84	LI 032/05	RÉSERVE STRATÉGIQUE GALE	01/07/2005	218 128	Bandundu	23/01/2006
85	GA 091/03	SAFBOIS	03/06/2003	250 000	Orientale	25/01/2006
86	GA 034/04	SAFBOIS	29/06/2004	84 700	Orientale	25/01/2006
87	GA 017/87	SAFECO	29/04/1987	73 088	Bas-Congo	17/02/2006
88	GA 001/95	SAFO	27/01/1995	242 952	Equateur	25/01/2006
89	GA 103/87	SAICO CONGO	13/11/1987	28 928	Bas Congo	25/01/2006
90	GA 104/87	SAICO CONGO	13/11/1987	20 224	Bas Congo	25/01/2006
91	GA 039/05	STÉ AFRICAINE DE NÉGOCE (SAN)	20/08/2005	140 000	Bandundu	25/01/2006
92	GA 040/05	STÉ AFRICAINE DE NÉGOCE (SAN)	20/08/2005	146 560	Bandundu	25/01/2006
93	GA 093/03	SCIBOIS	03/06/2003	229 400	Equateur	24/01/2006
94	GA 085/87	SCIERIE MBANDA	13/11/1987	36 160	Bas-Congo	13/02/2006
95	GA 005/95	SCIERIE MBANDA	23/03/1995	21 312	Bas-Congo	13/02/2006
96	GA 008/00	SCIERIE MBANDA	20/05/2000	13 092	Bas Congo	24/01/2006
97	GA 002/98	SEDAF SPRL	04/02/1999	200 533	Equateur	23/01/2006
98	GA 003/98	SEDAF SPRL	03/02/1999	219 200	Orientale	23/01/2006
99	GA 001/98	SEDAF SPRL	03/02/1999	248 300	Orientale	23/01/2006
100	GA 008/93	SEFOCO	20/11/1993	224 000	Equateur	20/01/2006
101	GA 028/98	SEFOCO	25/06/1998	189 738	Equateur	20/01/2006
102	LI 095/03	SEFOR	12/07/2003	160 000	Bandundu	24/01/2006
103	GA 046/05	STÉ FORESTIERE DU CONGO (SFC)	20/09/2005	39 360	Bas-Congo	24/01/2006
104	LI 024/02	SICA MUSUSU SPRL	26/06/2002	78 830	Kasaï Occidental	24/01/2006
105	GA 042/04	SICOBOIS	10/09/2004	127 300	Equateur	25/01/2006
106	GA 032/04	SICOBOIS	25/06/2004	109 320	Equateur	25/01/2006
107	GA 033/04	SICOBOIS	25/06/2004	158 130	Equateur	25/01/2006
108	GA 018/00	SIFORCO	09/11/2000	160 000	Bandundu	26/01/2006
109	GA 007/95	SIFORCO	01/05/1995	292 486	Equateur	26/01/2006
110	GA 002/89	SIFORCO	20/03/1989	293 000	Orientale	26/01/2006
111	GA 025/04	SIFORCO	01/06/2004	230 340	Equateur	26/01/2006
112	GA 026/04	SIFORCO	01/06/2004	249 050	Equateur	26/01/2006
113	GA 027/04	SIFORCO	01/06/2004	181 980	Equateur	26/01/2006
114	GA 028/04	SIFORCO	01/06/2004	114 180	Orientale	26/01/2006
115	GA 029/04	SIFORCO	01/06/2004	192 950	Orientale	26/01/2006
116	GA 030/04	SIFORCO	01/06/2004	213 740	Orientale	26/01/2006
117	GA 047/05	STÉ MULTICOMMERCIALE (SMC)	20/09/2005	102 000	Equateur	25/01/2006

118	LI 023/05	SOBAC	28/04/2005	237 800	Equateur	25/01/2006
119	GA 012/00	SOCEMA	07/08/2000	62 128	Bas Congo	25/01/2006
120	LI 027/02	SOCIBEX	24/12/2002	127 000	Bandundu	23/12/2005
121	LI 028/02	SOCIBEX	24/12/2002	240 000	Bandundu	23/12/2005
122	GA 032/94	STÉ LONGELE NOUVELLE (SOCOLO)	05/02/1994	199 650	Equateur	25/01/2006
123	GA 033/94	STÉ LONGELE NOUVELLE (SOCOLO)	05/02/1994	127 500	Equateur	25/01/2006
124	GA 002/91	SOCONEG	17/12/1991	81 000	Equateur	20/03/2006
125	GA 023bis/95	SODAIKEL	12/12/1995	121 216	Equateur	25/01/2006
126	GA 018/03	SODEFOR	04/04/2003	190 000	Orientale	25/01/2006
127	GA 019/03	SODEFOR	04/04/2003	38 000	Bandundu	25/01/2006
128	GA 020/03	SODEFOR	04/04/2003	181 000	Orientale	25/01/2006
129	GA 021/03	SODEFOR	04/04/2003	83 600	Bandundu	25/01/2006
130	GA 022/03	SODEFOR	04/04/2003	130 000	Bandundu	25/01/2006
131	GA 023/03	SODEFOR	04/04/2003	170 000	Equateur	25/01/2006
132	GA 024/03	SODEFOR	04/04/2003	46 000	Bandundu	25/01/2006
133	GA 025/03	SODEFOR	04/04/2003	168 000	Equateur	25/01/2006
134	GA 026/03	SODEFOR	04/04/2003	160 350	Equateur / Bandundu	25/01/2006
135	GA 027/03	SODEFOR	04/04/2003	86 000	Equateur	25/01/2006
136	GA 028/03	SODEFOR	04/04/2003	130 000	Bandundu	25/01/2006
137	GA 029/03	SODEFOR	04/04/2003	148 000	Bandundu	25/01/2006
138	GA 030/03	SODEFOR	04/04/2003	220 000	Bandundu	25/01/2006
139	GA 031/03	SODEFOR	04/04/2003	107 500	Bandundu	25/01/2006
140	GA 032/03	SODEFOR	04/04/2003	113 900	Bandundu	25/01/2006
141	GA 064/00	SODEFOR	02/05/2000	157 000	Bandundu	25/01/2006
142	GA 045/04	SOEXFORCO	23/11/2004	229 476	Equateur	23/01/2006
143	GA 002/03	SOFORMA	25/03/2003	200 000	Orientale	25/01/2006
144	GA 003/03	SOFORMA	25/03/2003	200 000	Orientale	25/01/2006
145	GA 005/03	SOFORMA	25/03/2003	96 000	Equateur	25/01/2006
146	GA 006/03	SOFORMA	25/03/2003	175 000	Equateur	25/01/2006
147	GA 007/03	SOFORMA	25/03/2003	60 000	Equateur	25/01/2006
148	GA 008/03	SOFORMA	25/03/2003	150 000	Equateur	25/01/2006
149	GA 033/03	SOFORMA	25/03/2003	115 000	Equateur	25/01/2006
150	LI 008bis/02	SOKAMO	13/04/2002	175 400	Bandundu	13/01/2006
151	GA 034/97	SOMI CONGO	07/05/1997	235 425	Bandundu	24/01/2006
152	LI 003/04	TALA TINA	18/01/2005	28 500	Bandundu	25/01/2006
153	GA 033/05	TRANS M	12/07/2005	250 000	Orientale	25/01/2006
154	GA 034/05	TRANS M	12/07/2005	250 000	Equateur	25/01/2006
155	GA 035/05	TRANS M	12/07/2005	246 000	Equateur	25/01/2006
156	LI 010/05	ZONGO BOIS	12/02/2005	147 328	Equateur	25/01/2006

Annex 4 Biographies

Ms. Edith Brown Weiss was appointed to the Panel in September 2002 and is an outstanding legal scholar who has taught and published widely on issues of international law and global policies, including environmental and compliance issues. She is the Francis Cabell Brown Professor of International Law at Georgetown University Law Center, where she has been on the faculty since 1978 and has directed international multi-disciplinary research projects. Before Georgetown, she was a professor at Princeton University. Ms. Brown Weiss has won many prizes for her work, including the Elizabeth Haub prize from the Free University of Brussels and, the International Union for the Conservation of Nature (IUCN) for international environmental law, and the 2003 American Bar Association Award in recognition for distinguished achievements in Environmental Law and Policy. She has also received many awards for her books and articles. She served as President of the American Society of International Law and as Associate General Counsel for the U.S. Environmental Protection Agency, where she established the Division of International Law. Ms. Brown Weiss is a member of many editorial boards, including those of the American Journal of International Law and the Journal of International Economic Law. She has been a board member, trustee, or advisor for the Japanese Institute for Global Environmental Strategies, the Cousteau Society, the Center for International Environmental Law, and the National Center for Atmospheric Research, among others. Ms. Brown Weiss has been a Special Legal Advisor to the North American Commission on Environmental Cooperation. She has been a member of the U.S. National Academy of Sciences' Commission on Geosciences, Environment, and Resources; the Water Science and Technology Board; and the Committee on Sustainable Water Supplies in the Middle East. She is an elected member of the American Law Institute, the Council on Foreign Relations, and the IUCN Commission on Environmental Law. Ms. Brown Weiss received a bachelor's of arts degree from Stanford University with Great Distinction, an LL.B. (J.D.) from Harvard Law School, a Ph.D. in political science from the University of California at Berkeley, and an Honorary Doctor of Laws from Chicago-Kent College of Law.

Mr. Tongroj Onchan was appointed to the Panel in September 2003. He has a Ph.D. in agricultural economics from the University of Illinois. Professor Onchan taught on the Faculty of Economics at Kasetsart University in Thailand for 26 years, including a term as Dean. He later served as vice president of Huachiew Chalermprakiat University; then joined the Thailand Environment Institute (TEI) as vice president. In 1998, Mr. Onchan was appointed president of TEI. He helped establish and was appointed president of the Mekong Environment and Resource Institute (MERI) in 2000. He has served as advisor to the Prime Minister and to the Minister of Science, Technology and Environment, as member of the National Environmental Board, chairman of the National EIA Committee, chairman of the Committee on the Preparation of State of the Environment Report for Thailand, and member of the National Audit Committee. Mr. Onchan is on many editorial boards, among them the Asian Journal of Agricultural Economics and the International Review for Environmental Strategies. He has consulted for a number of

international organizations, including the Asian Productivity Organization, ESCAP, the World Bank, the Asian Development Bank, the Food and Agriculture Organization, the International Labor Organization, USAID and the Ford Foundation. He has been project director of over thirty research projects and author or co-author of numerous technical and research papers on rural development, natural resources and environmental management. Currently, he serves in several capacities: chairman of the Board of Directors of the MERI, member of National Research Council for economics, and a director of the International Global Environment Strategy (IGES) based in Japan. Mr. Onchan was appointed as eminent person to serve as a member of the Asia and Pacific Forum for Environment and Development (APFED).

Mr. Werner Kiene was appointed to the Panel in November 2004. He holds a Masters of Science degree and a Ph.D. in Agricultural Economics from Michigan State University. He has held leadership positions with the Ford Foundation and German Development Assistance. In 1994, Mr. Kiene became the founding Director of the Office of Evaluation of the United Nations World Food Programme (UN WFP). He was the World Food Programme Country Director for Bangladesh from 1998 through 2000 and also served as UN Resident Coordinator during this period. From 2000 to 2004 he was a Representative of the UN WFP in Washington, D.C. Mr. Kiene's focus has been on the design, implementation and assessment of sustainable development initiatives. His professional writings have dealt with issues of rural poverty and social services delivery; food security, agricultural and regional development; emergency support and humanitarian assistance; international trade and international relations. Mr. Kiene is involved in professional organizations such as the American Evaluation Association; the Society for International Development; the American Association for the Advancement of Science; and the International Agriculture Economics Association.

Consultants

Mitsuo Ichikawa received a BA and Ph. D. in Anthropology from Kyoto University. Since 1974, he has been carrying out anthropological studies on various hunter-gatherer groups in Central and East Africa, including the Mbuti and Efe in DRC, Aka in Congo-Brazzaville, Baka in Cameroon, and Dorobo in East Africa, as well as fishing peoples in Bangweulu Swamps in Zambia and slash-and-burn cultivators in DRC and Cameroon. He has been teaching anthropology and African area studies at Kyoto University since 1978, as assistant professor from 1978 to 1982, as lecturer from 1982 to 1986, and as professor in 1996, and appointed as Dean of the Graduate School of Asian and African Area Studies from 2004 to 2006. He was elected the President of the Japanese Society of Ecological Anthropology in 2006.

Ralph Schmidt received a BA and Master of Forest Science Degree from Yale University. He worked in FAO (Rome) and in UNDP (New York) managing forest programs from 1986 through 2001, becoming Director of Forest Programs at UNDP after

1995. Prior to that he served as Chief of the Puerto Rico Forest Service, and researcher and botanist at the US Institute of Tropical Forestry in Puerto Rico. From 2002 through 2006 he was CEO of the Candlewood Timber Group which owns and manages Forest Stewardship Council certified forests in northwest Argentina. He also served as a Peace Corps Volunteer in rural Colombia in 1970 and 71. He has worked on forest issues in over 50 countries on six continents.

Paul Michael Taylor holds a Ph.D. in Anthropology from Yale University, 1980. Mr. Taylor is a cultural anthropologist based in Arlington, Virginia. He has produced four books and numerous scholarly publications on the ethnography, ethnobiology, and languages of Asia, especially Indonesia. He has also curated seventeen museum exhibitions and served as anthropological consultant for five films. The recipient of numerous international grants and awards, he has served on the Board of Directors of the Association for Asian Studies, and currently serves on the Advisory Board of the U.S.-Indonesia Society. His research on rural social and ecological issues has included living for over three years in rural village or tribal communities of Southeast Asia. Dr. Taylor served as senior consultant for social and resettlement issues on Inspection Panel investigations in China (Qinghai), Paraguay, and Cambodia; and assisted with the Inspection Panel investigation in the Democratic Republic of Congo. He served while on leave from his position as research anthropologist and Director of the Asian Cultural History Program (Department of Anthropology), Smithsonian Institution.