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**MANAGEMENT REPORT AND RECOMMENDATION
IN RESPONSE TO THE
INSPECTION PANEL INVESTIGATION REPORT**

DEMOCRATIC REPUBLIC OF CONGO

**TRANSITIONAL SUPPORT FOR ECONOMIC RECOVERY GRANT (IDA
GRANT NO. H 1920-DRC) AND
EMERGENCY ECONOMIC AND SOCIAL REUNIFICATION
SUPPORT PROJECT
(CREDIT NO. 3824-DRC AND GRANT NO. H 064-DRC)**

November 5, 2007

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OF THE
DEMOCRATIC REPUBLIC OF CONGO
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Pursuant to paragraph 23 of the Resolution Establishing the Inspection Panel (IBRD Resolution 93-10 and IDA Resolution 93-6), attached for consideration by Executive Directors is Management's Report and Recommendation in response to the findings set out in the Investigation Report No. 40746-ZR dated August 31, 2007, of the Inspection Panel on the captioned Projects (Transitional Support for Economic Recovery Grant (IDA Grant No. H 1920-DRC, and Emergency Economic and Social Reunification Support Project (Credit No. 3824-DRC and Grant No. H 064-DRC).

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ABBREVIATIONS AND ACRONYMS

AFCC2	Africa Region Country Unit for DRC
AFR	Africa Region
AFREX	Africa Region External Affairs
AFTCS	Africa Region Fragile States, Conflict and Social Development
AFTEN	Africa Region Environment and Natural Resources Unit
AFTQK	Africa Region Operational Quality and Knowledge Services
BCECO	Central Bureau of Coordination
BP	Bank Procedures
CARPE	Central African Regional Program for the Environment
CAS	Country Assistance Strategy
CRON	Coalition of NGO Networks
DfID	Department for International Development (United Kingdom)
DPL	Development Policy Loan
DRC	Democratic Republic of Congo
EA	Environmental Assessment
EESRSP	Emergency Economic and Social Reunification Support Project
ESMF	Environmental and Social Management Framework
ESMP	Environmental and Social Management Plan
FY	Fiscal year
GEF	Global Environment Facility
HIPC	Highly Indebted Poor Countries
IDA	International Development Association
IPDP	Indigenous Peoples Development Plan
IPN	Inspection Panel
MDTF	Multi-Donor Trust Fund
NGO	Nongovernmental organization
NPV	Net Present Value
OD	Operational Directive
OP	Operational Policy
OPN	Operational Policy Note
PFZP	Pilot Forest Zoning Plan
PRSP	Poverty Reduction Strategy Paper
RAP	Resettlement Action Plan
RN	Route nationale
RPF	Resettlement Policy Framework
SDR	Special Drawing Rights
SNV	Netherlands Development Organization
TORs	Terms of Reference
TSERO	Transitional Support for Economic Recovery Credit
TSS	Transitional Support Strategy
UCOP	Project Coordination Unit
UN	United Nations
USD	US Dollars

LIST OF OPERATIONAL POLICIES, OPERATIONAL DIRECTIVES, OPERATIONAL MANUAL STATEMENTS, AND OPERATIONAL POLICY NOTES

OP/BP 4.01, Environmental Assessment, January 1999

OP/BP 4.04, Natural Habitats, June 2001

OP/BP 4.12, Involuntary Resettlement, December 2001 (Revised April 2004)

OD 4.15, Poverty Reduction, December 1991

OD 4.20, Indigenous Peoples, September 1991

OP/BP 4.36, Forestry, November 2002

OP/BP 8.50, Emergency Recovery Assistance, August 1995

OP/BP 8.60, Development Policy Lending, August 2004

OPN 11.03, Management of Cultural Property in Bank-financed Projects, September 1986

OP/BP 13.05, Supervision, July 2001

I. INTRODUCTION

1. On December 1, 2005, the Inspection Panel registered a Request for Inspection, IPN Request RQ05/2 (hereafter referred to as “the Request”), concerning the Democratic Republic of Congo (DRC) for two operations financed by the International Development Association (IDA):

- Emergency Economic and Social Reunification Support Project (EESRSP, hereafter referred to as “the Emergency Recovery Project”, Credit No. 3824-DRC and Grant No. H 064-DRC, approved in September 2003); and
- Transitional Support for Economic Recovery Credit (TSERO, hereafter referred to as “the Development Policy Operation”, approved in December 2005).

2. The Request 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 local communities living in the DRC (hereafter referred to as the “Requesters”). The Executive Directors and the President of IDA were notified by the Panel of receipt of the Request. The Management responded to the claims in the Request on January 13, 2006. In its Report to the Board, the Panel found the Request eligible and recommended that the Executive Directors authorize an investigation. The investigation was authorized on February 28, 2006. On August 31, 2007, the Panel issued its report outlining the findings of the investigation.

II. BACKGROUND

A. THE POST-CONFLICT ENVIRONMENT IN DRC

3. DRC is gradually emerging from a decade of political instability and conflict that left its institutions and infrastructure in shambles. War and civil disturbance, compounded by the sequels of a long period of economic mismanagement and corruption, have taken a heavy toll on DRC and its 65 million people. Per capita income declined from about USD 380 in 1985 to USD 120 in 2005 making DRC one of the poorest countries in the world, with social indicators among the worst in Africa.

4. Peace is being gradually reestablished since the 1999 Lusaka Agreement. A United Nations (UN) peace-keeping force was deployed throughout the country in 2002, and withdrawal of foreign troops was completed by the end of 2002. In June 2003, negotiations between the Government, armed groups, political opposition, and civil society culminated in an agreement on a power-sharing arrangement with four vice-presidents from the previously fighting factions, for a transition period that lasted from July 2003 to June 2006.

5. Despite formidable logistical challenges and localized, if intense, episodes of violence, general elections, the first in the country’s history, took place in July and October 2006. Joseph Kabila was elected as president with 58 percent of the vote. Parliament and Government have been in place since early 2007.

6. On the economic front, since 2001, the Government has implemented a program of economic reforms supported by the World Bank and the IMF, as well as other development partners. The Bank's support included three Economic Recovery operations, and the IMF's support included a Poverty Reduction and Growth Facility from July 2002 to June 2006 and three Staff Monitored Programs, the most recent covering April to December 2007. Structural reforms have been launched in various areas such as economic governance, public expenditure management, as well as the mining and forestry sectors. After two decades of decline, economic growth returned in 2003 and is currently averaging about 6 percent per year. Inflation remains largely contained, although it spiked in the period leading to the 2006 elections. The DRC reached its HIPC Decision Point in 2003 (with a total relief estimated at USD 6.3 billion for a total stock of outstanding external debt estimated at USD 7.9 billion in NPV terms).

7. Economic recovery has opened up a window of opportunity for peace and stability, which if secured, could have a positive effect on the entire Central African sub-region. The Government has expressed its commitment to a successful process of peace and economic and social recovery. In this context, the Government has a three-fold agenda: (i) to keep the economic reform program on track, particularly with regard to transparency in the use of public finances and the management of natural resources, (ii) to restore institutional unity while allowing for needed decentralization, and (iii) to provide rapid financial support in the eastern and northern parts of the country with a view to attaining social stability and generating a peace dividend.

8. Donor response to the post-conflict economic recovery was discussed in December 2002 in the context of a Consultative Group meeting, where a consensus emerged on the need to facilitate the process of economic recovery and social reunification of DRC. Donors adopted a priority, four-part agenda to support DRC's strategy of: (i) helping restore sound economic governance and ensuring that reforms already undertaken by the Government were implemented throughout the country including in the area of natural resources management; (ii) mitigating the fiscal cost of reunification; (iii) supporting rehabilitation of essential infrastructure and the restoration of social services in eastern and northern areas; and (iv) assisting in demobilization and reintegration of former combatants within the context of the Multi-Country Demobilization and Reintegration Program. Government and other donors called on the Bank to commit resources that could contribute to stabilizing the economic and social situation in the eastern and other provinces. The Government expressed its concern that, in the absence of substantial and rapid external assistance, the situation in reunified provinces might severely deteriorate. There was widespread consensus that failure to consolidate peace would result in a continued humanitarian crisis and further exacerbate insecurity, resulting in a new outbreak of war.

B. THE BANK'S TRANSITIONAL SUPPORT STRATEGY FOR DRC

9. The Bank's Transitional Support Strategy (TSS) (2004-2006), was designed to help consolidate the transition and restore the foundations for effective poverty reduction efforts. In particular, the TSS supported four strategic elements: (i) social stability and security with a focus on demobilization and reintegration of former combatants, (ii) high and shared economic growth with a focus on improving macroeconomic and public management, infrastructure reconstruction, private sector development, natural resources management, and rural

development; (iii) governance and institutional strengthening with a focus on reunification of the country and decentralization of institutions, targeted institutional strengthening, judicial reform, and improved transparency; and (iv) social development, with a focus on HIV/AIDS, key social sectors, urban living conditions, and social protection.

10. The Emergency Recovery Project, approved in September 2003, had objectives that supported the TSS objectives. The Development Policy Operation, approved in December 2005, was also designed to support TSS objectives, notably to help maintain peace and macroeconomic stability, consolidate previous policy achievements since 2002 – including in mining and forestry sectors – and tackle the primary challenge of jump-starting economic growth in a post-conflict setting. The two operations were also complementary to other programs in the Bank-financed portfolio since its re-engagement in 2001 (currently the portfolio stands at about USD 2.0 billion).

11. Implementation of these two projects, as for the rest of the portfolio, has been challenging in a country with considerable logistical and institutional challenges. Fiduciary risks are high, in an environment still rife with corruption. Logistical challenges are extraordinary, especially for projects implemented outside of Kinshasa, where infrastructure and institutions are often non-existent. The challenges of dealing with a country where human rights violations continue – not only against vulnerable groups such as the Pygmies but all parts of Congolese society – are enormous.

C. THE BANK'S SUPPORT TO THE FOREST SECTOR IN DRC

12. Since the focus of the Inspection Panel is largely on the compliance of the Bank's forest work under the Emergency Recovery Project and the Development Policy Operation with Bank policies, the following paragraphs summarize the Bank's support to the forest sector in DRC.

13. With about 86 million hectares, the DRC has the second largest rainforest in the world. These forests make a critical contribution to the livelihoods of about 40 million people, who are among the world's poorest, by providing food, medicine, domestic energy, building materials, and cash income. These forests also have unique value as a biodiversity reservoir and fulfill vital public goods functions by storing carbon on a global scale.

14. As described above, the DRC's forests have been managed poorly in the past, and have yielded few benefits to the Congolese people as a whole. At the time of Bank re-engagement in 2001, the majority of the country's rainforests were already allocated in the form of 285 industrial logging contracts with little or no regard for issues of transparency, local consultation, or compensation for local people. No provision was made for environmental protection, and no consideration given to alternative uses. These concessions covered about 43 million hectares – almost twice the size of the United Kingdom. They overlapped with villages, agricultural lands, biodiversity hotspots and swamps, carried the seeds of new conflicts, deprived communities of the right to manage their own forests, and made it difficult to extend protected areas and to develop non-extractive forest uses. There was no legal provision for meaningful participation of local communities. Although the war and poor state of infrastructure had reduced timber production to minimum levels, requests for new logging titles kept pouring in as rent seekers prepared for the resumption of operations which peace and

new infrastructure would make possible. In the absence of radically innovative policy actions, such a situation was clearly conducive to unsustainable logging, and further social, environmental and economic losses.

15. In the post-conflict emergency context of 2002, forests were not considered an obvious priority in DRC by many parties, national or international. However, drawing on technical work done by the FAO and others on forests in Congo Basin countries, the Bank decided to include this sector as a priority in its early dialogue and operations. In line with its new 2002 Forest Policy and Strategy and recognizing the fundamental nature of the challenges at hand, the Bank helped the Government design a Priority Reform Agenda aimed at overcoming the legacy of forest mismanagement and laying the foundation for more sustainable and equitable forest models.

Box 1: Key Items of the Priority Forestry Reform Agenda supported by the Bank since 2002: Achievements and Future Actions

Key items of the DRC Priority Forestry Reform Agenda undertaken by the Government since 2002 with Bank support are as follows. The detailed Agenda is presented in Annex 2.

- *Removing the legacy of past concessions.* 25 million hectares of non-compliant concessions canceled in 2002. Legal Review of all remaining concessions underway with participation by an Independent Observer (World Resources Institute). Introduces new standards of transparency and civil society participation in natural resources management in DRC.
- *Establishing a moratorium on new concessions.* Ministerial regulation in 2002. Reportedly breached on several occasions in 2003-2005. Strengthened and extended as Presidential Decree in 2005. Bank advice that the moratorium should be maintained until satisfactory governance and management standards are achieved in existing concessions. Provides space and time to implement innovative models based on carbon and conservation contracts.
- *Increasing the annual forest fee to encourage the return of speculative concessions to the public domain.* Achieved through a comprehensive forest taxation reform enacted in 2004. Under implementation.
- *Enacting a new legal framework.* Colonial rules of 1949 replaced with a new Forest Code in 2002: protects the traditional rights of local people, introduces the principles of community management of forests, management plans, benefit-sharing at local levels, conservation concessions and environmental services, and calls for expansion of protected areas.
- *Establishing independent monitoring to help detect illegal logging,* and restoring basic enforcement capacity in the field. Scoping mission completed by Global Witness. Government commitment for a long-term assignment.

16. Launched in the wake of the war, in a country with no roads and dislocated institutions, this agenda was designed to be both selective and pragmatic. It focused on basic governance and public participation, and aimed at protecting forests from appropriation by powerful interests for private gain. It called for placing on hold the allocation of new logging concessions; for canceling large areas of non-compliant concessions; and for introducing more stringent social and environmental safeguards in remaining ones. In working with the DRC on the Priority Reform Agenda, the Bank did not, in any way, support the expansion of logging in DRC. All of the Bank's actions, policy dialogue and outreach have been aimed at controlling this activity and curtailing the potential for unregulated expansion, protecting forests and forest

peoples' rights, enhancing public participation, and opening the way to alternative uses of forests.

17. In this framework, in 2002, about 25 million hectares of illegal or expired concessions were canceled and a moratorium on new concessions was established. However, with the political transition process, five consecutive Ministers of Environment came into office in five years, with uneven levels of commitment to the reform agenda. As a result, some concessions were exchanged, awarded or reinstated, despite the moratorium.¹ In October 2005, President Kabila issued a decree that strengthened and extended the moratorium, and launched a third-party assisted Legal Review of all remaining contracts, including those awarded in breach of the moratorium.. Overall, the total area under logging contracts in DRC today is estimated to be about 21 million hectares, down from 43 million hectares in 2002. This means that 22 million hectares of concessions were freed from previously existing logging contracts and made available for participatory zoning and alternative forest uses. The 1949 colonial forest code was replaced with a new Forest Code (2002) which protects the traditional rights of local communities and introducing the principles of community forests, sustainable management plans, and conservation concessions, among others.

18. In applying its 2002 Forest Strategy to the context of DRC, the Bank noted that a gradual post-conflict expansion of logging was likely being driven by increased security and improved infrastructure and concluded in discussion with the authorities and other interested parties that urgent action was needed to regulate this sector and prevent further social and environmental damage. The Bank and other partners also emphasized that despite the risks, post-conflict DRC also provided a unique opportunity to promote new forest models and that radical policy innovations were needed in this regard. However, there was consensus that unless the legacy of past mismanagement was overcome, the benefits accruing from implementation of new forest management models would remain marginal at best.

19. DRC's forests and environment have enjoyed high level attention since the beginning of its re-engagement. From 2002 to the present, Vice Presidents and Presidents Wolfensohn (2004) and Wolfowitz (2007), engaged personally in the debate on forests with DRC Government and with civil society. President Kabila initiated the Priority Agenda in 2002, and personally intervened in 2005 to counter initiatives taken by the then Minister of Environment which threatened the reform process.

20. The Bank's support to the DRC forest agenda facilitated the emergence of a coalition of donors (comprised of the European Commission, Belgium, France, Germany, Luxembourg, United Kingdom, and the United States, among others) as well as international and national nongovernmental organizations (NGOs) familiar with and supportive of the DRC forest reform agenda. This agenda has gained wide recognition at the international level, and has been the focus of events organized in Kinshasa, Brussels and Washington DC (see Annex 6 and 9) that have featured broad civil society participation, including Pygmy representatives.

¹ Based on available information, the gross volume of concession exchanges and awards between 2002 and 2005 is estimated to be 15 million hectares, and the net difference between the total area under contracts in 2002 and 2005 appears to be 2.4 million hectares. 2.7 million hectares allocated after the 2005 Presidential decree were cancelled in April 2007. The 2002 ministerial regulation on the moratorium was published in the *Journal Officiel* in 2004.

21. Between 2002 and now, the Bank's support to the Priority Agenda has been primarily in the form of policy dialogue, studies, workshops, analytical work and field assessments financed through multi-sector emergency operations and trust funds. In 2002, through the First Emergency Recovery Credit, and again in 2005, through the Development Policy Operation, the Bank used development policy financing to establish and, where necessary, reinforce political commitment, strengthening the hand of reformers and helping overcome inertia and resistance to reform.

22. The DRC Government's Poverty Reduction Strategy Paper (PRSP), published in July 2006 and endorsed by the new Government in February 2007, highlights forests as a key sector for reducing poverty, and integrates forest priorities into the country's overall sustainable development agenda. It endorses the Priority Reform Agenda for forests, and aims to foster transparency and law enforcement as key elements of good governance, ensure equitable access to forest resources and equitable sharing of benefits, and promote local development through community-based management and other mechanisms.

23. Bank assistance to the forest sector is gradually evolving to include building capacity on the ground, through: (i) the Multi-Donor Trust Fund (MDTF), supported by the European Commission, Belgium, France, Luxembourg, the United Kingdom, and Germany; (ii) an IDA grant for forest and environment; and (iii) a Global Environment Facility (GEF) grant for national parks. These three operations are being developed in the framework of a multi-donor sector program. See Annex 3 on the Bank's ongoing and planned forest work in DRC.

III. STATUS OF THE TWO PROJECTS UNDER INVESTIGATION

24. The Request for Investigation concerns the application of Bank policies and safeguards in the Emergency Recovery Project and the Development Policy Operation. Both projects are multi-sector operations. In substance, the Request focused on three forest-related activities and reforms included in the two projects:

- A Pilot Participatory Forest Zoning Activity: this component was dropped from the Emergency Recovery Project before implementation began and before the Request was received (see Section III.A);
- The Legal Review of existing logging concessions: the Development Policy Operation supported the Review at a policy level (see Section III.B), and the Emergency Recovery Project is financing an international Independent Observer of the Review (Section III.A); and
- The moratorium on new logging concessions: the Development Policy Operation supported this at a policy level (Section III.B).

25. These three activities represent about 2 percent of the Emergency Recovery Project financing, and two of the nine prior actions (conditions that need to be met before the operation is negotiated and disbursed) of the Development Policy Operation.

A. THE EMERGENCY RECOVERY PROJECT

26. The IDA Credit of SDR 117.0 million (USD 164 million equivalent) and Grant of SDR 35.7 million (USD 50 million equivalent) were approved on September 11, 2003. The project became effective on December 5, 2003. Activities financed under the project are expected to be completed by March 31, 2008 and the Credit and Grant are expected to close on September 30, 2008. As of September 2007, the entire Credit had been disbursed. A total of USD 109 million (62 percent of the project) has been disbursed out of the operation. The overall project development objectives are to assist the Government in the process of economic and social reunification. The project consists of five components:²

- Component 1. Balance of Payments Support (USD 50 million);
- Component 2. Institutional Strengthening (USD 15 million),
- Component 3. Infrastructure Rehabilitation (USD 90 million),
- Component 4. Urban Rehabilitation (USD 30 million); and
- Component 5. Community Empowerment (USD 10 million).

27. The Panel's report addresses Components 2 and 3:

- Component 2 on institutional strengthening includes five subcomponents: (i) restoring administrative capacity in reunified provinces; (ii) supporting the preparation of the PRSP; (iii) assisting forest institutions in reunified provinces; (iv) supporting the decentralization process; and (v) undertaking engineering studies for future rehabilitation projects.
- Component 3 supports the rehabilitation of two national roads, namely RN4 between Kisangani and Beni, and RN2 between Bukavu and Mbuji-Mayi, which link the eastern and western provinces of the country.

28. ***Forest Elements of the Emergency Recovery Project.*** The project included two forest-related activities, which were affected by the following developments:

- *The Pilot Participatory Forest Zoning Activity.* Terms of Reference (TORs) were prepared for this activity in 2004 (see Annex 4). However, in July 2005, before the activity had commenced, the Bank recommended, and the Government agreed, to drop this activity from the project. The main reasons for dropping it related to the complexity of the envisaged activities and Government commitment to their success. The activities would have required greater commitment from the new Minister of Environment to basic governance reforms initially designed with his predecessor, and collaborating with NGOs operating in the pilot region as initially agreed upon. They would also have required more dedicated Bank supervision of that particular subcomponent (equivalent to 2 percent of project financing) than had been envisaged under the multi-sector Emergency Recovery Project. The Bank and Government agreed that this activity would better fit within a future sector-specific operation now in preparation and expected to be presented for Board approval in FY09. Meanwhile, since 2005, the Bank has continued to stress the importance of participatory multi-purpose forest zoning, to work with the Government and other stakeholders to build

² In addition, the project includes USD 5 million for implementation costs and USD 14 million for contingencies.

consensus and to support the policy foundations that make participatory zoning possible, such as the moratorium on new concessions and the cancellation of illegal concessions.

- *The Legal Review of Logging Concessions.* The project was to finance an international Independent Observer to assist the Government in reviewing the legality of all concessions granted before the 2002 Forest Code and those allocated or exchanged (“swapped”) after 2002. The expected outcomes of the Legal Review of existing concessions are as follows: (i) concession contracts found in breach of their own terms or in non-compliance with then existing laws and regulations will be canceled; (ii) concession contracts found to be compliant will be converted into a new format consistent with the 2002 Forest Code, which includes more stringent social and environmental obligations. Criteria and procedures for this Legal Review, and TORs for the Independent Observer, were prepared and agreed upon in 2003. However, in 2004, it became clear that the Legal Review process was undermined by a lack of commitment from the new Minister of Environment and the inability of the transition Government to overcome this inertia. A ministerial decree of November 2004 modified the criteria and procedures that had been agreed upon, and made the Independent Observer optional. Donors shared their concern in a joint letter to the Government in March 2005, as did several international and national NGOs. In September 2005, the Bank used leverage afforded by the Development Policy Operation to encourage the highest level authorities to remedy the situation. In October 2005, President Kabila issued a Presidential Decree (See Annex 5) that reinstated the initially agreed-upon criteria and procedures, restored the full mandate of the Independent Observer, and strengthened the moratorium initially established in 2002. The Legal Review was launched in November 2005, when the Independent Observer was recruited (The World Resources Institute), and the list of all existing concessions was published in the press (See paragraphs 32 and 34).

29. *Safeguard Policies.* The Emergency Recovery Project was prepared in accordance with OP 8.50 on Emergency Recovery Assistance, under which the required safeguard instruments may be prepared during appraisal or implementation. At the time of preparation, the project was classified as Category B for environmental assessment. The safeguards review process concluded that: (i) an Environmental Assessment (EA) and a Resettlement Policy Framework (RPF) should be prepared for the Infrastructure Rehabilitation component (Component 3); (ii) an Environmental and Social Management Framework (ESMF) should be prepared for the Urban Rehabilitation and the Community Empowerment components (Components 4 and 5) because the sites of the various sub-projects were not fully known at the time; and (iii) the Balance of Payments Support and Institutional Strengthening components (Components 1 and 2) did not require the preparation of safeguard instruments in keeping with the regular practice for budgetary and institutional support projects.

30. The safeguard policies triggered were OP/BP 4.01, Environmental Assessment, OP/BP 4.12, Involuntary Resettlement, and OP 4.36, Forestry. In line with OP 8.50 on Emergency Recovery Assistance, the agreed deadline for completion of the EA, ESMF and RPF was 12 months after effectiveness, i.e., December 5, 2004. However, because of delays in the procurement process, as well as in preparation of TORs and in project coordination, and with complex project implementation arrangements in a context of generally weak institutions, the

safeguard documents were received in draft a year later, in December 2005 (see paragraph 33 for more details). In order to mitigate the consequences of such delay, the team requested the Borrower to apply the environmental clauses from an earlier ESMF, and the RPF prepared for the Emergency Multi-sector Rehabilitation and Reconstruction Project, as this was financing similar types of activities in the western part of the country. These environmental clauses, common to any country, were made an integral part of contractors' contracts financed under the project. The RPF is a framework applicable to any road project in DRC. The use of existing environmental clauses and RPF was considered a temporary measure to avoid negative impacts to people and the environment during construction until the specific project EA and Resettlement Action Plans (RAPs) were finalized. The Borrower complied with this request.

31. The EA finding most relevant to this Request regards the presence of a community of non-nomadic Pygmies in the vicinity of Mambasa, a village along a segment of RN4. Accordingly, OD 4.20, Indigenous Peoples, was then triggered, and an Indigenous Peoples Development Plan (IPDP) was prepared before road rehabilitation began in that area. The EA, ESMF and RPF were disclosed in DRC and at the Bank InfoShop in March and April 2006. Copies were disseminated to NGOs, academics, Pygmy associations, and news agencies, etc. An Environmental and Social Management Plan (ESMP) is being implemented. RAPs for affected people have been completed. The project provides support to the *Institut Congolais de Conservation de la Nature* to protect the Okapi Reserve. Following an assessment made by the March 2007 supervision mission concerning the Project Coordination Unit's (UCOP) capacity to manage environmental and social issues, an international consulting firm is being recruited to provide technical assistance and help manage implementation of the ESMP.

32. With regard to the two forest elements of the project, the situation is as follows:

- *Pilot Participatory Forest Zoning*. As stated before, this activity, which was part of Component 2 of the Project, was dropped before it started and before the Request was received. Consistent with regular practice for capacity-building projects, OP 4.01 was not triggered for Component 2 during the safeguards review process. However, the design of the PFZP included the requirements to comply with OP 4.01 in substance, including studies, consultations, disclosure, consideration of alternatives, and collection of baseline data³ (see Annex 4).

³ Quotes from the TORs for the Pilot Participatory Forest Zoning Activity:

- With regard to Consultation: *“The focus of this operation is on the animation of a living process of collective reflection and collaboration within Congolese society and with the international partners ... to prepare decisions that take into account the views of all actors.”*; *“Special attention will be given to the consultation of pygmy groups while taking into account the particularities of their nomadic or semi-nomadic life style”*; *“Whatever the case, priority will be given to the quality of the land use planning and participatory process rather than on the maximization of area covered”*; *“...ensure that the various stakeholders are consulted and have the possibility to contribute their knowledge and can assert their rights, wishes and constraints”*; *“The team in charge of the activity must maintain a participative process from the beginning on and all along the way up to the end.”*
- With regard to Indigenous Peoples: *“A very good and as refined as possible understanding needs to be acquired and assembled on the dynamics of the use of the forest by indigenous peoples, and in particular the pygmies, that have a non-sedentary way of life. These particular dynamics will be taken into account in the zoning scenario's, by showing to what extent the fact of attributing a priority (but not exclusive) land use objective (like protected area, or sustainable forest management concession) is compatible with the respect*

- *Legal Review.* A Consultation Protocol has been prepared to ensure full participation of all concerned local communities, especially the Indigenous Peoples, in the Legal Review. The Protocol is being implemented by a Coalition of NGO Networks (CRON), which includes Indigenous Peoples organizations and is supported by the project as well as by the US-funded Central African Regional Program for the Environment (CARPE) and the Dutch bilateral SNV. This work, combined with the Bank's dialogue with the DRC Government, led to allocating two seats (one rotating and one permanent⁴) for Indigenous Peoples representatives in the Inter-ministerial Committee. It also led to identifying the 111 local representatives (14 of whom represent Indigenous Peoples) who will come to Kinshasa to review the concession contracts involving their respective communities and regions within the Committee. The identification of additional local representatives, including from Pygmy groups, is still underway.⁵ Local representatives will be provided with comprehensive and accessible information to enable them to participate fully in the review. This work is being supported by the Emergency Recovery Project.

33. ***Implementation and Supervision.*** The project is being implemented by UCOP in the Ministry of Planning. This Unit is supervised by a High-Level Oversight Committee, which includes representatives of the Ministers of Finance, Budget, Planning, and Public Works and the Office of the President. Procurement is delegated to the Central Bureau of Coordination (BCECO), a government entity. Since project approval in September 2003, there have been seven supervision missions in addition to the mid-term review in June 2006. During the extended election period from July 2006 to January 2007, and again in March/April 2007, all Bank missions to DRC were suspended, although videoconferences were organized to ensure some monitoring of project implementation. On three occasions after the 2006 mid-term review, Bank safeguard specialists traveled to DRC, including to the project sites, and assisted the project unit in launching and monitoring the social and environmental aspects of the project, including Components 2 and 3. Supervision of the forest Legal Review was intense and took place in the framework of the forest sector dialogue so as to ensure consistency with the other elements of the forest reform agenda. Since 2004, on average, there have been five forest sector missions to DRC per year, including nine field visits to the provinces of Equateur, Orientale, and North Kivu, with mission members having legal, social, Indigenous Peoples,

for the traditional rights and the way of life of these peoples, and by showing how the land use planning process can help to secure the exercise of these rights.”

- With regard to Baseline Data: *“Acquisition of detailed understanding of the challenges linked to land rights and local agricultural dynamics, of the use of the forest by different ethnic groups – and in particular the pygmy groups, of the customs related to access to land and land rights, and customary use rights.”;*
- With regard to Consideration for Alternative Uses and Options: *“...propose and simulate zoning scenario's that contain solutions to restore coherence in the use of forest lands and that secure the rights and responsibilities of the different actors, and that show priority attributions as well as alternatives” – see also specific sections on nature conservation and community forests in the TORs.*
- With regard to disclosure: *“The consultant will produce and assist the Ministry to diffuse the necessary communication and vulgarization supports to ensure sound comprehension of the zoning process and its results, before, during and after the operation. The final land use planning products will be made accessible to the public, on the website of the Ministry and by multiplication and distribution of maps.”*

⁴ In total, the Committee will include five representatives of civil society: two from NGOs, one from local communities, and two from Indigenous Peoples.

⁵ The Legal Review covers a total of 156 concessions. Local representatives have been identified for 114 concessions, and the identification of local representatives for the remaining 42 concessions is underway.

environmental, and safeguard expertise. A forest expert was recruited in Kinshasa to ensure daily monitoring of the forest and agriculture program. In addition, the Legal Review was discussed with the DRC delegation during their visits to Washington for the Annual and Spring Meetings.

34. ***Current Status of the Emergency Recovery Project.*** The project is currently rated as Satisfactory for project objectives and implementation. The following is an update on the status of the two project components relevant to the Inspection:

- *Component 2 – Institutional Strengthening* (USD 15 million), which is to support national institutions, is being implemented satisfactorily. The majority of the activities identified have been implemented. Only two activities out of 26 have not been implemented, namely: (i) the forestry zoning; and (ii) improvement in the coordination of external resources. Twelve activities have been completed and the production of the PRSP is one of the major achievements of this component, along with the ongoing support to the Legal Review in the forest sector, improvements the procurement sector, and computerization of the debt sector.

Several activities have been delayed, mainly due to the 2006 elections, to political difficulties in making the new institutions operational, and to field challenges. The draft procurement code is still to be approved and promulgated. Computerization of country debt has yet to occur.

The pilot participatory zoning activity was dropped as explained in paragraph 32.

The Legal Review is being conducted in accordance with the steps and procedures defined in the Presidential Decree (See Annex 5), although with significant delays due mostly to the Presidential and legislative elections of 2006, and logistical challenges in the field. Field and desk verifications have been completed with the participation of the International Observer, the World Resources Institute. Quarterly progress reports have been disclosed and key issues identified have been acted on, such as providing additional funding for field work. CRON has identified over half of the local communities' representatives who will participate in the committee, and additional resources have been mobilized to enable CRON to complete this work for the remaining 42 concessions. The decree designating members of the Inter-ministerial Committee was submitted for the Prime Minister's signature in September 2007.⁶

- *Component 3 – Road Rehabilitation* (USD 90 million) is aimed at rehabilitating 1,770 kilometers of the interurban road network and is rated moderately satisfactory. The roads include RN4 (the 750 kilometers between Kisangani–Beni divided in two sections, Kisangani–Nia-Nia (340 kilometers) and Nia-Nia–Beni (410 kilometers); RN2 from Bukavu to Mbuji Mayi (1,020 kilometers with two sections: Mbuji Mayi–Kasongo (524 kilometers) and Kasongo–Bukavu (496 kilometers); and RN1 (Pont

⁶ A Presidential decree to nominate the members of the Committee was signed in November 2006 immediately after the elections. However, this decree needs to be updated, given the institutional set up of the new Constitution. The new Prime Ministerial decree will also extend the timeframe allowed for completing the Legal Review.

Mpozo–Matadi, 8 asphalted kilometers already completed since October 2006). Slow implementation from the beginning was linked to huge logistical issues associated with the remote locations of project sites and lack of transportation facilities, compounded by poor security conditions and poor organization of the contractor. As of today, 551 kilometers (31 percent of the component) have been completed and the sections of the roads are open to traffic. Traffic has picked up in these sections and the flow of goods and services between the villages and the main urban centers is increasing. Completion of the Nia-Nia–Beni section in March 2008 will directly benefit about 480,000 people living in the 57 villages that the road crosses.

The quality of the roads is good and, in all the completed sections, vehicles can travel 70 kilometers per hour. The main challenge faced under this component is the cost overrun that will have an impact on the scope of the component. The section of road from Kisangani to Beni has a revised completion date of December 2007, and will have a cost overrun that can be covered by the unallocated portion of the credit. The section of the road between Mbuji Mayi and Bukavu is more problematic. The estimated overrun for this project is large and one of the two contractors responsible for carrying out the works is not performing well. Rather than extend the contract, completion of this section will need to be considered under a future project.

B. THE DEVELOPMENT POLICY OPERATION

35. The IDA single tranche Grant of SDR 62.1 million (USD 90 million equivalent) was approved on December 8, 2005. The Grant became effective on December 27, 2005 and was disbursed on December 29, 2005. The Grant supported selected strategic targets of the TSS, approved by the Board in February 2004, including the Government's reform programs in public finance management, in the mining, forests, education, health and forest sectors.

36. ***Implementation and Supervision.*** This single-tranche Development Policy Operation included nine prior actions and seventeen indicators of progress against which implementation progress continues to be measured, and which were expected to have become prior actions for a subsequent budget support operation. The Ministry of Finance implemented this operation in coordination with the concerned line ministries. Supervision of the forest conditions and indicators took place in the context of the overall country and forest sector dialogue, so as to ensure synergy with the other elements of the forest reform agenda. Supervision was supported by Management's continued dialogue with high-level authorities in Kinshasa and Washington, as well as by links with the Emergency Project and its on-site supervision.

37. ***Forest Elements of the Development Policy Operation.*** This operation included two forest-related conditions (out of nine); and five forest-related progress indicators (out of seventeen), set out in Box 2 below. Current status and next steps for each condition and indicator are shown in Annex 2.

Box 2: Forest-related Triggers and Indicators of Progress of the Development Policy Operation

The two forest-related prior actions met in November 2005 were:

1. *Launch of the Legal Review of forest concessions*, i.e., (i) publication in the Official Journal of a Presidential Decree with clear criteria and transparent and non-discretionary procedures; (ii) publication of the list of all existing concessions jointly by Ministries of Environment and Finance; (iii) recruitment of the Independent Observer to assist the Legal Review;
2. *Extension of the 2002 forest moratorium on new logging concessions* by publication in the Official Journal of a Presidential Decree (the same decree as the one mentioned above) stating that the moratorium will be maintained until: new auction procedures are adopted, Legal Review of existing concessions is completed, and a 3-year plan for future allocations is adopted based on a participatory process.

The five indicators of progress that are being monitored are:

1. *Continued observance of the moratorium on new forestry concessions.* 2.7 million hectares of concessions allocated after the 2005 Presidential decree were canceled in April 2007.
2. *Completion of the Legal Review* with the participation of an Independent Observer; including publication of the results; and cancellation of concessions found illegal – Ongoing.
3. *Recruitment of technical assistance/Independent Observer* to strengthen the capacity of the Ministry of Environment to enforce forest laws and detect illegal logging on the ground. Global Witness has carried out a scoping mission from July to October 2007. Government committed to make third-party forest monitoring a long-term assignment. Will be supported under the Multidonor Trust Fund and/or the IDA grant.
4. *Adoption of key implementation decrees* of the Forest Code – Six decrees and "arrêtés" have been submitted to the Prime Minister and Minister of Environment in 2007 following the consultative process led by FAO in support of the Ministry of the Environment.
5. *Continued implementation of the March 2004 fiscal reforms*, including the cancellation of concessions that do not comply with the area tax – Ongoing. Noncompliant concessions are included in the Legal Review. Bank advises conducting studies and consultations before making any change to the 2004 reform package.

38. The Development Policy Operation was prepared in accordance with OP 8.60 on Development Policy Lending. In the area of forests, the operation drew on forest analytical work undertaken by the Bank and others, such as the FAO, in collaboration with leading research centers and NGOs, circulated in draft at the Forest Forum in Kinshasa in November 2004. This report concluded that the Government agenda was adequate, emphasized the importance of the moratorium and the Legal Review, and highlighted setbacks that needed to be corrected, especially the breaches of the moratorium. From the Forum, a strong consensus emerged in support of the moratorium and the Legal Review, as evidenced by the Forum's final statement and by subsequent NGO statements (Annex 6). A Forest Sector Report on DRC, co-authored by 14 research centers, NGOs and the Bank, was finalized in 2007 (Annex 10).

39. The DPL supported the launch of the Legal Review, stalled for two years; and it strengthened the moratorium established in 2002 at ministerial level by transforming it into a Presidential decree. It helped mobilize the commitment of high-level decision-makers for improved sector governance and transparency in the forest sector. The operation also helped to consolidate forest reforms agreed in 2002 that were being challenged by individual initiatives that the new government was willing, albeit unable, to prevent. No funds were used for forest sector-specific investments. By supporting a strengthening of the moratorium, this operation is helping to prevent large forest areas of the DRC from being set aside for industrial logging. By

supporting the Legal Review and the rescinding of non-compliant concessions, it is helping to return large areas of forest to the public domain, and to open the way for participatory land use planning. By supporting an Independent Observer to the Legal Review, it is helping to introduce new transparency standards in the DRC natural resources sector.

40. As with other Bank-supported activities, the Legal Review has suffered delays since late 2005, mostly due to the 2006 elections and challenges to field-related activities. However, the Government's commitment to the Legal Review and to the moratorium has remained constant since the issuance of the Presidential Decree in October 2005. Progress on the Legal Review is presented in paragraphs 28, 32 and 34. The Government is also working towards achieving the progress described in Box 2 (For more details, see Annex 2).

IV. FINDINGS OF THE PANEL AND MANAGEMENT CLARIFICATIONS

A. FINDINGS OF THE PANEL WITH REGARD TO COMPLIANCE WITH BANK OPERATIONAL POLICIES

41. This section summarizes Management's understanding of the Panel's findings with regard to compliance with Bank operational policies. Detailed observations, concerns, and opinions expressed by the Panel are discussed in the Matrix (Annex 1).

42. *OP/BP 4.01 on Environmental Assessment.* The Panel finds that the failure to prepare an EA for Component 2 of the Emergency Recovery Project does not comply with OP 4.01. It also finds that the preparation and public distribution of the EA for Component 3 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. Finally, 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 this distorted the actual economic value of the country's forests.

43. *OP/BP 4.04 on Natural Habitats.* Until the time of the Request for Inspection, the Panel found very little evidence of attempts to involve local communities likely to be affected by the project. This does not comply with OP 4.04.

44. *OP/BP 4.12 on Involuntary Resettlement.* The Panels 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.

45. *OD 4.15 on Poverty Reduction.* The Panel finds that Component 2 of the Emergency Recovery Project is not consistent with the objective of this OD because it found evidence that the promised benefits to local communities from the forest concessions such as schools, clinics, and other facilities have not materialized.

46. *OD 4.20 on Indigenous Peoples.* 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; and that Management failed to identify the existence of

Pygmy communities in areas affected by the project. The Panel finds that Bank's failure to trigger OD 4.20 for Component 2 of the Emergency Recovery Project and to prepare an IPDP does not comply with OD 4.20. The Panel also commends the Bank for its efforts to encourage participation of Indigenous Peoples in the Legal Review process and notes that this is consistent with Bank policy.

47. *OP/BP 4.36 on Forests.* The Panel finds that 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. The Panel also notes the importance of the Bank's intervention, before the start of the Economic Recovery Project, to advise the Government to cancel concessions that were illegal or had expired, and it notes that this was consistent with the Bank's Forest Policy. The Panel notes that developing a good quality legal framework is a high priority and is consistent with Bank policy. The Panel further recognizes the Bank's efforts to establish the role of the Independent Observer of the Legal Review, which is consistent with Bank policy. Finally, 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-known international NGO study how to provide an independent monitoring capability for illegal logging, and it notes that this is consistent with Bank policy.

48. *OP 8.60 on Development Policy Lending.* The Panel finds that the Bank's determination that there were no significant environmental or social effects of the forest component of the Development Policy Operation is not consistent with the objective of Bank policies, especially when this component essentially carries forward a component of an investment project that was subject to full Bank safeguard policies.

49. *OPN 11.03 on Cultural Property.* The Panel finds that the Emergency Recovery Project did not comply with OPN 11.03 because project documents at design and appraisal did not identify cultural property and spiritual value of forest areas to Pygmy peoples or the appropriate measures to avoid impacts to areas that might fall within the definition of cultural property under Bank policy.

50. *OP/BP 13.05 on Supervision.* The Panel finds that the Bank's recognition of breaches of the moratorium and its responses in Aide-memoires through July 2005 were consistent with OP 13.05. However, the Panel also finds that Management apparently did not make timely follow-up efforts at a sufficiently high level to ensure necessary actions in response to its findings, and that none of the supervision documents after July 2005 refer to the "swaps" (of previous areas) or potential violations of the moratorium.

B. MANAGEMENT CLARIFICATIONS

51. Management concurs with a number of the Panel's findings, but wishes to clarify several issues. These are set out below, according to the applicable OP.

52. *Environmental Assessment.* Management agrees that with regard to the Emergency Recovery Project, the quality of the Bank's intervention in this case would have been enhanced

by triggering OP 4.01 and thus an EA should have been prepared for Component 2. Management also agrees that the EA for Component 3 was completed and distributed late. On Component 2, however, Management wishes to clarify that: (i) the pilot zoning was dropped before it started and before the EA was completed for other Components of the project; and (ii) had it started, the design of this pilot zoning activity included the elements required by OP 4.01, such as studies, baseline data collection, consideration for alternative uses, local consultations and disclosures (See Annex 4); and (iii) more broadly, the Bank's early engagement in the forest sector focused on removing the legacy of past mismanagement, tackling the risk of unregulated logging, and setting the stage for multi-purpose forest management in the future (see Sections II and V, and Annex 1).

53. *Natural Habitats.* Management clarifies that: (i) the design of the dropped pilot zoning emphasized the involvement of local communities as required by OP/BP 4.04; and (ii) a Consultation Protocol is being followed for the Legal Review. Had it started, the design of the Pilot Forest Zoning Plan would have been expected to pursue natural habitats conservation and improved land use in line with OP 4.04, paragraph 3.

54. *Involuntary Resettlement.* Management clarifies that: OP 4.12 was triggered during project preparation. Management acknowledges that the preparation of an RPF was not done on time. Management also notes that: (i) in January 2006, an Environmental and Social Assessment of Component 3 was prepared in close consultation with potentially affected peoples that includes a RPF, and (ii) the Emergency Recovery Project does not support any new logging concession or operation and no resettlement would derive from the forest-related activities supported by the project. Finally, Management notes that the Legal Review is designed to cancel illegal concessions and introduce additional social provisions in remaining compliant concessions for the benefit of local communities, including Indigenous Peoples groups.

55. *Poverty Reduction.* Management would like to clarify that, under the Emergency Recovery Project, Component 2 aimed at removing the legacy of mismanagement and at restoring essential governance and policy conditions to allow local communities to benefit more from forests in the future. Component 2 did not finance any forest concessions, and was not intended to deliver schools, clinics, and other facilities.

56. *Indigenous Peoples.* Management agrees there was no appropriate screening in the early stages of the project to determine the possible presence of Indigenous Peoples in areas affected by Component 3 of the Emergency Recovery Project; that OD 4.20 was not triggered during project preparation; and that an IPDP and a strategy for local participation were not developed during project preparation. With regard to Component 3, Management clarifies that an IPDP is being implemented. With regard to Component 2, Management clarifies that (i) the design of the dropped pilot zoning identified the possible presence of Pygmy populations in the pilot area and included the consultation, disclosure, baseline data collection and analytical work required by OD 4.20 (see Annex 4); and (ii) a Consultation Protocol is being implemented to ensure full participation of Indigenous Peoples for the Legal Review. Management also agrees that encouraging participation of Indigenous Peoples in the Legal Review is consistent with OD 4.20.

57. *Forests.* Management agrees with the Panel's finding that the Emergency Recovery Project is consistent with OP 4.36 for the following reasons: (i) the project did not finance any significant conversion of critical forest areas or natural habitats; (ii) the Bank advised the Government to cancel concessions that were illegal or had expired; (iii) developing a good quality legal framework, including the 2002 Forest Code and 2002 Decree creating a Moratorium on new concessions, was a high priority; (iv) the Bank helped establish an Independent Observer in the Legal Review of concessions and (v) the Bank promoted independent monitoring by a well known international NGO to help tackle illegal logging.

58. *Development Policy Lending.* Management clarifies that the policies supported by the Development Policy Operation regarding forests, namely, the extension of the moratorium and launching of the Legal Review of forest concessions, helped preserve forests and forest peoples' rights. Thus, Management considers that there were no adverse effects from the forest "prior actions" in the DPL. In Management's view, the determination made on likely significant effects of the Development Policy Operation, is fully consistent with the objective of Bank policies. Management wishes to clarify as well that investment lending and development policy lending instruments cannot be used interchangeably and that the choice of a development policy grant to support a small set of policy and institutional actions was appropriate and consistent with the objective of Bank policies.

59. *Cultural Property.* Management agrees with the Panel regarding the identification of cultural property issues raised in its report. It should be noted that the EA Report disclosed in January 2006 for Component 3 explicitly addresses impacts on cultural property, and includes mitigation measures and compensation to communities for affected cultural properties and sacred sites.

60. *Supervision.* Management notes that OP 13.05 was complied with, and clarifies that: (i) after July 2005 Management raised the issues of moratorium breaches at the highest level of Government including with President Kabila, who issued a Presidential decree in October 2005 that strengthened the moratorium and launched the Legal Review; and (ii) after a remedial action against the breaches in the moratorium had been agreed to, Management concluded that repeating these breaches in Aides-memoires would be unproductive and instead focused its efforts on supporting the implementation of the 2005 Decree; and (iii) continued to make its views on the moratorium and the need to correct the breaches known to all stakeholders notably through its website and through a publication "Forests in Post-Conflict DRC" distributed at a special meeting devoted to forest issues in the DRC chaired by the President of the Bank during the April 2007 Spring Meetings.

V. KEY ISSUES

61. This section addresses several key issues identified in the Panel investigation. The attached Matrix (Annex 1) lists each of the Panel's findings, concerns, and observations, along with Management's comments and clarifications. This section does not purport to discuss all the issues raised in the Panel's report.

A. NEED FOR CONTINUED BANK ENGAGEMENT

62. Throughout its report, the Panel noted the importance of the Bank's intervention in the forest sector, particularly with respect to advising the Government to cancel concessions that were illegal or invalid and to establishing and enforcing the moratorium on new concessions. The Panel also noted that developing a good quality legal framework is a high priority, as is the creation of adequate institutional capacity. The Panel noted the importance of promoting community-based management initiatives, testing innovative models that emphasize conservation and global environmental services, and securing the cultural identity and economic welfare of forest peoples, especially the Pygmies. Management is pleased to note that the Panel agrees that the Bank's forest work has contributed to initiating these policies in DRC.

B. IMPACT OF ZONING, MORATORIUM, AND LEGAL REVIEW

63. The Panel raises a concern that Bank-supported interventions may have facilitated the expansion of logging in DRC. Management wishes to clarify that the nature of the three activities supported by the two operations (moratorium, Legal Review, and multi-purpose participatory zoning) demonstrates that Bank support aimed at containing and regulating the forest industry rather than facilitating its expansion. Despite the breaches of the moratorium, which are being examined by the Legal Review, the area under logging concessions in DRC was reduced from 43 million in 2002 to 21 million in 2007, making it the largest cancellation of forest concessions ever accomplished anywhere in the world.

64. In 2002, half of DRC's rainforests were under logging concessions with no local consultations, little or no economic benefits to the public, no consideration for other uses and no provisions for environmental protection. Canceling these old concessions and tackling the legacy of mismanagement was the logical first step to pave the way for a more balanced approach that promotes community rights, biodiversity protection, and non-extractive uses. It was also urgent to introduce more stringent social and environmental obligations into concession contracts that could not be canceled for legal reasons, before they resumed. This is the purpose of the Legal Review. The moratorium and the Legal Review were designed to defend the interests of the Congolese people against grabbing of forest lands by private interests at a time of post-conflict institutional weakness.

65. The Panel has stressed the importance of participatory activities and concluded that the Bank should consider financing them. Management agrees on the importance of a participatory activity in the context of DRC. The pilot forest zoning activity was intended to demonstrate participatory approaches to multi-purpose forest management. However, as stated in paragraph 32, it was dropped before implementation and, as such, did not have any impact, positive or negative, on people or the environment. In line with the decision taken in 2005, the Bank intends to support the introduction of participatory zoning in the forthcoming IDA-financed forest operation. Since 2005, the Bank has continued to emphasize participatory multi-purpose forest zoning, help build consensus among the various actors involved, and strengthen the governance foundations that make participatory zoning possible, such as the moratorium on new concessions and the cancellation of illegal ones.

66. Logging production levels have been increasing gradually in the past few years, bringing official exports to slightly more than 1996 levels, driven primarily by the return of relative security and improved infrastructure. This post-conflict context entails high risks for sustainable forest management in DRC and there is a relatively short window of opportunity (a few years) during which basic governance and enforcement systems must be put in place. Global Witness, in partnership with local NGOs, is currently completing an independent monitoring pilot mission to help the forest department detect illegal logging and strengthen capacities in forest management, and the Government is committed to make third-party forest monitoring a long-term component of this management system.

C. CONTRIBUTION TO POVERTY REDUCTION

67. The Panel raises the concern that Bank-supported interventions may not help reduce poverty. Management clarifies that past and ongoing Bank work in DRC, including support to the PRSP, places poverty reduction at the core of the Bank's engagement in DRC. The recently approved PRSP highlights forests as a key sector for reducing poverty, and it integrates forest priorities into the country's overall agenda. The PRSP is based on three pillars: good governance, shared growth, and community development. The forest agenda is linked to each of them: fostering transparency and law enforcement as key elements of good governance; ensuring equitable access to forest resources; and promoting local development through community forests and other mechanisms.

68. The PRSP, as well as the forest strategy, recognize explicitly that most rural people in the DRC rely on forests for food, medicines, heating, cooking, and income. Accordingly, securing forest peoples' rights, while preventing the depletion of the natural resource base, is a prerequisite to reducing poverty. Maintaining customary users' rights, and making the harvesting of construction materials, fuelwood, bushmeat, and timber products sustainable and economically advantageous for the poor feature prominently in the DRC's poverty reduction strategy. Management notes that the risk of benefits from forest uses remaining marginal for forest-dependent people was greatest at the end of the Congolese conflict – when the colonial forest code was still in effect, most of the production forests were in the hands of speculators, and practically no social, environmental or fiscal obligations applied to logging. To address this situation the Bank engaged with the Government in a comprehensive reform agenda, which the Emergency Recovery Project and the Development Policy Operation helped strengthen; secured a strong role for forests and natural resources in the PRSP; and introduced investments and capacity building operations into the latest Country Assistance Strategy (CAS) (FY08-10).

69. The PRSP fully endorses the Priority Agenda for forests, including the moratorium, the Legal Review of remaining concessions, participatory zoning, the use of third-party monitoring to help detect illegal logging, and the need to innovative forest models. This Agenda is also reflected in the Multi-Donor Country Assistance Framework. Many development partners also support the Agenda (see paragraph 66).

70. Management agrees with the Panel's findings that traditional forest industry models have provided only modest and short-term benefits to local communities; that unless strong measures are taken to ensure that benefits reach local people, timber production would not make the expected contribution to poverty reduction; that people's access to non timber forest

resources should be maintained and improved; and that appropriate community forestry models and other innovative approaches to forest conservation and uses could provide significant benefits at the local level. Thus, any poverty strategy should involve complementary efforts at the national and sub-national level – rebuilding institutions, fostering local development initiatives, preserving biodiversity, and rewarding environmental services – as well as activities at the international level, such as regional integration, developing forest agendas, and agreeing to a coherent sector wide program, supported by donors and other partners. Management is committed to helping promote these innovative uses and approaches in DRC.

71. Management considers that the moratorium and Legal Review supported by the Emergency Recovery Project and the Development Policy Operation helped create conditions that will be crucial in enabling the poor to benefit from forests in the future, not only through community forest management at the local level, but as a result of enhanced public expenditures to improve livelihoods. Bank commitment to poverty reduction in the context of its forest work in DRC includes the cancellation of a large amount of forest areas previously under illegal concessions; blocking the unregulated expansion of logging concessions; introducing new social obligations in all contracts related to forest production; increasing previously symbolic taxation levels and establishing that a share of forest tax revenues should go to local communities; supporting a new Forest Code and the creation of an comprehensive body of regulations that respect the needs of the poor; expanding community rights; and, supporting new community-based forest models.

D. SEQUENCING AND TRADE OFFS BETWEEN LAWS AND CAPACITY

72. The Panel notes that approval of a new Forest Code, cancellation of concessions, the moratorium, and the Legal Review are important and positive endeavors. At the same time, it notes that drafting and adopting the implementation decrees for the new code are taking a long time, that there are instances where the moratorium was breached, that the Legal Review is being delayed and that its recommendations might be challenged by powerful stakeholders.

73. In supporting these observations, Management would like to place them in the context of a country that only recently emerged from decades of civil conflicts and institutional collapse. It is only in 2002 that foreign troops withdrew from DRC; only in 2003 that a transitional power-sharing arrangement was put in place; and only in 2006 that the country held the first democratic elections in its history. Delays, inefficiencies, and unorthodox decisions were to be expected in this context. Management notes that the forest reforms continued to enjoy support from the Presidency, the Ministry of Finance, the Parliament, and civil society, even at times of wavering commitment by the Ministry of Environment. This has allowed the Government to protect initial reform achievements, to identify shortcomings and to create instruments to correct them. Management agrees with the Panel that there are delays in the preparation of the implementation decrees of the Forest Code. The Government is making progress under difficult circumstances. As of end October 2007, eleven key decrees and arrêtés have been adopted, six are ready for signature by the Prime Minister and the Ministry of Environment, six are submitted for stakeholder consultation, and nineteen others are being prepared. At the request of the Government, the Bank is reviewing the quality of this legal work

74. Management agrees with the Panel that there is little point in creating new laws if there is no capacity to enforce them; that both laws and capacity are equally important; and that institutional capacity is very limited in post-conflict DRC, including in the forest sector. In this particular case, sequencing the establishment of new rules prior to reinforcing the forest institutions responded to both necessity and opportunity. Rules in effect at the time of Bank re-engagement were inherited from the colonial era and out of step with the priorities of the reunified Government, as well as those supported by the Bank, especially with regard to social and environmental values. Strengthening the capacity of forest institutions to enforce those old rules would have reinforced an unsustainable, inequitable and nontransparent system. Management notes that in the absence of the Bank's focus on policy reforms, almost the entire Congolese rainforest would now be placed under old-style concessions with little or no consideration for social and environmental values. Large areas of forest which the cancellations have made available for new uses would still be under these contracts. The scenario of widespread grabbing of rainforests by powerful private interests was clearly underway in 2002, and the Bank's policy focus helped avert this scenario.

75. Finally, Management would like to highlight the positive and complementary roles that investment and policy instruments have played, and will continue to play, in advancing the forest agenda in DRC. Actions that require high political commitment will be best supported through policy lending or broader reform frameworks. Capacity building operations that require equipment, training, and technical assistance will be best supported by investment instruments.

E. OUTREACH TO STAKEHOLDERS

76. The Panel stresses the importance of participatory approaches and consultations with all stakeholders. Management agrees and underscores that significant outreach and consultation efforts have been undertaken since the early stages of Bank engagement, helping to build consensus and partnerships with civil society and within the donor community. Significant outreach efforts started in 2003. The Bank team met regularly with international and national NGOs in Kinshasa, in the field, and in Europe and Washington. Discussions were framed around the Priority Reform Agenda, the initial steps taken by the Government, and a draft forest sector review that the Bank team had started to prepare. In 2003, 2004 and 2005, Bank teams visited the recently-pacified Equateur, Orientale and North-Kivu provinces. In 2004, the Bank posted "Questions & Answers" on its forest approach in DRC online. In 2004, the Kinshasa Office organized a first event with the national press, radio and television, and distributed background materials on key forest issues. In July 2004, the President of the Bank met with local and international NGOs including Indigenous Peoples representatives, and in November 2004, the Bank helped organize the First Forest Forum in Kinshasa. These efforts helped develop consensus with civil society and the donor community in support of the reform agenda. Nevertheless, in a post-conflict country the size of DRC, many stakeholders especially in the field have had to rely on second or third hand information about the work of the Bank in general and in the forest sector in particular.

77. In 2006 the Bank developed a more proactive communications strategy (update of progress in Annex 11) in DRC. At the national level, it started to meet regularly with the Congolese media network for environment (MET) and held interviews with newspapers, radio channels and televisions. It also reached out to leading international media: BBC, Reuters,

AFP, Voice of America, Channel 4, The Financial Times, La Libre Belgique, De Morgen/Mo, Le Soir, Jeune Afrique, The Economist, Le Monde, and Nation Magazine. The Bank also continued to foster consensus with civil society and as a result, the forest sector review (“Forests in Post-Conflict DRC”) was co-authored with 14 NGOs and research centers. It was launched in Brussels, Paris, Washington and the NGOs that co-authored the report will disseminate it in DRC. The Bank made a concerted effort to keep development partners well informed about its DRC forest work and to invite donors to join in. A Bank team visited Belgium, the Netherlands, Norway and the United Kingdom in addition to participating in regular meetings of the donors’ thematic groups in Kinshasa. During 2006 and 2007, the Bank also helped organize high-level international forums such as the Second Forest Forum in Kinshasa in February 2006, and the Brussels Conference on Sustainable Forest Management in the Democratic Republic of Congo (co-sponsored by the Bank, Belgium, DRC, the European Commission, France, and the United Kingdom) in February 2007, which resulted in the Declaration of Brussels on Sustainable Forest Management in the Democratic Republic of the Congo. In April 2007, the President of the World Bank chaired a High-Level Congo Forest Side-Event during the Spring Meetings in Washington, and he recommended that the DRC forest agenda continue to be raised in similar high-level forums.

78. Overall, these outreach efforts helped bring clarity about the forest work supported by the Bank, and strengthened civil society and donor understanding of and support for this agenda. Since 2004, civil society has consistently expressed support for the moratorium, the Legal Review, and the participatory zoning, through a series of joint statements in 2004, 2005, 2006, and 2007. Final Statements from the Forest Forums in Kinshasa, 2004 and 2006, and the Brussels Declaration, 2007, were endorsed by all participants, including government, donors, the private sector, and NGOs (see Annex 6). The MDTF is being established with contributions from the European Commission, Belgium, France, Luxembourg, the United Kingdom, and Germany. In August 2007, a bipartisan group of six US Senators sent a letter to the President of the Bank in support of the DRC forest agenda and urging the Bank to keep up its work in this area.

F. ATTENTION TO INDIGENOUS PEOPLES

79. Management is devoting attention to livelihood and cultural issues facing people living in DRC forests, including Pygmies. The Bank began outreach efforts in 2004 and has expanded them since then. The Bank team regularly: (i) meets with Pygmy groups to exchange information and seek their advice; (ii) invites Pygmy representatives to events in which issues that affect their social and cultural situation are discussed; and (iii) promotes the inclusion of Pygmy groups in relevant forest regulations, institutions and decision-making bodies. In July 2004, the President of the Bank met with international, national and local NGOs including Indigenous Peoples representatives. Starting in 2005, Bank teams visited Pygmy communities in Beni, Mutsora, Epulu and Rumangabo in the newly-reunified eastern provinces, in an effort to establish direct lines of communication. In 2006, the Bank facilitated the collaboration of DRC Pygmy representatives in a forest sector review in neighboring Republic of Congo. In April 2007, the Bank helped organize the First International Central African Indigenous Peoples Meeting, in Brazzaville, Congo, and facilitated the participation of Pygmy representatives from DRC at this event. As part of the Bank’s enhanced engagement with Pygmy communities, a special study was undertaken in 2007 to support integration of these concerns into the overall program of the Bank.

80. The Bank has worked closely with the Government to ensure that the new Forest Code recognizes and protects traditional rights of local communities, including the Pygmies, in all production forests. The Bank has also encouraged the Government to include Pygmy representatives in the Inter-ministerial Committee in charge of the Legal Review of concessions. This participation aims to help guarantee preservation of the rights of Pygmies in production forests and ensure that boundaries and management plans take into account their social, economic and cultural needs. Bank efforts are intended to defend the interests and rights of the Congolese people, including Pygmy populations, by canceling illegal concessions, strengthening the moratorium, supporting the services of Independent Observers in the Legal Review and in field controls, and promoting the participation of Pygmy representatives in the Legal Review. This is particularly important in a country with serious institutional and policy weaknesses.

81. The forthcoming IDA-financed Forest Project, GEF Grant for National Parks, and the MDTF will seek to ensure that Pygmies enjoy equal access to rights and socio-economic opportunities resulting from the new Forest Code, such as the right to manage community forests and to benefit from social responsibility contracts. The forthcoming Agriculture Project is expected to include similar provisions with regard to agriculture rehabilitation, while the new Road Sector Rehabilitation Project is expected to include an Indigenous Peoples Framework that builds on and expands work initiated under the Emergency Recovery Project.

82. Management recognizes that assisting the Pygmies to fulfill their socio-economic and cultural aspirations is a considerable challenge, and solutions cannot come from the forest sector alone and are likely to take time and concerted effort by the authorities, with advice and financing from external parties such as the World Bank. As is the case for other vulnerable groups, Pygmies need equal rights, protection against exclusion and discrimination, equal access to social services, and equal opportunities to access livelihood opportunities and engage in civic participation.

83. As part of this broader effort to reach Pygmy populations, the Bank is analyzing its experience in improving access of poor and vulnerable groups to social and economic services in DRC through the Emergency Social Action Project implemented through the Social Fund. During the first phase of the project (2002-2006) it became clear that Indigenous Peoples were hardly benefiting from these investments. Consultations were undertaken with 655 Indigenous Peoples and representatives from NGOs in the context of 19 workshops all over the country. The project is now putting in place an outreach and capacity-building program to assist Indigenous Peoples communities in accessing and utilizing project funds to obtain schools, health clinics, rural roads, and water points, based on their demands. It is also analyzing ways in which the project can strengthen the voice and participation of Pygmy communities.

VI. MANAGEMENT'S ACTION PLAN

84. Management has prepared an Action Plan that addresses follow-up at the country level and within the Africa Region. Africa Regional Management is committed to strengthening safeguards quality control to better monitor and manage environmental and social risks, as well as to undertaking more consultations so that the concerns of project-affected persons are adequately considered. The Action Plan includes ongoing and future efforts for addressing

Indigenous Peoples issues in the Congo Basin, remaining engaged in the forest sector of the DRC, and continuing outreach about Bank sectoral work and lending.

ISSUE	ACTION AND RESPONSIBLE UNIT(S)	TIMEFRAME
REGIONAL LEVEL		
SAFEGUARDS	<p>Continue to strengthen safeguards quality control across the AFR portfolio to ensure that: (i) projects are properly classified and relevant Operational Policies are triggered; (ii) EAs and other safeguard instruments are prepared on time, including for emergency operations; and (iii) implementation of safeguard instruments is adequately monitored. (AFTEN/AFTCS/AFTQK).</p> <p>In particular:</p> <ul style="list-style-type: none"> ▪ Ensure Task Team Leaders are adequately trained in safeguards ▪ Review the AFR portfolio. 	<p>Ongoing Ongoing</p>
COUNTRY LEVEL		
INDIGENOUS PEOPLES	<p>Integrate Indigenous Peoples as a cross-cutting theme across the Bank's activities in DRC (AFTCS/AFCC2). In particular, the Bank will:</p> <ul style="list-style-type: none"> ▪ Analyze the current situation of vulnerable groups in DRC, including Pygmies, and draw and disseminate lessons from ongoing efforts to reach and support them with: (i) the Social Fund in-terms of access to education, health and rural infrastructure; (ii) the Indigenous Peoples Plan of the Emergency Recovery Project; and (iii) the dialogue with Indigenous Peoples in the context of the forest reform agenda. ▪ Ensure upcoming Road, Agriculture and Forest Projects will include capacity building components to strengthen social safeguards and implement Indigenous Peoples Frameworks. ▪ Dialogue with Government on ways to address the special needs of Indigenous Peoples groups in the framework of the PRSP. ▪ Based on the above actions, discuss and agree with Government and other donors on measures to further strengthen development of Indigenous Peoples in DRC. 	<p>FY08 onwards FY08 onwards FY08 onwards FY08 onwards</p>
FORESTS	<p>Stay engaged in the DRC forest sector.</p> <p>Continue to monitor the Legal Review and the moratorium and assist the Government to help ensure compliance with the 2005 Presidential Decree; continue to mobilize attention of the highest level of government, and ensure that forest governance benchmarks feature in possible future policy lending or similar instruments (AFTEN/AFCC2).</p> <p>In particular, the Bank will:</p> <ul style="list-style-type: none"> ▪ Continue to provide advice on the Legal Review and follow-on steps ▪ Continue to support and monitor progress on five TSERO indicators ▪ Agree with Government on key benchmarks and policy instrument <p>Ensure that capacity-building, participatory zoning, customary rights, critical natural habitats, and law enforcement, and independent monitoring feature in forthcoming forest-related operations. Include provisions to help provide equal opportunities to Indigenous Peoples. (AFTEN). In particular:</p> <ul style="list-style-type: none"> ▪ Include in FY08-10 CAS a forest sector project ▪ Launch GEF Grant for national parks ▪ Launch Multi-Donor Trust Fund for Forest Governance <p>Continue to foster high-level public debate on alternative uses and innovative models, and to stimulate Government's commitment and donors' interest. In particular:</p> <ul style="list-style-type: none"> ▪ Help organize a Chatham House Meeting on innovative uses 	<p>Ongoing 2008 Ongoing 2008 Ongoing 2008 CAS approval September 2008 September 2008 December 2007</p>

ISSUE	ACTION AND RESPONSIBLE UNIT(S)	TIMEFRAME
	<ul style="list-style-type: none"> ▪ Help the DRC access the new Forest Carbon Partnership Facility ▪ Help pilot conservation concessions in DRC. 	December 2008 December 2008
OUTREACH	Continue to implement the Congo/Forest communication strategy, with media, civil society and donors, in-country and internationally. Mainstream forests in Bank’s core communication and high-level events (AFREX/AFTEN). In particular: <ul style="list-style-type: none"> ▪ Disseminate the multi-author ‘Forests in Post-Conflict DRC’ ▪ Implement a strengthened outreach strategy, and update annually ▪ Conduct targeted meetings with Pygmy communities and their representatives to discuss forest issues. 	Ongoing 2008 Ongoing 2008 Ongoing 2007

85. The Management Action Plan was shared in Kinshasa with key counterparts from the Government, development partners, national NGOs, representatives of Pygmy organizations, and the forest industry. Counterparts confirmed their support for Bank engagement in the forest sector. These initial discussions took place on October 22 and 23, 2007, and were followed up by further meetings.

VII. CONCLUSION

86. Management welcomes the Panel’s conclusion that the Bank should remain engaged in the forest sector of DRC. Management agrees there have been omissions in the safeguards review of the Emergency Recovery Project; however, Management believes that the Bank has made every effort to correct the situation, to deliver emergency assistance to poor communities affected by the conflict and to maximize the project’s long-term beneficial impacts on poverty reduction.

87. With regard to the forest elements examined by the Panel, Management confirms that: (i) the pilot participatory zoning activity was dropped before it started, and, had it started, its design included provisions for undertaking the analytical work, baseline data collection, consultations, disclosure, and consideration for alternatives, consistent with the objectives of relevant Bank policies; (ii) the moratorium and the Legal Review, since they aim to cancel illegal concessions and to introduce more stringent social and environmental obligations in remaining legal concessions, are likely to have sustained positive impacts on the environment, forests, and other natural resources, as well as on poor people and vulnerable groups; and (iii) the overall forest work supported by the Bank since 2002 has benefited local people, vulnerable groups, forests and the environment by helping to remove the legacy of decades of mismanagement, and by laying the foundation for more sustainable, multi-purpose, and equitable forest models.

88. Given the difficult conditions in DRC since 2002, an alternative, such as waiting for generally more favorable conditions, would have let logging concessions, legal or illegal, continue to operate, expand and consolidate under the old regulations and practices. In this ‘no-reform’ scenario, there is reason to believe that a large part, if not all, of the Congolese rainforest would now be locked up under logging contracts. Participatory zoning would be precluded, and alternative models focusing on social and environmental values would no longer be an option. This scenario was underway in 2002 and the Bank’s intervention helped avert its progression.

89. Management welcomes the Panel's finding 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. Management is committed to support the authorities and other relevant groups in DRC in implementing the work started in 2002 and to implement the Action Plan set out in this report. Given the importance of the action plan and the broad interest in its successful implementation, Management proposes to provide the Board with a Progress Report in a year's time, i.e., December 2008.

**MANAGEMENT REPORT AND RECOMMENDATION
IN RESPONSE TO THE INSPECTION PANEL INVESTIGATION REPORT**

**ANNEX 1
FINDINGS, COMMENTS AND ACTIONS**

	ISSUES / FINDINGS	Para. no	RESPONSE
1.	<p>Cancellation of Forest Concessions</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 canceled 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>	117-118, 119, 127-128	<p>Comment:</p> <p>Management welcomes the Panel's assessment that the Bank's intervention to advise the Government to cancel concessions that were illegal or not valid, at the beginning of the reform process (before the start of the EESRSP), was important and was consistent with Bank policy. Management also shares the Panel's view that strong pressures from industrial logging, as well as other challenges, can be expected in the future, and welcomes the wish expressed by many people (including those critical of the Bank) that the Bank stay engaged in the forest sector. The Bank intends to do so.</p> <p>Management agrees that areas covered by canceled concessions also included villages and farmlands. This made cancellation of concessions all the more essential in restoring the rights of local people over land and forest resources. Available data showed that all existing concessions in DRC contained on average 19 percent of village, agriculture and swamp areas, and there is no evidence that concessions canceled in 2002 contained more of these areas than those not canceled. As to the cases where portions of canceled concessions re-emerged in contracts awarded after the moratorium, Management notes that these are currently being examined by the Legal Review, supported by the TSERO and the EESRSP.</p> <p>Management wishes to underscore the Bank's strong commitment to protecting forest social and environmental values in DRC. In 2002, 43 million hectares – i.e. half of DRC's rainforest, all the most accessible areas – were under logging concessions, allocated without local consultations, with little or no economic benefits for forest peoples and the country, and without provisions for environmental protection. Focusing on these concessions and effectively addressing the legacy of mismanagement was the logical first step in freeing up space for other forest uses and paving the way for a more balanced approach, including community rights, protected areas, and non-extractive uses. The cancellation of 25 million hectares of concessions in 2002 indeed created the opportunity to take a new look at forest uses and promote new models.</p> <p>Action:</p> <p><i>The Bank will stay engaged in the forest sector in DRC. It will do so in the framework of its overall</i></p>

	ISSUES / FINDINGS	Para. no	RESPONSE
			<p><i>country dialogue, and through capacity building and technical assistance operations – the GEF and IDA forest operations currently under preparation and the forest governance MDTF that is being set up in collaboration with the European Union, Belgium, France, Luxemburg and the United Kingdom. These instruments will emphasize forest governance, public participation, community development, biodiversity conservation and environmental services.</i></p> <p><i>Management will build upon the outcome of the 2007 Brussels Conference, the 2007 Spring Meetings Congo Forest Event and the ongoing DfID-led Roundtable on Alternative Uses, to help identify and promote alternative forest uses and related innovative financing models.</i></p>
2.	<p>Bank Engagement and Focus</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 other important socio-economic and environmental issues of forest use, embedded within Bank safeguard policies, and 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> <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>	124, 163, 165-166, 207	<p>Comment:</p> <p>Management would like to clarify that at no point in time has the Bank supported the expansion of logging in DRC. All its actions, policy dialogue and outreach, prior to and after the Request for Inspection, have been aimed at controlling this activity and curtailing the potential for unregulated expansion, protecting forests and forest peoples' rights, enhancing public participation, and opening the way to alternative uses of forests. The Priority Agenda, adopted in 2002 by the Government with Bank advice, focused on establishing a moratorium on new concessions, canceling illegal concessions, and finalizing a draft Forest Code that recognized local peoples' customary rights and introduced the concepts of community forestry, conservation concessions, and environmental services, among others.</p> <p>Management further wishes to clarify that the EESRSP was not built on an analysis that emphasized the need to increase logging. Indeed, EESRSP-supported activities (multi-purpose pilot participatory forest zoning and the Independent Observer's support to the Legal Review of logging contracts) make this point clearly. The Bank's intervention in the forest sector in DRC since 2002, even though the moratorium was not fully respected, countered the post-conflict grabbing of the entire Congolese rainforest for logging – a scenario that was clearly underway in 2002. With the reforms, although imperfectly implemented, the area under logging concessions in DRC dropped from 43 million hectares in 2002(out of 86 million) to 21 million in 2007. The ongoing Legal Review is likely to reduce further the amount of forest land under concession and integrate social and environmental considerations into all remaining concessions. This Legal Review is the continuation of the same effort undertaken in 2002 to remove the legacy of mismanagement and to promote more equitable and sustainable models.</p>

ISSUES / FINDINGS	Para. no	RESPONSE
		<p>Management notes that the Bank's engagement in the DRC forest sector has sometimes been misunderstood, especially at the beginning of its involvement. Important outreach efforts started in 2003. The Bank team met regularly with international and national NGOs in Kinshasa, in the field, and in Europe and Washington. Bank teams visited the recently-pacified Equateur, Orientale and North-Kivu provinces. "Questions & Answers" on the Bank's forest work in DRC were posted online. In 2004, the Kinshasa Office organized a first event with the national press, radio and television, and distributed background materials on key forest issues. In July 2004, the President of the Bank met with local and international NGOs including Indigenous Peoples representatives, and in November 2004, the Bank helped organize the First Forest Forum in Kinshasa. In February 2005, the Country Office met with Indigenous Peoples representatives in Kinshasa, and Bank teams visited Pygmy communities on the eastern side of the country in an effort to establish direct lines of communication with them. In 2006 the Bank developed a more proactive communications strategy (Annex 11) in DRC. At the national level, it started to meet regularly with the Congolese media network for environment (MET) and held interviews with newspapers, radio channels and televisions. It also reached out to leading international media, and continued to foster consensus with civil society. During 2006 and 2007, the Bank also helped organize high-level international forums such as the Second Forest Forum in Kinshasa in 2006, and the Brussels Conference in February 2007. In April 2007, the President of the World Bank chaired a High-Level Congo Forest Side-Event during the Spring Meetings in Washington, and he recommended that the DRC forest agenda continue to be raised in similar high-level forums. Bank staff co-authored, with 14 NGOs and research institutions, a book entitled "Forests in Post-Conflict DRC," which was widely publicized. (See Annex 10).</p> <p>Action:</p> <p><i>The Bank will continue its proactive outreach efforts to ensure its approach to forests in DRC is well understood (see Annex 11). To this end it will:</i></p> <ul style="list-style-type: none"> - <i>Facilitate understanding of the Bank supported Government forest agenda by disseminating in-country and internationally the publication entitled "Forests in Post-Conflict DRC".</i> - <i>Organize information exchanges with civil society on the occasion of missions and/or other events related to the preparation and supervision of the GEF, IDA and MDTF operations.</i>

	ISSUES / FINDINGS	Para. no	RESPONSE
			<ul style="list-style-type: none"> - <i>Proactively seek exchanges of information with Congolese and international media, with the Congolese Parliament, the NGO community, and forest peoples organizations throughout the preparation and implementation of the GEF and IDA forest operations and the MDTF.</i> - <i>Contribute to the December 2007 Chatham House discussions on DRC and forests, and feature DRC and forests as a side event during the 2008 World Bank/IMF Spring Meetings.</i>
3.	<p>Legal Framework and Institutional Capacity</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>	169, 202-212	<p>Comment:</p> <p>Management agrees with the Panel's finding that developing a good quality legal framework, including the 2002 Forest Code and the Decree on the moratorium, represented a high priority at the time of Bank re-engagement and that Management decisions were consistent with Bank policy.</p> <p>The 2002 Forest Code integrates new concepts which were absent in pre-existing forest legislation in DRC. These are: consultation and participation in decision making and land use choices; protection of customary rights, sustainable management of conservation and production forests; wildlife protection; community-based forest management, environmental protection and environmental services. A new Law on Nature Conservation is now being prepared to complete the body of legislation on renewable natural resources and the environment.</p> <p>Management agrees with the Panel that DRC lacks adequate capacity to implement the new forest legal framework. Building capacity is a major challenge in the forest sector as well as in any other sectors. Giving priority to creating a legal framework, to removing the legacy of mismanagement and to restoring basic governance conditions and political commitment, appeared the logical choice at the time of Bank re-engagement in DRC. At that time, several regions of the country remained inaccessible, and Bank support focused on emergency needs and framework setting policies rather than long-term capacity building.</p> <p>Following an improvement of the situation, at the request of the Government, and in collaboration with other donors, Management has now decided to move ahead with forest sector capacity building. To this end, the Bank is preparing GEF and IDA forest operations and establishing the Government executed MDTF. An institutional audit was recently completed to help prepare the above operations. In the meantime, to address critical needs in the short term, the Bank has advised the DRC to recruit a reputable international NGO, to work as a third-party forest monitor and help detect illegal logging. Global Witness is undertaking a scoping mission in</p>

	ISSUES / FINDINGS	Para. no	RESPONSE
			<p>that regard.</p> <p>With regard to the Panel's concern that the ongoing Legal Review may validate old concession contracts, Management wishes to clarify that the Legal Review is meant to ensure that old, invalid concessions are canceled and that stringent social and environmental requirements are introduced into concession contracts that cannot be canceled for legal reasons. Management wishes to emphasize that the alternative to the Legal Review was to let all existing concessions, legal or illegal, continue to operate and to do so under the terms of contracts bound to the pre-existing regulation with no proper social and environmental requirements.</p> <p>Action:</p> <p><i>Management will continue to assist the Government in undertaking the actions described above, including:</i></p> <ul style="list-style-type: none"> - <i>Help the Government complete the Legal Review, in compliance with the 2005 Decree;</i> - <i>Using the above mentioned GEF and IDA operations and the MDTF to strengthen the capacity of the Ministry of the Environment and the Congolese Institute for Nature Conservation to enforce the legal framework;</i> - <i>Help the Government test and adopt a third-party forest monitor to watch for illegal logging; and</i> - <i>Help develop implementation decrees of the Forest Code, as well as new Laws on Nature Conservation and Environmental Management.</i>
4.	<p>Indigenous Peoples</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> <p>Even by the time of Management Response to Request for Inspection, some Pygmy groups affected by Project had not been 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</p>	96, 168, 222, 223, 227, 231, 234, 237, 243, 251, 282	<p>Comment:</p> <p>Management agrees that OD 4.20 should have been triggered in the context of the safeguards review process of the EESRSP.</p> <p>Management agrees that appropriate screening for the road component of the EESRSP was not done and that the Pygmy presence in the project area could have been detected. Management clarifies that the situation has been corrected, although with some delay. As the security situation made field work and local consultation possible, in 2006, an Indigenous Peoples Development Plan (IPDP) was developed in consultation with Indigenous Peoples groups, and complemented by a detailed Action Plan. A consultant is currently being recruited to help in the implementation of the IPDP and the Action Plan.</p> <p>With regard to the pilot participatory forest zoning, Management would like to clarify that this activity was dropped before it started and that no zoning activity was carried out in DRC with Bank support. Management further wishes to underscore that</p>

ISSUES / FINDINGS	Para. no	RESPONSE
<p>million people relies heavily on forest for subsistence.</p> <p>Panel reviewed whether Pygmy people qualified as Indigenous Peoples 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 Peoples 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 [Pilot Forest Zoning Plan] 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>possible Pygmy presence in the pilot zoning area had been duly identified during project preparation, and that the TORs prepared for this activity, if it had happened, included the type of analytical and local consultation work that is conducted when OD 4.20 is triggered.</p> <p>Also, consistent with Bank safeguard policies (OP4.10), a Consultation Protocol has been prepared to allow Indigenous Peoples to participate fully in the Legal Review. The Protocol is being implemented by CRON, which includes Indigenous People organizations and which is supported by the CARPE (United States) and SNV (Netherlands). This work, combined with the Bank's dialogue with the Government, led to introducing two seats for Indigenous Peoples representatives in the Inter-ministerial Committee (one permanent, one rotating) and identifying the 220 representatives (70 of whom are Pygmies) who will come to Kinshasa to participate in the committee. In addition to identifying potential participants, CRON will select, coach and assist the Pygmy representatives in participating in the Review and decision-making about concessions located in their territories or lands (see also Item 12).</p> <p>Particular attention is now being given to screening procedures early on in preparation of all Bank-financed activities that take place in or around forests. Where feasible, partnership with NGOs working with the Pygmies is increasingly being sought to address their specific needs and issues.</p> <p>Finally, Management wishes to stress that the general situation of the Pygmy population cannot be fully addressed through individual projects or in the forest sector only. Management is continuing to work with all stakeholders at both the national and regional level to help Indigenous Peoples obtain appropriate and substantial benefits from development activities and projects.</p> <p>Action:</p> <p><i>Management will continue to work with all stakeholders, including government agencies, Indigenous Peoples and other stakeholders, to ensure effective implementation, monitoring, and supervision of its safeguard policies.</i></p> <p><i>Management will continue to monitor the implementation of the IPDP along the RN4; and to support participation of local people, including Indigenous Peoples in the Legal Review and in the subsequent preparation of forest management plans for the legal concessions.</i></p> <p><i>Bank financed/co-financed projects will pay particular attention to the needs of Indigenous Peoples and other vulnerable groups. Management will also discuss with the</i></p>

	ISSUES / FINDINGS	Para. no	RESPONSE
			<p><i>Government the possibility to analyze the current situation of vulnerable groups in DRC, including Pygmies, especially to draw and disseminate lessons from efforts to reach and support them. This analysis will especially draw on experiences with (i) the Social Protection Project, in particular access to education and health services; (ii) components of road projects, especially the RN4 and the upcoming Pro-routes project; and (iii) an expanded dialogue with indigenous groups in the context of the forest Priority Reform Agenda.</i></p> <p><i>Management will also dialogue with Government on ways to address the special needs of Indigenous Peoples in the PRSP, and based on the above actions, discuss and agree with Government and other donors on measures to further strengthen development of Indigenous Peoples in DRC.</i></p>
5.	<p>Cultural Property</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 impacts, and consultations with local Indigenous Peoples 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>	287, 292-293	<p>Comment:</p> <p>Although the ISDS and the TORs for the EA for the Road Component failed to trigger OPN 11.03, the EA Report disclosed in January 2006 has explicitly mentioned and analyzed impacts of the roads component on cultural property. These references include chance find procedures, mitigation measures, and compensation to communities for affected cultural and sacred properties (See EA Report Pages 39,148, 213, 215, 217, 218 and 256 on “Compensation for cultural and/or sacred sites”). The EA also provides guidance on the recruitment of archeologists to supervise the works. The EA lists as cultural properties: cemeteries, tombs, sacred forests, and historical sites. The EA mentions specifically that these sites must be avoided whenever and wherever possible.</p> <p>Action:</p> <p><i>Management will review progress as part of IPDP supervision.</i></p> <p><i>Management will ensure that cultural property issues are adequately addressed in forthcoming operations currently being prepared in DRC.</i></p>
6.	<p>Poverty Reduction</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</p>	123, 302-303, 307,-308, 312	<p>Comment:</p> <p>Management agrees with the Panel’s findings that traditional forest industry models have provided only modest and short-term benefits to local communities; that unless strong measures are taken to ensure that benefits reach local people, the concession system would not make the expected contribution to poverty reduction; that people’s access to non timber forest resources should be maintained and improved; and that appropriate community forestry models and other innovative approaches to forest conservation and uses could provide significant benefits at the local level. Management is committed to: helping DRC</p>

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	<p>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>		<p>change the way production forests are managed and benefits are shared; and testing and promoting innovative community-based forest management models, as well as models that emphasize marketing of environmental services.</p> <p>Management wishes to clarify that by helping cancel illegal concessions, countering unregulated expansion of logging concessions, and introducing new social obligations, the EESRSP and TSERO helped create conditions that are crucial for reducing rural poverty, asserting stronger community rights over larger forest areas, and expanding community-based models. The completion of the cancellation of illegal concessions and the changes in the terms of remaining contracts, and the enactment of a comprehensive regulatory framework, along with improved enforcement capacity, are expected to greatly increase the contribution of the forest sector to the livelihood of rural indigenous communities.</p> <p>Action:</p> <p><i>The upcoming forest operations will include measures to help ensure that forest benefits reach local people, that forest peoples’ access to non timber forest resources is maintained throughout the forest domains; that community-based forest models are tested and promoted; and, that civil society and local associations participate in forest-related decision-making processes.</i></p>
7.	<p>Environmental Assessment</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-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 EERSP: 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>	340-341, 346, 348-350, 354, 356, 361, 366-367	<p>Comment:</p> <p>The EESRSP is an emergency operation consisting of five components: (i) budget support (23 percent); (ii) institutional strengthening (7 percent); (iii) infrastructure rehabilitation, including roads (42 percent); (iv) urban rehabilitation (14 percent); and (v) community empowerment (5 percent).¹ The institutional strengthening component covered 26 activities, including two forest activities, totaling 2 percent of the project. In keeping with regular practices for similar projects dealing with institutional strengthening, the safeguards review concluded that only the road component should be subject to an EA. Management agrees that the EA was completed late, but wishes to add that it has been done and the ESMP is being implemented.</p> <p>Management agrees that with regard to the Emergency Recovery Project, the quality of the Bank’s intervention in this case would have been enhanced by triggering OP 4.01; however it wishes to reiterate that the pilot participatory zoning activity was dropped from the Emergency Recovery Project before it started and before the</p>

¹ The remaining 9 percent of the project costs included implementation and contingencies.

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	<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 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>EA was completed. Had this pilot zoning started activity started, its design included the elements required by OP 4.01, such as studies, baseline data collection, consideration for alternative uses, local consultations and disclosure (See Annex 4).</p> <p>The Legal Review elements of Component 2 consist of securing the participation of an international observer (the World Resources Institute) to monitor the completion of the Legal Review, as well as the participation of local communities in the Review. The Legal Review is meant to either cancel concessions or introduce more stringent environmental obligations in concessions that cannot be canceled for legal reasons. This activity is considered to be favorable to the environment. It is part of the effort initiated in 2002 to clean up the legacy of forest mismanagement, and is expected to free up more space to promote biodiversity conservation, community-based management, and new models based on environmental services.</p> <p>A Consultation Protocol was prepared to ensure adequate participation of local communities and it is being implemented by CRON.</p> <p>Action:</p> <p><i>Management will strengthen safeguards quality control, not only for the DRC portfolio, but the Africa Region portfolio, with the aim of ensuring that safeguards are properly triggered and implemented.</i></p> <p><i>Management will also ensure that potential future Bank support to participatory forest zoning in DRC is adequately screened for applicable safeguards, including OP 4.01, before implementation.</i></p> <p><i>Management will continue to monitor and support the Legal Review and follow up processes, such as the preparation of forest plans, and ensuring compliance with the Forest Code and the October 2005 Presidential Decree.</i></p>
8.	<p>Forest Policy</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</p>	371, 389	<p>Comment:</p> <p>Management shares the Panel finding that the EESRSP is in compliance with OP 4.36. It also wishes to make clear that the TSERO and EESRSP were not designed to promote, nor did they focus on forest harvesting. The EESRSP and TSERO focused exclusively on strengthening the moratorium on new concessions and supporting the Legal Review of existing concessions – two measures aimed at reducing logging areas and at clearing the path for alternative forest uses focused on social and environmental values.</p> <p>In line with OP 4.36, Management will ensure that future Bank forest and forest-related operations recognize and respect legally documented or customary rights, as well as the rights of</p>

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	<p>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>Indigenous Peoples and workers. With respect to industrial forest operations, the Bank will continue to promote responsible forest management standards (including protection of critical forests, sound and effective community relations, and accrual of environmentally sound multiple benefits) and third party certification by internationally recognized bodies.</p> <p>Action:</p> <p><i>Management will continue to work towards an approach that strengthens transparency, law enforcement, local participation and community rights, and protects critical forest ecosystems. This approach will be implemented through the GEF and IDA operations and the MDTF currently under preparation, as well as through policy dialogue and policy instruments.</i></p>
9.	<p>Natural Habitats Policy</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 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>	397-398	<p>Comment:</p> <p>Management would like to clarify that neither the projects under investigation nor other Bank supported policies and initiatives in the DRC involve significant conversion of natural habitats.</p> <p>Management wishes to highlight that: the design of the dropped participatory pilot zoning included the type of analysis and local consultations called for by OP 4.01 (see Item 7 above) and by OP4.04; and that Articles 5 and 16 of the Decree of October 2005 on the Legal Review explicitly preclude the opening of new areas to logging.</p> <p>Overall, the rainforest areas under logging concessions in DRC were reduced from 43 million hectare in 2002, to 21 million hectare in 2007.</p> <p>Action:</p> <p><i>Management will ensure that OP 4.04 is triggered, where appropriate, for the preparation of the upcoming Bank projects in DRC dealing with forests, infrastructure and other relevant sectors, and carry out the corresponding analysis and consultations. These projects will include activities aimed at protecting critical natural habitats and creating new protected areas.</i></p>
10.	<p>Development Policy Loans and Forest Components</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</p>	404, 420-427	<p>Comment:</p> <p>Management considers that the specific policies supported by the operation – launching of the Legal Review of forest concessions, and extension of the 2002 forest moratorium – helped preserve forests and made it possible for the Government to initiate a participatory process for forest planning. The Bank’s assessment during the corporate review processes – that these country policies would not cause likely significant effects on the environment, natural resources and forests – drew on analytical work undertaken in 2004-2005 and a multi-stakeholder forum in November 2004</p>

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<p>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 doubtful 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 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.</p>		<p>preceding the development of the TSERO.² Management acknowledges that the original documentation for the TSERO, which was corrected after its issuance to the Board, erroneously cross-referenced the EA of the EESRSP as additional analytical work.</p> <p>Management considers that there were no adverse effects from the forest prior actions in the DPL. In Management’s view, the determination made on likely significant effects of the Development Policy Operation, is fully consistent with the objective of Bank policies.</p> <p>Management also wishes to clarify that development policy lending and investment lending cannot be used interchangeably. The appropriate use of instruments is determined by the nature and content of Bank support. In particular, DPL operations support implementation of institutional and policy actions, whereas investment operations finance specific investment expenditures. Management believes that the actions supported by TSERO fall clearly in the domain of policy and institutional actions, and that the use of DPL was therefore appropriate and could not have been substituted by investment lending. In fact, DPL support for a limited set of policy actions was used to complement and enhance the impact of existing and planned investment lending.</p> <p>Management does not consider that the support of policy and institutional actions under a DPL <i>per se</i> reduces the Bank’s attention to social and environmental concerns. As was recognized during the introduction of OP 8.60 in 2004, Bank safeguard policies are designed to screen and review specific investment spending, particularly physical investments with geographically circumscribed impact. Management also notes that the policy for DPLs requires that, in case a DPL finances specific investments, the Bank’s safeguard policies apply to such investment subcomponents.</p> <p>Management agrees that a rigorous application of OP 8.60 is necessary to ensure the appropriate screening of policies for likely and significant effects on the environment, forests, and natural resources. The corporate review processes of DPLs are geared to ensuring Bankwide review of appropriate application of the policy. Management</p>

² As explained in Box 1 of “Forests in Post-Conflict DRC – Analysis of a Priority Agenda”, the research process included a desk review of literature, collection of original data through thematic studies and a consultative process to sharpen the analysis and test consensus on initial conclusions. The supporting thematic studies cover the following areas: Overview of the DRC’s forests and forest management system (Chezeaux 2003); Economics of the timber sector (Roda and Erdlenbruch 2003); Taxation and economic incentives (Karsenty *et al.* 2003); Interactions between rural populations and concessions (Yambayamba 2003); Small-scale artisanal forest operations (Djiré 2003); Indigenous forest people (Schmidt-Soltau 2004); Assessment of selected national parks (d’Huart 2004; Mwinyihali 2004); Economic valuation of forest goods and services (Bravi 2005). The process also included consultations with government, national and international NGOs, industry, forest people, and donors. This report was prepared in collaboration with and co-authored by 14 research and civil society national and international organizations (see Annex 10).

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		<p>agrees that natural resource policies are particularly sensitive areas requiring careful consideration and analysis. In this regard, Management believes that several DPL operations with strong forestry focus demonstrate that the Bank is identifying likely significant effects in this sensitive sector upstream and is addressing social and environmental concerns appropriately.</p> <p>Action:</p> <p><i>Environmental, forest, and natural resource aspects of policy-based lending will be reviewed again in the next biennial Development Policy Lending Retrospective, planned for FY09. The FY09 retrospective would also follow up on the FY07 retrospective and its recommendations.</i></p>
<p>11. Post-Moratorium Concessions and “Swaps”</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 canceled 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>	<p>429, 434-435, 443</p>	<p>Comment:</p> <p>Management welcomes the Panel’s finding that the Bank’s supervision work was consistent with relevant Bank policy, and believes that the technical and governance findings of Bank missions were raised at the appropriate level in the DRC Government structure, especially around July 2005 in the context of the preparation of the TSERO budget support.</p> <p>Since 2003 when the first breaches of the moratorium were reported, the Bank never stopped expressing concern on the enforcement of the moratorium. In 2004, it became clear that the forest reform agenda was completely undermined by the lack of interest of the then Minister of Environment to implement policy decisions made by his predecessor with support of the Presidency and several ministries. Breaches of the moratorium continued to be reported, official information was no longer disclosed, and there was no progress in launching the Legal Review that had been agreed upon in 2003. Donors including the Bank expressed their concerns in a joint letter of March 2005 as did several international and national NGOs. The Bank used its leverage afforded by the TSERO and escalated the debate to the highest level of Government, President Kabila. The moratorium and the Legal Review were included as prior conditions for the TSERO; and a Presidential Decree was enacted in October 2005 that reinstated the initially agreed-upon criteria and procedures for the Legal Review, restored the full mandate of the Independent Observer, and strengthened the 2002 moratorium. The Decree concerns all concessions including the swaps and other similar transactions (Article 23 of the Decree). A reputable international NGO (World Resources Institute) was recruited to be an Independent Observer of the Legal Review. It is Management’s understanding that concessions re-instated, swapped or granted in spite of the moratorium will be challenged by the Legal Review</p>

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			<p>in line with the provisions of the October 2005 Presidential Decree.</p> <p>After the Presidential Decree was adopted and the decision to recruit a reputable Independent Observer were made, Bank supervision focused on accelerating the implementation of the Presidential Decree. Now that remedial action against the breaches of the moratorium had been agreed upon, the Bank team concluded that repeating these breaches in Aide-memoires had become unproductive. The Bank continued, however, to make its views on the moratorium known to all stakeholders, including the Government through the Bank's website, Bank official statements in international forest events, including the speech of its President during the High-Level Forest Event he convened at the 2007 Spring Meetings. The Bank's continuous focus on the moratorium is also documented in a multi-author report "Forests in Post-conflict DRC", coordinated by Bank staff, widely publicized, and quoted by the Panel.</p> <p>Action:</p> <p><i>Management will continue to monitor implementation of the moratorium and the Legal Review as well as all other forest governance related indicators listed in the now closed TSERO operation.</i></p> <p><i>Furthermore, given that the maintenance of the moratorium requires not only technical support, but also enduring political commitment, the Bank will continue to raise this issue in the context of the overall country dialogue, and consider introducing relevant follow up measures in future policy lending or similar instruments.</i></p>
12.	<p>Concession Conversion Process</p> <p>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 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 needs 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</p>	204, 462-464, 469-470, 473, 474, 478-479, 484, 487, 490-493, 496, 497-499, 500, 508-509	<p>Comment:</p> <p>Management welcomes the Panel's finding that the Bank's effort to establish an Independent Observer in the Legal Review is consistent with Bank policy.</p> <p>Management shares many of the Panel's concerns regarding the challenges facing forests and forest peoples in the DRC. These make the Bank's engagement all the more important. As stressed by two Presidents of the World Bank in 2004 and in 2007, in the face of these challenges, inaction is not an option. Though progress is proving slow and achievements imperfect, Management believes it has been far better to attempt improving the situation, than to avoid the risks of engagement. Since 2002, Management has remained committed to helping DRC remove the legacy of mismanagement and poor governance, and lay the foundation for more equitable and sustainable models. To this end, it has helped cancel illegal concessions; introduce more stringent social and environmental obligations,</p>

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<p>conversion process set forth in the October 2005 Presidential decree has been beset by considerable and significant problems. These are noted below.</p> <p>Treatment of Existing Concessions</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> <p>Time Constraints</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> <p>Race to Extract and Swap for Higher Value Forest Areas</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> <p>Lack of Meaningful Participation by Pygmy Peoples and Local Communities</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 Peoples for each concession under review, if concession is in proximity to Indigenous Peoples. Panel also understands that under new draft legislation a permanent</p>		<p>where possible; and promote transparency and public participation. Had Management not done so, it is likely that the majority of the DRC rainforest would, by now, be under old style long-term logging contracts and no longer available for other uses focused on social and environmental values. This scenario was clearly underway in 2002.</p> <p>Management agrees that the Legal Review is facing challenges and delays, but notes that this review is taking place in an extremely delicate post-conflict state-building context where difficulties and delays are to be expected.</p> <p>As an alternative, Management could have waited for generally more favorable conditions to engage in the moratorium and Legal Review, letting concessions, old or new, legal or illegal, continue operating under the old forest regulations. This would have meant, however, accepting the likely lock up of the entire Congolese rainforest under long-term logging contracts to the detriment of other social and environmental values.</p> <p>With regard to the post-moratorium swaps, Management has encouraged the Government to conduct the Review in strict compliance with the Presidential Decree and believes that, in line with the moratorium, concessions exchanged after 2002 should be restored to their pre-moratorium status. According to the Decree, the reports of the Technical Working Group and the Independent Observer reports will be made public at the end of the technical verifications and before the Committee in charge of deciding on these matters is convened (Articles 8, 15 of the Decree).</p> <p>As for the timeframe of the Legal Review, Management wishes to clarify that: (i) clear time benchmarks are essential to keep the review process from being delayed or stalled, as was observed from 2003 to 2005; and (ii) according to the Presidential Decree, issues that go beyond the strict legality of concessions, such as the geographical boundaries, will continue to be dealt with during the 4-year period of preparation of management plans.</p> <p>Concerning the race to extract and swap for higher value forests, Management believes this point in fact strengthens the case explained above for a timely completion of the Legal Review. It also argues for using a third-party monitor to help curb illegal logging, and the Bank is helping DRC to secure the services of a reputable international NGO to fulfill this mandate.</p> <p>With regard to the Pygmies’ participation in forest management, Management welcomes the Panel’s finding that the Bank’s effort to encourage participation of Indigenous Peoples in the process is consistent with Bank policy. Management shares the Panel’s views that securing genuine</p>

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<p>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 Peoples 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 Peoples 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 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> <p>Asymmetrical Rights to Contest Concession Decisions</p> <p>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.</p> <p>Additional Observations on Concession Conversion Process</p> <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</p>		<p>Indigenous Peoples representation in the DRC context poses many challenges, and it welcomes the Panel's conclusion that the addition of a permanent Indigenous Peoples representative to the inter-ministerial committee is particularly positive. The Bank has recommended, and the Government agreed, that the Pygmies will be represented by two members in the Committee – one (rotating) whose habitat is close to a concession who will participate in the discussion of that specific concession; and one permanent representative. This arrangement is built into the Decree that will designate the members of the Committee, which has been submitted for the Prime Minister's approval.</p> <p>Management wishes to underscore that, although the (still ongoing) process of identifying Indigenous Peoples representatives may turn out to be imperfect, it represents a first attempt towards greater participation of Indigenous Peoples in public affairs and will provide a source of precious experience for the future.</p> <p>As for asymmetrical rights to contest concessions, Management wishes to clarify that, according to Government officials and legal experts in DRC, it is a general principle of law that communities whose rights are impacted and/or violated by any Government authority's decision have the right to contest such a decision. Furthermore, the 2002 Forest Code explicitly gives civil society organizations the right to act in court for forest-related matters (Article XX). Management is also aware of the need for the DRC Government to be properly represented in case of disputes with the private sector, and will integrate this question into its dialogue with the Government.</p> <p>Action:</p> <p><i>See action under Item 11.</i></p>

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received disturbing reports and information about abuses committed against local communities and forests in certain concession areas.		
<p>13. Zoning and Land Use</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>	<p>513-514, 516</p>	<p>Comment:</p> <p>Management wishes to clarify that TORs for the pilot participatory forest zoning plan, as defined in the TORs prepared before it was dropped from the EESRSP, provided for full consultation with the Pygmies and was compliant with OD 4.20, as well as with other applicable Bank policies (see TORs, Annex 4).</p> <p>Dropping the zoning activity did not influence EESRSP's policy compliance obligations, which related mostly to infrastructure rehabilitation, the largest project component.</p> <p>The pilot participatory forest zoning activity was dropped 7 months before the Request for Inspection, for the following main reasons: (i) the supervision arrangements under the EESRSP, a multi-purpose emergency operation where the zoning plan represented 2 percent of the cost, were unsuitable to support a delicate and technically complex process such as the zoning; and (ii) delays, combined with the then Minister of Environment's wavering commitment to basic reforms, such as the moratorium and the Legal Review, as well as his reluctance to collaborate with NGOs operating in the pilot area, seemed to undermine the potential for success. The decision was therefore made to support the participatory forest zoning activity at a more appropriate time, using a forest sector project.</p> <p>Management further wishes to clarify that the Legal Review/conversion and a participatory forest zoning activity are two important, but separate, exercises and that one cannot substitute for the other. The conversion of old forest exploitation contracts into new concessions complements the cancellation of invalid contracts. It ensures that contracts withstanding legal scrutiny are changed (converted) to include previously missing social and environmental obligations. According to Articles 19 and 20 of the 2005 Decree, local communities will be able to propose changes in the boundaries and projected use of converted concessions at the time of preparation and approval of forest management plans. These converted contracts would become final only after management plans are approved.</p> <p>The pilot zoning activity was to cover a broader landscape (valid and canceled concessions, current and potential biodiversity reserves, rural lands, community lands and all other conceivable land uses) and formulate an initial proposal regarding a wide range of possible uses of forest lands.</p>

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			<p>Management agrees that participatory mapping of the Pygmies' and other forest communities' customary forest uses is necessary, and such participatory mapping was included in the TORs for the participatory forest zoning activity. Management is aware of a number of initiatives by various partners to undertake participatory zoning in DRC. In fact, the Lopori Marina landscape was chosen as a pilot zone for the EESRSP so that the Government and local communities could expand and build upon the participatory zoning experiences of NGOs.</p> <p>Action:</p> <p><i>A forest land use planning activity similar to the one that could not be supported under the EESRSP, will be included in the forthcoming IDA forest operation, subject to the outcome of consultations during project preparation, and drawing lessons from the ongoing experiences of other partners in DRC.</i></p>
14.	<p>Implementation Decrees under the Forest Code</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>	521, 526	<p>Comment:</p> <p>Since re-commencing its policy dialogue with the Government, the Bank has recommended development of alternative uses, including community forestry. The Bank has advised that the preparation of a legal framework for community-based forestry be considered a priority and include local consultations, studies, and pilots. In its dialogue with the Government, the Bank has reiterated that a participatory approach, including consultation of all stakeholders, be used to prepare, discuss and endorse draft decrees and regulations.</p> <p>Management concurs with the Panel that the process of preparing and adopting the Forest Code's implementation decrees is slow, and notes that additional time will be required to complete this regulatory framework. Management wishes to recognize that the Government, together with its partners, especially the FAO, is showing commitment to this task and is making progress under difficult circumstances. Some 42 decrees and regulations are needed to ensure implementation of the principles, rules and procedures of the Forest Code. To date, eleven decrees and arrêtés have been adopted, six have been submitted for adoption by the Prime Minister, and seven are being submitted to stakeholders for additional consultation, and the remaining 19 are being prepared. Developing such a comprehensive set of decrees and regulations is a huge endeavor which is difficult to achieve, even in a stable country.</p> <p>The Bank is committed to assist the Government in preparing the decrees and regulations to facilitate the implementation of the new policies embedded in the 2002 Forest Code, especially the emergence</p>

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			<p>of alternative uses, protection of customary rights and nature conservation, as well as to ensure a smooth transition after the end of the Legal Review, sustainable practices in production forests, and to strengthen capacities for law enforcement and monitoring.</p> <p>Action:</p> <p><i>Management will support Government efforts to speed up the preparation and adoption of the key implementation decrees of the Forest Code, including by supporting local consultations, studies and pilots as needed.</i></p> <p><i>Through these operations, the Bank will also continue fostering collaboration between the Government and partners to assist in forest law enforcement and monitoring.</i></p>
15.	<p>Concluding Observations</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 Bank's policy of poverty reduction.</p> <p>Panel notes potential importance of developing a more balanced approach by emphasizing appropriate models of community forestry 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 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 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</p>	530-542	<p>Comment:</p> <p>Management understands and appreciates that the Panel is supportive of the moratorium and other fundamental measures the Government has taken with the support of the Bank and other development partners. Management also welcomes the Panel's wish that the Bank stay engaged in the forest sector in DRC. Management would like to reiterate that poverty reduction is at the core of the Bank's engagement in DRC, including in the forestry sector.</p> <p>Management concurs with the Panel that the moratorium has not been fully respected due to the wavering commitment by five successive line ministers in the transition government. Management also notes that the Bank's involvement was instrumental in protecting the achievements of the initial wave of contract cancellation and the moratorium and is confident that the breaches of the moratorium will be dealt with by the Legal Review now underway.</p> <p>Management also agrees that capacity building is crucial to implement forest reforms on the ground, and that this capacity is extremely low in DRC. Management notes that given multiple pressing priorities, financing a forest capacity building operation was not possible in the aftermath of the conflict, when the Bank resumed operations in DRC. The situation has now improved and the Bank has agreed to prepare such an operation for financing during FY09. This operation along with the MDTF for Forest Governance, will help strengthen the capacity of public institutions and civil society to implement, enforce and monitor the new forest policies on the ground.</p> <p>Management fully agrees with the need to develop new and alternative forest models including schemes which would help reduce carbon emissions, protect biodiversity, and reward local populations for the services that the forest they</p>

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<p>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> <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>		<p>inhabit provides to the global community. Since 2002, the Bank has advised the DRC Government to follow this direction. For example, it has advised the Government to introduce explicit reference to environmental services and conservation concessions in the 2002 Forest Code so as to facilitate the implementation of these approaches in the future. The Bank is now working with other partners to facilitate DRC's accession to the Forest Carbon Facility Partnership and to pilot conservation concessions in line with the 2002 Forest Code.</p> <p>At the same time, Management notes that in the wake of peace and a restarting of the economy, logging risks being driven primarily by market forces and rehabilitation of infrastructure. The Bank's intervention since 2002 has, therefore, focused on controlling this sector, removing the legacy of mismanagement, and freeing up space for more sustainable and equitable forest uses. It should be noted that, although harvesting operations are gradually resuming in DRC, it remains relatively modest compared to other forest-rich countries in the world, due mostly to persistent infrastructure bottlenecks.</p> <p>This context offers a window of opportunity of a few years to establish basic governance and enforcement capacity and to promote alternative forest models. This strategy is precisely the one the Bank helped put in motion, starting with the removal of illegitimate logging concessions that locked up the majority of Congolese forests until 2002. Although this initial effort faced resistance, it has helped to reduce areas under logging concessions by more than half, to secure Presidential commitment for a moratorium on new concessions, to establish third-party observers in the Legal Review and in forest controls in the field, and to create space for new forest models that were not given consideration until then.</p> <p>At no point in time has the Bank advocated for an expansion of logging in DRC. The Bank always made it clear – as the Panel also does in the present report – that, unless strong measures are taken, the current resumption of logging will most likely happen with little or no benefits to the Congolese people and to the detriment of the environment.</p> <p>Sector data mentioned in discussion with Government, put in the context of the broader sector strategy outlined above, helped draw the attention of DRC's high-level decision-makers to the forest and to mobilize the type of political commitment that was needed to put the ambitious governance reform agenda in motion. 2002 initial estimates were based on information available at that time, and were subsequently updated based on analytical work undertaken or supported by the</p>

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			<p>Bank and shared with all partners.. Sector data will continue to be refined in parallel with the implementation of governance reforms and capacity-building on the ground.</p> <p>The alternative to the reform agenda supported by the Bank under difficult conditions since 2002, was to wait for generally more favorable conditions and let concessions, legal or illegal, continue to operate, expand and consolidate under the old forest regulations. This approach would not have benefited local communities and the environment.</p> <p>Without the reform agenda supported by the Bank, it is likely that the entire Congolese forest would now be locked up under long-term old-style logging contracts without meaningful social and environmental provisions. Participatory zoning would be precluded, and alternative models based on social and environmental values would no longer be an option. This scenario was clearly underway in 2002, and the Bank helped prevent it from happening.</p> <p>Management also believes that, in 2005, policy lending was the appropriate instrument to revive the top-level political commitment that was needed to strengthen the moratorium and launch the Legal Review, at a time when the then line ministry had moved away from these fundamental governance measures. Had the Bank not used the policy lending instrument to mobilize the highest level of attention and overcome inertia, there is reason to believe that the moratorium would no longer be in place and many more areas would be covered with logging concessions, thus reducing the scope for other more sustainable and equitable forest uses. Policy lending was used to support two measures that enjoyed broad support from civil society (as demonstrated by the November 2004 Forest Forum, held in Kinshasa) and within the Government at the technical and political levels.</p>