

## **The Inspection Panel**

### **Report and Recommendation On Request for Inspection**

#### **Democratic Republic of Congo: Transitional Support for Economic Recovery Credit Operation (TSERO) (IDA Grant No. H 192-DRC) and Emergency Economic and Social Reunification Support Project (EESRSP) (IDA Credit No. 3824-DRC and IDA Grant No. H 064-DRC)**

1. On November 19, 2005, the Inspection Panel received a Request for Inspection,<sup>1</sup> dated October 30, 2005, related to two Projects regarding Democratic Republic of Congo (DRC): Emergency Economic and Social Reunification Support Project (EESRSP) (IDA Credit No. 3824-DRC and IDA Grant No. H 064-DRC) and Transitional Support for Economic Recovery Credit Operation (TSERO) (IDA Grant No. H 192-DRC). The Projects are part of a series of Bank<sup>2</sup> funded instruments to support, *inter alia*, forest sector reform in DRC. The Request received was in French. The Panel registered the Request on December 1, 2005.
2. The Organisations Autochtones Pygmées et Accompagnant les Autochtones Pygmées en République Démocratique du Congo submitted the Request on their own behalf and on behalf of affected local communities living in the Democratic Republic of Congo. Representatives of local communities of Kisangani in the Orientale Province, of Béni and Butembo in the Nord-Kivu Province, of Kinshasa/Mbandaka and Lokolama in the Equateur Province, of Inongo in the Bandundu Province, of Kindu in the Maniema Province, and of Bukavu in the Sud-Kivu Province, are signatories to the Request. The Request for Inspection includes 32 annexes.

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<sup>1</sup> Hereinafter called “the Request.”

<sup>2</sup> In this report the term “Bank” refers to the International Development Association.

## A. The Projects

### 1. The Emergency Economic and Social Reunification Support Project (EESRSP)

3. **Project objective:** The EESRSP's objectives are three-fold: to “[h]elp restore or introduce a sound economic governance system throughout the country;” to “[c]omplement actions currently underway to address urgent needs ... by financing rehabilitation activities in reunified provinces;” and to “prepare for the rapid extension of the EMRRP [Emergency Multi-Sector Rehabilitation and Reconstruction Program] to all parts of the country.....”<sup>3</sup>
4. **Project components:** The Project includes five components which aim either at supporting implementation of economic reforms in DRC or at addressing urgent needs and activating implementation mechanisms in reunified provinces. These components are: 1. Balance of Payments Support; 2. Institutional Strengthening; 3. Infrastructure Rehabilitation; 4. Urban Rehabilitation; and 5. Community Empowerment.
5. The Request focuses on the “Institutional Strengthening” component of the EESRSP, which, *inter alia*, has as an objective to help restore effective institutions in the forestry sector in those provinces that have been reunified. It is intended to help improve local governance over natural resources, and in particular to help bring the new Forestry Code into practice and to address the problem of illegal logging.
6. The institutional component of the Project sets out two priorities. The first is the preparation of a forest zoning plan that focuses particularly on Equateur Province and Orientale Province. According to the Technical Annex, “[t]his is critical to secure land rights and transparent access to forest resources for all stakeholders. The Project will finance mapping services and verifications on the ground, socio-economic assessments, facilitation of local consultations to help Government and local stakeholders organize rural areas in three broad categories according to their primary objectives (rural development, sustainable production, environmental production). The project will also provide basic training and equipment for forestry services to lead the planning process.”<sup>4</sup>

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<sup>3</sup> Memorandum and Recommendation of the President of the International Development Association to the Executive Directors on a Proposed Grant in the Amount of SDR 117.0 Million (about US\$164 Million equivalent) and a Proposed Credit in the amount of SDR 35.7 Million (about US\$50 Million equivalent) to Democratic Republic of Congo for an Emergency and Social Reunification Support Project, August 14, 2003, Report No: P7601-ZR, p. 10 [hereinafter “MOP”].

<sup>4</sup> Technical Annex for the Proposed Grant in the amount of SDR 117.0 million (about US\$164 million equivalent) and the Proposed Credit in the amount of SDR 35.7 million (about US\$50 million equivalent) to Democratic Republic of Congo for an Emergency Economic and Social Reunification Support Project, August 14, 2003, Report No:T7601-ZR, pp. 28-29 [hereinafter “Technical Annex”].

7. The institutional component's second priority is to “[l]ay the ground for implementation of the new law’s forest concessions with a focus on converting old forest contracts into the new concession regime.”<sup>5</sup> According to the Technical Annex, “[t]he Project will finance methodological support and field verifications to: assess compliance with past obligations; re-design concessions boundaries where appropriate; and monitor preliminary steps by concession holders towards developing sound forest management plans. The Project will also support the setting up of a forest information system, and the re-activation of communication between central and local forestry services, as well as basic training and equipment to strengthen capacity of forestry services.”<sup>6</sup>

## 2. Transitional Support for Economic Recovery Credit Operation (TSERO)

8. **Project objectives:** One of the TSERO’s objectives is to improve governance in the natural resources sector. The Program Document for the TSERO states that “[p]rior to and during the conflict, the majority of the country’s forests with commercial potential were allocated to rent seekers and interest groups: logging contracts were signed without transparency or local consultation, and yielded little or no benefits to rural communities or to the country as a whole. With the return of peace and rehabilitation of infrastructure, activities in the forestry industry are likely to resume and intensify. The challenge for the country is to ensure that these activities bring tangible benefits to the population at large, and especially to the poor.”<sup>7</sup>
9. **Program elements:** The Program Document lists specific reforms supported by the TSERO grant, such as the extension of the moratorium on issuing new forestry concessions until “(a) the legal review of all existing concessions are [sic] complete, (b) new auction procedures are adopted, and (c) a three year strategy for allocating new concessions has been adopted in a transparent manner.”<sup>8</sup> The legal review of forestry concessions is to be done by “(a) adopting a new presidential decree specifying credible and transparent procedures, (b) publishing the list of existing concessions, and (c) recruiting an independent expert (legal advisor) to ensure transparency and objectivity in the review process.”<sup>9</sup>

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<sup>5</sup> Technical Annex, p. 29.

<sup>6</sup> Technical Annex, p. 29.

<sup>7</sup> Program Document for a Proposed Grant in the Amount of SDR 62.1. Million (US\$ 90 Million equivalent) to Democratic Republic of the Congo for a Transitional Support for Economic Recovery Operation, November 8, 2005. Report No. 33785-ZR, p. 10 [hereinafter “Program Document”].

<sup>8</sup> Program Document, p. 20.

<sup>9</sup> Program Document, p. 20 – 21.

## B. Financing

10. The EESRSP is supported by an IDA Credit of SDR 35.7 million<sup>10</sup> and an IDA Grant of SDR 117.0 million<sup>11</sup> to DRC, approved on September 11, 2003. The Credit and Grant Agreements became effective on December 5, 2003. The closing date is set for September 30, 2008.
11. The TSERO was approved on December 8, 2005 and is supported by an IDA Grant of SDR 62.1 million to DRC.<sup>12</sup> The Grant Agreement became effective on December 27, 2005. The expected closing date is December 31, 2006.

## C. The Request

12. The Requesters claim that they have been harmed and will be harmed by the forestry sector reform activities supported by the EESRSP and the TSERO. They are concerned about possible negative effects of a forest zoning plan under preparation with IDA support and fear the implementation of a new commercial forest concession system that may cause irreversible harm to the forests where they live and on which they depend for their subsistence.
13. The Requesters state that the EESRSP includes the preparation of a forest zoning plan for the forests of the Equateur Province and Orientale Province, where the Pygmies have lived for a long time. The Requesters claim that, if the zoning of the forests occurs without consulting the indigenous peoples and considering their interests and if new forest concessions are assigned, the Bank will be ignoring its own forestry policies and procedures and will be supporting the violation of indigenous peoples' rights and harming their interests.
14. The Requesters claim that the implementation of the EESRSP as it now stands will lead to violations of their rights to occupy their ancestral lands, maintain the integrity of their traditional lands, access their traditional lands and existing resources, manage their forests and resources according to traditional knowledge and practices, and protect their cultural and spiritual values. They claim this would then lead to the destruction or loss of their natural living environment and their means of subsistence, impose or force change in their way of life, and cause serious social conflict.
15. The Requesters assert that their "*grievances concern the failings and negligence of the World Bank.*"<sup>13</sup> The Requesters believe that "[b]y failing to implement any safeguards, the World Bank, without any input from civil society or involvement of the indigenous communities, opted to hastily adopt a

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<sup>10</sup> US\$ 50 million equivalent at the time of Credit approval.

<sup>11</sup> US\$ 164 million equivalent at the time of Grant approval.

<sup>12</sup> US\$ 90 million equivalent at the time of Grant approval.

<sup>13</sup> Request, p. 1.

*Congolese Forest Code....*”<sup>14</sup> According to the Requesters, the EESRSP is based on this Forest Code and fails to take into account their interests. In particular, they claim that the Bank failed to comply with its policies and procedures regarding environmental assessment, indigenous people, forests and supervision.

### **Environmental Assessment**

16. The Requesters contend that the EESRSP was erroneously classified as Category B under OP 4.01 on Environmental Assessment. Because of the sensitive impacts of the policies to be implemented under the Projects, in particular the announcement of a national zoning plan and the existence of indigenous communities, the Requesters contend that the Project should have been classified as Category A.
17. The Requesters stress that *“the type of management and, in the long term the survival of the forests in DRC, will depend on the forest zoning activity.”*<sup>15</sup> They note that *“[c]onsequently, it may have a significant environmental and social impact, especially since a zoning plan is being prepared for all of the country’s forests, the second largest tropical area in the world, inhabited primarily by indigenous Pygmy peoples who depend directly on these very forests for their survival.”*<sup>16</sup>
18. According to the Requesters, an African case study <sup>17</sup> supports their concern *“by highlighting the significant impacts that could be produced, from both an environmental and human perspective, from what the study refers to as the start of a logging boom.”*<sup>18</sup>
19. The Requesters note that the preparation of the environmental assessment was delayed more than twelve months after the Development Financing Agreement for the Project became effective (December 5, 2003), and that the environmental assessment is still not available.

### **Indigenous Peoples**

20. The Requesters state that in the EESRSP, the Bank ignored OD 4.20 on Indigenous Peoples, despite the presence of indigenous Pygmies people in the Project implementation area. They explain that the Pygmies’ *“existence,*

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<sup>14</sup> Request, p. 4.

<sup>15</sup> Request, p. 7.

<sup>16</sup> Request, p. 7.

<sup>17</sup> ARD, Conflict Timber: Dimensions of the Problem in Asia and Africa, Volume III, African Cases, USAID/ARD, Burlington, USA, May 2003.

<sup>18</sup> Request, p. 7.

*survival, cultural identity, and traditional knowledge are intimately linked to the forest, their element and life source which they revere.*"<sup>19</sup>

21. According to the Requesters, OD 4.20 should apply to the EESRSP. They reject the Bank's claim that the Project is not expected to include activities in indigenous peoples' areas and claim this does not correspond to the reality on the ground. They note that the Pygmies were the first inhabitants of the region and have lived and traveled in the forests of the Equateur and the Orientale Provinces for centuries, even millennia.
22. The Requesters further allege that the Bank prepared terms of reference for a pilot zoning plan covering the axis Maringa-Lopori-Wamba and that these terms of reference recognized the presence of Pygmies' indigenous communities in these forests.

### **Forestry**

23. The Requesters further state that Bank activities pertaining to the forestry sector in DRC are not consistent with OP 4.36 on Forests. They claim that the activities lack popular legitimacy, as they are being implemented without adequate consultation and do not respond to indigenous peoples' concerns or to the requirements for sustainable management of the Congolese forests and the development of their inhabitants.
24. The Requesters fear that under the EESRSP, the Bank plans to lay the foundation for implementing a new forest concession system which will lift the moratorium on granting titles to exploit forests and result in granting new forest concessions, even though the zoning plan would not have been prepared. They fear that this concession system will lead to the revival of the logging industry without any mechanisms for effective control or for ensuring transparency. The Requesters further add that *"[s]hould this theory be borne out, the rights and interests of the indigenous Pygmy peoples would be seriously undermined, and they would not have been consulted, and, therefore not have been able to defend their rights to their traditional lands, which quite often cover wide areas, and are essential to their traditional nomadic practices and activities ...."*<sup>20</sup>
25. The Requesters believe that the Bank supports the implementation of the idea that *"development will come from industrial logging."*<sup>21</sup> They note that no regulation related to the rights and interests of local communities or to environmental protection has been adopted. They claim that the EESRSP forest component performance indicators refer only to the number of new concessions granted, without considering risks from a failure to consult indigenous people

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<sup>19</sup> Request, p. 5.

<sup>20</sup> Request, p. 6.

<sup>21</sup> Request, p. 9-10.

or to suspend the moratorium prematurely. The Requesters note that according to the Bank's own estimates, the policies supported by the Bank will ensure 60 million hectares of forests are available for forest production, which constitutes three-quarters of the 80 million hectares of tropical forests in DRC.<sup>22</sup>

26. The Requesters also refer to a Bank-financed structural adjustment credit, the Economic Recovery Credit, approved in May 2002 and to the DRC Forest Code adopted in August 2002 as a condition of the Credit. According to the Requesters, the EESRSP is based on the Forest Code, which sets the policy framework for the country's forest management and was adopted without the participation of civil society or the involvement of the indigenous population and without implementation of any safeguards.

### **Further Claims**

27. The Requesters argue that the type of lending instrument used (an Emergency Recovery Loan) resulted in the Bank bypassing its safeguard policies and procedures related to environment, forestry, and indigenous peoples. According to the Request, “[t]he current framework for the future management of the Congolese forests is based on a legislative text that clearly establishes an industrial logging system, thereby marginalizing local communities, and in no way recognizing the indigenous peoples or their specific needs.”<sup>23</sup> Thus, the Requesters state that the Bank's forest activities in DRC are developed “using a foundation which, in the eyes of the people, lacks legitimacy and fails to address the concerns of the indigenous peoples and the issues related to sustainable development....”<sup>24</sup>
28. The Requesters also express concerns with regard to the TSERO, which includes a component on forestry sector governance. They state that although they have not been granted access to the details of this component, they fear that if the TSERO is approved in the same form as the previous EESRSP and the earlier Economic Recovery Credit, “it would allow the application of the Bank's safeguard policies and procedures to be sidelined”, “reinforcing the industrial approach outline[d] in the Forest Code,” “risk marginalizing indigenous people even more,” and build upon flawed and inadequate forestry sector reforms already in place.<sup>25</sup> This would threaten their rights and their survival.
29. The Requesters claim that because of the above-mentioned Bank failures the policies supported “do not appear to lay a solid foundation for zoning.”<sup>26</sup> Moreover, the Requesters warn that, if the zoning of the forests were to be

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<sup>22</sup> Request, p. 9.

<sup>23</sup> Request, p. 4.

<sup>24</sup> Request, p. 4.

<sup>25</sup> Request, p. 4-5.

<sup>26</sup> Request, p. 8.

carried out without consultations of affected people and without taking their interests into account, and after the new forest concessions have been allocated, this would result in “1. *The violation of their rights to occupy their ancestral lands;* 2. *The violation of the integrity of their traditional lands;* 3. *The violation of their right of access to their traditional lands and the resources found thereon;* 4. *The violation of the right to manage their forests and the resources located therein, in keeping with their traditional knowledge and practices;* 5. *The violation of their cultural and spiritual values.*”<sup>27</sup>

30. These violations and damages, the Requesters believe, would lead to “*destruction and/or loss of their natural living environment,*” “*the elimination of their means of subsistence,*” “*an imposed, even forced, change to their lifestyle*” and “*[s]erious social conflicts.*”<sup>28</sup> The Requesters further warn that “*[t]hese negative impacts would further impoverish the poorest and most marginalized segments of the Congolese population, thereby jeopardizing all prospects for sustainable development.*”<sup>29</sup>
31. The Requesters state that they have tried several times to have the Bank clarify its real motivations and to explain its failure to apply its own policies and procedures, but without success. They also list several meetings and exchanges they had with the Bank and state that these did not provide any substantial answers to the concerns and recommendations of the organizations of the Pygmy indigenous people or of civil society generally.
32. For the existing EESRSP, the Requesters ask that the Bank implement OP 4.20 on Indigenous Peoples, reconsider the EESRSP classification under OP 4.01, so that it is classified as Category A rather than B, and disclose the EESRSP’s environmental assessments. They further request that their concerns and observations be considered as part of the approval process for new projects having a forest component, such as the TSERO.
33. The Panel notes that the above claims may constitute violations by the Bank of various provisions of the following operational Policies and Procedures:

OP/BP 4.01	Environmental Assessment
OP 4.12	Involuntary Resettlement
OD 4.15	Poverty Reduction
OD 4.20	Indigenous People
OP/BP 4.36	Forestry
OP/BP 8.50	Emergency Recovery Assistance
OPN 11.03	Cultural Property
OP/BP 13.05	Project Supervision
BP 17.50	Disclosure of Information

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<sup>27</sup> Request, p. 8-9.

<sup>28</sup> Request, p. 9.

<sup>29</sup> Request, p. 9.



## D. Management Response

34. On January 13, 2005, Management submitted its Response to the Request.<sup>30</sup> The Response provides background information on the context of the EESRSP and the TSERO, describes the challenges experienced during Project implementation, discusses the issues raised in the Request, and includes a section on lessons learned and next steps. The Response includes eleven Annexes.

### Response to Requesters' Claims

35. Management states that it *believes that the Bank made every effort to apply its policies and procedures ...* and that *“the Requesters’ rights or interests have not been, nor will they be directly and adversely affected by a failure of the Bank to implement its policies and procedures.”*<sup>31</sup> However, Management recognizes that *“with respect to the EESRSP, the Bank was not in full compliance with processing provisions of OP 4.01, and OD 4.20 should have been triggered during project preparation, even if the component in question, the PFZP [Pilot Participatory Forest Zoning Plan], was subsequently dropped from the Project before being started.”*<sup>32</sup> Management asserts that *“the complaint is based on two hypothetical assumptions that prove to be unfounded (i.e., the Bank-supported zoning will not be participatory, and the Bank pushes for rapid allocation of new concessions).”*<sup>33</sup>
36. With regard to the environmental categorization of the Project, Management asserts that the EESRSP was classified correctly as Category B. With regard to the institutional strengthening component of the EESRSP, Management asserts that *“technical assistance operations for institutional strengthening are usually classified as category C”* and that *“[c]ategory A would not have been appropriate for this component.”*<sup>34</sup> According to Management, the forest zoning plan was not expected to have widespread or adverse impacts, because it was planned at a pilot scale and as part of a *“policy package aimed at halting illegal use of forests and promoting participatory conservation and sustainable management of forest resources....”*<sup>35</sup>
37. In response to the Requesters’ claim that the preparation of a Forest Zoning Plan and the existence of indigenous communities would have called for

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<sup>30</sup> Bank Management Response to Request for Inspection Panel Review of the Democratic Republic of Congo: Transitional Support for Economic Recovery Operation (Grant No. H 192-DRC) and Emergency Economic and Social Reunification Support Project (Credit No. 3824-DRC and Grant No. H 064-DRC) [hereinafter “Management Response”].

<sup>31</sup> Management Response, p. 23, ¶ 63.

<sup>32</sup> Management Response, p. 23, ¶ 63.

<sup>33</sup> Management Response, p. 24, ¶ 65.

<sup>34</sup> Management Response, p. 25, Annex 1, item 1.

<sup>35</sup> Management Response, p. 25, Annex 1, item 1.

classification as Category A, Management states that these two aspects do not *per se* require a project to be placed into Category A.

38. Management considers the Pilot Forest Zoning Plan to be an important element of a Bank-supported strategy. However, Management underscores that the Pilot Forest Zoning Plan (PFZP) was dropped from the EESRSP in July 2005. Management notes that the Bank provided support for preparing the TORs of the PFZP. According to Management, the TORs of the PFZP emphasize the role of consultation as a means to identify and preserve the customary rights that the local communities enjoy over the forests.
39. In response to the Requesters fears about the effect of zoning on the awarding of new concessions, Management notes that the moratorium on allocating new concessions was established to avoid having new concessions allocated too quickly and in an inappropriate way. In response to the Requesters' criticism that the number of new concessions attributed in a transparent manner is an inappropriate performance indicator for EESRSP, Management admits that this is not a good indicator and states that it will replace this indicator with a more appropriate one.<sup>36</sup>
40. Management challenges the Requesters' claims regarding the application of OP 8.50 and the direct effect of the delay in implementing OP 4.01 on Environmental Assessment and OP 4.36 on Forests. Management explains that OP 4.01 allows the Bank to exempt the Project from its requirements when compliance with any of its provisions would prevent the effective and timely achievement of the objectives of an emergency recovery project. Management emphasizes that it did not decide not to implement safeguard policies. According to Management, completion of the Environmental Assessment and Environmental and Social Management Framework (ESMF) were delayed because of procurement issues. Management admits that in this respect it did not comply with OP 4.01, but states that it intends to be in compliance by February 2006.
41. As to the Requesters' criticism of the Bank's decision not to apply OD 4.20 on Indigenous Peoples to EESRSP activities, Management explains that "*OD 4.20 was not triggered because the design of the project as reviewed at concept stage did not reveal the existence of Pygmy communities in project-affected areas.*"<sup>37</sup> However, Management believes that OD 4.20 should have been triggered when the PFZP was added. With regard to the infrastructure component of the Project, Management confirms the existence of Pygmies in the affected area and states that an Indigenous Peoples Plan will be prepared.
42. Though Management admits that the Bank's work in DRC has been dominated by issues that deal with logging and with industry, it disagrees with the

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<sup>36</sup> Management Response, p. 33, Annex 1, item 5.

<sup>37</sup> Management Response, p. 33, Annex 1, item 6.

Requesters' assertion that the Bank's forestry sector operations in DRC are based on the notion that development comes from industrial logging.<sup>38</sup> It claims that the Bank is "*trying to introduce good governance in a system that has suffered from corruption, and where the majority of the production forests were under some form of logging contract.*"<sup>39</sup> Management claims that its efforts have led to an unprecedented decrease of the areas that are under concessions.

43. According to Management, the Forest Code introduces innovations such as: traditional users' rights, including those of indigenous peoples; contributions to rural development; enhancement of the rights of local communities; and transparent allocation of future logging rights. Management is of the opinion that the Forest Code serves as a good basis for improving forest management. Management is mainly concerned with the Government's capacity to develop and enforce the implementing regulations and states that many of these regulations are still lacking.
44. In response to the Requesters' concerns about violations of cultural and spiritual values, Management asserts that the pilot zoning plan does not threaten physical cultural property.
45. Concerning Project supervision with regard to the EESRSP, Management notes that four to five technical missions have taken place annually since 2002 and that these missions have focused on deepening the Bank's understanding of forest management in DRC. Management further states that since November 2004, its supervision has been strengthened by a full-time environmental economist based in Kinshasa.<sup>40</sup> In its response, Management includes a list of supervision missions.
46. According to Management, dialogue with local NGOs took place in late 2003 in the context of preparing the Economic and Sector Work (ESW). Management's Response notes that the Bank helped organize the first multi-stakeholder forest forum in DRC in November 2004.

### **Lessons Learned and Next Steps**

47. The section in Management's Response on "Lessons Learned and Next Steps" addresses several difficulties that the Bank has faced and is facing in DRC. Management emphasizes the "*importance of featuring natural resources prominently in the reform agenda at the time of re-engagement and using appropriate instruments to support implementation.*"<sup>41</sup> It states that at the time of re-engagement in the DRC, it was useful to place natural resource

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<sup>38</sup> Management Response, p. 30-31, Annex 1, item 5.

<sup>39</sup> Management Response, p. 32, Annex 1, item 5.

<sup>40</sup> Management Response, p. 23, para. 28. Management's Response in Annex 1 refers to the person as a "forest expert." Annex 1, item 11.

<sup>41</sup> Management Response, p. 20 ¶ 55.

management high on the Bank's agenda to *"avert misappropriation of forest resources during the period that followed reunification."*<sup>42</sup> According to Management, the arrival of a new Minister in DRC *"slowed down, if not reversed"* the reform.<sup>43</sup> Management questions whether it should have focused on capacity building for the Ministry of Environment rather than on the zoning plan and the review of concessions.

48. Management is aware that the *"Bank needs to undertake more proactive efforts to inform interested Governments and NGOs."*<sup>44</sup> With regard to outreach to indigenous peoples, Management claims that it understood the importance of reaching out to Pygmy groups but states that its efforts were restricted to policy dialogue and to contacts with stakeholders in Kinshasa because the forest areas were still inaccessible. According to Management, *"Bank efforts were hampered by the difficulty in eliciting a unified response from the various interlocutors who claimed to represent the Pygmies."*<sup>45</sup> Management acknowledges that a more proactive outreach *"would have perhaps enabled the Bank to rely less on advocacy groups and, instead, establish more direct lines of communication with Pygmy leaders and communities."*<sup>46</sup>
49. Bearing these lessons in mind, Management states that with regard to the forest sector work, it will plan the following steps: consider activities to strengthen institutions and provide an overall framework for other Bank-supported forest activities in DRC; establish a proactive forest information and outreach program as well as more direct lines of communications with indigenous communities, including Pygmies, to make certain that in future Bank operations they receive social and economic benefits that are culturally appropriate; and ensure that future Bank lending in the forest sector and other initiatives such as the zoning plan include measures that strengthen the legal and customary rights and preserve the cultural heritage of indigenous communities including the Pygmies.<sup>47</sup>

## **E. Eligibility**

50. The Panel must determine whether the Request satisfies the eligibility criteria for an Inspection, as set forth in the 1993 Resolution establishing the Panel and the 1999 Clarifications, and recommend whether the matter alleged in the Request should be investigated.

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<sup>42</sup> Management Response, p. 21 ¶ 55.

<sup>43</sup> Management Response, p. 21 ¶ 56.

<sup>44</sup> Management Response, p. 21 ¶ 57.

<sup>45</sup> Management Response, p. 22 ¶ 58.

<sup>46</sup> Management Response, p. 21 ¶ 58.

<sup>47</sup> Management Response, p. 23 ¶ 62.

51. The Panel has reviewed the Request and Management's Response. The Panel Chairperson, Edith Brown Weiss, together with Panel member Werner Kiene, Executive Secretary Eduardo Abbott and Panel Operations Officer Serge Selwan, visited DRC from January 19 through January 26, 2006. During their visit, the Panel Members met with the signatories of the Request for Inspection and affiliated groups, Governmental officials, nongovernmental organizations, representatives of the forest industry association, and local and international technical experts. The Panel visited Equateur and Orientale provinces and met with Requesters and other affected people in Kisangani, Mbandaka, Bikoro and nearby areas.
52. The Panel is satisfied that the Request meets all of the eligibility criteria provided in the 1993 Resolution and Paragraph 9 of the 1999 Clarifications.
53. During the visit, the Panel confirmed that the Requesters are legitimate parties under the Resolution to submit a Request for Inspection to the Inspection Panel. The persons who signed the Request live in Project-affected areas, have a common interest and common concerns, and reside in the Borrower's territory, as required by Paragraph 9(a).
54. The Panel notes that the Request "*assert[s] in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have material adverse effect upon the requesters.*" Paragraph 9(b).
55. During the Panel's visit, the Requesters and other affected people stressed their grave concern about the destruction of their livelihoods, which depend upon the forests. Most of the Requesters claim to be indigenous people who have centuries old ancestral ties to the forests and are dependent upon access to and use of the forests for income. They fear that the Project will destroy their way of life and their culture, which relies on forests.
56. The Requesters allege that the World Bank actions constitute a violation of Bank policies and procedures on forests, environmental assessment, indigenous peoples and supervision, among others, and that these actions have had or could have a significant adverse effect on the Requesters' rights, as required by Paragraph 9(b).
57. The Panel confirmed that the World Bank has been aware from the outset of concerns from civil society about the Project's adverse effects on people inhabiting concession areas, and that for the last four years numerous complaints about the Project, including from people represented in the Request for Inspection, have been brought to the Bank's attention.
58. The Panel is therefore satisfied that the Request "*does assert that the subject matter has been brought to Management's attention and that, in the Requesters' view, Management has failed to respond adequately demonstrating*

*that it has followed or is taking steps to follow the Bank's policies and procedures.*" Hence, the Request meets the requirement of Paragraph 9(c).

59. The Panel notes that the subject matter of the Request is not related to procurement, as required by Paragraph 9(d).
60. The expected closing date of the related EESRSP Grant and Credit is September 20, 2008. 100 percent of the Credit, but only about 25 percent of the Grant had been disbursed as of the date the Request was filed. For the TSERO, the expected closing date is December 31, 2006. The grant was approved on December 8, 2005, shortly after the Request was filed. The Request therefore satisfies the requirement in Paragraph 9(e) that the related Credit has not been closed or substantially disbursed.<sup>48</sup>
61. Furthermore, the Panel has not previously made a recommendation on the subject matter of the Request. Therefore, the Request satisfies Paragraph 9(f).
62. The Panel notes the importance of the forestry sector for economic development in DRC. It also appreciates the importance of providing financing for activities in the post conflict reconstruction context and the difficulties in doing so. During its visit, the Panel was especially impressed that the Requesters welcomed World Bank involvement in the forest sector. However, the Requesters are very concerned about the issues raised in the Request and Bank compliance with relevant policies and procedures.
63. The Panel also observes that Management's Response underlined that the Pilot Zoning Forest Program has been dropped from the EESRSP. However, in its visit, the Panel heard from multiple different and unrelated sources, that the Bank intended to support pilot forest zoning, including drafting of the implementing regulations for zoning to the Forest Code, and that the zoning related activities would commence shortly.
64. In order to ascertain compliance or lack thereof with Bank policies and procedures in this critical forestry sector, the Panel must conduct an appropriate review of all relevant facts and applicable policies and procedures. The Requesters, Management's Response, the Panel's visit to DRC, interviews with Government officials, Bank staff, Requesters and other affected persons, confirmed that there are sharply differing views on the issues raised by the Request for Inspection.

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<sup>48</sup> According to the Resolution that established the Panel, "*this will be deemed to be the case when at least ninety-five percent of the loan proceeds have been disbursed.*" Footnote to Paragraph 14 (c).

## **F. Conclusions**

65. The Requesters and the Request meet the eligibility criteria set forth in the Resolution that established the Inspection Panel and the 1999 Clarifications. The Request and Management Response contain conflicting assertions and interpretations about the issues, the facts, and compliance with Bank policies and procedures.
66. In light of the foregoing, the Panel recommends that an investigation be conducted.