



2nd December 2005

Dear Director,

Re: December 8th 2005 Board consideration of:

- **DRC: Transitional Support for Economic Recovery operation (TSER)**
- **DRC: Emergency Multisector Rehabilitation and Reconstruction Project (EMRRP)**

We are writing to express our concern about the World Bank's operations in the Democratic Republic of Congo (DRC), particularly in the natural resource sectors, and to urge you to postpone consideration of future funding until outstanding questions about the use of past loans and problems with the application of safeguard policies have been addressed. The upcoming Board consideration of the above-listed operations represents an important opportunity to review the Bank's portfolio in the country and to remedy problems before approving additional financing that could repeat or exacerbate past errors.

We urge that, before approval of additional support from the World Bank to the DRC, the following actions be implemented. The rationale for these recommendations can be found in the attached Memorandum.

- The World Bank should **ensure that all safeguards that have been triggered for past projects are fully implemented** and that **additional policies** which should have been applied to a project, such as those on indigenous peoples, forests, cultural property, and natural habitats, are retrospectively **triggered and implemented**.
- The Bank should **ensure that all relevant safeguard policies are triggered and fully implemented for all future operations** in DRC.
- The Bank should **open investigations to address issues raised in the request filed to the Inspection Panel by representatives of a network on indigenous peoples and affected communities in the DRC. The Board should await the outcome of the Inspection Panel investigation before financing any projects which include natural resources components** and which will build upon the (potentially seriously

flawed) legacy of previous Bank operations, including the September 2003 Emergency Economic and Social Reunification Support Project (EESRSP).

- In respect of the funding allocated for forest zoning activities (originally, under the EESRSP), the Bank should **ensure that a proper participatory land use planning process is developed which fully recognises customary rights of forest communities, including hunter-gatherer peoples**. The implementation of this process should be a precondition for the conversion of letters of guarantee into forest concessions and should precede the lifting of the moratorium on the allocation of new concessions.
- **The monitoring and evaluation indicators listed in the Development Financing Agreement for the EESRSP should be revised.** Specifically, the ‘monitoring and evaluation indicator’, stipulating that “By March 2008...at least ten new forestry concessions should have been awarded...” should be removed. Instead, indicators should be adopted related to the achievement of specified rural development goals, such as increases in levels of income in forest-dependent communities.
- The Bank should immediately **publish the PID for the TSER**, as no information has been publicly disclosed about the project, and allow additional time for public review and comment prior to approval.
- The Bank should **disclose any assessments it has conducted of governance adequacy and natural resource sector management capacity in DRC**.
- The Bank should **focus first on strengthening government capacity** in the sector, **before further facilitating private sector investment** in mineral and timber exploitation. Particular emphasis should be given to government capacity in relation to community-based natural resource management.
- Given the magnitude of funds transferred through the Central Coordination Bureau (BCECO) to date and the absence of any independently verified reporting on their use, **an independent expenditure audit and implementation progress report on the use of Bank finances must be conducted and published**. Financial audits of BCECO and BCMI (Bureau de Coordination de Marchés d’Infrastructures), the Infrastructure Procurement Coordination Bureau, **need to be “ground-truthed” with spot-checking of reported expenditures by a third party**.

With the upcoming December 8th decision on additional projects in DRC, the Bank Board has an opportunity to take a new approach and to correct and improve upon mistakes made to date. The Bank could be playing a positive role in DRC, using its resources and influence to support a process that genuinely leads to the achievement of its mandate: to reduce poverty, improve living standards and promote sustainable development. We consider that, **by supporting a process which would recognise communities’ rights to forest lands and resources, ensure rigorous control of the commercial exploitation of**

natural resources, and respect the principles of free, prior and informed consent of forest peoples, the Bank would be taking an important and positive step towards achieving the Millennium Development Goals in DRC and ensuring that its natural resources genuinely benefit its citizens.

The attached briefing provides background information and support for the above recommendations. Should you require any further information about our concerns, please do not hesitate to contact us.

Yours faithfully



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MEMORANDUM

The need for a review on Bank support for natural resources sectors in the Democratic Republic of Congo

December 2005

It is our understanding that on December 8, 2005, the Board will consider approval of a supplemental grant of **\$125 million for the Emergency Multi-sector Rehabilitation and Reconstruction Project (EMRRP)**, and a **\$90 million grant for the Transitional Support for Economic Recovery (TSER) budget support operation**. If approved, these projects will bring to over \$2 billion the total Bank commitments to DRC since re-engagement in 2001. These monies have been provided to an unelected, transitional government in a country that continues to be plagued by insecurity and risk of renewed conflict.

In addition to ongoing public sector reform and general budget assistance, the \$90 million Transitional Support for Economic Recovery operation (TSER) is, we understand, linked to natural resources “governance”, designed to finance the implementation of the new mining and forestry codes that were promulgated and adopted with previous Bank support. This emphasis on accelerating private participation in natural resource extraction gives rise to a number of major concerns. As was described in several reports by the UN Security Council Expert Panel, the devastating war which has claimed the lives of over three million people was largely driven by struggles for control of the country’s natural resources¹.

Our major concerns are set out below.

1. Failure to recognise the dangers of the post-conflict situation

The UN Security Council Expert Panel clearly recognised the dangers that uncontrolled re-activation of the natural resources sectors in DRC would present. In January 2003, the Security Council unanimously passed resolution 1457, calling on “*States, international financial institutions, and other organizations to assist...in efforts to create appropriate national structures and institutions to control resource exploitation*” in DRC². As yet, this has not happened, and there is little prospect of such institutions being established in the foreseeable future.

Given the dangers pointed out by the UN Security Council, the Bank’s research showing that over 50% of countries emerging from conflict fall back into conflict within the first 10 years, due to the persistence of the original conflict’s root causes, is especially relevant³. The World Bank’s Operational Policy on Development Cooperation and Conflict (OP2.30) “mandates the

¹ See for example, UN Security Council, Final Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, S/2002/1146, New York 16th October 2002.

² UN Security Council Resolution 1457, January 2003, New York.

³ Collier, Paul et al. Breaking the Conflict Trap: Civil War and Development Policy, World Bank, Washington DC, 2003.

integration of sensitivity to conflict in Bank assistance through conflict analysis.”⁴ As yet, however, there is no evidence that ‘conflict analyses’ have been done in the case of DRC.

The Bank’s Conflict Prevention and Reconstruction Unit has noted the need for Bank interventions in post-conflict countries to “do no harm”, by taking special care to not trigger any conflict causes.⁵ In countries plagued by the ‘natural resources curse,’ the World Bank and other donors have a role to play in encouraging financial transparency.⁶ The private sector’s engagement in reconstruction and development should initially focus on providing services and infrastructure, and move towards gaining long-term leases and concession rights at only a later stage.⁷ Finally, World Bank interventions in post-conflict countries should focus on community-driven, bottom-up development.⁸

While the World Bank’s 2004 Transitional Support Strategy (TSS), which outlines the Bank’s strategy for engagement in DRC for 2004-2006, states that it is written “against the backdrop of the Bank’s growing experience in post-conflict countries” and utilizes World Bank analyses and best practices, the 2004 TSS does **NOT** indicate adherence to the extremely important guidelines and lessons learned, outlined above. The Bank’s approach to accelerating investment in natural resource development in DRC – as has occurred under previous Bank funding facilities, including the EESRSP - therefore appears to contradict its own work on post-conflict situations.

2. The Bank’s approach to the forest sector in DRC

Our concerns over the two new grants to be considered for approval this month are particularly acute because of their potential to perpetuate what we see as comprehensive failure so far in the Bank’s previous work in DRC’s forest sector.

The natural resource component of the TSER builds upon a series of Bank operations in the forest and mining sectors, without providing a full assessment of the impact of Bank involvement in those sectors to date or accurate information concerning the situation on the ground.

According to Bank documentation, the approach taken in the forest sector so far is predicated upon the increase of private sector involvement in the industrial exploitation of DRC’s forests⁹. As noted below, there appears to be little developmental rationale for such an approach, particularly as the experience of such a strategy in other countries has been extremely disappointing. There appears to have been no serious economic or social assessment by Bank staff of the possible alternatives to industrial logging that would take

⁴ World Bank (Conflict Prevention and Reconstruction Unit). The Conflict Analysis Framework (CAF): Identifying Conflict-related Obstacles to Development, Dissemination Notes, No. 5, October 2002.

⁵ World Bank (Conflict Prevention and Reconstruction Unit). Conflict-Sensitive Development Assistance: The Case of Burundi, Paper No. 27, June 2005.

⁶ Bannon, Ian and Paul Collier. Natural Resources and Violent Conflict: Options and Actions, World Bank, Washington DC, 2003.

⁷ World Bank (Conflict Prevention and Reconstruction Unit). The Private Sector’s Role in the Provision of Infrastructure in Post-Conflict Countries: Patterns and Policy Options, Paper No. 16, August 2004.

⁸ World Bank (Conflict Prevention and Reconstruction Unit). Conflict-Sensitive Development Assistance: The Case of Burundi, Paper No. 27, June 2005.

⁹ World Bank, Democratic Republic of Congo, Mission de Suivi Sectoriel, 1-12 July, 2003.

into account the heavy reliance of DRC's rural population on wild forest resources for their survival; according to the Bank's own documents, as many as 35 million of DRC's 50+ million people depend at least partly on the forests for their survival¹⁰.

Bank staff appear to have justified their approach on the grounds that the forest sector (along with the mining sector) could help 'kick-start' the Congolese economy. However, there are reasons to believe that Bank staff projections of the likely economic benefits from the forestry sector have been grossly over-estimated – whilst the costs, such as those of lost resources for the rural poor, environmental damage, and the likely increase in infectious diseases such as HIV-AIDS and malaria as a result of industrial forestry exploitation, have not been factored in at all.

Bank staff have hypothesized possible governmental incomes from the formal forest sector of up to \$240 million per year, on the basis of exploitation of 40 million hectares of forest¹¹. Bank staff have also suggested that, under the Forest Code adopted by the Congolese government in 2002, 40% of forestry taxes would retrocede to local communities living in forest areas, and thereby be used for developmental works.

Experience in other comparable countries, such as Cameroon, has shown that such expectations are likely to be largely or wholly illusory. As Bank staff now recognize, the massive illegalities and rampant corruption, to which the forest sector seems uniquely prone, largely rob the national treasury of the expected level of funds. Similarly, national and local bureaucracies in Cameroon have been extraordinarily adept at capturing taxes designated for timber producing areas (often for private gain), such that communities never actually see any of the benefits of industrial exploitation in their local forests.

Furthermore, Bank staff have rightly noted that, at the time of Bank engagement in DRC's forest sector, levels of area taxation were extraordinarily low (\$0.0014 per hectare per year). Bank staff sought to raise this to a still very modest level of \$0.50 per hectare per year (still only one-twelfth the area tax in nearby Cameroon), but this was successfully resisted by the private sector; **area forestry taxes are currently at only \$0.20 per hectare per year. At this level, the allocation of all of DRC's potentially industrially exploitable forest (around 60 million hectares) would only raise a miserly \$12 million per year from area taxes.**

Bank staff have evidently sought to demonstrate that, despite these setbacks, some form of progress is being made in bringing DRC's existing forest industry under control. In October of this year, a new Presidential Decree was signed, banning all new allocations of industrial logging concessions until such time as a legal review has been conducted of existing logging contracts, and there could be proper application of the relevant laws. However, a Ministerial Decree to the same effect had already been in place since May 2002. Despite this, **the government had 'illegally' allocated nearly 15 million hectares of concessions, mostly during 2005**¹². We would emphasise the enormous dangers of

¹⁰ World Bank, Democratic Republic of Congo, Mission de Suivi Sectoriel, 17-27 April 2002

¹¹ World Bank, Democratic Republic of Congo, Mission de Suivi Sectoriel, 17 February-7 March 2002.

¹² Communique de Presse, La Reference Plus No 3519, 1st November 2005

this when, as the UN Security Expert Panel found, DRC's natural resources fall into the hands of corrupt and criminal elites¹³

Further problems have arisen in the Bank's support for legal reforms in the forest sector. At the time of the Bank's support for a new framework Forest Code in early 2002, the Bank envisaged that a complete set of implementation decrees and norms would be in place by the end of 2002. However, at present, more than 3 years later, most of the necessary decrees have yet to be drafted, let alone consulted on or adopted. **Those texts that have been developed and adopted more rapidly all relate to industrial forest exploitation, whilst there has been little or no progress in the all-important task of defining local community rights or access to forest resources, or how the rural poor are supposed to benefit from forest management.**

The Bank's work in geographical zoning of the forest has also been problematic. Under the Emergency Economic and Social Reunification and Support Project (EESRSP, approved by the Board in September 2003), \$ 4 million was earmarked for the development of a 'pilot' zoning scheme for DRC's forests, which would serve to identify those areas suitable for industrial exploitation, conservation and community use. It appears that, since then, little or nothing has happened – and as noted above, **large areas of forest have been handed out by the government without any formal planning basis whatsoever.**

In effect, the forest sector thus remains completely out of control: the government has been responsible for major 'irregularities', which completely undermine the proper implementation of the 2002 Forest Code; forestry taxation reform has been only partially successful, and it appears that the sector is, as could be anticipated, following the course of the Cameroonian industry, with an extremely poor record of financial and administrative governance; **the legal basis for much of the sector – especially as it relates to the rural poor - is still largely absent; the geographical basis for designation of forest for various uses is entirely absent.**

Under these circumstances, development of DRC's industrial forest sector must, we believe, represent an unacceptably high risk for the Bank. We would emphasise that it is unclear exactly what the developmental rationale is for Bank promotion of the industrial exploitation of DRC's forests. The experience in other countries where a similar strategy has been pursued – notably in Cameroon – has shown that, far from generating the expected developmental results, the outcomes have been disastrous.

3. Safeguard policy application and compliance

Since 2001, the World Bank has approved 12 loans, grants and credits for the Democratic Republic of Congo totaling nearly \$2 billion. The majority of these operations have been

¹³ UN Security Council, October 2002, Final report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo

classified as “emergency recovery loans” or as “structural adjustment/development policy” loans. For these projects, **environmental assessments and other safeguard measures meant to ensure broad-based poverty reduction benefits have either been delayed until after project implementation (thereby eliminating opportunities for assessments and consultations to influence project design) or not been required at all.** The Bank's O.P. 4.01 allows for the exemption of emergency recovery projects from compliance with environmental assessment requirements. As per the old and revised OP 8.60 on structural adjustment lending (now called “development policy operations”), adjustment projects are not required to conduct environmental and social impact assessments or to apply any of the other “safeguard policies.”

The original EMRRP, approved in August 2002, was classified as an emergency recovery loan, and thus safeguard policy requirements were postponed for the first year of implementation.¹⁴ Although, under the project, physical works to rehabilitate infrastructure started in November 2003¹⁵, no social or environmental documentation or evidence of public consultation was available until mid-2004. **As of December 1, 2005, the only documentation available about the project is two volumes of an environmental assessment, published in June 2004, and a resettlement action plan that was not released until April of 2005 - more than two and a half years after project approval.**

The activities for which the supplemental EMRRP financing will include the construction of roads and other infrastructure. In a densely forested country like the DRC, (re)building infrastructure will invariably have an impact on forests and the people who depend on them. Roughly half of the DRC is covered in forests and as noted above, as much as 75% of DRC's 50 million people depend at least partly on these forests for their survival – for wild food resources, natural medicines, building materials, fuel wood and for rotational agriculture. However, the Bank failed to trigger the operational policies on forests (OP. 4.36) or indigenous peoples (then, OD 4.20) when preparing the original EMRRP loan. Project performance indicators tied to the kilometers of roads and drainage systems built and the revenue generated from sales of water, raise serious questions about whether the environmental and social impacts of EMRRP on the poor have been fully anticipated and addressed. **Since no additional environmental or social studies or alterations of the project design are envisioned for the supplemental financing, the likely impacts of the operation on forests and indigenous peoples will continue to be neglected.**

The absence of safeguards is not unique to EMRRP. As noted above, the Emergency Economic and Social Reunification Support Project includes a pilot “forest zoning”

¹⁴ World Bank, Integrated Safeguards Data Sheet EMRRP, Report No. 24016 April 12, 2002. “The project is an emergency recovery operation, processed under OP 8.50. A full strategic environmental assessment (EA) (SEA), including resettlement plans where relevant, will be completed within one year of project effectiveness. The applicability of the remaining nine Safeguard Policies will be determined during preparation of the full SEA and subproject EAs.”

¹⁵ World Bank, Project Information Document, Democratic Republic of Congo: Emergency Multisector Rehabilitation And Reconstruction Project—Additional Financing, Report No. AB1819, September 8, 2005, p. 2.

component under the broader objective of facilitating the implementation of a new logging concession system. However, **no public consultation was conducted with the indigenous people and other forest-dependent populations who may be affected by the potential parceling out of what could, according to Bank documentation, eventually amount some 60,000,000 hectares of forest**¹⁶. The performance indicators for the project include “the number of new [industrial forestry] concessions attributed”¹⁷ and the Development Financing Agreement lists among the monitoring and evaluation criteria, the awarding of “at least ten new forestry concessions” by March 31, 2008 – a quantitative measure that seems more concerned with the pace of private sector contracting than sustainable development and poverty reduction.¹⁸

This month, representatives of a network on indigenous peoples and affected communities in the DRC filed a request for investigation to the World Bank’s Inspection Panel, alleging multiple violations of safeguard policies related to the EESRSP. The complaint argues that the Bank: misclassified the project as environmental “category B” despite the possibility of significant impacts of forest concession allocations on people and the environment; failed to trigger OD 4.20 on indigenous peoples or to acknowledge and consult with indigenous peoples; and neglected to properly implement those safeguard policies which were triggered, including the policies on environmental assessment (OP 4.01) and on forests (OP 4.36), through its failure to disclose environmental assessment documents even two years after project approval.

There are also no environmental or social assessments available for the two operations coming before the Board on December 8th despite their likely impacts on people and the environment. The \$125 million EMRRP supplemental grant is to be considered on a *streamlined basis*; no new environmental and social due diligence is required, nor is a Board discussion planned. Given this accelerated approval process, **the project risks causing additional harm as it builds upon the failure to implement environmental and social safeguard policies under the original loan** (see below), and seemingly ignores the lack of accountability for the use of funds to date. The other proposed project is a \$90 million development policy operation to which no social and environmental safeguards apply, despite the fact that the project includes a component aimed at accelerating the implementation of the new mining and forestry codes.

Before proceeding to approve these new projects in the DRC, the Bank’s Board must ensure that Management addresses concerns with safeguard policy implementation and compliance in these and past operations, accountability and reporting for the use of Bank funds to date, and the absence of public information or consultation in the design and preparation of projects which will have profound

¹⁶ World Bank, Democratic Republic of Congo, Mission de Suivi Sectoriel, 17-27 April 2002.

¹⁷ World Bank, Technical Annex for a Proposed Grant in the Amount of SDR 117 million (US\$164 million equivalent) and a Proposed Credit in the Amount of SDR 35.7 million) (US\$50 million equivalent) to the Democratic Republic of Congo for an Emergency Economic and Social Reunification Support Project, August 14, 2003, Washington DC.

¹⁸ Democratic Republic of Congo and International Development Association, Development Financing Agreement (Emergency Economic and Social Reunification Project, September 22nd, 2003).

impacts on the country's population. The new projects could represent an opportunity to take a new approach, to correct and improve upon mistakes to date. However, to do so, the Bank must first assess the impacts of its involvement in the DRC's natural resources sectors, and then design future interventions appropriately.

4. Transparency and accountability for use of Bank funds

With Bank allocations to the DRC nearing the \$2 billion mark, many are asking just how this impressive sum is being used. The Bank itself has noted that DRC suffers from a lack of institutional capacity and weak public expenditure management, as well as a history of widespread corruption.¹⁹ However, this does not appear to have deterred Bank management from proposing single-tranche, large credits and grants, such as the new \$90 million TSER. Since there is no staged disbursement for such an operation, there are no in-built mechanisms to stop financing if project or credit components result in harm. Despite the Bank's commitment to pay "particular attention" to "transparency issues in project implementation",²⁰ the lack of public information and independent verification of reporting on expenditures leaves many questions unanswered.

With regard to the EMRRP loan and supplemental support, which together represent a far larger sum than the TSER, the Bank requires that audit reports be conducted of the funds available under the project, by firms acceptable to IDA.²¹ However, these audits have not been made public. Although one of the implementing agencies for the EMRRP, BCECO (Central Coordination Bureau), produces its own annual report on expenditures, no independent verification of these reports has been disclosed. Local organizations have raised concerns about the discrepancy between spending reported by BCECO and projects executed on the ground. They have indicated that many of the projects listed in BCECO's report either do not exist at all or reflect vastly inflated costs. Given DRC's history and current concerns about spending, as well as the Bank's own expert advice on the role of donors in countries suffering from the resource curse, much more needs to be done to ensure transparency and accountability for the use of public funds. **Before committing more financing to the transitional government of DRC, the Bank should await the outcomes of an independent expenditure audit and implementation progress report on the use of Bank finances, as well as "ground-truthing" of expenditures reported by the government's implementing agencies.**

5. Information provided by the Bank on natural resource sector components

The project information document (PID) for the TSER, the most basic description of what Bank money will be used for, has not been posted on the website for the majority of the project preparation period. **As recently as December 1, no PID was publicly**

¹⁹ World Bank, Transitional Support Strategy for the Democratic Republic of Congo, Report No. 27751, January 26, 2004.

²⁰ World Bank, Transitional Support Strategy for the Democratic Republic of Congo, Report No. 27751, January 26, 2004.

²¹ World Bank, Project Information Document, Democratic Republic of Congo: Emergency Multisector Rehabilitation And Reconstruction Project—Additional Financing, Report No. AB1819, September 8, 2005, p. 4.

available and there was no other documentation posted online regarding the operation. According to the Bank’s own information disclosure policy, “For all lending operations under preparation for Bank financing...the PID is prepared when the first formal review of the proposed operation is held by Bank management, and is made publicly available. As project preparation evolves, the PID is updated. The updated PIDs are also publicly available.” According to Bank Procedure 8.60 on development policy operations, the task team is supposed to prepare and update the PID continuously, and send each revised version to the Bank’s InfoShop for disclosure.

The PID is the only source of project information available to the public in advance of the approval of a development policy operation, and thus provides an essential, if minimal, opportunity for early, informed public input into the project. **The failure to disclose a PID for TSER not only constitutes a violation of the Bank’s disclosure policy, but reflects a lack of attention and commitment by Bank management to public consultation.**

The absence of credible public information about the TSER is symptomatic of a broader problem with incomplete and misleading information about DRC on the Bank’s website. For example, in the only substantive explanation of its forestry activities in DRC available to the public, a carefully-worded ‘Press Backgrounder’ on the Bank’s website claims that:

“The Bank is not financing any industrial logging operation in the DRC. Current financial support to the forestry sector covers advisory services, studies, workshops, training, and institution strengthening. This support is being provided through several multi-sector operations including... the Emergency Economic and Social Reunification Support Project ([EESRSP Cr. 3824-DRC](#)). The latter project has a forestry component of \$4 million that will finance the revision of forest contracts and forest land use planning.”²²

This statement neglects to mention the Bank’s support, under the EESRSP project, for ‘implementation of the forest concession system’; nor does it mention, as noted above, that the Financing Agreement for the EESRSP specifically seeks to the allocation of “at least ten new forestry concessions.”

Altogether, there are many concerns about the Bank’s portfolio in the Democratic Republic of Congo. Before the DRC portfolio is further expanded, particularly in the natural resources sector, there is a real need to reassess the Bank’s approach. The Board consideration of the TSER and EMRRP offer an opportunity to do so and we would urge the Directors to take this into consideration.

²² World Bank, <http://lnweb18.worldbank.org/ESSD/ardext.nsf/11ByDocName/WBandSustainableManagementForestsInDRCPage1>, accessed 30.03.05.