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Report No. 31862

The Inspection Panel

Report and Recommendation

**Cambodia: Forest Concession Management
and Control Pilot Project
(Credit No. 3365-KH and Trust Fund. 26419-JPN)**

March 30, 2005

The Inspection Panel

Report and Recommendation On Request for Inspection

CAMBODIA: Forest Concession Management and Control Pilot Project (FCMCPP) (Credit No. 3365-KH and Trust Fund No. 26419-JPN)

1. On January 28, 2005, the Inspection Panel received a Request for Inspection, dated January 21, 2005, (the “Request”) related to the Cambodia: Forest Concession Management and Control Pilot Project (FCMCPP) (the “Project”). The NGO Forum on Cambodia submitted the Request on its own behalf and on behalf of affected local communities living in the districts of Tbeng Meanchey in Preah Vihear Province; Siem Bok and Sesan in Stung Treng Province; and Anlong Veng in Oddar Meanchey Province, Cambodia (the “Requesters”). These four districts are located respectively in the concession areas of the companies Chendar Plywood, Samraong Wood, Everbright and Pheapimex. The NGO Forum on Cambodia states that they have received “*letters from a number of villagers signed in March 2004*” asking them “*to represent their request [....]*.”¹ They also state that the “*local community representatives who signed the letters have requested that their names be kept confidential.*”²
2. The Request includes two signed letters from representatives of affected communities and a report prepared by the NGO Global Witness for the affected communities at the request of their representative, the NGO Forum of Cambodia, to provide “*details of the case and the violations of World Bank policies which occurred.*”³

A. The Project

3. The Project is financed by IDA Credit No. 3365-KH approved within the Learning and Innovation Loan (LIL) framework.⁴ The Project’s objectives are

¹ Request for Inspection, Letter to the Inspection Panel, January 21, 2005, p.1, [hereinafter “Request Letter 1”].

² Request, p.1.

³ Request for Inspection, “*Submission to the Inspection Panel World Bank Forest Concession Management and Control Pilot Project in Cambodia,*” Global Witness, February 2005, [hereinafter “Request, Attachment 1”]

⁴ “*The learning and innovation loan (LIL) supports small pilot-type investment and capacity-building projects that, if successful, could lead to larger projects that would mainstream the learning and results of*

*“to demonstrate and improve the effectiveness of a comprehensive set of forest management and operational guidelines and control procedures in forest concession areas, and to establish an effective forest crime monitoring and prevention capability.”*⁵

4. The FCMCCP has four components:⁶
 - Component A (*Forest Planning and Inventory*) provides the preparation of “forest concessions management plans to serve as models for current and future concessions, including field surveys and inventory [...] and preparation of detailed annual operational plans to give practical effect to such forest concessions management plans.”
 - Component B (*Concession Regulation and Control*) seeks to strengthen the capacity of Forest Management Offices “to oversee concession operations and ensure that they are in compliance with the forest management and operational plans.”
 - Component C (*Forest Crime Monitoring and Prevention*) aims at “strengthening the capacity” of the implementing agency, the Department of Forestry and Wildlife (DWF), and the Ministry of Environment to “systematically and regularly monitor illegal logging and launch effective prevention activities.” This component is also aimed at supporting the concessionaires, the local and national forestry and national parks offices, and the affected communities to design and implement “timber theft prevention plans” and disseminate the information on the government of Cambodia’s “forest crime prevention programs.”
 - Component D (*Project Management and Institutional Strengthening*) provides the creation of the Project Management Unit (PMU) and the “strengthening of its capacity to manage the project and be responsible for procurement and financial management activities, and monitoring and evaluation.”
5. Management Response to the Request for Inspection describes the “*Project Organization*.”⁷ The Project is being implemented by the former DFW, which

the LIL. LILs do not exceed \$5 million, and are normally implemented over 2 to 3 years – a much shorter period than most Bank investment loans. All LILs include an effective monitoring and evaluation system to capture lessons learned.” See World Bank, Operation Policy and Country Services, *World Bank Lending Instruments, Resources for Development Impact*, at <http://siteresources.worldbank.org>.

⁵ Development Credit Agreement (Forest Concession Management and Control Pilot Project) between the Kingdom of Cambodia and the International Development Association (IDA), Credit No. 3365-KH, July 6, 2000, [hereinafter “Credit Agreement”], Schedule 2 (Description of the Project).

⁶ Credit Agreement, Schedule 2 (Description of the Project).

⁷ Bank Management Response to the Request for Inspection Panel Review of the Cambodia Forest Concession Management and Control Pilot Project (Credit No. 3365-KH), March 8, 2005, [hereinafter “Management Response”], ¶ 10.

was reorganized in 2003 and became the Forestry Administration (FA). “*The FA is a semi-autonomous agency of the Ministry of Agriculture, Forestry and Fisheries (MAFF). A Deputy Director serves as Project Director.*”⁸ Concession plan reviews are the responsibility of a Technical Review Team (TRT) created by the FA. The forest crime monitoring and prevention role was initially carried out under a project financed by the Food and Agriculture Organization (FAO) and the United Nations Development Program (UNDP), within which the NGO Global Witness served as “*independent monitor.*” Presently, this function is the responsibility of a commercial firm contracted under the FCMCCP.

6. Management states that the Project was modified in 2003 “*to address post-concession management issues*” “*in areas released from concessions, [where] the Government has taken preliminary steps to institute new management arrangements,*”⁹ though the Development Credit Agreement did not require amendment.¹⁰ According to the Response, the GOC has designated a total of 1 million hectares in three post-concession areas as protected forests,¹¹ and has requested technical assistance to develop management plans for these areas. International donors and NGOs, among them the Wildlife Conservation Society (WCS), are assisting the Government in this effort. Management states that the FCMCCP, as amended, finances the collaboration between the FA and the WCS in one of these post-concessions areas, Mondulkiri.¹²

B. Financing

7. The Project is supported by an IDA Credit of SDR 3.6 million¹³, approved on June 6, 2000. The Credit Agreement became effective on October 20, 2000. The closing date was originally set for December 31, 2003, but upon request of the Borrower, the Credit was extended to June 30, 2005. A Japanese Policy and Human Resources Development Fund Grant of USD 240,000¹⁴ financed technical assistance during implementation.

C. The Request

8. The NGO Forum on Cambodia submitted the Request on its own behalf and on behalf of affected local communities living in the districts of Tbeng Meanchey in Preah Vihear Province; Siem Bok and Sesan in Stung Treng Province; and

⁸ Management Response, ¶ 10.

⁹ Management Response, ¶ 60.

¹⁰ Management Response, ¶ 9.

¹¹ Management Response, ¶ 60. The three areas are Central Cardamom (401,313 ha), Mondulkiri (429,438 ha), and Preah Vihear (190,027 ha).

¹² Management Response, ¶ 60.

¹³ USD 4.6 million equivalent at the time of Credit approval.

¹⁴ Japanese Grant Agreement, (Forest Concession Management and Control Pilot Project), TF026419, January 11, 2001.

Anlong Veng in Oddar Meanchey Province, Cambodia. As indicated above, these four districts are located respectively in the concession areas of the companies Chendar Plywood, Samraong Wood, Everbright and Pheapimex.

9. The Requesters claim that *“in its commissioning and supervision of the FCMCPP, the Bank has violated a number of its operational policies leading to harm or potential future harm to people living in the project-affected areas.”*¹⁵ In their view, the Project has *“endorsed forest concession management plans of six forest concession companies”* that *“have a poor record with regard to the protection of community rights and livelihoods.”*¹⁶ The Requesters claim that when the logging activities resume, trees the villagers tap for resin will again be *“cut illegally”*¹⁷ and the villagers will be subject to the *“kinds of abuses”*¹⁸ they have suffered in the past.
10. The Requesters allege that *“through flawed project design and poor implementation the World Bank has promoted the interests of the logging concession system and concessionaires,”* even though *“the companies have already caused harm to the forest-dependent communities and will continue to do so.”*¹⁹ They add that by assisting the companies in preparing sustainable forest management plans (SFMPs) and environmental and social impact assessments (ESIAs), the Bank is *“using loan money to benefit logging companies that have a track record of timber theft, tax evasion and human rights abuses.”*²⁰ In the Requesters’ view, by endorsing such management plans and impact assessments with no additional check and balances requirements, the Bank has *“increased the likelihood”* that these companies will continue their logging concession, and has strengthened the companies’ position *“making it even more difficult for adversely affected communities to hold them to account.”* The Requesters allege that the Bank *“has contributed to a set of outcomes that stand to inflict harm on forest-dependent communities in the near future.”*²¹
11. The report prepared by Global Witness further elaborates on these claims and describes in details the policy violations the Requesters believe the Bank is responsible for. According to the Requesters, *“[b]oth the design and the execution”* of the Project *“have contravened World Bank operational policies.”*²² In their view, the *“overall consequence”* of these violations is that the Bank has endorsed concessionaires’ activities harmful to forest dependent people, showing its *“bias towards the concession companies.”* If World Bank

¹⁵ Request, Letter 1, p. 2.

¹⁶ Request, Letter 1, p. 1.

¹⁷ Request, Letter 1, p. 2.

¹⁸ Request, Letter 1, p. 2.

¹⁹ Request, Letter 1, p. 2.

²⁰ Request, Letter 1, p. 2.

²¹ Request, Letter 1, p. 2.

²² Request, Attachment 1, p. 58.

policies had been complied with, the Request alleges, the Project “*would never have been conceived in the way it was.*”²³

12. With respect to the Project’s Environmental Assessment, the Requesters claim that the Bank did not comply with OP 4.01’s requirements related to the classification of the Project, the evaluation of the impacts, public consultation and disclosure of information. According to the claimants, the Bank “*erroneously categorized the FCMCPP project as Category B.*”²⁴ In their view, the Project should have been categorized as “A” because the concession system caused “*significant adverse environmental impacts,*” such as “*immediate degradation*” and “*damage to watershed,*” which under OP 4.01 require the classification as Category A. In addition, the Requesters believe that an “A” classification is warranted as the logging concessions have impacts that cannot be construed as “*site specific*” because they affect an area larger than the site of the Project’s physical works and cover “*a significant portion of Cambodia’s forest reserve and large population who inhabit or depend on it for their livelihood.*”²⁵
13. The Requesters complain that not only was the Project incorrectly categorized, but “*the level of assessment was so low that it did not even conform to Category B standards.*”²⁶ The Request also includes passages from the Project Appraisal Document (PAD) and infers from them that “*the Bank has chosen not to address environmental impacts at the pre-project planning stage and will instead deal with them during the implementation phase.*”²⁷ However, the claimants state, given that the Bank’s EA policy “*is primarily concerned with prior assessment of potential risks*” the Bank did not comply with the policy because it was “*unable to show any such assessment [...] aside from the ESIA [Environmental and Social Impact Assessment] work done in conjunction with the concessionaires themselves, the standards of which fall well short of the requirements of OP 4.01.*”²⁸ The claimants believe that this happened because the FCMCCP is a learning and innovation loan and “*Bank staff associated with the FCMCCP are evidently keen to push the idea that [...] it was therefore not bound by Bank operational policies.*”²⁹ They conclude that if a proper assessment had been carried out “*it is unlikely that the Bank would have decided to support the activities of environmentally destructive companies.*”³⁰
14. The Requesters claim that “*it is not clear what consultation, if any, took place before the project began.*” They add that the affected people who submitted the Request to the Panel “*were not amongst those invited to participate in any*

²³ Request, Attachment 1, p. 58.

²⁴ Request, Attachment 1, p. 59.

²⁵ Request, Attachment 1, p. 59.

²⁶ Request, Attachment 1, p. 60.

²⁷ Request, Attachment 1, p. 61.

²⁸ Request, Attachment 1, p. 61.

²⁹ Request, Attachment 1, p. 61.

³⁰ Request, Attachment 1, p. 62.

*pre-project consultation process.*³¹ According to the Requesters, although the Bank states that consultation was carried out through “*Bank-supported activities of the concessionaires,*”³² the companies did not carry out any consultations during the preparation of the management plans submitted in 2002³³. When companies were indeed compelled to consult affected people in late 2002 and early 2003, such consultations, the Requesters claim, “*were of a poor standard, with instances in which participants were subject to intimidation by guards and officials accompanying company representatives.*”³⁴ It is the Requesters’ belief that “*[i]n this context, flawed consultation is arguably more damaging than no consultation at all.*”³⁵ The Request also states that the Bank did not ensure that the Sustainable Forest Management Plans (SFMPs)³⁶ and ESIA were disclosed to community representatives in November 2002.³⁷

15. The Requesters claim that the Bank has violated its own policy on Forests – OP 4.36 – as it provided technical assistance to “*undeserving*” logging companies “*to facilitate their future logging operations.*”³⁸ They also believe that the Cambodian government can hardly be deemed “*in compliance with all or even many*” of the criteria the policy demands from a government that is committed to sustainable forest management.³⁹ The Request addresses one by one these five criteria to document the policy violations they believe have occurred. In summary, they claim that the Bank has not tried to challenge the problematic features of the concession system, including non-competitive and non-transparent concessionaires’ selection process, but has adopted this concession system as the foundation on which to build its project.⁴⁰ The Requesters further maintain that no development plan outlining a clear definition of roles for the government, the private sector and the local people for forestry conservation has been elaborated:⁴¹ that the concession companies have prepared “*extremely poor*” social, economical and environmental assessment; that there was no prior assessment of Cambodia’s production forests before parceling them into concession; and that the companies “*have consistently disregarded forest dwellers’ rights and interests.*”⁴² In addition, according to the Requesters, the FCMCCP has no institutional capacity, and the reorganization of the DFW into the FA has worsened the situation because of “*[i]nstitutional flaws such as the*

³¹ Request, Attachment 1, p. 62.

³² Request, Attachment 1, p. 62.

³³ Request, Attachment 1, p. 62.

³⁴ Request, Attachment 1, p. 62.

³⁵ Request, Attachment 1, p. 63.

³⁶ In the Request, Attachment 1, (page 63), SFMP stands for Sustainable Forest Management Plans. In Management Response’s Abbreviation List, SFMP stands for Strategic Forest Management Plans.

³⁷ Request, Attachment 1, p. 63.

³⁸ Request, Attachment 1, p. 68.

³⁹ Although the Requesters seem to refer to the current Bank policy OP 4.36 on *Forests* (November 2002), the policy applicable to this Project is the old OP 4.36 on *Forestry* (September 1993), as the Project Concept Review took place before January 1, 2003 (See OP 4.36, November 2002, Note).

⁴⁰ Request, Attachment 1, p. 69.

⁴¹ Request, Attachment 1, p. 69.

⁴² Request, Attachment 1, p. 69.

*lack of separation between production management and regulatory control function.*⁴³

16. The Request also complains that the Bank did not undertake an assessment that could have identified the Cambodian forests, such as the Prey Long Forest, as *“forests of high ecological value.”*⁴⁴ Similarly, the Requesters claim that the promotion of forest concessions in the context of the FCMCCP will lead to degradation of natural habitats, in violation of OP 4.04.⁴⁵ They state that the six management plans approved under the Project (with the *“proposed overcutting”*⁴⁶) and the past behavior of the companies indicate that this degradation will continue.⁴⁷ According to the Requesters, *“[i]t appears that the project’s architects and executors have declined to consider the forests slated for logging as natural habitats.”*⁴⁸ Once again, the Requesters believe that this failure has led to a *“poorly conceived project.”*⁴⁹
17. The Request claims that *“Cambodia’s indigenous people, notably the Kouy minority [...] are directly affected by the logging concessionaires.”* The Requesters state that these populations live in the forests in the north and northeastern part of the country – *“the heart of Cambodia’s logging concession system.”* Their livelihood and culture are *“intrinsically linked with the forests”* and this *“makes them particularly vulnerable to the impacts of industrial logging operations.”*⁵⁰ In the Requesters’ opinion, the Bank seems not to have identified issues related to indigenous peoples.⁵¹
18. The Requesters claim that *“the Bank deemed that no indigenous people’s plan was required,”* because, among other reasons, concession plans approved under the Project adequately addressed social issues and a social consultant had been hired to look into how the concessionaires deal with the social impacts at the compartment (five year) planning level.⁵² The Requesters argue that an indigenous people development plan was necessary under OD 4.20 on Indigenous Peoples because the *“very existence”* of an indigenous peoples policy suggests that *“this issue is distinct from broader question of social impacts.”* Moreover, they add, analysts from the Bank itself *“have consistently dismissed the idea that consideration of these [social impacts] can be relegated to the compartment (five year) planning level.”*⁵³

⁴³ Request, Attachment 1, p. 70.

⁴⁴ Request, Attachment 1, p. 70.

⁴⁵ Request, Attachment 1, p. 71.

⁴⁶ Request, Attachment 1, p. 71.

⁴⁷ Request, Attachment 1, p. 71.

⁴⁸ Request, Attachment 1, p. 71.

⁴⁹ Request, Attachment 1, p. 72.

⁵⁰ Request, Attachment 1, p. 64.

⁵¹ Request, Attachment 1, p. 65.

⁵² Request, Attachment 1, p. 66.

⁵³ Request, Attachment 1, p. 66.

19. The Request also mentions that under a 2001 Cambodian Law, the indigenous people have a prior claim to the land on which they practice traditional agriculture, including “*lands held in reserve for these purposes.*” According to the Request, this should lead to repealing the “*competing claims from logging concessions companies whose contracts were issued prior to 2001.*”
20. According to the Requesters, the Bank has also violated the policy on Cultural Property, OPN 11.3. Although the six logging concessions areas approved under the Project “*contain both spirit forests and sites of archeological importance that undoubtedly constitute cultural property,*” no survey of these sites was carried out during Project preparation.⁵⁴ The Requesters further complain that the Bank did not take into account the concerns of the communities in and around the concession areas about the inclusion of spirit forests in the concessionaires’ management plans.⁵⁵
21. The Requesters allege that the Bank has failed to comply with OP/BP 8.40 on Technical Assistance. In their view, there are deficiencies in the work of the Technical Assistance (TA) consultants, such as assisting and advising logging companies that “*should have been excluded*” from the consultants’ terms of reference, and refusing to take into account the prohibition under Cambodian Law on cutting resin-producing trees.⁵⁶ These failures, according to the Requests, also violate the policy on supervision.⁵⁷
22. The Requesters state that the World Bank has been “*negligent*” in its supervision of the FCMCCP⁵⁸, thus violating the related policy OP/BP 13.05. Section 2 of the Global Witness report – Project Implementation – includes a detailed account of the alleged policy “*breaches*”⁵⁹ by the Bank. The Requesters believe that once the implementation of the Project began, “*the case against the concession system and its operators [...] strengthened [...] as more evidence of concessionaires’ illegal activities emerged.*”⁶⁰ They contend that the Bank tolerated the FCMCCP’s “*indulgent view of forest crimes by the concessionaires.*”⁶¹ What is more, the Request adds, in June 2004 the Bank recommended to the government the approval of the six companies’ logging plans⁶². Other violations of the supervision policy that the Requesters believe occurred are: inadequate and inappropriate consultations during the preparation of the SFMPs and EIAs; failure to observe minimum standards in the 2003 forest cover survey developed under the Project; and the Bank inaction to stop the companies to log resin trees, which is an illegal activity that will further

⁵⁴ Request, Attachment 1, p. 74.

⁵⁵ Request, Attachment 1, p. 75.

⁵⁶ Request, Attachment 1, p. 74.

⁵⁷ See Request, Attachment 1, pp. 20, 21, 72.

⁵⁸ Request, Attachment 1, p. 72.

⁵⁹ Request, Attachment 1, p. 72.

⁶⁰ Request, Attachment 1, p. 19.

⁶¹ Request, Attachment 1, p. 19.

⁶² Request, Attachment 1, p. 19.

impoverish the people.⁶³ In the Requesters' view, *"lack of supervision has accounted for many of the FCMCCP's damaging acts and omissions [...] [which] in turn have contributed to the project's overall negative impact : legitimating of a flawed system and rogue concessionaires that cause material harm to forest-dependent communities."*⁶⁴

23. The Requesters conclude their submission to the Panel by stating that the FCMCCP is harmful, because of the *"Bank's determination to keep the concessionaires operating."*⁶⁵ They believe that the project was conceived within the Bank *"around the assumption that the concession system would work and this could be demonstrated through its [the Bank] project intervention."*⁶⁶ However, the Requesters add, *"this distortion that the Bank introduced in the project's conceptual framework has driven the FCMCCP's constant effort to lower the bar for the concessionaires and ensure that some of them stay in business."*⁶⁷
24. In its Notice of Registration, the Panel noted 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/BP 4.04	Natural Habitats (September 1995)
OPN 11.03	Cultural Property
OD 4.20	Indigenous People
OP/BP 4.36	Forestry
OP/BP 8.40	Technical Assistance
OD/OP/BP 13.05	Project Supervision
BP 17.50	Disclosure of Information

D. Management Response

25. On March 8, 2005, Management submitted its response to the Request. The Response provides background information on the Project and discusses a number of challenges encountered during implementation, such as issues related to the logging concession systems and poor logging practices; log transport permits; a weak national forest revenue management system; and tensions among various stakeholders. The Response also discusses in detail the so-called "special issues" of this project (1) Bank approach to the forestry issues; (2) weakness in Cambodian governance institutions and (3) forestry management instruments. It also includes "lesson learned" and "next step"

⁶³ Request, Attachment 1, p. 73.

⁶⁴ Request, Attachment 1, p.73.

⁶⁵ Request, Attachment 1, p. 81.

⁶⁶ Request, Attachment 1, p. 81.

⁶⁷ Request, Attachment 1, p. 81.

sections. Detailed responses to each specific claim raised by the Requesters are provided in Annex 1 of Management Response.

26. The “lesson learned” section of the Response frames many of the difficulties the Bank faced, and is facing, in Cambodia and with the FCMCPP Project in particular. Management states that the “*Bank chose to address a focused and prioritized set of issues*” such as concession management, forest crime and community forestry.⁶⁸ It also argues that while this Project attempted to “*introduce the concept of social responsibility*” in the Cambodian management of public resources, it was not enough to “*address the underlying distrust*” against the concession system.⁶⁹ “*In retrospect*”, Management claims, “*many crucial issues might have been more effectively addressed at an earlier stage,*” and the Bank could have “*played a more proactive role*” in ensuring the involvement of local communities since the Project design phase, possibly through “*conditionalities in the legal agreement concerning social issues*”⁷⁰. Further, having recognized that “*Project implementation was slow,*” Management maintains that the Bank “*repeatedly raised concerns with the Government about its performance [...]*” although, “*in retrospect*” it admits that the Bank could have been more aggressive in questioning the Government and more outspoken in voicing its concerns.⁷¹
27. With respect to alleged instances of non-compliance the Requesters raise, Management believes that it “*made every effort to apply its policies and procedures [...]*” although it recognizes not being “*in full compliance with processing and documentation provisions of OP 4.01 and OD 4.20 during project preparation.*”⁷² Management adds, however, that “[*t*]o have complied fully with the policies, the Bank should have requested more explicit documentation from the Government and provided more extensive explanation in the PAD. Local-level consultations on the proposed project concept should have been held at selected concession locations.”⁷³ According to Management, the “*lack of full compliance*” with the policies “*has not had a material effect on the project nor has it led to harm or potential future harm to people living in project affected areas.*”⁷⁴ It also states that the “*Bank did anticipate the social and environmental issues associated with the project, incorporated processes to address these issues into the project and supervised the project appropriately.*”⁷⁵ According to the Response, any harm the Requesters may have suffered has not been caused by the Bank-financed FCMCCP. It is Management’s view that “*the Requesters’ rights or interests have not been, nor*

⁶⁸ Management Response, ¶ 64.

⁶⁹ Management Response, ¶ 64.

⁷⁰ Management Response, ¶ 64.

⁷¹ Management Response, ¶ 64.

⁷² Management Response, ¶ 73.

⁷³ Management Response, ¶ 39.

⁷⁴ Management Response, ¶ 40.

⁷⁵ Management Response, ¶ 73.

will they be, directly and adversely affected by a failure of the Bank to implement its policies and procedures.”⁷⁶

28. In its Response, Management challenges one of the main allegations included in the Request – that the Bank has promoted the interest of the logging concessions and the concessionaires – and states that, to the contrary, the FCMCCP Project tried to assist the government of Cambodia (GOC) to regulate the forestry sector in a “*more effective and equitable*”⁷⁷ way. The Response explains that the Cambodian forest concession system was established in 1994 without Bank assistance. However, as it became clear in Cambodia and in the international community that the country needed a “*transparent and accountable system to control and manage the concession system,*” the Bank decided to assist the government in this effort. Although several issues were expected to emerge, such as conflicts of interests and capacity limitations, Management claims that, at the time of Project preparation, the Bank, NGOs and other donors “*were optimistic about working constructively with concessionaires.*”⁷⁸ The Response emphasizes that the Project did not provide any funds to forest concessionaires, because “*Project funding seeks to build capacities within the Government*”⁷⁹ for forest crime monitoring and reporting in general and to help the FA to control illegal logging.⁸⁰ Management also states that the Project “*was based on extensive prior studies*”, such as an ADB-commissioned review (the Fraser Thomas study), the Bank/FAO/UNEP Forest Policy Assessment, and Bank supervision of a previous Technical Assistance Project (TA) approved in December 1994 (Credit No. 2664-KH).⁸¹ These studies recognized that forest and other land had been misallocated to concessionaires. Thus, Management continues, “*the project’s process orientation was intended to provide a practical context for reassessment of land and forest use, based on site-specific data.*”⁸²
29. With respect to the erroneous environmental categorization of the Project claimed by the Requesters, Management believes that “*the decision to classify this project as a “B” was correct and appropriate.*”⁸³ The categorization of a project depends on various factors, including the “*nature and magnitude of its potential environmental impacts,*” and is normally based on “*expected impacts on-the-ground.*”⁸⁴ According to Management, a forestry project is typically classified as A when it involves plantation activities or production forestry. This Project was categorized as B because of its “*interventions,*” such as strengthening the capacity of Cambodia and forest crime monitoring and

⁷⁶ Management Response, ¶ 73.

⁷⁷ Management Response, Annex 1, Item 1, p. 25.

⁷⁸ Management Response, Annex 1, Item 1, p. 25

⁷⁹ Management Response, Annex 1, Item 1, p. 25

⁸⁰ Management Response, Annex 1, Item 1, p. 26.

⁸¹ Management Response, Annex 1, Item 2, p. 26

⁸² Management Response, Annex 1, Item 2, p. 26.

⁸³ Management Response, Annex 1, Item 5, p. 29.

⁸⁴ Management Response, Annex 1, Item 5, p. 29

reporting. It was not rated C, the Response notes, because of concerns about the social and environmental implications of the concession system. Management acknowledges that the files do not show that the draft Environmental Data Sheet reflecting the B categorization was finalized, but notes that the rationale for the B categorization is explained in the Project Information Document (PID).⁸⁵

30. Management states that no Environmental Assessment (EA) was carried out prior to appraisal,⁸⁶ but adds that “no A-level EA process was required.”⁸⁷ Management also claims that the project design incorporates measures to address the Project’s environmental and social problems.⁸⁸ The Response explains that “[s]pecific planning decisions to be made at each location could not be known in advance” and “the value added of additional up-front impact analysis was, therefore, questionable [...]”⁸⁹ A “process-oriented approach” was thus preferred⁹⁰. However, Management recognizes that the PID “did not record the type of environmental impacts, make note of the type of EA or EA instruments needed or of a proposed consultation schedule.”⁹¹ Management adds that “[w]hile noting that the processing requirements for a LIL were not well developed at the time, Management acknowledges, nevertheless, that the Bank was not in full compliance with OP 4.01.”⁹²
31. Management also recognizes that the only environmental assessment work undertaken during the Project’s first four years was the ESIA that each concessionary was required to prepare under Cambodian law. It also acknowledges that there are still no “satisfactory standards” for the preparation of the ESIA’s and the sixteen developed so far by the concessionaires “have been poor.”⁹³ In view of this, the Response states, “of these concessions, ten have either been cancelled by the Government, withdrawn voluntarily or identified for rejection by the FA.”⁹⁴ Six concessions remain under consideration and are still subject to rejection or further requirements. Management claims that it will “continue to work with the Government to improve the quality of the ESIA through the ongoing independent Review of SFMPs and ESIA’s, recommendations of which have been provided to MAFF.”⁹⁵

⁸⁵ Management Response, Annex 1, Item 5, p. 30.

⁸⁶ Management Response, ¶ 39.

⁸⁷ Management Response, Annex 1, Item 6, p. 30.

⁸⁸ Management Response, Annex 1, Item 6, p. 30.

⁸⁹ Management Response, Annex 1, Item 6, p. 30.

⁹⁰ Management Response, Annex 1, Item 6, p. 30.

⁹¹ Management Response, Annex 1, Item 6, p. 30.

⁹² Management Response, Annex 1, Item 6, p. 30.

⁹³ Management Response, Annex 1, Item 7, p. 31.

⁹⁴ Management Response, Annex 1, Item 7, p. 31.

⁹⁵ Management Response, Annex 1, Item 7, p. 31.

32. The Requesters also complain about lack of disclosure of the SFMPs and the ESIA's. Management responds that "*although not required under Bank policies, proper disclosure*" of these documents was a "*pressing*" concern for the Bank.⁹⁶ According to the Response, although disclosure was agreed with the Government in June 2002, the FA resisted the publication of the documents. "*After much pressure from the Bank*" in October 2002 the Government agreed to disclose the draft SFMPs, and the FA to place Khmer versions of the plans in each affected commune. The documents were also to be publicly available in the Bank's Public Information Center (PIC), though problems arose because NGO representatives complained that color copies of these documents were not available in the Bank's Public Information Center.⁹⁷ The dispute was solved in November 12, 2002, when several copies were provided to NGOs. Management concludes, however, that "*public disclosures of documents could have been planned better*" and that expectations of disclosure have not been managed properly.⁹⁸
33. With respect to the claim that affected communities were not consulted, Management states that "*there were no consultations specific to the EA process.*"⁹⁹ However, Management claims that "*the project builds on*" consultations carried out in the context of the above-mentioned TA project, on ADB-supported consultation, on "*Bank work during the identification mission,*" and consultations conducted on community forestry during the Fraser Thomas study¹⁰⁰. In addition, the Response claims that the Bank consulted with NGOs in 1998 when it assisted the Government in the design of the forest planning system and drafting of regulation, guidelines and codes. A workshop with NGOs was also organized in 1999 to discuss forest certification. Management acknowledges that "*the quality of consultations may have been affected by the presence of higher level officials,*" although it maintains that at the time of the project appraisal "*there was sufficient information about the social and environmental aspects of the concession management system to design a process to address these aspects.*"¹⁰¹ Management also claims that this consultation process "*led to a set of criteria and guidelines for sustainable production/concession forest management, specifically [...] protecting the rights of the communities/people.*"¹⁰²
34. As to lack of consultations during the preparation of the ESIA's, the Response emphasizes that the Bank did not finance any activities of the concessionaires and does not endorse any claim that the companies have conducted the consultations adequately. However, the Response claims that such consultations

⁹⁶ Management Response, Annex 1, Item 22, p. 40.

⁹⁷ Management Response, Annex 1, Item 22, p. 41.

⁹⁸ Management Response, Annex 1, Item 22, p. 41.

⁹⁹ Management Response, Annex 1, Item 8, p. 31.

¹⁰⁰ Management Response, Annex 1, Item 8, p. 31.

¹⁰¹ Management Response, Annex 1, Item 8, p. 32.

¹⁰² Management Response, Annex 1, Item 8, p. 32.

have been conducted because of the “*Bank’s effort to improve the Governments’ management and control over the concession system.*”¹⁰³ In addition, the Bank has made efforts “*to develop linkages between NGOs, including the NGO Forum and the FA.*” When the Bank realized that the FA and the concessionaires were not carrying out adequate consultations, the Bank recommended to the Government to hire an international consultant to prepare a “*step by step manual*” for community consultations. Moreover, Management adds that the “*Bank has monitored the consultation process*” and pointed out its weaknesses to the Government¹⁰⁴. On the other hand, Management states that consultations with affected communities in each concession area are the responsibility of the concessionaires when they prepare their compartment and annual plans¹⁰⁵. With respect to the Requesters’ allegation of intimidation during the consultation process, Management responds that “*the Bank cannot take action against non-Bank staff.*”¹⁰⁶ However, Management contacted “*immediately*” MAFF after the intimidation incidents referred to by the Requesters.¹⁰⁷ “*The Government’s account*” Management claims, “*did not support the allegation of threats having been made.*”¹⁰⁸

35. In response to the allegation of non-compliance with the Bank policy on Forestry, Management reiterates that the Project does not finance logging operations, including in high ecological value areas,¹⁰⁹ nor have the concessionaires received any Bank funds. The Response again emphasizes that the Project has supported activities permitted by OP 4.36, such as inventory and fields control, capacity building and system development.¹¹⁰ Management maintains that the Bank has engaged in Cambodian forestry, and particularly in the FCMCPP, based on “*frank dialogue*” with the Government as well as NGOs, and has received “*repeated assurances of commitment to a sustainable forest policy.*”¹¹¹ Management claims that the Project is a “*vehicle to test*”¹¹² and if possible “*convert that commitment to an ongoing program,*” and lists a series of actions from both the Bank and the GOC working towards that goal. It is Management’s view that, although the “*progress of the Government on the reform agenda was and continues to be uneven*” it was encouraging.¹¹³
36. Management also believes it is in compliance with OP 4.04 because “[n]o degradation of critical habitats has occurred due to the project.”¹¹⁴ It adds that

¹⁰³ Management Response, Annex 1, Item 9, p. 32.

¹⁰⁴ Management Response, Annex 1, Item 9, p. 33.

¹⁰⁵ Management Response, Annex 1, Item 9, p. 33.

¹⁰⁶ Management Response, Annex 1, Item 10, p. 33.

¹⁰⁷ Management Response, Annex 1, Item 10, p. 34.

¹⁰⁸ Management Response, Annex 1, Item 10, p. 34.

¹⁰⁹ Management Response, Annex 1, Item 16, p. 37.

¹¹⁰ Management Response, Annex 1, Item 14, p. 36.

¹¹¹ Management Response, Annex 1, Item 14, p. 36.

¹¹² Management Response, Annex 1, Item 14, p. 36.

¹¹³ Management Response, Annex 1, Item 14, p. 37.

¹¹⁴ Management Response, Annex 1, Item 17, p. 38.

no concession over new areas has been approved because of the Project and the planning guidelines for existing concessions prevent the issuance of cutting permits before completing the forest management planning process, which requires the preparation of three plans (strategic concession-wide 25 years; 5-year compartment and annual). The Response claims that no cutting permits have been issued to date. With respect to biodiversity issues, the Response states that the Bank identified biodiversity concerns since the beginning of its work in Cambodian forestry. Under the Project, the Government adopted the “*Biodiversity Conservation Guidelines for the Managed Forest*,” prepared in collaboration with WCS and revised based on a field study supported through Bank-Netherlands Partnership Program grant resources, and a Biodiversity Code of Practice.¹¹⁵

37. The Request claims that the Project adversely affects the Kouy indigenous peoples but did not take them into consideration. Acknowledging that the “*Bank was not in full compliance with OD 4.20*,” Management responds that the policy was deemed applicable during preparation though “*no efforts were made to develop policies and plans in accordance with OD 4.20*.”¹¹⁶ It adds that “*the project approach was to develop, together with and as part of the general consultation process, criteria and guidelines for community engagement in concession areas with local people*” but admits that “*in hindsight, screening studies and a framework Indigenous Peoples Development Plan, along with more discussion of the issue, would have been more appropriate during project design*.”¹¹⁷ Management claims that the importance of this issue has been later recognized in Aide Memoires and BTOs in 2003 and 2004, which recommended “*to revise comprehensive guidelines for community consultations*” to include, *inter alia*, specific provisions for Indigenous Peoples and protection of cultural and spiritual resources.¹¹⁸
38. Management acknowledges also that no Indigenous Peoples Development Plans were prepared under the Project, because “*Indigenous Peoples issues were to have been embedded in the SFMPs and ESIA’s prepared by the concessionaires*.”¹¹⁹ The SFMPs and the ESIA’s should have addressed issues such as the identification of forest dependent communities and consultations about their rights. Management recognizes that “*guidelines for community consultations are dispersed in various documents and manuals*” and that the “*Bank had already acknowledged this, because the SFMPs and ESIA’s were inadequate and the process of consultation flawed*.”¹²⁰

¹¹⁵ Management Response, Annex 1, Item 19, p. 38.

¹¹⁶ Management Response, Annex 1, Item 12, p. 34.

¹¹⁷ Management Response, Annex 1, Item 12, p. 34.

¹¹⁸ Management Response, Annex 1, Item 12, p. 35.

¹¹⁹ Management Response, Annex 1, Item 13, p. 35.

¹²⁰ Management Response, Annex 1, Item 13, p. 35.

39. Management “believes that the project complies with OPN 11.03” on Cultural Property, since the “SFMPs and ESIAs have not been ‘approved’” for the six logging concession areas and “the Bank has not conveyed any endorsement.”¹²¹ The Response claims that the Bank expressed concerns about spirit forests and sites sacred to the local communities and recommended “participatory mapping of community use forest,” such as resin trees and spiritual, burial, village and bamboo forests, to exclude these areas from any form of logging.¹²² Management also claims that the Project developed guidelines to identify and designate Special Management Areas, which include sacred groves, spirit forests, and archeological sites. However, the Response adds that, because of inadequate consultations, “archeological sites may not have been identified yet.”¹²³ According to Management, as a step-by-step consultation manual is under preparation, “cultural resources to the extent that these are known to local communities” will be considered so that cultural resources areas will be excluded from commercial logging operations.¹²⁴
40. Management further believes it has complied with the Bank policy on Project Supervision. Management emphasizes that it has “supervised the project intensively.” The Response states that “[n]ine formal supervision missions including a mid-term review (MTR)” were conducted since June 2000.¹²⁵
41. The Response notes that Unsatisfactory (“U”) ratings on certain aspects of the project “were first registered in December 2001.”¹²⁶ The Development Objectives and Implementation Performance ratings were downgraded to “U” in December 2002. As of the end of 2004, the Implementation Performance rating is still Unsatisfactory.¹²⁷ [The Panel observes that, as of December 21, 2004, Implementation Progress and Monitoring and Evaluation are rated “U.” The Project component “Forest Crime Monitoring and Prevention” is also rated Unsatisfactory.]
42. Management reports that a “voluntary” Quality Enhancement Review (QER) was also conducted upon “request of the East Asia and the Pacific (EAP) Region” in October 2003. The QER found that, while “good forest governance is far from being achieved,” reforms in this area “would not be moving at all without Bank involvement.”¹²⁸ It also found, however, that the Bank image and its effectiveness “have suffered” in this Project because of, inter alia, “an insufficiently well articulated bank commitment to non concessionaire forest

¹²¹ Management Response, Annex 1, Item 21, p. 39.

¹²² Management Response, Annex 1, Item 21, p. 39.

¹²³ Management Response, Annex 1, Item 21, p. 40.

¹²⁴ Management Response, Annex 1, Item 21, p. 40.

¹²⁵ Management Response, ¶ 16.

¹²⁶ Management Response, Annex 1, Item 29, p. 45.

¹²⁷ Management Response, Annex 1, Item 29, p. 45.

¹²⁸ Management Response, ¶ 18.

users, especially the rural poor in and near the forest.”¹²⁹ The QER further expressed concerns about the effectiveness of the LIL instrument to address long term forest governance issues in Cambodia and emphasized the need for the Bank to “develop and continuously refine a single coherent view on the substance and the process of the [Bank’s] forest sector strategy.”¹³⁰

43. In response to some of the Requester’s allegations, Management reiterates that the concessionaires have not received technical assistance under the FCMCCP Project. The Response acknowledges that consultation conducted for the preparation of the SFMPs and the EIAs was inadequate and notes that a social forestry consultant is preparing revised consultation guidelines to address these issues. Management rejects the allegation that the Bank ignored evidence of the concessionaires’ illegal logging and claims that the Bank has supported studies and proposals aimed at “strengthening controls on illegal logging and log transport under the TA project.” Nevertheless, Management also refers to a Bank-financed 1998 report on illegal logging (Findings and Recommendations on Log Monitoring and Logging Control Project) and supports the report’s finding that “without further monitoring, it is difficult to determine to what extent uncontrolled logging is conducted by concessionaires, their sub-contractors or poachers.”¹³¹
44. Management’s Response includes a section on “Lessons Learned” and concludes with a section on “Next Steps.” Management proposes a “dual track approach, one for actions to be taken before project closure, and the second, suggested options over the longer term, once the project has closed.”¹³² Among the proposed action preceding the closure of the Project, Management includes the supervision of the “ongoing work to refine ... consultation procedures in order to better address, inter alia, Indigenous Peoples issues;” “[u]rging the Government to formalize forest management planning procedures for post-concession and non-concession areas;” and “[s]eeking” a decision by the Government on concessions recommended for closure¹³³. “Options” proposed for the post-project period include, among others, “[...] to facilitate a transition from an international monitor to a participatory system of forest crime monitoring;” and to apply the “lessons learned in the forestry sector to the broader dialogue on land/economic concession reforms.”¹³⁴ The Bank also plans to keep its dialogue with the Government open so as to solve the outstanding issues affecting Cambodia’s natural resources management¹³⁵.

¹²⁹ Management Response, ¶ 18.

¹³⁰ Management Response, ¶ 18.

¹³¹ Management Response, Annex 1, Item 27, p. 43. The Report was financed under the 1994 TA Project.

¹³² Management Response, ¶ 65.

¹³³ Management Response, ¶ 66.

¹³⁴ Management Response, ¶ 67.

¹³⁵ Management Response, ¶ 71.

E. Eligibility

45. 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.
46. The Panel has reviewed the Request and Management's Response. The Panel Chairperson, Edith Brown Weiss, together with Panel member Tongroj Onchan and Executive Secretary Eduardo Abbott, visited Cambodia from March 12 through March 19, 2005. During their visit, the Panel Members met with the signatories of the Request for Inspection and with over a hundred affected villagers from several communes, with the NGO Social Forum, Global Witness, Wildlife Conservation Society, Oxfam GB, and other local nongovernmental organizations, with national government officials, with the Danida Resident Representative in Phnom Penh, and with local Bank management and staff and the Country Director in Bangkok. The affected villagers with whom the Panel met included indigenous people.
47. 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.
48. 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 villagers living in four different logging concession areas have a common interest and common concerns and reside in the Borrower's territory, as required in Paragraph 9(a). The Request also indicates that affected villagers have authorized the NGO Forum on Cambodia to represent their interests to the Inspection Panel.
49. 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.*" The Requesters assert that "*through flawed project design and poor implementation, the World Bank has promoted the interests of the logging concession system and the concessionaires [...] despite abundant evidence that the companies have already caused harm to forest-dependent communities and will continue to do so.*" The Requesters allege that the "*World Bank has not succeeded in introducing any additional checks and balances to the concession system that would compel the companies to operate differently from the way that they did before.*" Moreover, "*the World Bank project endorsement has in fact strengthened the position of these six companies,*" who will now "*present their operations as having the World Bank seal of approval.*" The Request notes that "*[s]ome companies are already using this endorsement to deflect criticism of their past and future actions, making it even more difficult for adversely affected communities to hold them to account.*"

50. The Requesters assert that they have suffered serious harm or will suffer harm in the future, because the project “*has contributed to a set of outcomes that stand to inflict harm on forest-dependent communities in the near future.*” 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, because of the logging of resin trees, loss of access to non-timber products in forests, such as fruits and medicinal plants, and elimination of wildlife from the destruction of the forest.
51. Some of the Requesters are 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 the Project will destroy their way of life and their culture, which relies on forests.
52. The Requesters allege that the World Bank actions constitute a violation of Bank policies and procedures on forests, environmental assessment, indigenous peoples, and supervision and that these actions have had a significant adverse effect on the Requesters’ rights, as required by paragraph 9(b).
53. Management Response alleges that “*neither the four local communities who submitted the letter noted under item (i) [the Request] nor their representative had previously communicated with the Bank on the specific claims asserted in the letter.*”¹³⁶ The Request, however, provides a list of letters and meetings between the NGO Forum on Cambodia, Global Witness, Oxfam GB (a member of the NGO Forum on Cambodia), and the World Bank, and minutes of meetings between the World Bank and the NGOs mentioned above. The Panel was able to confirm that the World Bank has been aware from the outset of concerns from civil society about the Project’s adverse effects on villages in 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.
54. Indeed, Management Response acknowledges that there have been numerous exchanges with civil society where all these concerns were voiced and discussed.¹³⁷ According to the Requesters and their representatives, these include a November 2002 meeting where eight members of the Requesters’ villages visited the World Bank Phnom Penh office and complained about the destruction of forests and the harmful effects on commune life. In addition, during its field visit, local communities confirmed to the Panel that on March 17, 2004, representatives from the four different concession areas signing the Request participated in a meeting in Phnom Penh where the issues raised in the

¹³⁶ Management Response, ¶ 4.

¹³⁷ Management Response, Annex 1, Item 22. See also Management Response, Annex 5, which describes the meeting referenced in Annex 1 as an NGO-led Workshop with “*NGO-led discussions with communities*” and “*with several sets of comments submitted.*”

Request for Inspection were discussed. The Request for Inspection states that at this particular meeting “an expert from the World Bank,” in referring to the concession system, asked “*Why do you say it is finished? We have worked hard to improve the logging concession system and it is good now, it is almost operating again.*” According to the Request, this made clear to the representatives that the “*World Bank is supporting the logging concession system*” and that the “*World Bank had loaned money to the government to help the logging companies prepare management plans so that they can log again.*”

55. 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).
56. The Panel notes that the subject matter of the Request is not related to procurement, as required by paragraph 9(d).
57. The expected closing date of the related loan is June 30, 2005. Only about 73 percent of the Credit had been disbursed as of the date 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.¹³⁸
58. Furthermore, the Panel has not previously made a recommendation on the subject matter of the Request. Therefore, the Request satisfies paragraph 9(f).
59. The Panel notes the importance for economic development of undertaking risky projects and acknowledges that the Bank has been willing to provide financing in difficult situations where other sources of financing have been wary of doing so. The Panel welcomes Management’s willingness to take risks in supporting activities in a complex and controversial area like the forestry sector in Cambodia. In the instant Request, however, the Panel notes the allegations that the Credit has led to support for a system of private logging concessions, which is perceived by many as causing serious harm. The World Bank actions connected with this alleged result are the subject of this Request for Inspection.
60. The Panel also notes that Management’s Response contains a number of remedial actions that in Management’s view would address the Requesters’ concerns and improve Project implementation. While these actions indicate Management’s intention to comply with the policies and procedures invoked by the Requesters, the Panel is not satisfied that they would ensure compliance with, *inter alia*, the applicable environmental and indigenous peoples policies. The Panel cannot be satisfied that the actions described by Management in the Response would, by themselves, demonstrate *prima facie* compliance with

¹³⁸ 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).

Bank policies and procedures as required by the Resolution. The Panel, therefore, cannot refrain from recommending an investigation.

61. In order to ascertain compliance, or lack thereof, 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 Cambodia, interviews with Government officials, Bank staff, and affected persons, confirmed that there are sharply differing views on the issues raised by the Request for Inspection.

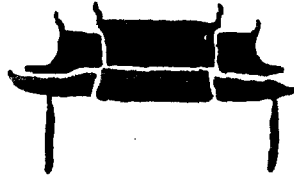
F. Conclusions

62. 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.
63. In light of the foregoing, the Panel recommends that an investigation be conducted.

Annex 1

REQUEST FOR INSPECTION

Letter 1



វេទិកាសម្រាប់ការចិន្តាធិការសហគមន៍
THE NGO FORUM ON CAMBODIA

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INSPECTION PANEL

21 January 2005

Office of the Inspection Panel
World Bank
1818 H Street, N.W.
Washington DC 20433
United States of America

Request for Inspection:
Forest Concession Management and Control (Pilot) Project - Cambodia

The NGO Forum on Cambodia, acting as a representative of affected local communities, wish to submit the Forest Concession Management and Control (Pilot) Project (FCMCP) in Cambodia for Inspection.

In support of this Inspection Panel request, we attach a number of supporting documents:

1. Two letters from representatives of affected communities, including English translations;
2. Report prepared by Global Witness providing details of the case and the violations of World Bank policies which occurred *[Still under revision – may be sent a week later]*;
3. Copies of previous correspondence between NGOs and the World Bank regarding forestry in Cambodia.

The NGO Forum on Cambodia is a Cambodia-based NGO membership organisation representing both international and local NGOs. We are a recognised non-government organisation registered with the Cambodian Government. For the past few years, we have conducted a Forest Livelihoods Project that has facilitated the networking and advocacy of NGOs working in forest concession and ex-concession areas and the rural communities they support.

We have decided to take this action after receiving letters from a number of villagers, signed in March 2004, asking us to represent their request that the Inspection Panel of the World Bank inspect all of the actions of the World Bank-financed FCMCP, which supports the logging concession system in Cambodia. Please note that the local community representatives who signed the letters have requested that their names be kept confidential.

Since the villagers wrote their letters, the FCMCP has endorsed forest concession management plans of six forest concession companies, paving the way for the possible resumption of logging by companies that have a poor record with regard to the protection of community rights and livelihoods. As stated in the villagers' letters, a resumption of logging will surely entail a repeat of the kinds of abuses villagers have suffered in the past. The

FCMCPP and Bank staff have also continued to endeavour to facilitate the movement of logs cut illegally, including trees that villagers tapped for resin. We perceive that in its commissioning and supervision of the FCMCPP, the Bank has violated a number of its operational policies leading to harm or potential future harm to people living in the project-affected areas.

Over the past few years, NGOs in Cambodia have raised with Bank staff problems associated with the FCMCPP on numerous occasions (see sample of correspondence attached). While some of the responses have been encouraging, the violation of World Bank policies and the potential harm to forest-dependent communities has not been substantially addressed.

The NGO Forum finally decided to represent the above-mentioned villagers in a meeting held on 10th January 2005. The NGO Forum's Management Committee (a group elected from our members) heard opinions from NGOs involved in forestry and human rights issues and from NGOs operating in the project-affected areas before making their decision.

Our concern is that:

1. Through flawed project design and poor implementation, the World Bank has promoted the interests of the logging concession system and the concessionaires. This despite abundant evidence that the companies have already caused harm to forest-dependent communities and will continue to do so. Here, it is worth noting that the World Bank had around five years worth of information about the concessionaires' track records before the FCMCPP began.
2. A key element of the FCMCPP has been assisting the companies in their production of sustainable forest management plans (SFMPs) and environmental and social impact assessments (ESIAs). The concessionaires have been required to produce these as a precondition for continued logging. The Bank is thus using loan money to benefit logging companies that have a track record of timber theft, tax evasion and human rights abuses. This would appear somewhat at odds with the Bank's stated goals of poverty reduction and promotion of good governance.
3. By allowing its project to endorse the sustainable forest management plans and environmental impact assessments of six of these companies, the World Bank has increased the likelihood that they will continue to maintain control of their concessions. At the same time, the Bank has not succeeded in introducing any additional checks and balances to the concession system that would compel the companies to operate differently from the way that they did before.
4. The World Bank project endorsement has in fact strengthened the position of these six companies, which hereon will present their operations as having the World Bank seal of approval. Some companies are already using this endorsement to deflect criticism of their past and future actions, making it even more difficult for adversely affected communities to hold them to account.
5. Through its acts and omissions, the World Bank has contributed to a set of outcomes that stand to inflict harm on forest-dependent communities in the near future.

While the above-mentioned Global Witness report provides details of the Bank's violations of Bank operational policies, a number of these violations are summarised below:

Operational Policy OP 4.36 – Forests

For the Forest Concession Management and Control Pilot Project in Cambodia the applicable World Bank Forest Policy would be OP 4.36, September 1993, along with relevant Annexes,

as this was the operational policy in place at the time of FCMCPP design and initial implementation. The policy says: "... *the Bank Group does not finance commercial logging operations... in primary tropical moist forests.* "

The Bank has breached this Operational Policy, though indirectly, in its provision of loan-backed technical assistance to commercial logging companies that is designed to facilitate their future operations.

Operational Policy on Environmental Assessment (OP 4.01)

The Bank has breached a number of provisions of this operational policy:

- Misclassification of the project as a lower impact category B project, rather than high-impact category A. This lowered the level of environmental assessment that the project would be required to carry out.
- Lack of environmental assessment even to category B standards – in fact, it appears that no meaningful environmental assessment was carried out before the project began.
- Poor standards of public consultation – Here the breach is twofold: lack of public consultation during the project planning stage and then flawed public consultations during its implementation stage.
- Poor standards of disclosure – this breach centres on the disclosure of the concessionaires' SFMPs and ESAs in late 2002. This was marred by a failure to properly disclose in which the Bank's Phnom Penh office was directly involved.

Operational Directive 4.20 – Indigenous Peoples

Cambodia's indigenous people, notably the Kuy minority (who are represented among those who have drafted letters to the Inspection Panel), are directly affected by the logging concessionaires. Under OD 4.20, the Bank must ensure "*informed participation*" by indigenous people and proposed projects that could impact on indigenous people, such as those relating to forestry, should be assessed carefully. Screening of projects for such impacts should usually take place via environmental assessment, which as noted above, appears not to have been undertaken for the FCMCPP. OD 4.20 states that "*For an investment project that affects indigenous peoples, the borrower should prepare an indigenous people's development plan that is consistent with the Bank's policy. Any project that affects indigenous peoples is expected to include components or provisions that incorporate such a plan.*"

Operational Policy OP 13.05 – Project Supervision

The policy states, "*As a development agency, the Bank also has an interest in assisting member countries to achieve their development objectives on a sustainable basis. To these ends, recognizing that project implementation is the borrower's responsibility, the Bank supervises the borrower's implementation of Bank-financed projects.*"

Project supervision is required in order to "(a) *ascertain whether the borrower is carrying out the project with due diligence to achieve its development objectives in conformity with the legal agreements; (b) identify problems promptly as they arise during implementation and recommend to the borrower ways to resolve them; (c) recommend changes in project concept or design, as appropriate, as the project evolves or circumstances change.*"

Examples of the Bank's poor supervision of the FCMCPP include:

- Allowing project technical assistance to be offered to companies that should have been excluded under the terms of reference given to the TA consultants;
- Overlooking the project requirements to undertake Environmental Assessment and produce an Indigenous People's plan;
- Failure to ensure that the planning processes for SFMPs and ESIA's carried out under the auspices of the project included adequate and appropriate consultation;
- Failure to ensure quality of the 2003 forest cover survey that the FCMCPP produced.

To our knowledge, the FCMCPP has not yet reached the 95% completion point beyond which an Inspection cannot be carried out. We therefore request that the project be inspected and action be taken to bring it into compliance with World Bank policies. We would also like to suggest that the World Bank:

- Publicly acknowledge the damage that the Forest Concession Management and Control Project stands to cause to the interests of forest-dependent communities in Cambodia;
- Publicly refute the FCMCPP's endorsement of the six logging companies;
- Write off the debt that Cambodia's citizens have incurred through the Learning and Innovation Loan that supports the FCMCPP;
- Undertake a wide-ranging review of World Bank interventions concerning forestry and other extractive industries to i) ensure that these projects have not breached the same operational policies standards as the FCMCPP; ii) ensure that they are not serving to entrench and endorse organizations that have a history of illegal activities;
- Include timber in the Extractive Industries Transparency Initiative (EITI) and hold Bank interventions in the forestry sector to the same standards as those in oil, gas and mining sectors.

In summary, our hope is that an Inspection would lead to both rectifications in the World Bank's approach to the forest sector in Cambodia and potentially to similar World Bank projects elsewhere in the world. We hope that the World Bank will welcome the opportunity to reflect on lessons learned from this experience and will continue to value their relationship with NGOs in Cambodia, who consider the World Bank to be an important and respected player in Cambodia's development.

Sincerely,

R. Peterson

Russell Peterson
Representative



Kep Kannaro
Chair of Management Committee

Copy: World Bank office in Phnom Penh
Member NGOs of the NGO Forum

Kingdom of Cambodia

Nation Religion King

We are villagers living in the concession areas of
Chendar Plywood, Samraong Wood, Everbright, and Pheapimex

Respectfully address

The Inspection Panel of the World Bank.

Regarding: Request for inspection of the activities of the Cambodia Forest Concession Management and Control Pilot Project.

According to the above subject, we are all villagers living in the Chendar Plywood, samraong wood, Everbright, and Pheapimex concession areas, who have all been impacted by these four companies. We are worried that these companies will re-start their activities and impact further on us, and we are unhappy with the World Bank's support for these companies.

In the past, these companies have impacted on our communities and on us personally also, as follows:

- Chendar Plywood has cut thousands of resin trees belonging to villagers in Prame and Mlu Prey 1 Communes that have provided a source of livelihood for many years. Other non-timber forest products that villagers have collected to sell have also been lost. Soldiers protecting the company have threatened villagers not to go into the concession area to tap resin. One company worker eloped with the daughter of villagers.
- Samraong Wood has cut hundreds of resin trees belonging to villagers in Anlong Veng Commune. Company soldiers have forbidden villagers from going into the forest to collect non timber forest products that villagers collect to make a living.
- Pheapimex has cut thousands of resin trees belonging to villager in Talat Commune and forbidden villagers from going into the forest to collect non-timber forest products.
- Everbright has cut thousands of resin trees belonging to villagers. The group of soldiers that protects the company has threatened villagers saying that, "If you sell your resin trees, we will cut them, if you don't sell them, we will still cut them." They also said that "I am not cutting your resin holes, I am just cutting the trees, and I'm leaving the holes for you." When villagers go into the company's logging concession, company soldiers don't let them go in.

In November 2002, we went to ask for environmental and social impact assessment books of the logging concessionaires from the Department of Forestry. But the Deputy Director of the Department, named Chea Sam-Mg, said that the books aren't at the Department of Forestry, they are at the World Bank. We waited for two days at the World Bank before getting the books, in order to take them to consult with people in our villages. This made us wonder: Why is the World Bank involved in this? When we looked at the books, we were startled because the reports by the logging concessionaires were not accurate. We saw that the companies were going to cut again without consideration for impacts on the living situation of villagers.

On 17 March 2004, we were interested again when the independent team evaluating forests in Cambodia said in a meeting at the Cambodiana Hotel that the logging concession system in Cambodia is finished. Then an expert from the World Bank asked, "Why do you say it is finished? We have worked hard to improve the logging concession system and it is good now, it is almost operating again." This made us understand that the World Bank itself is supporting the logging concession system. After that we learned that the World Bank loaned money to the government to help the logging companies prepare management plans so that they can log again.

If the logging concessions' management plans, which received technical assistance from the World Bank, are accepted by the Government, and the companies start up their activities again, there will certainly be violations even more severe than before on

villagers, especially on indigenous people, such as in the areas of the Chendar Plywood, Everbright, and Pheapimex concessions. If the companies operate again, they will certainly cut resin trees again; if they don't cut resin trees they won't have any wood to cut.

Therefore, we ask the Inspection Panel of the World Bank to inspect all of the actions of the World Bank Project that supports the logging concession system in Cambodia. In that, we would like to give the right to NQO Forum to represent us in all of this work.

Because we are worried about our personal security, we ask that the Inspection Panel not release our names as the people who have asked for the inspection.

We all are hopeful and believe fully that your Inspection Panel will definitely help us who are Cambodian villagers.

Please enjoy good health and success at all times.



global witness

February 2005

Submission to the World Bank Inspection Panel:

**WORLD BANK FOREST CONCESSION MANAGEMENT AND CONTROL
PILOT PROJECT IN CAMBODIA**

Prepared for NGO Forum on Cambodia by Global Witness

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Project Description

The Forest Concession Management and Control Pilot Project is funded by a World Bank IDA credit of US \$4.82 million made to the Royal Government of Cambodia initially commencing 20th October 2000 and originally due to end on 31 December 2003. This was subsequently extended to an end date of June 2005. The US \$4.82 million credit takes the form of a Learning and Innovation Loan (LIL). The project is situated in the Government Forest Administration (FA), a semi-autonomous department of the Ministry of Agriculture, Forestry and Fisheries. The Forest Administration was formerly known as the Department of Forestry and Wildlife (DFW) up until its internal restructuring in 2003.¹

Project Development Objective:

“The overall project development objectives are to demonstrate the effectiveness of a comprehensive set of forest management and operational guidelines and control procedures in forest concession areas and to establish an effective forest crime monitoring and prevention capability.”²

The Project’s four main components (*quoted from the FCMCPP Project Appraisal Document*):

- **A. Forest Planning and Inventory Component.** This component will support DFW (Forest Administration) in providing guidance and exercising quality control over concessionaire preparation of detailed long and short-term forest management plans. The resulting plans will set harvesting prescriptions and define other conditions for further operations. This component will finance acquisition of satellite imagery, aerial photography, conduct of field inventories, training and technical assistance.
- **B. Concession Regulation and Control Component.** This component will strengthen the capacity of the Forest Management office (FMO) of the DFW (Forest Administration) to oversee concession operations and to ensure that operations are in compliance with plans and conditions established under the Forest Planning and Inventory Component. It will finance acquisition of vehicles, equipment, training facilities and programs, and technical assistance.
- **C. Forest Crime Monitoring & Prevention Component.** This component will strengthen the capacity of the DFW’s (Forest Administration’s) Legal and Litigation Office (LLO) and the Ministry of Environment (MoE) to systematically and regularly monitor illegal logging and to launch effective prevention activities. It will introduce systematic data collection and analysis techniques, provide equipment and contractual services, training and technical assistance. The component will assist concessionaires, provincial forestry offices, national parks

¹ For the sake of clarity, the institution is referred to as Forest Administration throughout this document.

² Forest Concession Management and Control Pilot Project Appraisal Document, dated 2 June 2000.

and protected area managers and affected communities with design and implementation of timber theft prevention plans and will disseminate information on the Government's forest crime prevention program using media, training programs and other mechanisms. An international NGO will function as an independent monitor to check on the accuracy of Government's reporting.³

- D. Project Management and Institutional Strengthening Component. This component will establish a Project Management Unit (PMU) in the DFW (Forest Administration). The PMU, which will be developed from the Secretariat of the National Committee for Forest Policy, will provide overall coordination for the project, manage procurement and contracting, and be responsible for project monitoring and evaluation.

Glossary

AAC	Annual Allowable Cut
ADB	Asian Development Bank
CTIA	Cambodia Timber Industry Association
ESIA	Environmental and Social Impact Assessment
FA	Forest Administration
FCMCP	Forest Concession Management and Control Pilot Project
IFSR	Independent Forest Sector Review
LIL	Learning and Innovation Loan
MAFF	Ministry of Agriculture, Forestry and Fisheries
MEF	Ministry of Economy and Finance
RCAF	Royal Cambodian Armed Forces
RGC	Royal Government of Cambodia
SAC	Structural Adjustment Credit
SFMP	Sustainable Forest Management Plan
WGNRM	Working Group on Natural Resource Management

³ Global Witness took on this role as independent monitor from the end of 1999 (before the FCMCP began) to April 2003, when the Cambodian government announced that it had terminated the organisation's role. Global Witness' activities were not funded through the FCMCP; however its replacement as independent monitor, the Swiss company SGS, is financed through the Bank project.

INTRODUCTION

In April 2004, the outgoing World Bank task manager for the Forest Concession Management and Control Pilot Project observed that the forest concession system introduced by the Cambodian government in the mid 1990s was “*inadequate on paper, dysfunctional in reality*”. Despite the abundant evidence of its adverse impacts on the interests of ordinary Cambodians, however, the World Bank has sought to strengthen and perpetuate this same forest concession system and its operators.

The World Bank’s Forest Concession Management and Control Pilot Project was premised on the validity of the existing system and its operators, when flaws in the system and persistent illegal activities by the concessionaires were already well documented. As the project has progressed, evidence that the concession system and the concessionaires are inimical to the interests of ordinary Cambodians has continued to mount. Rather than changing course however, the Bank has, through its project, continued to support the concession companies and undermined laws, regulations and professional standards designed to make them accountable to ordinary Cambodians. In the process, the Bank has greatly increased the likelihood that six of these companies will retain their concessions for a further 25 years.

At the same time, the World Bank’s intervention has done nothing to change the way the concessionaires will operate in the future. Over-riding evidence suggests once they recommence logging operations, the six companies whose management plans the FCMCPP has approved will continue to inflict material harm on individual Cambodians and interests of the population as a whole. In doing so, the companies’ efforts to deflect criticism and maintain impunity will be strengthened by the seal of approval bestowed upon them by the World Bank project.

Communities living in and around the forests are those most directly affected by the concessionaires’ operations. They are alarmed at how the Bank is promoting the interests of companies that have abused their rights in the past and are certain to continue doing so. Their appeal for a correction to this approach is the basis for this inspection panel claim.

In its endorsement of six logging companies, the FCMCPP has undermined the Bank’s over-arching goals in Cambodia of reducing poverty and strengthening governance. How was this allowed to happen? The project’s damaging outcome is explained, in large measure, by the World Bank’s contravention of a number of its own operating policies, during both project preparation and implementation phases. The operational policies breached include those concerning Environmental Assessment, Indigenous Peoples, Forests, Natural Habitats, Supervision and Cultural Property. It is inconceivable that the FCMCPP would have been designed or implemented as it has been, if the Bank had adhered to these operational policies.

This document proceeds through four main sections. The first of these outlines the World Bank’s flawed conception of the FCMCPP and project’s inherent bias towards the

interests of the concessionaires. Section 2 examines the project's implementation and how the Bank allowed it to shield the companies from efforts to hold them accountable. The third section examines those aspects of the World Bank's planning and project implementation that violate Bank operational policies. Section 4 summarises previous attempts by NGOs and others to raise with the World Bank the concerns outlined in this report.

All three sections expand upon and support the central arguments of this paper:

- The World Bank, through its project, has consistently promoted the interests of the concession system and operators, despite the evidence that they have and will continue to inflict harm on forest-dependent communities.
- The Bank has, through its acts and omissions, undermined laws, standards and other accountability mechanisms designed to protect the interests of forest-dependent Cambodians.
- By allowing its project to endorse the strategic level management plans of six companies, the Bank has significantly increased the likelihood that they will continue to maintain their logging concessions and go on inflicting material harm on local people.

SECTION I: PROJECT CONCEPTION

1.1 Point of Departure

'Project Development Objective: Demonstrated field implementation in concession areas, of a comprehensive set of forest management and operational guidelines and control procedures' (Project Appraisal Document p.13)

The Forest Concession Management and Control Pilot Project's endorsement of the concession system stems from the point of departure set out in its project objective. World Bank staff took the view that the existing concession system was the most appropriate management regime for Cambodia's forests and the project was designed to demonstrate that it could be reformed.

The Bank's intention of proving that the existing concession system can work is further articulated elsewhere in the FCMCPP Project Appraisal Document and the Project Information Document:

*'the LIL serves to demonstrate field implementation approaches supportive of the reformed policy framework. If successful, these innovations will re-energize the currently dormant concession sub-sector ...'*⁴

*'the Project is specifically designed to enhance the sustainability of forest concessions in Cambodia'*⁵

These project objectives are founded on the conclusions of a World Bank 1999 vision paper on forest sector management in Cambodia. The paper argues that

*"A sustainably managed industrial concession system can be the center piece for the Cambodian Forestry Sector. While not addressing all these dimensions in equal detail, the studies conducted by Government with the assistance of World Bank financing provide the essential basis for moving toward the proposed vision"*⁶

Moreover, World Bank staff responsible for designing and supervising the project speak of its conceptual framework in terms of a hypothesis: that the Bank's intervention can overhaul the concession system and make it work.⁷

⁴ World Bank, 'Project Appraisal document on a Proposed Learning and Innovation Credit To the Kingdom of Cambodia for a Forest Concession Management and Control Pilot Project', June 2000, p.3.

⁵ World Bank, 'Cambodia – Forest Concession Management and Control Pilot Project: Project Information Document', May 1999.

⁶ World Bank, 'Background Note: Cambodia – A Vision for Forest Sector Development', February 1999, p.7.

⁷ Bank staff expressed such views during a meeting between NGOs and World Bank project staff, 20th April 2004; see also minutes of meeting between World Bank FCMCPP task manager and NGOs 24 September 2002 which quote the task manager as commenting that *"the World Bank's operational focus is to bring the concession system to whatever scale to make it work."*

The significance of the objectives, vision and hypothesis is that they can only be realised or proven if Cambodia's concession system continues. If the concession system disappears, the project is, on its own terms, a failure.

From the outset the FCMCPP's success or failure has thus hinged closely on the fate of forest concession system; giving the Bank an unhealthily strong stake in its preservation. A modest reduction in the number of concessions would not in itself invalidate the Bank's hypothesis.⁸ However, termination of all concessions would leave the project's architects facing difficult questions as to their decision to invest \$4.8 million and 5 years in their restructuring.

A more serious flaw is the way that the Bank effectively linked successful project outcomes to the continued tenure of the incumbent concessionaires. Article 5.4 of Cambodia's Sub-Decree on Forest Concession Management, introduced in February 2000, before the FCMCPP commenced, states that

"All revoked or transferred forest concessions shall be preserved natural forest zones and the managed forest shall not be conceded to any other company."

This meant that if any logging companies had their contracts terminated, their concessions could not be reallocated within the concession system. If the Bank wanted to demonstrate a functioning concession system and thereby realise its vision and project objectives, it needed to ensure the continued tenure of the incumbent concessionaires. Accordingly, it weighted the FCMCPP heavily towards the companies' own interests, by assisting them in their production of sustainable forest management plans (SFMPs) and environmental and social impact assessments (ESIAs), for example.

Following the logic of its pro-concession agenda, the Bank perceived the development of alternative management regimes as a threat. This sentiment is expressed in an internal memo from the FCMCPP task manager to the Cambodia country director about proposals to turn some of the concessions into protected areas for conservation:

*"This area is currently under concession and the financial package offered to Government (by conservation organisations) could result in difficulties coordinating activities and projects, **not to mention maintaining the coherence of the concession system reform program.**"* (emphasis added)⁹

⁸ World Bank, 'Background Note: Cambodia – A Vision for Forest Sector Development', February 1999, p.6 advocates a reduction in the concession system from approximately seven million hectares to around four million. In fact, according to the ADB-financed review of concessions, by April 2000, the area under concession had been reduced to 4.6 million hectares. Thus, by the time the FCMCPP commenced in late 2000, the concession system had already contracted to a size close to that which the World Bank considered appropriate. This raises questions as to whether the Bank was genuinely committed to further reductions in the area under concession, as it has since claimed.

⁹ Internal World Bank memo from FCMCPP Task Manager William Magrath to World Bank Country Director Ian Porter, February 2001.

Notwithstanding the Bank's misgivings, the Cambodian government has since designated the area in question – Cambodia's central Cardamom Mountain range – as a permanent protected forest. UNESCO is considering this same area as a possible World Heritage site on account of its high ecological values.

Given the extent to which the existing concession system and concessionaires were already discredited before the project began, the World Bank's construction of the FCMCPP on such a set of concepts and assumptions represented a serious error of judgment. It also suggested an approach to project preparation that owed more to the Bank's confidence in its preconceptions than observance of its operational policies. Discussions with Bank staff indicate that pre-project preparation, in terms of gauging environmental and social impacts in particular, was cursory at best and did not meet operational policy standards. This issue is examined in more detail in Section 3.¹⁰

Setting the Bank's prior intent to promote the existing forest concession system as the management regime for Cambodia's production forest is important for three main reasons:

- It highlights the flawed planning of the FCMCPP and the World Bank's refusal to acknowledge overwhelming evidence that preservation of the existing concession system and operators would inflict material harm on forest-dependent Cambodians.
- It explains the subsequent behaviour of the both the Bank and FCMCPP personnel towards the concessionaires, particularly their unwillingness to take account of companies' breaches of laws, planning requirements and agreed deadlines.
- Thirdly, highlighting this obvious bias towards the concession model has become necessary given recent denials by World Bank staff.¹¹ Criticism of its approach has prompted Bank officials to claim that the FCMCPP is as much about developing alternative management regimes such as community forestry as supporting the concession system. Project planning and implementation do not bear out this claim, neither does the vision paper from which the FCMCPP draws its inspiration.¹²

¹⁰ Meeting between World Bank staff members William Magrath (FCMCPP Task Manager 2000-2004), Peter Jipp (FCMCPP Task Manager 2004-), Stephen Mink and Steven Schonberger; with Suwanna Gauntlett and Delphine Vann Roe of Wildaid; Mike Davis and Hannah Thompson of Global Witness, Phnom Penh, 20 April 2004.

¹¹ Meeting between Steven Schonberger, World Bank Special Operations Manager and Marcus Hardtke and Mike Davis of Global Witness, 29 July 2004. Steven Schonberger claimed that it was unfair to label the FCMCPP as a project dedicated to the concession system, arguing that it was as much about developing alternative forest management regimes such as community forestry.

¹² World Bank, 'Background Note: Cambodia – A Vision for Forest Sector Development', February 1999, p.15 dismisses the idea of community management of high value forests: "*Community Forestry: As noted, perhaps 4 million ha of reasonably well stocked, high potential forests is available for commercial production oriented management and some 3.3 million ha is currently devoted to protection status. There still remains approximately 3 million ha of forest and another 7 million ha of rural area in which management of small forest areas and scattered trees is needed. In addition to having the potential of poverty alleviation, community forestry needs to be recognized as a means for achieving sustainable*

Indeed, the prevailing bias towards the concession system was highlighted in a World Bank internal 'Quality Enhancement Review' of the FCMCPP in 2003, which acknowledged that "*The Bank has not been fully prepared to discuss alternatives outside the concession model*".¹³

The World Bank decided to base its forestry project on the existing concession system and concessionaires in the face of abundant evidence that they were damaging the interests of Cambodia's citizens, particularly forest-dependent communities. The FCMCPP began in 2000, by which time NGOs, journalists, other international donor agencies and even the Bank itself, had documented the flaws in the system and the track records of the operators over several years. The arguments against perpetuating the status quo were very clear. To grasp the extent of the flawed assumptions on which the Bank founded the FCMCPP, requires a brief overview of the concession system, the concessionaires and their impacts.

1.2 Cambodia's Concession System

Labelling Cambodia's array of forest concessions a system suggests a degree of forethought and planning which is certainly not warranted. In the mid-1990s, the Cambodian Government awarded between 30 and 40 timber concessions to a range of Cambodian and foreign-owned companies.¹⁴ The contracts signed away a total of 7 million hectares on terms that greatly favoured the interests of the concessionaires over those of Cambodia. Setting a trend in Cambodia's forest sector that has persisted ever since, the process by which the contracts were awarded was secretive and suggestive of high-level government corruption. The Bank's own 2003 Quality Enhancement Review of the LIL notes that "*over half of these concessions had been established in 1995 and 1996 under unclear criteria and among widespread allegations of cronyism*".¹⁵

To borrow from the terms of reference the FCMCPP later issued to consultants working on the project, "*forest concessions are seldom properly surveyed and demarcated on the ground*".¹⁶ Indeed, as noted in an ADB-financed review published in 2000

*"the DFW (Forest Administration) has never been consulted prior to selection of concession areas. Apparently, allocations were made according to the requests of the concessionaires."*¹⁷

management for the large bulk of forest resources that are not suited to commercial production and which will be beyond the direct management capacity of Government."

¹³ World Bank, 'Quality Enhancement Review – Cambodia Forestry', 2003.

¹⁴ Asian Development Bank Sustainable Forest Management Project, 'Cambodian Forest Concession Review Report', April 2000 identifies 33 concessions.

¹⁵ World Bank, 'Quality Enhancement Review – Cambodia Forestry', 2003.

¹⁶ Forest Concession Management and Control Pilot Project, 'Consulting Services on Forest Management Planning and Training Terms of Reference'.

Moreover, as acknowledged in the FCMCPP planning documents, most if not all contained large areas of non-operable forest, non-forest areas, entire communities and agricultural land.¹⁸

Regarding the resource itself, the World Bank made the assumption that the existing concessions constituted a basis for sustainable use of Cambodia's forests. It adopted this position despite its own admission that *"little or nothing is known about the dynamics of stand structure, species composition, regeneration and growth in Cambodian forests following logging."*¹⁹ This acknowledgement echoed the ADB concession review's own conclusion that *"The current forest management system has no scientific basis, and does not ensure sustained yield and sustainable forest management."*²⁰

In its project planning, the World Bank tacitly acknowledged these very fundamental problems, yet made no attempt to challenge them. It conducted no thorough assessment of the values and possible alternative uses of Cambodia's forests (despite being one of the few institutions with the capacity to do so). Neither did it require any reworking of the existing concession boundaries as a pre-condition for, or even a component of, its efforts to reform the concession system.

1.3 The Logging Concessionaires

Cambodia's logging concessionaires encompass a spectrum of operators. These range from fly-by-night foreign investors looking to exploit weak governance and reap a quick profit, through to Cambodian operators whose approach to business is more mafia than corporate.

Well before the Bank commenced its project in 2000, investigations into these companies' activities, carried out over several years, showed that most, if not all had

¹⁷ Asian Development Bank Sustainable Forest Management Project, 'Cambodian Forest Concession Review Report', April 2000, p.15, footnote 22.

¹⁸ Project Appraisal Document on a Proposed Learning and Innovation Credit For a Forest Concession Management and Control Pilot Project p.9.

¹⁹ Forest Concession Management and Control Pilot Project, 'Consulting Services on Forest Management Planning and Training Terms of Reference'.

²⁰ Asian Development Bank Sustainable Forest Management Project, 'Cambodian Forest Concession Review Report', April 2000 p.32.

The ADB report also cautioned that given the damage already caused by illegal logging, the concessionaires might find it in their own interests to assess the resource in their concessions before investing time and money in production of management plans: *"Also in the meantime, the concessionaires should start identifying resources (national and/or international) for the preparation of the forest management plans. The preparation of forest maps, design and implementation of forest inventories, carrying out ESIA's and data processing and finally preparation of forest management plans would be an expensive operation. It is therefore advisable for the companies holding critical concessions to carry out a reconnaissance level assessment of the remaining resources first, before committing larger resources."*, *ibid.* p.39.

seriously violated Cambodia's laws.²¹ All the concessionaires, moreover, demonstrated either a lack of capacity for, or interest in, sustainable forest management.²²

Through the late 1990s and up until 2002, the concession companies were a driving force in the illegal logging that degraded what the World Bank termed "*Cambodia's most developmentally important natural resource*".²³

FCMCPP documents acknowledge, moreover, that in 1997, "*about 93% of the industrial wood volume was harvested illegally*".²⁴ Apologists for the concession system ascribe much of the so-called 'anarchic logging' of the late 1990s to factions of the Royal Cambodian Armed Forces (RCAF). While RCAF's involvement is not in dispute, it is important to note that many of the concessionaires the World Bank project has assisted were also heavily involved in illegal logging over this period and subsequently. Indeed, in many cases the 'anarchic' RCAF factions were logging to order for the concessionaires.²⁵

An ADB-commissioned survey of the concession system and concessionaires carried out from 1999-2000 compiled data on the companies' contractual breaches. The review's findings, which represent a conservative estimate, are summarised in table 1 below. Briefing notes on the six companies whose concession management plans the Bank's project has approved, are provided in Annex I.

²¹ See for example reports produced by Global Witness, www.globalwitness.org; Asian Development Bank Sustainable Forest Management Project, 'Cambodian Forest Concession Review Report', April 2000.

²² Only two of the concessionaires, GAT International and Samling, had any prior experience of forest management. These firms may have had the technical capacity to manage forest sustainably, however their actions quickly demonstrated a lack of interest in doing so in Cambodia.

²³ World Bank, 'Structural Adjustment Credit to Cambodia', 2000.

²⁴ Forest Concession Management and Control Pilot Project, 'Consulting Services on Forest Management Planning and Training Terms of Reference'.

²⁵ A summary of the role played by concessionaires in illegal logging during the mid to late 1990s can be found in Global Witness, 'The Untouchables: Forest Crimes and the Concessionaires – Can Cambodia Afford to Keep Them?', December 1999.

Table 1. Legal and contractual breaches by the concession companies²⁶

	Failure to invest as contract outlines	Failure to make financial deposits	No minimum annual royalty paid	No submission of financial statement	Non-compliance with EIA rules	Unacceptable forest management plan	(Extensive) illegal logging	Breach of Investment Agreement	No submission of EIA report	Inadequate technical training of staff	Operations outside concession	Illegal processing of unmarked trees	Logging without permit	Logging in wildlife sanctuary
Casotim	♦		♦		♦	♦	♦	♦	♦	♦				
Cherndar Plywood	♦		♦		♦					♦		♦		
Colexim Enterprise	♦		♦ ^c		♦	♦		♦		♦				♦
Everbright CIG Wood	♦	♦	♦ ^b	♦	♦	♦		♦		♦				
GAT	♦	♦	♦ ^d	♦	♦	♦		♦		♦				
Hero Taiwan	♦	♦ ^a	♦ ^e	♦	♦	♦	♦	♦		♦	♦			
Kingwood	♦	♦ ^a	♦ ^f	♦ ^g	♦	♦		♦	♦	♦	♦			
Mieng Ly Heng	♦ ^a	♦	♦	♦	♦	♦		♦		♦			♦	
Pheapimex-Fuchan	♦	♦ ^a	♦ ^b	♦	♦	♦	♦	♦	♦	♦				
Samraong Wood	♦	♦	♦ ^b	♦		♦		♦	♦	♦				
Silveroad		♦	♦	♦ ^h		♦ ⁱ	♦							
Samling				♦	♦	♦	♦	♦						
Superwood	●	●	●	♦	●	♦	♦ ^j	♦	♦	♦				♦
Timas Resources	♦	♦	♦	♦		♦	♦ ^j	♦	♦	♦				
TPP	♦	♦	♦	♦	♦	♦ ^k			♦	♦				
Voot Tee Peanich	♦	♦	♦	♦	♦	♦		♦	♦	♦				
Youry Saco	●	●	●	●		♦		♦	♦	♦				

a No proof supplied to support their claims of payment

b No payment in the 2nd or 3rd years

c No payment in 1996 or 1997

d No payment before 31st December 1999

e No payment in the 2nd year

f No payment in 2nd, 3rd or 4th years

g No payment last 4 years

h No payment in last 2 years

i Concessionaire permits Thai companies to log in their concession

j Logging carried out by unknown (illegal and organised) parties

k No existing management plan at all

²⁶ Asian Development Bank Sustainable Forest Management Project, 'Cambodian Forest Concession Review Report', April 2000.

1.4 Adverse Impacts of Concessionaires' Activities

The range of adverse impacts that concessionaires have on forest dependent communities and the country as a whole have been documented in detail over several years.

Illegal logging of resin trees

Resin tapped from various species of *dipterocarp* tree is an economically valuable commodity both within Cambodia and abroad. An estimated 100,000 Cambodians derive a portion of their income from resin collection.²⁷ This far exceeds the numbers of people concessionaires can claim to be employing.²⁸ Resin tapping is a sustainable activity that causes little or no harm to the trees that are tapped.²⁹ As such it is regarded as complementary to forest conservation.

The activities of the logging concessionaires pose a direct threat to resin tappers' livelihoods.³⁰ The trees that rural Cambodians tap for resin, are those same commercial grade species that the timber companies target for use in production of plywood and veneer. Records of concessionaires' harvests during the last cutting season (2000-2001) before the government imposed a moratorium on further logging clearly illustrate this. One concession company claimed that 80% of its harvest comprised the principal resin-producing tree species.³¹ The harvesting records of another state that 89% of the trees it cut were of this type.³²

Under Article 17 (g) the 1988 Decree on Forest Practice Rules, it is illegal to cut trees that people have tapped for resin. This law has since been superseded by the 2002 Forestry Law, Article 29 of which extends this protection to "*trees of species that people tap for resin*". The concession companies do not acknowledge the legal prohibitions on cutting resin trees and have violated them with impunity.³³

²⁷ Prom Tola & Bruce McKenney, 'Trading Forest Products in Cambodia: Challenges, Threats and Opportunities for Resin', Cambodia Development Resource Institute, 2003; p.15; for summary of figures on income from resin-tapping in three provinces, see Bruce McKenney, Yim Chea, Prom Tola and Tom Evans, 'Focusing on Cambodia's High Value Forests: Livelihoods and Management', Cambodian Development Resource Institute and Wildlife Conservation Society; November 2004, p.59.

²⁸ The 2004 Cambodia Independent Forest Sector Review writes that "*At the zenith of the working of the concession and wood processing system there were estimated to be about 37,000 workers employed in the forest sector*", Cambodia Independent Forest Sector Review, 'The Forest Sector in Cambodia', Part I, p. 63.

²⁹ Tom Evans, Hout Piseth, Phet Phaktra and Hang Mary, 'A Study of Resin-tapping and livelihoods in southern Monduliri, Cambodia, with implications for conservation and forest management', Wildlife Conservation Society, 2003, p.p. 69-70.

³⁰ Prom Tola & Bruce McKenney, 'Trading Forest Products in Cambodia: Challenges, Threats and Opportunities for Resin', Cambodia Development Resource Institute, 2003, chapter 3.

³¹ Global Witness, 'Deforestation Without Limits', July 2002, p. 17

³² Log harvesting books compiled for Pheapimex-Fuchan Stung Treng / Thalabariwat concession, 2001.

³³ See for example Global Witness letter to Cambodian Prime Minister Hun Sen, 9 January 2002, regarding illegal cutting of resin trees by Cherndar Plywood, GAT International, Pheapimex-Fuchan, Colexim Enterprise and Samraong Wood forest concessionaires.

It is worth emphasising, moreover, that resin is just one of the numerous forest products which rural Cambodians depend upon for food, medicine and fuel. Access to others is also jeopardised by logging operations carried out by concessionaires – both because of damage as a result of industrial logging and because many concessionaires attempt to prevent local people from accessing the forest.

Acts of violence and intimidation against local inhabitants

Employees of the concessionaires have violated the rights of people living inside or adjacent to forest concessions on any number of occasions. Abuses committed by company staff have included denial of access to forest areas, intimidation, rape, and, in at least one case, murder. In 1997, staff of the Colexim Enterprise logging company killed a local resin tapper who remonstrated with the concessionaire over its illegal cutting of people's resin trees. Colexim is one of the companies whose 25 year management plan the FCMCPP has recommended that the government approve. Further examples of human rights abuses suffered by local inhabitants are provided by the letters which form the basis for this submission to the Inspection Panel.

Environmental Impacts

The environmental impacts of the concession operations are felt both locally and nationally. At a local level these typically include obstruction of streams that form people's water supply as a result of poor road and bridge construction, as well as the damage caused to existing roads by logging trucks and heavy machinery.³⁴

At a national level, the overall impacts of the concessionaires' logging are also apparent. Agriculture and fisheries are the Cambodian population's main sources of food. Both are sustained through natural systems of water management within which the forests play an important role. UN agencies cited deforestation as a cause of the severe floods in 2000 that cost Cambodia an estimated \$156 million.³⁵

The forest degradation caused by the industrial logging, has likewise impacted on Cambodia's biodiversity. The extent and nature of these impacts has not received a full analysis, however it is likely that they have been severe.³⁶

³⁴ See for example reference to problems caused by bridge construction in Global Witness, 'The Untouchables: Forest Crimes and the Concessionaires – Can Cambodia Afford to Keep Them?', December 1999 p.14; reference to problems associated with road building in Asian Development Bank Sustainable Forest Management Project, 'Cambodian Forest Concession Review Report', April 2000, p.29.

³⁵ Cited in Global Witness, 'Deforestation without Limits' July 2002, p.3.

³⁶ Independent Forest Sector Review, 'The Forest Sector in Cambodia', Part I, p. 64.

Loss of revenues to the state

Floods in 2000, which the UN linked to deforestation, are estimated to have cost Cambodia \$156 million. By contrast, the entire forest sector generated only \$92 million for the national treasury between 1994 and 2000.³⁷

This \$92 million is a fraction of the royalties due on the timber cut by concessionaires and others during this period.³⁸ Proponents of the concession system argue that the value of concessions lies in their reliable delivery of revenues to the state. This argument is not supported by the Cambodian experience, where the concession system has comprehensively failed to deliver, even in this respect. In the meantime, the concessionaires have played a major role in liquidating one of the country's few natural resources of value. In terms of destruction of the resource and the opportunity cost, the companies' collective impact has been Cambodia's further impoverishment.

1.5 Embracing the System and the Operators

The World Bank was fully aware of the track records of the concessionaires and the adverse impacts they were having before it initiated the FCMCPP. The evidence that the existing concession system and its operators were undermining efforts to reduce poverty and strengthen governance in Cambodia was compelling and readily available. Indeed, just months before the FCMCPP got underway, an ADB-commissioned review of the concession system concluded that it constituted a *"total system failure"*.³⁹

Notwithstanding the conclusions of the ADB review, the World Bank proceeded with the development of a project premised on the validity of the same failed system and operators. It made no attempt to challenge such fundamental flaws as the location and boundaries of the concessions, nor did it question the legitimacy of the companies.⁴⁰ If the Bank wished to prove that some kind of concession system could work in Cambodia, it was dealing itself the weakest possible hand before its project even commenced.

³⁷ Global Witness, 'Deforestation without limits', July 2002, p.3.

³⁸ Asian Development Bank Sustainable Forest Management Project, 'Cambodian Forest Concession Review Report', April 2000, p.3 notes that for the years 1996-98 alone, *"total log production in Cambodia, including illicit felling, was between 4 to 8 million cubic metres, which, assuming that the annual allowable cut (AAC) calculations apply to the nation's forests as a whole, under the current management system would correspond to between 8 to 16 years AAC"*; for details of the role of the concession companies in this, see Global Witness, 'The Untouchables: Forest Crimes and the Concessionaires – Can Cambodia Afford to Keep Them?', December 1999.

³⁹ Asian Development Bank Sustainable Forest Management Project, 'Cambodian Forest Concession Review Report', April 2000, p.32.

⁴⁰ World Bank, 'Quality Enhancement Review – Cambodia Forestry', 2003; alludes to this in its comment that *"the decision of the Bank to respect (concessionaires') contracts was very unpopular with the Donor and NGO community, and contributed to widespread suspicion that the Bank would not take on vested interests."*

The World Bank's justifications for the course it took are both flimsy and contradictory. Concerning concessions' problematic location and boundaries, Bank staff have argued that with the concessions already allocated, the Bank was not in a position to demand any revisions. The notion that the Bank lacked the bargaining power to effect any kind of change here is dubious, although admittedly hard to prove either way.

Regarding its decision to support the incumbent concessionaires, the World Bank's arguments are more convoluted. Bank staff claim that the Government could not unilaterally cancel any of the concessionaires' contracts without being subject to lawsuits by the companies.⁴¹ In making these assertions, the Bank invariably refers to a legal analysis that it commissioned in the late 1990s. The Bank has consistently declined to publish the lawyers' assessment, making its professed rationale for opposing cancellation hard to verify.

In either event, the Bank's position is unconvincing for two main reasons. One is the substantial body of evidence already assembled concerning the companies' contractual breaches and illegal activities. This in itself provided strong grounds for terminating most if not all the concession contracts. The other is the Cambodian government's willingness, since before the start of the FCMCPP and subsequently, to cancel the investment agreements of a large number of concessionaires. Not one of these cancellations has encountered a legal challenge from the companies concerned.

Somewhat paradoxically, the Bank has consistently tried to take the credit for the government's termination of concession contracts, indeed as recently as December 2004; the World Bank Cambodia Country Director wrote in a letter to Global Witness that

*"The World Bank (has) focused on support to reforms of the forest concession system... Through a process of deliberative case-by-case review the number of concessions has been reduced from forty in August 2000, to six concessions covering 1.1 million hectares."*⁴²

The claim that there are now only six concessions left is almost certainly inaccurate – the government has announced the cancellation of only two of the 18 that remained at the start of 2003.⁴³ On the question of how the number was reduced, the implied role of the Bank and the deliberative quality of the process are not substantiated by comments made by the FCMCPP Task Manager in an internal memo addressed to the same Country Director in 2001:

"Government has unilaterally cancelled about 10 concession contracts without consultation with the Bank for reasons that have generally not been disclosed and which seem to include inadequacy of a resource capable of supporting commercial

⁴¹ This line of argument is summarised in World Bank, 'Quality Enhancement Review – Cambodia Forestry', 2003.

⁴² Letter from World Bank Country Director Ian Porter to Global Witness, 20 December 2004.

⁴³ These concessions were controlled by 14 different companies, three of which controlled two or more concessions each.

operations... These have not resulted in any ongoing dispute or claims against Government."⁴⁴

There is in fact no evidence that the Bank has had a role in concession cancellations, with two possible exceptions.⁴⁵ The real grounds for termination have been, in most cases, because the company had no more timber in its concession, was bankrupt or was associated with opponents of the government. The Bank continues to advance conflicting arguments on the issue, however. On the one hand, Bank staff advise the government against termination of concessions because of the supposed legal risk. On the other, as the letter from Ian Porter to Global Witness shows, the Bank expects to be congratulated when the Government ignores its advice and terminates concessions anyway.⁴⁶

As one of Cambodia's most important donors, the World Bank has substantial political leverage over the Cambodian government, which it could have used to demand pre-conditions for its assistance in reforming the forest sector. More importantly, the Bank was in no way compelled to put its name to Cambodia's forest concession system. If it genuinely had no scope to demand pre-conditions for its engagement, then it should have declined to lend its endorsement to an un-reformable system and un-reformable operators.

Instead, it chose to endorse the failed system and rogue concessionaires as the basis for future forest management in Cambodia. That this would increase the risks of further material harm to forest-dependent communities was clear. As is argued in Section 3, the Bank conceived the FCMCPP as it did only by disregarding a range of operational policies that, if observed, would surely have prevented the project being initiated in the first place.

⁴⁴ Internal World Bank memo from FCMCPP Task Manager William Magrath to World Bank Country Director Ian Porter, February 2001.

⁴⁵ The findings of the FCMCPP may have been instrumental in the government's cancellation of the Kingwood and Mieng Ly Heng logging concessions, which were terminated in line with the project's own conclusions in 2003. However, even here it should be noted that both these were concessions that were practically exhausted commercially.

⁴⁶ For similar claims see e.g. letter from World Bank Vice President Jemal-ud-din Kassum to NGO Forum, 17 December 2003.

SECTION 2 – PROJECT IMPLEMENTATION

2.1 Overview

The case against the concession system and its operators, clear before the FCMCPP began, only strengthened once the project implantation phase commenced. From an early stage, the World Bank struggled to justify the project's underlying assumptions, as more evidence of concessionaires' illegal activities emerged.

Rather than correct the FCMCPP's approach, however, the Bank allowed or perhaps even encouraged it to take an indulgent view of forest crimes by the concessionaires. Through the project, the Bank worked to ensure that some companies at least cleared the strategic (25 year) level concession planning process the FCMCPP was supervising. They achieved this by

- using loan money to help the logging companies make more presentable management plans
- turning a blind eye to illegal activities by those companies that the project was assisting
- lowering the standards of concession planning with which companies had to comply
- helping to undermine accountability mechanisms such as public disclosure and consultation.

By June 2004, the World Bank's project had recommended that the Cambodian government approve the logging plans of six of the companies. This recommendation is based on the FCMCPP's review of management plans that the companies wrote with technical assistance from the project.

2.2 Production of Concession Management Plans

Shortly before the FCMCPP commenced, the Cambodian government announced that the logging concessionaires would all be required to produce Sustainable Forest Management Plans (SFMPs) and Environmental and Social Impact Assessments (ESIAs) to international standards as a condition for continued operation. This measure followed the recommendations of the ADB-sponsored forest concession review completed in April 2000:

“Some of the concessionaires may not agree to prepare a new management plan and/or renegotiate a new contract. However, no inadequacy in the agreements or proven violations should prevent the Government from taking measures to protect the nation's resources. The forest estate remains a vital resource and the government retains its responsibility to bring about its effective management. Since the main purpose of the RGC's entrusting the management of its renewable resources to concessionaires is to

attain sustainable economic growth based on sustainable resource management we recommend that the RGC should insist on obtaining assurances that the resources will be put under sustainable management, and that these assurances be monitorable. Therefore, if any concessionaire declines to provide such monitorable assurances as would be required for a new management plan and / or contract, it should not be considered as a partner of the Government for resource management and the contract should be terminated.”⁴⁷

Common sense, not to mention protection of the public interest, would suggest that companies unable or unwilling to comply with this requirement by themselves should not be given custody of what the World Bank has described as “*Cambodia’s most developmentally important resource*”.⁴⁸ The World Bank took a different view, however and decided to offer loan-funded technical assistance through the FCMCPP to aid the companies in preparing their SFMPs and ESIA’s. As a use of loan money which Cambodians will have to repay, this element of the project is highly questionable, particularly given the concessionaires’ documented theft of valuable state assets.

This aspect of the Bank’s intervention had two immediate implications. One was to enhance greatly the companies’ chances of clearing the planning phase and retaining tenure of their concessions for a further quarter of a century. The other was to reduce the planning process from a meaningful test of companies’ suitability, to a window-dressing exercise in which the concessionaires’ technical deficiencies and cynicism would be masked courtesy of loan-backed technical assistance.⁴⁹ The Bank’s decision to assist the companies had the effect of lowering the bar in their favour. It robbed Cambodia of a crucial opportunity to measure the concessionaires’ commitment and capacity and to show the door to operators that had already damaged its forests and abused the rights of its inhabitants.

2.3 Disregarding Project Terms of Reference

In theory at least, this technical assistance was not to be provided to companies indiscriminately. Terms of Reference issued to the consultants hired to implement the

⁴⁷ Asian Development Bank Sustainable Forest Management Project, ‘Cambodian Forest Concession Review Report’, April 2000, p. ix.

⁴⁸ World Bank, ‘Structural Adjustment Credit to Cambodia’, 2000.

⁴⁹ J. Blakeney, Kay Panzer, Werner Schindele, ‘Forest Concession Management and Control Pilot Project – Final Report of the Mid-Term Review Mission’, February-March 2003, p. 15: According to the review team, this component of the FCMCPP experienced delays, meaning that FCMCPP may have played a smaller part in preparation of concessionaires’ first draft plans than envisaged in the original project design. There can be little doubt that the project made up for lost time through its provision of advice and assistance to the companies on the redrafting of these documents over the next year and a half, however.

planning components of the FCMCPP included various criteria for assisting companies in their preparation of SFMPs and ESIA, including the following:⁵⁰

“concessionaire’s operable area is sufficient for management;”

This criterion alone should have excluded all the companies. As the ADB review of concessions concluded just months before the FCMCPP began:

“Of the concessions where the consultant could obtain sufficient information to assess the number of harvestable coupes, 40% are estimated to have fewer than five years left, 50% have between 5 and 10 years left, and 10% have between 10 and 15 years left. Of the four companies that have never harvested their concessions, none have more than 10 years of viable annual coupes remaining.”⁵¹

In other words, none of the concessionaires had forest sufficient for a 25 year cutting cycle as required by their contracts.

“minimum of illegal activities”

With regard to this second requirement, the ADB review is again instructive. It concluded that all the companies had breached either their contractual obligations or Cambodian law or both. Global Witness meanwhile, had been exposing the companies’ illegal activities over a period several years.⁵² Published evidence of significant levels of illegal activity by companies such as Colexim Enterprise, Everbright CIG Wood, Pheapimex-Fuchan, Samling and others was readily available to the World Bank and its project staff. Despite this, the World Bank allowed or perhaps even instructed the FCMCPP to provide advice and other forms of assistance to all 13 of the companies that embarked on the production of management plans.

This highlights one of the main flaws in the World Bank’s supervision of its project – the willingness to allow loan money to be used to support concessionaires that have a well-documented history of illegal activities. This approach sits somewhat at odds with the Bank’s stated goal of poverty reduction.

“company has professional forestry staff capable of participating in, and benefiting from, the forest management planning process;”⁵³

⁵⁰ World Bank Forest Concession Management and Control Pilot Project, ‘Terms of Reference: Consulting Services – Forest Management Planning and Training’.

⁵¹ Asian Development Bank Sustainable Forest Management Project, ‘Cambodian Forest Concession Review Report’, April 2000, p. vii.

⁵² A summary of illegal activities by concessionaires up to 2000, the year that the FCMCPP commenced, can be found in Global Witness, ‘The Untouchables: Forest Crimes and the Concessionaires – Can Cambodia Afford to Keep Them?’, December 1999.

⁵³ World Bank Forest Concession Management and Control Pilot Project, ‘Consulting Services on Forest Management Planning and Training Terms of Reference’.

On the question of companies' employment of professional staff, the ADB Review found that

*"All except two of the concessionaires do not employ professional foresters to plan and supervise logging activities and more significantly, no measures are taken to monitor the health of the resource and adapt logging activities or take corrective silvicultural measures accordingly... The field staff of most of the concessionaires are simply logging supervisors, whose sole interest is the volume of logs removed and sent to the mills."*⁵⁴

meanwhile

*"The Department of Forestry and Wildlife staff are actively preparing concession management plans, carrying out annual coupe inventories and receiving direct payments for their services from the concessionaires... The current system is a clear case of conflict of interest."*⁵⁵

Despite this unequivocal and timely conclusion (published immediately before commencement of the FCMCPP), the Bank project ignored these findings and its own criteria for assisting the companies. Indeed, the FCMCPP has persistently refused to recognise the problem of concessionaires sub-contracting all technical forestry work to Forest Administration staff. This practice is symptomatic of two serious problems associated with the concession system in Cambodia. Firstly, concessionaires' reliance on government officials to undertake even the most mundane technical tasks on their behalf is evidence enough of their unsuitability as managers of the country's forests. Secondly, the companies' employment of the same officials responsible for regulating their activities sets up a fundamental conflict of interests; one that gives Forest Administration staff a stake in the continued tenure of the concessionaires. The Bank should have prevented its project from assisting companies that had 'captured' the officials responsible for regulating their activities. Conversely, it has permitted an employee of one of Colexim Enterprise's main shareholders to work as Director of the FCMCPP Project Management Unit.⁵⁶

Assuming that the Bank was adhering to its operational policies on procurement of services and recruitment of consultants, it would have been fully aware of the content of the FMCPP consultants' terms of reference.⁵⁷ Its failure to intervene when these ToR

⁵⁴ Asian Development Bank Sustainable Forest Management Project, 'Cambodian Forest Concession Review Report', April 2000, p.30.

⁵⁵ Asian Development Bank Sustainable Forest Management Project, 'Cambodian Forest Concession Review Report', April 2000, p. vii.

⁵⁶ Hang Sun Tra, who describes himself as an assistant to Colexim Enterprise shareholder So Sovann. See for example e-mail from Hang Sun Tra to ScanCom company 14 April 2002: "I heard your name through Mr William Magrath who introduced me during the workshop and trade show... my name is Hang Sun Tra, assistant to Mr So Sovann, shareholder of the Colexim concession company." This conflict of interests has been pointed out to World Bank staff on a number of occasions.

⁵⁷ In particular the World Bank Operational Policy OP 11.00 on Procurement and the World Bank Consultant Guidelines. The Bank states its commitment to observing both sets of standards in the Forest Concession Management and Control Pilot Project Appraisal Document, 2 June 2000, p.21.

were so seriously breached again raises questions about the quality of the project's supervision.

2.4 Standards for Preparation of the Management Plans

The regulatory requirements for preparation of forest management plans were largely complete before the FCMCPP began.⁵⁸ However the concessionaires, who had an obvious interest in lowering these standards, took it upon themselves to devise their own framework for environmental and social impact assessment. This problem was highlighted in July 2001 by a World Bank staff consultant's report on terms of reference for ESIA prepared by the Cambodian Timber Industry Association.⁵⁹

In October 2001, the World Bank Cambodia Country Director sent the staff consultant's paper to the Cambodian government, describing it as "*a note prepared for the World Bank*".⁶⁰ While not presenting it as the World Bank's official position, the Country Director's letter implied that the views expressed in the report were those of the Bank.

The staff consultant's damning verdict on the CTIA's ESIA terms of reference is captured in the report's opening sentence:

*"this document is so fundamentally flawed that it is unlikely to achieve the desired results for either the timber industry or government."*⁶¹

The paper went on to detail the deficiencies. In the light of subsequent approaches taken by the FCMCPP (discussed in more detail in subsequent sections) two of its comments deserve particular attention:

1. *"The proposal to use Forest Research Institute (FRI) staff to assist in environment and social assessment work is inappropriate unless and until the institute is established as an entity entirely independent and separate from DFW (Forest Administration);"*

The Forest Research Institute is situated within the Forest Administration and staffed by FA personnel. The staff consultant's identification of the obvious conflict of interest in

⁵⁸ A summary of the laws, regulations and guidelines covering concession planning can be found in GFA Terra Systems: 'Results of the Independent Review of Strategic Forest Management Plans prepared by Concession Companies operating in Cambodia', August 2004 p.p. 22-27.

⁵⁹ An earlier critique of the same terms of reference for ESIA was produced by NGO Forum on Cambodia in April 2001.

⁶⁰ Letter from Ian Porter, World Bank Country Director, Cambodia, to Cambodian Minister of Finance, Minister of Agriculture Forestry and Fisheries and Minister of Environment, 4 October 2001.

⁶¹ John H. Dick, Staff Consultant to The World Bank, 'Comments on the Environmental and Social Impact Assessment Terms of Reference and Workplan for The Preah Vihear Concession of Cambodia Cherndar Plywood, as prepared by the Cambodian Timber Industry Association, April 2001', World Bank, July 2001.

FRI staff preparing concessionaires' ESIA's echoes the conclusions of the 2000 ADB-financed concession review.

2. *"The mechanisms for community consultation are much too vague and the proposal that 'community participation shall be at the Compartment (five yearly) and Annual Plan levels' is entirely inappropriate since public participation will be essential to strategic-level concession zoning."*

In the event, the Staff Consultant's comments were ignored by the Cambodian government and not followed up by the World Bank. An examination of the ESIA's that concessionaires subsequently produced, including those the FCMCPP later endorsed, shows that they are based on the CTIA's *"fundamentally flawed"* terms of reference.⁶²

The World Bank intended that assistance to concessionaires preparing SFMPs and ESIA's would be a main focus of the FCMCPP. This raises questions as to why the Bank did not make more effort to ensure that the companies observed the appropriate guidelines. When NGOs raised this issue at a meeting in December 2003, the project task manager claimed that he could not remember having seen the staff consultant's report.⁶³ Asked again in April 2004, he said that he would need more time to look at the document before commenting.⁶⁴

The concessionaires' failure to produce ESIA's in accordance with appropriate guidelines is not solely the fault of the Bank and the FCMCPP. On the other hand, the Bank's unwillingness to push for high standards set the tone for the FCMCPP's constant attempts to lower the bar for the concession companies. As detailed in section 2.10, FCMCPP staff disregarded the staff consultant's comments completely when they came to review the concessionaires' plans.

Meanwhile, the response of the World Bank to the lack of community consultation in companies' ESIA preparation has been to adopt the position taken by the Cambodian Timber Industry Association.⁶⁵ In total contradiction with the position advocated by the

⁶² GFA Terra Systems: 'Results of the Independent Review of Strategic Forest Management Plans prepared by Concession Companies operating in Cambodia', August 2004, p.p. 30-31.

⁶³ Meeting between World Bank country representative and FCMCPP task manager, together with representatives of Oxfam GB, Oxfam US, NGO Forum on Cambodia and Global Witness, 22 December 2003.

⁶⁴ Meeting between World Bank staff members William Magrath (FCMCPP Task Manager 2000-2004), Peter Jipp (FCMCPP Task Manager 2004-), Stephen Mink and Steven Schonberger; with Suwanna Gauntlett and Delphine Vann Roe of Wildaid; Mike Davis and Hannah Thompson of Global Witness, Phnom Penh, 20 April 2004.

⁶⁵ Cambodia Timber Industry Association, 'Environmental and Social Impact Assessment (ESIA) Terms of Reference (TOR) and Workplan for Preah Vihear Forest Concession of Cherndar Plywood Mfg. Co. Ltd', April, 2001, p.15: *"At the Strategic Plan level, only the assessment of current situations, identification of community dependence on forest resources, identification of impacts and recommended mitigation measures are to be carried out. Detailed and specific treatment s and applications of ESIA measures are to be formulated at the Compartment Plan level following the terms of tri-partite Collective Agreements between the local authority, subject communities and the concessionaire through consultative processes."*

staff consultant in 2001, the Bank now argues that consultation on social impacts can be deferred to the five year planning level.

The staff consultant's overall recommendation was that "*The ESIA terms-of-reference and work plan should not be endorsed in their current form by the Cambodian Government, the international donor community or NGOs*", however this is effectively what the Bank, through the FCMCPP, has done. The issue of lack of adequate consultation is examined further in the sections that follow.

2.5 Ignoring Evidence of Illegal Activities by the Concessionaires

The efforts of community groups, NGOs and the media to document the illegal activities of the concession companies continued after the FCMCPP got underway. Under pressure from international donors, the government agreed to the appointment of Global Witness as official monitor of forest governance reform in Cambodia at the end of 1999. Global Witness' activities received financial support from various bilateral donors and fitted within the framework of an overarching Forest Crime Monitoring and Reporting Project managed by UNDP and FAO. This project focused on supporting efforts by the Forest Administration and the Ministry of Environment's Department of Inspection to detect and suppress forest crime. Its sources of financing included the FCMCPP.

Example 1 – Illegal logging by Everbright CIG Wood

The World Bank used the FCMCPP to support aspects of the Forest Crime Monitoring and Reporting Project situated within the Forest Administration. However, the Bank declined to make the connection between the findings of the forest crime project and the FCMCPP's parallel efforts to reform the concessionaires. Thus, while Global Witness and others continued exposing illegal logging by concessionaires, this in no way shook the World Bank's conviction that the same companies remained appropriate recipients of LIL-funded technical assistance. This 'see no evil' attitude is exemplified by a well-publicised case of illegal logging by Everbright CIG Wood, a Chinese state-owned company.

Between December 2000 and April 2001 Global Witness, together with Forest Crime Monitoring and Reporting Project advisors supported by the FCMCPP, investigated a large-scale illegal logging operation by Everbright. Over the same period, Global Witness publicised a related case of timber royalty evasion by the same company. Everbright, whose sub-contractor is the Forest Administration Director General Ty Sokhun's father-in-law, responded by mounting a law suit (unsuccessfully) against Global Witness staff. Everbright, by contrast, was never prosecuted or otherwise punished for its actions.⁶⁶

⁶⁶ FA staff were conspicuously uncooperative in the provincial authorities' efforts to investigate Everbright. The provincial prosecutor handling the case informed Global Witness in October 2001 that the FA had not

The World Bank appears to have given little consideration to these developments. Through the FCMCPP, it continued to advise and assist Everbright in the company's preparation of management plans. Eighteen months later, project staff declared Everbright to be one of two companies in which they had particular confidence.⁶⁷ In early 2004, as detailed below, the FCMCPP made its recommendation to the Cambodian government that Everbright's management plans be accepted.⁶⁸

The Everbright case was just one example of many illegal operations exposed by Global Witness and others over the lifetime of the project. The World Bank likewise acknowledged on several occasions that the concessionaires were continuing to break the law:

*Cambodia continues to face a serious timber theft problem. The level of forest crime appears to still be of worrisome proportions and higher than is recognised in official estimates and involves concessionaires, sub-contractors, and others operating within concession boundaries in disregard of Government standards and required procedures.*⁶⁹

Notwithstanding these expressions of concern, the Bank continued to allow its project to assist these same companies. It is worth reflecting on how this approach sits with Cambodia's own laws. The criteria by which companies' suitability as forest concessionaires should be judged are set out in Article 4 of the 2000 Sub-Decree on Forest Concession Management:

"Only those commercial entities who have been pre-selected and complied with the conditions and proof below are allowed to apply:

- a) Demonstrated competence in all aspects of forest management including planning, harvesting, forest regeneration, stand management, environmental protection and community relations;*
- b) A good compliance record, with an absence of serious technical violations in all jurisdictions in which it has been engaged in forestry operations; (emphasis added)*
- c) Adequate financial and professional staff resources to carry out effective forest operations.*

given him the completed documentation required to move the case forward. The prosecutor claimed that the FA's foot-dragging was a deliberate ploy to obstruct prosecution of Everbright.

⁶⁷ Global Witness interview with Yann Petrucci, technical advisor to FCMCPP, 17 September 2003.

⁶⁸ The exact date on which this recommendation was made is not known, because FCMCPP reports on the concessionaires' management plans have not been made publicly available.

⁶⁹ Letter from World Bank Country Director Ian Porter to Minister for Agriculture, Forestry and Fisheries, 12 December 2001. Other examples of similar statements include i) the December 2001 World Bank mission report, Annex 3; ii) letter from Mark Wilson, Head of Rural Development and Natural Resource Sector Unit, East Asia and Pacific Region to Forest Administration Director-General Ty Sokhun, 10 June 2002.

Example 2 – Offsetting Timber Royalties

It was not only FCMCPP-supported technical staff who obtained evidence of serious violations by the concessionaires, however. In July and August 2002 the FCMCPP task manager wrote to Global Witness requesting information on corruption and misuse of funds relating to Cambodia's forest sector.⁷⁰ At a meeting in September 2002, Global Witness representatives duly presented both the task manager and the head of the Bank's Rural Development and Natural Resource Sector Unit, East Asia and Pacific Region with documentation that exposed high-level corruption involving the concessionaires. The offsetting scheme in question enabled the misappropriation of large sums of money that the companies owed to the government in unpaid timber royalties.

The offsetting system emerged soon after the government imposed a moratorium on further cutting and log transportation in January 2002. With concession operations in suspension, revenue flow to the companies and their subcontractors almost immediately dried up. In response, the most powerful of the company subcontractors and industry fixers, who have blood or business relations with senior officials, engineered the offsetting of royalty payments owed by the companies. This operated as follows:

- Senior officials claimed that the government owed large sums of money to certain creditors.
- Rather than paying the timber royalties they owed direct to the government, the concessionaires were instead invited to pay these creditors – the payment of royalties was thus offset.
- The concessionaires would be able to reimburse the creditors incrementally. As an additional incentive, the amount they paid would be very slightly less than the total royalties they were legally obliged to pay the government.
- The transactions would be facilitated by the subcontractors and fixers, who also brokered their authorisation by senior officials (including the prime minister and deputy prime minister).

The disappearance of royalties owed to the government was initially detected by the IMF in mid-2002. In response, the Ministry of Economy and Finance (MEF) initiated its own audit which uncovered five 'irregular' cases of offsetting government debts against royalties.⁷¹ MEF demanded that the concessionaires involved pay the offset royalties to the government; however evidence gathered by Global Witness suggests that this never happened. In addition, Global Witness found that MEF's findings touched on only a few of a much larger number of cases involving almost all of the concessionaires that operated in 2001.

In fact, there are very strong indications that some or all of the government's purported debts to creditors were fictitious and that the companies in question, many of which had not operated in Cambodia for years, were entirely unaware of their role in the offsetting

⁷⁰ E-mails from William Magrath to Global Witness, 13 July and 1 August 2002.

⁷¹ Global Witness investigations revealed that MEF, as well as other ministries, was in fact notified of all of the offsetting deals at the time that they were originally brokered.

arrangements. It is hard to avoid the conclusion that the money, which amounted to several million dollars, was simply stolen by the subcontractors and their political patrons.⁷²

One of the World Bank's main justifications of the concession system is its supposedly reliable delivery of tax revenue to the state. Moreover, the Bank has frequently been forthright (albeit selectively) in its condemnation of corruption in Cambodia.⁷³ In his e-mails to Global Witness requesting information, the FCMCPP task manager duly expressed serious concern at the possibility of royalty misappropriation having taken place:

*"I have discussed with Global Witness staff on numerous occasions, the importance I would attach to information that Global Witness might provide on royalty accruals."*⁷⁴

*"Regarding our last conversation about possible new information and allegations that Global Witness might be in a position to raise in respect of corruption and misuse of funds, as I have indicated on other occasions, I have stand ready to pass on information and evidence to the appropriate Bank officials. Please let me know if you have material of relevance to Bank operation in Cambodia and be assured that such information will be treated very seriously."*⁷⁵

In the event, however, the Bank did little or nothing with the evidence concerning the offsetting scheme. Indeed, only days after receiving the documentation from Global Witness, the task manager wrote to the Forest Administration proposing that the log transport moratorium be overturned and the same concession companies that had offset their royalty payments be allowed to resume timber shipments.⁷⁶

The Bank's conduct in these (and other similar cases) again betrays its steadfast bias towards the concessionaires, in the face of overwhelming evidence of the damage they have inflicted on the public interest. Had the World Bank demanded that the FCMCPP desist from supporting the companies, it is highly unlikely that any would have cleared the strategic level planning process. In the event, the overriding imperative to keep the concessionaires in business in order to realise the project goal prevailed over principle, concerns about Cambodian law or the integrity of the forest sector reform process.

⁷² The MEF investigation of June 2002 claimed that, the five cases that it examined involved offsetting of more than \$3 million owed to the state.

⁷³ A summary of World Bank statements concerning corruption in Cambodia is included in Global Witness, 'Taking a Cut', November 2004, p.8.

⁷⁴ E-mail from William Magrath to Global Witness, 13 July 2002.

⁷⁵ E-mail from William Magrath to Global Witness, 1 August 2002.

⁷⁶ Letter from William Magrath, to Ty Sokhun, Director General, Forest Administration, 3 October 2002; the Bank's attempts to facilitate renewed log transports are examined in more detail in section 2.12. As examined in section 2.12, a significant proportion of the logs in concessionaires' stockpiles had been felled illegally in the first place.

2.6 Submission of the Management Plans – “Deadlines are not written in stone”⁷⁷

The concession companies had committed to submitting their SFMPs and ESIA's by the end of September 2001.⁷⁸ Shortly before this deadline expired, consultants to the FCMCPP gave a presentation to members of the international donor Working Group on Natural Resource Management, in which they claimed that the companies had made significant progress towards completion of the plans.

These claims were subsequently exposed as grossly exaggerated or, in the case of some companies, entirely false.⁷⁹ In the event, all the concessionaires missed the 30 September deadline. This provided grounds for cancellation of their contracts. Instead, World Bank officials argued that the deadline should be allowed to slip and none of the companies penalised for their failure to meet it.⁸⁰ These arguments prevailed and the government decided to grant the companies another year to produce their plans. The short-term consequence of this was that the companies continued logging for the remaining months of 2001, before pressure from international donors other than the Bank persuaded the government to suspend concession operations effective from January 2002. During this three month period several of the companies, including Cherndar Plywood, Colexim Enterprise and Samraong Wood continued illegally logging resin trees and thus inflicting substantial material harm on local inhabitants.⁸¹

It is difficult to determine the degree to which lobbying by Bank and FCMCPP staff influenced the extension of the plans' submission deadline. At a minimum, it reassured the government that the Bank would support a decision to let companies off the hook. Either way, this episode again highlights the determination of the Bank and its project to shield the concessionaires from efforts to make them accountable.

2.7 Disclosure

Disclosure of concessionaires' management plans is a requirement under the Article 19 of the Cambodian Forestry Law. In addition, the World Bank had made disclosure of the plans a condition for release of the US\$ 15 million second tranche of its Structural Adjustment Credit (SAC) to Cambodia, which was due for disbursement in December 2002.

⁷⁷ Comment attributed to FCMCPP task manager when it became clear that the concessionaires would not meet the plans submission deadline.

⁷⁸ Department of Forestry and Wildlife (Forest Administration), 'Progress Report on Forestry Reform – Presented at the Meeting of the Donor Working Group on Natural Resources Management', 27 September 2001.

⁷⁹ Notably the case of Casotim company, which to date has still not produced an SFMP or ESIA but continues to maintain tenure of its concession.

⁸⁰ See, for example, minutes of meeting between Jon Buckrell and Rosie Sharpe (Global Witness) with Steven Schonberger, 9 August 2001.

⁸¹ Global Witness 'Deforestation Without Limits', July 2002, p.p. 16-17.

In late October 2002, the Forest Administration announced that it would allow a period of only 19 days for public review and consultation on the documents. This period coincided with a major public holiday, reducing the actual amount of time to around two weeks. The World Bank reacted by criticising the 19 day limitation, but then indicated that this would nonetheless be sufficient to fulfil the SAC conditionality. Clearly, the Bank is not primarily to blame for the inadequate consultation period. However, its effective endorsement of the government's decision passed up a clear opportunity to use its influence to remedy the situation. Moreover, the Bank's position gave the impression that it was quite happy to see a basic mechanism for ensuring concessionaire accountability to forest dependent communities diluted to a degree that rendered it close to meaningless.

Further to its tacit acquiescence to the 19 day consultation period, the World Bank office in Phnom Penh agreed to take on the government's legal responsibility for disclosing copies of the concessionaires' plans. However, following an intervention by the Cambodia Timber Industry Association, the Bank agreed that it would disclose only an edited version of the plans, which excised the economic data.⁸² As discussed in more detail in section 2.11, the commercial viability of all the concessions is highly questionable. The Bank's acceptance of the CTIA's argument that the public should be denied access to the data that might reveal this is hard to reconcile with its professed commitment to ensuring meaningful transparency.⁸³

When community and NGO representatives requested copies of the documents from the Forest Administration on the first day of the designated review period, the FA referred them to the World Bank office. The Bank's reaction to the request for the documents was to announce that it did not have some of the documents, that it had only one copy of those that it had received and that these were all in black and white (which rendered their colour-coded maps indecipherable). Bank staff informed the community and NGO representatives that it did not have the funds to make more copies. What makes this response all the more astonishing is the fact that NGO representatives had comprehensively briefed World Bank staff just a few days beforehand on villagers' intentions to come and request copies of the plans.

In the words of the Oxfam Regional Director in her letter to the World Bank Cambodia Country Director

"It is hard to understand why the Bank chose to take on the legal responsibility of the government to ensure disclosure of the documents and why, having done so, it failed to discharge this responsibility competently."⁸⁴

⁸² Letter from Cambodia Timber Industry Association to Ian Porter, World Bank Cambodia Country Director, 21 October 2002.

⁸³ In practice this information did enter the public domain because, while the CTIA and Forest Administration removed the economic data from English language versions of the management plans, they forgot to excise it from the Khmer language copies.

⁸⁴ Letter 2002 from Heather Grady, Regional Director of Oxfam to Ian Porter, World Bank Country Director, Cambodia, 6 December 2002.

In view of the World Bank's underlying commitment to the poor and vulnerable, its role in the unravelling of a key accountability mechanism designed to protect such people's interests is particularly regrettable. It also constitutes a breach of the provisions on disclosure of Operational Policy OP 4.01 on Environment Assessment, as detailed in section 3.1 below.

2.8 Consultation

One of the first outcomes of the eventual disclosure of the SFMPs and ESIA's was to confirm that the concessionaires had not carried out adequate community consultation, as required by the planning process.⁸⁵

On 5 December representatives of communities situated in and around concessions went to the Forest Administration to request a consultation on the content of the management plans. They spoke with the Project Director of the FCMCPP, Chea Sam Ang, who is also Deputy Director of the Forest Administration. Chea Sam Ang refused their request for a meeting and, according to some of the community members, threatened them.⁸⁶ In response, the villagers staged a sit-in protest outside the Forest Administration main office. The same evening, special police units violently dispersed them, using electric shock batons.

While the World Bank did protest the use of violence by the police, it nevertheless undermined this commendable stance by failing to take action against the FCMCPP Project Director. In this regard it is worth noting that evidence of subsequent illegal activities by the same individual has been brought to the World Bank's attention and elicited no response.⁸⁷

The outcomes of the FCMCPP are damaging primarily because they strengthen the hand of companies whose activities cause material harm to rural Cambodians. In this instance, however, the harm was immediate and implicated FCMCPP staff directly. The ways in which this represents a breach of operational policy OP 4.01 are examined in Section 3.

In the face of widespread criticism of the limited window for comment on the plans and the lack of public consultations during their preparation, the government announced that

⁸⁵ Global Witness, 'Preliminary Assessment of Strategic Forest Management Plans and Environmental and Social Impact Assessment Reports – Cambodia's Forest Management Options for the Future' December 2002, p.p.21; GFA Terra Systems: 'Results of the Independent Review of Strategic Forest Management Plans prepared by Concession Companies operating in Cambodia', August 2004, p.135.

⁸⁶ Letter from Heather Grady, Regional Director of Oxfam to Ian Porter, World Bank Country Director, Cambodia, 6 December 2002.

⁸⁷ See, for example letter from Global Witness to Peter Jipp, Task Manager of the FCMCPP, 22 July 2004 concerning Chea Sam Ang's role in facilitating the transport of timber illegally logged within a protected forest in Mondulkiri. The fact that conservation of this same protected forest was being funded through the FCMCPP was apparently insufficient to persuade the World Bank to take action.

it would allow further consultations beyond the allotted 19 days. These consultations, which had started at the beginning of the designated review period in November 2002 thus continued through the first months of 2003. Some of these were marred by intimidation of the participants and attempts to trick villagers into signing off blank documents.⁸⁸

A World Bank representative in January 2003 admitted that the standard of these consultations was very poor.⁸⁹ By contrast World Bank Regional Vice-President Jemal-ud-din Kassum informed NGO Forum on Cambodia in December 2003 that

*“community consultations on forest concession management plans have been taking place. A report has been produced by the Government, but has not been made public. We will urge the Government to disseminate this report to interested parties in the interest of increasing understanding of community concerns regarding forest management. Specialist social science staff of the World Bank have reviewed this work and concluded that it was a satisfactory basis for the strategic level decision making of Government.”*⁹⁰

It is not clear whether Mr Kassum was referring to the same set of consultations and the report he referred to does not appear to have been published. World Bank staff responsible for the FCMCPP have since echoed his satisfaction with the standard of consultations. In April 2004 the outgoing task manager claimed that a World Bank social science specialist had concluded that social impacts were adequately addressed during the strategic level planning process.⁹¹ The social scientist’s supposed conclusions (which have also not been published) are at odds with those of the independent review team that examined the companies’ plans in July to August 2004:

*“participation in the designation of community areas did not take place and the whole social context of these concessions has become problematic as a result, even though the TRT (FCM CPP plans review team) initiated community consultations as part of their review process. The currently proposed community use zones and resource access plans are therefore inadequate.”*⁹²

⁸⁸ See, for example, letter from Heather Grady, Regional Director of Oxfam to Ian Porter, World Bank Country Director, Cambodia, 6 December 2002; field notes compiled by NGO representatives attending the consultations.

In at least one instance, representatives of the Colexim Enterprise company tried to persuade villagers to thumbprint a blank document in exchange for blankets.

⁸⁹ Meeting between Peter Stephens, Melissa Fossberg and Bou Saroeun of the World Bank, together with Eva Galabru, Jon Buckrell, Marcus Hardtke and Mike Davis of Global Witness, 15 January 2003.

⁹⁰ Letter from World Bank Vice President Jemal-ud-din Kassum to NGO Forum on Cambodia, 17 December 2004.

⁹¹ Meeting between World Bank staff members William Magrath (FCM CPP Task Manager 2000-2004), Peter Jipp (FCM CPP Task Manager 2004-), Stephen Mink and Steven Schonberger; with Suwanna Gauntlett and Delphine Vann Roe of Wildaid; Mike Davis and Hannah Thompson of Global Witness, Phnom Penh, 20 April 2004.

⁹² GFA Terra Systems: ‘Results of the Independent Review of Strategic Forest Management Plans prepared by Concession Companies operating in Cambodia’, August 2004, p.135.

The World Bank and FCMCPP's satisfaction with the consultations is further manifested in the project's conclusion in 2004 that plans submitted by six of the concessionaires should be approved. On one level, this provides an example of the FCMCPP endorsing harmful acts by other parties (officials and companies), which undermined a key public accountability mechanism. The World Bank should have ensured the FCMCPP took the poor quality of the consultations into consideration when it reviewed companies' plans; however, as discussed below, it did not.

Comments by World Bank staff suggest that the project had a more direct responsibility for ensuring the quality of the consultations, however. The Bank undertook no prior environmental and social assessment of the project's impacts before it began, thus placing it in breach of OP 4.01 on Environment Assessment. Asked to explain this, the outgoing project task manager claimed that compliance with this operational policy was fulfilled through the environmental and social assessment work carried out by the concessionaires assisted by the FCMCPP.⁹³ This explicit identification of the FCMCPP's performance with the social and environmental work of the companies raises more questions than it answers. Given the standard of the consultations conducted by the companies, this suggests that the FCMCPP is also in breach the provisions of OP 4.01 regarding public consultation. This issue is explored in more detail in Section 3.

Lack of consultation was one of the reasons for the World Bank rating the FCMCPP as 'unsatisfactory' in the second half of 2002.⁹⁴ It is reassuring to know that the Bank had some awareness of the project's deficiencies in this regard. Nevertheless, the belated increase in number of consultation exercises since has not been matched by any qualitative improvement. Moreover, as these consultations have taken place after the companies had already submitted their SFMPs and ESIA's, their scope to influence the concessionaires' planning process has been very limited.

2.9 Forest Cover Survey

In 2003, the FCMCPP undertook a forest cover study of Cambodia for use in its assessment of concessionaires' management plans. Consultants working on the FCMCPP admitted that the three months allocated made it difficult to do the job thoroughly.⁹⁵ In the event, the consultant nominally leading the study was absent for

⁹³ Meeting between World Bank staff members William Magrath (FCMCPP Task Manager 2000-2004), Peter Jipp (FCMCPP Task Manager 2004-), Stephen Mink and Steven Schonberger together with Suwanna Gauntlett and Delphine Vann Roe of Wildaid; Mike Davis and Hannah Thompson of Global Witness, Phnom Penh, 20 April 2004.

⁹⁴ J. Blakeney, Kay Panzer, Werner Schindele, 'Forest Concession Management and Control Pilot Project – Final Report of the Mid-Term Review Mission', February-March 2003, p. 3.

⁹⁵ Global Witness interview with Yann Petrucci, technical advisor working on FCMCPP team, 17 September 2003. This view was supported by the findings of the mid-term review of the FCMCPP: J. Blakeney, Kay Panzer, Werner Schindele, 'Forest Concession Management and Control Pilot Project – Final Report of the Mid-Term Review Mission', February-March 2003.

most of this period. Neither he nor the World Bank exercised much supervision of the exercise.

When the forest cover survey results were released in June 2003, they purported to show that Cambodia's forest cover had increased by more than 4%. This came as a surprise in view of documented deforestation and forest degradation in the years since the previous cover assessment (1997). As it turned out, the FCMCPP study contained internal inconsistencies, methodological weaknesses and basic errors.⁹⁶ When asked why areas that the 1997 survey displayed as bare earth were now fully forested, an FCMCPP consultant suggested that this reflected the inability of the study to distinguish between forest cover and bamboo.⁹⁷

The overall conclusion, that Cambodia's forest cover was increasing, helped boost the World Bank's arguments for more industrial logging by concessionaires. More immediately, however, the study's flawed findings provided a useful political prop for the governing party's re-election campaign ahead of the national ballot in July 2003. On National Tree Planting Day in July 2003, Prime Minister Hun Sen cited the FCMCPP forest cover study as evidence of his wise stewardship of the country's forests over the previous five years. While unlikely that such a claim would, on its own, determine the outcome of an election, forest management is a highly political issue in Cambodia, and has been known to influence the results of previous polls in some localities.

It is difficult to determine whether the FCMCPP deliberately set out to manipulate the findings of the study, not least as it has declined to publish the survey's findings in full. Either way, the main outcomes can be summarised as follows:

- LIL money wasted
- the opportunity to produce an authoritative assessment of forest cover lost
- production of misleading information at a time when it was liable to be used for political purposes

At a minimum, the poor oversight of this project component constitutes a breach of operational policy OP 13.05 on project supervision.

2.10 Declaration on Forestry Revenues Systems Management

Another component of the FCMCPP has been the development of a prakas – a ministerial declaration that forms an additional component of an existing law – covering forestry revenue systems management.⁹⁸ Under an action plan agreed by the World Bank and the RGC in early 2003, the government agreed to put this prakas in place by the start of May

⁹⁶ Bruce McKenney, notes on forest cover study presentation, 27 June 2003.

⁹⁷ Global Witness interview with Yann Petrucci, technical advisor to FCMCPP, 17 September 2003.

⁹⁸ This prakas is called for under Cambodia's 2002 Forest Law.

the same year. Prior to finalisation, the prakas would be publicly disclosed and available for comment. Assistance in these processes would be provided through the FCMCPP.

The prakas was not completed in time for the May 1 deadline and the process effectively dropped out of sight. FCMCPP staff involved admitted that they were not keeping a close track of the prakas development and were unable to provide information as to when the slated disclosure and comment period would take place.⁹⁹

At a meeting in December 2003, the World Bank task manager informed NGO representatives that the prakas had already been passed. Responding to requests for information on its availability for comment prior to completion, the task manager stated that “*a public*” had been consulted. Asked to define the public in question, he explained that it consisted solely of the IMF office in Cambodia.¹⁰⁰

While presumably now completed and legally applicable, the prakas has still not been publicly disseminated. In the first instance its disclosure is undoubtedly the responsibility of the Cambodian government rather than the World Bank. However the Bank, having chosen to take a role in the prakas development, had considerable scope to steer the process. It chose not to exercise this. Although not necessarily materially harmful in itself, the Bank’s handling of the issue is indicative of the lack of commitment to transparency and consultation which has characterised the FCMCPP and explains several of its more damaging outcomes.

2.11 Reviewing the Management Plans

As described above, continued evidence of forest crimes by the logging concessionaires did not shake the World Bank’s conviction that the FCMCPP should continue supporting them. Neither did the FCMCPP take account of companies’ illegal activities when it came to assessing their plans.¹⁰¹ As with other elements of the project, the FCMCPP team went out of its way to accommodate the companies.

⁹⁹ E-mail from Dennis Cengel, technical advisor to FCMCPP to Global Witness, 15 September 2003.

¹⁰⁰ Meeting between World Bank country representative and FCMCPP task manager, together with representatives of Oxfam GB, Oxfam US, NGO Forum on Cambodia and Global Witness, 22 December 2003.

¹⁰¹ As criticism of the FCMCPP has mounted, the World Bank has taken to referring to the team reviewing the concessionaires’ plans as “*the government’s technical review team*”; for example in the letter from Cambodia Country Director Ian Porter to Global Witness, 20 December 2004. This is a none too subtle attempt to place distance between the Bank and a review team that clearly labels its written outputs as “*Forest Concession Management and Control Pilot Project*”; as for example in the FCMCPP’s 2003 report on the SFMP and ESIA produced by Kingwood company. The report on Kingwood’s is one of only two out of 13 such documents that the project has actually publicly disclosed.

Refusal to take account of concessionaires' track records

The FCMCPP team reviewing the plans closed its eyes to all past offences by the concessionaires. This established a skewed system of assessment by which plans written by external consultants were treated as the sole indicator of the company's will and capacity to manage forest responsibly. Meanwhile, documented past practices of the companies themselves (as opposed to the scribes who drafted the management plans) were studiously overlooked.

In terms of evaluating the companies' suitability as forest managers, this approach had obvious limitations. From a supposedly 'technical' forestry standpoint, moreover it introduced basic errors into the review process. For example, in the aforementioned case of illegal logging by Everbright in 2000-2001, the concessionaire cut substantial portions of the timber stand in its concession coupe number two. In its management plan the company indicated its intention to log this same coupe again within 10-11 years, despite the fact that coupes are only supposed to be cut once every 25 years. As a result of their refusal to take account of past and ongoing illegal activities, the FCMCPP review team did not pick this up. When it was pointed out to them they refused to factor it into their review of the company's submission.¹⁰²

Prioritising timber volume to the exclusion of environmental and social impact planning

The World Bank took no action to prevent its project from adopting a wholly flawed scorecard system for assessing concessionaires' SFMPs and ESIA's.¹⁰³ Under the FCMCPP methodology, different elements of companies' submissions are assessed and a certain number of points awarded or deducted for each component. These individual scores are then added to produce an overall figure. The system is very heavily weighted towards consideration of the amount of timber the company has left in its concession. Thus, while a company can obtain a maximum of 125 points if it produces satisfactory inventory data, it will only receive 30 points for an acceptable ESIA. The available project reports on Kingwood and Mieng Ly Heng plans include the careful caveat that

*"A quantitative score and weight were provided at each stage following the evaluation, but these should be interpreted more as guidelines than as absolute measures of the relative importance of the criteria that were established to evaluate the forest management plan."*¹⁰⁴

¹⁰² Minutes of meeting between Yann Petrucci, technical advisor to FCMCPP and Mike Davis of Global Witness, 17 September 2003.

¹⁰³ Although the nature of this scoring system was not publicly disclosed during the review process, scorecards for Kingwood and Mieng Ly Heng company plans are included in the FCMCPP's reports on the submissions of these two concessionaires.

¹⁰⁴ Forest Concession Management and Control Pilot Project, "Technical Review of the Strategic Forest Management Plan and Environmental and Social Impact Analysis – Kingwood Company Kratie Concession", 2003.

However, the implication is clear enough – companies that still have viable forest in their concession will receive approval to carry on cutting. Poor quality of SFMP, ESIA or community consultation (up to 30 points added or subtracted for each) is not going to prejudice this outcome.

So distorted is this system, that it seriously questions the sincerity of the World Bank's professed efforts to reform the companies. The methodology betrays the fact that the project's over-riding concern is how much timber is left, rather than the quality of forest management that the concessionaires can offer or their respect for the rights of local communities. The Bank was quite aware of this situation and did nothing to correct it, suggesting that the FCMCPP's approach was entirely in line with its own agenda.

Disregarding legal prohibitions on cutting resin trees

Probably the most harmful impact of the concessions on rural Cambodians has been the companies' illegal logging of resin-producing trees. The 1988 Decree on Forest Practice Rules prohibited felling of trees that people were actively tapping for resin. Concessionaires consistently flouted this law, however, and cut them in vast numbers. Various public statements by officials, including the prime minister, calling on the companies to desist from cutting resin trees did little to change this.¹⁰⁵

Article 29 of the new Forest Law introduced in 2002 extended the existing protection to "*trees within a species / type that local communities have traditionally tapped to extract resin*"; in other words all resin producing trees, not just those already tapped. This provision thus protects not only those trees that villagers are currently tapping, but also those that they have earmarked for tapping in years to come.¹⁰⁶

Resin-producing *dipterocarp* trees are the staple input for plywood and veneer production by the concessionaires and have historically constituted the bulk of the harvest in many of the concessions.¹⁰⁷ If the law is upheld and cutting of these trees is stopped, it is highly unlikely that any of the concessions can be considered economically viable. A recent

¹⁰⁵ Prime Minister Hun Sen publicly ordered the concessionaires to stop cutting resin trees on 18 April 2001. Letter from Global Witness to Prime Minister Hun Sen concerning continued logging of resin trees by Cherndar Plywood, Colexim Enterprise, GAT International, Pheapimex and Samraong Wood, 9 January 2002.

¹⁰⁶ Bruce McKenney, Yim Chea, Prom Tola and Tom Evans, 'Focusing on Cambodia's High Value Forests: Livelihoods and Management', Cambodian Development Resource Institute and Wildlife Conservation Society, November 2004, p.58: "*In addition to tapped trees, most households have resin trees "in reserve" – untapped smaller resin trees growing among their currently tapped resin trees which they plan to tap in the future. On average, Kompong Thom households claim 145 trees in reserve and Preah Vihear households report 34 trees in reserve.*"

¹⁰⁷ Reference in Pheapimex-Fuchan / Department of Forestry and Wildlife harvest logbook for Pheapimex-Fuchan Stung Treng / Thalabariwat concession cited in Global Witness, 'Preliminary Assessment of Strategic Forest Management Plans and Environmental and Social Impact Assessment Reports – Cambodia's Forest Management Options for the Future', December 2002, p.13; Global Witness, 'Deforestation Without Limits', July 2002, p.17.

analysis of timber stands in the Cherndar Plywood concession in Preah Vihear concluded as follows:

“Resin trees represent about half of the timber volume and rent in the Preah Vihear (Cherndar Plywood) area, suggesting that logging operations (in this area) will have great incentives to cut resin trees regardless of the legal prohibition. Such actions will significantly increase poverty in the area for more than half of the (surveyed) households. This income cannot easily be replaced because employment alternatives in the area are scarce. Expecting logging companies to adopt sustainable forest management appears to be a non-starter, as rents fall dramatically under such an approach. No operation that can carry on with conventional logging will want to adhere to a management approach that reduces timber rents by nearly 90 percent, especially if there remain few enforced penalties for non-compliance.”¹⁰⁸

In their management plans, concessionaires included resin-producing trees in their inventories and annual allowable cut (AAC) – calculations by which they justified their economic viability. A review of the plans carried out to basic professional standards would have been unable to avoid the following conclusions:

- The companies claims to economic viability were highly suspect
- The plans indicated the companies’ intention to carry on cutting resin-producing trees illegally

Instead, the FCMCPP review team accepted the companies’ intended logging of the trees as legitimate and assessed the concessions’ inventories and AACs accordingly. NGOs pointed out the content and meaning of the Forestry Law’s Article 29 to both the FCMCPP and the World Bank on several occasions. At a meeting with Global Witness in September 2003, a member of the FCMCPP review team acknowledged the meaning of the law and its protection of all trees of resin-producing species. However, he said that the review team would ignore it because they thought that the Ministry of Agriculture, Forestry and Fisheries (MAFF) might grant an exemption for the companies. Any attempt by MAFF to issue a blanket waiver for logging companies would certainly be strongly contested. Either way, no such exemption has been issued.

As argued above, in order to meet the project objectives set by the World Bank, the FCMCPP needed to ensure that some of the concessionaires at least could resume logging. In the absence of any plausible justification, this appears the most likely explanation for the project’s conscious decision to ignore the law in its assessment of the companies’ management plans. As the FCMCPP team surely realized, this amounted to encouragement of illegal logging that would penalise some of Cambodia’s poorest citizens.

¹⁰⁸ Bruce McKenney, Yim Chea, Prom Tola and Tom Evans, ‘Focusing on Cambodia’s High Value Forests: Livelihoods and Management’, Cambodian Development Resource Institute and Wildlife Conservation Society, November 2004, p.87.

Global Witness staff raised the same matter with the World Bank task manager and two of his colleagues in October 2003 and they promised to look into it.¹⁰⁹ Whether they did or not is unclear; in either event they did not compel the FCMCPP team to amend its review methodology. As well as exposing the underlying rationale of the FCMCPP and its bias towards companies' interests, the project's decision to ignore the law and Bank's failure to correct this point to a breach of the Bank operational policy on project supervision.

Extra time and extra chances for the concessionaires

In the event, the FCMCPP's review of concessionaires' SMFPs and ESIA's was far from being a substantive examination of their will and capacity for sustainable forest management. Instead the assessment evolved into a protracted exchange of drafts that robbed the process of any residual credibility that it might otherwise have had.

When the companies finally submitted their plans up to a year after the originally agreed September 2001 deadline, FCMCPP staff conceded that in all cases the quality was extremely poor. Rather than treating the documents as a gauge of the companies' suitability for concession management, however, the project chose to give them multiple extra chances to improve them. By May 2004, some of the companies had submitted plans as many as three times.¹¹⁰ On each occasion, FCMCPP staff sent the companies suggestions on how to make them more presentable.

Throughout its review of concessionaires' plans, the FCMCPP team repeatedly insisted that its assessment was based on purely technical criteria. This was their justification for overlooking companies' past violations of the law, for example. Project staff's decision to give the companies more and more opportunities to improve their plans was anything but technical however. Once again, this reflected the FCMCPP imperative of shepherding at least some of the companies through the process to a point where they could resume logging. Not for the first time, the project demonstrated its determination to place the interests of the companies above those of Cambodians who stood to suffer the adverse impacts of their continued operations. The Bank, meanwhile, was quite aware of these shortcomings, but did nothing to remedy them.

Postponing consideration of adverse social impacts

In spite of the FCMCPP's provision of technical assistance to the concessionaires, the calibre of the plans they produced, even after several revisions, remained desperately low, not least in the realms of environmental and social impacts. This threatened to

¹⁰⁹ Meeting between Hak Sarom, Oxfam; Andrew Cock, NGO Forum, Mike Davis, Global Witness together with William Magrath and Andrew Bond of World Bank and John Dick, World Bank Staff Consultant, Phnom Penh, October 2003

¹¹⁰ GFA Terra Systems: 'Results of the Independent Review of Strategic Forest Management Plans prepared by Concession Companies operating in Cambodia', August 2004, p.15.

obstruct the project's efforts to ensure that some companies continued operating. In response, the FCMCPP staff and the World Bank task manager have increasingly sought to gloss over the concessionaires' glaring lack of attention to social impacts by arguing that these can be addressed at the compartment (five year planning) level, after the companies' strategic (25 year) level plans have already been approved.

This line of argument is extremely disingenuous. The production and assessment of the strategic (25 year) plans offers the only real opportunity in the concession reform process to judge companies against their willingness and capacity to address the concerns of local communities. Indeed, the primacy of strategic level planning for all aspects of concession management is the reason the World Bank focused its project on this process rather than planning at the compartment and annual coupe level. For the same reason, communities, NGOs and other donors have concentrated their efforts on ensuring that the strategic planning phase meets minimum international standards.

It was with the same concerns in mind that the World Bank staff consultant examining the CTIA terms of reference for ESIA wrote that community participation at the strategic-level planning stage was essential.¹¹¹ In a similar vein, the independent review of six companies' concession plans completed in August 2004, argued that

"There is still disagreement regarding whether work with communities should take place during strategic or compartment level planning. However, most of the existing guidelines, notably the Social Forestry Guidelines of 1998, are very clear that participatory planning with stakeholders needs to take place at concession level. We feel that, given the strategic nature of the social tasks and the fraught history of relations between many of the concessions and the communities, there is no alternative to participatory survey and planning at the concession level."

With their strategic level plans approved, the concessionaires are in an unassailable position. Indeed, it is almost inconceivable that they would have their concessions terminated on the basis of poor planning at the five year and annual coupe stages. The notion that local inhabitants might, in subsequent planning exercises, stand a better chance of compelling the companies to take account of their interests is fanciful. Relegating social impacts considerations to subsidiary stages completely undermines their negotiating position. Nevertheless, the FCMCPP and the project task manager have increasingly talked about how social impact considerations such as the cutting of resin-producing trees should be addressed in compartment level rather than strategic level planning.¹¹²

¹¹¹ John H. Dick, Staff Consultant to The World Bank, 'Comments on the Environmental and Social Impact Assessment Terms of Reference and Workplan for The Preah Vihear Concession of Cambodia Cherdar Plywood, as prepared by the Cambodian Timber Industry Association, April 2001', July 2001, section 2.

¹¹² Global Witness interview with Yann Petrucci, technical advisor to FCMCPP, 17 September 2003; Meeting between World Bank staff members William Magrath (FCMCPP Task Manager 2000-2004), Peter Jipp (FCMCPP Task Manager 2004-), Stephen Mink and Steven Schonberger; with Suwanna Gauntlett and Delphine Vann Roe of Wildaid; Mike Davis and Hannah Thompson of Global Witness, Phnom Penh, 20 April 2004.

World Bank and FCMCPP staff's motivations for pushing social considerations to the compartment level planning stage are suspect, not least as the project design never anticipated work at the compartment level at all. The FCMCPP Project Appraisal Document talks about planning taking place only at the strategic and annual coupe levels.¹¹³ The terms of reference for consultants assigned to the project, moreover, refer only to strategic (25 year), coupe (one year) and block (subdivision of the annual coupe) planning.¹¹⁴

That the World Bank is now so eager to push social issues to a planning level that it did not previously considered of importance raises serious questions about its commitment to ensuring that they are addressed in a meaningful way. The overall approach reinforces the impression of a project desperate to find ways of justifying some of the companies and prepared to sideline the interests of ordinary Cambodians in order to do so.

Ignoring conflicts of interest

The concessionaires' SFMPs and ESIA's were not written by company staff responsible for operations, but rather by three different groups and institutions¹¹⁵:

Table 2: Authorship of concessionaires' management plans

	Cambodia Timber Industry Association (CTIA)	Forest Research Institute	Staff from Forest Administration and MAFF
Cherndar Plywood	X		
Colexim Enterprise		X	
Everbright CIG Wood	X		
Kingwood			X
Mieng Ly Heng	X		
Pheapimex			X
Samling	X		
Samraong Wood		X	
Silveroad	X		
Superwood			X
TPP			X
Timas Resources		X	
Youry Saco			X

¹¹³ World Bank, 'Project Appraisal Document on a Proposed Learning and Innovation Credit to the Kingdom of Cambodia for a Forest Management and Control Pilot Project', June 2000, p.15.

¹¹⁴ Forest Concession Management and Control Pilot Project, 'Consulting Services on Forest Management Planning and Training Terms of Reference'.

¹¹⁵ Global Witness, 'Preliminary Assessment of Strategic Forest Management Plans and Environmental and Social Impact Assessment Reports – Cambodia's Forest Management Options for the Future', December 2002, p.5.

This in itself made the validity of the plans highly questionable. That none of the concessionaires had staff capable of producing a concession management plan or ESIA should have served as yet another reminder of the quality of forest stewardship that these companies could offer. Presumably in the interests of efficient time management, the documents' authors copied whole sections from one plan to another. For example, the CTIA discovered identical eating habits in all six of the concessions for which it prepared plans:

“Dried toads were observed for sale in the medicine shops in nearby towns, as well as river terrapins in the local wet markets. Frog is a common and popular dish, both in the local kitchens as well as urban restaurants. It is interesting to note that a kind of tarantula spider, black beetle and cricket are favorite snacks of local people, but these species normally occur near rice fields.” (Section on Reptiles and Amphibians for Silveroad ESIA p.43; Samling Kratie-Mondulkiri ESIA p.44; Samling Koh Kong ESIA p.42; Everbright ESIA p. 49; Cherndar Plywood ESIA p.40; Mieng Ly Heng ESIA p.41)¹¹⁶

In its review process, the FCMCPP team decided to close their eyes to the copy and paste methodology and the World Bank appears to have made no effort to correct this. Furthermore, the Bank and the project team declined to address the serious conflict of interests that that the documents' authorship posed. Five of the concessionaires had commissioned plans from staff of the Forest Administration and Ministry of Agriculture, Forestry and Fisheries – the same institutions responsible for deciding whether or not the companies should be allowed to resume operations. Three more companies had hired the Forest Research Institute; an organisation established within the Forest Administration. The World Bank's staff consultant drew the Bank's attention to this issue in July 2001; however his advice was not heeded by either the FCMCPP task manager or the project team.¹¹⁷

FCMCPP international consultants tasked with reviewing the plans insisted that none of their Forest Administration counterparts had written the plans they were reviewing. Even if true, this does not address the underlying problem of the FCMCPP review team's FA members assessing documents produced by their own institution. Moreover, as already noted, one of the FCMCPP's senior project staff has been simultaneously employed as assistant to a concession company shareholder.

It is difficult to determine whether such conflict of interests played a role in the conclusions that the FCMCPP reached. Either way, this offers one more example of the way that the Bank was prepared to overlook the project's deviation from basic professional standards.

¹¹⁶ Global Witness, 'Preliminary Assessment of Strategic Forest Management Plans and Environmental and Social Impact Assessment Reports – Cambodia's Forest Management Options for the Future', December 2002, p.5

¹¹⁷ John H. Dick, Staff Consultant to The World Bank, 'Comments on the Environmental and Social Impact Assessment Terms of Reference and Workplan for The Preah Vihear Concession of Cambodia Cherndar Plywood, as prepared by the Cambodian Timber Industry Association, April 2001', July 2001, Section 2.

Ignoring the combined impacts of concessionaires on Cambodia's forested landscapes

The FCMCPP assessment excluded consideration of the combined impacts of logging companies' plans on Cambodia's forested landscapes. The team examined the different sets of plans entirely in isolation from one another. This approach proceeded from the flawed assumption that logging would only have environmental and social impacts within the boundaries of the given concession and the combined impacts of groups of contiguous concessions could be discounted.

The FCMCPP therefore took no account of the obvious environmental and social impacts of the plans of two companies with adjacent concessions to drive parallel roads into Cambodia's last intact lowland evergreen forest, Prey Long.¹¹⁸ Again the Bank took no corrective action. The Bank's decision to help companies develop plans for industrial logging in this ecologically valuable area is itself a breach of World Bank operational policy OP 4.36 on forests, as discussed in Section 3.3.

2.12 The Model Plans

"The concession management and operations plans developed with the aid of technical assistance will serve as models for similar plans to be developed, subsequently, in all operating concessions. As such they will serve as standards by which the acceptability of such plans will be judged (by the Forest Administration)" FCMCPP Project Appraisal Document, p.15

As a result of the deficiencies in the FCMCPP's assessment and the Bank's failure to correct them, by June 2004 the project had recommended that the Cambodian government approve the plans of six of the companies: Cherndar Plywood, Colexim Enterprise, Everbright CIG Wood, Samraong Wood, TPP and Timas Resources. The companies may yet be required to produce further plans (compartment / five year level and annual coupe). However, acceptance of the strategic level plan is the critical threshold that the concessionaires must cross in order to assert control of their concessions for the next 25 years. It is for this reason that all stakeholders – Cambodian government, World Bank and other donors, community groups and NGOs have attached particular importance to the strategic level planning process.

With two exceptions, the FCMCPP has not disseminated its assessments of the companies' plans. A table setting out the review team's conclusions is included, however

¹¹⁸ Global Witness interview with Yann Petrucci, technical advisor working on FCMCPP team, 17 September 2003; Global Witness, 'Preliminary Assessment of Strategic Forest Management Plans and Environmental and Social Impact Assessment Reports – Cambodia's Forest Management Options for the Future', December 2002, p.30-31.

in the annex of the 2004 GFA Terra review of the six sets of documents¹¹⁹. This summary shows how the FCMCPP has implicitly or explicitly acknowledged deficiencies in all the concession documents to which it has given its endorsement. In each case it has justified this with the argument that these flaws can be rectified during subsequent planning stages.¹²⁰

It is therefore not surprising to find that the quality of the SFMPs and ESIA's that the FCMCPP recommended for approval remains thoroughly deficient. Many contain even the same elementary errors as the first drafts disclosed in November 2002, notably blatant copying of whole passages from other companies' plans. For example the FCMCPP-approved Cherndar Plywood management plan persists in describing its concession in Preah Vihear province (close to the Thai border) as a wildlife corridor between a protected area in Mondulakiri province and Vietnam.

Cherndar Plywood, or rather the CTIA staff it hired to write the document, copied this section wholesale from the plan prepared by Samling for its Mondulakiri concession. In this regard it is interesting to note that the FCMCPP dismissed both sets of concession plans produced by Samling, a company involved in a protracted dispute with the Cambodian government, despite the fact that Samling's plans provided the blueprint for the other four drafted by the CTIA.

All six concessionaires have a track record of serious forest crime and/or contractual breaches documented by the ADB Concession Review of 2000, reports by Global Witness and others. Moreover, they include the same company (TPP) whose concession was described by the 2000 ADB-financed study as 90% non-operable.¹²¹ According to the same ADB report, none of the companies had enough forest left to permit the sustainable 25 year cutting cycle that the concessionaires are required to follow.

The companies all either state or imply their intention to cut resin-producing trees, despite the fact that this is illegal. Resin-producing trees are not excluded from inventories and calculations of annual allowable cut. One concessionaire (Colexim) talks about how it has decided to pay villagers small amounts of money (unilaterally determined in advance by the company), after illegally cutting their trees. Some also indicate their hostility towards local forest users by describing collection of non timber forest products as illegal, which it is not; and declaring their intention to exclude communities from certain areas, which is.¹²²

¹¹⁹ GFA Terra Systems: 'Results of the Independent Review of Strategic Forest Management Plans prepared by Concession Companies operating in Cambodia', August 2004, annexes.

¹²⁰ *ibid.*

¹²¹ Asian Development Bank Sustainable Forest Management Project 'Cambodian Forest Concession Review Report', 2000.

¹²² Article 15 of the 2002 Forest Law states that: "*Concessionaires shall have the right to manage and conduct forest products and by-products harvesting operations within their concession, while ensuring that the operation does not interfere with... customary access and user rights practiced by communities residing within or adjacent to forest concessions.*"

The concessions that the FCMCPP recommends for renewed logging include three encompassing the core of Prey Long forest, the last intact lowland evergreen forest in mainland Southeast Asia. The FCMCPP's position is at odds with the recommendation of the 2004 Cambodia Independent Forest Sector Review, funded by the World Bank and other donors, which concludes that Prey Long should be taken out of production in recognition of its high conservation value. This decision to support logging of an ecologically valuable area breaches the World Bank operational policy on forests (section 3.3 below).

As already noted, the World Bank project and the Government Forest Administration have declined to publish the FCMCPP's evaluations of the SFMPs and ESIA's, thus adding to prevailing lack of transparency within the sector. Communities affected by concessionaires' activities are therefore denied even an explanation as to why the World Bank project is endorsing the six companies' plans.

The FCMCPP review team's conclusions tacitly concede that community consultation for the plans it has approved has been inadequate.¹²³ This deficiency alone should be grounds for rejection of the companies' submissions. However, rather than holding the companies to account for their failings in this regard, the FCMCPP staff and the World Bank task manager have argued that they be invited to compensate for these deficiencies with extra consultation at the compartment level (five year) planning stage, as described above.¹²⁴

As argued above, once the companies have secured control over concessions for another 25 years, there will be little or no incentive for them to take account of the views of local inhabitants. The FCMCPP is thus denying forest-dependent communities an unprecedented opportunity to hold concessionaires to account and have their voices heard.

Following the FCMCPP's recommendation of approval for Cherndar Plywood, Colexim Enterprise, Everbright CIG Wood, Samraong Wood, TPP and Timas Resources, the international donor Working Group on Natural Resource Management convened an independent evaluation of the six sets of plans. The review team concluded that not one of the six companies should be allowed to resume logging without serious adjustments to the plans that the FCMCPP had recommended for approval. Their report draws particular attention to deficiencies in companies' assessment of environmental and social impacts and also the proposed logging of resin trees. It also criticises the FCMCPP review team for the way in which they "*generally permitted concessions to defer addressing social*

¹²³ Note that this annex of the GFA Terra Systems: 'Results of the Independent Review of Strategic Forest Management Plans prepared by Concession Companies operating in Cambodia' was not disseminated until January 2005.

¹²⁴ See, for example, annex of GFA Terra Systems: 'Results of the Independent Review of Strategic Forest Management Plans prepared by Concession Companies operating in Cambodia', August 2004, which summarises the conclusions of the FCMCPP team reviewing the plans.

*issues until the compartment level. In doing so, (they) have gone against the guidelines”.*¹²⁵

The World Bank helped to fund this independent review. It also helped to pay for the Independent Forest Sector Review (IFSR) completed in April 2004 that recommended that the entire concession system be scrapped. In October 2004 the Bank published a set of comments in response to the IFSR which admitted that *“concessionaire and Government performance has been largely a continuation of the ‘system failure’ described in the ADB supported assessment (of concessions in 2000)”*.¹²⁶

Despite this financial support of other reviews, and its acknowledgement of their findings, the World Bank has nonetheless declined to halt the FCMCPP’s unstinting promotion of the concession system and its operators. Its public admission that the concession system has failed Cambodia has not done anything to obviate the damaging impact of its project’s endorsement of the six logging companies.

¹²⁵ GFA Terra Systems: ‘Results of the Independent Review of Strategic Forest Management Plans prepared by Concession Companies operating in Cambodia’, August 2004, p.128.

¹²⁶ World Bank, Cambodia Independent Forestry Sector Review – Comments and Proposals Going Forward’, October 2004; p.4

SIX PLANS THAT THE FCMCPP RECOMMENDED FOR APPROVAL

Cherndar Plywood SFMP:

- Communities' rights will be respected only if they don't conflict with the concessionaire's legitimate interests. p. 66. This is an inversion of provisions of Article 15 of the Forest Law, which allows concessionaire activities only so far as these do not interfere with "*customary access and user rights practiced by communities residing within or adjacent to forest concessions*".
- The company intends to restrict community access to the forest outside of the 'free access zones' unilaterally determined by the company (p. 112), which is against the law.
- The SFMP states that the only resin-producing trees that are protected are those tapped for household use (p. 113). Article 29 of the Forest Law protects all resin-producing trees.
- Cherndar Plywood does not subtract resin-producing trees from its calculations of its annual allowable cut; further indicating its intention to ignore the law.
- The company repeatedly states its intention to reduce shifting cultivation and collection of non-timber forest products by local people (p. 4, 6, 9, 11, 14, 29, 56, 57, 66). The right to collect non-timber forest products and practice shifting cultivation is protected under the Forestry Law and Land Law respectively.
- The company indicates its intention to cut luxury timber species, which is illegal (p.60)

Colexim Enterprise SFMP:

- The company intends to continue cutting resin trees, even though this is illegal (p. 29).
- The company gives an annual harvesting estimate of 167,703.344 cubic metres per year (p. 82). Elsewhere it describes how, in the past, it cut at a rate seven times what could be considered sustainable. The figures it gives for these previous unsustainable harvests are between 18,939 to 62,433 cubic metres per year. This suggests that Colexim is now intent on cutting at three or more times a level that was itself seven times more than what was sustainable.
- The results of its wildlife survey show that the company has succeeded in detecting animal species not usually known to be resident in central Cambodia, notably coyote and seal (p.24).

Everbright CIG Wood SFMP:

- The plan talks about free access zones (p.79), which conversely suggests that it may continue to exclude local inhabitants from areas of the concession illegally.
- Everbright regards local people's resin collection activities as being in conflict with its own interests. The company says that it will not cut resin trees that are currently tapped; however it will log those that it perceives to be unused or no longer (resin) productive (p.79).
- Meanwhile, it does not excise resin-producing trees from calculations of its annual allowable cut.

Samraong Wood SFMP:

- The company admits it has no expertise (p. 8)
- According to the plan, the company will only allow people to collect non-timber forest products for household use (p.22). Such a restriction would be illegal.

TPP company SFMP:

- The company plans a 46,700 ha plantation of acacia (p. 1, p. 20). Creation of such a plantation would necessitate clear-cutting of the natural forest on a vast scale, which would be against the law.
- TPP has plans to log deciduous forest (p. 21); a forest type generally regarded as too ecologically fragile to withstand commercial-scale harvesting.

Timas Resources SFMP:

- Timas Resources intends to create an NTFP collection zone during the compartment (five year) level planning process (section 2.7). This suggests illegal prevention of NTFP collection in other areas.
- The company regards large-scale resin tapping as illegal (Section 3).
- The plan argues that the company should be given the rights to harvest/control NTFPs (Section 3). This is in conflict with the Forestry Law.

2.13 Old Log Transportation

Aside from assisting companies in their production of management plans and then reviewing them, a consistent focus of the FCMCPP's activities has been planning the transportation of stockpiles of old logs. These logs constitute residual stocks that the companies were unable to move before the Government's introduction of a definitive ban on log transports in May 2002.

The ban on log transports followed the imposition of a ban on cutting effective from January 2002. These two suspension orders were intended to compel the companies to actually produce the management plans and ESIA's that they had all failed to submit by the original deadline of 30 September 2001.

An unknown but evidently significant proportion of the timber in the remaining log stockpiles was cut illegally. This includes logs from Samraong Wood's 2001 harvest, around 16% of which the company admitted comprised trees that people were tapping for resin.¹²⁷ Logs cut by Colexim Enterprise subcontractors fall into the same category – many of these were resin-producing trees being tapped by local villagers.

The reasons for the companies' subsequent efforts to have the transportation ban lifted are clear enough. In the first instance, transporting the logs would enable them to continue processing operations at their factories and reduce the pressure caused by the cutting ban.¹²⁸ Secondly, past practice has shown that retrieval of old logs is one of the most effective ways of circumventing cutting bans in Cambodia.

'Old log collection' was the device most commonly used by illegal loggers during the late 1990s. Under this system, concessionaires, military commanders and others would claim to have discovered quantities of old logs in the forest and request official permission to collect them. Upon receiving approval, they would log new areas and then extract the fresh-cut logs, claiming that they were 'old'. In 1998, a report commissioned by the World Bank estimated that illegal 'old log collection' accounted for more than 90% of logging in Cambodia in 1997. Recognising the scale of the problem, Prime Minister Hun Sen banned the issuing of 'old log collection' permits in January 1999. This has not stopped loggers from continuing to use 'old log collection' as a pretext for illegal felling, often with the connivance of local government and the Forest Administration.

While the motivations of the companies are clear enough, the same cannot be said of the World Bank, which has made several attempts over the past three years to overturn the log transport ban and facilitate shipment of the logs. In a letter to the Director of the Forest Administration sent in October 2002, the FCMCPP task manager acknowledged that *"any revision of the current prohibition on log transport risks abuse and fraud and*

¹²⁷ Global Witness, 'Deforestation Without Limits', 2002, p. 17.

¹²⁸ This is acknowledged in Colexim's letter entitled 'Proposal for Transportation of 2,812 Round Logs equivalent to 7,649.334 cu.m. from Tumring to Colexim mill.' addressed to Director General of the Forest Administration Ty Sokhun, 16 May 2003.

*contributing to illegal logging*¹²⁹ but then went on to argue the case for precisely this course of action.

Given the risks that the task manager himself highlighted and the fact that the prime beneficiaries of renewed transportation would be logging companies yet to produce acceptable SFMPs and ESIA's, this course of action would seem impossible to justify. Two other factors make the Bank's proposal all the more extraordinary. Firstly, the task manager floated the idea just days after he received evidence that some of the same concessionaires were involved in a high-level corruption scandal. This scheme (detailed in section 2.5) concerned the misappropriation of royalties that the companies owed to the government on the same logs the Bank was now proposing be transported.¹³⁰

Secondly, as the Bank was equally well aware, some of the concessionaires' stockpiles contained large numbers of resin trees that they had effectively stolen from Cambodian villagers. In his letter to Ty Sokhun, the task manager noted that

*"In view of the weak controls and lack of supervision at the time of harvest, Government needs to give serious consideration to the possibility that some of these logs were illegally felled. Therefore a substantial burden of proof should be placed on any party claiming possession and seeking permission to transport. Applicants should provide clear and compelling documentary evidence that harvests were conducted in places and manners authorized by Government and that all royalties, fees and applicable fines and penalties have been paid in full to the National Treasury,"*¹³¹

This approach has not been followed by either the task manager or the FCMCPP, however. In the first half of 2003, the project, at the behest of the Bank, commissioned a plan for regulating the transportation of logs felled by Colexim Enterprise and stockpiled in Tumring commune in Kompong Thom. It did so in response to representations from the company:

"Facing all these difficulties (associated with the cutting and log transport ban), Colexim has met with Mr. William Magrath, Senior Economist, World Bank Task Manager, Forest Concession Management and Control Pilot Project, to inform of logs remain unprotect in Tumring Rubber Plantation and those problems as mentioned earlier. Immediately after receiving those reports, Mr. William Magrath and his colleague, Mr Matti Raisanen (FCMCPP consultant) and the DFW (Forest Administration) staff visited those logs. He

¹²⁹ Letter from William Magrath, Task Manager of the FCMCPP to Ty Sokhun, Director General, Forest Administration, 3 October 2002.

¹³⁰ This evidence, summarised in section 2.5 above, was presented to FCMCPP task manager William Magrath and Mark Wilson, head of Rural Development and Natural Resource Sector Unit, East Asia and Pacific Region by Global Witness in September 2002.

¹³¹ Letter from William Magrath, Task Manager of the FCMCPP to Ty Sokhun, Director General, Forest Administration, 3 October 2002.

recommended that Colexim should prepare a log transport proposal as per the attachment to this letter.”¹³²

On their visit to the site, the task manager and FCMCPP consultant evidently made little effort to ascertain the legal origin of the timber. Had they done so, they would have noticed that many, if not most of the logs had visible resin-tapping holes cut into them – showing clearly that the trees had been cut illegally. If the task manager and the consultant had any doubts about legality, these did not deter them from encouraging Colexim to develop plans for extracting the wood to its factory.

On the advice of the task manager, the FCMCPP consultant proceeded to draft a proposal for controlling the proposed log transportation. This document makes no reference at all to the legal origin of the logs or the question of whether or not the company had paid due royalties.¹³³ Reflecting its own evident interest in seeing the operation proceed, the World Bank office in Phnom Penh then circulated copies of the monitoring plan, together with Colexim’s own voluminous justification for the scheme.

The proposed transportation was shelved following strong written expressions of disapproval sent by the international donor Working Group on Natural Resource Management (WGNRM) to the Cambodian authorities:

1. *“The proposed log transport can not be separated from the origin of the logs. Our understanding of the development of the Tumring Rubber Plantation is very troubling... communities have been displaced and lost their established livelihoods... Our critical concern is that any authorized log movement should not create an opportunity for transport of new illegal logging or transport of illegally felled timber. It was for this reason that the Working Group urged in 2002...the present suspension of log transport.”*¹³⁴

2. *“As we indicated in our earlier letter, we also see the environmental aspects (erosion) as well as the social issues of the Tumring project as closely linked with the wisdom of advancing on the controlled transport and sale of logs from the project site. Even with the clarifications you provide, we still can not endorse the movement of these logs.”*¹³⁵

¹³² Letter from Colexim to Director General of the Forest Administration Ty Sokhun, entitled ‘Proposal for Transportation of 2,812 Round Logs equivalent to 7,649.334 cu.m. from Tumring to Colexim mill.’, 16 May 2003.

¹³³ ‘World Bank-financed Forest Concession Management and Control Pilot Project – Guidelines for Control and Monitoring of Log Transportation / Case Study: Log Transportation from Tumring Rubber Tree Plantation Area to Colexim Company Sawmill’, April 2003.

¹³⁴ Letter from Working Group on Natural Resource Management to Minister for Agriculture, Forestry and Fisheries, 30 June 2003.

¹³⁵ Letter from Working Group on Natural Resource Management to Minister for Agriculture, Forestry and Fisheries, 28 October 2003.

World Bank, FCMCPP and Forest Administration staff continued to discuss means of overturning the transportation moratorium throughout 2004.¹³⁶ Written communications from Global Witness in July and December 2004 requesting that the Bank explain its involvement have so far met with no response.¹³⁷

In December 2004 Bank staff were instrumental in weakening the log transport moratorium in the course of negotiations between donors and government over next steps in the forest reform process. In mid January 2005 government officials announced that they were on the point of resuming old log transportation and would be engaging the services of consultants to the FCMCPP to facilitate the process.¹³⁸ At the time of writing the full details of the proposed operation have not been announced. However they appear to be a product of the Bank's continued lobbying to allow shipment of timber by Colexim and other concessionaires.

As already noted, the cutting and log transport moratoria were originally implemented with the express intent of compelling the logging companies to present new SFMPs and ESIA's. However, the World Bank has demonstrated itself quietly determined to overturn the transportation moratorium in particular. The only plausible motivation for this appears to be its need to keep the concessionaires operating in order to achieve its project objective.

The outcomes of these activities are harmful in two ways. Firstly, the Bank is weakening one of the few available points of leverage over the companies. It is the suspension of their activities that has forced the concessionaires even to pay lip service to such requirements as community consultation and environmental and social impact assessment. If the Bank succeeds in getting the companies operational once again before the planning process is complete, the concessionaires will make even less effort to address such issues.

Perhaps even more disturbing is the Bank's efforts to help logging companies to profit from serious forest crime, the victims of which were poor villagers. The Bank thus stands on the verge of becoming an accessory to criminal activities. The fact that it should embark on such a course of action is one of the most troubling aspects of the entire history of the FCMCPP.

¹³⁶ e-mail from SGS (independent monitor of the forest sector and consultants to FCMCPP) to Global Witness, 19 July 2004.

¹³⁷ Letter from Global Witness to Peter Jipp, Task Manager of the FCMCPP, 22 July 2004, e-mail from Global Witness to Ian Porter, World Bank Country Director, Cambodia, December 2004.

¹³⁸ Cambodia Daily, 'Government Cuts Back Moratorium on Transporting Old Timber' 18 January 2005.

2.14 Outcomes of the FCMCPP

The FCMCPP's outcomes have been shaped by its conceptual weaknesses – the World Bank's idea that the incumbent logging concessionaires could be reformed – together with flawed implementation that persistently lowered the standards of planning and performance that Cambodia can expect of the companies. These factors have combined to produce a situation in which companies whose track records should have excluded them from consideration as managers of Cambodia's forests are poised to continue logging for another twenty five years (or in practice the much shorter time that it will take for them to exhaust their concessions completely). If Cambodia's concession system continues, the precedent that the FCMCPP has set in endorsing a truly dismal quality of concession planning will block efforts to achieve acceptable standards for many years to come. Unfortunately, the FCMCPP designer's expectation that the SFMPs and ESIA's which the project developed will be held up as models for other management plans is likely to be fulfilled.¹³⁹

In the meantime, recent independent studies of Cambodia's forest sector indicate that the Bank has not wrought any changes in Cambodia's forest sector governance that would compel the concessionaires to behave any differently from the way that they did in the past.¹⁴⁰ There are neither incentives nor controls sufficient to force the companies to obey the law and respect the rights of ordinary Cambodians. They can therefore be expected to operate in line with past practice; in other words illegal logging and abuse of local inhabitants. This much is apparent from management plans that the FCMCPP has endorsed, which indicate quite clearly the intention by some companies to log resin trees illegally and exclude communities from areas of forest. As in the past, this will cause serious material harm to ordinary Cambodians who live in and around concessions.

“To date, the main response to poor logging practices (by the concessionaires) has been to strengthen the legal framework and encourage commercial timber operations to adopt sustainable forest management (SFM). As argued here and elsewhere, this strategy appears doomed to failure due to the tremendous financial incentives to avoid SFM...there should be no illusions of “win-win” SFM schemes under which logging companies manage forest for a modest return while fulfilling their responsibilities to village welfare and conservation. Rather, a “cut and run” logging scenario should be assumed where commercial logging is allowed, unless regulation and enforcement (and incentives for them) improve dramatically.”¹⁴¹

¹³⁹ FCMCPP Project Appraisal Document, June 2000, p.15: “The concession management and operations plans developed with the aid of technical assistance will serve as models for similar plans to be developed, subsequently, in all operating concessions. As such they will serve as standards by which the acceptability of such plans will be judged (by Forest Administration)”.

¹⁴⁰ Independent Forest Sector Review, ‘The Forest Sector in Cambodia’, 2004; Bruce McKenney, Yim Chea, Prom Tola and Tom Evans, ‘Focusing on Cambodia's High Value Forests: Livelihoods and Management’, Cambodian Development Resource Institute and Wildlife Conservation Society; November 2004.

¹⁴¹ Bruce McKenney, Yim Chea, Prom Tola and Tom Evans, ‘Focusing on Cambodia's High Value Forests: Livelihoods and Management’; Cambodian Development Resource Institute and Wildlife Conservation Society, November 2004, p.92

The impact of the FCMCPP has not only been to help maintain the concession system, however. Thanks to the World Bank's project, those six companies that it has recommended for approval are now in a stronger position than before the project commenced. As argued above, it is highly unlikely that any of the companies would have cleared the strategic level planning stage without assistance provided by the FCMCPP; both in terms of its technical advice on drafting plans and its overly accommodating approach to assessing them.

As the Bank is well aware but keen to deny, its endorsement of, or even association with, particular institutions or policies is a political commodity. Cambodia's forest sector is no exception. Examples include the debates on the draft Forest Law held in the Cambodia's National Assembly in 2002, as well as use of the FCMCPP forest cover survey as a political prop in July 2003.

In the first of these cases, Minister of Agriculture, Forestry and Fisheries Chan Sarun rebuffed opposition MPs' criticisms of the Forestry Law with the argument that they had no right to question a law drafted with input from World Bank experts. The following year, Prime Minister Hun Sen cited the FCMCPP's flawed forest cover survey in election campaign speeches as evidence of his judicious preservation of the country's forests.

It should therefore come as no surprise when concession companies use FCMCPP approval of their management plans as a means of deflecting questions concerning their legitimacy and past and future performance. For the next 25 years, or until they have logged out their concessions, Cherndar Plywood, Colexim Enterprise, Everbright CIG Wood, Timas Resources, TPP and Samraong will present themselves as the companies whose logging operations have the endorsement of the World Bank.

This process is already underway. The following passages come from a letter that Cherndar Plywood, which holds the chairmanship of the CTIA, sent to Forest Administration Director General Ty Sokhun in September 2004. The letter is an extended attack on NGOs that have criticised the concession system, and a justification of Cherndar Plywood's activities:

"In every meeting during the consultations, the company has provided full opportunity in a free and fair manner to the community representatives and villagers in the community to raise all their problems, suggestion, thoughts and recommendations and all the issues were properly solved in accordance with the effective laws and regulations. Before the meeting closed in each consultation centre, the consultation were going on until the participating community villagers told the company they had no any more problem, suggestion/comment or doubt. The result of the consultation has now also been officially recognized by the FA/World Bank (WB) expert team."

"FMP/ESIA has been strictly, thoroughly and carefully reviewed, checked and assessed by the experts of the World Bank/Forest Administration's technical review team, who are professional, disciplined to code of ethic and conduct, responsible and experienced. The

review and assessment by these experts were made in serious details, spending times of two years and some US \$5million. This review team were supported with sufficient educated/qualified staff (in such all fields of forester, environmentalist, ecologist, biologist, community forest specialist, natural scientist, sociologist, economist etc.) and sophisticated tools in their works, including long-time inspection/checking tasks in the field. This work, for people who has no or less knowledge of forest management techniques and experiences or any independent research/study with lack of the above staff, could not be done while the claim by these accusers or independent review cannot be technically justified and supported. The criticism against the World Bank/Forest Administration expert team's reviewed plans is an intentional contempt against, disparagement against and disrespect of the internationally and the Royal Government of Cambodia-recognised professional technicians/scientists."¹⁴²

The message is clear – critics have no right to question the activities of Cherndar Plywood now that it has the support of World Bank specialists.

The World Bank has strengthened the position of Cherndar Plywood and the over five companies, even as its project has helped them evade legal and regulatory standards. This will make it even harder for rural Cambodians to challenge the companies' control or assert their rights in the face of the future abuses that will inevitably follow. Acts and omissions by the FCMCPP are set to cause material harm to forest dependent communities living within or in proximity to the six concessions. It is ironic that these communities represent those same sections of rural Cambodian society that World Bank claims it is most committed to helping.

2.15 The Without-Project Situation

What would have happened if the FCMCPP had never been commissioned?

Cambodia's forestry reform process began in 1999 with the RGC undertaking a major crackdown against illegal logging operators, closing hundreds of medium-size sawmills, drastically increasing the timber royalty rate and cancelling at least nine concession agreements. Following on from the first World Bank funded forestry project in 1998, the 2000 ADB concession review produced an action programme to advance the reform process. This programme encompassed the immediate cancellation of another three concessions, preparation of proper management plans, a reduction in or suspension of logging activities, a new model concession agreement and other measures.

In its assessment of the logging companies' legal and contractual compliance, the ADB review identified grounds for terminating all of the concessions. It also argued that

¹⁴² Letter dated 22 September 2004 from Lu Chu Chang, Chief Executive of Cherndar Plywood and head of the CTIA addressed to Ty Sokhun, Director-General of Forest Administration.

*“The alarming state the forest estate is now in, due to extremely poor management has given a new perspective, and shown that no serious attempt has been made to manage the concessions sustainably. In the opinion of the legal experts, this constitutes a violation of the prime objective of the concession agreements which was sustainable economic growth based on sustainable forest management... ..The absence of a specific law or existence of a poorly written agreement should not prevent the government protecting its resources that belong to the nation as a whole, even if such action may entail adverse financial consequences.”*¹⁴³

However, through excessive caution or an error of judgement, the ADB review accepted the World Bank’s arguments that the RGC would be exposed to serious legal risk if it unilaterally terminated concessionaires’ contracts.¹⁴⁴ The review’s key recommendation that the companies instead be forced to adhere to a strict restructuring and evaluation process was clearly conceived as a less risky means of achieving a similar outcome.

With respect to the management plans, the ADB-funded review noted that

*“Assuming that the concessionaires start a program for preparing concession management plans as early as October 2000, the fieldwork for these can be completed by the end of May 2001. The new management plans can then be prepared, reviewed and approved and the new agreements signed by all parties before the beginning of the logging season in November 2001.”*¹⁴⁵

The ADB- funded review presented the conclusions not only of the team that undertook the study, but also the recommendations of a panel of experts. On the issue of the management plans, the panel of experts advocated

*“time-bound milestones for the development of sustainable forest management plans... the maximum time span for completion of the management plans should be one year... Concessionaires who do not meet any single item in the schedule of prescribed milestones in the development of their FMPs (Forest Management Plans) should have their concessions cancelled within one month after receiving DFW (Forest Administration’s) letter of notification of failure to meet the milestone, if the milestone cannot be satisfactorily shown to have been met.”*¹⁴⁶

Adhering to the action programme’s prescribed timeline, in October 2000, the concessionaires and the Cambodian government did in fact agree such a set of milestones. In a letter to the World Bank, *“CTIA members agreed that acceptable*

¹⁴³ Asian Development Bank Sustainable Forest Management Project, ‘Cambodian Forest Concession Review Report’, April 2000 p.32

¹⁴⁴ Asian Development Bank Sustainable Forest Management Project, ‘Cambodian Forest Concession Review Report’, April 2000 p.35. As already noted, this risk has never materialised, even though the government has cancelled numerous concession contracts over the years.

¹⁴⁵ Asian Development Bank Sustainable Forest Management Project, ‘Cambodian Forest Concession Review Report’, April 2000 p.39.

¹⁴⁶ Asian Development Bank Sustainable Forest Management Project, ‘Cambodian Forest Concession Review Report’, April 2000 Appendix 11.

SFMPs must be in place by the end of November 2001 or else the defaulting concessionaires will face cancellation of the contract".¹⁴⁷ The Forest Administration subsequently announced that this deadline had been moved forward to 30 September 2001.¹⁴⁸

In the event, none of the companies met the 2001 deadline. Rather than cancelling their concessions, however, the government merely suspended the companies' activities.¹⁴⁹ Several factors explain this. Close familial and business relationships between concession operators and high-ranking officials as well as entrenched corruption gave some elements in the government a strong stake in the companies' activities, for example.

Another significant factor, however, was the stance of the World Bank and the focus of its project. As outlined above, the Bank had its own stake in continued concession operations; which were a prerequisite for successful implementation of the FCMCPP. Thus in September 2001 it was FCMCPP consultants who played a leading role in efforts to persuade the donor Working Group on Natural Resource Management that the concessionaires had already made substantive progress towards the completion of their plans. World Bank staff, meanwhile, sought to convince donors and other stakeholders that the deadline for submission of plans should be allowed to slip.¹⁵⁰

Aside from the lobbying by Bank and FCMCPP staff for a stay of execution for the concessionaires, the very existence of its project provided a convenient excuse for the RGC to treat the companies with unwarranted indulgence. Through the FCMCPP, the Bank had promised to reform the concessionaires via its own set of prescriptions. These consisted less of "*time-bound milestones*" than a package of assistance, advice and elastic guidelines. As a result, the RGC was never forced to choose between either terminating defaulting companies or having its professed attempts at reform exposed as hollow and insincere. Rather than holding the companies to account, it could always point to the World Bank's ongoing efforts to reform them as a justification for a more lenient approach. The FCMCPP provided a useful alibi.

The overall impact of the Bank's intervention was to weaken significantly the momentum of the forest sector reform process. The ADB review's recommendation that the concessionaires undergo a stringent restructuring process provided a means of weeding out those that had already caused serious material harm. However, this approach was comprehensively undermined by the FCMCPP, which set out with the express intention

¹⁴⁷ Letter to William Magrath, task manager for FCMCPP from Henry Kong, Chairman of the CTIA, Ty Sokhun, Director General of Forest Administration and Andrew McNaughton, Facilitator (contracted by the UK Department for International Development), 18 October 2000.

¹⁴⁸ See reference to this changed date in Department of Forestry and Wildlife (Forest Administration), 'Progress Report on Forestry Reform – Presented at the Meeting of the Donor Working Group on Natural Resources Management', 27 September 2001.

¹⁴⁹ The Cambodia Daily, 31 December 2001 'Six Companies Reject Logging Moratorium': The reaction of six of the companies to the imposition of the moratorium was to threaten to sue the government; illustrating how little interest the industry had in following the restructuring process.

¹⁵⁰ See, for example, minutes of meeting between Jon Buckrell and Rosie Sharpe (Global Witness) with Steven Schonberger, 9 August 2001.

of helping the companies to clear this new set of hurdles. Indeed, without the project's assistance, advice and willingness to bend the rules in favour of the concessionaires, it is highly unlikely that any would have stood a chance of passing through the strategic level planning process. Moreover, by positioning itself as both assistant to and arbiter of the companies' planning efforts, the FCMCPP excluded a more neutral entity from taking the lead in evaluating the plans.

In 1999-2000 there was emerging agreement between reformists in the RGC and Cambodia's international donors community that the forest concession system had proven disastrous as a management tool in the Cambodian context. However, in putting its weight behind the same failed management system and operators, the Bank severely diluted the strong medicine that the ADB review advocated and which the government had shown a willingness to accept. The Bank's agenda obstructed the development of alternative management models such as community forestry and proved a source of disunity within the international donor community.¹⁵¹ This in turn resulted in the donors sending mixed messages to the government and undermined the position of more reform-minded officials.

In the absence of the FCMCPP, the forest sector reform process would have developed quite differently:

- The RGC would have felt obliged to take a much tougher line towards the concessionaires rather than falling back on the pretence that they could be reformed.
- The rapid termination of most or all of the concessions would have forced the government, donors, NGOs and other stakeholders to focus on developing alternative management systems capable of contributing to poverty reduction.
- There would have been far more scope for other donor-led interventions in the forest sector in support of such efforts.
- The donor-RGC forest reform agenda would have maintained much greater coherence and momentum.

¹⁵¹ The ADB offered the Cambodian government loan-backed technical assistance to help develop not only industrial, but also community forestry models as part of its Sustainable Forest Management Project. In 2000, however, the year that the FCMCPP began, the Cambodian government informed the ADB that further assistance in forest sector development was not required.

SECTION 3: WORLD BANK BREACHES OF OPERATING POLICIES¹⁵²

Both the design and execution of the Forest Concession Management and Control Pilot Project have contravened World Bank operational policies. This section examines the policies breached and the material harm that this is set to cause. The overall consequence has been to allow the commissioning and implementation of a project that has endorsed concessionaires whose activities are harmful to forest dependent communities. Put another way, if the operational policies had been observed, the FCMCPP would never have been conceived in the way that it was. Secondly, the project would not have been implemented with the bias towards the concession companies that it has consistently exhibited.

3.1 Operational Policy OP 4.01 – Environmental Assessment

The World Bank has breached this operational policy in relation to its classification of the Forest Concession Management and Control Pilot Project. In addition, the Bank has failed to observe the operational policy's requirements for environmental assessment of the project's likely impacts. During its implementation phase, meanwhile, the Bank, through the FCMCPP has contravened those provisions relating to public consultation and disclosure.

Categorisation of the project

OP 4.01 Section 1:

“The Bank requires environmental assessment (EA) of projects proposed for Bank financing to help ensure that they are environmentally sound and sustainable, and thus to improve decision making.”

The operational policy classes projects into four categories. In the case of the Forest Concession Management and Control Pilot Project, those of relevance are the highest risk categories A and B.

A project should be classed as Category A if

“it is likely to have significant adverse environmental impacts that are sensitive, diverse, or unprecedented. These impacts may affect an area broader than the sites or facilities subject to physical works. Category A project examines the project's potential negative and positive environmental impacts, compares them with those of feasible alternatives

¹⁵² The World Bank's Operational Manual describes operational policies as “short, focused statements that follow from the Bank's Articles of Agreement, the general conditions, and policies approved by the Board. OPs establish the parameters for the conduct of operations; they also describe the circumstances under which exceptions to policy are admissible and spell out who authorizes exceptions.”

(including the 'without project' situation), and recommends any measures needed to prevent, minimize, mitigate or compensate for adverse impacts and improve environmental performance. For a Category A project, the borrower is responsible for preparing a report, normally an EIA (environmental impact assessment) ”

By contrast

“A proposed project is classified as Category B if its potential adverse environmental impacts on human populations or environmentally important areas – including wetlands, forests, grasslands, and other natural habitats – are less adverse than those of Category A projects. These impacts are site-specific; few if any of them are irreversible; and in most cases mitigatory measures can be designed more readily than for Category A projects. The scope of EA for a Category B project may vary from project to project, but it is narrower than that of Category A EA. Like Category A EA, it examines the project’s potential negative and positive environmental impacts and recommends any measures needed to prevent, minimize, mitigate or compensate for adverse impacts and improve environmental performance. The findings and results of Category B EA are described in the project documentation Project Appraisal Document and Project Information Document.”

The World Bank erroneously categorised the FCMCPP project as Category B, despite the fact that the concession system and companies that the project supports have already comprehensively demonstrated how they have “*significant adverse environmental impacts that are sensitive, diverse, or unprecedented*”. These include not only the immediate degradation caused by industrial-scale logging, but also secondary impacts such as damage to watersheds. All available evidence suggests that the impacts of future concessionaire logging operations will be equally serious.

Moreover, the logging concessions undoubtedly do have “*impacts (that) may affect an area broader than the sites or facilities subject to physical works*”. The impacts of concessionaires’ activities affect a significant portion of Cambodia’s forest reserve and large populations who inhabit or depend on it for their livelihoods. In this sense, it is difficult to see how the FCMCPP’s impacts could be construed as “*site-specific*”. In addition, evidence from studies of the impacts of industrial logging in other tropical countries would suggest that the impacts of concessionaires’ logging on Cambodia’s forests are likely to be “*irreversible*”.

World Bank staff have defended their classification of the project with two main arguments:

- The FCMCPP was initially conceived as a ‘pilot’ and that it was only once activities were underway and the project extended to all concessions, that the likely impacts became so wide-ranging.

- The FCMCPP is policy oriented, it does not involve construction or physical operations and it does not leave a physical imprint.¹⁵³

The first claim is unsatisfactory for two main reasons. In the first instance, all forest concessions in Cambodia cover large areas, typically measuring between 100,000 and 200,000 hectares and in some cases over 300,000. Even if the project had initially set out to work with only a few concessionaires, the area of forest and number of communities affected would nonetheless have been substantial and certainly more than “*site-specific*”. Moreover, this line of argument does not explain why the Bank did not reassess and reclassify the project once its scope had expanded.

The second contention is likewise highly questionable. The thrust of the FCMCPP has been helping the concession companies to prepare for renewed logging operations that will leave a very clear physical imprint. That the Bank’s role in this is more instigator than executor does not divest it of responsibility. Furthermore, the imprint left by the FCMCPP will be more extensive than those of many project interventions that involve site-based construction operations.

In addition, as the FCMCPP Project Appraisal Document argues:

“The concession management and operations plans developed with the aid of technical assistance will serve as models for similar plans to be developed, subsequently, in all operating concessions. As such they will also serve as standards by which the acceptability of such plans will be judged by (the Forest Administration).”

If the goals of the PAD are realised, the FCMCPP stands to have an environmental impact not only across all existing forest concessions but any future concessions that the government may allocate.

Environmental Assessment of FCMCPP impacts

The World Bank’s erroneous classification of the project’s impacts as Category B has provided the justification for a level of environmental assessment that might charitably be described as minimal. Bank staff did not produce the kind of EIA report called for in the case of Category A projects. In fact the level of assessment was so low that it did not even conform to Category B standards. As noted above, the OP requires that “*the findings and results of Category B EA are described in the project documentation Project Appraisal Document and Project Information Document.*”

¹⁵³ Meeting between World Bank staff members William Magrath (FCMCPP Task Manager 2000-2004), Peter Jipp (FCMCPP Task Manager 2004-), Stephen Mink and Steven Schonberger; with Suwanna Gauntlett and Delphine Vann Roe of Wildaid; Mike Davis and Hannah Thompson of Global Witness, Phnom Penh, 20 April 2004.

Meeting in Phnom Penh between Mike Davis of Global Witness, together with Glenn Morgan, Task Manager of the World Bank Biodiversity and Protected Area Management Project (BPAMP) and Klaus Schmitt, Senior Technical Advisor to BPAMP; May 2004.

The Project Appraisal Document for the FCMCPP contains a single paragraph on environmental assessment:

“Concession operations present significant impacts on the environment. The regulatory regime to be piloted under the project seeks to anticipate and manage these impacts by requiring attention throughout the planning and operational cycle. The system is intended to ensure that at the large scale planning level particularly fragile areas are excluded from concessions operations and that harvesting operations are conducted to minimize adverse impacts at the site or ‘coupe’ level. The proposed system will be synchronized with the national environmental impact assessment requirements.”

This passage suggests that the Bank has chosen not to address environmental impacts at the pre-project planning stage and will instead deal with them during the implementation phase. This impression is reinforced by comments made by World Bank representatives in April 2004. Asked to explain the EA process on the project, Bank personnel responded in the following terms:

- the FCMCPP was funded by a learning and innovation loan and designed to be process oriented. Therefore, environmental issues could be addressed during the course of the project rather than before commencement.¹⁵⁴

Given that OP 4.01 is primarily concerned with prior assessment of potential risks, a lack of prior EA itself constitutes a breach of this operating policy. Furthermore, the Bank representatives were unable show any such assessment having been undertaken during the project’s first four years, aside from the ESIA work done in conjunction with the concessionaires themselves, the standards of which fall well short of the requirements of OP 4.01.

Bank staff associated with the FCMCPP are evidently keen to push the idea that because the FCMCPP was backed by a learning and innovation loan, it was therefore not bound by Bank operational policies. This argument is not born out by OP 4.01 (or other operational policies), which states that the loans and projects that it covers include

“projects under adaptable lending – adaptable program loans (APLs) and learning and innovation loans (LILs)”

The rationale for carrying out prior environment assessment as part of a project planning process is to safeguard against the initiation of projects that are likely to cause harm to the environment and those whose livelihoods depend upon it. Had proper environmental assessment been carried out, it is unlikely that the Bank would have decided to support

¹⁵⁴ Meeting between World Bank staff members William Magrath (FCMCPP Task Manager 2000-2004), Peter Jipp (FCMCPP Task Manager 2004-), Stephen Mink and Steven Schonberger; with Suwanna Gauntlett and Delphine Vann Roe of Wildaid; Mike Davis and Hannah Thompson of Global Witness, Phnom Penh, 20 April 2004.

the activities of environmentally destructive companies. The project outcome that stands to cause most material harm – Bank endorsement of six of the concessionaires – can thus be traced to its failure to comply with this operational policy.

Public Consultation

OP 4.01: *“For all Category A and B projects proposed for IBRD or IDA financing, during the EA process, the borrower consults project-affected groups and local nongovernmental organizations (NGOs) about the project’s environmental aspects and takes their views into account.”*

The Bank has a responsibility for ensuring that this requirement is met, however, as with the environmental assessment, it is not clear what consultation, if any, took place before the project began. What is certain is that the project-affected groups who are requesting an Inspection Panel investigation, were not amongst those invited to participate in any pre-project consultation process.

Bank staff working on the project have contended that compliance with this Operating Policy has been achieved through Bank-supported activities of the concessionaires themselves.¹⁵⁵ This argument is all the more dubious given the kind of public consultation exercise that the companies have pursued under the auspices of the FCMCPP.

The companies failed to consult with communities during their preparation of the plans that they submitted in 2002. Subsequently, when they were compelled to do so in late 2002 and early 2003, these were of a poor standard, with instances in which participants were subject to intimidation by guards and officials accompanying company representatives. These flawed consultations have effectively reduced the scope of forest dependent communities to hold the logging concessionaires accountable. As a result, communities’ views have not been acknowledged in plans that companies will use to justify their operations in Cambodia over the next quarter of a century. At the same time, concessionaires will claim that they have fulfilled consultation requirements already, and are therefore under no obligation to listen to concerns that affected communities might raise in the future.

Here it is worth referring again to the arguments made by the head of the Cambodian Timber Industry Association in his letter to Ty Sokhun of 22 September 2004:

“In every meeting during the consultations, the company has provided full opportunity in a free and fair manner to the community representatives and villagers in the community to raise all their problems, suggestion, thoughts and recommendations and all the issues

¹⁵⁵ Meeting between World Bank staff members William Magrath (FCMCPP Task Manager 2000-2004), Peter Jipp (FCMCPP Task Manager 2004-), Stephen Mink and Steven Schonberger; with Suwanna Gauntlett and Delphine Vann Roe of Wildaid; Mike Davis and Hannah Thompson of Global Witness, Phnom Penh, 20 April 2004.

were properly solved in accordance with the effective laws and regulations. Before the meeting closed in each consultation centre, the consultation were going on until the participating community villagers told the company they had no any more problem, suggestion/comment or doubt. The result of the consultation has now also been officially recognized by the FA/World Bank (WB) expert team.”¹⁵⁶

In this context flawed consultation is arguably more damaging than no consultation at all.

Perhaps the most serious violation of this provision of OP 4.01 concerns the intimidation and violence used against community representatives in December 2002. In this instance the FCMCPP Project Director is alleged to have made threats against villagers seeking a consultation session.

One can surmise that failure to comply with this part of the operating policy has had the following adverse impacts:

- Direct harm – consultations marred by attempts by companies and officials to intimidate weaken an important accountability mechanism designed to protect the interests of local inhabitants.
- Imminent harm – such exercises enable concessionaires to claim to have fulfilled consultation requirements without having to take account of the views of local people. This strengthens their ability to move forward through the planning process and resume logging as before.

Disclosure

Similar issues arise in relation to the paragraphs of OP 4.01 that deal with disclosure:

OP 4.01: “For meaningful consultations between the borrower and project-affected groups and local NGOs on all Category A and B projects proposed for IBRD or IDA financing, the borrower provides relevant material in a timely manner prior to consultation and in a form and language that are understandable and accessible to the groups being consulted.”

The World Bank contravened this policy in its failure to ensure that the borrower (Forest Administration) provided the concessionaires’ SFMPs and ESIA’s to community representatives in November 2002. In fact, direct responsibility for this breach lay with the Bank’s own office in Phnom Penh. Having agreed to assist with the disclosure process, Bank representatives then informed communities that they would be unable to provide them with copies of the plans.

The negative impacts of this breach were two-fold. In the first instance those groups most directly affected by the concessionaires’ activities were denied important

¹⁵⁶ Letter from Lu Chu Chang, Chief Executive of Cherndar Plywood and head of the Cambodia Timber Industry Association to Ty Sokhun, Director-General of Forest Administration, 22 September 2004.

information about the companies planned future operations. Secondly, a precedent-setting opportunity to ensure that the Forest Administration observed its legal obligations to disclose such information was lost through the Bank's decision to intercede and take on the government's legal responsibility.

Monitoring of Implementation

OP 4.01: *During project implementation, the borrower reports on (a) compliance with measures agreed with the Bank on the basis of the findings and results of the EA, including implementation of any EMP, as set out in the project documents; (b) the status of the mitigatory measures; and (c) the findings of monitoring programs. The Bank bases supervision of the project's environmental aspects on the findings and recommendations of the EA, including measures set out in the legal agreements, any EMP (environmental management plan), and other project documents.*

Given that little or no environment assessment was undertaken, this aspect of the operational policy also appears to have been breached by the World Bank.

3.2 Operational Directive OP 4.20 – Indigenous Peoples

Cambodia's indigenous people, notably the Kouy minority (who are represented among those who have drafted letters to the Inspection Panel), are directly affected by the logging concessionaires. The main populations of Kouy and other indigenous groups are in the forested north and northeastern parts of the country – in other words the same areas that constitute the heart of Cambodia's logging concession system. The livelihoods and culture of these groups are intrinsically linked with the forests. This makes them particularly vulnerable to the impacts of industrial logging operations.

Articles 25-26 of Cambodia's 2001 Land Law set out the prior claim that indigenous people have to land on which they practice traditional agriculture. This includes not only land in current use, but also lands held in reserve for these purposes. Article 26 of the law states that "*Any provisions that are contrary to this law are repealed*". This would include any competing claims from logging concession companies, whose contracts were all issued prior to 2001.

The Bank's approach to engaging with indigenous people is set out in operational policy 4.20 as follows:

"...the objective at the centre of this directive is to ensure that indigenous peoples do not suffer adverse effects during the development process, particularly from Bank-financed projects, and that they receive culturally compatible social and economic benefits."

“The Bank's policy is that the strategy for addressing the issues pertaining to indigenous peoples must be based on the informed participation of the indigenous people themselves. Thus, identifying local preferences through direct consultation, incorporation of indigenous knowledge into project approaches, and appropriate early use of experienced specialists are core activities for any project that affects indigenous peoples and their rights to natural and economic resources.”

“... a full range of positive actions by the borrower must ensure that indigenous people benefit from development investments.”

It is difficult to find any evidence that the World Bank has observed either the spirit or the letter of these requirements in the case of the FCMCPP. Discussions on the issue with Bank staff suggest little, if any consideration of the potential impacts on indigenous people. This despite the very clear acknowledgement in the operational policy that forestry projects are among those most likely to impact on indigenous populations:

“Issues concerning indigenous peoples can arise in a variety of sectors that concern the Bank; those involving, for example, agriculture, road construction, forestry, hydropower, mining, tourism, education, and the environment should be carefully screened.”

The operational policy notes that *“Issues concerning indigenous peoples are commonly identified through the environmental assessment or social impact assessment process, and appropriate measures should be taken under environmental mitigation actions”*

That the Bank does not appear to have identified any *“issues concerning indigenous people”* in the course of planning or implementing the FCMCPP may be explained by the lack of proper environment assessment described in the preceding section.

Section 13 of the operational policy outlines the specific measures that must be taken for projects that affect indigenous people:

“For an investment project that affects indigenous peoples, the borrower should prepare an indigenous peoples development plan that is consistent with the Bank's policy. Any project that affects indigenous peoples is expected to include components or provisions that incorporate such a plan.”

The detailed list of components required for this plan includes many that are directly relevant to Cambodia and the impacts of forest concessions:

“Particular attention should be given to the rights of indigenous peoples to use and develop the lands that they occupy, to be protected against illegal intruders, and to have access to natural resources (such as forests, wildlife, and water) vital to their subsistence and reproduction.”

World Bank staff working on the FCMCPP informed Global Witness in April 2004, that the Bank deemed that no indigenous people's plan was required.¹⁵⁷ The reasons they cited were as follows:

- Previous studies on the forest sector commissioned by the World Bank during the last 1990s examined the social dimensions of forestry in Cambodia and fed into the FCMCPP.
- Social impact issues had been mentioned in the 2000 FCMCPP Project Appraisal Document and could be reviewed during the lifetime of the project.
- The project had recently recruited a consultant to look at how social impacts would be addressed by the concessionaires at the compartment (five year) planning level.
- One of the Bank's social science specialists had advised the Bank that the concession plans produced under the auspices of the FCMCPP addressed social issues adequately.

In a separate meeting, meanwhile, a World Bank official instrumental in reviewing the pre-project planning of the FCMCPP, including matters pertaining to environmental and social impacts, cited the difficulty of anticipating impacts in process-oriented projects.¹⁵⁸

None of these arguments constitute a convincing justification. The very existence of an operational policy specifically addressing indigenous people reflects the World Bank's own recognition that this issue is distinct from broader questions of social impacts. Moreover, even in terms of general social impacts, analysts such as the World Bank's own staff consultant have consistently dismissed the idea that consideration of these can be relegated to the compartment (five year) planning level.¹⁵⁹

As suggested above, the argument that the Bank has fulfilled its obligations under this and other operational policies courtesy of social impact work contained within the concessionaires' SFMPs and ESIA's is very difficult to sustain. Here it is worth referring to the findings of the August 2004 GFA Terra Systems assessment of the six sets of plans approved by the FCMCPP. This review produced in depth analyses of two of these (Everbright CIG Wood and Samraong Wood), on which it made the following comments.

¹⁵⁷ Meeting between World Bank staff members William Magrath (FCMCPP Task Manager 2000-2004), Peter Jipp (FCMCPP Task Manager 2004-), Stephen Mink and Steven Schonberger; with Suwanna Gauntlett and Delphine Vann Roe of Wildaid; Mike Davis and Hannah Thompson of Global Witness, Phnom Penh, 20 April 2004.

¹⁵⁸ Meeting in Phnom Penh between Mike Davis of Global Witness, together with Glenn Morgan, Task Manager of the World Bank Biodiversity and Protected Area Management Project (BPAMP) and Klaus Schmitt, Senior Technical Advisor to BPAMP, May 2004.

¹⁵⁹ John H. Dick, Staff Consultant to The World Bank, 'Comments on the Environmental and Social Impact Assessment Terms of Reference and Workplan for The Preah Vihear Concession of Cambodia Cherndar Plywood, as prepared by the Cambodian Timber Industry Association, April 2001', July 2001 – note that the same paper makes particular reference to the need to mitigate impacts on indigenous people in section 4.3.

GFA Terra Systems: 'Results of the Independent Review of Strategic Forest Management Plans prepared by Concession Companies operating in Cambodia', August 2004, pp. 134-135.

On Everbright CIG Wood:

“Social planning has been treated inadequately in the ESIA and SFMP, in process and content. In principle, it should have been done in a participatory manner involving communities and local government. As a top-down exercise it is also inadequate – baseline data was either inaccurate or incorrectly applied and the resulting community areas are unsuitable in size, location and forest type.”¹⁶⁰

On Samraong Wood:

“Social research and planning have been inadequate, in process and content. The fact that an enormous area has been set-aside, principally for community purposes, should not disguise the fact that the diverse interests of the surrounding communities were poorly understood and their own opinions not taken into account. Most of the area is low value forest, and access to resin trees and other NTFPs, is not assured. The proposal to renegotiate the law to give the company the right to control NTFP management (resin tapping) seems indicative of the real intentions of the company. Consultation mechanisms have not been established.”¹⁶¹

Commenting on standards of social impact assessment and planning across all the six plans that the FCMCPP had recommended for approval, the review team found that:

“participation in the designation of community areas did not take place and the whole social context of these concessions has become problematic as a result, even though the TRT (FCMCPP review team) initiated community consultations as part of their review process. The currently proposed community use zones and resource access plans are therefore inadequate.”¹⁶²

On the specific issue of indigenous people, moreover, their conclusion was as follows:

“Guidelines and plans must address the issue of indigenous ethnic groups, and their land rights, but none of the concessions have begun to do this.”¹⁶³

The World Bank’s failure to abide by this operational policy has meant that the FCMCPP has taken no account of the potential impacts of concession activity on indigenous peoples, or their rights (to land in particular) under Cambodian law. This in turn has allowed concessionaires to ignore these issues completely.

¹⁶⁰ GFA Terra Systems: ‘Results of the Independent Review of Strategic Forest Management Plans prepared by Concession Companies operating in Cambodia’, August 2004, p.113.

¹⁶¹ *ibid*, p.122

¹⁶² *ibid*, p.135

¹⁶³ *ibid*, p.59. Note that the failure of the concessionaires to recognise populations of indigenous people had already been highlighted in Global Witness, ‘Preliminary Assessment of Strategic Forest Management Plans and Environmental and Social Impact Assessment Reports – Cambodia’s Forest Management Options for the Future’, December 2002, p.p. 28-29.

More broadly, one can conclude that these omissions have had the overall effect of making the concessions appear more viable and less socially disruptive than is in fact the case. Again, this feeds into the overriding harmful impact of the FCMCPP – the lowering of standards for concessionaires and the provision of World Bank Project endorsement to companies whose activities cause material harm to Cambodian citizens.

3.3 Operational Policy OP 4.36 – Forests

For the Forest Concession Management and Control Pilot Project in Cambodia the applicable World Bank Forest Policy is OP 4.36, September 1993, along with relevant annexes, as this was the operational policy in place at the time of FCMCPP design and initial stages implementation.

OP 4.36: “... *the Bank Group does not finance commercial logging operations... in primary tropical moist forests.*”

The World Bank has breached this Operational Policy in its provision of loan-backed technical assistance to concessionaires that is designed to facilitate their future logging operations.

OP 4.36 does state that “*When the government has (made a commitment to move towards sustainable management of primary tropical moist forest), the Bank may finance improvements in the planning, monitoring, and field control of forestry operations to maximize the capability of responsible agencies to carry out the sustainable management of the resource.*”

The critical point here, however is that the Bank has allowed the FCMCPP to go beyond this in its active support of the logging concessionaires. As noted above, the companies with which the project has engaged are in any case particularly undeserving beneficiaries of loan money. In addition, this operational policy includes five criteria for what constitutes a “*government’s commitment to move toward sustainable management of (primary moist tropical) forests*”. It is doubtful that the Cambodian government can be considered in compliance with all or even many of these:

(i) Adopt policies and an institutional framework to (a) ensure conservation and sustainable use of existing forests and (b) promote more active participation of local people and the private sector (with proper incentives) in the long-term management of natural forests

The Cambodian government, however, has based production forest management on a concession system in which, as the FCMCPP task manager himself admitted, “*land allocation was inappropriate, concessionaire selection was noncompetitive and nontransparent contracts were poorly conceived, (and) local interests were not*

considered.”¹⁶⁴ The situation might be different had the World Bank focused the FCMCPP on rectifying these problems. However, as outlined above, the World Bank has not attempted to challenge any of these problematic features of the concession system and has instead adopted them as the foundations on which to build its project.

(ii) Adopt a comprehensive and environmentally sound forestry conservation and development plan that contains a clear definition of the roles and rights of the government, the private sector, and local people (including forest dwellers)

The government had no such plan at the commencement of the FCMCPP and appears to be no closer to producing one.

(iii) Undertake social, economic, and environmental assessments of the forests being considered for commercial use

No prior assessments of Cambodia’s production forests were undertaken before they were parceled into concessions.¹⁶⁵ It is true that the logging companies have been required to carry out social, economic and environmental assessments as part of the FCMCPP-supported planning process. However, the fact that these are only being attempted years after the forest has already been allocated as logging concessions means that their scope to influence strategic management decisions is limited. In any case, as argued above, the quality of the social, economic and environmental assessments produced by the concessionaires has been extremely poor.

(iv) Set aside adequate compensatory preservation forests to maintain biodiversity and safeguard the interests of forest dwellers, specifically their rights of access to designated forest areas

Since 1993 Cambodia has had a national protected areas system designed to conserve biodiversity. Moreover, official guidelines for concession management developed during the late 1990s do call for the interests of forest dwellers’ to be addressed in concession planning. Both these factors suggest that the Cambodian government has met this criterion on paper at least.

In practice however, concession companies’ have consistently disregarded forest dwellers’ rights and interests. Moreover, the management plans approved by the FCMCPP do not appear to herald any significant improvement in this regard. The companies have tended to allocate preservation and community forests on degraded areas, non-operable forest and areas not suited to community use.¹⁶⁶

¹⁶⁴ Internal World Bank memo from William Magrath to Ian Porter, February 2001.

¹⁶⁵ Asian Development Bank Sustainable Forest Management Project, ‘Cambodian Forest Concession Review Report’, April 2000, p.15.

¹⁶⁶ See, for example GFA Terra Systems: ‘Results of the Independent Review of Strategic Forest Management Plans prepared by Concession Companies operating in Cambodia’, August 2004; p 113, 122, 135.

(v) *Establish institutional capacity to implement and enforce these commitments.*

No such institutional capacity existed at the start of the FCMCPP. World Bank staff would doubtless argue that establishing this institutional capacity was the primary objective of the project. However, it is an objective that the FCMCPP has signally failed to meet. In terms of basic institutional structure of the Forest Administration, for example, the situation has actually deteriorated.¹⁶⁷ Institutional flaws such as the lack of separation between production management and regulatory control functions persist. Recent studies of the institutional framework leave little doubt that it remains inadequate to implement and enforce the standards that OP 4.36 calls for.¹⁶⁸

The FCMCPP falls well short of meeting other standards required by this operational policy. For example, the requirement that *“borrowers identify and consult the interest groups involved in a particular forest area”* has not been met. This deficiency relates closely to the breaches of Operational Policy 4.01 on Environment Assessment and Operational Directive 4.20 on Indigenous Peoples concerning consultation.

In addition, OP 4.36 states that *“In forests of high ecological value, the Bank finances only preservation and light, nonextractive use of forest resources.”*

As described above, the World Bank undertook no environment assessment ahead of the FCMCPP that might have identified such forests of high ecological value. Instead, the project has advised the Cambodian government to allow another 25 years of logging by three concessionaires (Colexim Enterprise, Everbright CIG Wood and Timas Resources) in the highly ecologically valuable Prey Long forest. This area was identified by an IUCN (World Conservation Union) study three years before the FCMCPP commenced as a *“Remote, and possibly very old, lowland forest area with major wildlife populations... feasibility of a World Heritage Nomination should be established* (emphasis in original).”¹⁶⁹

A botanical study undertaken in 2004, meanwhile, noted that

*“We can also assume that the rainforests of the greater Prey Long region maintain a level of biodiversity that equals or exceeds other lowland terrains of Cambodia. Given that most national parks of Cambodia are located in or near mountainous regions, the biological value of the greater Prey Long region seems all the more critical.”*¹⁷⁰

The 2004 Independent Forest Sector Review, to which the World Bank committed funding, also draws particular attention to the ecological significance of Prey Long.¹⁷¹

¹⁶⁷ Independent Forest Sector Review, ‘The Forest Sector in Cambodia’, Part I, p.p. 78-85.

¹⁶⁸ Mary Hopley / Independent Forest Sector Review, ‘Players in the Sector: Government Agencies’, Chapter 11, Part II, p.p. 64-65.

¹⁶⁹ David Ashwell in collaboration with the Department of Nature Conservation and Protection of the Ministry of Environment, ‘Cambodia – a National Biodiversity Prospectus’, IUCN, 1997, p.56.

¹⁷⁰ J. Andrew Macdonald, ‘Ecological Survey of Prey Long, Kompong Thom’, September 2004.

¹⁷¹ David Ashwell, Frank Miller & Ignas Dummer / Independent Forest Sector Review, ‘Ecology and Status of Cambodia’s Forest’, Chapter 1, Part II, p.p. 34-36.

In a set of comments circulated in response to the IFSR, the World Bank did make acknowledgement of the ecological value of the Prey Long forest. This has not changed the prescriptions of the FCMCPP and their likely impact, however.¹⁷²

The harmful consequences of the World Bank's breaches of this operational policy can be summarised as follows:

- Assistance to and endorsement of concessionaires that will allow these companies to continue logging with the same harmful consequences to environment and local people as in the past.
- Allowing the FCMCPP to promote the logging of a forest of high ecological value, thus greatly increasing the chances of its degradation.

3.4 Operational Policy OP 4.04 – Natural Habitats

OP 4.04: *“The Bank does not support projects that, in the Bank's opinion, involve the significant conversion or degradation of critical natural habitats”*

No doubt the World Bank staff responsible for the FCMCPP would argue that it does not consider the promotion of forest concessions as likely to lead to the degradation of the natural habitats which Cambodia's forest concessions constitute. As argued above, the substantial body of evidence on the impacts of the concessionaires' activities strongly suggests otherwise. The concession companies have already significantly degraded the natural habitats within their concessions. Their past behaviour and, indeed the contents of the six sets of plans that the FCMCPP has approved (in terms of proposed over-cutting) indicate that they will continue to do so.

“The Bank expects the borrower to take into account the views, roles and rights of groups, including local nongovernmental organizations and local communities affected by Bank-financed projects involving natural habitats, and to involve such people in planning, designing, implementing, monitoring and evaluating such projects.”

Again, as described in relation to breaches of operational policies on environment assessment and indigenous peoples, consultation has been absent or of a very poor standard, both during preparation and implementation of the FCMCPP.

Moreover, the Bank did not ensure that the borrower (Forest Administration) invited the stakeholder participation in planning, design, implementation, monitoring and evaluation that this operational policy calls for. It appears that the project's architects and executors have declined to consider the forests slated for logging as natural habitats. While the six concessionaires endorsed by the FCMCPP have, as required, made reference to biodiversity conservation within their plans, the quality of this work has been abysmal, as

¹⁷² World Bank, 'Cambodia Independent Forest Sector Review – Comments and Proposals Going Forward', October 2004.

a recent study of these components of the Everbright CIG Wood and Colexim Enterprise plans makes clear.¹⁷³

Failure to recognise the concessions as natural habitats in any meaningful sense has, as with other deficiencies, resulted in the commissioning of a poorly conceived project. By the same token, the Bank has allowed the project to produce outcomes that increase the probability of severe imminent damage to natural habitats that are part of Cambodia's natural heritage.

3.5 Operational Policy OP 13.05 – Project Supervision

OP 13.05: *“As a development agency, the Bank also has an interest in assisting member countries to achieve their development objectives on a sustainable basis. To these ends, recognizing that project implementation is the borrower’s responsibility, the Bank supervises the borrower’s implementation of Bank-financed projects.”*

Project supervision is required in order to *“(a) ascertain whether the borrower is carrying out the project with due diligence to achieve its development objectives in conformity with the legal agreements; (b) identify problems promptly as they arise during implementation and recommend to the borrower ways to resolve them; (c) recommend changes in project concept or design, as appropriate, as the project evolves or circumstances change.”*

In the case of the FCMCPP, the World Bank has repeatedly contravened point (a), as a result of negligence in supervision. Details of these breaches are set out in detail in Section 2 of this report. The following appear particularly clear-cut examples.

i) Allowing project technical assistance to be offered to companies that should have been excluded under the terms of reference given to the TA consultants. This has had the impact of increasing the chances of these companies passing through the planning process, despite their track records and obvious unsuitability as concession managers.

ii) Not ensuring that the planning processes for SFMPs and ESIA's carried out under the auspices of the project included adequate and appropriate public consultation. Note that consultation is required under Cambodian law (Sub-Decree on Forest Concession Management). This has weakened the bargaining position of communities in their dealings with the companies. It has enabled concessionaires to ignore the interests of communities and remain unaccountable to those who live in and around their concessions.

iii) Failure to ensure the observance of minimum standards in the 2003 forest cover survey that the FCMCPP produced. This extremely poor piece of work has provided a

¹⁷³ J. Andrew Macdonald, 'Ecological Survey of Prey Long, Kompong Thom', September 2004.

distorted picture of forest quality and cover in Cambodia. This in turn assists proponents of the concession system to argue the case for continued industrial logging.

iv) Not taking any action to change the flawed methodology of the FCMCPP's review of the SFMPs and ESIA's, in particular the project's refusal to take account of the legal prohibition on cutting resin trees. This protection of resin trees is specified in Cambodia law (1988 Decree on Forest Practice Rules; 2002 Forest Law). This has led to FCMCPP's endorsement of companies whose concessions may not be economically viable. It will also encourage companies to continue logging resin trees, an activity that is illegal and which will serve to further impoverish already poor Cambodians.¹⁷⁴ This goes directly against overall World Bank development objectives. Note that this issue has been raised with World Bank and FCMCPP staff on a number of occasions.¹⁷⁵

v) Repeatedly attempting to help a company (Colexim Enterprise) overturn the log transport ban and profit from its illegal logging of villagers' resin trees. Admittedly, World Bank staff have themselves been so directly implicated that is debatable as to whether this is simply a breach of the supervision policy.

Overall, lack of supervision has accounted for many of the FCMCPP's damaging acts and omissions. These, in turn have contributed to the project's overall negative impact: legitimating of a flawed system and rogue concessionaires that cause material harm to forest-dependent Cambodians.

3.6 Bank Procedure BP 8.40 – Technical Assistance

A related World Bank standard that the project has not met is its Bank Procedure BP 8.40 on technical assistance, which accompanies the Operational Policy OP 8.40 concerning the same issue.

BP 8.40: "Because supervision offers an opportunity for informal TA, Bank staff must remain aware of importance of effective supervision to the implementation and ultimate success of the TA."

¹⁷⁴ Bruce McKenney, Yim Chea, Prom Tola and Tom Evans, 'Focusing on Cambodia's High Value Forests: Livelihoods and Management', Cambodian Development Resource Institute and Wildlife Conservation Society; November 2004, p. 91: "Based on experiences in Cambodia and elsewhere in the region, continuation of the current commercial forestry model will result in further forest losses with little revenue generated for government. It will not lead to poverty reduction and rural development. Indeed, findings of this study suggest some logging operations (and some agricultural concessions) are helping to move villages in high value forest areas into poverty, not out of it."

¹⁷⁵ For example meeting between Hak Sarom, Oxfam; Andrew Cock, NGO Forum, Mike Davis, Global Witness together with William Magrath and Andrew Bond of World Bank and John Dick, World Bank Staff Consultant, Phnom Penh, October 2003; Global Witness interview with Yann Petrucci, technical advisor to FCMCPP, 17 September 2003.

Several breaches of the Operational Policy on supervision outlined above, also contravene this section of BP 8.40. Deficiencies in the work of the TA consultants to the FCMCPP that suggest inadequate supervision by the World Bank include:

- Provision of assistance and advice to all logging companies, including those that should have been excluded under the terms of reference issued to the technical assistance consultants.
- The refusal of consultants to the FCMCPP to take account of the legal prohibition on cutting resin-producing trees.
- The distorted score-card system of assessing concessionaires' management plans.
- The poor standard of the TA-supported forest cover survey.

This has contributed to the same negative outcomes as breaches of the operational policy on supervision.

3.7 Operational Policy OP 4.11 – Cultural Property

OP 4.11 *"1. Cultural property... encompasses both remains left by previous human inhabitants (for example, middens, shrines, and battlegrounds) and unique natural environmental features such as canyons and waterfalls.*

2. The World Bank's general policy regarding cultural properties is to assist in their preservation, and to seek to avoid their elimination. Specifically:

(a) The Bank normally declines to finance projects that will significantly damage non-replicable cultural property, and will assist only those projects that are sited or designed so as to prevent such damage.

(b) The Bank will assist in the protection and enhancement of cultural properties encountered in Bank-financed projects, rather than leaving that protection to chance.

(c) Deviations from this policy may be justified only where expected project benefits are great, and the loss of or damage to cultural property is judged by competent authorities to be unavoidable, minor, or otherwise acceptable. Specific details of the justification should be discussed in project documents.

(d) This policy pertains to any project in which the Bank is involved, irrespective of whether the Bank is itself financing the part of the project that may affect cultural property.

3. (2) If there is any question of cultural property in the area, a brief reconnaissance survey should be undertaken in the field by a specialist."

The six logging concessions whose plans the FCMCPP has recommended for approval contain both spirit forests and sites of archaeological importance that undoubtedly constitute cultural property. Despite this, it appears that the World Bank carried out no survey of these sites prior to the project's commencement. This omission falls in line

with the Bank's erroneous acceptance of the existing concession boundaries as an appropriate basis for management of the country's production forest.

There is strong circumstantial evidence that many communities, particularly those comprising indigenous peoples, have spirit forest areas. Despite this, only one of the companies endorsed by the FCMCPP, Colexim Enterprise, has identified a spirit forest in its plan. Communities in Kompong Thom have complained that this company previously logged their spirit forests in both 1997 and 2002.

In mid 2004, a group of provincial, national and international NGOs facilitated public consultations concerning the six sets of SFMPs and ESAs approved by the FCMCPP. These consultations involved 1,529 people from 13 communes situated in and around concession areas. One of the common concerns that participants' voiced was companies' inclusion of spirit forests in their management plans; a factor apparently not considered by the Bank or the FCMCPP.¹⁷⁶

Aside from spirit forests, the six concessions also contain important archaeological sites. As with the spirit forests, it appears that a significant number of these have not been identified and excised from production areas in the SFMPs produced by the six companies. An assessment of the first sets of plans submitted by concessionaires in 2002, noted that:

*"A number of concessionaires recognize and excise from their areas officially recognized temples and archaeological sites. This however is not the case for smaller and uncharted temples which dot Preah Vihear, Kompong Thom and Kratie provinces. These omissions are inexplicable as the presence of such sites is widely known locally."*¹⁷⁷

Once again, The World Bank has not met standards of pre-project assessment required by its operational policies. Consequently, the FCMCPP has proceeded to endorse SFMPs that appear to spell destruction for sites of cultural significance. Logging of spirit forests will seriously harm the interests of local communities. Furthermore, similar lack of attention to archaeological sites could jeopardise cultural property that is part of the national heritage of all Cambodians.

¹⁷⁶ NGO Forum on Cambodia and Oxfam GB, 'Brief Notes regarding Community Consultations on Forest Concession Management Concessions', August 2004.

¹⁷⁷ Global Witness, 'Preliminary Assessment of Strategic Forest Management Plans and Environmental and Social Impact Assessment Reports – Cambodia's Forest Management Options for the Future', December 2002.

SECTION 4: PREVIOUS COMMUNICATION WITH THE WORLD BANK

The World Bank's project intervention has been situated within the Forest Administration and has focused primarily on planning processes. This meant that, in its initial stages at least, the FCMCPP had a fairly low profile within Cambodia. As implementation has progressed, however, this has changed, and affected communities have had more contact with the Bank and more awareness of its project's activities, as is clear from the letters accompanying this submission.

Nonetheless, much of the debate around the project has been conducted between the World Bank and local and international NGOs working in Cambodia. The reasons for this can be summarised as follows:

- The focus of the project has made it largely inaccessible to rural Cambodians.¹⁷⁸
- By the time the project commenced, there was a well established dialogue on forest sector issues involving the World Bank, other donor agencies and NGOs. Discussion of the FCMCPP naturally fed into this.
- NGOs working at both the grassroots and national policy level were able to provide a conduit for the concerns and interests of rural communities; NGO Forum on Cambodia and Oxfam GB being obvious examples here.

Raising concerns with the World Bank

Dialogue between the World Bank and NGOs has addressed both the FCMCPP and other elements in the Bank's forest sector reform efforts, notably its \$30 million Structural Adjustment Credit (SAC). The SAC, initiated in early 2000, contained a range of conditions for release of the second tranche of US\$ 15 million that related to the forest sector. The government's failure to meet these conditions and the Bank's decision to disburse the money anyway became a source of serious disagreement between the Bank and NGOs.¹⁷⁹ The Bank's handling of the SAC disbursement undermined confidence in its commitment to achieving reform in the forest sector.

Appeal to the Inspection Panel is intended as a measure of last resort and the case of the FCMCPP is no exception. For three to four years NGOs have been raising concerns about the conduct of the project and its potential impacts on forest-dependent communities with the Bank staff responsible.

From 2001-2002, Global Witness, in its function as official independent forest sector monitor, held meetings with FA officials on a weekly basis. These were frequently

¹⁷⁸ This problematic aspect of the project was highlighted in J. Blakeney, Kay Panzer, Werner Schindele, 'Forest Concession Management and Control Pilot Project – Final Report of the Mid-Term Review Mission', February-March 2003, p.4.

¹⁷⁹ Arguments against the release of the second tranche of the SAC are summarised in Global Witness, 'World Bank caves in on Forest Reform', Phnom Penh Post, 18 December 2003-1 January 2004. <http://www.phnompenhpost.com/TXT/comments/c1301-1.htm>.

attended by FCMCPP staff, as well as the project task manager and more senior World Bank staff who were visiting Cambodia. While these sessions focused primarily on developments in the Forest Crime Monitoring and Reporting Project, they also provided a forum for discussion of the FCMCPP.

Through these meetings, the World Bank obtained regular updates on the activities of the concessionaires, for example instances of illegal logging and large-scale royalty evasion. It also received prior notice of problems likely to be encountered in the implementation of the FCMCPP, such as disclosure of the management plans and 'old log' transportation.

On numerous occasions over the last four years Global Witness and other NGOs have also raised concerns regarding the FCMCPP at meetings of the donor Working Group on Natural Resource Management (WGNRM), of which the World Bank is a member. Over the same period, World Bank and FCMCPP staff accompanied several Global Witness field inspections to obtain a first hand understanding of the issues. Participants in these field visits included the FCMCPP task manager, the senior operations officer in Cambodia, the East Asia and Pacific regional director of the rural development sector unit, as well as others. FCMCPP staff also joined Global Witness on aerial surveys that revealed the discrepancy between concessionaires' claims and the reality on the ground.

NGOs' countless attempts to address deficiencies in the World Bank's performance in the forest sector in Cambodia have extended to mediation by third parties, such as the Bank's regional external affairs and communication unit, World Bank personnel seconded to Fauna & Flora International (FFI), as well as representatives of other donor agencies. NGOs have also kept up regular communications with World Bank staff through more informal channels.

World Bank responses

The Bank has responded to questions and criticisms concerning its project in the following ways:

- In most cases, the Bank has been prepared to meet NGOs to discuss points of concern.
- The Bank has responded to most, but not all, written communications.
- In 2002, the Bank downgraded the project's rating to 'unsatisfactory', partly as a result of the lack of public consultation undertaken in the course of the project.
- In November 2003, as the LIL neared its due expiration date, the Bank convened a workshop involving NGOs, in order to discuss future direction of the FCMCPP.
- In the last quarter of 2003, the Bank adjusted its spending plan for the remainder of the LIL; allocating sums of money to activities such as post-concession management.

The Bank's efforts to maintain dialogue are commendable. Nevertheless, the dialogue and the shuffling of budgetary allocations have done nothing to alter the substance of the

FCMCPP. In no meetings, written communications or actions has the Bank indicated any willingness to acknowledge the damaging impact of its support to the concession companies, let alone a readiness to rectify this. The Bank's stock responses to criticism of its project have been:

- blaming the Cambodian government
- arguing that it has no responsibility for and little control over what the FCMCPP does
- chiding critics for calling the Bank to account and exhorting all stakeholders to 'look ahead', rather than scrutinising Bank decisions and project activities
- arguing that because the FCMCPP is process-oriented, it is not subject to Bank operational policies

In fact, the main thrust of World Bank activities in the forest sector has not changed at all. Indeed it is since the Bank began repackaging the FCMCPP in late 2003, that the project has produced some its most damaging outcomes. The most significant of these has been its endorsement of the six logging companies in June 2004. This seal of approval is already being used by the concessionaires to argue their case for resumption of industrial logging. In addition, the Bank continues to use the project to help the concessionaires resume transportation of timber that includes logs that were harvested illegally.

Community members and NGOs have thus concluded that further dialogue will not persuade the Bank to abandon its support for the concessionaires and address the damaging impacts of its project. This has led to consideration of the Inspection Panel as an alternative means of holding the Bank to account.

Table 3: Sample list of correspondence and meetings between NGOs and World Bank and FCMCPP staff.¹⁸⁰

Written communications from the World Bank and FCMCPP team are in marked in bold. Note that this list is far from being exhaustive.

DATE	NATURE OF COMMUNICATION
28 December 2004	e-mail from Global Witness to Ian Porter, Cambodia Country Director, World Bank
20 December 2004	Letter from Ian Porter, Cambodia Country Director, World Bank to Global Witness
2 December 2004	Letter from Global Witness to James Wolfensohn, World Bank President

¹⁸⁰ Note that this list only refers to those meetings for which minutes are immediately available. It is possible that World Bank and FCMCPP staff may also have their own records of these and some of the numerous other meetings that have encompassed discussion of the FCMCPP.

27 August 2004	e-mail from Kimberly Versak, World Bank External Affairs division to Oxfam GB
27 August 2004	e-mail from Oxfam GB to Ian Porter, Cambodia Country Director, World Bank
19 August 2004	Letter from Ian Porter, Cambodia Country Director, World Bank to Oxfam GB
13 August 2004	Letter from Oxfam GB to Nisha Agrawal, Cambodia Country Representative, World Bank
4 August 2004	Statement by Peter Stephens, Regional Communications Manager for East Asia
29 July 2004	Global Witness press release
22 July 2004	Letter from Global Witness to Peter Jipp, Task Manager, FCMCPP
10 May 2004	Letter from Global Witness to Peter Jipp, Task Manager, FCMCPP
20 April 2004	Minutes of meeting between representatives of World Bank, Wildaid and Global Witness, Phnom Penh
16 March 2004	e-mail from Global Witness to Peter Jipp, Task Manager, FCMCPP
11 February 2004	Letter from Ian Porter, Cambodia Country Director, World Bank to NGO Forum on Cambodia
8 January 2004	Letter from NGO Forum on Cambodia to Jemal-ud-din Kassum, World Bank Vice President, East Asia and the Pacific Region
17 December	Letter from Jemal-ud-din Kassum, World Bank Vice President, East Asia and the Pacific Region to NGO Forum on Cambodia
11 December 2003	Letter from NGO Forum on Cambodia to Jemal-ud-din Kassum, World Bank Vice President, East Asia and the Pacific Region
22 October 2003	Global Witness press release
17 September 2003	Minutes of meeting between Yann Petrucci, Technical Advisor to FCMCPP and Global Witness
21 August 2003	Letter from Ian Porter, Cambodia Country Director, World Bank to NGO Forum on Cambodia
27 June 2003	Minutes of meeting between World Bank and FCMCPP consultants and NGO representatives, Phnom Penh
17 June 2003	Minutes of meeting between John Dick, Staff Consultant to FCMCPP and NGO representatives, Phnom Penh
9 June 2003	Letter from NGO Forum to Ian Porter, Cambodia Country Director, World Bank
23 May 2003	e-mail from FCMCPP Task Manager William Magrath to donor agencies and NGOs
25 April 2003	e-mail from Jemal-ud-din Kassum, World Bank Vice President, East Asia and the Pacific Region to Oxfam GB
22 April 2003	e-mail from Oxfam GB to Jemal-ud-din Kassum, World Bank Vice President, East Asia and the Pacific Region and Ian Porter, Cambodia Country Director
10 April 2003	e-mail from Oxfam GB to Jemal-ud-din Kassum, World Bank Vice President, East Asia and the Pacific Region
3 April 2003	Letter from Yann Petrucci, Technical Advisor to FCMCPP to Global Witness

28 March 2003	Letter from Global Witness to Yann Petrucci, Technical Advisor to FCMCPP
17 February 2003	e-mail from Jemal-ud-din Kassum, World Bank Vice President, East Asia and the Pacific Region to Oxfam GB
24 January 2003	e-mail from Oxfam GB to Ian Porter, Cambodia Country Director, World Bank
23 January 2003	e-mail from Oxfam GB to Ian Porter, Cambodia Country Director, World Bank
22 January 2003	Minutes of meeting between representatives of Oxfam GB and James Wolfensohn, President, World Bank
15 January 2003	Minutes of meeting between representatives of World Bank and Global Witness
24 December 2002	e-mail from Ian Porter, Cambodia Country Director to Oxfam GB
6 December 2002	Letter from Oxfam GB to Ian Porter, Cambodia Country Director, World Bank
26 November 2002	Minutes of meeting between representatives of World Bank, Oxfam and Global Witness, Phnom Penh
15 November 2002	Global Witness press release
16 October 2002	Letter from NGO Forum on Cambodia, WWF Cambodia, Oxfam GB, Wildlife Conservation Society, Global Witness and Oxfam America to Mark Wilson, Rural Development and Natural Resource Sector Unit, East Asia and Pacific Region
24 September 2002	Minutes of meeting between World Bank and NGO representatives, Phnom Penh
3 September 2002	Minutes of meeting between representatives of World Bank and Global Witness
29 July 2002	Letter from Global Witness to Ian Porter, Cambodia Country Director, World Bank
12 July 2002	Letter from Ian Porter, Cambodia Country Director, World Bank to Global Witness
17 December 2001	e-mail from FCMCPP Task Manager William Magrath to Global Witness
9 August 2001	Minutes of meeting between representatives of World Bank and Global Witness

CONCLUSION AND RECOMMENDATIONS

World Bank staff have defended the FCMCPP by arguing that the project's focus on planning and review does not leave a physical imprint, and that they cannot be held accountable for the outcomes of these processes.

This argument is unacceptable for a number of reasons. The fact that the FCMCPP is strengthening the hand of other parties to log in a destructive way, rather than undertaking logging operations directly, does not divest it of responsibility. The general pattern of World Bank projects, even those that leave the most obvious physical imprint, such as dams, is for Bank interventions to be carried out via other actors; typically government agencies and private companies. In this sense, the FCMCPP is no different.

One respect in which it is different, however, is the scale of the area that stands to be affected. The Bank / FCMCPP seem to have taken the view that the huge size of the area involved means that observance of operational policies is impractical and therefore unnecessary. This is not much of a defence.

Another of the Bank's most common justifications of the FCMCPP is that the Bank cannot be held responsible for the flaws inherent in a system and operators that existed prior to the commencement of its project. Again, these claims are unsatisfactory. The outcome of the FCMCPP has been entrenchment of some of the worst of the logging companies. These firms will pass up no opportunity to brandish their World Bank seal of approval and use it to deflect attempts by local inhabitants to hold them accountable.

Equally flimsy, is the Bank's claim that it had no choice but to throw in its lot with the concession system and concession companies. Since when has it been Bank policy to respond uncritically to all requests for loans that client governments make? In reality, the Bank was under no obligation to intervene in Cambodia's forest sector beyond its own institutional imperative to keep making loans.

While trying to reform an unreformable system and operators was folly in itself, what has made the FCMCPP not only misconceived, but actually harmful, has been the Bank's determination to keep the concessionaires operating. The Bank constructed the FCMCPP around the assumptions that the concession system could work, and that this could be demonstrated through its project intervention. The objectives that the Bank then set the project meant that it could only succeed if a significant number of the concessionaires kept operating. Were all the concessions to be terminated, the FCMCPP would be exposed as a complete waste of \$5 million and five years.

This distortion that the Bank introduced into the project's conceptual framework has driven the FCMCPP's constant efforts to lower the bar for the concessionaires and ensure that some of them stay in business. The combination of endless dispensations and public endorsement from the project has left Cherndar Plywood, Colexim Enterprise, Everbright CIG Wood, Samraong Wood, Timas Resources and TPP strongly placed to resume logging, with the same harmful impacts as before. Meanwhile, the Bank has not

introduced any controls that will cause the companies to operate with greater respect for either the law or the rights of local inhabitants. This leaves people who have suffered at the hands of the logging companies in the past, anticipating their resumption of harmful activities in the very near future. They perceive that the World Bank project has contributed to this outcome and that is why they are demanding redress.

Recommendations for World Bank Board of Executive Directors

In Cambodia:

- Publicly acknowledge the damage that the Forest Concession Management and Control Pilot Project stands to cause to the interests of forest-dependent communities in Cambodia.
- Publicly refute the FCMCPP's endorsement of the six logging companies.
- Write off the debt that Cambodia's citizens have incurred through the Learning and Innovation Loan that supports the FCMCPP.

Internationally:

- Undertake a wide-ranging review of World Bank interventions concerning forestry and other extractive industries to i) ensure that the Bank is not breaching operational policies as it has in Cambodia; ii) ensure that Bank projects are not serving to entrench and endorse organisations that have a history of illegal activities.
- In this regard, give priority to a review of the World Bank's forestry project in Democratic Republic of Congo.
- Include timber in the Extractive Industries Transparency Initiative (EITI) and hold Bank forestry projects to the same standards as interventions in the oil, gas and mining sectors.

Appendix I: Concessionaire Profiles

Cherndar Plywood

Cherndar Plywood currently holds a 103,300 hectare timber concession in Preah Vihear. Although the company's official owners and management are Taiwanese, Cherndar Plywood's operations are effectively run by its subcontractors Dy Chouch (also known as Hun Chouch), who is the cousin of Prime Minister Hun Sen, together with his wife Seng Keang.

Illegal logging

An investigation by Global Witness in 1999 found multiple cases of illegal logging by Cherndar Plywood, including logging outside permitted coupes, failure to stamp trees after felling, and the purchase for resale of prohibited luxury woods.¹⁸¹ Aerial photographs taken in January 2001 of Cherndar Plywood's Dong Mar log rest area showed an estimated 22,000 m³ of timber, indicating that the company harvested considerably more timber than they declared or were allowed for the 2000 cutting season.¹⁸²

Despite possessing its own concession, Cherndar Plywood has also been found purchasing illegally felled logs from areas outside of its concession, including the Sandan District of Kompong Thom and Casotim's log rest area in the Kang Chhor village in Chhlong district.¹⁸³

Cherndar Plywood targeted trees tapped for resin throughout 2001 in spite of the clear prohibition on their felling. In December 2001, Global Witness documented the cutting of 340 resin trees by the company. The Forest Administration investigated and confirmed these findings but took no action. The company has continued to antagonise local people and deprive them of their livelihoods. Throughout January 2002 Cherndar Plywood security manning the checkpoints were denying local people access to the forest in an apparent attempt to kill off the resin trade, in order to eliminate the competition for the commercially desirable resin-producing trees remaining in the concession.¹⁸⁴

Other legal and contractual breaches

A random inspection carried out by Global Witness in January 2001 found that Cherndar

¹⁸¹ Global Witness, 'Chainsaws Speak Louder Than Words', May 2000, p.p. 23-24.

¹⁸² Global Witness, 'The Credibility Gap and the Need to Bridge It', May 2001, p.p. 35-36.

¹⁸³ Global Witness, 'Going Places... Cambodia's Future on the Move', March 1998, part 4, part 9.4; Global Witness, 'The Credibility Gap and the Need to Bridge It', May 2001, p. 26.

¹⁸⁴ Global Witness, 'Deforestation Without Limits', July 2002, p. 17.

Plywood failed to pay any royalties for 29 out of the 89 logs inspected, while the royalties for an additional 18 logs had been substantially underpaid.¹⁸⁵

The Asian Development Bank-funded concession review found that Cherndar Plywood failed to pay USD 250,000 in royalties for the years 1997-1999. It is not known whether this debt has since been paid.¹⁸⁶

Cherndar Plywood was heavily involved in the offsetting scheme that deprived the Cambodian treasury of timber royalties in 2001-2002. As of mid 2002, the company had offset more than a million dollars in royalties owed to the state.

Poor concession management

The Asian Development Bank-funded 1999-2000 concession review gave Cherndar Plywood's performance a rating of 60 points out of a possible 200 and described its performance as "*unacceptable in all aspects*" and required "*urgent action*". The review found the company's operations particularly deficient with respect to environmental sensitivity (three points out of 40) and harvesting (15 points out of 40).¹⁸⁷ The report further suggested that if Cherndar Plywood continued its current pattern of activity it would exhaust its concession within five to ten years.¹⁸⁸

In addition to its illegal logging activities, Cherndar Plywood has further refused to comply with its concession contract provisions and has been cited for inadequate technical training of its own staff.¹⁸⁹

Colexim Enterprise

Colexim Enterprise currently controls a 147,187 hectare timber concession covering part of Prey Long – one of Cambodia's most valuable remaining areas of forest, both in commercial and ecological terms. During its tenure Colexim has consistently demonstrated its contempt for Cambodian law.

Illegal logging

Global Witness has documented many instances of illegal logging by Colexim since 1995, including logging in contravention of the January 1st 1995 cutting ban, obtaining

¹⁸⁵ Global Witness, 'The Credibility Gap and the Need to Bridge It', May 2001, p.p. 35-36.

¹⁸⁶ Ibid, p. 11.

¹⁸⁷ Asian Development Bank Sustainable Forest Management Project, 'Cambodian Forest Concession Review Report', April 2000, Appendix 8 page 1-3.

¹⁸⁸ Ibid, Appendix 8 page 4.

¹⁸⁹ Ibid, Appendix 7 p. 1.

illegally felled logs from the neighbouring GAT International concession and receiving logs from the Boeung Per Wildlife Sanctuary.

In October 2001, Global Witness found Colexim sub-contractors illegally felling trees being tapped for resin by local people. A subsequent investigation by the Department of Forestry and Wildlife (DFW) found that Colexim had cut 240 trees in three different locations. However, DFW accepted the company's excuses that it needed the timber to collect sample data for its inventory and that it intended to use the wood to build schools and repair a bridge. DFW recommended that the Ministry of Agriculture, Forestry and Fisheries (MAFF) issue Colexim with a written warning. MAFF instead opted to furnish the company with 'advice' and then close the investigation.

Had this volume of timber been logged legally, royalties to the Cambodian treasury would have amounted to approximately \$60,000. Under the 1988 Decree on Forest Practice Rules, the appropriate fine for Colexim's illegal logging should have been between two and three times the value of the logs.

Investigations during 2003 and 2004 revealed that at least one thousand hectares of forested land around the Colexim logging camp '99' have been cleared illegally. The land is now being prepared for commercial plantation development. Colexim subcontractors are instrumental in organising these activities and are also involved in illegal logging and timber processing activities in the same area.

Other legal and contractual breaches

In April 1997 Colexim security personnel murdered Chan Oeurn, a local resin tapper, at the company's logging camp '99'. Chan Oeurn was trying to persuade a Colexim sub-contractor not to cut resin trees in the area, when he was shot three times by a company security guard. The guard subsequently fled the area with the assistance of other Colexim employees and has never been charged with the murder.

In early 2003, local people living within the Colexim concession reported that company representatives were visiting villages and handing out blankets in exchange for villagers thumb-printing a document. Colexim subsequently sought to present this exercise as a consultation with local people about the content and implications of the company's Strategic Forest Management Plan.

The Asian Development Bank-funded concession review found that Colexim failed to pay the Cambodian Government royalties in 1996 and 1997 and in 1999 still owed \$40,000. More recently, Colexim has been involved in the offsetting scheme designed to divert royalty payments owed to the Cambodian government. As of early 2002, the company had offset due royalties totalling at least half a million dollars. It is not known whether any of these debts to the government have ever been paid, however in late 2003,

the World Bank told journalists that it believed that Colexim still owed the Cambodian government \$80,000 in unpaid royalties.¹⁹⁰

Poor concession management

The Asian Development Bank-funded 2000 concession review observed that "*Colexim staff possess low technical capacity and under the present administration system are 'required' to employ DFW teams to undertake inventory, tree marking and planning functions.*" The ADB review also concluded that Colexim had committed seven different breaches of its contractual obligations and Cambodia's Environmental and Forestry laws. Of these breaches, four related to deficiencies in the company's concession management.

Conflicts of interest

The Cambodian government holds a fifty one percent stake in Colexim. Forty percent is controlled by the Japanese firm Okada and the remaining 9% by former Colexim accountant So Sovann. The lack of any meaningful separation between the company and DFW is such that a senior member of DFW staff working on the World Bank-funded Forest Concession Management and Control Project, Hang Sun Tra, who is Director of the Project Management Unit, also describes himself as an assistant to Colexim shareholder So Sovann.

In 2002, Colexim submitted Strategic Forest Management Plans and ESIA's which had been prepared by DFW's Forestry Research Institute. The fact that the plans had been written with staff of the same institution charged with assessing them represents a clear conflict of interest.

Everbright CIG Wood

Everbright CIG Wood is a subsidiary of the Chinese state-owned Everbright group, a conglomerate which has been at the centre of high-profile corruption scandal in mainland China. Like Colexim, Everbright's 136,376 hectare concession contains one section of the Prey Long forest area.

Illegal logging

Everbright carried out major illegal logging operations in Cambodia in 2000 and 2001. In December 2000 through January 2001 Global Witness gathered evidence of Everbright logging illegally inside its timber concession in Kratie province. Company staff were observed collecting old and freshly cut logs at a range of locations within concession

¹⁹⁰ The Cambodia Daily, 'Illegal Loggers Keep Busy in Kompong Thom', 31 December 2003.

coupe 2, in which the company had no authorisation to cut. Loss of royalties to the Cambodian treasury from Everbright's illegal logging in coupe 2 alone could be as much as \$250,000.

Approximately 20% of the logs inspected by Global Witness at Everbright's plywood factory in Kandal province in January 2001 had not been stamped by the Department of Forestry and Wildlife (DFW), indicating that they had been harvested illegally. If the same proportion of the remaining logs in the compound on the same date were also unmarked, this would point to a loss of royalties of approximately \$26,000.

While the evidence gathered in January 2001 warranted the termination of Everbright's concession, the company escaped any serious punishment. Everbright did, however, receive an official warning from the Ministry of Agriculture, Forestry and Fisheries (MAFF) concerning the company's "illegal logging activities" in which the Ministry threatened to cancel the concession agreement if the terms of the order were not adhered to.

In 2002 Everbright submitted to DFW its Strategic Forest Management Plan. This document proposed harvesting operations within 11 years in the same area (coupe 2) where Everbright was caught logging illegally in 2001. A basic premise of sustainable forest management is that logged areas should be allowed 25 years of regeneration prior to renewed cutting.

Other legal and contractual breaches

The 1999-2000 Asian Development Bank concession review team found that Everbright owed the Cambodian Government \$200,000 in unpaid royalties and deposits. It is not known whether the company has since cleared its debts.

Poor concession management

The ADB review concluded that 'Everbright staff possess low technical capacity and under the present administration system are "required" to employ DFW teams to undertake inventory, tree marking and planning functions.' The review team also noted that Everbright had committed eight different breaches of Cambodian law and its investment agreement with the Cambodian Government. Four of these concerned deficiencies in the company's management of its concession. The Review concluded that Everbright performance was "*Very poor... Unacceptable in all aspects*".

Conflicts of interest

One of Everbright's sub-contractors has close familial links with senior Government officials responsible for determining whether or not Everbright should be permitted to

continue operating. Sub-contractor Khun Thong is the father-in-law of DFW Director General Ty Sokhun and brother-in-law of Minister for Agriculture Chan Sarun.

Samraong Wood

Samraong Wood is a Cambodian company holding a 200,050 hectare concession in Siem Reap. The company shares offices and personnel with Timas Resources company. There are strong indications that, like Timas, it is owned by Singaporean billionaire Robin Loh.

The ADB concession review projected that Samraong Wood would completely exhaust its concession within 5-10 years.¹⁹¹

Illegal logging

During an inspection of Samraong Wood's coupe 5 in December 2001 by Global Witness found freshly felled resin trees throughout blocks 35 and 36. A company official estimated that 80% of Samraong Wood's 2001 harvest was made up of resin trees; 20% of which were being tapped for resin when they were cut down. This destruction of resin producing trees was corroborated by former resin tree owners in the area who told Global Witness that foresters forced them to sign sales contracts by telling them that if they did not sign the contracts they would never see any money, which they did not anyway.¹⁹²

In January 2002 Global Witness submitted a crime report to the Forest Administration relating to a large sawmill operating two kilometres from the Varin District Forestry Office, observed during an aerial survey of the Samraong Wood concession in late December 2001. The sawmill is not on the official Forest Administration list of licensed processing facilities and is therefore illegal. In any case, the sawmill is located inside a concession, which is also prohibited.¹⁹³

Other legal and contractual breaches

The 2000 Asian Development Bank concession review cited Samraong Wood for contractual breaches including failure to invest, failure to make financial deposits or pay annual royalty, failure to submit a financial statement, EIA report, or adequate forest management plan, and inadequate technical training of staff.¹⁹⁴

¹⁹¹ Asian Development Bank Sustainable Forest Management Project, 'Cambodian Forest Concession Review Report', April 2000, Appendix 8, page 4.

¹⁹² Global Witness 'Deforestation Without Limits', July 2002, p. 17.

¹⁹³ Ibid.

¹⁹⁴ Asian Development Bank Sustainable Forest Management Project, 'Cambodian Forest Concession Review Report', April 2000, Appendix 7, page 1.

In addition, the review found that, as of 1999, Samraong Wood had failed to pay USD 200,000 in royalties to the Cambodian Government. In 2001 and 2002, Samraong Wood offset more than \$450,000 in royalties which it owed to the Cambodian treasury. It is not known whether any of these debts have since been paid.¹⁹⁵

TPP Cambodia Timber Product

TPP is a Thai company that holds a 395,900 hectare concession encompassing parts of Siem Reap, Preah Vihear, and Pursat provinces. Since securing its investment contract in 1998, the company has made little effort to manage these areas and has been largely inactive. Due either to negligence or complicity on the part of the company, TPP's concession has been consistently subject to illegal logging operations.

The 2000 ADB-funded concession review concluded that less than 10% of the TPP concession area contained operable forest and recommended that the government place a moratorium on its activities.¹⁹⁶

Illegal logging

TPP-subcontracted sawmills were active for several years before the company was first officially active in 2001 and some, notably the Ta Ouk sawmill in Kompong Thom, have been caught processing illegally logged timber on numerous occasions.¹⁹⁷

In late 2000, Global Witness uncovered a major illegal logging operation in the Phnom Samkos Wildlife Sanctuary in Pursat province, with signs that the loggers were accessing the area through the adjacent TPP concession.¹⁹⁸ One year later, Global Witness found TPP engaged in illegal construction of a road from its concession to the wildlife sanctuary.

In late 2001, Global Witness investigations revealed numerous instances of illegal harvesting and land clearance in the TPP concession in Preah Vihear province. The extent of the company's role in these activities remains unclear. Even if TPP did not organise the logging itself, however, it is evident that it has made little attempt to exercise any managerial control of its concession.

¹⁹⁵ Global Witness, 'The Credibility Gap and the Need to Bridge It', May 2001, p. 11.

¹⁹⁶ Asian Development Bank Sustainable Forest Management Project, 'Cambodian Forest Concession Review Report', April 2000, Appendix 1.

¹⁹⁷ Global Witness, 'Deforestation Without Limits', July 2002, p. 15.

¹⁹⁸ Ibid. p. 15

Other legal and contractual breaches

TPP was cited by the Asian Development Bank-funded concession review of 2000 for a range of contractual breaches, including failure to make due investment, failure to make financial deposits or pay minimum annual royalties, failure to submit required financial statements, EIA report, or adequate forest management plan, as well as inadequate technical training of staff.¹⁹⁹

In 2000 the Asian Development Bank-funded concession review found that TPP failed to pay USD 100,000 in deposit and royalties to the Cambodian Government. It is not known whether this debt has since been paid.²⁰⁰

Timas Resources

Timas Resources is a part of the Singapore-based Robina group owned by Robin Loh, a billionaire accused by academic researchers of being a business associate of Indonesia's Suharto family.²⁰¹ In 1997 Timas acquired a 161,450 hectare concession encompassing parts of Preah Vihear, Kompong Cham and Kratie. The Preah Vihear part of the concession includes the northwestern edge of the Prey Long forest, the largest tract of lowland evergreen forest in mainland Southeast Asia. Nevertheless, "47% of the Preah Vihear area consists of inoperable forest types or villages and rice fields."²⁰²

Illegal logging

Timas was operational during the late 1990s and implicated in illegal logging and export of logs.²⁰³ The company was then largely inactive up until the 2001 cutting season, during which it felled villagers' resin trees illegally in the Preah Vihear part of its concession. In the same year, overloaded Timas log trucks caused the collapse of a major road bridge in Kompong Cham province.

Other legal and contractual pressures

Timas Resources was cited by the 2000 Asian Development Bank concession review for contractual breaches, including failure to invest, failure to make financial deposits or pay minimum annual royalties, failure to submit a financial statement, EIA report, or

¹⁹⁹ Asian Development Bank Sustainable Forest Management Project, 'Cambodian Forest Concession Review Report', April 2000, Appendix 1.

²⁰⁰ Global Witness, 'The Credibility Gap and the Need to Bridge It', May 2001, page 11.

²⁰¹ George Aditjondro, 'US Business Links of the Suharto and Habibie families and their cronies (1)'.
²⁰² Asian Development Bank Sustainable Forest Management Project, 'Cambodian Forest Concession Review Report', April 2000, Appendix 1.

²⁰³ Global Witness, 'Just Deserts for Cambodia?', June 1997, p. 15; Global Witness, 'Going Places... Cambodia's Future on the Move', March 1998, part 9.2.

adequate forest management plan, extensive illegal logging, and inadequate technical training of staff.²⁰⁴

The Asian Development Bank-funded concession review found that Timas Resources failed to pay USD 200,000 in deposits and due royalties to the Cambodian Government as of 1999.²⁰⁵ Moreover, like many other concessionaires, Timas Resources was involved in the 2001-2002 offsetting scheme to divert royalty payments owed to the Cambodian treasury. Global Witness investigations in 2002 revealed that it had offset a sum of over \$350,000.

²⁰⁴ Asian Development Bank Sustainable Forest Management Project, 'Cambodian Forest Concession Review Report', April 2000, Appendix 7 page 2.

²⁰⁵ Global Witness 'The Credibility Gap and the Need to Bridge It', May 2001, p. 11.

Annex 2

MANAGEMENT RESPONSE

**BANK MANAGEMENT RESPONSE TO
REQUEST FOR INSPECTION PANEL REVIEW OF THE
CAMBODIA FOREST CONCESSION MANAGEMENT AND CONTROL
PILOT PROJECT (Credit No. 3365-KH)**

Management has reviewed the Request for Inspection of the Cambodia Forest Concession Management and Control Pilot Project (Credit No. 3365-KH), received by the Inspection Panel on January 28, 2005 and registered on February 4, 2005 (RQ05/1). Management has prepared the following response.

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Abbreviations and Acronyms

ADB	Asian Development Bank
AusAID	Australian Agency for International Development
ARD	Associates in Rural Development
BNPP	Bank-Netherlands Partnership Program
BP	Bank Procedures
BTO	Back to Office Report
CAS	Country Assistance Strategy
CG	Consultative Group
CI	Conservation International
DAI	Development Alternatives, Incorporated
DANIDA	Danish International Development Agency
DfId	Department for International Development (United Kingdom)
DFW	Department of Forestry and Wildlife
EA	Environmental Assessment
EAP	East Asia and the Pacific Region
EASRD	East Asia Sector Rural Development
ESIA	Environment and Social Impact Assessment
FA	Forestry Administration
FAO	Food and Agriculture Organization of the United Nations
FCMCP	Forest Concession Management Control and Pilot Project
FRM	Forêt Ressources Management
GAT	Grand Atlantic Timber
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit
IDA	International Development Association
IFSR	Independent Forest Sector Review
IMF	International Monetary Fund
IPDP	Indigenous Peoples Development Plan
IPN	Inspection Panel
ITTO	International Tropical Timber Organization
LIL	Learning and Innovation Loan
MAFF	Ministry of Agriculture, Forestry and Fisheries
MEF	Ministry of Economy and Finance
MOE	Ministry of Environment
MTR	Mid-Term Review
NGO	Nongovernmental Organization
OD	Operational Directive
OED	Operations Evaluation Department
OP	Operational Policy
OPN	Operational Policy Note
PAD	Project Appraisal Document
PHRD	Japan Policy and Human Resources Development Fund
PIC	Public Information Center
PID	Project Information Document
<i>Prakas</i>	Regulation issued by a Government office or officer, also known as a Ministerial Order
PROFOR	Program on Forestry
QAG	Quality Assurance Group
QER	Quality Enhancement Review
SAC	Structural Adjustment Credit

SDR	Special Drawing Rights
SFMP	Strategic Forest Management Plan
SGS	Société Générale de Surveillance
TA	Technical Assistance
TFT	Tropical Forestry Trust
TOR	Terms of Reference
TRT	Technical Review Team
TTL	Task Team Leader
TWG	Technical Working Group
UNDP	United Nations Development Programme
USAID	United States Agency for International Development.
USD	United States Dollar
WCS	Wildlife Conservation Society
WGCRM	Working Group on Natural Resource Management
WWF	World Wildlife Fund

I. INTRODUCTION

1. On February 4, 2005, the Inspection Panel registered a Request for Inspection, IPN Request RQ05/1 (hereafter referred to as “the Request”), concerning the Cambodia Forest Concession Management and Control Pilot Project (“FCM CPP” or “the Project”), Credit No. 3365-KH, financed by the International Development Association (IDA).

2. *Structure of the Text.* The document contains the following sections: Section II provides information on the Request; Section III presents background information and analytical work on the Project, including the overall country context for World Bank (“the Bank”) operations and policy dialogue in Cambodia, and key events during implementation. Section IV discusses special issues and lessons learned, and Section V considers Management’s intentions moving forward. Section VI presents Management’s conclusion. Annex 1 contains the Requesters’ claims, together with Management’s detailed responses, in table format.

II. THE REQUEST

3. The Request for Inspection was submitted by the NGO Forum on Cambodia acting on its own behalf and on behalf of affected local communities living in the districts of Tbeng Meanchey in Preah Vihear Province; Siem Bok and Sesan in Stung Treng Province; and Anlong Veng in Oddar Meanchey Province, Cambodia (hereafter referred to as the “Requesters”). These four districts are respectively located in the concession areas of the companies Cherndar Plywood, Samraong Wood, Everbright and Pheapimex. See Map 1.

4. Attachments to the Request received by Management from the Inspection Panel are:

- (i) One letter from representatives of four affected communities (English translation) instead of the two letters referenced in the NGO Forum letter of January 21, 2005; and
- (ii) Report prepared by Global Witness providing details of the case and the violations of Bank policies that allegedly occurred.

No further materials, i.e., the correspondence between NGOs and the Bank, referred to in item (3) of the NGO Forum letter, were received by Management in support of the Request. Management wishes to note that prior to the Request for Inspection, neither the four local communities who submitted the letter noted under item (i) nor their representative had previously communicated with the Bank on the specific claims asserted in the letter.

5. The Request contains claims that the Panel has indicated may constitute violations by the Bank of various provisions of its policies and procedures, including the following:

- OP 4.01, Environmental Assessment (January 1999)
- OP 4.04, Natural Habitats (September 1993)
- OD 4.20, Indigenous Peoples (September 1991)
- OP 4.36, Forestry (September 1993)
- OP 8.40, Technical Assistance (October 1994)
- OPN 11.03, Cultural Property (September 1986, reissued August 1999)
- OP 13.05, Project Supervision (July 2001)
OD 13.05 (August 1989 and January 1996)
- BP 17.50, Disclosure of Operational Information (September 1993)
World Bank Policy on Disclosure of Information (August 2001).

6. The Requesters claim in their letter that:

- “Through flawed project design and poor implementation, the World Bank has promoted the interests of the logging concession system and the concessionaires...
- A key element of the FCMCPP has been assisting the companies in their production of [strategic] forest management plans (SFMPs) and environmental and social impact assessments (ESIAs). The concessionaires have been required to produce these as a precondition for continued logging. The Bank is thus using loan money to benefit logging companies that have a track record of timber theft, tax evasion and human rights abuses...
- By allowing its project to endorse the [SFMPs and ESIAs] of six of these companies, the World Bank has increased the likelihood that they will continue to maintain control of their concessions. At the same time, the Bank has not succeeded in introducing any additional checks and balances to the concession system that would compel the companies to operate differently from the way that they did before.
- The World Bank project endorsement has in fact strengthened the position of these six companies, which hereon will present their operations as having the World Bank seal of approval. Some companies are already using this endorsement to deflect criticism of their past and future actions, making it even more difficult for adversely affected communities to hold them to account.

- Through its acts and omissions, the World Bank has contributed to a set of outcomes that stand to inflict harm on forest-dependent communities in the near future.”

The Requesters’ letter and the attached report from Global Witness claim that the Bank has violated all the policies noted in para. 5 above. The claims and Management’s response are presented in Annex 1.

III. THE FOREST CONCESSION MANAGEMENT AND CONTROL PILOT PROJECT

7. **The Project.** The IDA Credit of SDR 3.6 million (USD 4.82 million equivalent at the time of approval) for a Learning and Innovation Loan (LIL) was approved on June 5, 2000. The legal agreement was signed July 6, 2000 and the project became effective on October 20, 2000. A Japan Policy and Human Resources Development Fund (PHRD) Grant of USD 240,000 was provided for technical assistance during implementation. The project was originally scheduled to close on December 31, 2003. The Closing Date was extended at the request of the Borrower to June 30, 2005. As of February 2005, a total of USD 3.7 million (73 percent) was disbursed out of the IDA Credit of SDR 3.6 million equivalent (USD 5.1 million, reflecting SDR appreciation against the USD).

8. **Project Objectives.** The overall project development objectives (Schedule 2 to the Development Credit Agreement) were to demonstrate and improve the effectiveness of a comprehensive set of forest management and operational guidelines and control procedures in forest concession areas, and to establish an effective forest crime monitoring and prevention capability. The project was formulated with the expectation and understanding that greater knowledge was needed about Cambodian forestry and about the ways in which reforms could be advanced. As a LIL, the project was specifically expected to generate better understanding of the following issues (PAD, p. 4):

- **Maintaining Commitment.** The Government’s commitment to sustainable forestry threatened strongly entrenched interests. A hypothesis behind the project was that increased revenue flows, professional support from the Department of Forestry and Wildlife (DFW, now the Forestry Administration or FA), and local support related to socially responsible operations would help to overcome resistance to reform;
- **Private Sector Support.** The then newly established Cambodia Timber Industries Association (CTIA) supported the proposed project, although its membership was acknowledged to include enterprises not fully committed to, or currently capable of practicing, sustainable forest management. Moreover, the full costs of sustainable management could include significant reductions in timber supply and could lead to resistance from some concessionaires unless paired with other suitable policy or regulatory reforms, which would need to be identified and considered as part of the project; and

- *Monitoring and Supervision Requirements.* While the elements of the reformed regulatory system were defined in detail, the FA monitoring and supervision requirements would depend, in large part, on concessionaire response. The rate at which concessionaires could absorb the proposed innovations and adjust their operations was not known. Petty and large scale corruption were characteristic of the forestry sector and learning was needed to discover how regulations could be made more effective in the face of extremely low salaries and difficult working conditions.

9. ***Project Components.*** The project consists of four components (PAD, p. 5):

- *Forest Planning and Inventory Component* (USD 1.3 million). This supports the FA in providing guidance to and exercising quality control over concessionaire preparation of detailed long- and short-term forest management plans. It includes conduct of field surveys and inventories, and assessment of management constraints, biodiversity and social issues, and risks of timber theft;
- *Concession Regulation and Control Component* (USD 2.04 million). This component strengthens the capacity of the FA to oversee concession operations and to ensure compliance of operations with plans and conditions;
- *Forest Crime Monitoring and Prevention Component* (USD 1.11 million). This component strengthens the capacity of the FA and Ministry of Environment (MOE) to systematically and regularly monitor illegal logging and to launch effective prevention activities. It introduces systematic data collection and analysis techniques, and provides equipment and contractual services, training and technical assistance; and
- *Project Management and Institutional Strengthening Component* (USD 0.97 million). This component establishes a Project Management Unit in the FA, including construction of a small office building, and provision of equipment and staff training.

The project was subsequently modified in 2003, as indicated in para. 60; this modification did not require an amendment to the Development Credit Agreement.

10. ***Project Organization.*** The project is implemented by the DFW, which in 2003 became the FA as a result of the reorganization of the DFW pursuant to the Forestry Law of 2002. The FA is a semi-autonomous agency of the Ministry of Agriculture, Forestry and Fisheries (MAFF). A Deputy Director of the FA serves as Project Director. Under the project, the FA established a Technical Review Team (TRT) to conduct concession plan reviews. Staff from various units within FA and MAFF are involved in the project. The forest crime monitoring and prevention function was initially supported by a project of the United Nations Food and Agriculture Organization (FAO) and United Nations Development Programme (UNDP) in 2000, using Global Witness as an “Independent Monitor.” This role is now contracted to a commercial firm under the FCMCPP.

11. The Government-Donor Consultative Group (CG), which the Bank chairs, and the associated Working Group on Natural Resources Management (WGNRM), although not formally party to the FCMCPP, have consistently been engaged in discussion and informal oversight of the project and the sector dialogue. The WGNRM was recently restructured into four Technical Working Groups (TWGs), with the Forestry and Environment TWG chaired by the Director of the FA and DANIDA as Lead Donor Facilitator.

PROJECT BACKGROUND

12. The project developed as Cambodia, one of the poorest countries in the region (USD 290 per capita income in 2000), emerged in the mid-1990s from decades of war and isolation. Its institutions were fragile and violence and social dislocation were ongoing, with disarray extending to all parts of the economy. By the late 1990s, the Government had begun an ambitious structural reform program, with the support of the Bank and other donors. The Bank's 2000 Country Assistance Strategy (CAS) for Cambodia discussed the governance challenges facing the country: "[governance] overshadows almost all of Cambodia's development problems" (CAS, p. 1). The CAS built on awareness of the excessive role of the military in national life, the limitations and weak capacity of the public administration, low civil service salaries, widespread corruption, and other problems; it set out building "the foundations for sustainable development and poverty reduction" as the Bank's main objective in Cambodia (CAS, p. v). The CAS acknowledged the risks to Cambodia of faltering political commitment to reforms in the face of powerful special interests or a return to social unrest and political instability. During his February 2005 visit to Cambodia, World Bank President Wolfensohn told Government ministers, diplomats and others that Cambodia must tackle corruption because good governance is key to a stronger economy.

13. *Analytical Work.* The Government, the Bank and others engaged in an intensive examination of forest policy following a sector analysis by the Bank, UNDP and FAO, presented in early 1996. That report, "Cambodia: Forest Policy Assessment" (Report No. 15777 KH), laid out the enormous economic, social and environmental potential of the forest resource and identified serious weaknesses in the Government's approach. Concessions stood out as a critical constraint to the emergence of sustainable, diverse and socially responsible forestry in Cambodia. Illegal logging was also seen as a serious threat to the sector. The Bank, UNDP and FAO recommended a strategy involving development of an improved regulatory and legal framework, re-examination of concession contracts, trade policy reform for log and forest products and other measures. Subsequent studies estimated 3-4 million cubic meters of illegal logging in 1997-1998 and showed a continued pattern of grossly inadequate fiscal returns (DAI, 1998, Fraser Thomas, 2000b). At that rate of exploitation, the forest would be exhausted in five years.

14. The project was identified in December 1998 at the conclusion of the program of technical studies supported by the Bank under the Technical Assistance Project (TA Pro-

ject, Credit No. 2664-KH).¹ These studies, which included consultations, workshops (see Annex 2) and specialist input, helped establish the legal and contractual framework for concession regulation and clarified the basis for the Government's use of its right to terminate concession contracts. The identification mission reviewed this work, considered the role of other donors, and concluded that appropriate management of the concessions would require substantial investment to build capacity and operationalize the desired policy reforms. In early 1999, the Government embarked on reforms to enforce forest law, shut down illegal operations, and raise forest royalties.

15. A design alternative considered was the targeting of a small number of concessions for intensive technical assistance and development as "model" operations (Appraisal Completion Note, December 11, 1999). This was rejected, because of the Bank's obligation to comply with OP 4.36 on Forestry, the risks for the Bank in aligning with any particular concessionaire, and the important need to deal with system-wide regulatory deficiencies. Project preparation and appraisal were completed in 2000.

PROJECT IMPLEMENTATION

16. **Project Supervision.** Since approval of the project in June 2000, Bank staff conducted nine formal supervision missions, including a Mid-Term Review (MTR). The Task Team Leader (TTL) was based in a neighboring country during the preparation and early implementation period of the project, and in Cambodia from August 2002 until December 2003. This allowed regular on-time and face-to-face communication with the Government, donors, and other partners. The Credit was augmented by several trust funds, including a Recipient-executed PHRD Grant (TF026419) of USD 240,000 and a grant from the Bank Netherlands Partnership Program (BNPP) of USD 164,000 to support project implementation. The Bank has utilized a substantial supervision budget (see Table 1), including trust funds, especially relative to the Credit amount. See Annex 3 for supervision frequency and composition.

Source	2001	2002	2003	2004	2005	Total
BB	35	23	39	120	112	329
TF	41	113	37	0	0	190
Total	75	136	76	120	112	519

17. **MTR.** The Government commissioned consultants to assist in a project MTR in February 2003 and a report was prepared and made available publicly in April 2003 (DFW, 2003f). The MTR recognized serious problems that had arisen during implementation, suggested that the FA redouble its efforts to utilize project resources and proposed expanded use of project resources for forest concession control, forest law enforcement work, and reinstatement of compartment-level planning. It highlighted the lack of trust

¹ Technical studies addressed forest policy, legal aspects, log tracking and forest law enforcement, and forest concession management.

and credibility that was facing the FA and as an initial measure proposed establishment of a Public Affairs Unit under the project. The MTR suggested an arrangement for the resumption of logging (the Bank advised against this in a Management Letter from the Rural Sector Director to the FA Director on May 21, 2003, see Annex 4). The MTR also proposed that the Government seek an extension of the Closing Date of the Credit. A Bank-led multi-donor supervision mission, proposed to coincide with the Government's MTR, was cancelled due to criticism by several nongovernmental organizations (NGOs) of the terms of reference (TOR) and proposed mission staff composition. A small Bank supervision mission was later fielded to discuss the MTR findings in May 2003.

18. ***Quality Enhancement Review (QER) Review.*** At the request of the East Asia and the Pacific (EAP) Region, a voluntary QER was organized by the Quality Assurance Group (QAG) in October 2003. The findings/results of the QER were (pp. 1-2):

- “Good forest governance is far from being achieved... and much work remains to be done at both the institutional level and in the forest. While Donors and NGOs are impatient with the perceived slow rate of progress, the panel’s judgment is that reform in this difficult area is probably occurring as rapidly as can be expected, and would not be moving at all without the Bank’s involvement...”
- The Bank’s image, and indeed [its] effectiveness, have suffered from the following: (i) the inability of the country team to coalesce around a shared strategy on substance and on process; (ii) the early termination of the FAO/UNDP Forest Crime Monitoring and Reporting Project due to the breakdown of relations between the Forest Crime Monitor, Global Witness and the Government; (iii) not having in place a clear and well-articulated vision of how the recently liberated 4 million hectares [from the cancelled concessions] are to be occupied; and (iv) an insufficiently well articulated Bank commitment to non-concessionaire forest users, especially the rural poor in and near the forest.
- The panel concluded that the LIL and Structural Adjustment Credit (SAC, Credit No. 3323-KH) have had limitations as instruments in addressing the long-term structural nature of Cambodia’s forest governance problem. Nevertheless, carefully selected forest-related SAC conditionalit[ies], that are squarely on the larger governance agenda and are completely under Government control, should continue to be considered in forthcoming SACs...
- The forestry sector is of strategic importance to achieve gains on the top two agenda items in Cambodia, governance and poverty reduction. Bank efforts in these areas will require a commitment by the regional and country management working in cooperation with the Task Team and the Bank’s external relations staff in order to develop and continuously refine a single coherent view on the substance and the process of [the Bank’s] forestry sector strategy, and to develop and implement a proactive communications and partnership-building strategy.”

19. The QER also recommended extending the Closing Date of the Credit and using the remaining funds to carry out aerial and field surveys to verify the current status of

forest lands and establish a clear baseline for additional work; analyze options for non-concession land use, with a focus on poverty, equity, traditional rights, and biodiversity protection; carry out a participatory ICR to work with stakeholders to develop a consensus around next steps; and maintain pressure on concession reform (p. 1). These results of the QER were discussed at a workshop with donors, NGOs and the Government in Phnom Penh in November 2003, when the Bank consulted stakeholders prior to releasing the final tranche of the SAC and extending the project.

CHALLENGES DURING PROJECT IMPLEMENTATION

20. The Project Appraisal Document (PAD) identified key risks facing the project, including several noted in the Request. Many of these challenges are closely related to the claims raised in the Request and the Global Witness report attached thereto. This section explores some of these challenges. Key events are indicated in Table 2 below and in more detail in Annex 5.

Date	Event	Comment
1994-1998	TA Project	
1995/1996	Bank/UNDP/FAO Forest Policy Assessment	Concession Area stands at 6.4 million ha
1997-1999	Technical Studies under TA Project	Forest policy, legal aspects, log tracking, and forest concession management
May 1999	Project Identification and Concept Review	
June-December 1999	Project Appraisal	
August-October 1999	CAS Consultations	
November 1999	Workshop with WWF/TFT on Forest Certification	
February 2000	Cambodia CAS SAC approved Forest Concession Management Sub-Decree	
January-May 2000	Project Technical Discussions and Negotiations	
June 2000	IDA Approval of FCMCPP	Concession Area stands at 4.6 million ha
July 2000	Development Credit Agreement signed	
August 2000	Draft Forest Concession Management Planning Manual prepared by Fraser Thomas under ADB project	
September 2000 to September 2004	PHRD Grant implemented	
October 2000	Credit Effectiveness	
March 2001	Revised Forest Concession Management Planning Manual issued by FA	
January 2002	Logging and Log Transport suspended by December 2001 <i>Prakas</i> (regulation or Ministerial order)	
June 2002	Government advised that project risked Unsatisfactory rating	
August 2002	Forestry Law	
November 2002	Draft SFMPs and ESAs disclosed	
December 2002	Project rated Unsatisfactory	

Table 2. Chronology of Key Events

Date	Event	Comment
March 2003 – June 2004	Independent Forest Sector Review, preparation through distribution	
April 2003	Government MTR publicly available	
August 2003	<i>Prakas</i> on Forestry Revenue Systems Management	
October 2003	Sub-Decree on Community Forestry	
December 2003	Closing Date Extended	
June 2004	FCMPPP TRT completes reviews of SFMP and ESIA submissions	Approval recommendation withheld on 1.4 million ha of concessions
July 2004 – ongoing	Independent Review (GFA Terra Systems) of SFMPs and ESIA	2 of 6 plans reviewed as of February 2005
March 2005		Concessions of around one million ha remain under review
June 30, 2005	Closing Date of the Credit	

21. **Concession Logging and Suspension.** The Requesters cite harm from previous and possible future improper logging as the basis for their claim. The evolution of logging policy in Cambodia prior to and during the life of the project is central to the claim and to understanding the Bank's performance. Concession logging preceded the project and Bank involvement in Cambodian forestry. Early logging was based on Government approval of plans prepared by concessionaires, usually without adequate investigation and analysis. Logging was authorized on an annual basis according to plans based almost entirely on processing capacity and not on the basis of forest potential. Logging practice by concessionaires was generally poor, as were road construction, worker safety and other aspects.

22. As part of its reform program, the Government enacted the February 2000 Sub-Decree on Forest Concession Management, which defines roles and responsibilities for concession management and supervision and sets out the key principles to guide concession operations. These aimed to provide protection to local communities and the environment, restrict harvests to sustainable levels, facilitate revenue collection and generally increase transparency and accountability. Provisions of the Sub-Decree were initially introduced gradually in line with the Government's limited implementation capacity. After IDA approval of the project, the Asian Development Bank (ADB) and the United Kingdom's Department for International Development (DfID) continued to support technical assistance and advanced proposals for the planning process, in particular developing further a three-level planning process (see Annex 6).² This process included brokering agreement between the Government and industry on an interim 50 percent reduction in harvesting for the 2000-2001 logging season from the levels approved for 1999/2000, and a September 2001 target for preparation of management plans. A November 2001 supervision mission provided suggestions on a draft *Prakas* (a regulation or Ministerial order)

² That work, which was originally intended to prepare a community forestry project, was redesigned midway in implementation when Government informed the ADB that it would not borrow for community forestry, and requested ADB to direct the balance of the project to the development of proposals for concession management and for completion of a review of concession performance.

on the enforcement of the planning and other requirements of the Sub-Decree on Forest Concession Management and the Bank followed immediately with confirmation in a Management Letter. On December 16, 2001, the MAFF issued the *Prakas* suspending logging and log transportation for concessions that were not fully in compliance with the requirements of the Sub-Decree as of January 1, 2002.

23. Since the introduction of the *Prakas*, no forestry concession logging has been authorized by the Government and no reports of illegal logging by concessionaires have been substantiated by the Government or the Independent Monitor, except for the GAT concession, which was terminated by the Government for illegal logging in May 2002. Concessionaire compliance has been assessed by Bank supervision missions that have visited idle concession wood processing factories and concession areas. Forest crime is independently monitored by SGS.

24. **Log Transport Restrictions.** The Requesters assert harm deriving from the Government's policy towards transport of logs, including logs felled prior to the imposition of the *Prakas*. Log transport policy has also evolved during the life of the project. In January 2002, when the *Prakas* went into effect, the Government estimated that 94,265 cubic meters of felled logs remained in thirteen different concession areas. In March 2002, log movements were sanctioned by the Government in contravention of the *Prakas*. In response to concerns expressed by the Bank and others, log transport permits were rescinded and the ban on log transport was reinstated within days, with large volumes remaining in the forest. Bank missions, the Independent Monitor, and others visited concession areas to inspect the stockpiles, some of which are deteriorating, subject to arson, and could possibly be used to conceal additions of new illegal fellings. In April 2004, estimates of log volumes proposed for transportation provided by the Independent Monitor were significantly less than in January 2002 but the basis for the reporting was different. The discrepancy was discovered in the course of preparing this Response and the Bank is seeking clarification from the Independent Monitor.

25. The Government repeatedly expressed concern over uncollected royalties, and concessionaires approached the Bank regarding interruptions in the supply of raw material supplies, idle factories and unemployed mill workers. Discussions in September 2002 in the field with Global Witness and NGO Forum staff led to agreement on the possibility of safe and legitimate transport of logs. Shortly thereafter, the Bank wrote to the FA outlining a set of principles that could be applied to managing the controlled transport of logs. These included transparency, preservation of evidentiary value, collection of royalties and worker and road safety. In 2003, the FCMCPP forest concession control adviser, whose TOR covered issues related to log transport, undertook preparation of guidelines for log transport management. This followed interest expressed by the Colexim Concession, regarding transport of salvage logs remaining from site preparation for the Tumring Rubber Plantation. However, concern was raised by several NGOs over the origins of these logs and harm alleged in the course of this operation. Despite the fact that the Bank did not finance this land development, in order to be responsive, the Bank sent a staff social specialist to Cambodia. As a result, the social specialist proposed TOR for a retroactive plan to mitigate damage done by the Tumring operation, but the Government subse-

quently disputed any deficiencies in the management of social impacts from Tumring and the log movement issue was shelved.

26. The issue of log transport was raised again in April 2004 when the TWG was approached by the FA with a proposal to move confiscated and legally harvested logs from nine concessions including Colexim. The letter was issued in the last week of April and proposed that log movements begin in early May. The Bank responded to the Government through the TWG and reiterated the principles first set out in September 2002. Log movements were resumed in January 2005 following a Government-donor discussion of limited log movements at the December 2004 CG meeting.

27. **Timber Royalty Offsets.** The Request also cites weaknesses in the Cambodian forest revenue management system and suggests shortfalls in the Bank's response to problems. For most of the project's life, logging has been suspended and there have been no new royalty revenues due from logging in concessions during that period. In May 2002, during consultations with the International Monetary Fund (IMF), questions were raised over apparently off-budget transactions involving forest concession royalties collected in 2001. A Government audit later found these to have involved improper "offsetting" transactions. As this issue was associated with the Government's request for an extension of the closing date of the SAC and development of an Action Plan to satisfy the remaining conditions, the Bank asked for and received clarifications. The Bank also provided assistance under the FCMCPP for the development of strengthened financial procedures. The Bank supervised the work of an interministerial team that developed a *Prakas* on forest revenue systems adopted by the Ministers of the Ministry of Economy and Finance (MEF) and MAFF in August 2003. Work continues with the Government on forest revenue systems, including participation of MEF and MAFF officials in the World Bank Institute/PROFOR (World Bank, February 2004) policy seminars and training.

28. **Tensions among Stakeholders.** Because forestry reform was painfully slow, the Bank, other donors working on the sector, and NGOs were frequently frustrated with the lack of progress on the part of the forestry administration. Members of the NRMWG and the NGOs often disagreed among themselves and with each other over the differing approaches to forestry reform. Tensions among project stakeholders, in particular the Bank, NGOs and concessionaires, emerged over a variety of issues. For example, Global Witness, the Independent Monitor supported by the parallel FAO/UNDP project on forest crime monitoring and reporting, disclosed its report on the Government's law enforcement work without the agreed prior consultation with the Government in January 2001 (for which Global Witness subsequently issued an apology). The FAO project lacked the funds needed to support FA work and there were numerous disputes about contracts, reporting, access to information and Government endorsements. The Bank expressed its concerns on these issues to the Government as well as to UNDP, FAO and other partners. In December 2001, a Bank supervision mission noted that the problems FAO encountered in delivering assistance were a major obstacle to moving forward with the FAO project, the FCMCPP and reform. An FAO review mission in early 2002 reinforced these observations and provisions were made for additional technical assistance up to the decision to close the FAO project in December 2003. NGOs also expressed concerns about the substance and process of the Government's development of what was ultimately the

2002 Forestry Law and the Community Forestry Sub-Decree. The Bank intervened with the Government on numerous occasions to expand opportunities for NGO comment and input. Throughout this time, the Bank maintained an ongoing dialogue with Global Witness about both forest crime monitoring and views on forestry in Cambodia.

29. The tensions disrupted and delayed the expected development of sector reforms and law enforcement systems, contributed to the breakdown of collaboration between FA and Global Witness, and deepened the mistrust and lack of confidence of many NGOs and others in the Government's commitment to reform. In April 2002, the local director of the Global Witness program was physically attacked and beaten. The Bank and other donors expressed concern about the attack and the Council of Ministers issued a statement on May 10, 2002 condemning the assault. In December 2002, an incident occurred in front of the FA when forest-affected communities petitioned FA officials for a meeting on the recently disclosed management plans. The group was dispersed by police with reports of use of physical force. Bank management conveyed its serious disapproval and received a detailed report from the Minister of MAFF, which in addition addressed allegations against the FCMCPP Director (see Annex 1, Item 10). In the aftermath of the December incident and related allegations of human rights abuses leveled by Global Witness, the Government announced that it would no longer recognize Global Witness as an Independent Monitor and requested donor assistance in making alternative arrangements. In March 2003, consultant selection began under the project and a commercial enterprise (SGS) was awarded a contract as Independent Monitor in November 2003. Despite these tensions, several NGOs have continued to work and collaborate closely with the FA (for example, WCS, CI, WildAid and Concern International).

30. **Forest Cover Survey.** To respond to concerns that had been raised by NGOs and others about the possibility that changes in forest area and condition might have significantly undermined the management potential of large areas of forest, the Bank in 2002 urged the Government to undertake an update of forest cover data as a contribution to the MTR. The FA proposed assigning this work to its Remote Sensing Unit with international technical assistance provided by the PHRD Grant. The Bank arranged for external reviews of the TOR and proposed methodology and provided its non-objection. During the course of this work, the consultant presented the study methodology to a meeting attended by NGOs and researchers at the Bank Cambodia Office and was available to NGOs for individual consultations. The study provided detailed maps of forest cover, forest cover changes and tabular estimates of changes by major forest type for each concession and each park and protected area in Cambodia. These were based on satellite imagery backed by ground truthing and the study (DFW, 2003e) has now become a standard reference for forest cover in Cambodia (see Annex 1, Item 30). Reference to the Forest Cover Survey was made in the course of political events and speeches during the 2003 national parliamentary election campaign, and complaints were registered with the Bank that candidates for office had inappropriately utilized the study findings.

31. **IFSR.** The TWG initiated a multi-donor sponsored Independent Forest Sector Review (IFSR) in March 2003. The purpose of the IFSR was to provide a fresh look at the entire forestry sector, and was to have evaluated the FCMCPP and reviewed the draft SFMPs and ESIAAs (the work on the SFMPs and ESIAAs was not completed by the IFSR

team and was subsequently contracted with GFA Terra Systems in June-July 2004). The Bank's contribution to the IFSR included participation in planning and discussions with the Government, and fees for the team leader from the Bank budget, but the IFSR was managed independently of the Bank by the TWG. The IFSR team delivered its report in April 2004 and it has since been published on the Internet (<http://www.cambodia-forest-sector.net/>). This 800-page report made a large number of recommendations, including some with a direct bearing on the FCMCPP. One of the IFSR recommendations was to close the forest concession system and to move toward a system of local government control over forest resources decision making, referred to as "Partnership Forestry" by the IFSR authors.

32. A compendium of public comments on the IFSR was distributed to stakeholders by FAO in August 2004. The Bank issued its public comments on the IFSR report in October 2004 and these were also distributed by FAO. The Bank's comments on the IFSR noted that it provided a potential basis for a constructive dialogue on forestry in Cambodia. Unresolved aspects of the IFSR recommendations, including inconsistencies in proposals for the concession system and the lack of consideration for legal and contractual risks, were outlined in the Bank's comments. The Bank provided observations on the "Partnership Forestry" concept of the IFSR and noted issues in need of further policy analysis and development, including allocation of land to protected areas and other uses, community forestry policy, other mechanisms for public timber sales, forest law enforcement and administrative arrangements for the sector.

33. **SFMP/ESIA Submission and Disclosure.** At the core of the project has been Government's establishment of a system to review and manage concessionaire proposals, the first in a sequence of which would be the SFMPs/ESIAs. Various parts of the Request deal with qualitative aspects of those plans and the process by which they are reviewed and disclosed. Under Cambodian regulations, concessionaires are required to prepare and submit SFMPs and ESIAs for review, consideration and approval by FA, MAFF and MOE. A target date of September 2001 for submission by the concessionaires was not met; the Government extended the deadline to September 2002, and allowed logging to continue in the fall of 2001. The Bank considered the extension of the date for plan submission reasonable, in view of delays in the selection of technical assistance under the project, but conveyed its written concerns to the Government regarding the continued logging (see also Annex 1, footnote 2). A Bank mission in November–December 2001 reached agreement with the Government on the *Prakas* suspending logging that was subsequently issued in December 2001.

34. Following some resistance by the Government (see Annex 1, Item 22), the draft SFMPs and ESIAs of the concession management plans prepared by the concessionaires were made public in November 2002 with provision for a limited 19-day period of public comment. The Bank made its Public Information Center in Phnom Penh available as a supplementary site for the disclosure of the SFMPs and the ESIAs both for convenience and because it was considered less intimidating than the FA building. The Bank monitored distribution of copies to Provincial and Commune Offices in the concerned concessions and found that the FA had distributed Khmer versions of the plans and a letter of explanation specifically allowing unlimited disclosure in each affected commune. The

manner of the FA presentation of its disclosure plans, the short period set for public comment and brief delays in the availability of copies at the Public Information Center (PIC, see Annex 1, Item 22), aggravated tensions between NGOs and the FA (see paras. 28-29 above). Together with the announcement regarding the public comment period, the FA also announced that it was dropping requirements for preparation of medium-term, compartment-level plans that were to be the next level in the planning sequence. Following several exchanges between the Bank and the Government as well as interventions by NGOs, the period of comment was eventually extended to January 31, 2003, and the compartment-level plan requirement reinstated.

35. In 2003, the FCMCPP concluded its first technical reviews of the concessionaires' SFMPs and ESIA and solicited comments from the TWG. The first two reviews recommended rejection of the two respective concessionaire proposals, and the methodology and conclusions were endorsed by the TWG. Although the TWG originally undertook to review all SFMP and ESIA submissions, this did not materialize. The TWG then included reviews of SFMPs and ESIA in the TOR of the IFSR in 2003-2004 but these reviews also did not occur. By mid-year 2004, the FA TRT had completed its reviews of all SFMP and ESIA submissions.

36. The Bank, in association with TWG, contracted GFA Terra as an independent consultant to consider the TRT reviews of the six concession plans that were recommended to advance to the compartment planning level. GFA provided detailed reviews on two concessions and suggested significant additional work in both cases. Further independent reviews are proposed for the other four concessions; negotiations with consultants and the TWG are pending. The Bank has not commented independently on the six concession plans or the TRT reviews and the Government has withheld action pending TWG and Bank comments. No concession operations have been approved, and concessionaires have expressed uncertainty about proceeding with further planning or consultations.

IV. SPECIAL ISSUES AND LESSONS LEARNED

OVERVIEW

37. In response to the Request, the Bank has meticulously analyzed the claims and reviewed its work on the project. The basic premise of the Request is that the project concept was flawed because of the emphasis on concessions. Management maintains that the choice of working for gradual reform of the system was the most appropriate at the time. Its strategy was widely shared by knowledgeable observers and forest policy specialists, and was publicly discussed at the time of approval. It grew logically from the work of other agencies and was built on dialogue with the Government.

38. The Requesters call into question the Bank's compliance with eight of its policies and procedures—OP 4.01, OP 4.04, OD 4.20, OP 4.36, BP 8.40, OPN 11.03, OD/OP 13.05 and BP 17.50. Management believes that the detailed analysis undertaken in Annex 1 demonstrates that the Bank is in compliance with all of the policies and procedures

noted above, with the exception of some processing and documentation provisions of OP 4.01 and OD 4.20.

39. Under OP 4.01, the project was rated “B” and emphasis was placed on improved planning processes and assessments because: (i) the concession system was already fully defined and would only be reduced in area by the proposed project and ongoing policy work (under the SAC); (ii) social and environmental risks and mitigation needs were anticipated within the background studies (which were publicly available); and (iii) the project would not involve physical works. However, no Environmental Assessment (EA) was undertaken prior to appraisal (see Annex 1, Items 5-6). Neither was an Indigenous Peoples Development Plan (IPDP) prepared (see Annex 1, Items 12-13), in accordance with OD 4.20. To have complied fully with the policies, the Bank should have requested more explicit documentation from the Government and provided more extensive explanation in the PAD. Local-level consultations on the proposed project concept should have been held at selected concession locations.

40. Management considers that the lack of full compliance with certain of its policies has not had a material effect on the project nor has it led to harm or potential future harm to people living in project affected areas.

41. The Requesters further suggest that the Bank:

- *Acknowledge the damage that FCMCPP stands to cause to forest communities in Cambodia.* In response, Management notes that the Bank has helped to establish within Government the capacity to put in place regulations and procedures to prevent damage to the interests of forest-dependent communities;
- *Publicly refute the project’s “endorsement” of six logging companies.* The Bank is well aware of the deficiencies in the plans of the six logging concessions and has refrained from “endorsing” them or “recommending [their] approval.” Endorsement and recommendation are the sole purview of the FA and not of the Bank;
- *Write off the debt that Cambodian citizens have incurred through the LIL.* The Government is obliged to repay the IDA concessional Credit under the Development Credit Agreement. In addition, debt write off is not undertaken for individual projects or project specific reasons but because of country economic circumstances; and
- *Undertake a wide-ranging review of World Bank interventions concerning forestry and other extractive industries, as well as include timber in the Extractive Industries Transparency Initiative.* Because an Inspection Panel case is project-specific, such policy-level issues are not addressed in a Management Response.

SPECIAL ISSUES

42. The following paragraphs discuss some of the special issues encountered in dealing with the challenging and difficult governance setting of a post-conflict country such as Cambodia. The Bank recognized from the outset that there would be no easy solutions to the problems in the forest sector. It would be inaccurate and unfair to attribute to the Bank the problems that persisted or ensued in the sector. Management believes that the Bank adopted a responsible approach, consistent with its evolving forest policies and strategies. Admittedly, the Bank faced a very complex environment and may have fallen short in recognizing or gauging some of these multiple challenges, especially in the context of a small LIL. This situation cannot, however, be interpreted as indifference to the goal of promoting the sustainable development of forests. In fact, Management believes that the Bank's intervention likely led to significantly better overall outcomes in the Cambodian forest sector than if the Bank had been absent.

Bank Approach to Forestry Issues

43. Management wishes to highlight the responsible approach that the Bank adopted, consistent with the 1993 Forestry Policy, which was applicable to the project; the 1991 Forest Sector Policy Paper; and the insights that the project derived from the evolving new Forest Strategy during 1999-2000. The Forest Sector Policy Paper (1991) recognized the role of forestry in poverty reduction. This paper, which constituted what today's Bank terminology calls a forest strategy (OED, 2000), emphasized preservation of intact forest areas and included a Bank commitment not to finance commercial logging in primary moist tropical forests. The broad goals of the 1991 strategy were to prevent or significantly reduce deforestation and to stimulate plantations and creation of additional forest resources. OP 4.36 on Forestry reflected the policy content of the 1991 paper.

44. During 1999-2000, while the FCMCCP was being prepared, OED undertook a review of the 1991 strategy and the 1993 policy. OED found that implementation had fallen short of its objectives and resulted in a "chilling effect" on Bank support for forestry sector activities and that lending for self-standing forestry sector operations that traditionally dealt with key forest policy and management sector issues had stagnated. Among many recommendations, OED advised that the Bank should "address the risky and controversial issues of the forest sector." In particular, OED stated that "Illegal logging needs to be reduced by actively promoting improved governance and enforcement of laws and regulations... helping Bank borrowers improve, implement, and enforce existing laws and regulations." To do so "will also require that national stakeholders (especially civil society and the private sector) demand, implement, and monitor improved governance practices." It was in this context that the Bank appraised and approved the FCMCCP.

45. Subsequent to the OED review, the Bank conducted a two-year process of analysis and consultation resulting in a revised Forest Strategy. This Strategy mandates active Bank engagement in the sector to promote three equally important and interdependent objectives—harnessing the potential of forests to reduce poverty; integrating forests in sustainable economic development; and protecting the vital local and global environ-

mental services and values provided by forests. The Strategy identified, as a priority, the need to address illegal logging and corruption and reform forest concession policies. Concerning concessions, the Strategy committed the Bank to promote use of regulatory frameworks for timber concessions to enhance the contribution of forests to economic and social development as well as environmental protection. The strategy also committed the Bank to encourage governments to engage independent third-party certification bodies in performance-based monitoring of forest harvesting and management operations.

46. Although the FCMCPP was prepared under the 1993 OP on Forestry, it benefited from the insights of the OED review and the paradigm shift that emerged in the new Forest Strategy. The project reflects the emphasis on governance and forestry reform in the new Strategy.

Weaknesses in Cambodian Governance Institutions

47. In Cambodia, similar to other poor, post-conflict countries, natural resources have been distributed to appease warring factions, “purchase” political support, and finance a patronage-based political party system. As a result, the cessation of civil war, while undoubtedly the most important priority of Cambodian citizens, has not provided the livelihood security needed by the rural poor. Rather, corruption and the non-transparent allocation of natural resource exploitation rights have exacerbated their problems and their access to the natural resources upon which they depend for a significant proportion of their consumption and income—land, forests and fish in particular—has been diminishing. Competition for access to resources has continued to grow, intensified by a current population growth rate of 2.5 percent per year, and a dearth of alternative employment opportunities for the rural poor, or investment options for the wealthy, due to an adverse business environment affected both by bribery payments and excessive regulation.

48. Cambodia’s tragic, recent history and the complexity of governance issues have required special vigilance, responsibility and continuous learning on the part of the Bank and other donors regarding issues of corruption and reform. Given the combination of tremendous need to provide basic services to Cambodia’s poor and the acknowledgement that rebuilding Cambodia’s institutions would take time, donors have historically recognized Cambodia’s governance shortcomings while tolerating limited progress in addressing these issues. Hence, strongly critical assessments of Cambodia’s governance performance have, until recently, generally not been accompanied by sanctions in the form of reduced aid flows, leading to general questioning of donor commitment to governance reforms by civil society groups. More recently, multilateral donors, including IDA, have reduced their funding based largely on governance assessments, although this has been compensated for by increased funding from bilateral agencies.

49. The 2000 to 2003 CAS stated that “Cambodia’s institutions of governance are still weak. This issue overshadows almost all of Cambodia’s development problems.” The CAS set out to build “the foundations for sustainable development and poverty reduction” as the Bank’s main objective in Cambodia (p. v). The Bank’s program focused on institutional strengthening through support for anti-corruption studies, public sector reform, legal and judicial reform, and improved land management and administration, to be

supported through analytical work, capacity building assistance, investment and adjustment lending. The CAS program included three LILs, including the FCMCPP. While the foundations of the last CAS—governance, service delivery and investment climate—were appropriate and remain so today, good delivery of the program did not lead to the broader change in outcomes that was anticipated at the outset. During the CAS period, a number of output targets were achieved through this approach, but the failure to address cross-cutting issues such as expenditure management and public administration reform in a more comprehensive manner resulted in “islands” of improvement with very limited impact on the Government’s general approach to service delivery.

50. Not surprisingly, IDA’s projects faced particular problems in sectors such as forestry, in which the incentives for resisting reform were pronounced. Based in part on the experience gained with forestry reform, the forthcoming 2005 to 2008 CAS will focus on a limited number of critical governance reforms³ stemming from consensus amongst all stakeholders on required reform actions that are both critical and feasible in a limited time period. As a result, Bank support will include relatively more analytical work in the context of technical working groups to develop and maintain agreed sectoral reform programs, supported by sectoral programs and proposed Poverty Reduction Support Credits (PRSC).

Forestry Management Instruments

51. Over the last ten years, the Bank has put considerable effort into its work on forestry, which has brought into better focus the diverse values of forests, the need for robust systems of governance, and the participation of communities and the private sector as critical ingredients for environmentally sustainable and equitable resource development. Cambodia has been a particularly challenging environment in which to advance such reforms. The perception in the Request that the Bank is indifferent, or even hostile, to development of forests for uses other than commercial timber is contradicted by the Bank’s actions and statements. The Bank has made efforts to work with the Government to ensure a suspension of logging, promote disclosure and transparency, and formalize a regulatory process to anticipate and mitigate risks of future harm.

52. The Bank has employed a three-pronged strategy in Cambodian forestry issues to: (i) assist the Government in reducing the concession system; (ii) assist in strengthening the regulatory system for the remaining concession system; and (iii) contribute directly to the development of alternative forest management arrangements.

53. ***Reducing the Concession System.*** At its peak, the concession system covered 6.4 million hectares and consisted of large, primarily internationally owned and operated holdings linked with capital intensive wood processing investments. The international donor community urged the Government to address serious deficiencies in the system and pursue reforms. The Bank, together with ADB, encouraged the Government to pursue a

³ The CAS will focus on the private investment climate, public financial management, decentralization and management of land and forest resources.

case-by-case restructuring of concessions to achieve a higher level of sustainability (see Annex 1, Item 3). As shown on Map 1, a dramatic reshaping of the claims on forest resources in Cambodia has resulted, with the area covered by concessions recommended by the TRT to go forward now totaling just over one million hectares. No other country has ever, in percentage terms, so radically reduced the claims of the commercial private sector over forest lands in so short a time as has Cambodia over the last ten years. While many concession areas that were cancelled, abandoned or not allowed to go forward were of limited commercial value, others had both commercial and other forest values, making the reductions important achievements and genuine contributions to public welfare. Much of this reduction in concession area is clearly attributable to the FCMCPP.

54. ***Strengthening the Concession Regulatory System.*** While concession systems alleviate some forest management burdens on the public sector, because resource ownership is unchanged, the ultimate concern and responsibility for sustainable management remains with the public sector. The FCMCPP was designed to help Cambodia move towards establishing a credible regulatory framework. A three level planning framework (strategic, compartment, annual) helped to provide the tactical focus for the FCMCPP. While the full range of skills needed by the FA could not be developed under a single project, strategic level planning requirements, for which the requisite skills were largely in place in the FA, allowed for an assessment of the physical feasibility of long-term operations, and led to a large number of concessions being recommended for closure.

55. While much remains to be done, the project has raised the quality of the concession regulatory process to a new level. The inventory claims of concessionaires have for the first time been subjected to field verification by the FA. The FA has had a cadre of staff trained and oriented to the role and function of an independent regulatory agency. The FA has the basic physical infrastructure, mobility and communications needed to implement its mandated responsibilities. There are, and have been genuine doubts—which the Bank has shared with the Government and expressed openly—about the potential for conflicts of interest, and the breadth and depth of commitment to the use of the FA’s regulatory potential.

56. The Bank’s supervision of the FCMCPP was informed and balanced in the face of these uncertainties. The Bank responded promptly and effectively to the improper resumption of logging in late 2001 and to log transport in 2002. The Bank made its office available to help ensure the distribution of draft SFMPs and ESIA’s and has repeatedly taken responsibility for shortcomings in that process. The Bank joined with other donors in securing from the Government a reinstatement of the compartment planning requirement. These efforts, however, do not remove uncertainty about the intentions of some authorities in the Government, or the risks that special interests will seek to, and possibly succeed, in evading the rules, regulations and safeguards that have been put in place.

57. Given the complexity of many issues in the project, prioritizations were required. Therefore, efforts to assess the social aspects of concessions were deferred until the potential concession area was reduced. At the time, other critical actions such as forest inventory, mapping, and yield calculations were considered to be more immediate priori-

ties. The suspension of logging on January 1, 2002 provided a level of confidence that harm resulting from uncontrolled logging would not occur.

58. Another critical development was the disclosure of draft SFMPs and ESIA's prepared by the concessionaires in November 2002. It is unfortunate that the opportunity for public comment and debate, a genuine landmark and potentially a watershed in Cambodian forestry, has not been fully realized. Nevertheless, the public scrutiny that disclosure and transparency generated has contributed to the continued Government adherence to the suspension of logging and pursuit of the planning process.

59. ***Alternative Forest Management Systems.*** Prior to the project, the most significant alternative utilization of forest resources was deforestation and conversion. Conversion occurs through land development schemes and through spontaneous settlement by individuals, often landless and poor. Land development projects, unlike concession logging, are designed to completely remove the natural forest and leave no residual sources of non-timber forest products. At the time of project preparation and approval, as indicated above, very limited work had been done on alternative systems for potential development, such as community forestry and protected areas systems. FAO's Community-Based Management of Natural Resources Project has been the largest effort related to community forestry, and as of 2004 covered around 100,000 hectares. Others, such as the German GTZ, and NGOs, such as Concern International, have pursued pilot work on community forestry. The 2004 International Tropical Timber Organization (ITTO) diagnostic mission (see Annex 1, Item 37) found that "community forest management will not be possible at the scale required to deal with extensive forest rich landscapes - although it should be developed in appropriate locations within these landscapes." In addition, the Bank has financed, through a Credit and GEF Grant totaling about USD 4.7 million, the Biodiversity and Protected Areas Management Project (Credit No. 3320-KH/TF023524-KH). This is the largest biodiversity project in Cambodia both in scale and funding.

60. In the areas released from concessions, the Government has taken preliminary steps to institute new management arrangements. The Government has requested additional technical assistance to prepare management plans for post-concession forest areas and has designated approximately one million hectares of post-concession areas as protected forest—the Central Cardamom (401,313 hectares), Mondulkiri (429,438 hectares), and Preah Vihear (190,027 hectares) Protected Forests. The Government is being assisted in the management, protection and development of these areas by international donors and NGOs, most prominently by WCS in Mondulkiri and CI in the Central Cardamom. The FCMCPP itself was modified in 2003 to address post-concession management issues and has financed the FA's collaboration with WCS in Mondulkiri. The Task Team is also seeking grant resources to develop a participatory forest monitoring system and to pilot community forestry approaches following project closure.

61. The forest system research and modeling work funded by FCMCPP (FA, 2004d) provides the Government with new data on permanent sample plots, forest growth and log volume tables and other information that is essential to sustainable forest management through any institutional arrangement. The Forest Cover Survey (DFW, 2003e) is a similarly valuable contribution that is applicable to a range of management arrangements.

The inventory information that is now available for cancelled as well as potentially ongoing concessions, and particularly the data from the FA validation studies by the TRT, are new contributions to the knowledge about Cambodia's forests that transcend their concession system application per se.

62. The introduction of the concept of "social responsibility" into public policy toward commercial development of natural resources, the demonstration of a formal process for the review of concession plans, and the solicitation of public comment on commercial activity on public lands, are models that could be extended to other state lands based on lessons learned from the implementation of the FCMCPP.

63. The project's approach to forest management systems has contributed to a number of important improvements—formal adoption of guidelines and codes of practice for forest management; regular public reporting on forest crime; effective control of anarchic logging in concession areas; and a sharp reduction in the area under forest concessions. Unfortunately, the process of reform in the forestry sector has moved much more slowly than originally anticipated, raising doubts about the Government's commitment to the reform process and the sustainability of sectoral impacts. Delays in the preparation, processing and review of forest management plans have left unanswered questions about concessionaires' potential performance under the new legal and regulatory regime even as the project nears its revised Closing Date (June 30, 2005).

LESSONS LEARNED

64. The Bank recognized from the outset that there would be no easy solutions and that many of the problems (corruption, lack of transparency) were systemic and could not be addressed through a sectoral operation alone. To tackle the broader context, the Bank adopted and applied a range of tools and approaches—SAC conditionality, joint preparation with other donors of a "Governance" CAS, analytic work, partnership with NGOs, public disclosure of information, and targeted work on land administration and tenure security. Within the forestry sector, and again in consultation with other donors, the Bank chose to address a focused and prioritized set of issues—concession management, forest crime, legal systems development, biodiversity conservation, and community forestry. A number of lessons emerge from this:

- Because it does not intervene or take sides on existing investment contracts between its member countries and the private sector, the Bank was limited to promoting gradual reform and to working largely within the existing system. *In retrospect, this constrained the Bank's options in the sector.*
- This project marked a first attempt to introduce the concept of social responsibility into the management of public resources in Cambodia. Project contributions to the legal framework, management guidelines, regulatory capacity, and disclosure of information were all essential elements in moving toward "socially responsible" forest management. Unfortunately, these elements in combination were not sufficient to address the underlying distrust associated with the concession system. One important lesson must be that in the absence of clear resolve on the part

of Government regulators, *the Bank might have played a more proactive role in encouraging greater involvement of local communities at an earlier stage in the process to clarify both opportunities and challenges inherent in the implementation of the Government's proposed system. In retrospect, many crucial issues might have been more effectively addressed at an earlier stage—overlapping claims on timber/resin trees, lack of effective concessionaire controls over sub-contractors, restriction of access to livelihood resources—lowering tensions and apprehensions on all side and speeding the process of reform.*

- Project implementation was slow and suggested a weak Government commitment to concession system reform. The Government's response to issues, including illegal activity by some concessionaires, was at times weak and at other times more positive and encouraging. The Bank repeatedly raised concerns with the Government about its performance and level of effort. Indifferent and, at times, technically poor work by concessionaires was commonly viewed as part of doing business in Cambodia. *In retrospect, the Bank could have more aggressively questioned the Government's commitment. It also could have been more outspoken regarding its concerns about the quality of submissions and a flawed disclosure process.*
- The quality and impact of consultations undertaken by concessionaires in the course of their plan preparation was to have been one of the dimensions by which plans were assessed. The responsibility of the Government and the concessionaires for consultation related to concession developments needed to be more rigorously examined and developed. The Government's understanding of consultation and informed consent needed strengthening; thus the PHRD Grant program was put in place to provide technical assistance in social aspects of plan evaluation. Government pursuit of this work was slow, but is now proceeding using Bank internal budget and under Bank supervision. *In retrospect, conditionalities in the legal agreement concerning social issues might have been appropriate.*

V. NEXT STEPS

65. Management has reviewed the progress of the project, its accomplishments and lessons learned. In light of the limited time remaining prior to project completion, Management proposes a dual track approach, one for actions to be taken before project closure, and the second, suggested options over the longer term, once the project has closed.

66. ***Proposed Actions during the Remaining Project Period.*** The Bank will focus on:

- Supervising ongoing work to refine and field-test community consultation procedures, in order to better address, inter alia, Indigenous Peoples issues;
- Monitoring Borrower-implemented mitigation actions identified through consultation;

- Working in partnership with the TWG to initiate the process of facilitated consensus building called for by the IFSR;
- Making resources available and seeking donor support to complete the review of the remaining SFMPs and ESIAAs;
- Urging the Government to formalize forest management planning procedures for post-concession and non-concession areas; and
- Seeking the Government's final determination on concessions recommended for closure by the TRT.

67. **Options beyond the Project Period.** Management is considering options available to the Bank to continue work in the forestry sector within the broader context of natural resources management. Options include:

- Mobilization of grant support to pilot alternative forest management regimes (led by communities and/or local government) and to facilitate a transition from an international monitor to a participatory system of forest crime monitoring;
- Application of lessons learned in the forestry sector to the broader dialogue on land/economic concession reforms;
- Continued dialogue on forestry sector reform and natural resources management in operations that follow from the governance CAS now under preparation; and
- Exploration of partnerships with other stakeholders including the TWG.

68. **Options beyond Cambodia.** In the ongoing development of a forestry strategy for the Bank in East Asia, the Bank is examining opportunities outside its usual lending and country analytic instruments on issues of forest law enforcement and governance. It is developing initiatives to address illegal logging and forest-based corruption through Anti-Money-Laundering efforts, developing technical guidance on timber theft prevention, planning consultations on anti-corruption work focusing on forestry, and supporting follow-up to the Bali Declaration on Forest Law Enforcement and Governance.

69. **Risks and Mitigation.** The Bank recognizes the risks posed by the Cambodian forest concession management system and has consistently tried to mitigate the risks concessions pose to local communities and the environment throughout its work. This is why the Bank has promoted development of a formal system for concession planning that includes predictable opportunities for transparency and public input. The project has not been completely successful in achieving these objectives. There is still a long way to go in developing greater predictability, confidence and technical quality in the forest concession system. Nevertheless, the Bank ensured that draft SFMPs were made available through its Cambodia office, has endeavored to bring social forestry expertise into the management of the concession system, and commissioned independent consultants to review the assessments of concession plans prepared under the project. The Bank also has

contributed to bringing about a reduction in the area exposed to concession operations from 6.4 million hectares to just over one million currently recommended by the TRT to go forward. In summary, the Bank sought to help the Government in instituting meaningful and effective controls on the planning and operations of the remaining concessions.

70. If improperly planned and uncontrolled concession operations are allowed to resume, communities will indeed be at risk of future harm. The Bank expects the Government to abide by its commitments to continue to require concessionaires to complete all the planning and consultation requirements of Cambodian law. Any operations that are allowed to proceed should be supervised by the Government working with local communities and other stakeholders to provide increased transparency to hold concessionaires accountable for implementing their commitments to sustainable and socially responsible forestry practices.

71. Going forward, and based upon the lessons learned from the project, the Bank will continue its dialogue with the Government and explore options regarding natural resources management issues, including forestry.

VI. MANAGEMENT'S RESPONSE

72. The Requesters' claims, accompanied by Management's detailed responses, are provided in Annex 1.

73. Management believes that the Bank has made every effort to apply its policies and procedures and to pursue concretely its mission statement in the context of the project. Management recognizes that the Bank was not in full compliance with processing and documentation provisions of OP 4.01 and OD 4.20 during project preparation. The Bank did anticipate the social and environmental issues associated with the project, incorporated processes to address these issues into the project and supervised the project appropriately. Any harm that may have come to the Requesters was, in the opinion of Management, not in anyway attributable to the Bank project. Management believes 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.

ANNEX 1
CLAIMS AND RESPONSES

No.	Claim/Issue	Page No. ¹	Response
Project Concept			
1.	<p>Project Basis. The Forest Concession Management and Control Pilot Project's endorsement of the concession system stems from the point of departure set out in its project objective. World Bank staff took the view that the existing concession system was the most appropriate management regime for Cambodia's forests and the project was designed to demonstrate that it could be reformed.</p> <ul style="list-style-type: none"> • From the outset the FCMCPP's success or failure has thus hinged closely on the fate of forest concession system; giving the Bank an unhealthily strong stake in its preservation. • A more serious flaw is the way that the Bank effectively linked successful project outcomes to the continued tenure of the incumbent concessionaires.... If the Bank wanted to demonstrate a functioning concession system and thereby realise its vision and project objectives, it needed to ensure the continued tenure of the incumbent concessionaires. • Following the logic of its pro-concession agenda, the Bank perceived the development of alternative management regimes as a threat. This sentiment is expressed in an internal memo from the FCMCPP task manager to the Cambodia country director about proposals to turn some of the concessions into protected areas for conservation: "This area is currently under concession and the financial package offered to the Government (by conservation organisations) could result in difficulties coordinating activities and projects, <i>not to mention maintaining the coherence of the concession system reform program.</i>" (emphasis added)....Indeed, the prevailing bias towards the concession system was highlighted in a World Bank internal 'Quality Enhancement Review' of the FCMCPP in 2003, which acknowledged that "The Bank has not been fully prepared to discuss alternatives 	7-10	<p>The Bank's objective in Cambodia, as reflected in the February 2000 CAS, was to help build the foundations for sustainable development and poverty reduction, in particular strengthening good governance through a more efficient and accountable public administration. The LIL for the FCMCPP was conceived in this context, along with two other LILs, the Northeast Village Development Project; and the Biodiversity and Protected Areas Management Project. The LIL did not seek to promote the existing concession system. Rather, it sought to assist the Government to make the regulation of the forestry sector more effective and equitable.</p> <p>The Government established the forest concession system with arrangements dating as early as 1994 and some before. This system, adopted without consultation with the Bank, carried with it a regulatory burden that the Government was ill-equipped to carry. As the international community's engagement in the forestry sector grew, and as debate developed within Cambodia, the need for a transparent and accountable system to control and manage the concession system became apparent. Recognition of the responsibilities to regulate the system was developing through studies supported under the Bank's TA Project and ADB-financed work (see Item 2). The Bank, after considering that other donors were not taking on the challenge posed by the concession system, decided to assist the Government in reforming the system. As discussed in the FCMCPP PAD (E. Summary Project Analysis, 4.a.; Sustainability and Risks), conflicts of interest, capacity constraints, and the public sector's lack of familiarity with a fair and well-governed system were among the obstacles that the Bank expected. Nevertheless, at the time of project preparation and approval, the Bank, other donors and NGOs (such as, WWF, TFT, WCS, FAO, UNDP and ADB) were optimistic about working constructively with concessionaires, as indicated in various correspondence and reports.</p> <p>The FCMCPP had learning and innovation goals (PAD, p. 4) that aimed to generate better understanding of the following issues, which go beyond the concession system per se: (i) how increased revenue flows, professionalism in the FA and local benefits from socially responsible operations would help overcome resistance to reforms; (ii) how industry commitments to sustainable forestry could be made durable and meaningful in the face of higher costs and an increased regulatory burden; and (iii) how an effective regulatory mission could be adopted by the FA in the face of corruption, low public sector wages and difficult working conditions. The project also addressed illegal logging and capacity building concerns.</p> <p>Under the project, no funds are provided to forest concessionaires. Funds from the IDA credit are directed to the FA with the aim of reforming the regulatory system. Project funding seeks to build capacities within the Government. By the time of the</p>

¹ Page numbers are from the Global Witness 2005 report, "World Bank Forest Concession Management and Control Project in Cambodia," prepared for the NGO Forum on Cambodia and submitted as a supporting document to the Request for Inspection.

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	<p>outside the concession model.”</p> <p>The World Bank decided to base its forestry project on the existing concession system and concessionaires in the face of abundant evidence that they were damaging the interests of Cambodia’s citizens, particularly forest-dependent communities.</p>		<p>Credit Closing Date in June 2005, roughly one-quarter of total project costs will have been directed to forest crime monitoring and reporting, including the costs of independent monitoring and physical equipment (computers, boats, etc.) that will be used by the FA in the control of illegal logging. A substantial share (about 20 percent) of the project’s technical assistance addresses operational forestry research matters and other work directly relevant to forest management and forestry institutions. The physical infrastructure, communications and other equipment procured by the project is adaptable to any forest management arrangements adopted in Cambodia.</p> <p>The quote about a preoccupation with concessions is taken out of context. The statement was made in the context of the forestry dialogue as a whole, including community forestry and protected areas, and was not intended to convey limitations of the Bank’s work or the exclusion of alternatives. In correspondence with the NGO Forum, the Bank wrote: “Some areas may simply need to be off limits to concessionaires as special management areas within concessions.”</p> <p>Concerning the QER, this Bank review was project-specific and, thus, did not consider the full range of other project work in Cambodia. Nevertheless, since the QER, the Bank has made additional efforts, within the project and in other aspects of the policy dialogue, to broaden its scope in the forestry sector, including community forestry. Prior to the QER and after, alternatives to concessions were not ignored, as reflected in the conduct of supervision and the Bank’s ongoing policy dialogue in the forestry sector.</p>
2.	<p>Status of the Forest. [The World Bank] conducted no thorough assessment of the values and possible alternative uses of Cambodia’s forests (despite being one of the few institutions with the capacity to do so). Neither did it require any reworking of the existing concession boundaries as a pre-condition for, or even a component of, its efforts to reform the concession system.</p> <p>[J]ust months before the FCMCPP got underway, an ADB-commissioned review of the concession system concluded that it constituted a “total system failure.” Notwithstanding the conclusions of the ADB review, the World Bank proceeded with the development of a project premised on the validity of the same failed system and operators. It made no attempt to challenge such fundamental flaws as the location and boundaries of the concessions, nor did it question the legitimacy of the companies.... Concerning concessions’ problematic location and boundaries, Bank staff have argued that with the concessions already allocated, the Bank was not in a position to demand any revisions.</p>	10-11, 16-17	<p>The project was based on extensive prior studies (by Fortech, ARD, DAI, White and Case and the ADB-commissioned review – hereinafter the Fraser Thomas study), as well as Bank supervision of the TA Project and the Bank/FAO/UNDP <i>Forest Policy Assessment</i>. These all recognized misallocation of forest and other land to concessions and contributed to the logic of Bank funding of gradual reform. As indicated elsewhere in the Response (see Items 1 and 5), the project’s process orientation was intended to provide a practical context for reassessment of land and forest use, based on site-specific data. The Bank made clear its view that credible land-use evaluation, planning and allocation process for Cambodia would have been desirable prior to major land allocations. No legal basis for such an undertaking existed until recently, nor is there adequate resource information. With concessions already in place in 1997, there was an immediate need to improve resource use and protection on those areas. Integral to any sub-regional natural forest management planning (i.e., SFMPs) is a forest zoning process, in order to eliminate from harvesting those lands needed for watershed protection, biodiversity conservation and community resource conservation.</p> <p>The quote from the Fraser Thomas study, “Cambodian Forest Concession Review Report” (2000a), is taken out of context and does not reflect the study’s overall recommendation to pursue further planning and restructuring efforts. A fuller quote is: “It cannot be overstressed that no one entity is to blame for the current crisis. It is the result of a total system failure; resulting from greed, corruption, incompetence and illegal acts that were so widespread and pervasive as to defy the assignment of primary blame. Responsibility for the debacle must be shared by national and pro-</p>

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			<p>vincial politicians, government staff, the police and military, concessionaires, private businesses and individuals, and by individuals and organizations in the neighboring countries of Thailand, Laos and Vietnam" (p. 25). In fact, the report concluded "that DFW [now FA] should accelerate the effectiveness of the World Bank supported LIL project, so that the process of restructuring can be monitored and guided" (p. 39).</p> <p>Problems posed by concession boundaries, as well as other constraints raised by the terms of concession contracts, were recognized early in the process. Setting aside areas for community use and conservation from within concessions is one of the objectives of the SFMP/ESIA strategic level planning process (see Annex 6). Government, through the support of the FCMCPP, is responsible for regulation and oversight of this process. The Bank has not been satisfied with the outcomes of this process to date. See also Items 33 and 36.</p>
3.	<p>Grounds for Cancellation of Concessionaire Contracts. Bank staff claim that the Government could not unilaterally cancel any of the concessionaires' contracts without being subject to lawsuits by the companies. In making these assertions, the Bank invariably refers to a legal analysis that it commissioned in the late 1990s. The Bank has consistently declined to publish the lawyers' assessment, making its professed rationale for opposing cancellation hard to verify. In either event, the Bank's position is unconvincing for two main reasons. One is the substantial body of evidence already assembled concerning the companies' contractual breaches and illegal activities. This in itself provided strong grounds for terminating most if not all the concession contracts. The other is the Cambodian government's willingness, since before the start of the FCMCPP and subsequently, to cancel the investment agreements of a large number of concessionaires. Not one of these cancellations has encountered a legal challenge from the companies concerned.</p> <p>Somewhat paradoxically, the Bank has consistently tried to take the credit for the government's termination of concession contracts...The claim that there are now only six concessions left is almost certainly inaccurate – the government has announced the cancellation of only two of the 18 that remained at the start of 2003. On</p>	17-18	<p>The Bank has raised with the Government on numerous occasions its expectations that the Government should protect the public interest by canceling concession contracts that were not operating according to contractual provisions.² While cancellations are the Government's responsibility, much of the information and standard-setting arising from Bank projects has influenced the cancellations. The SFMP review indicated that one concessionaire never submitted a plan and thus will probably be stopped after a reasonable grace period and two had their management plans rejected and are now dormant. As of now, only six remain in the review process. There is, therefore, an indication that increased standards and performance expectations are having the effect of eliminating those operators who are either incapable of or uninterested in improving their forest management performance.</p> <p>The Bank does not intervene nor take sides on existing investment contracts between its member countries and the private sector. When the Bank has reason to believe that contracts may have negative impacts on the development of its member country, the Bank in general advises such member to undertake a full review of its contractual relationships and the performance of its contractual partners and to seek legal and technical advices from reputable experts and firms.</p> <p>Through the <i>Forest Policy Assessment</i> (Bank/UNDP/FAO, 1996), the Bank encouraged the Government to seek legal advice on its options for an estimated 30 concessions (6.4 million hectares) already in place. The report also stated that: "the Government should also require concessionaires to satisfy [their] commitments or should declare concessions in default" (p. ii).</p> <p>Under the TA Project, a legal study was undertaken in 1997 on behalf of the Government by an international law firm. The study was commissioned by the Government and it was not the</p>

² For example, "Continuation of agreements with concessionaires that have seriously abused the forest resource, and especially those that have blatantly violated the Prakas suspending operations, is especially troubling" (Rural Development Sector Director to Director FA, June 10, 2002, N.B. the GAT concession was cancelled June 16, 2002); "[W]e do also believe that the Government needs to act definitively with respect to concessionaires that are in clear and persistent noncompliance and which are unlikely to be viable long-term partners." (Country Director to Minister, MAFF, December, 12, 2001, N.B. Prakas suspending operations issued December 16, 2001).

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	<p>the question of how the number was reduced [from forty in August 2000], the implied role of the Bank and the deliberative quality of the process are not substantiated....There is in fact no evidence that the Bank has had a role in concession cancellations...The real grounds for termination have been, in most cases, because the company had no more timber in its concession, was bankrupt or was associated with opponents of the government. The Bank continues to advance conflicting arguments on the issue, however. On the one hand, Bank staff advise the government against termination of concessions because of the supposed legal risk. On the other...the Bank expects to be congratulated when the Government ignores its advice and terminates concessions anyway.</p>		<p>Bank's role to disclose it. Requests to the Bank for the document were referred to the Government. However, sections of the study have since been widely disseminated. The study resulted in a detailed critique and guidance for a reform process. It described the legal context for concessions as riddled with ambiguities and inconsistencies, identified shortcomings in the concession contracts,³ and examined possible justifications for contesting their validity. It noted that the success of challenges was highly uncertain and would pose a variety of risks. The study concluded that the Government could exercise its rights to terminate contracts on the basis of well established defaults, but could also seek to amicably resolve disputes with concessionaires on the basis of voluntary restructuring.</p> <p>The Government did cancel concessions on the basis of its own assessments beginning in 1997 and further in 1999 when twelve concessions covering two million hectares were terminated (Fraser Thomas, 2000a, p. 14). This study noted that the FA did not effectively respond to the management responsibilities implied by the cancellation of these areas. At the 1999 CG meeting in Tokyo, the Bank reflected on the partial progress of the Government, referring to the fact that cancellations were concentrated in low potential areas and concessions with higher commercial value merited further review and action.</p> <p>Concerning the Bank's position on cancellation of concessions, the Chief Counsel for East Asia concluded:</p> <p>"the review of the concessions should carefully avoid encouraging or facilitating breach of existing contracts, as this has been alleged in some situations to amount to 'tortious interference' by the Bank in ongoing contracts. For this reason, any actions arising from such reviews should be taken consistent with existing contractual arrangements." (Chief Counsel for East Asia to TTL, SAC, 1/24/2000.)</p> <p>This approach was reflected in the formulation of the SAC program regarding concession management (see Letter of Development Policy).</p> <p>The Fraser Thomas study identified performance deficiencies by nearly all active concessionaires and this specifically led to cancellation of three. It proposed that with concerted effort concessionaires and the Government could come to closure on acceptable programs before the beginning of the 2001-2002 logging season, and encouraged the FA to "accelerate the effectiveness of the World Bank supported LIL project ... so that the process of restructuring can be monitored and guided" (p. 39).</p> <p>In response to criticisms raised at that time by Global Witness, the ADB explained that unilateral cancellations would likely result in legal action by concessionaires and that the Government's liabilities could be substantial (see Letter from Senior Sector Specialist, ADB to Global Witness, March 9, 2000).</p> <p>Fraser Thomas undertook a legal review of the issue of non-compliance and potential concession cancellation. The advice</p>

³ Strictly, concessions are created by two interlinked contracts between the Government and the concessionaire: an Investment Agreement addressing establishment of wood processing capacity; and a Timber License Agreement providing terms of access to forest areas for harvesting and management.

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			<p>provided was that the only valid grounds for canceling concessions are: first, significant non-compliance with the terms and conditions of the concession Investment Agreements and Forest Timber Licenses; and second, serious and deliberate illegal acts. It found that in respect of compliance with contractual conditions:</p> <ul style="list-style-type: none"> • The two contractual documents were poorly drafted and, because they were not founded in regulatory law, were not directly enforceable by the Government. As civil contracts, the only avenue for an aggrieved party would be civil action, which was not judged a useful vehicle for enforcement or cancellation. • The Government administration of these contracts split responsibilities between six government departments with no clear roles and responsibilities; record keeping and filing was poor, and instructions were either non-existent or contradictory. The administration of these contracts was, therefore, so subject to challenge that, even if non-compliance were demonstrated, the Government would share culpability. <p>Fraser Thomas concluded that cancellation of concessions because of contractual non-compliance would be very difficult, would have to be pursued in civil court, and would almost certainly involve counter-suits.</p>
4.	<p>Lack of pre-conditions for Bank engagement. As one of Cambodia's most important donors, the World Bank has substantial political leverage over the Cambodian government, which it could have used to demand pre-conditions for its assistance in reforming the forest sector. More importantly, the Bank was in no way compelled to put its name to Cambodia's forest concession system. If it genuinely had no scope to demand pre-conditions for its engagement, then it should have declined to lend its endorsement to an un-reformable system and un-reformable operators. Instead, it chose to endorse the failed system and rogue concessionaires as the basis for future forest management in Cambodia. That this would increase the risks of further material harm to forest-dependent communities was clear.</p>	18	<p>LILs are loans of USD 5 million or less financing small, experimental, risky and/or time-sensitive projects in order to pilot promising initiatives and build consensus around them, or experiment with an approach in order to develop locally based models prior to a larger-scale intervention. LILs are predominantly used in sectors or situations in which behavioral change and stakeholder attitudes are critical to progress, and where 'prescriptive' approaches might not work well.</p> <p>Bank policy dialogue was conducted through the 2000 SAC, which contained conditions regarding a broad range of forestry issues raised by earlier Bank-supported analysis and others – see response to Item 2. The FCMCPP was not considered as effective leverage in view of its small size.</p> <p>Instead, leverage on the forestry sector relied upon the separate SAC conditionality, which was aimed at authorities in central economic agencies. This proved to be a useful strategy throughout project implementation and throughout the SAC period, because it enabled the Bank to carry out a more intensive and higher level dialogue than would otherwise have been possible.</p>
OP 4.01 - Environmental Assessment			
5.	<p>Categorization. The World Bank erroneously categorized the FCMCPP project as Category B, despite the fact that the concession system and companies that the project supports have already comprehensively demonstrated how they have "significant adverse environmental impacts that are sensitive, diverse, or unprecedented"...Moreover, the logging concessions undoubtedly do have "impacts (that) may affect an area broader than the sites or facilities subject to physical works." In addition,</p>	58-60	<p>Management believes that the decision to classify this project as a "B" was correct and appropriate. The Bank's environmental classification of projects depends on the type, location, sensitivity and scale of the project as well as the nature and magnitude of its potential environmental impacts. The assignment of category is typically based on the expected impacts on-the-ground, the guidance given in OP 4.01 and precedents and current practice within the region and Bankwide.</p> <p>Categorization of projects varies according to the characteristics of each project. In recent years, forestry projects in the region have been categorized as "A," typically when they involved direct</p>

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	<p>tion, evidence from studies of the impacts of industrial logging in other tropical countries would suggest that the impacts of concessionaires' logging on Cambodia's forests are likely to be irreversible. ... If the goals of the PAD are realised, the FCMCPP stands to have an environmental impact not only across all existing forest concessions but any future concessions that the government may allocate.</p>		<p>investment in production forestry or in plantation activities (e.g., certain projects in China and Laos). Other recent forestry projects have been categorized as "B" when their primary goal is improved forest regulation, planning or conservation (e.g., projects in Vietnam and Cambodia).</p> <p>The "B" rating assigned to this project was based on its interventions—technical assistance to develop improved planning and inventory management systems, strengthening Borrower capacity for concession regulation and control, and for forest crime monitoring and prevention. The decision to make this a "B" rather than a "C" reflected concerns over the social and environmental implications of the concession system.</p> <p>The files, unfortunately, do not show that the draft Environmental Data Sheet reflecting the B categorization was finalized. The PID, processed by the Infoshop in October 1999, and for which records of disclosure are contained in ImageBank, describes (in para. 9), the rationale for the "B" categorization. It also discusses the proposed regulatory regime to be piloted, which sought to anticipate and manage impacts by requiring attention throughout the planning and operational cycle. The PID stated that "the system is intended to ensure that at the large scale planning level, particularly fragile areas are excluded from concession operations. The proposed system is to [be] synchronized with the national environmental impact assessment requirements."</p>
6.	<p>Prior EA. Bank staff did not produce the kind of EIA report called for in the case of Category A projects. In fact the level of assessment was so low that it did not even conform to Category B standards.... Given that OP 4.01 is primarily concerned with prior assessment of potential risks, a lack of prior EA itself constitutes a breach of this operating policy.</p>	60-61	<p>The project design explicitly recognized that environmental and social problems existed in the management of forest concessions and incorporated measures to address them. Specific planning decisions to be made at each location could not be known in advance. The value added of additional up-front impact analysis was, therefore, questionable, and a process-oriented approach was considered preferable. Furthermore, prior to project appraisal, Fortech and ARD studies under the TA Project did examine social and environmental issues.</p> <p>The preparation and provision of an EA is the responsibility of the Borrower. The role of the Bank is to advise the Borrower (Cambodia) as to the kind of EA to be prepared. In this case, the Bank advised the Borrower to adopt an approach that incorporated environmental and social planning criteria, backed by a consultative process, into the planning procedures to be applied in every concession.</p> <p>Since this was not a Category "A" project, no "A"-level EA process was required. OP 4.01 recognizes that, when the screening process determines or national legislation requires, the findings of a Category "B" EA may be set out in a separate report, or, depending on the type of project and nature and magnitude of impacts, other options may be considered, such as environmental mitigation or management plans (OP 4.01, footnote 11). In this case, since no form of prior EA report was undertaken, no findings or results could be described in either the PAD or the PID, as stated in OP 4.01. In addition, the PID did not record the type of environmental impacts, make note of the type of EA or EA instruments needed or of a proposed consultation schedule. While noting that the processing requirements for a LIL were not well developed at the time, Management acknowledges, nevertheless, that the Bank was not in full compliance with OP 4.01.</p>

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7.	<p>EA During Implementation. Furthermore, the Bank representatives were unable [to] show any such [environmental] assessment having been undertaken during the project's first four years, aside from the ESIA work done in conjunction with the concessionaires themselves, the standards of which fall well short of the requirements of OP 4.01.</p>	61	<p>Management agrees that the EA work carried out during the project's initial years was the environmental and social assessment (ESIA) required of each concession under Cambodian law. Management acknowledges that the Government has not yet established satisfactory standards for ESIA; to address this, the Bank sought supplemental grant resources under the project to finance the Government's work on environmental, social and legal issues.</p> <p>Bank staff and ADB consultants had encouraged FA and MOE to develop joint TOR for a combined SFMP/ESIA in order to link plans and the assessment of impacts (Identification Mission Aide Memoire 12/1998; Fraser Thomas, 2000c). Given the lack of direction from MOE, the CTIA took it upon itself in 2001 to develop TOR for an ESIA. A Bank environmental consultant undertook a detailed critical review of the TOR in July 2001, with comments circulated to the CTIA and the MOE (Environmental consultant, July 2001, and Country Director to Ministers of MAFF, MOE, and MOF, in October 2001).</p> <p>The sixteen ESIA's prepared by the concessionaires to date have been poor. Of these concessions, ten have either been cancelled by the Government, withdrawn voluntarily or identified for rejection by the FA. The six concessions that remain under consideration are still subject either to rejection or to further requirements to address issues at the strategic and compartment planning levels. The Bank will continue to work with the Government to improve the quality of the ESIA's through the ongoing Independent Review of SFMPs and ESIA's, recommendations of which have been provided to MAFF.</p>
8.	<p>Prior EA Consultation. The Bank has a responsibility for ensuring that this requirement [for EA consultation] is met, however, as with the environmental assessment, it is not clear what consultation, if any, took place before the project began. What is certain is that the project-affected groups who are requesting an Inspection Panel investigation, were not amongst those invited to participate in any pre-project consultation process.</p>	62-63	<p>As no EA was undertaken prior to project appraisal, there were no consultations specific to the EA process. Nevertheless, the project builds on the previous TA Project, ADB supported consultations and Bank work during the identification mission (Identification Mission Aide Memoire 12/1999). During the Fraser Thomas study, consultations were conducted on community forestry, including a specific workshop organized by Concern International on concession-related community issues (Fraser Thomas, 2000b). The project also relied upon several studies done during the prior TA Project that addressed logging impacts on communities and for which consultations were conducted. See Annex 2.</p> <p>The Bank consulted during 1998 with conservation and social NGOs in assisting the Government to draft regulations, design the forest planning system and prepare the various components of the guidelines and codes. The project identification mission included a social scientist, who, based on available documents and interviews, produced "Social Forestry Guidelines for Forest Concessions" (Annex 4 to the Aide Memoire, November 1998), which was the foundation for addressing social aspects and consultation processes during the project.</p> <p>Also, prior to IDA approval, the project was discussed at a workshop for government, industry and NGOs on forest certification, held in Phnom Penh in November-December, 1999 (WWF/Bank National Forest Certification Workshop Cambodia Report, Phnom Penh, November 30-December 1, 1999).</p> <p>The quality of some consultations may have been affected by the presence of higher level government officials, especially forest officials. Nevertheless, by the time of project appraisal, it was determined that there was sufficient information about the social</p>

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			and environmental aspects of the concession management system to design a process to address these aspects. The above-mentioned consultation process led to a set of criteria and guidelines for sustainable production/concession forest management, specifically including ongoing consultations, working relations between concessionaires and communities/people, and protecting the rights of communities/people. See also Item 9.
9.	<p>Consultation on SFMPs and ESIA. Bank staff working on the project have contended that compliance with this [OP] has been achieved through Bank-supported activities of the concessionaires themselves...The companies failed to consult with communities during their preparation of the plans that they submitted in 2002. Subsequently, when they were compelled to do so in late 2002 and early 2003, these were of a poor standard, with instances in which participants were subject to intimidation by guards and officials accompanying company representatives. These flawed consultations have effectively reduced the scope of forest dependent communities to hold the logging concessionaires accountable. As a result, communities' views have not been acknowledged in plans that companies will use to justify their operations in Cambodia over the next quarter of a century. At the same time, concessionaires will claim that they have fulfilled consultation requirements already, and are therefore under no obligation to listen to concerns that affected communities might raise in the future. [See also pages 24-25, 31-33, 37, 45, 53 and 67 of the Global Witness report.]</p>	62-63	<p>The Bank did not finance any activities of concessionaires and has not accepted or endorsed the claims of concessionaires to have consulted villagers adequately. Consultations have taken place because of the Bank's efforts to improve the Government's management and control over the concession system. In November 2000, CTIA's consultant recommended that detailed community consultation and participation could be focused on the compartment level of planning. Neither the Bank nor FCMCPP staff agreed with that recommendation, since, at the strategic level, forest use mapping, including set-asides to protect community resources, cannot be credible without community consultation.</p> <p>The Forest Concession Management Planning Manual (DFW, 2001b) contains several directives on community consultation:</p> <ul style="list-style-type: none"> • "Consultative processes and forest management practices will be adopted to minimize negative environmental impacts in operable production forest zones and special management areas will be designated to protect unique environmental values and local community livelihoods in the concession area." • "The team is to consult with a wide range of stakeholders... including local communities in a transparent process of public meetings, workshops and informal discussions to introduce different views, important issues... and find compromises and new solutions." • In determining special management areas for supporting community livelihoods, concessionaires must "participate in consultative processes with communities" in order to "protect livelihoods based on traditional wood and non-wood forest products." <p>ESIA guidelines (Annex 1 of DFW, 2001b) also give guidance on the role of communities in forest management, community survey techniques, community consultation and conflict resolution.</p> <p>CTIA, at its own initiative, distributed TOR for fulfilling the ESIA guidelines to NGOs and donors and requested input and advice (email from CTIA President to TTL, April 2, 2001). In response to the various difficulties that arose in relation to disclosure and consultation, the Bank also sought and reached agreement with the Government to incorporate a Public Affairs Unit into the FA in July 2003.</p> <p>The Bank made efforts throughout project implementation to develop linkages between NGOs, including the NGO Forum and</p>

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			<p>the FA, and also to engage the NGO Forum in a collaborative program to work with communities.⁴ Since 2002, when it became evident that consultations by the FA and the concessionaires were inadequate, the Bank has consistently recommended to the Government that an international consultant be hired to develop a detailed and comprehensive step-by-step manual for community consultations, do field testings and build initial capacity for community consultations, benefit sharing and protection of cultural/spiritual and livelihood resources. In April 2004, a social forestry consultant was selected to begin these tasks, which are still ongoing.</p> <p>The Bank has monitored the consultation process and called the Government's attention to weaknesses and limitations in repeated Management letters and meetings (Country Director to the Minister of MAFF in December 2002, Country Director meeting with Minister of MAFF in January 2003, Rural Development Sector Director to FA Director in June 2002, December 2002 and May 2003, Rural Development Sector Director to the Minister of MAFF in June 2004 and February 2005). Under the SAC, the Bank caused the Government to ensure that SFMP and ESIA disclosure took place, including monitoring the availability of documents in remote commune offices. The Bank put in place measures to expand and improve the quality and impact of consultations related to forestry, for example, by facilitating input from NGOs to discussions on forestry law and the community forestry sub-decree.</p> <p>With regard to any particular concession area, the responsibility to carry out meaningful consultations with local communities rests with the concessionaires when preparing their strategic, compartment, and annual plans. To date no concessionaire has completed these steps and the Government has issued no cutting permits.</p> <p>Management recognizes that there is very little time remaining during project implementation (the Closing Date is June 30, 2005) and given the pace of reform and restructuring of concession management, it will be difficult to complete the process within the remaining project period (see Section IV of the Response and Item 26 below).</p>
10.	<p>Intimidation. Perhaps the most serious violation of this provision of OP 4.01 concerns the intimidation and violence used against community representatives in December 2002. In this instance the FCMCPP Project Director is alleged to have made threats against villagers seeking a consultation session.</p> <p>While the World Bank did protest the use of violence by the police, it nevertheless undermined this commendable stance by failing to take action against the FCMCPP Project Director.</p>	62-63, 31	<p>The Bank cannot take action against non-Bank staff; any action can only be taken by the Government. Following the incident of intimidation on December 5, 2002, the Bank immediately sent a letter to the MAFF to express the Bank's "most serious concerns about... [the] violence outside of the [FA] against people wishing to express views on the recently disclosed forest concession plans—input that, from [our] point of view, has been legitimate and constructive." (December 6, 2002 letter to the Minister of MAFF from Country Director). The Country Director also sent the Bank's regional communications advisor and country manager to look further into the issue in Phnom Penh the next week and followed up with a visit of his own on January 14-15, 2003. The Country Director met directly with the Minister of MAFF as well as</p>

⁴ For example, in the fall of 2002, NGO Forum submitted a proposal to the Bank for Community Consultations on Forest Concession Management Plans, which was in turn submitted to the Norwegian Trust Fund for Environmentally and Socially Sustainable Development for funding, although it was subsequently rejected.

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			<p>donors and NGOs (January 21, 2003 email from Country Director to East Asia Vice-President).</p> <p>The Government's response to the Bank included statements by the Ministry of Interior, and reports to the MAFF from the FA. The report from the FA described the FCMCPP Project Director's actions in discussions with villagers on December 2, 2002 and November 12, 2002. The Government's account did not support the allegation of threats having been made.</p>
11.	<p>Monitoring of EA compliance. Given that little or no environment assessment was undertaken, this aspect of the operational policy also appears to have been breached by the World Bank.</p>	64	<p>Because there was no EA, there were no EA conditions, actions or undertakings to the Bank with which the Government was specifically obliged to comply. Concessionaires and the Government were, and are, obligated to comply with national regulations and law, including preparation of ESIA's. The Bank provided advice and comments on the ESIA TOR and has subsequently reviewed ESIA's. When logging was allowed to proceed in the fall of 2001, the Bank engaged with the Government on the need for actions to ensure compliance with the terms of the Sub-Decree on Forest Concession Management, leading to the <i>Prakas</i> and suspension of logging and log transport. The Bank also provided advice on the quality of environmental and social consultations and compliance with the logging and log transport suspension.</p> <p>A Bank environmental consultant participated in nearly all supervision missions (see also footnote 3 in the Response, Item 6 above, and Annex 3 on Supervision). The environmental consultant produced several substantial reports, including ones cited in the Global Witness report attached to the Request.</p>
OD 4.20 - Indigenous Peoples			
12.	<p>Consideration of Indigenous Peoples. Cambodia's indigenous people, notably the Kouy minority (who are represented among those who have drafted letters to the Inspection Panel), are directly affected by the logging concessionaires.... It is difficult to find any evidence that the World Bank has observed either the spirit or the letter of these requirements [indigenous Peoples not to suffer adverse effects, informed participation; and benefit from development investments of OD 4.20]... [.]</p>	64-66	<p>The Indigenous Peoples policy is not mentioned in the PAD. Applicability of OD 4.20 was recognized during preparation (May 4, 1999 email of Bank consultant regarding social issues for the PCD review) but no efforts were made to develop policies and plans in accordance with OD 4.20. Rather, the project approach was to develop, together with and as part of the general consultation process, criteria and guidelines for community engagement in concession areas with local people, including issues such as customary use of resources, traditional property rights and symbolic value and religious practices associated with forests (see Annex 4 of the Project Identification Mission Aide-Memoire, December 1998).</p> <p>Management acknowledges that the Bank was not in full compliance with OD 4.20 and that, in hindsight, screening studies and a framework IPDP, along with more discussion of the issue, would have been more appropriate during project design. The consultation guidelines discussed below outline the process that will require that Indigenous Peoples concerns be addressed, in keeping with OD 4.20.</p> <p>In hindsight, screening studies and a framework IPDP, along with more discussion of the issue, would have been appropriate. The project approach was to develop, together with and as part of the general consultation process, criteria and guidelines for community engagement in concession areas with local people, including issues such as customary use of resources, traditional property rights and symbolic value and religious practices associated with forests (see Annex 4 of the Project Identification Mission</p>

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			<p>Aide-Memoire, December 1998). The consultation guidelines discussed below will outline the process that will require that Indigenous Peoples concerns be addressed, in keeping with OD 4.20.</p> <p>A June 2003 Back to Office (BTO) report of the Bank social scientist states that "social issues and impacts of concessions on local communities have been dealt with inadequately in the past, and relations between these and the concessionaires, and to some extent [FA], are characterized by mistrust and non-cooperation." The BTO "recommended that this aspect [social issues] is given increased attention for the remaining period of the project." The BTO was accompanied by the TOR for the social forestry consultant to revise comprehensive guidelines for community consultations, including specific provisions for Indigenous Peoples, benefit sharing and protection of cultural/spiritual and livelihood resources. The consultant was selected in April 2004 to begin this work. See also Item 9.</p> <p>The Bank has recognized the importance of this issue. The October 2004 Aide Memoire states that "it [is] essential that unrestricted access of villagers to resin trees, collection of rattan and other NTFPs is ensured by the concessionaire." The Aide Memoire further states that "the mission recommends that the Social Forester's TOR be revised to apply to all forms of production forest, and to be able to address the strategic (concession-wide) as well as the compartment level planning. Furthermore the mission suggests that provisions of the World Bank Operational Directive (OD 4.20) on Indigenous Peoples would be incorporated into the guidelines."</p> <p>See also response to Item 21.</p>
13.	<p>IPDP. World Bank staff working on the FCMCPP informed Global Witness in April 2004, that the Bank deemed that no indigenous people's plan was required... the argument that the Bank has fulfilled its obligations under this and other operational policies courtesy of social impact work contained within the concessionaires' SFMPs and ESAs is very difficult to sustain. Here it is worth referring to the findings of the August 2004 GFA Terra Systems assessment of the six sets of plans approved by the FCMCPP.... The World Bank's failure to abide by this operational policy has meant that the FCMCPP has taken no account of the potential impacts of concession activity on indigenous peoples, or their rights (to land in particular) under Cambodian law. This in turn has allowed concessionaires to ignore these issues completely.</p>	65-67	<p>No separate IPDPs were prepared prior to project appraisal. Indigenous Peoples issues were to have been embedded in the SFMPs and ESAs prepared by the concessionaires (see also Item 12). Subjects to have been addressed were identification of forest dependent communities, consultations about their rights and forest use and exclusion of areas and species (e.g., resin trees and rattan) from the operating area, all of which were to form the basis of any additional interventions regarding indigenous communities.</p> <p>The Bank acknowledges and agrees with the findings of the GFA Terra Systems assessment of August 2004, which, inter alia, find that guidelines for community consultations are dispersed in various documents and manuals. The Bank had already acknowledged this, because the SFMPs and ESAs were inadequate and the process of consultation flawed. As a consequence, the Bank took further steps to assist the Government in preparing revised community consultations guidelines, with a detailed step by step manual, including provisions for Indigenous Peoples (see also Item 12). These guidelines are under preparation.</p>
OP 4.36 – Forestry (1993)			
14.	<p>Criteria for Financing. The World Bank has breached this Operational Policy in its provision of loan-backed technical assistance to concessionaires that is designed to facilitate their future logging operations. OP 4.36 does state that "When the government</p>	68-70	<p>Management believes that the project is in compliance with the 1993 OP 4.36. The project is consistent with the OP's prohibition on financing of logging in primary tropical moist forest. No such logging has been financed by the project. Concessionaires have received no IDA financial support, including none for preparation of the SFMP/ESAs. The project has financed systems develop-</p>

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	<p>has (made a commitment to move towards sustainable management of primary tropical moist forest), the Bank may finance improvements in the planning, monitoring, and field control of forestry operations to maximize the capability of responsible agencies to carry out the sustainable management of the resource." The critical point here, however is that the Bank has allowed the FCMCPP to go beyond this in its active support of the logging concessionaires. As noted above, the companies with which the project has engaged are in any case particularly undeserving beneficiaries of loan money. In addition, this operational policy includes five criteria for what constitutes a "government's commitment to move toward sustainable management of (primary moist tropical) forests". It is doubtful that the Cambodian government can be considered in compliance with all or even many of these.</p>		<p>ment, capacity building, inventories and field controls as permitted by the policy. During implementation, an internal examination (Vulnerability Assessment, 2003) of compliance with OP 4.36 was conducted.</p> <p>The Bank's engagement in Cambodian forestry and its support for the FCMCPP have been measured and deliberate. Both the design of activities to be financed, and the assessment, per the guidance of OP 4.36, of the Government commitment have been based on frank dialogue with the Government and consultation with other donors and NGOS.</p> <p>The 1993 OP 4.36 explicitly allowed the Bank to provide financing in forest regulation and management where there was clear Government commitment to sustainable and conservation-oriented forest management. Paragraph 1a states that: 'Where the government has made this commitment, the Bank may finance improvements in the planning, monitoring, and field control of forestry operations to maximize the capability of responsible agencies to carry out the sustainable management of the resource'.]</p> <p>Furthermore, the document upon which the OP was based (The Forest Sector: A World Bank Policy Paper, World Bank, 1991) provided the following additional guidance with regard to such support (see p. 66):</p> <p>"If such conditions are present [e.g., the Government commitment to sustainable and conservation-oriented forestry], projects will be judged on their individual merits. If they are not present, Bank support will be restricted to operations that directly help countries achieve them. Such operations will be appropriately limited in scope, sequenced, and specifically targeted at helping countries meet the stated conditions".</p> <p>This is the approach the Bank adopted for the FCMCPP. The Bank consulted with the Government and received repeated assurances of commitment to a sustainable forest policy. The Bank approached the project as a vehicle to test and, to the extent possible, convert that commitment to an ongoing program. For example:</p> <ul style="list-style-type: none"> • In response to the Forest Policy Assessment in 1996, a proposal for technical assistance was made to the MAFF, which it accepted. The program was funded under the TA Project. • In 1996, the Senior Minister in charge of Rehabilitation and Development and of MEF presented measures "to strengthen the control undertaken by competent authorities to enforce obligations made by concession holders... and to pursue appropriate approaches covering among others the utilization of forestry resources by households, farmers and the small enterprises." • Following the Forest Policy Assessment, in July 1996, the Government established a National Committee on the Organization and Implementation of Forest Policy. The Committee has not been as vibrant a forum for policymaking and debate as hoped, but its Secretariat, in the FA, has functioned as the counterpart for the contemporary donor-government policy dialogue. • In the Letter of Development Policy (February, 1999) pre-

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			<p>pared in association with the SAC, the Minister of MEF wrote:</p> <p>"Present logging concessions operate under a legal and regulatory framework which does not give adequate consideration to such critical factors as area to be harvested, forest inventories, and biodiversity protection. (para. 14)"</p> <p>"Under community forestry, the Government needs to develop means for awarding long-term forest tenure rights to local communities, indigenous peoples, and other target groups (para. 15)."</p> <ul style="list-style-type: none"> • In 1999, the Prime Minister issued a "Declaration on Management of Forests and Elimination of Forest Illegal Activity," mandating a "crackdown" on illegal logging and other measures to introduce controls over the forestry sector. <p>Experience with technical studies (see Item 2) and complementary actions, such as suspension of log exports in 1996, cancellation of twelve logging concessions in 1999, termination of the "log collection quota system," and increases in timber royalties, was satisfactory.</p> <p>The progress of the Government on the reform agenda was, and continues to be, uneven but has repeatedly provided encouragement shared by the Bank and NGOs, including Global Witness (press release, January 22, 1999): "Hun Sen has shown that with his political will illegal logging can be brought under control - this gives real optimism for the future of Cambodia's forests and should impress the international community, said Global Witness' Patrick Alley."</p> <p>An important component of the Bank's willingness to deepen engagement in forestry was the readiness of the Government to engage an "Independent Monitor of Forest Crime Reporting." This arrangement was formulated as an integral part of the SAC program and the FCMCPP and involved partnerships with UNDP, FAO, UK DfID, and the Australian Agency for International Development (AusAID).</p>
15.	<p>Consultation. The requirement that "Borrowers identify and consult the interest groups involved in a particular forest area" has not been met. This deficiency relates closely to the breaches of Operational Policy 4.01 on Environment Assessment and Operational Directive 4.20 on Indigenous Peoples concerning consultation.</p>	70	See response to Items 8, 9 and 12.
16.	<p>High Ecological Value. OP 4.36 states that "In forests of high ecological value, the Bank finances only preservation and light, nonextractive use of forest resources." As described above, the World Bank undertook no environment assessment ahead of the FCMCPP that might have identified such forests of high ecological value. Instead, the project has advised the Cambodian government to allow another 25 years of logging by three concessionaires... in the highly ecologically valuable Prey Long forest. This area was identified by an IUCN (World Conservation Union) study three</p>	70, 43	<p>The Bank has not financed logging or infrastructure in high ecological value areas (or any others). As noted in the Global Witness report (p. 69), Cambodia has an extensive national protected areas system that provides protection for critical natural habitats at the macro landscape level. Furthermore, the Bank has supported studies under the Biodiversity Management and Protected Areas Project to address Prey Long. Standards and guidelines developed for and under the FCMCPP address micro-level considerations by requiring the mapping of forest use, including environmentally and socially sensitive Special Management Areas.</p> <p>SFMPs are 25-year plans and, under the project planning process, subsequent compartment (5-year) and annual plans are</p>

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	<p>years before the FCMCPP commenced as a "Remote, and possibly very old, lowland forest area with major wildlife populations... <i>feasibility of a World Heritage Nomination should be established</i> (emphasis in original)."</p> <p>The FCMCPP [...] took no account of the obvious environmental and social impacts of the plans of two companies with adjacent concessions to drive parallel roads into Cambodia's last intact lowland evergreen forest, Prey Long. Again the Bank took no corrective action.</p> <p>[See also page 45 of the Global Witness report.]</p>		<p>to be developed and reviewed. All are expected to address areas of ecological and other values. One reason for the initial "U" (unsatisfactory) rating of the project in December 2002 (see Item 29) was the Government's removal of the compartment plan requirement, which was reinstated as of May 29, 2003 (Letter from the FA Director to the President of the Cambodia Timber Industry Association).</p>
OP 4.04 – Natural Habitats			
17.	<p>Degradation of Critical Natural Habitats. The concession companies have already significantly degraded the natural habitats within their concessions. Their past behaviour and, indeed the contents of the six sets of plans that the FCMCPP has approved (in terms of proposed over-cutting) indicate that they will continue to do so.</p>	71	<p>Bank management believes that the project is in compliance with OP 4.04. As noted for claim 16 above, the studies supported by the Bank will help to identify gaps in Cambodia's protected area system. No degradation of critical habitats has occurred due to the project. No concessions have been issued over new areas as a result of the project and planning guidelines for existing concessions developed under the project preclude issuance of cutting permits until a three tiered (strategic concession-wide – 25 years; compartment – 5 years; and annual coupe) forest management planning process is completed (see Annex 6). The planning guidelines include numerous provisions to ensure identification, assessment and proper planning for critical habitats. These issues have been carefully reviewed and supervised by the Bank. No formal approvals by the Government to allow cutting have been issued to date (see also Items 19 and 36).</p>
18.	<p>Consultation. As described in relation to breaches of operational policies on environment assessment and indigenous peoples, consultation has been absent or of a very poor standard, both during preparation and implementation of the FCMCPP. Moreover, the Bank did not ensure that the Borrower (Forest Administration) invited the stakeholder participation in planning, design, implementation, monitoring and evaluation that this operational policy calls for.</p>	71	<p>See response to Item 9.</p>
19.	<p>Biodiversity Conservation in Forest Plans. It appears that the project's architects and executors have declined to consider the forests slated for logging as natural habitats. While the six concessionaires endorsed by the FCMCPP have, as required, made reference to biodiversity conservation within their plans, the quality of this work has been abysmal, as a recent study of these components of...[two] plans makes clear.</p>	71	<p>"Biodiversity Conservation Guidelines for the Managed Forest," prepared in collaboration with WCS, have been adopted (and revised) by the Government under the project. Biodiversity as a concern in relation to concessions was identified early in the Bank's work on forestry in Cambodia. A Biodiversity Code of Practice was developed as part of the Identification Mission and was integral to the Sub-Decree on Forest Concession Management as developed under the SAC. On the basis of consultation with NGOs (WCS, Flora Fauna International, WWF), revisions were proposed and the Bank mobilized Bank-Netherlands Partnership Program grant resources to assist in a "Field Testing of Biodiversity Conservation Guidelines for the Managed Forest Pro-</p>

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			ject." Under the project, WCS was contracted and worked collaboratively with FA and one concessionaire (SL International) on a series of studies and field inventories. Field testing of this work was constrained by the suspension of logging, which prevented exploration of some issues at the felling block level. Nevertheless, the study successfully led to revised Guidelines that were adopted by the FA.
BP 8.40 - Technical Assistance			
20.	<p>A related World Bank standard that the project has not met is its Bank Procedure BP 8.40 on technical assistance, which accompanies the Operational Policy OP 8.40 concerning the same issue. BP 8.40: "Because supervision offers an opportunity for informal TA, Bank staff must remain aware of importance of effective supervision to the implementation and ultimate success of the TA."</p> <p>Several breaches of the Operational Policy on supervision outlined above, also contravene this section of BP 8.40. Deficiencies in the work of the TA consultants to the FCMCPP that suggest inadequate supervision by the World Bank include:</p> <ul style="list-style-type: none"> • Provision of assistance and advice to all logging companies, including those that should have been excluded under the terms of reference issued to the technical assistance consultants. • The refusal of consultants to the FCMCPP to take account of the legal prohibition on cutting resin-producing trees. • The distorted score-card system of assessing concessionaires' management plans. • The poor standard of the TA-supported forest cover survey. <p>This has contributed to the same negative outcomes as breaches of the operational policy on supervision.</p>	73-74	Responses to these claims are addressed specifically under OP 13.05, Items 23-41.
OPN 11.03 - Cultural Property			
21.	<p>Spirit Forests and Archaeological Sites. The six logging concessions whose plans the FCMCPP has recommended for approval contain both spirit forests and sites of archaeological importance that undoubtedly constitute cultural property. Despite this, it appears that the World Bank carried out no survey of these sites prior to the project's commencement. This omission falls in line with the Bank's erroneous acceptance of the existing concession boundaries as an appropriate basis for management of the country's production</p>	74-75	Bank management believes that the project complies with OPN 11.03. SFMPs and ESAs have not been "approved" (the Government review process is ongoing) and the Bank has not conveyed any endorsement. On the contrary, the Bank has expressed its serious reservations, specifically concerning spirit forest/sacred sites and other sites of social and cultural significance to local communities. As stated in the October 2004 Aide Memoire: "The mission... finds it essential that as part of the improvements of the SFMP, and latest when the first compartment level plan is being prepared, participatory mapping of community use forest (Resin trees, Sacred sites/spiritual forest, burial forest, watershed protection, village forest, and bamboo forest) are undertaken. These should be excised from any form of logging."

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	<p>forest.</p> <ul style="list-style-type: none"> There is strong circumstantial evidence that many communities, particularly those comprising indigenous peoples, have spirit forest areas. Despite this, only one of the companies endorsed by the FCMCPP, ...has identified a spirit forest in its plan...In mid 2004, a group of provincial, national and international NGOs facilitated public consultations concerning the six sets of SFMPs and ESAs approved by the FCMCPP. One of the common concerns that participants' voiced was companies' inclusion of spirit forests in their management plans; a factor apparently not considered by the Bank or the FCMCPP. The six concessions also contain important archaeological sites. As with the spirit forests, it appears that a significant number of these have not been identified and excised from production areas in the SFMPs produced by the six companies. 		<p>Guidelines developed under the project call for identification and designation of Special Management Areas and specifically refer to sacred groves, spirit forests and archaeological sites.</p> <p>Since community consultations so far have been inadequate, archaeological sites may not yet have been identified. During future community consultations carried out according to the detailed manual under preparation, cultural resources, to the extent these are known to local communities, will be considered in line with the March 2001 Manual criteria, according to which cultural resource areas will be excluded from commercial logging and reported to the archaeological authorities.</p> <p>"Chance finds" of archaeological sites are not currently addressed under forest concession contracts in Cambodia. The Bank will, prior to closure of the project, seek the Government's agreement to include provisions for appropriate treatment of chance finds in revised concession contracts and to introduce chance find provisions into annual operating plans to ensure that such sites are preserved.</p>
BP 17.50 Disclosure of Information (1993) / Policy on Disclosure (2001)			
22.	<p>The World Bank contravened this policy in its failure to ensure that the Borrower (Forest Administration) provided the concessionaires' SFMPs and ESAs to community representatives in November 2002. In fact, direct responsibility for this breach lay with the Bank's own office in Phnom Penh. Having agreed to assist with the disclosure process, Bank representatives then informed communities that they would be unable to provide them with copies of the plans.</p> <p>The negative impacts of this breach were two-fold. In the first instance those groups most directly affected by the concessionaires' activities were denied important information about the companies planned future operations. Secondly, a precedent-setting opportunity to ensure that the Forest Administration observed its legal obligations to disclose such information was lost through the Bank's decision to intercede and take on the government's legal responsibility.</p> <p>(More detail is provided on pages 29-31 of the Global Witness report.)</p>	63-64	<p>Although not required under Bank policies, proper disclosure and improvements in the quality of the consultations in the SFMP and ESIA process were a pressing concern of the Bank. Transparency was viewed by the Bank as a critical element of the reform process and of overall governance and accountability issues.</p> <p>Immediately after the CG in June 2002, at which disclosure of the SFMPs and ESAs was agreed, the Bank encouraged the Government to move rapidly. Over the course of the following four months, the FA resisted disclosure, leading the Bank to establish disclosure as the remaining trigger for the second and final SAC tranche release. During the negotiation process, the Bank consulted with members of the TWG, industry, NGOs and others, to convey the importance attached to this issue.</p> <p>The Government agreed, after much pressure from the Bank, donors and other stakeholders, on October 17, 2002 to disclose the draft SFMPs and the FA committed to placing Khmer versions of the plans in each affected commune, accompanied by a letter of explanation specifically allowing unlimited disclosure, later confirmed by Bank staff during field visits. The public comment period, announced on October 29 for a period of 19 days, was later officially extended, from November 11 to January 31. The Bank agreed that its PIC would provide a supplemental venue for disclosure (not the sole site) to ensure that people had ample, unfettered access to the plans and maps.</p> <p>Two black and white copies of each SFMP were received from the FA project advisor, based on the request from the Bank the previous day, and placed in the PIC on November 11, 2002. The NGO Forum noted that color coding of the maps was essential. Because of the size of the maps, 24 hours would be needed to make two color copies of each SFMP. A group that had gath-</p>

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			<p>ered outside the Bank's Phnom Penh office requested via a member of parliament, with whom Bank representatives had met earlier in the day to resolve the issue of color copies, that color copies of the SFMPs be provided immediately to representatives of each of the communities present—up to 10 copies of each SFMP (for a total of more than 300 copies). Bank staff stated that at least one color copy of each SFMP could be provided to representatives the next day, and that meanwhile community representatives could consult the information available in the PIC, as the next best alternative.</p> <p>On November 12, a limited number of representatives of the communities and international NGOs agreed to come to the Bank office to discuss the situation. The available color copies were provided to those representatives and a system by which further copies could be requested was put in place. Several copies were provided to NGOs and other interested groups.</p> <p>Beyond the end of the formal consultation period on January 31, 2003, the Bank stated that consultations were to be continued with affected communities until there was agreement on a satisfactory plan; and only then would plans be approved (January 21, 2003 email from Country Director to East Asia VP).</p> <p>The Bank acknowledges that public disclosure of documents could have been planned better. The Government—and the Bank—did not manage appropriately expectations for the disclosure process.</p>
OD/OP 13.05 - Project Supervision			
23.	<p>Compliance with OD/OP 13.05. See items 24-41 on claims related to supervision.</p>		<p>Bank management believes that the project is in compliance with the OD (through July 19, 2001) and subsequently, with the current OP. This statement applies to responses to Items 23 through 38.</p> <p>Since approval of the project in June 2000, Bank staff conducted nine formal supervision missions, including an MTR. The TTL was based in a neighboring country during preparation and early implementation of the project, and in Cambodia from August 2002 until January 2004. This arrangement allowed regular on-time communication with the Government, donors, and other partners. The Bank has utilized a substantial supervision budget, augmented by several trust funds. Actual resources devoted to supervision are greater than accounting records indicate, since forestry policy and governance issues were also supervised under the SAC and the project has benefited from these efforts. See also para. 16 in the narrative and Annex 3 on supervision frequency and composition.</p>
24.	<p>Technical Assistance Criteria. [The Bank is in breach of OP 13.05 by] allowing project technical assistance to be offered to companies that should have been excluded under the terms of reference given to the TA consultants. This has had the impact of increasing the chances of these companies passing through the planning process, despite their track records and obvious unsuitability as concession managers.</p> <p>The Bank's decision to assist the companies had the effect of lowering the bar in</p>	72, 19-20	<p>The project did not target concessionaires as recipients of technical assistance and none has been provided through the FCMCPP. Concessionaires have borne the costs of field studies, analyses, assessments and plan preparation of SFMPs. Nevertheless, as part of the implementation of its regulatory process, the Government has provided direction to ensure consistency and quality in data gathering, analysis and presentation. The Government establishes and explains the objectives and standards; private industry must meet the standards, either from its own resources or by hiring competent technical expertise, in seeking approval. Technical direction by the regulatory authority is necessary and was not considered as technical assistance as such.</p>

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	<p>their favour. It robbed Cambodia of a crucial opportunity to measure the concessionaires' commitment and capacity and to show the door to operators that had already damaged its forests and abused the rights of its inhabitants.</p> <ul style="list-style-type: none"> • None of the concessionaires had forest sufficient for a 25 year cutting cycle as required by their contracts. • The World Bank allowed or perhaps even instructed the FCMCPP to provide advice and other forms of assistance to all 13 of the companies that embarked on the production of management plans. This highlights one of the main flaws in the World Bank's supervision of its project – the willingness to allow loan money to be used to support concessionaires that have a well-documented history of illegal activities. 		
25.	<p>Sub-contracting of Technical Work and Conflicts of Interest. The FCMCPP has persistently refused to recognize the problem of concessionaires sub-contracting all technical forestry work to Forest Administration staff. This practice is symptomatic of two serious problems associated with the concession system in Cambodia. Firstly, concessionaires' reliance on government officials to undertake even the most mundane technical tasks on their behalf is evidence enough of their unsuitability as managers of the country's forests. Secondly, the companies' employment of the same officials responsible for regulating their activities sets up a fundamental conflict of interests; one that gives Forest Administration staff a stake in the continued tenure of the concessionaires. The Bank should have prevented its project from assisting companies that had 'captured' the officials responsible for regulating their activities. Conversely, it has permitted an employee of one [enterprise's] main shareholders to work as Director of the FCMCPP Project Management Unit.</p> <p>The Bank and the project team declined to address the serious conflict of interests that that the documents' authorship posed. Five of the concessionaires had commissioned plans from staff of the Forest Administration and Ministry of Agriculture, Forestry and Fisheries – the same institutions responsible for deciding whether or not the companies should be allowed to resume operations. Three more companies had hired the Forest Research Institute; an organisation established within the Forest</p>	22-23, 41-43	<p>Conflicts of interest in Cambodian forestry have been recognized by the Bank from its first involvement (World Bank/UNDP/FAO Forest Policy Assessment, 1996, pp 25-27). The PAD made note of both petty and large scale corruption (p. 4) and stated: "Unlike current practice, salaries and allowance of DFW <i>supervisory</i> (emphasis added) staff will be paid by the DFW and not by concessionaires." However, the pool of foresters in Cambodia is limited, and Government employees in Cambodia are poorly compensated and outside employment is common. The Bank discussed with the Government the issue of Government staff working privately as consultants to concessionaires and cautioned against the Government's appearing to condone conflict of interests (Management Letter, December 14, 2000, from the Country Director to MAFF, and from the Country Director to three Ministers, October 4, 2001). The Government assured the Bank that Government staff who had worked as consultants would not be involved in evaluation of concessions with which they had worked.</p> <p>This issue was monitored during supervision. For example, the TRT recommendations do not reflect a bias in favor of concessionaires. Involvement of the Forestry Research Institute (the Government agency affiliated with FA) is documented in the SFMP and ESIA documents that were made publicly available.</p> <p>The Bank has investigated the involvement of the Project Management Unit Director with a concession company and found no conflict of interest. He assisted the company in commercial correspondence in a follow up to the 1999 Certification Workshop. The particular concession company is partly State-owned and it is common for Government staff to be assigned to such duties. As Project Management Unit Director, the individual had no regulatory authority or duties related to the concerned company.</p>

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	Administration. The World Bank's staff consultant drew the Bank's attention to this issue in July 2001; however his advice was not heeded by either the FCMCPP task manager or the project team.		
26.	<p>Consultation on Management Plans. [The Bank is in breach of OP 13.05 by] not ensuring that the planning processes for SFMPs and ESIA's carried out under the auspices of the project included adequate and appropriate public consultation. Note that consultation is required under Cambodian law (Sub-Decree on Forest Concession Management). This has weakened the bargaining position of communities in their dealings with the companies. It has enabled concessionaires to ignore the interests of communities and remain unaccountable to those who live in and around their concessions.</p> <ul style="list-style-type: none"> • The [Bank] staff consultant's comments [on mechanisms for community consultation] were ignored by the Cambodian government and not followed up by the World Bank. • The response of the World Bank to the lack of community consultation in companies' ESIA preparation has been to adopt the position taken by the Cambodian Timber Industry Association. In total contradiction with the position advocated by the staff consultant in 2001, the Bank now argues that consultation on social impacts can be deferred to the five year planning level. 	72, 24-25	<p>The Bank acknowledges that consultations carried out thus far are inadequate to provide input to strategic level zonation and to ensure meaningful dialogue between concessionaires and communities. The social forestry consultant preparing the revised consultation guidelines under the project is addressing these issues. In this context, there has been debate about whether in-depth, high quality community consultations and negotiations on benefit sharing should take place at the strategic 25-year planning level, or at the 5-year compartment level. While the Bank and FA agree that some consultations have to take place up front as input to the SFMPs, some villages/communities would not experience logging operations in the next 20 years. For such villages/communities, the consultations and negotiations with concessionaires might put pressure on villagers, and they might agree now to arrangements to which they might not agree when future logging operations take place.</p> <p>Comments on the ESIA TOR expressing disagreement with the CTIA position were conveyed in a Management Letter from the EAP Country Director to the FA Director (October 4, 2001).</p> <p>See also responses in Items 9 and 12.</p>
27.	<p>Ignoring Evidence of Illegal Activities</p> <ul style="list-style-type: none"> • Illegal Logging. The World Bank used the FCMCPP to support aspects of the Forest Crime Monitoring and Reporting Project situated within the Forest Administration. However, the Bank declined to make the connection between the findings of the forest crime project and the FCMCPP's parallel efforts to reform the concessionaires.... The World Bank likewise acknowledged on several occasions that the concessionaires were continuing to break the law...Notwithstanding these expressions of concern, the Bank continued to allow its project to assist these same companies. 	25-28 31	<p>Illegal Logging. The Bank had supported initial studies of law enforcement and design of proposals for strengthening controls on illegal logging and log transport under the TA Project. The illegal logging situation was analyzed nationally (with input from Global Witness and other sources). The final report, "Findings and Recommendations of the Log Monitoring and Logging Control Project" (DAI, 1998) noted: "evidence collected through ...surveillance activities indicates that logging is occurring on almost all concessions. <u>Without further monitoring, it is difficult to determine to what extent uncontrolled logging is conducted by concessionaires, their sub-contractors or poachers</u>" (p. 14) (emphasis added).</p> <p>The second component of the FCMCPP, Concession Regulation and Control, was intended specifically to provide the FA with the mobility, communications, training and protocols to monitor plan compliance and to distinguish between criminal and non-criminal problems. To date, the project has provided field equipment and technical assistance for protocol development.</p> <p>Fraser Thomas (2000a) also investigated the issue of legal non-compliance by concessionaires, in parallel with a similar review under the FAO/UNDP-supported Forest Crime Monitoring and Reporting Project. At the time there were only four serious</p>

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			<p>offenses in the effective Cambodian Laws (Decree 35 of 1986, Regulation 049 of 1986 and Decisions 05 of 1995 and 02 of 1996) —unauthorized cutting of trees, transport of timber, export of timber and road construction. A detailed review of reports on forest crime was used to determine whether any of the allegations could and should be entered into the crime monitoring system. Reviewers could find fewer than thirteen instances where reports contained corroborating information (pictures, taped conversations with third party witnesses or witnesses willing to testify). With information from all sources, Fraser Thomas (2000a) found a total of 47 allegations awaiting inquiry and investigation. Four companies had previously been fined and received sanctions for unauthorized cutting and one of these concessions was cancelled. Of the six concessions currently in the planning process, two each have three outstanding allegations and the other four have none. Fraser Thomas (2000a) concluded: "the existing forest crime database and the actions by the Government so far are considered inadequate to recommend [termination]" (pp. 24-25).</p> <p>Concessionaire logging ceased following the December 2001 <i>Prakas</i>. Illegal activities by the GAT concession have been substantiated and the concession cancelled as a result. Since the appointment of the new Independent Monitor in 2003, no new cases of illegal logging by concessionaires have been brought forward (see SGS, Third Quarterly Report as Independent Monitor, Forest Crime Monitoring and Reporting, September 2004). Concession-related mills and factories are closed and have been visited by Bank staff and the Independent Monitor. Reports of illegal logging have concerned parks and protected areas, land development projects (economic land concessions) and "wild cat" illegal logging without demonstrable linkage to concessionaires.</p>
	<ul style="list-style-type: none"> • Offsetting Timber Royalties. At a meeting in September 2002, Global Witness representatives...presented both the task manager and the head of the Bank's Rural Development and Natural Resource Sector Unit, East Asia and Pacific Region with documentation that exposed high-level corruption involving the concessionaires. The offsetting scheme in question enabled the misappropriation of large sums of money that the companies owed to the government in unpaid timber royalties. The offsetting system emerged soon after the government imposed a moratorium on further cutting and log transportation in January 2002...In the event, however, the Bank did little or nothing with the evidence concerning the offsetting scheme. Indeed, only days after receiving the documentation from Global Witness, the task manager wrote to the Forest Administration proposing that the log transport moratorium be overturned and the same concession companies that had offset their royalty payments be allowed to resume timber shipments. 		<p>Royalty Offsets. Royalty offsets were identified in a 2002 IMF audit of the 2001 national budget, which was discussed with the Bank in the context of the SAC. The transactions of concern were off-budget transactions that were approved by the Council of Ministers to compensate enterprises that were owed as a result of the Government cancellation of log exports in 1996 and 1997. Royalties collected by the Government agencies (in this case the FA) were transferred directly to the enterprises holding claims against the Government, rather than, as required by the Budget Law, to the National Treasury. This was explained to the Bank in a letter from the Minister of MEF and the Minister of MAFF on July 18, 2002. According to a May 2002 audit by MEF (MEF to Country Director, June 10, 2002), USD 3.0 million was mishandled. The Government satisfied the Bank and the IMF that the claims against the Government were genuine and that it was also pursuing compensation from two firms that had been overpaid. The Bank pursued work with MAFF, FA and MEF on development of improved systems to prevent reoccurrences.</p> <p>Regarding the log transport ban, see Item 38.</p>

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	<ul style="list-style-type: none"> • Illegal FA Director Activities...[i]t is worth noting that evidence of ...illegal activities by the [FCMCPP Project Director] has been brought to the World Bank's attention and elicited no response. 		<p>FA Director Activities. A letter sent on July 22, 2004 by Global Witness included accusations of complicity on the part of the Project Director in issuing transit permits to move logs. The allegations against the Project Director were referred to the Bank's Department of Institutional Integrity immediately. Other concerns expressed in the July 22 letter and another letter sent by Global Witness on July 29, 2004 were discussed with them during a meeting held at their offices on July 29. An email outlining the discussions is attached in Annex 4.</p>
28.	<p>Deadlines for Management Plans. The concession companies had committed to submitting their SFMPs and ESIA's by the end of September 2001 [however] all the concessionaires missed the 30 September deadline. This provided grounds for cancellation of their contracts. Instead, World Bank officials argued that the deadline should be allowed to slip and none of the companies penalised for their failure to meet it. These arguments prevailed and the government decided to grant the companies another year to produce their plans. The short-term consequence of this was that the companies continued logging for the remaining months of 2001, before pressure from international donors other than the Bank persuaded the government to suspend concession operations effective from January 2002.</p> <p>Throughout its review of concessionaires' plans, the FCMCPP team repeatedly insisted that its assessment was based on purely technical criteria...Project staff's decision to give the companies more and more opportunities to improve their plans was anything but technical however. Not for the first time, the project demonstrated its determination to place the interests of the companies above those of Cambodians who stood to suffer the adverse impacts of their continued operations. The Bank, meanwhile, was quite aware of these shortcomings, but did nothing to remedy them.</p>	29, 39	<p>Guidelines for the Government review of SFMPs stipulate that revision and re-submission by concessionaires is allowed (FA, 2004c). The number of resubmissions is not specified, however.</p> <p>This claim misrepresents potential legal ramifications in the event that concessionaires missed the SFMP submission deadline. The September 2001 deadline for SFMP and ESIA submission was an agreed target, but this date was not based on a formal commitment to the Bank (Report of first meeting of the Joint CTIA-DFW Working Group, May 16, 2000). The Bank was not a specific party to this group, which was established under the ADB project and was assisted by a UK DfID-financed consultant). While failure to meet this deadline was discussed by donors and the Government as possible grounds for cancellation, any such cancellation was to be implemented at the discretion of the FA Director.</p> <p>When the deadline was missed, the Bank took action to ensure that inappropriate logging did not occur. It conveyed disapproval of logging that occurred in the fall of 2001 (explained by the Government as based on a 12-month approval cycle that would lapse on December 31, 2001). A Bank mission in November–December 2001 discussed these issues with the Government and reached agreement on a draft <i>Prakas</i> to enforce planning requirements of the Sub-Decree on Forest Concession Management. A revised <i>Prakas</i> was issued by the MAFF on December 16, 2001 (Aide-Memoire and Management Letter of December 12, 2001).</p> <p>The same Bank supervision mission urged the Government to finalize its determination of which concessionaires qualified for immediate termination. A suggested notice of cancellation letter was attached to the Management Letter (December 2001). See also Item 3.</p>
29.	<p>Unsatisfactory Rating. Lack of consultation was one of the reasons for the World Bank rating the FCMCPP as 'unsatisfactory' in the second half of 2002. It is reassuring to know that the Bank had some awareness of the project's deficiencies in this regard. Nevertheless, the belated increase in number of consultation exercises since has not been matched by any qualitative improvement. Moreover, as these consultations have taken place after the companies had already submitted their SFMPs and ESIA's, their scope to influence the concessionaires' planning process has been very lim-</p>	33	<p>As summarized in Annex 3, the Bank team has supervised the project intensively. "U" ratings on aspects of the project were first registered in December 2001, followed by subsequent downgrading of Development Objective and Implementation Performance ratings to "U" in December 2002. As of end 2004, the rating remains "U".</p> <p>In June 2002, prior to the downgrading, the Bank called the Government's attention to an absence of progress. In its communication to the FA Director (June 10, 2002), the Bank expressed doubts that the Government "would not fully exploit the concession control capabilities being developed under the project." The Bank recommended specific remedial actions regarding utilization of project resources on forestry field control and law enforcement, development of revenue systems, and project evaluation. The</p>

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	ited.		<p>Bank also called attention to Cambodian regulatory requirements for disclosure of management plans to affected communities. In December 2002, the Bank informed the Government that it had downgraded the rating of the project because substantial improvements had not been made. The letter from the Sector Director to the FA Director noted specifically that the Bank had received complaints that local communities had been denied access to concession plans, documents and remedies. The letter urged the Government to resume its commitments to the project and offered the prospect of reallocating Credit proceeds to, for example, community forestry, forest mapping and demarcation.</p> <p>In June 2003 Bank staff reviewed the results of the MTR and noted the FA's reversal on abandoning the compartment plan requirement as well as other initiatives proposed by the MTR. Agreement was also reached on moving ahead with support for a Public Affairs Unit in the FA and recruitment of a social scientist to assist in the consultation process. At the conclusion of this mission, the rating of the Development Objective was upgraded to "Satisfactory."</p>
30.	<p>Quality of Forest Cover Survey. [The Bank is in breach of OP 13.05 by] failure to ensure the observance of minimum standards in the 2003 forest cover survey that the FCMCPP produced. This extremely poor piece of work has provided a distorted picture of forest quality and cover in Cambodia. This in turn assists proponents of the concession system to argue the case for continued industrial logging. It is difficult to determine whether the FCMCPP deliberately set out to manipulate the findings of the study, not least as it has declined to publish the survey's findings in full. Either way, the main outcomes can be summarised as follows:</p> <ul style="list-style-type: none"> • LIL money wasted • The opportunity to produce an authoritative assessment of forest cover lost • Production of misleading information at a time when it was liable to be used for political purposes. <p>[See also page 34.]</p>	72, 34	<p>The forest cover survey (DFW, 2003e, "Trends in Land Cover Changes Detection between 1996/1997 and 2002 by Remote Sensing Analysis") was prepared by the FA with assistance from a qualified international consultant. The study aimed to provide current information about recent land cover trends as a basis for discussion of forest management issues nationwide. It described technical issues and methodology, the extent of ground truthing of the satellite imagery and the results of that ground truthing.⁵ The study provided detailed maps of forest cover, forest cover changes and tabular estimates of changes by major forest type for each concession and each park and protected area in Cambodia. To estimate the degree to which logging was occurring, the study used the extent of road development as a surrogate measure. The study cost less than USD 100,000 and was financed by a PHRD Grant for Implementation Technical Assistance.</p> <p>Bank and independent specialists reviewed the TOR for the study and consulted with the FA technical advisers. An open workshop held by the advisers at the Bank Cambodia Office was attended by NGOs and researchers. No specific defects in the methodology have been called to the attention of the Bank, but there have been complaints that the results of the study have been misquoted.</p> <p>Specialists employed by the Multi-Donor IFSR reviewed multiple sources of geographic data on Cambodian forestry, including the FA assessment. The IFSR Annex on forest cover (D. Ashwell, D.F. Miller and A. Dümmer, 2004, "Ecology, Forest Cover and Quality") discusses the assessment in detail and makes note of various limitations and caveats, but does not dispute its workmanship or technical quality. The IFSR, in fact, makes extensive use of the study. The Bank also has utilized the results of the study in its own due diligence work on SFMP and ESIA.</p> <p>The "Trends in Land Cover Changes" survey has been dis-</p>

⁵ Of 88 ground truthing points, 67 (76%) matched with the image interpretation results. Misclassifications were all among the deciduous, other forest and non-forest categories. No errors were detected within the evergreen and semi-evergreen types.

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			seminated in Cambodia and the Bank will encourage the MAFF to make the digital data files publicly accessible.
31.	<p>Declaration on Forestry Revenues Systems Management. Another component of the FCMCPP has been the development of a <i>Prakas</i> – a ministerial declaration that forms an additional component of an existing law – covering forestry revenue systems management... While presumably now completed and legally applicable, the <i>Prakas</i> has still not been publicly disseminated. In the first instance its disclosure is undoubtedly the responsibility of the Cambodian government rather than the World Bank. However the Bank, having chosen to take a role in the <i>Prakas</i> development, had considerable scope to steer the process. It chose not to exercise this.</p>	34-35	<p>The <i>Prakas</i> on forestry revenue systems management was one follow-up to the royalty offset problem (see Item 27). An inter-agency team was established to review the forest revenue system and to make recommendations leading to a joint August 2003 <i>Prakas</i> of the Ministers of MAFF and MEF.</p> <p>Supervision of the review process proved difficult, and the Government proceeded with the <i>Prakas</i>. A limited consultation was organized and involved the Bank and the IMF, but this was used by the Government to inform rather than to seek input during drafting of the <i>Prakas</i>. The efforts of the interagency team developed somewhat stronger institutional capacity in both Ministries and involved Government staff in World Bank Institute/PROFOR-sponsored international policy seminars.</p> <p>The Bank proposes to bring the issue of disclosure and concerns about remaining weaknesses in the <i>Prakas</i> to the multi-donor TWG and seek support for a resumption of work.</p>
32.	<p>Review of Management Plans - Concessionaire Track Records. The FCMCPP team reviewing the plans closed its eyes to all past offences by the concessionaires. This established a skewed system of assessment by which plans written by external consultants were treated as the sole indicator of the company's will and capacity to manage forest responsibly.</p>	36	<p>The Bank has endorsed using company track records in concession evaluation and has encouraged the Government to cancel contracts for concessionaires that are in clear and persistent non-compliance with Cambodian forestry regulations (see Item 3). Company background was reviewed as part of the Independent Review of SFMPs (co-financed by the Bank) and recommendations on suspect practices, such as the irresponsible use of subcontractors, have been brought to the attention of the Government and the CTIA.</p> <p>Ultimately, the FA refused to accept unproven allegations in its assessment methodology, but the TRT addressed a number of issues, including the quality and completeness of environmental and social impact assessments, in qualifying and explaining its final recommendations. If illegal logging had diminished forest volumes, this would have been reflected in the strategic level inventory results and allowable yield calculations. The TRT also highlighted issues and weaknesses in the ESAs that will need special attention at the next level of planning.</p> <p>Data on legal and contractual breaches by concessionaires (p. 13 of the Global Witness attachment to the Request), based on Fraser Thomas (2000a), show that none of the six companies that were recommended to proceed to the next level of planning is known to have engaged in "extensive" illegal logging.</p>
33.	<p>Review of Management Plans - Timber Volume. The World Bank took no action to prevent its project from adopting a wholly flawed scorecard system for assessing concessionaires' SFMPs and ESAs. Under the FCMCPP methodology, different elements of companies' submissions are assessed and a certain number of points awarded or deducted for each component. These individual scores are then added to produce an overall figure. The system is very heavily weighted towards consideration of the amount of timber the company</p>	36-37	<p>The scorecard is only one part of an internal review system established within MAFF and FA for evaluation of SFMPs and, despite the flaws in the scorecard approach, the results of the first phase, in which rejections were recommended for 9 of 15 concessions, generally support the validity of the system.</p> <p>To ensure an objective and balanced review, the Bank established its prerogative to review and comment on forest management plans prior to their submission for final approval (Development Credit Agreement, para. 5(c) of Schedule 4). In addition, the donor community, with Bank support, established the process of public review and comment on SFMPs; this drew attention to weaknesses in the estimates of timber volume and concerns about the need to eventually adjust volume estimates and com-</p>

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	has left in its concession.		partment boundaries to account for community use, biodiversity conservation and other management objectives.
34.	<p>Methodology of SFMP and ESIA Review regarding Resin Trees. [The Bank is in breach of OP 13.05 by] Not taking any action to change the flawed methodology of the FCMCPP's review of the SFMPs and ESIA's, in particular the project's refusal to take account of the legal prohibition on cutting resin trees. This protection of resin trees is specified in Cambodia law (1988 Decree on Forest Practice Rules; 2002 Forest Law). This has led to FCMCPP's endorsement of companies whose concessions may not be economically viable. It will also encourage companies to continue logging resin trees, an activity that is illegal and which will serve to further impoverish already poor Cambodians. This goes directly against overall World Bank development objectives. Note that this issue has been raised with World Bank and FCMCPP staff on a number of occasions. [See also pages 14-15, 37-39 44-45, 47-50 and page 73 of the Global Witness report.]</p>	73	<p>Oleoresins are produced in varying quantities and qualities by trees of many tropical species. Resin tapping is an important source of income for many poor rural Cambodians, as it is in other tropical countries. Industrial forestry can be in direct conflict with resin utilization, and protection of livelihoods requires careful planning to exclude trees used for resin from the harvesting program. If this is not possible, either substantial areas must be removed from the area available for industrial timber harvesting, or alternative compensatory or protective mechanisms developed. The full extent of the resin tree issue in Cambodia emerged during implementation of the project and the Bank has supported studies (BNPP-supported work on biodiversity by WCS), including those cited in the Request.</p> <p>Regulatory provisions regarding resin trees have evolved during the period of project implementation but at present harvesting of resin trees is prohibited. Inclusion of all standing trees in the concession forest inventory is based on the purpose of the inventory (and the associated calculations), which is to support compartment definition and not determination of harvesting strategy. Volume figures were discounted by 50 percent in harvest calculations used by the FA TRT and do anticipate limitations that might occur at later stages in the planning process. Concessionaires plan their operations at their own risk, and nothing in the TRT work implies a commitment to or guarantee of concession continuation.</p> <p>Work on a legal opinion on resin tree tapping and logging has proceeded over the last year under USAID funding, and the Bank has assigned a social forestry consultant to help facilitate related consultations and discussions.</p>
35.	<p>Adverse Social Impacts. In April 2004 the outgoing task manager claimed that a World Bank social science specialist had concluded that social impacts were adequately addressed during the strategic level planning process. The social scientist's supposed conclusions (which have also not been published) are at odds with those of the independent review team that examined the companies' plans in July to August 2004.</p> <p>[T]he FCMCPP staff and the World Bank task manager have increasingly sought to gloss over the concessionaires' glaring lack of attention to social impacts by arguing that these can be addressed at the compartment (five year planning) level, after the companies' strategic (25 year) level plans have already been approved...World Bank and FCMCPP staff's motivations for pushing social considerations to the compartment level planning stage are suspect, not least as the project design never anticipated work at the compartment level at all....That the World Bank</p>	32, 40-41	<p>The Bank has been concerned from the outset about social risks. There has been substantial discussion within the project Task Team, with Government counterparts and with concessionaires on how best these can be managed and anticipated and at which junctures in the three tiered planning process. The intention was to give attention to social issues at all levels, but it was anticipated that deficiencies would occur especially at the strategic level, because of the large areas, large number of villagers, and long-term planning horizon (25 years). Measures, such as support (from PHRD and later Bank budget) for a social forestry consultant were introduced to respond as specific concerns materialized.</p> <p>The Bank has never approved any strategic level ESIA and has acknowledged the weaknesses highlighted by the Independent Review of SFMPs. The Bank agrees with its recommendations and has encouraged the Government and concessionaires to meet and discuss how to address the concerns highlighted in the Independent Review report.</p> <p>In response to the assertion that the project design did not envision a compartment level planning process, the December 1998 Identification Mission outlines the three tiered concession management planning system (later published by Fortech, 1999, p. 5).</p>

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	is now so eager to push social issues to a planning level that it did not previously consider of importance raises serious questions about its commitment to ensuring that they are addressed in a meaningful way.		
36.	<p>Ignoring Impacts on Forested Landscapes. The FCMCPP assessment [of the plans] excluded consideration of the combined impacts of logging companies' plans on Cambodia's forested landscapes. The team examined the different sets of plans entirely in isolation from one another. This approach proceeded from the flawed assumption that logging would only have environmental and social impacts within the boundaries of the given concession and the combined impacts of groups of contiguous concessions could be discounted.</p>	43	<p>Management believes that the Bank appropriately followed the criteria of the 2004 Guidelines for the Review of Forest Management Plans (FA, 2004c, Annexes 4 and 5). These criteria address adjacent land uses, watershed processes, wildlife, and "effects on the forest resource as a whole."</p> <p>The Bank recognized landscape approaches to forest management in the Biodiversity Conservation Guidelines prepared in English in 1998, subsequently translated into Khmer with AusAID support: "The purpose of forest management units, whether commercial concessions or community forests, is to balance sustainable forest commodity production with the maintenance of ecological services, biodiversity conservation and landscape stability. Forest concessions will not only have an important biodiversity conservation function on their own, but will also provide buffers around and connectivity between the systems of national protected areas. Thus concession planning will have to look both internally and to the provincial scale in its compartment designations and management prescriptions" (Section 2.2).</p> <p>In partnership with the WCS a pilot study and training course was funded by the BNPP with the overall goal of strengthening the mainstreaming of biodiversity concerns into forest concession reform and management. This work led to a Ministerial declaration formally designating the Keo Seimar section of the former Samling Concession as a national area for biodiversity conservation. In addition the aforementioned Biodiversity Conservation Guidelines were revised to incorporate the lessons of the WCS pilot (Final Report August 2002).</p> <p>During the October 2004 supervision mission, the Bank sought and received the commitment of the FA to explore opportunities for landscape level conservation in the Strung Chinit-Prey Long area, subject in particular to cumulative impacts. Specifically, the Bank agreed with Government on use of an ongoing review of the protected areas system funded by the Biodiversity and Protected Areas Management Project to assess appropriate mechanisms for conservation in an area that is overlapped by three concessions. That project is currently completing a nationwide gap-analysis of the protected areas system in Cambodia. As part of that review the study will evaluate areas currently not under formal protected status. Stung Chinit-Prey Long is included within this national review. Recommendations on its biodiversity significance and future protected status will be made as part of the study's final analysis.</p> <p>See also responses to items 16, 17, and 19 above.</p>
37.	<p>Deficiencies in Draft SFMPs. As a result of the deficiencies in the FCMCPP's assessment and the Bank's failure to correct them, by June 2004 the project had recommended that the Cambodian government approve the plans of six of the companies....With two exceptions, the FCMCPP has not disseminated its assessments of</p>	43-46	<p>The Bank is aware of deficiencies in the six plans and has refrained from "endorsing" them or "recommending [their] approval." Endorsement and recommendation is the sole purview of the FA and not of the Bank. The TRT of the FA has recommended the six plans to the Director, and provided both justifications and qualifications on its recommendations. The FA and the MAFF have assured the Bank that they will either: (i) have the deficiencies in</p>

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	<p>the companies' plans. A table setting out the review team's conclusions is included, however, in the annex of the 2004 GFA Terra review of the six sets of documents. This summary shows how the FCMCPP has implicitly or explicitly acknowledged deficiencies in all the concession documents to which it has given its endorsement. In each case it has justified this with the argument that these flaws can be rectified during subsequent planning stages... As already noted, the World Bank project and the Government Forest Administration have declined to publish the FCMCPP's evaluations of the SFMPs and ESIA's, thus adding to prevailing lack of transparency within the sector. Communities affected by concessionaires' activities are therefore denied even an explanation as to why the World Bank project is endorsing the six companies' plans.</p> <p>...Following the FCMCPP's recommendation of approval for [six enterprises]..., the international donor Working Group on Natural Resource Management convened an independent evaluation of the six sets of plans. The review team concluded that not one of the six companies should be allowed to resume logging without serious adjustments to the plans that the FCMCPP had recommended for approval.</p> <p>...The World Bank helped to fund this independent review. It also helped to pay for the Independent Forest Sector Review (IFSR) completed in April 2004 that recommended that the entire concession system be scrapped. In October 2004 the Bank published a set of comments in response to the IFSR which admitted that "concessionaire and the Government performance has been largely a continuation of the 'system failure' described in the ADB supported assessment (of concessions in 2000)".</p>		<p>these plans corrected; or (ii) reject the plans.</p> <p>Concerns about dissemination of information and the disclosure policy are addressed under Item 22. The Government has not formally accepted the IFSR recommendation to end the concession system; it has verbally indicated that it will not abandon the case-by-case concession review process (Aide memoire, October 2004 mission). The Bank has recommended that if the Government were to proceed with forest concession management planning (even for the short period of ten years indicated in the IFSR) then it should reflect carefully on the recommendations for additional planning requirements included in the report of the Independent Review of SFMPs. In the Bank's public comments on the IFSR and in consultations with the Government, the Bank highlighted the urgent need to establish a robust system for planning, management, and protection in post-concession areas.</p> <p>The ITTO sponsored an international diagnostic mission in 2004 on obstacles to achieving sustainable forest management in Cambodia. This mission, led by a Senior Fellow with WWF International and the former Director General for the International Centre for International Forestry Research, recommended that, notwithstanding the controversy and problems surrounding the management of concession in Cambodia, a small number of concessions should be allowed to proceed to the next stage of their management planning. Furthermore, the mission found that the "The World Bank sponsored studies of concession management have produced 15 sets of guidelines that, if implemented, would result in Cambodia having some of the most sophisticated, technically difficult and costly concession management in the world." ("Achieving the ITTO Objective 2000 and Sustainable Forest Management in the Kingdom of Cambodia," International Tropical Timber Council Document (XXVII)/15, November 12, 2004).</p>
38.	<p>Overtourn of Log Transport Ban. [The Bank is in breach of OP 13.05 by] Repeatedly attempting to help a company... overturn the log transport ban and profit from its illegal logging of villagers' resin trees. Admittedly, World Bank staff have themselves been so directly implicated that is debatable as to whether this is simply a breach of the supervision policy.</p> <p>World Bank, FCMCPP and Forest Administration staff continued to discuss means of overturning the transportation moratorium throughout 2004. Written communications from Global Witness in July and December 2004 requesting that the Bank explain its involvement have so far</p>	73, 48-51	<p>The Bank endorsed the December 2001 <i>Prakas</i> banning log transportation and suspending harvesting operations. The Bank has been cautious in its approach and mindful of local community and civil society concerns when considering how to dispose of the large volume of harvested material that remained along road sides and in the forest when the transport suspension came into effect (approximately 6,000 pieces with an estimated volume of 19,000 m³ – see SGS letter to FA auditing proposed logs and outstanding royalty payments, April 1, 2004).</p> <p>In 2003, the Bank mobilized a resettlement specialist to consider claims by NGOs that the stockpiles associated with the Colexim concession and an adjacent rubber plantation resulted from socially disruptive logging and land development. The Bank noted serious problems with the land development process and the absence of adequate planning and social safeguards in the</p>

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	<p>met with no response. In December 2004 Bank staff were instrumental in weakening the log transport moratorium in the course of negotiations between donors and government over next steps in the forest reform process. In mid January 2005 government officials announced that they were on the point of resuming old log transportation and would be engaging the services of consultants to the FCMCPP to facilitate the process.</p> <p>The outcomes of these activities are harmful in two ways. Firstly, the Bank is weakening one of the few available points of leverage over the companies. It is the suspension of their activities that has forced the concessionaires even to pay lip service to such requirements as community consultation and environmental and social impact assessment. If the Bank succeeds in getting the companies operational once again before the planning process is complete, the concessionaires will make even less effort to address such issues.</p> <p>Perhaps even more disturbing is the Bank's efforts to help logging companies to profit from serious forest crime, the victims of which were poor villagers. The Bank thus stands on the verge of becoming an accessory to criminal activities. The fact that it should embark on such a course of action is one of the most troubling aspects of the entire history of the FCMCPP.</p>		<p>rubber plantation project (which was not Bank financed). The Bank prepared TOR for a retroactive mitigation plan that were presented to the Government and discussed with donors and NGOs. The plan proposed that revenues be set aside to fund compensatory measures. Ultimately this plan was not put into action because of NGO objections.</p> <p>In April 2004 the Bank was approached by the Government through the TWG and asked to comment on a proposal to move logs from nine companies. Bank staff responded that all of the logs should be inventoried and all royalties paid <i>before</i> authorization to move them was given; that SGS should monitor any movement; that the Government should publicly disclose its plan to move the logs so that civil society could participate in the monitoring if it wished to; that Government proceeds should be directed to address development in communities neighboring the harvest areas; and that the value of logs as evidence in any ongoing court cases should be preserved.</p> <p>During preparation for the December 2004 CG meeting the subject of the log transportation ban was again raised by the Government, which sought an easing of the ban to allow log movements to meet domestic demand (wood for the new parliament building was specifically referenced). In donor discussions, various formulations ranging from quite liberal to very restrictive were considered. The Government held that the position that was tabled during the CG meeting was too restrictive and objected, claiming that it had not been adequately consulted. Ultimately the version that was agreed between donors and the Government addresses some but not all of the concerns that the Bank had highlighted in its recommendations to the TWG in April 2004. The new benchmark reads: "Maintain suspension/moratorium on logging, transport of logs (except those which have been already inventoried and for which royalties have been paid in full), and new economic land concessions pending completion of applicable review processes and/or a legal framework."</p> <p>It is correct that no written reply was issued to either of the cited Global Witness letters but it is not correct to assert that there was no response. A Bank representative met with Global Witness in its offices on July 29, 2004 to discuss log transportation and other issues. As reported by Bank staff in an email dated July 29, 2004, Global Witness appeared to agree that if the Government did not provide a reasonable plan for transport of existing logs, the Bank should indicate clearly that it did not support the proposed transport. If the Government chose not to transport, all would accept that decision. Should the Government choose to transport, the Bank should focus, <i>inter alia</i>, on inventory control/log tracking and ensuring the royalty status of the logs.</p>
39.	<p>Governance. Recent independent studies of Cambodia's forest sector indicate that the Bank has not wrought any changes in Cambodia's forest sector governance that would compel the concessionaires to behave any differently from the way that they did in the past. There are neither incentives nor controls sufficient to force the companies to obey the law and respect the rights of ordinary Cambodians.</p>	52	<p>Timber harvesting in concession areas has been effectively constrained by a logging ban for more than two years while the capacity of Cambodia's FA to review and regulate concession management is being strengthened. From the initiation of the first Bank TA Project, through ADB Project Preparation Technical Assistance, to FCMCPP, the principal intent has been improved governance; specifically, to improve the capacity of Cambodia's forest management agency to control the industrial concession system that Cambodia had chosen as the main instrument for regulating production forest management. This has led to:</p>

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			<ul style="list-style-type: none"> • A Concession Management Sub-Decree February 2000, establishing Government expectations for the forest industry and a basis for enforcing those expectations; • The first Forestry Law for Cambodia in August 2002, providing a context for both commercial and community forest management and for compliance and enforcement in all forest operations; • A series of standards and guidelines, produced from 1998 to 2004, for concession forest management, including planning, reduced impact harvesting, forest engineering (roads and water crossing), forest crime reduction, biodiversity conservation and social forestry; • A map folio and computed statistics on forest cover, published in 2003, showing the extent of forest cover in 1996/1997 and in 2002, thus allowing calculation of trends in forest cover; • A three tiered forest planning system with approved plans directly enforceable in law; • A series of Handbooks, prepared from 1998 to 2004, to guide the planning system—Forest Planning Handbook, Forest Inventory Handbook, Forest Systems Research and Modeling Handbook and Guidelines for the Review and Management Plans; • A total ban on forest harvesting on concessions, initiated in 2002 and now in its third year, until strategic and compartment level plans are prepared and approved; and • The recommended cancellation of 10 concessions for either non-viability or irretrievably poor performance.
Other			
40.	<p>World Bank Endorsement As a Political Commodity. As the Bank is well aware but keen to deny, its endorsement of, or even association with, particular institutions or policies is a political commodity. Cambodia's forest sector is no exception. Examples include the debates on the draft Forest Law held in the Cambodia's National Assembly in 2002, as well as use of the FCMCPP forest cover survey as a political prop in July 2003...</p>	53-54	<p>Cambodia is a post-conflict country in which the Bank has made good governance a key objective. The Bank's work with Government institutions in this context may appear to legitimize actions taken by those institutions. A delicate balance needs to be maintained when the efforts of the Bank in a project such as the FCMCPP are focused on improving forest management.</p> <p>The Bank has helped generate information, insight and procedures addressing a range of issues facing the forestry sector in Cambodia. For interest groups to engage in political, commercial or other processes in relation to this information, or to misuse or misrepresent data or concepts is beyond the control of the Bank.</p>
41.	<p>Outcomes With versus Without the Project. The overall impact of the Bank's intervention was to weaken significantly the momentum of the forest sector reform process. The ADB review's recommendation that the concessionaires undergo a stringent restructuring process provided a means of weeding out those that had already caused serious material harm. However, this approach was comprehensively undermined by the FCMCPP, which set out with the express intention of helping the</p>	56-57	<p>Studies undertaken during the TA Project estimated that illegal logging (occurring in 1997 at a rate of 4 million m³ per year) would exhaust the forest resource in five years (DAI, p. vii). In contrast to this "without project" scenario, concession logging has been suspended, large scale illegal logging has been brought under control (according to the Government's audited estimates of forest crime), and a more coherent planning and management framework has been defined and begun to be implemented. Significant problems and challenges remain, but illegal logging has been sharply reduced (SGS quarterly reports).</p> <p>Following up on suggestions that logging would be resumed</p>

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	<p>companies to clear this new set of hurdles. Indeed, without the project's assistance, advice and willingness to bend the rules in favor of the concessionaires, it is highly unlikely that any would have stood a chance of passing through the strategic level planning process...The Bank's agenda obstructed the development of alternative management models such as community forestry and proved a source of disunity within the international donor community.</p>		<p>nappropriately, the Bank has consulted with the Government and received assurances that it intended to adhere to the provisions of the concession management Sub-Decree and the December 2001 <i>Prakas</i>. To date, these provisions have been observed.</p> <p>At the core of the Request is the overall assertion that the Bank has or is poised to give its approval to logging in the context of inadequate plans and processes. Over a period of years, this possibility has been raised repeatedly by groups and individuals associated with the Request, despite the fact that no logging approvals have yet been issued. As recently as January 2005, the Director of the FA indicated to donors that he estimates that at least two more years will be required for concessionaires to complete the necessary approvals.</p> <p>The Bank remains aware of the fragility of the ongoing suspension of logging activities. The excesses of the 1997 logging season are a constant reminder of the urgent need to establish effective operations and controls in the sector. Through FCMCPP, the Bank sought to assist the Government in building its capacity for effective forest planning and regulation.</p> <p>Management does not find credible the claim that the Bank has obstructed the development of alternative management models in Cambodia. As noted above (see Item 1), many of the project's contributions to the sector—sponsored inputs including planning guidelines, regulatory capacity enhancement, crime monitoring and reporting procedures—are applicable to any forest management regime that Cambodia currently has or may adopt in the future.</p> <p>While the Request focuses on the FCMCPP, Management believes that its efforts in Cambodia and Cambodian forestry demonstrate the Bank's responsible engagement through multiple operations. The Bank has integrated forestry issues, including sector legislation, community forestry, and forest law enforcement, into its policy-based lending. The Bank supports the management and protection of the country's largest protected area, the Virachey National Park, as well as improvement of livelihoods in communities in surrounding areas through the Biodiversity and Protected Areas Management Project (Credit No. 33200-KH). The Land Management and Administration Project (Credit No. 36050-KH, USD 24.3 million equivalent) addresses security of title and land policy including management of State lands. Through its Agricultural Productivity Improvement Project (Credit No. N0110-KH, USD 27 million equivalent) and Rural Investment and Local Governance Project (Credit No. 37470-KH, USD 22 million equivalent), the Bank is working at the local community level on issues of rural poverty, insecurity and instability.</p>
42.	<p>Harm from Logging. Cherndar Plywood has cut thousands of resin trees belonging to villagers in Prame and Mlu Prey 1 Communes that have provided a source of livelihood for many years... Other nontimber forest products that villagers have collected to sell have also been lost... Samraong Wood has cut hundreds of resin trees belonging to villagers in Anlong Veng Commune... Pheapimex has cut thousands of resin trees belonging to villagers in Talat</p>	Letter from Communities	<p>Prior to the Request, the Bank was not informed about the cited logging and claims of harm and has not had an opportunity to investigate. The Bank has not financed any logging and is not responsible for damages that may be the result of third parties, including concessionaires, guards, military forces or others acting in violation of Cambodian law.</p> <p>The Government, with the encouragement of the Bank, suspended logging as of January 2002.</p> <p>Cherndar, Samraong and Everbright have been recommended by the FA TRT to advance to the compartment planning</p>

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	<p>Commune... Everbright has cut thousands of resin trees belonging to villagers... If the logging concessions' management plans which received technical assistance from the World Bank are accepted by the Government and the companies start up their activities again, there will certainly be violations even more severe than before on villagers, especially on indigenous people...</p>		<p>phase, but have not had logging approved by the Government or the Bank. Pheapimex has not been recommended to continue to the compartment planning stage.</p> <p>The Bank has provided no financial assistance to the preparation of concessionaires' management plans (see Items 1 and 24 above).</p>

ANNEX 2
SOCIAL ANALYSIS AND CONSULTATIONS

I. Pre-Project Analytic Work and Consultation

Instrument (Sponsor)	Issues	Approach	Participants (Locations)	References
<p>TA Project Studies (RGC/World Bank):</p> <ul style="list-style-type: none"> - Forest Policy Reform (ARD, 1997-1998) - Forest Concession Management (Fortech, 1997-1998) 	<ul style="list-style-type: none"> - Land Use - Community Livelihoods - Ethnic Minorities - Social Forestry 	<ul style="list-style-type: none"> - Survey Research - Workshops - Policy Seminars 	<ul style="list-style-type: none"> - Commune/Village - Businesses - District, Province, National, NGO officials (Krahe, Kampong Thom, Ratanakiri) - Industry – concessionaires - NGOs 	<ul style="list-style-type: none"> - Butterfield (1997) - Fox (1997a&b) - Chea Sam Ang (1997) - Fortech (Dec. 1997) - Fortech (May 1998) - Minutes of Certification Working Group meeting
<p>World Bank managed (with WWF, TFT, BNPP):</p> <ul style="list-style-type: none"> - Certification Workshop (November 1998) - Mekong Basin Countries Symposium on Forest Law Enforcement (June 1999) 	<ul style="list-style-type: none"> - Concession Management - Forest Law Enforcement - Independent Certification of sustainable forest management 	<p>Meetings</p>		
<p>ADB-Supported Sustainable Forest Management Project</p>	<ul style="list-style-type: none"> - Concession Performance Review - Community Forestry - Concession Management Guidelines 	<ul style="list-style-type: none"> - Workshops - 3 Local Consultations on Community Forestry (Protected forest areas) - International Workshop on Concession Review 	<ul style="list-style-type: none"> - Community Representatives - Concessionaires, NGOs, Donors 	<ul style="list-style-type: none"> - Fraser-Thomas (2000a, 2000b, 2000c)
<p>Messages Integrated in FCMCPP</p>	<p>Established range and depth of social conflicts, interests, and potential mechanisms that needed to be addressed by the Forest Management Regulatory System</p>			
<p>Key Synthesis Documents</p>	<p>Guidelines for Social Responsibility (1999)</p> <p>Guidelines for Biodiversity Conservation in the Managed Forest (1999)</p>			

II. Donor and NGO Consultation

Forum/Mechanism	Events	Bank Role and Project Issue	Participation	Documentation
Consultative Group	<p>Consultative Group Meetings (1999, 2001, 2002, 2004) – Forestry has been a prominent agenda item on all Bank-co-chaired CG meetings and also discussed at regular Interim Meetings</p>	<p>1999 CG – Bank presents paper on Vision for Forestry Sector Development, discussing proposed project</p> <p>2002 CG – Bank responds to questions on SAC and FCMCPP; helps revise language on SFMP/ESIA disclosure benchmark</p> <p>Regular consultations on concession management and reform issues, including FCMCPP since 2000</p>	<p>Government, Donors, and NGOs</p> <p>Government, Donors, and NGOs</p>	<p>CG reports</p> <p>Meeting Minutes</p>
Thematic Working Group (Previously Working Group on Natural Resources Management) (TWG is an outgrowth of the Cambodia Consultative Group Process and is one of a family of Government-donor committees established to monitor progress on key development and reform issues)	<p>TWG/WGNRM process developed in response to Prime Minister's request for more frequent meetings to assist in monitoring reform program and advising on implementation; monthly or more frequent meetings from 2000 onward</p>	<p>Bank participates in preparation of TOR and provided funding for team leader</p> <p>Bank presentation on its natural resources operations, including FCMCPP, SAC and Biodiversity and Protected Areas Management Project</p> <p>Bank issued comments on October 2004</p>	<p>Donors, FA, NGOs, and various Government ministries</p>	<p>TOR</p> <p>Proceedings and Bank Presentation</p> <p>BTOR February 5, 2004</p> <p>Website</p> <p>Hard copy</p>
Independent Forestry Sector Review (IFSR) Planning and preparation – March 2003 – April 2004	<p>Planning and logistical meetings</p> <p>Public Workshops, including: - Development Assistance to Cambodia Forestry Sector – October 2003 - Institutions and Governance – January 2004 - Assessment of the Natural Resource Base – January 2004</p> <p>Publication of report on website, April 2004</p> <p>Compilation and distribution of comments, August – October 2004</p>	<p>Bank-initiated workshop</p> <p>Bank-hosted discussion on implementation of Community Forestry Sub-Decree (led to Bank preparation of JSDF proposal)</p> <p>Joint Bank-DfID-ADB CAS</p>	<p>Government, NGOs, Donors</p> <p>Government, Donors</p>	<p>CAS</p> <p>Bank discussion paper</p> <p>Draft JSDF proposal</p> <p>Draft CAS</p>
Follow-up April 2004-ongoing	<p>2000 CAS Workshops, included background study on land issues – 1999)</p> <p>Consultation on SAC and Bank future role in forestry in Cambodia – November 2003</p> <p>Community Forestry Meeting hosted in Bank Country Office – December 9, 2004)</p> <p>Governance CAS – 2005</p>			
Bank Country Strategy and Programming				

III. SFMP/IESIA Consultation during Implementation			
Instrument (Sponsor)	Dates	Approach	Documentation
Strategic Forest Management Plan and Environmental and Social Impact Assessment Preparation (15 Concessionnaires)	June 2000 – March 2002	Social Surveys (10% sample of households living in or adjacent to concessions) Follow-up interviews and consultation, as described in SFMP/IESIA submissions	SFMP/IESIA Submissions of: - Chemdar Plywood - Colexim - Everbright - Kingwood - Mieng Ly Heng - Pheapimex (3) - Samraong Wood - Silveroad - SL International (2) - Superwood - Timas - TPP Cambodia Timber Product - Youry Saco
Voluntary Submissions to FA during public comment	November 2002 – January 2003	NGO specialist and NGO facilitated community consultations	Flora and Fauna International (11/30/2002) Global Witness (11/30/2002) NGO Forum (11/30/2002) Conservation International (11/27/2002) Sella (11/21/2002) WildAid (11/29/2002) Ratanakiri NGO/IO-NRM Working Group (11/2002)
FA Consultations (see Attachment 1)	November 2002 – February 2003	FA-facilitated Workshops	FA Reports on Workshops

Attachment 1. Consultations on Environmental and Social Impact Assessment (ESIA) of Forest Concessions undertaken by FA

Concession	Province	District	Commune	Village	Date	No of local people	Repre- senting No. of villages	Letter No.	Comments
Chendard Plywood Concession	Preah Vihear	Tbeng Meanchey	Pur	Pur	24-Nov-02			458	Based on letter dated 11/30/02 of 15 people representing 783 families requesting a modification of ESIA and SFMP
		Chheb	Mluprey II	Preus Ka-ak	28-Nov-02				
		Choam Khsan	Pring Thom	Kralapeah	03-Dec-02				
Colexim Enterprise	Kampong Thom	Sandán	Turnng	Sralao Strong	05-Dec-02	6		460	Based on letter dated 11/30/02 of 15 people representing 1,300 people living in the concession forest area requesting a modification of ESIA and SFMP
			Sochet	Kraing		01-Dec-02	6		
Everbright Forest Concessionaire	Kralie	Sambor	Kampong Cham		22-Nov-02	?	1	450	Based on letter dated 12/30/02 of 15 people representing 739 families requesting for changes to the ESIA and SFMP
						?	total people)		
Kingwood Forest Concessionaire	Stung Treng	Siem Bok	Siem Bok	Bosung Cha School	22-Nov-02	1			Based on letter dated 12/30/02 of 7 people representing 325 families requesting a modification of ESIA and SFMP
				Preah Bat	24-Nov-02	1			
				Kbal Romeas	24-Feb-03		455		
Mieng Ly Heng Forest Concessionaire	Kampong Thom	Baray	Baksna		23-Nov-02	3		454	Based on letter dated 12/30/02 of 15 people representing ethnic minority people living in Mieng Ly Heng Concession Forest requesting a modification of ESIA and SFMP
					05-Dec-02	344	36		
Pheapimex Fu Chan Forest Concessionaire	Kampong Thom	Santuk	Boeng Lvea	Tbeng	09-Jan-03	6		453	Based on letter dated 11/30/02 of 15 people representing 817 families requesting a modification of ESIA and SFMP
				Kampong Cham	19-Jan-03	7			
				Chroy Banteay	15-Jan-03	3			
Pheapimex Fu Chan	Stung Treng	Thalaboriwoth	Thalaboriwoth	Vadanak	17-Jan-03	3			Based on letter of 11/29/02 from 15 people representing 716 families asking for changes in ESIA and SFMP
				Chamka Leu	13-Jan-03	Representatives of 11 commune councils	457		
				Kang Cham	16-Jan-03	47			
Sarraoing Wood Forest concessionaire	Oddar Meanchy	Anglong Veng	Anglong Veng	Kang Cham	19-Jan-03	58		459	Based on letter dated 11/29/02 of 15 people representing 734 ethnic minority people requesting a modification of ESIA and SFMP
				Yeang Khong	30-Dec-02	3			
				Cheung	11-Jan-03	27			
SL Company	Seam Reap	Vann	Svay Sar			61	456	Based on letter dated 11/30/02 from 61 people representing 181	

Concession	Province	District	Commune	Village	Date	No of local people	Repre- senting No. of villages	Letter No.	Comments
SL International Forest Concessionaire	Monduliri							461	families asking for modification of the ESIA and SFMP Based on letter dated 11/30/02 of 18 people representing 716 ethnic minority people living in the concession forest area requesting a modification of ESIA and SFMP
Timas Resource Forest Concessionaire	Preah Vihear	Chey Sen	Putrea		28-Jan-03		2	451	Based on letter dated 12/30/02 of 15 people representing 894 families requesting changes in ESIA and SFMP
			Salang and Torsou		29-Jan-03		6		
			Kyong		30-Jan-03		3		
			Thmea		31-Jan-03		3		
			Chrach	Pakdevadh	01-Feb-03		5		
		Chheh	Chheh II		02-Feb-03		1		
			Sangka I and Chheh I		03-Feb-03		7		
TPP Concession Forest Company	Siem Reap and Preah Vihear							452	Based on letter dated 11/30/02 of 15 people representing 788 families requesting a modification of ESIA and SFMP

Source: FA Reports

ANNEX 3 SUPERVISION MISSION CHRONOLOGY

Date	Team Composition
November 2000	<ul style="list-style-type: none"> • Task Team Leader/Lead Natural Resource Economist • Environment/Forestry Specialist • Procurement Specialist • Financial Management Specialist
June 2001	<ul style="list-style-type: none"> • Task Team Leader/Lead Natural Resource Economist • Environment/Forestry Specialist
November– December 2001	<ul style="list-style-type: none"> • Task Team Leader/Lead Natural Resource Economist • Environment/Forestry Specialist
March 2002	<ul style="list-style-type: none"> • Task Team Leader/Lead Natural Resource Economist
July 2002	Task Team Leader stationed in Phnom Penh until December 2003; supervision conducted in the field
December 2002	<ul style="list-style-type: none"> • Task Team Leader/Lead Natural Resource Economist*
February 2003 MTR Supervision Mission	Cancelled due to lack of progress in project implementation
May 2003 Replacement for February MTR Supervision Mission	<ul style="list-style-type: none"> • Task Team Leader/Lead Natural Resource Economist • Procurement Specialist
October 2003	<ul style="list-style-type: none"> • Task Team Leader/Lead Natural Resource Economist • Environment/Forestry Specialist • Financial Management Specialist
April 2004	<ul style="list-style-type: none"> • Task Team Leader/Lead Natural Resource Economist • Sr. Forestry Specialist • Communications Officer • Communications Associate • Sr. Social Scientist
October 2004	<ul style="list-style-type: none"> • Task Team Leader/Sr. Forestry Specialist • Sr. Social Scientist • Communications Officer • Forest Conservation Management Specialist • Social Forestry Specialist

* Procurement and Financial Management Specialists visited the project separately.

ANNEX 4
SELECTED DOCUMENTS AND CORRESPONDENCE

1. Cambodia Forest Concession Management Joint Working Group – Report of 1st Meeting, 16 May 2000
2. Email from Task Team Leader on Cambodia Forestry, February 22, 2001
3. Management Letter from Country Director to Senior Minister, Ministry of Economy and Finance, October 4, 2001
4. Letter from Task Team Leader to Minister of Agriculture, Forestry and Fisheries, Economy and Finance and Environment, October 19, 2001
5. Letter from Country Director to Minister, Ministry of Agriculture, Forestry and Fisheries, December 12, 2001
6. Letter from Task Team Leader to Director General, Department of Forestry and Wildlife, October 3, 2002
7. Management Letter from Country Director to Minister, Ministry of Agricultural, Forestry and Fisheries, December 6, 2002
8. Letter from Minister, Ministry of Agricultural, Forestry and Fisheries to Country Director, December 18, 2002, with attachment
9. FRM 5th Quarterly Report, Appendix 1 – Description of Satellite Imagery Study, Response to Letter sent by Global Witness, March-May 2003
10. Management Letter from the Rural Sector Director to the Director General, Department of Forestry and Wildlife, May 21, 2003
11. Quality Enhancement Review – October 2003
12. Email from Senior Operations Officer on Meeting with Global Witness, July 2004

CAMBODIA FOREST CONCESSION MANAGEMENT JOINT WORKING GROUP REPORT OF 1ST MEETING, 16 MAY 2000

Background

The ADB funded Concession Review report, and the dialogue following its release in draft, have created a valuable momentum for change in the management of Cambodia's forest sector. All parties expressed a commitment to sustainability and equitability principles as a basis for management. The Department of Forestry and Wildlife (DFW) and the Cambodian Timber Industry Association (CTIA) undertook to continue the dialogue, in an attempt to respond quickly and positively to the various recommendations of the ADB report and the Review Panel. The following is a brief report on the 1st meeting of the Joint Working Group, established by the DFW and the CTIA for this purpose.

Participants

- The Department of Forestry and Wildlife, represented by the Director and some of his senior staff;
- The CTIA, represented by the Chairman and some concessionaires;
- The ADB Sustainable Forest Management Project, represented by the Team Leader;
- The Facilitator, an international consultant.

Agenda

1. Role of CTIA in the dialogue;
2. Discussion of timing and process for establishment of standards of acceptability for concession management plans;
3. Proposals for performance milestones in management plan development;
4. Discussion of process for the establishment of interim annual allowable cuts (AAC), pending acceptance by DFW of concession management plans;
5. Discussion of process and timing for review of draft model forest concession agreement. Identification of critical questions and inputs required;
6. Mechanisms for involvement of DFW staff in concession inventory and monitoring work;
7. Proposals for the Working Group's own work-plan;
8. Timing and agenda for next meeting.

Discussion and Conclusions:

1. **CTIA Role:** The CTIA is able to represent the concessionaires on all matters of a general or technical nature in the dialogue. Renegotiation of individual contracts later in the process will be bilateral, between the RGC and each concessionaire.

2. **Standards for Sustainable Forest Management Plans:** Standards for the development of management plans will be developed with technical assistance provided by the existing ADB project, now in its concluding 3 months. Appropriate experts will be on hand in early June, and the standards will be available in early July 2000. The experts will present an inception report to the Joint Working Group early in their work, so that the CTIA and other stakeholders can make appropriate input to the process of standards development.

While the standards will be the product of a consultative process, it will be up to the DFW to enforce compliance, in the design of the management plans which will be based on them. It is anticipated that the standards derived from the consultative process will be available to the CTIA, for their acceptance, in July 2000.

3. **Performance Milestones:** The standards for management plan design will be in place in July, as above. By the beginning of September 2000 the CTIA will submit, for the approval of the DFW, evidence that it has obtained the services of credible professional expertise, to lead the process of plan development for its members, in response to the standards.

By early October 2000 the CTIA will present to the Joint Working Group, for approval by the DFW, an inception report by the planning team. The report will cover the planning parameters, information requirements, scope of work, and resource requirements, for the formulation of management plans by the concessionaires.

Fieldwork on the forest-technical, environmental, and social aspects of the management plans will take place in the dry season (October 2000 to May 2001). Management plans will be submitted not later than September 2001. The DFW may take two or more months to review and approve or reject each proposed plan.


The 15 November 2001 deadline for submission of the sustainable forest management plan by the concessionaires was understood to be a real deadline. Concessionaires failing to meet the deadline will be so notified by the DFW. If an acceptable management plan is then not submitted by 15 December 2001, the offending concessionaire will face immediate cancellation of the concession, at the discretion of the Director of DFW, after consideration of any mitigating factors and after one month's prior notification, in line with the subdecree on Forest Concession Management.

4. **Interim Annual Allowable Cuts:** For the interim period until management plans are in place, the CTIA and the DFW have agreed to take a very conservative approach, by reducing annual allowable cuts by at least 50% to 70%. Subdecree 049 provides for a maximum offtake of 30% of mature or over-mature trees in any given area for the calculation of current AAC. For the cutting season which will begin in November 2000, the interim AAC will be reduced between 50% to 70%. Existing regulations concerning girth limit, species, and other silvicultural, environmental and social parameters will apply. Monitoring of the cutting activity will be carried out by staff of DFW's Forest Management Office (see below).

5. **Draft Model Forest Concession Agreement:** The ADB Concession Review Project has provided a draft model agreement, as a basis for discussion leading to revision of the concession contracts. It was agreed that review of that document should begin at an early date, under the auspices of the Joint Working Group. A date and process for the review will be determined at the next meeting. General issues concerning royalties and taxation will be considered here, among other matters. It is understood that finalization of contracts will be a bilateral procedure, and that the terms of each contract will depend in part on the content of the particular management plan.
6. **DFW Staff:** It was agreed that there are at least two separate roles for DFW staff in the management of concessions in the field, i.e. inventory and monitoring. To be carried out effectively, both require resources of funds, equipment and training. Both tasks could legitimately be charged to the concessionaires in the form of a service charge, if an appropriately transparent and accountable financial mechanism were in place. The Director of DFW undertook to explore the establishment of an official mechanism whereby service charges would be paid by the concessionaires to the DFW, who would use the funds to meet the costs of the services, including reasonable incentive payments to staff.

The two functions of forest inventory and performance monitoring are quite separate and potentially in conflict. Inventory tasks will be carried out by staff of DFW's Forest Research Institute. Monitoring will be the purview of the Forest Management Office. It is anticipated that the Geographic Information Systems (GIS) unit of DFW will be similarly involved, in the provision of mapping services.

7. **Work Plan:** It is intended that the Joint Working Group will meet frequently. A formal workplan will be developed for confirmation at the next meeting.
8. **Next Meeting:** Date to be announced, on or about the 30th of May 2000.

 William B. Magrath Subject: Fw: Cambodia Forestry

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William B. Magrath
Lead Natural Resource Economist
Rural Development and Natural Resources
East Asia and the Pacific
Phone (202) 458-1679
Fax (202) 477-2733

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From: William B. Magrath on 02/22/2001 04:40 AM
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To: Tom C. Tsui/Person/World Bank, Ian C. Porter/Person/World Bank@WorldBank
cc: Bonaventure Mbida-Essama/Person/World Bank@WorldBank, Su Yong Song/Person/World Bank@WorldBank, Mark D. Wilson/Person/World Bank@WorldBank, Glenn S. Morgan/Person/World Bank@WorldBank, Steven N. Schonberger/Person/World Bank, Louise F. Scura/Person/World Bank, Zafer Ecevit/Person/World Bank@WorldBank

bcc:

Subject: Cambodia Forestry

As the subject of the Cambodia Draft Forestry Law has come up, I thought it would be useful to give a recap on where we have been and come to generally on forestry in Cambodia. I have tried to keep this as brief as I can and will be happy to provide additional information or references as needed. I have also not dwelt on biodiversity issues. Glenn is better equipped there. I will be preparing a similar note covering the sector in Lao PDR. Please let me know if this is useful and if you need additional information.

Immediate Issues and Next Steps for the Bank.

Legislation. A draft law was submitted to the Council of Ministers by MAFF on February 1. The draft, which has not been provided to the Bank, is reportedly under review, but debate by the full CoM is not yet scheduled. The Prime Minister, however, is said to have ordered that the draft be forwarded to the National Assembly by March 1 (the significance of the SAC and IMF target dates in this are not known).

Government has not responded on Bank comments on most recent draft provided to the Bank. Without assurance on the points raised, the current draft can not be considered satisfactory to the

Evelyn Bautista-Laguidao, EASRD, The World Bank

tel. 202-458-2450, email: elaguidao@worldbank.org

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Bank. Recently, the Bank has been trying to make arrangements for Government acceptance of additional legal technical assistance. Resources are available under the PHRD for the LIL project or under the LIL itself. Effective assistance could be provided while the draft is being considered at an interministerial level or at the National Assembly. Whatever the status of the draft at the time of the upcoming SAC supervision mission, the Bank should request an explicit schedule for further processing and consultation linked to the upcoming Bank assistance.

Forest Law Enforcement. Global Witness and Government are in indirect negotiations regarding public disclosure of information on alleged illegal logging activities. Depending on the outcome of these negotiations, the Bank will need to work with Government to identify an alternative independent monitor or to satisfy itself of the viability of the agreed protocols. The Bank may eventually be called upon to assist in dispute settlement between Government and Global Witness.

Concession System Restructuring. The Bank should request from Government a schedule of actions (between now and end-September, 2001) on the renegotiation of concession contracts and the processing of any cancellations and terminations. This should include steps on the recruitment and selection of legal and other advisers under the recently signed PHRD. The Bank is mobilizing consultants to review results of an ongoing industry sponsored study of royalties and revenue arrangements.

Forest Concession Management and Control Pilot Project. Government should complete contracting with the Project Adviser and proceed with consultant selection and other project activities. The Bank is continuing to work with concessionaires, NGOs and the DFW on field testing of biodiversity guidelines for concessions.

New Issues. The Bank should consider incorporation of second generation forestry and natural resource management policy issues into the proposed second SAC. Potentially important issues include: domestic timber market pricing; log export deregulation; decentralization of community forestry administration; judicial reform; Department of Forestry and Wildlife budget sustainability.

Donor Coordination. With the posting of a Senior Operations Officer responsible for rural sector issues to the Phnom Penh Office, as well as Bank predominance in the natural resource sectors, the Bank should consider assuming leadership of the Donor Working Group on Natural Resource Management. The Bank should also consider preparing a forestry sector update for the upcoming CG Meeting.

Background. Forests cover roughly half of the country (10-11 million ha out of 18 million ha). Some 3 million ha (most forested) are designated as parks and protected areas. At the peak, nearly 7 million ha of forests had been granted as industrial forest concessions. This amounted to essentially all of the commercially valuable area and also included marginal and unstocked areas. Cancellations, mostly affecting relatively less valuable areas, have reduced the area under concession to around 4.7 million ha. Most of the remaining forest amounts to scattered woodlands, open areas and flooded forests, which while of value to local communities and for environmental considerations, are

Evelyn Bautista-Laguidao, EASRD, The World Bank

tel. 202-458-2450, email: elaguidao@worldbank.org

Cambodia

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of limited commercial interest.

Deforestation is proceeding at a relatively slow pace (by regional and international standards), although there are increasing reports of conversions to agriculture. More significant is forest degradation largely due to illegal logging. There are no genuinely scientifically defensible estimates of annual allowable cut for the country, but indicatively 0.5 million cubic meters can be assumed. In contrast, total fellings, 90% of which were illegal in 1997, were estimated at over 4 million cubic meters. It is generally acknowledged that illegal logging has fallen substantially, but there is evidence that it is beginning to rebound. Logging, including illegal logging, generally focuses on large diameter valuable specimens. Collateral damage (road and track clearance damage to surrounding trees, etc.), and the long term distorting effect of removing sources of high quality regeneration, leaves an intact forest, but one that is significantly reduced in quality and value.

Government Policy. Starting in the mid 1990's Government embarked on an attempt to aggressively develop the commercial and industrial potential of the resource. This was motivated by a conventional view of the resource as an easy source of public revenue and as a foundation for industrial development as well as by political and corrupt private pecuniary interests. The policy mix included a range of discredited protectionist measures (log export bans, domestic processing investment requirements) and low royalties. Land allocation was inappropriate, concessionaire selection was noncompetitive and nontransparent, contracts were poorly conceived, local interests were not considered, and monitoring and compliance provisions were nonexistent. As a result, the concession system was dominated by large foreign interests, with essentially no accountability, very little incentive to practice sustainable management and Government had no countervailing regulatory capacity or a commitment to requiring acceptable standards of forest management. Bank sector work in 1995 estimated that sustainable revenues from forestry could eventually average \$100 million annually, but in practice have never exceeded \$12 million and are now in the neighborhood of \$8 million (an impact of the East Asia Financial Crisis has been depressed timber prices such that a more realistic target for timber revenues would be around \$30 million, especially considering the extent of forest degradation in the intervening years).

Government at the highest levels has made numerous pronouncements on its commitment to forestry reform and, especially, to controlling illegal logging. Delivery on these commitments has been mixed. At the DFW level, support for Bank assistance is strong and essentially all Bank initiatives have been enthusiastically supported and welcomed. Administrative capacity is seriously limited at both the DFW and MAFF levels limiting follow through.

Throughout the Bank's involvement in the forestry sector, an ongoing concern has been the depth and breadth of Government commitment to sustainable forestry and to due diligence in the management of public lands and forest revenues. Government's implementation and policy failures, while perhaps extreme, are not dissimilar to those seen in other forest rich developing countries. High levels of illegal logging and complicity from the military, senior political leaders and forestry officials are common features of the forestry sector. It was the depth of the problem, the potential of the sector vis-a-vis the poverty of the country, and the consensus among donors that

Evelyn Baurista-Jaguidao, EASRD, The World Bank

tel. 202-458-2450, email: elaguidao@worldbank.org

Cambodia

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raised the profile of forestry and made it a priority.

Bank Strategy. Following from the initial 1995 sector study, the Bank has attempted to assist design and introduction of reformed policies and strengthen capacity, while hedging with respect to uncertainties about Government commitment. Because of this reluctance, resources were first provided to Government through the Technical Assistance Credit, and through various ad hoc trust fund arrangements. Only in the last year was a LIL project approved and an implementation support PHRD mobilized. Attention has focused on four aspects: controlling illegal logging; forest management; concession system restructuring; legislative and regulatory reform.

Concession System Restructuring. Government's prior actions to place essentially the entire commercial resource under flawed concessions has conditioned and hamstrung the entire process. Bank and Government legal specialists have reviewed the concession contracts in detail and conclude that, although they are unfair to Government and flawed in various respects, they constitute binding obligations. In particular, Bank lawyers argued strongly that the Bank should not interfere in the contracts and that the Bank would be exposed to considerable risk by promoting arbitrary terminations or cancellations. Government's Bank-financed legal advisers recommended that the performance of individual concessionaires against various obligations in the contract could be used as the basis to either force renegotiation or to justify unilateral termination. This would require finding and documenting specific performance lapses related to financial obligations, forest management or other requirements. A Performance Review exercise was subsequently carried out for Government by ADB grant-financed consultants who identified systemic failure across essentially all concessions (as well as on Government's part). Rather than specifically identifying concessions for cancellation (with two exceptions), the ADB TA proposed a voluntary restructuring process. Building on these findings, Bank SAC conditionality was designed to require Government to pursue a voluntary restructuring process with concessionaires and to cancel for cause nonresponsive concessionaires (this conditionality is due to trigger in the Fall of 2001 and a series of preparatory actions is underway).

The Bank has had extensive discussions with some concessionaires on this program. An industry association has been formed and has broadly endorsed the approach. Concessionaires have been in discussion with Government on the requirements of the restructuring process, has negotiated a new standard contract (to be used as the model for bi-lateral negotiations). An industry sponsored study of forest royalties and revenue provisions is ongoing and is a critical ingredient to the restructuring/renegotiation process. Government has unilaterally canceled about 10 concession contracts (without consultation with the Bank) for reasons that have generally not been disclosed and which seem to include inadequacy of a resource capable of supporting commercial operations (an explicit justification in the case of two ADB recommended cancellations). These have not resulted in any ongoing dispute or claims against Government. Some concessionaires are clearly incapable and/or unwilling to voluntarily restructure. Others are positioning themselves to assume control of additional resources through consolidation of land from canceled or abandoned concessions. Others seem intent on operating without regard to the restructuring initiative and clearly doubt Government's intention to follow through.

Hivelyn Bautista-Laguidao, FASRD, The World Bank

tel. 202-458-2450, email: elaguidao@worldbank.org

Cambodia

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Some stakeholders, especially NGOs, are also unconvinced of Government's intentions and are not persuaded by the extended review and renegotiation process. Global Witness, in particular, has on several occasions called for immediate and unilateral concession termination on the basis of alleged involvement of concessionaires in illegal logging. Other NGOs have called for greater transparency in the restructuring process and for clear definition of the process. Their particular concern is local community issues and consultations. Donor agencies and the IMF have generally seem to have been satisfied with the process to date. ADB financed consultants, with whom the Bank and IMF consulted extensively, contributed heavily to the definition of the restructuring process. Particularly significant is that the ADB-financed consultants were unable to specifically document charges of illegal logging and raised concern that illegal logging would accelerate in the absence of concessionaires. This supports the gradual and, to the extent possible voluntary strategy being pursued. It does leave open the risk of concessionaire abuse of the interim period and of Government reneging on the final steps. The risks of concessionaire abuses are small relative to damage already incurred and the risk of Government default is managed by the tranching of the SAC.

Forest Management. The scientific and technical basis of forest management in Cambodia is extraordinarily weak. In addition to there being little knowledge on forest dynamics on which to develop harvesting or other management prescriptions, there is no capacity or physical or institutional infrastructure whereby Government can exert itself to influence forest utilization. In the absence of standards for routine and disciplined forest management, illegal logging has become the norm. In parallel with efforts to control illegal logging (see below), the Bank has supported development of a package of technical recommendations and standards covering harvesting, engineering works, biodiversity conservation, social issues, management planning and inventory. These have been developed through technical assistance working in close collaboration with the Department of Forestry and Wildlife (DFW). A comprehensive first draft of the "Cambodian Code of Forest Practice" has been prepared in English and translated into Khmer as a component of the new regulatory framework for concession forestry (see below). These general guidelines are intended to be used by the DFW and concessionaires in the development and evaluation of strategic and operational plans and as the basis for the specification of approvals and permit conditions.

Introduction of these provisions will be gradual due to the general nature of these guidelines, the limited capacity of Government staff to interpret field conditions and to apply judgment with respect to the application specific features of the guidelines, and because of severe constraints on the DFW in terms of mobility, communications, and infrastructure. The recently approved Bank-financed Forest Concession Management and Control Pilot Project LIL (\$4.8 million) will further support development of this system through technical assistance, training, provision of equipment and infrastructure. This project is experiencing minor delays due to recruitment problems caused by clearance procedures at the Ministry of Economy and Finance.

Illegal Logging. Illegal logging is a systematic and predictable result of the flawed policy and operational system for forestry in much of the developing world. In Cambodia, this has been

Evelyn Bautista-Jaguidao, EASRD, The World Bank

tel. 202-458-2450, email: elaguidao@worldbank.org

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accentuated by the affects of war and unrest and by continuing political instability. As noted, in 1997 illegal removals are estimated to have reached as much as 4 million cubic meters and possibly more. In the beginning of the Bank's interaction with Government on this issue, there was a general effort to deny and minimize the problem and to blame it on factors outside of Government's control (the Khmer Rouge, neighboring countries). Government's only substantive response to the problem was reintroduction in 1996 of a ban on log exports. This was never fully effective, poses various economic efficiency problems and is largely a diversion from the underlying problem. In addition, the Prime Minister has made numerous public statements on his determination to see illegal logging controlled. Government has claimed a 95% reduction in illegal logging. Until this logging season observers, including Global Witness, have not specifically challenged this assertion although there is little data to support any specific claim.

While the long term solution to an illegal logging problem needs to be rooted in sound routine sectoral and resource management, the crisis dimensions of Cambodian timber theft call for urgent and specialized measures. Bank-financed technical assistance introduced systematic data collection to estimate the severity and extent of the problem and the "Prevention/Detection/Suppression" framework as the basis for a coherent and sustainable forest law enforcement approach.

Currently, with Bank, FAO, UNDP, DFID, DANIDA and AusAID support, Government has put in place a Forest Crime Monitoring Project (this system is also specifically required under the IMF and SAC programs). This aims at supporting forest law enforcement by making available on a timely basis information on the general timber theft problem and on specific cases of illegal logging. The project provides training, equipment and expert technical assistance (identified by the Bank). A modern "Case Tracking System" has been instituted, remote sensing information is being routinely assessed and data and reports are being collected from the DFW and Ministry of Environment field staff. The most unusual feature of the Forest Crime Monitoring Project is that Government has officially recruited an "Independent Monitor" to report on the diligence of Government's own efforts. Global Witness, a UK-based NGO with an established program on Cambodia was selected to perform this role.

The Forest Crime Monitoring Project encountered substantial start up problems, but has generally proceeded well. The program involves several medium term capacity building activities and procedures for data collection and reporting will require more time to be fully institutionalized. Important issues have emerged on performance of the judicial system in handling cases of illegal logging brought by Government, the ability and willingness of Government to respond effectively to information on new cases and on the conduct by Global Witness of its work as Independent Monitor. Several high profile cases, where apparently strong evidence was presented in court have been overturned or dismissed by the judiciary. These cases are strongly suggestive of corruption and undermine the motivation of officials and staff to pursue new cases. In other incidents, Government pursuit of information may have been selective and possibly biased by personal considerations. These are difficult to disentangle from other capacity constraints but merit monitoring. Global Witness has on several occasions, including around the time of the recent Government/Donor meeting, enflamed the tensions inherently built into the Independent Monitoring

Evelyn Bautista-Laguidao, EASRD, The World Bank

tel. 202-458-2450, email: elaguidao@worldbank.org

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arrangement. Its release of allegations to the media without notice to Government, the inclusion of particularly inflammatory language and aspersions against staff and senior officials may have ruptured the arrangement. Various parties are now attempting to reconcile Government and Global Witness and to promote agreement on mutually acceptable protocols and procedures.

Regulations and Legislation. Government's Bank-financed legal advisers provided Government with a detailed critique of the legislative framework for forestry development. Cambodian forest law (like much of the rest of the legal system) is a patchwork of instruments that date back into colonial times. Proposed legislation has been drafted at various time over the past seven years by Government, FAO, ADB-financed consultants and others. Satisfactory legislation was a condition of the first IMF program (canceled in 1997) and is required in both the current IMF program and the SAC. There are purely political aspects to the legislative process which account for some of the delay. These include rivalry between individuals and agencies. To a significant extent the Cambodian approach to drafting legislation by a lead technical agency is not conducive to a successful process for an intersectoral subject such as forestry.

Under the SAC, Government adopted a Sub-Decree on Forest Concession Management. This establishes the procedures and mechanisms for DFW administration of the concession system and incorporates directly or by reference the key products of Bank-financed technical assistance on concession management.

A specific legislative agenda has not been laid out for forestry despite considerable discussion and public debate. Within Government, which has repeatedly and independently expressed a commitment to enactment of a forestry law (the intent to enact a forest law is clearly implied in the Constitution, Article 58), there is interest in clarification of the administrative arrangements and assignment of responsibilities for control of public forests. Among other stakeholders, NGOs in particular, there is concern about acknowledgment and respect for local communities use of forest resources. Bank and IMF concerns include these and additionally relate to the orderly mobilization of the commercial potential of the resource base. In addition, throughout the drafting process a sometimes curious array of provisions arise including such arcana as a proposed requirement that registration of a marriage must be based on evidence that the couple has planted at least two trees!

The current drafting process was assisted by ADB-financed consultants who worked with a DFW drafting team. This team worked largely in isolation until a draft was released for public comment in May 2000. The draft that was released was a departure from the version supplied by the consultant and included provisions drawn from a wide variety of sources including colonial and other sources. These consultations were convened under the direction of an Under-Secretary of State of the Ministry of Agriculture, Forestry and Fisheries (MAFF) who assumed ongoing responsibility for the drafting process. There has been a mechanical approach to the drafting process at MAFF: all comments are noted and an effort is made to accommodate nearly all contributions, often without reference to guiding principle or objective. Updated English translations are available only at intervals and the translations have been of exceptionally poor quality.

Helynn Bautista-Laguidao, EASRD, The World Bank

tel. 202-458-2450, email: elaguidao@worldbank.org

Cambodia

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The Bank has focused substantively, in detailed comments on earlier drafts (available on request), on four issues: definition of the national forest estate and the clarity and consistency of provisions for institutional jurisdiction over forest land and resources; provision for definition of feasible administrative arrangements for management of forest subsequent to the jurisdictional assignment; various provisions with respect to economic policies and revenue arrangements; and the need for adequate protection of customary users and use of forest resources. Discussions with responsible officials seem to find ready agreement on the economic policy issues (provisions on log trade, for example, were revised as suggested by the Bank). Discussions are amicable, but not definitive on administrative arrangements (there is consistent recourse by MAFF/DFW to language that is unclear in translation and which might be adequate for the concession areas but which will be less effective for other forest areas). On the general jurisdictional issue, as inter-sectoral and interministerial issues are involved it has been impossible to determine the viability of what is proposed by MAFF. Discussion with Ministry of Environment (which has authority under various instruments for parks and protected areas) only serve to reinforce the sense that existing legislation is unclear and that debate at the interministerial level is liable to alter the provisions of the MAFF draft. Ministry of Economy and Finance officials have declined to discuss work ongoing at the sectoral Ministry. On all these issues, the Bank position has not been to advance specific strategies or provisions, as various alternatives are feasible and would be satisfactory provided there is clarity and consistency.

Integrating comments and suggestions from various sources is a difficult challenge for Government, especially when their own guiding philosophy is so weak. NGOs have consistently complained of limited access to the drafting process. NGO criticisms have centered on an alleged Government-centric approach to the sector and on a view that MAFF/DFW are seeking to control all forest resources at the expense of local communities and nontimber resources. There is some validity in these criticisms, but some go well beyond international norms. FAO and NGO tends to recommend detailed and exhaustive definition in the law of nearly all issues so that future discretion is limited. The Bank and ADB, have tended to recommend aiming for enabling legislation and retention of discretion for subsequent lower level instruments.

Second Generation Issues.

Although absorptive capacity is a major constraint, in addition to the current priorities several additional issues may merit inclusion in the Bank dialogue with Government. Community forestry, although referred to in passing in the SAC and dealt with as a safeguard issue in the forest concession management context, is an issue that affects livelihoods of much of the rural population living outside of well forested areas. Government policy generally does not provide these people guarantees of access for subsistence purposes and does not provide for effective management of these resources. Similarly, although the required sums are small, neither Government, the Bank or other donors are providing significant investment resources to support agroforestry, village woodlots, fruit and orchard production, etc. Investment support for these would best be channeled through decentralized agricultural and rural development operations, but policy dialogue on decentralization of community forestry services and access to forest resources could be

Evelyn Bautista-Laguidao, E.ASRD, The World Bank

tel. 202-458-2450, email: elaguidao@worldbank.org

Cambodia

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incorporated into SAC II discussions.

Log Export Policy is currently restricted in relation to controlling illegal logging. In addition to being ineffective as a law enforcement device, the ban is distortionary and reduces revenue potential and exacerbates domestic over processing capacity. A deregulation policy could involve the introduction of an export tax or other measures, but needs to be considered in the context of concession royalty reform and strengthened law enforcement. Government is similarly inclined to paternalistic and interventionist policies in the domestic lumber market. An intention is frequently indicated to exert quantitative controls on concessionaires to force allocation of timber to local markets. These are potentially very distorting and could contribute to corruption and other problems. To date efforts in this direction seem largely ineffective, but could become significant obstacles to concession reform.

Financial and administrative arrangements for the DFW also need to be reviewed and addressed by Government. Conventional public sector budgeting and civil service terms and conditions will not sustain the level and intensity of management being piloted under the LIL. Should these prove effective, special budgetary and staff remuneration provision will be needed and justified to maintain the concession management system (and the revenues which it will generate). Although centralized supervision and control of concessions by the DFW is essential, the administration of community forestry ought to be inserted into provincial and district rural development and agricultural development. Considerable dialogue and analysis will be needed to reach a consensus with Government on appropriate arrangements.

Alternative forest management regimes for areas taken from canceled concessions have not been elaborated in depth. DFW management of areas not suited to community management is a possibility, but Departmental capacity and policy need to be established.

Donor Coordination.

The Bank has expended considerable effort to work collaboratively with other donors (especially FAO and ADB) and NGOs (especially Global Witness). No other agency has the level or breadth of investment as the Bank in the sector, the high profile (and concomitant reputational risk), has worked with Government to visualize a development scenario for the sector, or has been able to mobilize the expertise needed to formulate specific programs. Nevertheless, FAO, UNDP and ADB are playing increasing, and increasingly disruptive, roles in the donor-Government process. In both the forest law discussion and the independent monitoring dispute, FAO has exacerbated tensions and has not been able to provide constructive alternatives or independent assistance. FAO and UNDP have both been ineffective in administration of the basic financial and operational support of the Forest Crime Monitoring Project. ADB was partially effective (with the support of the Bank) in the concession system review technical assistance, but has abandoned the effective work of its legal consultants on the draft forestry law. Other donors, have supported consultants that have become enmeshed in Government compliance with Bank SAC conditions without consultation with the Bank on TOR or consultant selection.

Evelyn Bautista-Laguidao, EASRD, The World Bank

tel. 202-458-2450, email: elaguidao@worldbank.org

Cambodia

Forest Concession Management and Control Pilot Project

NGOs are becoming increasingly active in the sector. Local NGOs, including the NGO Forum are relatively constructive and professional, but approach the Government (and especially Government technical staff) in a confrontational manner and with a highly loaded social agenda. International environmental NGOs are becoming increasingly active in Cambodia, but are seriously divided over priorities and approach. Conservation International (CI), a U.S.-based NGO with links to the Bank through the Critical Ecosystems Fund, has proposed a major conservation set aside in the Cardamoms Mountains (in the southwest). This area is currently under concession and the financial package offered made to Government by CI could result in difficulties coordinating activities and projects, not to mention maintaining the coherence of the concession system reform program.

The Bank-financed LIL provides Government with a senior Project Advisor who is expected to assist Government take a more active and decisive role in donor coordination. This should help to resolve some donor coordination problems, as should the appointment of a Senior Operations Officer to oversee the rural portfolio from the Phnom Penh Office. Nevertheless, considerable specialist effort will continue to need to be devoted to donor coordination.

William B. Magrath
Senior Natural Resource Economist
East Asia Environment and Social Affairs Unit
World Bank Office, Beijing
Phone 86-10-6554-3361 Ext. 2630
FAX 86-10-6554-1686

To: Evelyn Bautista Laguidao

Evelyn Bautista-Laguidao, EASRD, The World Bank

tel 202-458-2450, email: elaguidao@worldbank.org

Cambodia

Forest Concession Management and Control Pilot Project

The World Bank

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
INTERNATIONAL DEVELOPMENT ASSOCIATION

14th Floor, Diethelm Tower A
93/1 Wireless Road
Bangkok 10330, Thailand

Telephone: (66-2) 252-2305-7
Facsimile: (66-2) 256-7794-5

October 4, 2001

H. E. Keat Chhon
Senior Minister
Ministry of Economy and Finance
Phnom Penh, Cambodia
Fax No.: 855 23 427 799

H. E. Chan Sarun
Minister
Ministry of Agriculture,
Forestry and Fisheries
Phnom Penh, Cambodia

H. E. Mok Mareth
Minister
Ministry of Environment
Phnom Pehn, Cambodia

Your Excellencies:

I would like to take this opportunity to forward two notes prepared for the World Bank relating to Cambodian forestry sector reform issues and to take note of several other topics related to forestry.

Comments on the draft Cambodia Timber Industry Association-sponsored Royalty Study. In response to the CTIA initiative to bring solid analytics to bear on the issue of forest royalties, the Bank commissioned several leading authorities to review the study prepared by KPMG. The attached note summarizes their findings and offers suggestions on how Government and its private sector partners might proceed to settle on defensible royalties and forest revenue arrangements in the context of forthcoming concession restructuring discussions. In the unanimous view of the experts we consulted, the draft study seriously underrepresents the economic value of Cambodia's industrial forest resource and needs to be considered cautiously, including with respect to royalty renegotiations.

While the attached note does not recommend any specific royalty rate or formula, the comments do suggest at least three important considerations for incorporation into a royalty settlement. One is that, on lands where timber production outweighs other potential uses¹, the basis for forest revenues ought to be the economic value of

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¹ This determination, while in principal an economic issue, should realistically be made separately from royalty rate setting through a forest land allocation and management planning process, such as that introduced through the Sub-Decree on Forest Concession Management.

Cambodian timber in reference to international forest products prices and not necessarily the profitability of domestic wood processing by the current concessionaires. Second, in the interest of both Government and its private sector partners, provision should be made for periodic review of revenue arrangements and levels in consideration of evolving domestic and international markets trends, price levels, technologies and other considerations. Third, in addition to the level of the implicit royalty rate, the choice of revenue *mechanism* is an important consideration that could help to strengthen sector governance. In particular, serious consideration should be given to making fixed charges (such as area fees) an important component of the revenue mix along with charges based on volume harvested. Such combinations can be designed to be revenue neutral and to fairly allocate various risks between Government and concessionaires, while being more transparent and easily monitored and administered than volume based royalties alone.

Environmental and Social Impact Assessment Terms of Reference. The second set of comments, prepared by a Bank consultant with substantial experience in Cambodia and regulatory practice worldwide, concerns sample terms of reference (TOR) circulated earlier this year for environmental and social impact assessment of concession operations. These TOR were prepared privately on behalf of concession operators in anticipation of requirements likely to be imposed by Government in relation to reforms in the concession system.

While recognizing the good intent behind the preparation of these TOR, these comments express serious concern about the value of the proposed work and suggest a need for further collaboration between industry and Government in the planning and assessment process and for serious consideration of the way in which environmental assessment review and clearance functions will be organized within Government. The comments include a number of recommendations to take the required work forward, including utilization of the first phase work for scoping of impacts and consultation with affected communities. With respect to the review and approval process, recommendations are made, such as limiting Government agency involvement in the preparation of plans and assessments and definition of a transparent review process with specified roles for the Department of Forestry and Wildlife and the Ministry of Environment on the basis of existing Cambodian law and regulation.

I hope that both these sets of comments can be reviewed by government specialists and incorporated into Government's further consideration of these issues. If the Bank can provide additional suggestions or comments as you move forward with the concession restructuring process, please do not hesitate to ask. As you know, the ongoing Forest Concession Management and Control Pilot Project (LIL) provides resources to support technical assistance and other support and the Bank has arranged for a technical assistance grant to assist Government in implementation; and Mr. Magrath, our forestry specialist, would be happy to organize whatever additional support and clarification may be needed.

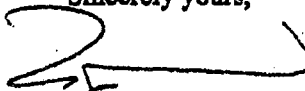
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Finally, I would like to congratulate Government on the preparation and adoption of draft forestry legislation. The draft legislation will go a long way in helping to solidify the forestry sector on a sustainable basis and to enhancing the economic and social contribution of the resource to Cambodian development. I recognize the hard work that went into the drafting process and the efforts that were made to consult widely and effectively with interested parties and stakeholders. I am pleased that the Bank was able to provide assistance in a timely fashion and want you to know that if the Bank can be of further assistance as the legislative process moves forward, you should please let me know.

In consideration of their interest in these matters, I am taking the liberty of copying this letter to the officials listed below.

Excellencies, please accept my best regards.

Sincerely yours,



Ian C. Porter
Country Director, Cambodia
East Asia and Pacific Region

CC. H.E. Sum Manit, Secretary of State, Office of the Council of Ministers
Mr. Ty Sokhun, Director, Department of Forestry and Wildlife
Mr. Mario de Zamaroczy, Resident Representative, IMF
Ms. Dominique McAdams, Resident Representative, UNDP
Mr. Jean Claude Levasseur, Resident Representative, FAO

The World Bank

Суветны Банк

Міжнародны Банк
Рэканструкцыі і Развіцця

Беларускае прадстаўніцтва
вул. Герцага 2А
220030, г. Мінск
Рэспубліка Беларусь

Belarus Resident Mission

2A Gertsena str.
Minsk 220030
Republic of Belarus

Tel: 375 (17) 226-52-84

Fax: 375 (17) 211-03-14

19 October, 2001

H. E. Chan Sarun
Minster of Agriculture, Forestry and Fisheries
Ministry of Agriculture, Forestry and Fisheries

H. E. Keat Chhon
Minister of Economy and Finance
Ministry of Economy and Finance

H.E. Mok Mareth
Minister of Environment
Ministry of Environment

Dear Excellencies:

Following my recent discussions with Government officials on the forest concession system restructuring process, I have taken the opportunity to consult with Bank Management and to review available documentation on the concession restructuring process. This includes the report prepared for Government by White and Case (1997), Asian Development Bank-sponsored reports by Fraser Thomas Limited, (1999, 2000), and reports prepared by Global Witness and the Royal Government's own reports on forest crime and illegal logging. I believe these reinforce the observations conveyed to Government during my mission and suggest the need for careful and deliberate consideration as Government moves forward with forest concession contract renegotiations and ratification.

As you will recall, under the Structural Adjustment Credit agreement, for second tranche release Government has committed to have completed the forestry concession contract review and taken actions based on the outcome of the review, within the framework of Cambodian law and the existing contracts, by: (a) terminating non-performing contracts, where appropriate; (b) requiring other concessionaires to present restructuring programs, satisfactory to IDA; and (c) not awarding any subsequent contracts outside of the scope, rules, and procedures set out in the Sub-Decree on forestry concession management.

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Forest Concession Management and Control Pilot Project

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The World Bank recognizes the prudence with which Government is approaching these renegotiations and shares your concern about minimizing the risks associated with unilateral action by Government. Accordingly, we support Government in the continuation of a process that seeks to ensure that only concessionaires prepared to commit to full and complete compliance with Government's approach to economically, environmentally and socially sustainable forestry continue to operate. We are aware, also, of the additional protections incorporated into the draft model concession contract used as the basis for re-negotiations and general safeguards provided by the Sub-Decree on Forest Concession Management.

Nonetheless, Government should apply reasonable commercial standards to the selection of firms to retain and should, as suggested by Article 4.2 of the Sub-Decree on Forest Concession Management, take due consideration of corporate track record, patterns of compliance with law, regulation and financial obligations, and capacity to conduct technically sound operations. In this context, we would like to underline the need for Government to take account of well documented instances of serious default and deviation by various concessionaires. These include cases of convictions for involvement in illegal logging, pursuit of operations without compliance with Government regulations and requirement (in particular requirements for environmental assessment and public consultation), and failure to complete technically sound forest management plans. Some of this experience may have been partly the result of lax enforcement by Government in the past. In total, however, this pattern suggest that prudent commercial practice would lead to substantially higher rates of termination and non-renewal than was indicated as likely by Government officials.

Concern about the coherence of the restructuring process is, unfortunately, heightened by issuance of approvals for logging operations in the balance of 2001. These approvals are difficult to understand, in view of the ongoing negotiations, the incompleteness of management plans and the absence of filings of environmental assessment reports. We suggest that Government reconsider its options with respect to these approvals prior to resumption of operations in the upcoming dry season. Moreover, we strongly suggest that Government revise the permitting system so that henceforth permits can be issued to coincide with the natural logging season (for example October 1-September 30) as opposed to an arbitrary calendar year.

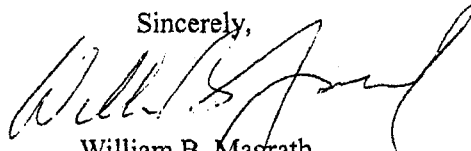
So as to ensure that future Government action on concession contracts does not adversely affect compliance with the terms of the Structural Adjustment Credit, we suggest that Government provide the Bank details on individual renegotiated contracts prior to final approval. In addition, may I call your attention to the Development Credit Agreement for the Forest Concession Management and Control Pilot Project under which the Government undertakes to provide the Bank an opportunity to review and comment upon any Forest Concession Management Plan prepared under the project. I hope that you will agree that this will assist Government in ensuring that such approvals are

appropriate and in accordance with international standards of good forest resource management.

Finally, we would like to acknowledge the additional time and effort that these measures may require. Please rest assured that the Bank will make every effort to provide resources under the Forest Concession Management and Control Plot Project and the associated PHRD implementation technical assistance grant.

If I can provide any additional information, clarification or assistance, please do not hesitate to ask. Because of their involvement and intense interest in these issues, I am taking the liberty of copying this letter to those listed below.

Sincerely,



William B. Magrath
Lead Natural Resource Economist
Environment and Social Development Unit
East Asia and the Pacific

cc. H. E. Chan Tong Yves
Ty Sokhun
Urooj Malik, Asian Development Bank
Jean-Claude Levassuer, U. N. F. A. O.
Ben Davies, UK DFID
John Buckrell, Global Witness
Mario de Zamaroczy, IMF

The World Bank

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
INTERNATIONAL DEVELOPMENT ASSOCIATION

14th Floor, Diethelm Tower A
93/1 Wireless Road
Bangkok 10330, Thailand

Telephone: (66-2) 252-2305-7
Facsimile: (66-2) 256-7794-5

December 12, 2001

H. E. Chan Sarun
Minister of Agriculture, Forestry and Fisheries
Ministry of Agriculture, Forestry and Fisheries
Phnom Penh, Cambodia

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DATE	12-18
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Excellency:

Forest Policy Reforms

The World Bank mission that visited Cambodia from November 27 to December 2, 2001, to review developments in the forestry sector has reported on its findings and recommendations and I would like to raise with you some of the serious concerns with the current situation and the risks that they pose to the success of the Government's forest policy reform efforts. These problems could adversely affect continued compliance with the terms of the Structural Adjustment Credit and of the IMF Poverty Reduction and Growth Facility operations and require your urgent attention.

Following Government's requests, the Bank mission worked with your staff and technical assistance advisers. It prepared an assessment of the forest crime situation and helped develop proposals related to the Forest Crime Monitoring and Reporting Project, the management of logging activities after December 31, 2001 and on next steps in the forest concession contract restructuring process. I attach the results of this work and would appreciate being kept informed of actions which the Royal Government takes or intends to take to follow up on these proposals and address the issues raised.

As I am sure you will agree with us, an urgency has been added to the situation because of the imminent elapsing of the 2001 logging approvals, the risks of an acceleration of illegal logging in the current dry season and because of the concerns that Government's international partners will raise at the upcoming Post-CG meeting in January next year.

Illegal Logging

Cambodia continues to face a serious timber theft problem. The level of forest crime appears to still be of worrisome proportions and higher than is recognized in official estimates and involves concessionaires, sub-contractors, and others operating within concession boundaries in disregard of Government standards and required procedures. The inconsistency of official estimates of crime and those of Government's Independent Monitor, Global Witness, and other observers is a serious concern and seems to be due to a series of problems involving the structure of forest management control

☐ Telephone: (66-2) 252-2305/07, 256-7792/4 ☐ FAX: (66-2) 256-7795

and compliance, the effectiveness of technical assistance, reluctance to accept technical assistance, and delays in mobilizing financial support. Government's decision to authorize logging during the balance of this year has also played a role in complicating the enforcement problem and may have given rise to future risks of accelerated abuses.

We believe that it is highly advisable that Government move quickly to resolve the problems facing the Forest Crime Monitoring and Reporting Project by acting on the recommendations made in Attachment 1. Specifically, it is proposed that Department of Forestry and Wildlife (DFW) immediately increase its field presence, utilizing funding under the World Bank-financed Forest Concession Management and Control Pilot project to support training and mobilization. It is also strongly suggested that DFW immediately move to more effectively separate investigation and enforcement activities, including management of the Case Tracking System, to be more independent from routine forest management functions. We also recommend immediate establishment of a Working Group, comprising DFW, the Department of Investigation (DI) (Ministry of Environment), the Focal Point, Global Witness, the FAO Chief Technical Adviser and the DFW Project Adviser, to commence weekly work programming meetings and to provide a mechanism for information exchange and greater cooperation and coordination in compliance monitoring and enforcement activities.

Also the Case Tracking System should be improved through greater precision and discipline in data entry, the ability to distinguish between major and minor forest crime, the ability to assign priorities to cases for investigation, and the re-establishment of geo-referencing of forest crime information in the DFW component of the system. Finally, we also recommend recruitment of an adviser to the Focal Point Coordinator. The adviser would assist the Focal Point in the review and evaluation of submissions from operational units and would ensure stronger internal quality control prior to release of reports.

Management of Logging Activities in 2002

Authorizations currently in place permitting concessionaires to proceed with logging activities up to December 31, 2001 present several complexities and problems in terms of enforcement of Government's policy of requiring full compliance with the terms of concession contracts and the Sub-Decree on Forest Concession Management and other laws and regulations. Given that no concessions have prepared and submitted for review and approval Forest Management Plans and Environmental and Social Impact Assessments, we believe that Government should enforce a full cessation of logging after December 31. Moreover, log stockpiles still in place in concession areas need to be carefully managed to prevent the co-mingling of illicit new fellings. Accordingly log transport should similarly be stopped as of January 1, 2002 pending completion of inventories of felled logs. These inventories should record full details of log location, volumes, species, condition, origin and other information needed to allow accurate future identification, royalty assessment and tracking. Only after complete inventory, marking,

mapping, receipt of full royalty payment and approval and public disclosure of a detailed log transport plan, should monitored and controlled log transport be permitted.

Government should continue with preparation of detailed plans for log inventory and proceed with definition of standards and guidelines for log transport that will provide assurance that additional illegal logging does not result from the clearance of existing log stocks from concession areas. These should take into consideration laws and regulations governing control of state property, collection and analysis of information on log inventories in relation to records of past logging approvals and royalty payments, and other factors that might influence the likelihood of future illegal logging in concessions and adjacent areas.

As agreed with the mission, attached as Attachment 2 is the draft Prakas on the "Implementation of provisions of the Sub-Decree on Forest Concession Management (suspension of activities and permits)" that the mission discussed with technical staff of the Department of Forestry and Wildlife. We believe that this draft contains the essential elements needed to provide guidance to DFW, other agencies and stakeholders and should be finalized as soon as possible. In the development of the additional procedures and standards, we suggest that efforts be made to ensure full and early public disclosure and interagency consultation within RGC.

Concession Management Contract Restructuring

In consultations with earlier Bank missions, as well as with other donors, Government has indicated that definitive progress was being made in the renegotiations of concession contracts and in the identification of concessions with whom it would not be appropriate to continue. As the Bank indicated in earlier correspondence, we recognize the value of continued discussions with concessionaires which might be able to ultimately satisfy Government's requirements and standards for sustainable forest management. However, we do also believe that Government needs to act definitively with respect to concessionaires that are in clear and persistent noncompliance and which are unlikely to be viable long term partners.

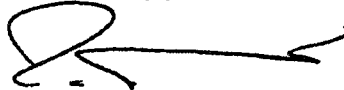
As discussed during the mission, Government's Legal Adviser has provided a detailed opinion on the contractual issues facing Government and has drafted templates of letters advising concessionaires of Government's findings with respect to contract breach and the remedies which Government seeks to pursue. These provide a concrete mechanism whereby Government could move to resolve some of the more notable cases of default and abuse by concessionaires and advance negotiations with other concessionaires as suggested by earlier World Bank- and ADB-financed advisers. For convenience, these templates are provided as Attachment 3. We believe that Government should finalize its determination of which concessionaires qualify for immediate termination, and which qualify for other approaches and move the process forward with appropriate notifications.

With respect to royalty and taxation issues that affect negotiations with several concessionaires, please refer to our earlier correspondence on this issue. The mission suggests some limited amount of additional analysis and consultation within Government is needed to arrive at a negotiation stance on royalties and terms that would be commercially viable for both concessionaires and Government.

As discussed with the mission, we are concerned about the impact that current conflicts over the forest crime monitoring process are having and are likely to continue to have over the overall program. We would like to take this opportunity to urge you to take appropriate action to resolve the situation. The World Bank, along with other partners, would be willing to help on this matter.

Because of their interest in these issues, I am taking the liberty of copying this correspondence to the RGC and donor agency officials listed below.

Sincerely yours,



Ian C. Porter
Country Director, Cambodia
East Asia and Pacific Region

cc: H. E. Sok An, Deputy Prime Minister
H. E. Keat Chhon, Senior Minister of Economy and Finance
H. E. Sum Manit, Council of Ministers
H. E. Chan Tong Yves, MAFF
Mr. Ty Sokhun, DFW
Mr. Ben Davies, UK-DFID
Mr. Jon Buckrell, Global Witness
Mr. Jean-Claude Levasseur, FAO
Mr. Urooj Malik, ADB

The World Bank

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
INTERNATIONAL DEVELOPMENT ASSOCIATION

1818 H Street N.W.
Washington, D.C. 20433
U.S.A.

(202) 477-1234
Cable Address: INTBAFRAD
Cable Address: INDEVAS

October 3, 2002

Mr. Ty Sokhun
Director-General
Department of Forestry and Wildlife
#40 Preah Norodom Blvd.
Phnom Penh, Cambodia

Dear Mr. Ty Sokhun:

Subject: Timber Sale and Transport

I'd like to follow on our earlier discussions and talks with members of your staff regarding the management and control of existing stockpiles of felled logs. As you know, I view the mere presence of these logs in forest areas as demonstrative of the serious weaknesses of forest management controls and forest revenue systems in Cambodia. Moreover, any revision of the current prohibition on log transport risks abuse and fraud and contributing to renewed illegal logging. Nevertheless, I can understand the interest the Royal Government places in proper disposal of these logs, the full receipt of the revenues due and the potential contribution of this material to local and export markets. I also believe that a responsible, credible and transparent process is feasible and could help set the stage for introduction of improved management and control in the future and could also help renew confidence in the Government's commitment to forestry reform.

Risks and Experience

Several key principles should drive policy toward transport of parts of the existing inventory of logs in forest areas. These are all related to the disappointing and repeated patterns observed in earlier episodes of "old" log movement. The persistent cycle of transport of "old" logs and new illicit fellings needs to be broken. A disciplined, well-engineered and transparent program for the existing stockpiles could mark a break from the problems of the past. One consideration that provides hope that previous experience will not be repeated is the work now underway on instituting tighter controls and greater transparency in routine forest operations. For a system of transport controls to be credible, it must be introduced as this other development work accelerates and is applied in the field.

Suggested Operational Principles

In view of the weak controls and lack of supervision at the time of harvest, Government needs to give serious consideration to the possibility that some of these logs

RCA 248423 □ WUI 64145 □ FAX (202) 477-6391

were illegally felled. Therefore, a substantial burden of proof should be placed on any party claiming possession and seeking permission to transport. Applicants should provide clear and compelling documentary evidence that harvests were conducted in places and manners authorized by Government, that all royalties, fees and applicable fines and penalties have been paid in full to the National Treasury, and should submit a full plan describing the intended method of transport, routes, timing and other details of the proposed transport. Prior to approval of any transport proposal, the relevant Government agencies, including the Department of Forestry and Wildlife, Ministry of Agriculture, Forestry and Fisheries, Ministry of Economy and Finance, should evaluate and verify all claims regarding the origin of the concerned logs and proper receipt of payment, make the related documentation available for public inspection and comment, and define a transportation monitoring plan to ensure proper transport and to prevent abuse.

Criteria and Standards

In evaluating transport plan proposals and setting conditions on permits, Government should take into consideration three dimensions of the proposed chain of custody process: 1) how does the applicant intend to provide for the *identification* of the logs being moved so that they can be readily and reliably distinguished from illicit material; 2) how will logs whose movement has been authorized be kept physically *segregated* from other logs (and especially logs from new, illicit fellings); and, 3) how will the process be *documented* before, during and after transport? These and other aspects of an acceptable chain of custody system are described in some detail in the report on "*Technologies for Wood Tracking*" prepared on the basis of the meeting sponsored by the World Bank and the Worldwide Fund for Nature held in Cambodia earlier this year. I provided to you a draft of this in July and it is now also available on CD-ROM from my office. Considerable judgment will be involved in establishing sound procedures and I believe Government would benefit by convening an accelerated multi-stakeholder consultative process on this issue.

Planning is also needed to make provisions for handling of claims and material for which the submissions of concessionaires or other claimants do not satisfy Government. Where ownership, payment can not be satisfactorily established, or where agreement on transport procedures can not be reached, the appropriate provisions of Cambodian laws and regulation on forestry and on State property need to be brought to bear. These questions need to be fully explored and incorporated into a fully documented set of procedures.

Potential Technical Approaches

As we have discussed, and as the chain of custody report makes clear, various technologies, including optical barcodes and other computerized technologies are readily available and could be employed by the Department of Forestry and Wildlife to assist with the current problem. The report also makes clear that adequate controls are possible with less sophisticated and less expensive technologies provided attention is paid to vulnerabilities and opportunities for abuse. As we have also discussed, the Bank is ready

to assist the Department with the necessary equipment and technical assistance under the provisions of the credit for the Forest Concession Management and Control Pilot Project and we will do our best to help expedite procurement and consultant selection as needed.

Recommended Next Steps

On the basis of the principles discussed in this letter, prior to any change in existing policy, Government could consider preparing a detailed proposal for a revised system of controls and permits. This should be based on wide and transparent consultation with concerned stakeholders, including industry, representatives of the Natural Resources Management Working Group, NGOs and others. With serious effort and use of resources currently available to your Department, I believe that a concrete proposal that could gain wide endorsement and support could be prepared in as little as six weeks. This would require designation of a senior team of specialists from your Department and from related units of Government. They could be assisted by technical advisers already in place and additional expertise which could be mobilized on a short term basis using World Bank loan resources. The first steps would include designation of an inter-agency team and formulation of an initial work plan and budget. This team would benefit from consultation with the existing Inter-ministerial Commission on Forest Revenue Systems. I would be happy to assist you in this in anyway I can and will follow up with you and your staff at the earliest opportunity.

Because of their interest in these issues, I am taking the liberty of copying this letter to those listed below. Please be assured on my highest considerations.

Sincerely,



William B. Magrath
Lead Natural Resource Economist
Rural Development and Natural Resources Division
East Asia and the Pacific

cc. Mr. Chheng Kim Sun
Mr. Net Mony
Mr. Jean-Claude Levasseur
Mr. Urooj Malik
Mr. Robert Hagemann

the World Bank

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
INTERNATIONAL DEVELOPMENT ASSOCIATION

14th Floor, Diethelm Tower A
93/1 Wireless Road
Bangkok 10330, Thailand

Telephone: (66-2) 252-2305-7
(66-2) 256-7792-3
Facsimile: (66-2) 256-7794-5

December 6, 2002

H. E. Chan Sarun
Minister of Agriculture, Forestry and Fisheries
Ministry of Agriculture, Forestry and Fisheries
Phnom Penh, Cambodia
Fax : 855-23 215982

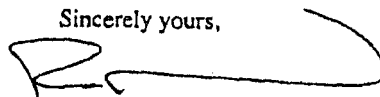
Excellency :

I am writing to express my most serious concerns about yesterday's violence outside of the Department of Forestry and Wildlife against people wishing to express views on the recently disclosed forest concession plans – input that, from my point of view, has been legitimate and constructive. This violence seriously undermines commitments to consultation and transparency made by the Government. At a time when the World Bank and others are urging expanded consultation on the forestry proposals before Government, these events do great harm to the credibility of that process.

For me to properly brief World Bank senior management, I would like to request specific information from the Government on what has occurred and the steps that Government intends to take to prevent a reoccurrence. Additionally, next Monday, Mr. Peter Stephens, our Regional Communications Advisor, will visit Phnom Penh and I will ask him, together with our Country Manager, Mr. Bonaventure Mbida-Essama, to look further into this issue and report back to me. Your assistance to them would be greatly appreciated.

Although there are many other issues we will be raising with you separately concerning the World Bank's support to forestry in Cambodia, I am taking the opportunity with this letter to convey our deepest concern for the most recent events. Because of their interest in these matters, I am copying this letter to those listed below.

Sincerely yours,



Ian C. Porter
Country Director, Cambodia
East Asia and Pacific Region

cc: H. E. Keat Chhon, Senior Minister of Economy of Finance
H. E. Sok An, Senior Minister, Council of Ministers
H. E. Sum Manit, Secretary of State, Council of Ministers
Mr. Ty Sokhun, Director-General, Department of Forestry and Wildlife
H. E. Dr. Aun Porn Moniroath, Secretary General, Ministry of Economy and Finance
Mr. Jean Claude Levasseur, Resident Representative, Food and Agriculture Organization of the United Nations
Mr. Urooj Malik, Resident Representative, Asian Development Bank,
Mr. John Buckrell, Global Witness

FROM :

FAX NO.

KINGDOM OF CAMBODIA
Nation Religion King

Ministry of Agriculture, Forestry and Fisheries

Phnom Penh, December 18, 2002

From: the Minister of Agriculture, Forestry and Fisheries

**To: Mr. Ian C. Porter, Country Director,
Cambodia, East Asia and Pacific Region**

Mr. Director,

The Ministry of Agriculture, Forestry and Fisheries acknowledged receipt of your letter dated 6 December 2002, requesting clarification on the incident took place in front of the Department of Forestry and Wildlife on 5 December 2002, caused by a group of people who declared themselves as representatives of local communities living in provinces with forest concessions. They came to complain about the process of public disclosure, the consultation on forest concession management and the social and environmental impact assessment report. The Department of Forestry and Wildlife (DFW) had continuously clarified these issues and that group of people had confirmed that they fully understood what DFW had explained to them. Nevertheless, they still demanded that the DFW organized a political forum workshop.

This demand protracted from 12:30 until 17:00 on 5 December 2002. At that time, about 50 demonstrators, who were not authorized by the authorities, blocked the access to the DFW from 17:00 until nearly 20:00, regardless the continuous conciliation efforts offered by the Chief of the Psar Kandal II District Council, Daun Penh ward. At 18:30, the DFW Director sought the assistance of the authorities to facilitate the locked-in staff of the department to go home. When the police arrived at the department, the people gathered in front of the department were leaving by themselves because of rain. The officials left the DFW premises safely. Under such circumstances, the authorities did not use force or violence against the demonstrators. What they did was to blow the whistle to facilitate the traffic.

At 20:46 on the same day, Mrs Eva Galabru from Global Witness wrote a slanderous email to the international media and the donor community, alleging that a woman was missing, about 12 people were injured and a man had his leg broken. She failed to mention that about 100 officials and foreign experts were taken hostages for nearly 3 hours. This can be verified with the international experts working at the DFW, as well as a Cambodian lady who was prevented from leaving DFW's premises to pick up her young child from school. After this incidence, on 6 December 2002 the spokesperson for the Global Witness, Ms Rosie Sharpe, issued a press statement to echo Mrs. Eva Galabru's email, accusing the police and the military police of using force, beating and using the electric batons against demonstrators, leading to one dead. Furthermore, the statement requested the World Bank to withdraw a US\$15 million SAC loan to the Royal Government of Cambodia.

According to a report from the ground, a number of representatives of the Global Witness and NGOs have barred some forest concessionaires from undertaking direct consultations with the local communities, since they consider this process as fruitless. Instead, they want the NGOs to organize such consultations in Phnom Penh. At the same time, according to the information we received from the Provincial Office of Forestry and Wildlife, some NGO workers have incited the

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local people to protest against forest concession and land concession development. Moreover, according to a remark by the Ministry of Interior, this incident was intentionally prepared by some quarters to spoil the political climate before the general elections. On 12 December 2002, the Special Representative of the UN Secretary General for Human Rights issued a statement condemning the death of a representative of the forest community, allegedly caused by the crackdown associated with the use of electric baton during the rain. The two statements by Global Witness and the Special Representative of the UNSG for Human Rights were a slander. The spokesperson of the Ministry of Interior informed the public that the video tape received from Global Witness, which filmed the demonstration from the beginning until the end did not show any episode of the use of violence or electric baton by the police or the military police against the demonstrators. Witnesses to this demonstration, including the staff members of NGO Forum, who took part in the demonstration, also denied any use of violence by the authorities against the demonstrators. Mr. Hem Sao, who Global Witness and the Human Right group alleged to be electrocuted by the baton, was not on the list of the representative from the Preah Vihear Province. An unidentified person was transported to the Preah Kossamak Hospital, but died on the way and those who took him to the hospital told the hospital staff that he was dying from a heart attack. Some people were slightly injured due to congestion or slippery during the rain.

On a different matter, I am pleased to inform you that following many meetings within my department and with many donors, we have decided that more time is needed for the process of review of the concession plans. I therefore have instructed my staff that:

- (a) The period under which comments can be received from the general public be extended to January 31, 2003.
- (b) The consultations with the local communities be held for as long as is necessary, which we have always proposed in any case. These consultations will be done on the basis of work plans and terms of reference prepared by the DFW.

Please accept, Mr. Director, the assurances of our high consideration.

CC:

- Office of the Council of Ministers;
- Ministry of Economy and Finance;
- Ministry of Interior;
- Ministry of Environment;
- Ministry of Information;
- Phnom Penh Municipality;
- Inspection Directorate;
- Department of Forestry and Wildlife;
- Department of Agricultural Legislation.

ព្រះរាជាណាចក្រកម្ពុជា
ក្រសួងមហាផ្ទៃ



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

**Statement
By
The Spokesman of the Ministry of Interior**

On December 5th, 2002 at 12:30AM there were approximately 50 people from Preah Vihear, Rotanakiri, Mondulkiri, Stung Treng, Koh Kong, Kratie, Pursat, Kampong Thom, Siem Reap and Kampong Cham gathering outside the Department of Forestry and Wildlife demanding for organizing a workshop concerning forest management plans. This gathering did not ask for the permission from the local and competence authority at any level.

The illegal gathering of those people has been prolonged until 5:00 PM. At that time the protesters closed the gate of the Forestry and Wildlife department by not allowing the officials and staffs of the department to leave the office when the working hour was finished. The illegal activity of closing the gate of the Forestry and Wildlife department had continued until 6:30 PM. The Director the Forestry and Wildlife department had proposed competent authority to help the officials to be able to leave the office and get back home.

Acting upon on this proposal, Municipal Police and Military Police department had sent their officials to the Forestry and Wildlife department to help the department's officials to leave the office and get back home. When the Police and Military Police arrived, the protesters who were gathering outside the Forestry and Wildlife Department had dispersed themselves meanwhile it was raining. After that Forestry and Wildlife Department's officials were able to leave the office and go back home peacefully.

In this case, police and military police that went to disperse the crowd neither used the electric shock batons nor acted any violence on the crowd. They just blew the whistles to facilitate the traffic jam outside the department. The batons which were used by the police and military police at that time were all their everyday used normal plastic batons.

After this event, on the 6th of December 2002 the Global witness issued a statement by condemning police and military police for committing violent beaten and using batons to the crowd of which led to a dead of a protester, Hem Sao, from Preah Vihear. On December 12th, 2002 the United Nations Special Representative of the Secretary for Human Right in Cambodia has issued a statement by pointing at Cambodian authority for using electric shock batons in the rain which led to a dead of a representative of forest dependent community. The above two statements, Global Witness's statement and U.N. Special Representative's statement, are completely exaggerated and contradicted to the fact.

The spokesman of the Ministry of Interior would like to inform national and international opinions as the following:

- Through the video tape reviewing received from the Global Witness, which showed the entire activity of the protesters since the beginning till the disperse, we have seen no any activity of the police and military police beating or using electric shock batons to the crowd.

- Eyewitnesses of the event including NGO Forum official who attended the demonstration also affirm that no any violent act of the competent authority to the crowd in the event of evening of December 5th, 2002.

- Mr. Hem Sao who was said by the Global Witness and Human Right Organization to be "died because of the electric-shock baton" was not in the name list of the representative of the forest-dependent communities from Preah Vihear province. The victim was taken to Preah Kosamak Hospital. The people who brought the victim to a hospital told the hospital staff that he died because of fainting spell and asked the hospital to preserve the body for one night.

- For those who got minor injury in the incidence were caused by squeezing together and by slipping during the rainfall.

The Ministry of Interior has noticed that in the past few weeks there are some circles intentionally making political atmosphere trouble before the general election to come.

For example: the gun shot incident took place at Kampong Speu province on November 16th, 2002 which led to dead of Tith Keo Monyroath, second deputy commune chief of Sambo Commune, Samroang Torng District. Just a very short time after the incident happened; competence authority has actively investigated the case. When the competence authority was investigating, some circles have used this incident for their political benefit by calling this case as political motivated case. In contradictory, the result of the investigation through forensics analysis and the confesses made by the offender--Tit Keo Mony Roath's nephew-- who accompanied the victim to join the wedding ceremony in Krang Lear village Sabaur commune has indicated that he was the one who predisposition the gun hand's triggered and led to the death of his uncle.

All activities of the above-mentioned circles have reflected that their intention is really to poison the political atmospheres before the general election, the importance historical event of the country, which will be held in the few coming month.

Once again, the interior ministry would like to reaffirm that: The Royal government of Cambodia, with real political good will and determination, would try to do all the best and spare no efforts to ensure good atmosphere for free and fair election. The Ministry of Interior has had strict order to investigate the cases, and arrest suspects or preparatory to send to justice regardless of criminal activities including this related to the political party matters.

Phnom Penh, December 13, 2002

APPENDIX 1

Description of the Satellite Imagery Study Response to a letter sent by Eva Galabru, Global Witness

source: Forest Concession Management and Control Pilot Project - 5th Quarterly R
Report, March - May 2003 (Project Credit No. 3365-KH)

Dear Eva,

Thank you for sending me your comments. Let me address them one by one.

1) *"The study will show mainly changes from forest to non-forest, but not provide any indication on the condition of the forest":* ► We can't be more accurate than that in such a short period of time. *"and in particular whether areas should remain under production":*

- The information provided by this Satellite Imagery Interpretation Study is only one part of the information we are using to evaluate the SFMP. In other words, it is not because the satellite images do not reveal any degradation of the forest that it should remain under production (or the contrary). You seem to overlook that a consistent process has been developed by the DFW that we are assisting to review the SFMPs and ESAs. Many tools are being used to analyze all the information provided by the companies, for example, to assess the quality and the reliability of the inventories carried out by companies.

2) *The study purports to show where logging has occurred in the recent past by examining whether new logging roads have been built since 2000. The assumption behind this is that in order to carry out logging (whether legal or illegal) one requires roads, therefore new roads are an indicator of logging. The assumption is really only valid only if we are dealing with untouched, pristine forest areas. Whereas in Cambodia most forest areas are intersected by roads, tracks and paths, which are not necessarily detectable with remote sensing, but that nevertheless enable logging to take place. So the study will not show satisfactorily where past logging has occurred.*

- We have never said that we intend to detect all the places where logging has occurred. This is not a forest crime monitoring exercise. One of its primary purposes is to evaluate whether the information provided by the companies in their SFMPs is reliable and relevant. As you said, it will not be possible to detect and to locate all the logged areas, but it will enable us to identify the most recent and most extensive logging activities. These activities are certainly the ones that affect most of the resource and these activities should be described in the SFMPs.

3) *The study is using late 2001, early 2002 images. Two logging seasons have come and gone, as well as extensive conversion of forestland in concession and other areas. In the last few months alone, 7,500 hectares of forest have been cleared by a high-ranking government official in the Samling concession in Snoul, most of coupes 3, 4 and 9 of Colexim have been sold and converted, the RCAF Division 12 in the TPP concession have cleared almost all the evergreen forest at the foot of Eastern Phnom Tbeng Mountain and the former security of GAT International have grabbed extensive parcels of land in the Southern part of the Kompong Thom concession. Surely the Concession Management and Control Pilot Project can afford to buy up-to-date images.*

- The logging suspension started from the beginning of 2002. Most the logging activities in forest concessions stopped at that time even though others are still going on. Thus, changes until early 2002 should provide a rather good estimation of recent logging activities prior to the logging suspension. This can be easily demonstrated when looking at the road networks within different concessions: e.g., Pheapimex - Kompong Thom, Silverroad... Once again the objective is not to evaluate precisely the logged area, but to use the road network as a proxy indicator to evaluate the information provided by the concessionaire.
- If such big changes happened during the last months, I would be very grateful if you would provide us with such evidence (maps). This would be very helpful to the TRT.
- I would like to remind you that the former GAT International concession was officially cancelled in Cambodia June 2002 and that this cancelled concession is not included in the evaluation exercise. Moreover, *Forest Concession Management and Control Pilot Project*

the examples you give rather demonstrate that when legal logging is suspended, illegal logging seems to take over.

- ▶ In many other tropical countries the forest cover is updated every 5 to 10 years. Until now we have 92-93, 96-97, and 2000 (only for concessions) forest cover interpretation and we will soon have 2002 interpretation. We have enough material to work on and I don't think that purchasing a new set of images will be of any significant help in the preparation of the management plans. On the other hand, I agree that for your own activities of crime monitoring you should be able to work on updated images.

4) *The DFW GIS/RS staff prepared all the maps and GIS data for the concession management plans. It is written on the maps submitted by the companies and has been confirmed verbally by concessionaires - who by the way complained rather bitterly about DFW's excessive fees. I believe it is unrealistic for anyone to expect the DFW GIS/RS staff to produce for this on-going study anything different from what they produced for the concessionaires. Surely you do realize that this constitutes a classical example of conflict of interest.*

- ▶ Nobody has ever disagreed with the fact that the DFW GIS/RS Unit prepared the maps for the concessionaires. Even DFW GIS/RS staff recognize it.
- ▶ Regarding the "excessive fees" about which the concessionaires complained, I would just like to remind everybody that the concessionaires were not required to work with the GIS Unit. They could have worked with any one else (or by themselves...) for less cost.
- ▶ The interpretation of 2000 Satellite Imagery by the DFW is certainly of good quality and is definitely of better quality than the 96-97 interpretation. That has been acknowledged by GIS and RS professionals. There is a competent team that has the capability to provide reliable work. Moreover, this team will be supervised by an independent specialist who has never worked in Cambodia before and he cannot be suspected of having any previous relationships with anyone in the country. I will also supervise some part of the work while the specialist is not in Cambodia. I have already looked at some preliminary results and I am quite pleased with the quality of the work. Indeed, I, myself, have checked the interpretation of the road networks in different concessions. It fits perfectly with the GIS Unit's interpretation. Even better, the road networks are sometimes wider on the GIS Unit interpretation inside and outside of the official coupes.

I won't repeat the limitations of this study, since Vincent Fesneau, did that during his presentation. I would just like to remind you that the objectives of this study are, in a very short period of time, to:

- evaluate the forest cover in Cambodia at the beginning of the year 2002;
- develop information on some general trends in the evolution of forest cover from 96-97 to 2002 inside existing concessions, cancelled concessions, and protected areas; and
- provide an estimation of the logged area by using logging roads as a proxy indicator at the beginning of 2002. This will be used by the TRT to assess the quality of the information provided by concessionaires in their SFMPs.

I think that it is important to remember that the objectives of this study are not to:

- evaluate the level of degradation of forest cover ;
- monitor illegal logging in Cambodia. (FRM/INDUFOR/SGS has no mandate to evaluate these activities); or
- provide a continuous survey of Cambodia's forests.

Best regards,

Cambodia
Yanni Petrucci

Forest Concession Management and Control Pilot Project

May 21, 2003

Mr. Ty Sokhun
Director General
Department of Forestry and Wildlife
Phnom Penh, Cambodia

Subject: Forest Concession Management and Control Pilot Project

Dear Mr. Ty Sokhun:

I would like to follow-up with you on discussions you have had with Mr. William B. Magrath of the Bank's Cambodia Country Office on how the recommendations of the recent Mid-Term Review Team's (MTR) report can best be operationalized.

Mid-Term Review Report. At the outset, I would like to say that I find that the MTR reflects a solid understanding of the project, its potential contribution and the limitations and constraints that have been faced. I believe it could be the basis for improved performance and long lasting development impact and would like to work with you to see project performance improve as the team suggests. It's open acknowledgement of public mistrust and lack of confidence, even as these may not be fully justified, is an important message for the Department of Forestry and Wildlife to reflect upon.

Broadly read, the review is supportive of the basic thrusts of the project and of the technical quality of much of the work that has been completed. Nonetheless, there are some aspects of the MTR that appear to be in error. For example, the observation that three concession Strategic Forest Management Plans have been accepted and that the concessions are awaiting approval for a resumption of logging (p. 15). Given the sensitivity of this issue, I strongly suggest that you provide public clarification on the status of these plans and logging approvals. In addition, some of the consultant's recommendations are not well advised in the view of the Bank. The World Bank cannot, for example, support the consultant's recommendation for temporary licensing of concession operations that might in any way be outside of the procedures envisioned by the Sub-Decree on Forest Concession Management (p. 16). I would, instead, suggest that concessionaires be directed to pursue the established planning sequence as rapidly as possible consistent with good technical performance.

Application of 5-year Compartment Planning. The MTR refers to a decision by the Department of Forestry and Wildlife (DFW) to enforce 5-year compartment planning as an integral part of the concession management system. As I indicated in my letter of 20 December 2002, I believe attention to mid-range planning issues is essential, and a 5-year compartment plan would be an effective way for these to be addressed. I am also convinced that the 2002 Forest Law permits the Department of Forestry and Wildlife

discretion to require concessionaires to pursue sound practice and particularly to require concessionaires to conform to the future planning sequence to which they have committed themselves in their Strategic Plans. As most, if not all concessionaires have indicated that they will prepare 5-year compartment plans if their long-term Strategic Plans are approved, I believe that there is no effective constraint to application of the full planning sequence. While I understand that you may wish to consult internally on this matter, I believe that clear and public confirmation that the full planning sequence will be applied is essential for the successful implementation of the balance of the project.

Community Consultations. I fully support the MTR recommendation that a Community Forestry Specialist be recruited under the project as soon as possible to ensure that adequate procedures and processes are pursued in future concession planning and control work. To operationalize this recommendation, I suggest that you consider preparation of something along the lines of a "Social Issues for Forest Concessions Sourcebook". This would give concessionaires, the public and your staff practical guidance on incorporation of social issues into concession operations from the planning through to logging and post logging stages. This could build on the recommendations made in "Social Forestry Guidelines for Forest Concessions" (Fortech, 1998) and could be based on a consultancy, training program and pilot activities that could be implemented in the next 5 months. I suggest that you consider consulting systematically with interested NGOs and others on implementation of such a program.

Field Patrols and Supervision. Similarly, I fully endorse the MTR proposal that project resources be used more aggressively and visibly to support the presence of the DFW in forest areas including both ongoing and cancelled concession areas. To this end, it would be appropriate for DFW to assign project-financed vehicles, equipment and staff to work in the field with NGOs and others, including those with whom you are already working in partnership. In any case, it is important to be able to demonstrate that the project is enabling DFW to exert controls on resource use through a field presence. I suggest you consult with WildAid and Conservation International or others of your choice, and or develop your own program for field activities that the project can support and present it to the Bank as soon as possible using the MTR estimate of cost of mobile forest crime enforcement units (Annex 4) as a point of departure.

Forest Estate Delineation and Boundary Setting. It is unfortunate that the MTR consultants were not able to utilize the results of the ongoing satellite imagery assessment of changes in forest cover and forest degradation. This could have added considerably to the authority with which the team was able to offer an opinion on the overall performance of the concession system and the role of this project in strengthening it. It is, nonetheless, important that this ongoing work be completed and made available as part of the public debate on forestry in Cambodia. Looking further ahead, the current project should make every effort to support the data collection, mapping and other work needed to establish a workable permanent forest estate (including, but not limited to concession areas). In this direction, I suggest that you consider carefully any possibilities of cooperating, with the resources available through this project, with other agencies of the Royal Government and particularly the Ministry of Land Management on work related to forest mapping and demarcation. In addition, I suggest that you make an effort to identify ways to ensure

that concessionaires shoulder a reasonable share of the burden of boundary demarcation as part of the concession planning and operations processes, and work with other concerned agencies of Government to establish procedures and protocols for the necessary mapping and field work. From the Bank perspective, costs for such activities, within eligible expenditure categories under the Credit, could be financed by the Credit if agreed in advance. . Also, even if an extension of the entire project is not possible, it could be possible to extend the closing date for these specific activity if needed.

Public Affairs Capacity. Part of the mistrust and suspicion that characterizes the Cambodian forestry sector, I believe, is due to the limited availability of timely and accurate information. In my opinion, the Department of Forestry and Wildlife has not received adequate recognition for its efforts in this regard, for example, the disclosure last November of concession Strategic Forest Management Plans and Environmental and Social Impact Assessments. Nevertheless, more needs to be done. As proposed in the MTR, DFW should establish under the project a designated public affairs unit with terms of reference that include dissemination and disclosure of information and documentation on forest concession management and other forestry issues. This could be organized to be in line with and help fulfill obligations on the Forest Administration under Article 6, paragraph D of the 2002 Forest Law.

Work Plan and Extension Program. These recommendations are summarized in the attachment to this letter and I hope will help you plan your next steps. As an immediate step forward, I suggest that your Department prepare a detail work plan, including key activities and anticipated delivery dates, estimated budget, procurement plan and consultant terms of reference, for the next 6 months of the project that addresses the specifics of the MTR recommendations, particularly those highlighted above. This would build on the already approved program for the Forest Crime Monitoring and Control component, which you might also wish to extend, especially with respect to field activities and the possible need to finance the services of a new Independent Monitor of Forest Crime Monitoring and Reporting.

We hope that you would be in a position to submit such a work plan to the Bank no later than 26 June 2003. As you know, Mr. Magrath is in Cambodia and is available to work with you and your team on the necessary documentation requested above and to conclude an agreement with you on targets. I have also made plans for a World Bank Social Scientist and consultant Forester to visit Cambodia in June to help review your proposed work plan and to assist as necessary with Terms of Reference, consultant recruitment and other support as needed.

On the basis of delivery targets in the work program you submit, I suggest that we consult further no later than 15 October 2003 to assess progress and to determine whether the project has begun to move forward satisfactorily and, if so, whether an extension of the closing date is warranted. This review would coincide with the scheduled work of the multi-donor Forestry Sector Review and would take into consideration the views of a broad range of stakeholders on the impact and performance of the project. As input to the Bank's consideration of an extension of the project, I encourage you and your team to think as broadly as possible of the investment needs of the forestry sector as a whole

May 21, 2003

and submit by 15 October 2003 a proposed design for a one- or two-year extension of the project that would address the most important sectoral development constraints that you see facing forestry.

I suggest that your team move ahead immediately with assistance from your technical advisers with the ongoing work of the project, and at the same time undertake the suggested activities summarized in the attached table, including preparing for the Bank's review in June of the detailed work plan related to the key recommendations of the Mid-Term Review. Please let me know of any questions or concerns that you have or consult with Mr. Magrath at your convenience.

Because of their interest and involvement in these issues, I am taking the liberty of copying those listed below on this letter.

Sincerely,



Mark D. Wilson
Director
Rural Development and Natural Resources
Sector Unit
East Asia and Pacific Region

- cc. H. E. Chan Sarun, Minister of Agriculture, Forestry and Fisheries
H.E. Keat Chhon, Senior Minister of Economy and Finance
H. E. Im Chhun Lim, Minister of Land Management
Mr. Cheah Sam Ang, Project Director, Department of Forestry and Wildlife
Mr. Urooj Malik, Country Director, Asian Development and Co-Chair WGNRM
Mr. Jean-Claude Levasseur, Representative, U.N. Food and Agriculture
Organization and Co-Chair WGNRM

**SUGGESTED ACTIONS TO OPERATIONALIZE RECOMMENDATIONS
OF THE MID-TERM REVIEW**

Issue/Topic	Suggested Activity/Product	Main Project Component	Proposed First Step	Target Date	Bank Support or Participation
5-year Compartment Planning	Confirmation of application of 5-year Compartment Plan requirement	Planning and Inventory	Press Release or other public statement	June 1, 2003	
Community Consultations	Pilot activities leading to "Sourcebook" or other guidelines on community/social concerns in concession planning and operations	Planning and Inventory	Terms of Reference	June 10, 2003	Bank Social Scientist to assist and review
Field Patrols and Supervision	Project-supported field patrols	Forest Crime Monitoring and Prevention	Terms of Reference	June 10, 2003	Bank Forestry Specialist to advise and review
Forest Estate Delineation and Boundary Setting	Program for project supported cooperation with other key land agencies for setting policy and giving operational directions to Department of Forestry and Wildlife and concessionaires	Planning and Inventory	Terms of Reference	June 10, 2003	Assistance available under Bank-financed Land Management and Administration Project
Public Affairs Capacity	Designation of responsibility for public affairs and information dissemination function within Department of Forestry and Wildlife	Planning and Inventory/ Concession Control	Terms of Reference	June 10, 2003	Assistance available from Bank's External Affairs Specialists
Work Plan and Extension Program	Short-term work plan and Terms of Reference related to the above	Project Management	Proposed Budget and Consultant Selection and Procurement Plan	June 26, 2003	
	Plan for Project with Extension of Closing Date	Project Management	Proposed Budget and Work Plan	October 15, 2003	

Quality Enhancement Review Cambodia Forestry

Summary

Since 1995 the Bank has been closely associated with attempts to reform the forestry sector in Cambodia. This includes a forest policy assessment in 1996 and two lending operations, a SAC and a LIL in 2000. Despite tangible successes donor and NGO criticism of the Bank's work has been strong. Both groups have challenged the outcome of the Bank-Government work, as well as the process by which it was carried out. The main thrust of their criticism is that the Bank has not brought adequate pressure to force reforms---we have been too tolerant of foot-dragging by government. Critics acknowledge, however, that the Bank's presence is critical to bringing about change.

Successes include (1) a reduction by 4 million hectares of area in concessions with real progress toward good management of the remaining 2.5 million and (2) a substantial empowerment of civil society and donors in their battle to create a transparent forestry industry operating within the public interest. Good forest governance is far from being achieved, however, and much work remains to be done at both the institutional level and in the forest. While Donors and NGOs are impatient with the perceived slow rate of progress, the panel's judgment is that reform in this difficult area is probably occurring as rapidly as can be expected, and would not be moving at all without the Bank's involvement.

Despite these successes, the Bank's image, and indeed the Bank's effectiveness has suffered from the following: (1) the inability of the country team to coalesce around a shared strategy on substance and on process, (2) the early termination of the FAO/UNDP Forest Crime Monitoring and Reporting Project due to the breakdown of relations between the Forest Crime Monitor, Global Witness, and Government (3) not having in place a clear and well-articulated vision of how the recently-liberated 4 million hectares are to be occupied, and (4) an insufficiently well-articulated Bank commitment to non-concessionaire forest users, especially the rural poor in and near the forest. The panel concludes that the LIL and SAC have had limitations as instruments in addressing the long-term structural nature of Cambodia's forest governance problem. Nevertheless carefully selected forest-related SAC conditionality, that are squarely on the larger governance agenda and are completely under government control, should continue to be considered in forthcoming SACs.

We recommend extending the LIL and using the remaining funds to (1) carry out aerial and field surveys to verify the current status of the forest and establish a clear baseline for additional work, (2) analyze options for non-concession land use, with a focus on poverty, equity, traditional rights, and biodiversity protection (3) carry out a participatory ICR to work with stakeholders to develop a consensus around next steps, and (3) maintain pressure on concession reform.

In terms of the future of the Bank's involvement in forestry we note the forest sector is of strategic importance to achieve gains on the top two agenda items in Cambodia, governance and poverty reduction. Bank efforts in these areas will require a commitment by the regional and country management working in cooperation with the Task Team and EXT in order to develop and continuously refine a single coherent view on the substance and the process of our forest sector strategy, and to develop and implement a proactive communications and partnership-building strategy.

Successes

The Bank's 1995 Forest Policy assessment provided a solid diagnosis of the state of the forest sector in Cambodia and led to a correct focus on concession policy reform and forest governance. Subsequent TA and lending was, therefore, appropriately focused on reforming the concessions system and controlling illegal logging.

The 1996 Forest Policy Assessment identified over 6 million hectares under concessions from some 30 concessionaires. Over half of these concessions had been established in 1995 and 1996 under unclear criteria and among widespread allegations of cronyism. Actual concession implementation varied widely. In addition to lack of transparency in allocation, no systematic control of concession management was in place, harvest was far above sustainable levels and government was receiving only a small fraction of economic rent.

Important progress has been made, although key elements could be reversed at any time. Following discussion with Bank and Government lawyers, it was decided that no matter how irregular the allocation and monitoring system, existing contracts must be respected¹. Conditionality in the SAC and support to DFW under the LIL for the first time put teeth in the sustainability language in the contracts. This has reduced the concession area from 6.2 million to 2.6 million, with additional reductions pending. As remaining concessionaires have not responded in a timely manner to the requirements of government, a logging ban was imposed effective January 2002. While there is evidence that illegal logging has continued on some concessions, and government has created a loophole through the economic land concessions, there is no doubt that other concessions have suspended operations and overall log volume is greatly reduced.

On the institutional front a new forest law was drafted and passed that allocated institutional responsibility for forest land and established principles supporting transparent management in the public interest².

These Bank activities have significantly exposed and challenged the control of vested interests and empowered civil society and donors to hold government accountable. Specific examples include the cancellation of concessions, public disclosure of concession documents, and greatly enhanced transparency including third party monitoring.

¹ It is noteworthy that the decision of the Bank to respect these contracts was very unpopular with the Donor and NGO community, and contributed to widespread suspicion that the Bank would not take on vested interests.

² This law also created the legal figure of community forests.

Current Problems

For the Bank's critics the glass is half empty. Illegal logging is widespread, including on cancelled concessions, there is no clear plan for what to do with the land under cancelled concessions, and the government continues to be a hesitant partner. Because of the Bank's leadership in the reform effort it tends to be held responsible for the glass not being full. In addition there is a widespread view among donors and NGOs that through its emphasis on the concessions model the Bank has gotten too close to vested interests in government and the industry, failed to employ its remedies when appropriate, and not seriously entertained alternative community-based models. It should be noted, however, that both correspondence reviewed and conversation with the representative of Global witness indicate that despite criticisms of the Bank's performance, they indicated they do not want the Bank to exit.

Diagnosis

In the panel's judgment both the image and the effectiveness of the Bank is being seriously undermined by the inability of the country team to develop and coalesce around a shared strategy on substance and on process. This requires (1) a dynamic reform agenda that evolves as progress is made and, (2) a strategy to build effective and realistic partnerships with the critical stakeholders. The Bank's program has come up short in both areas.

Lack of evolution of the reform agenda. Although the reform agenda started off right—there was no alternative but to work on concession reform in 1996—the Bank has fallen behind the curve as this agenda progressed. In particular, the Bank has not been fully prepared to discuss alternatives outside the concessions model as 4 million hectares were removed from concessions as a result of the success of the concession reform strategy. On the other hand, the Bank's work program in this area is constrained as the Government has been hesitant to take on the issue and presently lacks the capacity to address it (apart from law enforcement). Although alternatives such as community-based models had been discussed internally and analytical work on social forestry issues has been ongoing through a PHRD TA grant, the Bank did not keep pace with the demands and expectations of the public, NGO and donor community. Consequently, options were not fully developed and discussed with government and stakeholders. This inability to keep up with the demand by producing and disseminating substantive results in this area, only strengthened the perception that the Bank was somehow too close to vested interests in the area of concessions.

Failure of the country team to develop and coalesce around a shared strategy. The lack of clarity on *where* we want to go has impeded agreement on *how* to get there, in particular how to deal with government, donors and NGOs. Widening the base of issues that the Bank is *viewed* to be working on in forest policy would create more points of contact with the substantial agenda of potential Donor and NGO partners. In addition the

Bank team needs to agree on how to manage relationships with key stakeholders: *e.g.* how to deal with the few skeptic NGOs who are not likeminded in terms of process and outcomes; when the Bank is to lead, when it should let others take the lead.

Donors and NGOs want the Bank to take the lead on analytical work, and in dialogue with government. The team needs to agree on a strategy to generate broad ownership in the former, and to better explain our limitations in the latter. On analytical work especially, everyone on the team needs to understand that in Cambodia, even more than in other countries, the Bank needs to balance high standards of analytical rigor with a process that strengthens partnerships. This also holds true for project implementation. Responsibility and accountability for this strategy and its implementation must be shared by the country management team and the TTL. Their interest and participation in the QER has demonstrated a high-level of commitment to the work and signals that the needed elements are coming together for this to occur.

Failure of the environmental crimes project. The coherence of the Bank-led reform has been badly damaged by the early termination of the FAO/UNDP Forest Crime Monitoring and Reporting Project due to the breakdown of relations between the Forest Crime Monitor, Global Witness, and Government. This left a fundamental leg missing from the concessions reform package. In retrospect that Bank should have allocated more resources to the project (see discussion of instruments below) and adequately funded and ensured implementation of a component so fundamental to overall success³.

Credibility. Doubts raised concerning the economic viability of concessions and the Bank's downgrading of foregone revenue estimates have done some harm to our credibility. These reflect both reduced timber prices since the 1996 analysis, and better knowledge with regard to the productivity of the forest.

Bank instruments. The panel feels that the early ESW and TA reports were of generally high quality. As suggested above, our analytical work did not adequately evolve as the concession situation changed. Bank work on the ground suffered from insufficient resources resulting from the choice of a LIL, which in any case was not structured as a learning and innovation exercise. As suggested above, the absence of Bank control in implementing the forest crimes component turned out to have been a serious error. The use of the SAC to carry governance conditionality within the context of the forest sector was fully appropriate and coherent with the loans governance objectives. The link to general conditionality through the development letter was a mistake fully recognized by management.

Recommendations.

Stay involved in the forest sector in Cambodia. This sector is of critical importance both for institutional and governance reform and for poverty reduction. Forest sector reform is in many ways critical to governance and institutional reform. First, as well

3

documented in the Bank's 2003 WDR, the OED Forest Sector Review and the work of Paul Collier and others, poor governance of natural resource wealth helps finance corruption and abuse of power in other segments of society, diverts entrepreneurial talent to "take not make", and permits government to be less responsive to its citizens. Were the Bank to exit from the forestry sector at this time it would hurt the Bank's credibility and effectiveness not only in the forest sector, but in the overall country program.

Expand ESW on alternatives for the forest sector in Cambodia, and include major stakeholders to the extent possible. This might include a learning ICR for the LIL. In order to ensure ownership and to generate consensus on the way forward this should be done jointly with our major stakeholders. In view of the ongoing reduction of concession land, and emerging interest in community-based models, solid analysis is needed of (1) the potential for community based forestry and (2) alternative concession and community based systems. Current estimates are that 80-90 thousand hectares are under community forestry. Indicative calculations by GTZ apparently indicate that nearly 9 million hectares (out of some 10-11 million of total forest) have potential for community forestry. Clearly much analytical work is needed.

Use remaining resources from the extension of the LIL to establish a new baseline of forest conditions and to strengthen partnerships. Carry out an aerial photography-based forest assessment complemented with field measurements and surveys. This survey should include identification of logging activities, sample forest inventories, and a mapping of communities. This would establish an updated baseline for considering future forest options. Its design and implementation should ensure that information generated is of high quality and, in the interests of complete transparency, fully available to the public, including both the source data (air photos) and the accompanying analyses.

Keep pressure on concession reform. The Bank must keep pressure on concession reform. This includes ensuring through Bank no objections the highest international standards in management plans (including social and sustainability criteria), as well as fully professional monitoring and evaluation of performance.

Continue to use Adjustment conditionality to achieve improvements in forest sector governance. Forest sector governance is critical to the larger issues of institutional development and national governance. Adjustment conditionality should focus on very well-defined governance improvements that are completely under the control of government.

Develop a strategic communications strategy and implement it. The communications strategy needs to fulfill three functions: (1) communicate the Bank's strategic thinking effectively to stakeholders and help to manage expectations, (2) guarantee effective communication and dialogue between the Bank and stakeholders to develop a coherent, shared implementation strategy, including a better understanding of the limitations of each of the partners, and (3) to develop the incipient local civil society into an effective constituency for institutional change. The Bank needs to shift its alliances and dialogue

from dependence on international NGOs and Donors to one involving an increasingly national constituency.

From: Steven N. Schonberger on 07/29/2004 07:13 PM ZE7
EASRD

To: Peter Jipp/Person/World Bank@WorldBank, Kimberly Versak/Person/World Bank@WorldBank
cc: Mudita Chamroeun/Person/World Bank@WorldBank, Hoonae Kim/Person/World Bank@WorldBank,
William B. Magrath/Person/World Bank@WorldBank, Nisha Agrawal/Person/World Bank@WorldBank,
Peter L. Stephens/Person/World Bank@WorldBank, Ian C. Porter/Person/World Bank@WorldBank
bcc:
Subject: Meeting with GW

Given the tone of the latest letter, I went to see GW - Mike Davis and Markus - with Mudita.

GW indicated following:

- They feel that "nothing has changed" despite assurance from Ian and Nisha that we would work in concert with the other donors and the results of the Indpt. Review
- Bank is trying to salvage the concession system as the main management system for production forests at all costs, in part at least to justify the money we've already sunk into concessions reform. While the concessions have been reduced this has nothing to do with the LIL (areas logged out) which is focusing on supporting continued concessions in the six concessions which represent virtually all of the commercially valuable areas.
- We have been pushing log transport independently of FA and the other donors
- The WB has endorsed that six concessions go forward through the LIL
- Our advocacy of the concession system demonstrates that we are not sincere in our indications that we would work with the other donors based on the results of the indpt. review which recommended stopping the concession system

I responded:

- In terms of transport, we responded to a request from govt. and discussed this with the other donors. We were not asked for approval but for our views on how this could be done.
- In terms of concessions, it is clear that we are not advocating this system for expansion but simply supporting an orderly wind down from the initial situation. This is confirmed by the provisions of the Subdecree on Forest Concessions (with which we have indicated our agreement) which stipulates that the cancelled concessions cannot be rebid out for forest concessions.
- I disagreed that the six concessions recommended by TRT constitute the only viable areas in Cambodia. The fact that the TRT recommended the largest and politically most connected concession - Pheapimex - for cancellation - is encouraging.
- We have worked in close collaboration with the other donors on all aspects including the proposed transport and SFMP review. As the lead technical donor in the sector, we are often in the position of presenting the situation to the group to clarify govt.'s position and suggesting ways forward, but we do so with the expectation that others will challenge these

views and this in fact does happen. We recognize that not all donors may be able to fully capture the issues being discussed at the time or may reconsider afterwards, but in this case the donors concerned should indicate their reservations or uncertainties as input to the process rather than express outside the consultative process that they are not sure if they agree or not. This hardly constitutes major dissension amongst donors.

- The disagreement in terms of concessions is now focused on whether it is reasonable to expect that any of the existing concessionaires will act or can be managed to act consistent with sustainable forestry practices. WB believes that this is possible if the SFMPs are reasonably good, while GW does not believe this is possible given the types of abuses which these firms engaged in previously.
- We have not endorsed anything regarding the SFMPs. The technical review team works for government and our responsibility is to ensure good TORs, qualified applicants and a transparent selection process. We have under the LIL the right to comment on the TRT results and we have chosen to join the other donors in supporting an independent review of the SFMPs recommended to continue. We are awaiting these results before we indicate our agreement or disagreement with the TRT and have not reviewed the plans or the TRT comments independently at this point. If we have concerns regarding the indpt. review, we will review directly the concerned plans.
- As regards the independent review, we agreed that our future engagement in forestry would be guided by the sector review, but not in the sense of following all recommendations but rather that this would be the basis for discussion and reaching consensus with other stakeholders on how we focus our future support. We are preparing comments to discuss with others.

We seem to have agreed on the following:

- While focusing on concessions as the key issue some years back seemed the right way to go, our own internal review agrees with the concerns of several stakeholders that we should have maintained a broader approach to forest resource management, particularly as the issue of post-concession management systems began to emerge. This was highlighted in our internal QER and shared at the forest review workshop. We are expanding on the previous support for partnership type approaches including to WCS and Wild Aid. We hoped to also support FAO community forestry but govt. did not agree to use credit funds for this.
- We agree that moving forward the emphasis should be on alternative management systems, including experiments with partnership forestry, combined with efforts to bring as much transparency and accountability to the annual coupe system in the mean time.
- If Government does not provide a reasonable plan for transport of existing logs, we should indicate clearly that we do not support the proposed transport given the risks. If govt. chooses not to transport, we will all accept that decision. In the case that govt. chooses to transport, the Bank TA should focus, inter alia, on ensuring the royalty status of the logs.
- If based on the indpt. evaluation and our own review, none of the SFMPs qualify for renewal, the concession system should be concluded. WB would consider the program successful in supporting an orderly process, introducing practical mechanisms of transparency and

technical requirements which are pioneering in the Cambodia context and we would consider this sufficient accomplishment.

Where we may end up disagreeing:

- If govt. proposes a log transport plan which incorporates the suggestions from us and the donor working group, then we would be supportive and GW would remain opposed.
- If the indpt review of the TRT recommendations and/or our own review concludes that some of the plans should go ahead, we will be supportive and GW will be opposed.

As WB and GW are about the only agencies dedicating significant time to forestry, it behooves us to work to help others clarify the areas where we disagree and why, rather than personalize the issue or imply there is some kind of conspiracy going on which is frankly counterproductive. As the indpt. review emphasized, the primary dialogue and accountability should be with govt. and not between donors or donors and NGOs. The later simply distracts from focusing on the very difficult, big picture issues and frankly plays into the hands of the vested interests opposed to reforms.

GW appealed that we not focus our efforts on trying to fix what is already in place and bad (concessions, Tumring) which they feel is hopeless or easily deviated, but instead focus on introducing examples of new good alternatives which might gain momentum.

While the meeting was often tense, overall there was a sense that we are on the same side but there are still some specific issues over which we disagree and depending on how govt. acts. we may end up on different sides of these issues. In that case, we know that they will use their advocacy tools as they have, but emphasized that we will keep our eye on the bigger picture and as long as they do as well there will be scope to work together.

The ride going forward will depend on what happens with the transport and SFMPs. Important that we keep our role relative to govt. clear in our discussions with govt., donors and NGOs, as well as letters, aide memoires, etc. as GW really wants to paint this as all WB unilateral decisions rather than WB responding to RGC initiatives which is what the donors still believe (accurately) to be the case. If some concessions continue, we'll just have to ride it out and meanwhile take more leadership on the development of alternative management options and help lead the charge in insisting on transparency and accountability in the annual coupe process.

Peter - this was all based on my involvement in your discussions during the last mission and with Bill during the SFMP review mission. If any major errors, let me know and I'll convey to GW.

Regards

ANNEX 5
DETAILED CHRONOLOGY OF KEY EVENTS

Date	Event
1994	Royal Government of Cambodia's First Concession Contract with SL
November 1995	Joint World Bank/UNDP/FAO Forest Policy Assessment Mission
January – August 1996	TORs for technical studies, joint Bank/UNDP/FAO review of draft Forest Policy Assessment, follow-up discussions and publication of Assessment.
June 1997 – January 1999	Forestry studies and dialogue leading to National Forest Sector Policy (2002) under Technical Assistance (TA) Project
November – December 1997	Supervision Missions on forestry sector and forestry studies under TA Project
December 1998	Final supervision of forestry studies under TA Project /Identification Mission of FCMCPP
January 25, 1999	Government Declaration on Management of Forests and Elimination of Forest Illegal Activity
May 6, 1999	FCMCPP Appraisal Decision Meeting
June 12, 1999	FAO/UNDP Forest Crime Monitoring Project – Forest Concession Review
July 19, 1999 – July 18, 2000	ADB Project Preparation Technical Assistance for Sustainable Forestry Project
October 22, 1999	FCMCPP Project Information Document (PID) at Infoshop
November 30, 1999	WWF/TET/WB/FA Forest Certification Workshop. Consultation on proposed FCMCPP
December 11, 1999	FCMCPP Appraisal Completion Note
January – May 2000	Authorization to negotiate, discussions and negotiation of FCMCPP
February 2000	Structural Adjustment Credit (SAC) approved
May 17, 2000	ADB Forest Concession Review Workshop. Concession harvest volumes reduced following ADB/DFID Consultations, follow-up to ADB Concession Review
June 4, 2000	ADB response to Global Witness comments on Cambodia Forest Concession Review draft Report
June 5, 2000	FCMCPP Approved
July 6, 2000	FCMCPP Development Credit Agreement signed
October 9, 2000	NGO correspondence on Biodiversity Conservation Guidelines concluding in need for revisions done by WCS with FA and completed in 2002
October 20, 2000	
January 11, 2001	PHRD Grant approved technical assistance in environmental, social and legal issues during project implementation
February 8, 2001	Follow up with NGO Forum on possible involvement in project activities
February 27, 2001	Forest Management Certification Meeting: FA with WWF
September 2001	Bank Supervision Mission Management Letter to Government on Royalties and Cherndar ESIA TOR Global Witness expresses concern about cutting permits to FCMCPP TTL
December 16, 2001	Government through MAFF issued a <i>Prakas</i> suspending logging effective as of January 1, 2002
March 2002	Government resumes log transport and is stopped after complaints
March 18 – 21, 2002	Bank/WWF Joint Workshop on Log Tracking
March 1, 2002	FCMCPP Forestry TA (FRM Forest Planning Advisor) mobilizes
May 8, 2002	Government issues decision to cancel Hero Concession and Voot Tee Peanich Concession
June 2002	CG Donor Meeting on benchmarks for disclosure of SFMPs/ESIAs and logging suspension Bank relocates FCMCPP TTL to Cambodia
June 10, 2002	Bank Management Letter to Government advises that Bank's rating of project is at risk of being downgraded to Unsatisfactory Government Letter to Bank regarding forestry revenue offsets
June 16, 2002	Government cancels GAT concession
July 29, 2002	Global Witness letter to Bank regarding criticisms of FCMCPP
August 2002	Forestry Law
October 3, 2002	Bank sends letter to FA on principles for controlled log transport
October 2002	Government agrees to disclose draft SFMPs and ESIAs

Cambodia

Date	Event
November 11-12 2002	Draft concession SFMPs and ESIA's disclosed and protests occur at World Bank offices concerning numbers of copies and format in which available Communities approach FA for consultations on SFMPs/ESIA's
November 13, 2002	Government opposition politicians write to Bank President about forestry issues
November 2002	NGO-led Workshops on SFMPs/ESIA's; NGO-led discussions with communities; several sets of comments submitted
December 5, 2002	Crowd in front of FA building on SFMP/ESIA consultations dispersed by police
December 13, 2002	Bank Supervision Mission verifies distribution of SFMPs/ESIA's on concession areas to commune offices
December 19, 2002	Government thru MAFF sends letter to FAO, ADB and TWG regarding Global Witness' dismissal as Independent Monitor on Forest Crimes in Cambodia citing incident at FA on December 5, 2002
December 20, 2002	Bank Management Letter downgrades rating of FCMCPP to Unsatisfactory
January 13, 2003	Mid-CG Meeting discusses MAFF Progress Report on Forestry and Fisheries Reform
February 2003	FA begins recruitment process for Independent Monitor Project Technical Reviews recommend closure of two concessions Government's MTR begins
March – June 2003	Forest Cover Survey
April 1, 2003	TOR for joint Government and TWG Forest Sector Review Mission (IFSR) issued
April 7, 2003	Guidelines for Control and Monitoring of Log Transportation prepared by FCMCPP for FA
May 21, 2003	Bank Management Letter to Government on Government MTR report
May 29, 2003	Government Letter to CTIA on evaluation of SFMPs/ESIA's
June 24, 2003	Bank sends resettlement specialist to visit Tumring to follow up on NGO allegations and concerns
July 21, 2003	Bank review of SFMP/ESIA consultations
July 24, 2003	Government Response to Bank on MTR agreeing to Public Affairs Unit and reinstatement of compartment planning
August 28, 2003	Government issues Joint <i>Prakas</i> (by MAFF and MEF) on Forest Revenue Management System
September 2003	SL announces departure from Cambodia
October 9, 2003	Workshop on Development Assistance to Cambodian Forestry, including Bank presentation
October 29, 2003	SGS contracted as Independent Monitor
November 21, 2003	Consultation on Bank consideration of SAC tranche release and Bank work in forestry in Cambodia
January 2004	Bank participation in IFSR Workshop
April 2004	Bank meeting with NGOs to discuss forestry issues
April 23, 2004	Government request for comments by the Donor Working Group on Natural Resource Management on the plan for log transport beginning May 1, 2004 Distribution of Independent Forest Sector Review (IFSR) via Internet, CD and hardcopy
June 25, 2004	Bank Management Letter to Government regarding public disclosure of revised SFMPs/ESIA's
July 29, 2004	Bank Country Office meeting with Global Witness to discuss log transport and FCMCPP
September 16, 2004	Independent Review of two SFMPs/ESIA's
October 19, 2004	Bank comments on IFSR provided to Government and TWG
October 2004	Social Forester mission to assist in developing social assessment and consultation procedures
December 2004	Social Forester mission to assist in developing social assessment and consultation procedures
December 9, 2004	A meeting with stakeholders in Bank Country Office to discuss JSDF grant support for community forestry
February-March 2005	Social Forester's third mission to assist in development of social assessment and consultation procedures
February 3, 2005	Bank seeks complementary donor support to complete of Independent Review of SFMPs/ESIA's Draft Policy Facilitation Proposal for PROFOR ESSD Trust Fund submitted to TWG for comment
March 2005	JSDF Proposal for Support to Community Forestry and Participatory Monitoring to be submitted

ANNEX 6.
CAMBODIA'S FOREST MANAGEMENT REGULATORY REGIME

1. A successful forest regulatory regime needs to provide managers and regulators with the legal, regulatory, contractual and other bases on which to compel resource users to abide by acceptable standards and practices in the conduct of forestry operations in a wide range of potential circumstances. Regulatory systems should avoid unnecessarily rigid prescriptions and allow for flexible decision-making through well planned and monitored adaptive management and research. Room must be made for practical decisions to be based on local site conditions, the progress of forest stand development, needs of local users, site-specific biodiversity conservation considerations, and technical innovation. Guidance to regulators and operators must express clear expectations and should be written in such a way as to reduce the chance of misinterpretation. In developing countries, practical consideration must be given to: the skills and sensitivities of operators and field regulatory staff; the communications, mobility and other logistical capacities of controlling agencies; the range and types of equipment, forest types, terrain, weather and other aspects of the local forest industry. In light of the wide gap that exists between conventional logging practices and acceptable standards in most developing countries, regulatory regimes will need to be carefully and pragmatically sequenced in order to promote and encourage incremental improvement in a practical manner.
2. Since 1997, the regulatory regime for forest management in Cambodia has been developed incrementally through three linked efforts:
 - Forest concession management studies under the Technical Assistance Project (1997 to 1999);
 - Asian Development Bank-supported Sustainable Forestry Project (2000 to 2002); and,
 - Forest Concession Management and Control Pilot Project (2002 to the present).
3. The regulatory regime consists of six specific components: overarching national legislation; legal regulations; legal standards of sustainable forest management; a three-tiered planning process; planning and operational guidelines that provide direction to the forest planning process at all levels; and contracts, permits and licenses.
4. Forest planning processes generally function at a number of levels, reflecting a range of spatial scales and time horizons. Technical guidance embodied or reflected in various reference material, as well as standard accepted forestry, engineering, social and environmental practice, are usually not, in themselves, mandatory requirements but become enforceable when stipulated in an approved license, plan, permit or contract.
5. The components of the regime are described below:

- **National Legislation.** An “umbrella” forest law (RGC Forest Law 2002) that establishes the long-term intent of forest management, and enables government to:
 - create a permanent forest estate to be managed by a designated, responsible agent of government (the Forest Administration);
 - define acceptable and sustainable uses of forest resources; establish procedures for environmental protection and the conservation of natural forest diversity;
 - protect the traditional rights of forest-dwelling people to access and use the forest;
 - establish criteria and procedures for the zoning and allocation of forest lands;
 - allocate forest lands to different uses (i.e., commercial concessions, community forestry, annual felling coupes, etc.);
 - regulate and control forest use and harvest;
 - collect fees and royalties on public use and harvest of forest resources;
 - define illegal activities in the forest, and establish enforcement procedures and penalties for non-compliance; and
 - regulate and control the transport, conversion and processing of forest products.

- **Legal Regulations.** Legal regulations pursuant to the Act (i.e., Sub-Decree on Forest Concession Management 2000, Sub-Decree on Community Forestry 2003) that establish:
 - broad management direction for different uses;
 - procedures for application and approval to use the forest and forest resources;
 - legal contracts and/or agreements between government and forest users establishing enforceable terms and conditions for resource use (i.e. model Concession Agreement);
 - standards for forest planning and management; and
 - procedures for the monitoring of compliance, and enforcement actions and penalties to be applied in cases of non-compliance.

- **Legal Standards.** Legal standards of sustainable forest management for each major forest zone, establishing:
 - long-term forest and ecosystem management objectives for the zone;
 - the nature and rates of acceptable use, and royalty rates due to government; and
 - mandatory forest management practices (i.e. silvicultural systems, rate-of-cut constraints) that apply nationwide.

- **Planning Process.** A three-tiered planning process, defined by planning guidelines (see below) and providing the basis for Government approval and permitting and for compliance monitoring and enforcement, consisting of the following levels.

- *Long-term (25-year) strategic forest management plans*, which include:
 - broad sustainable forest management, environmental and social objectives for the concession;
 - delineation of forest zones to define both protection areas (biodiversity reserves, protected area buffer zones and corridors, watershed protection areas, riparian reserves, fragile areas, traditional non-timber forest product areas important to local communities, and areas of cultural or historical importance) and the net operable working forest by major forest type;
 - a scientifically calculated medium- and long-term sustainable yield on the net operable working forest;
 - appropriate silvicultural systems and harvesting techniques for different forest and terrain types;
 - environmental and social impact management and monitoring programs;
 - ongoing community disclosure, consultation and participation programs; and
 - inventory, monitoring and evaluation programs.
- *“Rolling” 3-5 year compartment plans*, which include:
 - medium-term access planning, management and decommissioning;
 - more focussed community consultation leading to refined environmental and cultural resource zoning; and
 - medium-term silviculture and site rehabilitation operations.
- *Annual coupe plans*, guided by operational guidelines (see below), which describe:
 - harvesting methods and equipment;
 - operational inventory results;
 - tree numbers and volumes to be retained and removed;
 - location and design of forest access;
 - tree marking and log tracking methods;
 - on-site environmental and cultural resource protection and biodiversity conservation; regeneration and stand-tending activities; and
 - methods and results of annual community consultation programs.
- **Guidelines.** This comprises a set of planning and operational guidelines that provide direction to the forest planning process at all levels—strategic, compartment and coupe. Guidelines have been developed to give direction to planning through a range of field circumstances and site conditions, and thus not all of the prescriptions may apply to a specific area. In Cambodia, guidelines have been prepared relating to planning, inventory, community consultation and participation, biodiversity conservation, watershed and riparian zone delineation and protection, reduced impact logging, access management (road design, construction, maintenance and de-commissioning), and forest engineering. Planning guidelines have now been consolidated in a Forest Planning Handbook covering all levels of concession planning—strategic, compartment and coupe.

- **Contracts, Permits and Licenses.** Linking the above elements into an operable control system is rigorous and methodical documentation of the controlling agency's evaluation and acceptance of the operator's plans. This documentation must record and verify the expected adequacy of the proposed action, as judged in light of site-specific conditions and the overall objectives of management. For this reason, guidelines are not mandatory in themselves, but the prescriptions they contain become enforceable when stipulated in *approved* plans at the strategic, compartment and coupe levels.

6. **Environmental and Social Impact Assessment of Forestry Concession Management.** Environmental and social impact assessment of forestry projects should be integral to the underlying forest planning process. However, because of obligations mandated by the Law on Environmental Protection and Natural Resource Management, it is a separate process requiring parallel documentation. At a fundamental level, traditional ESIA fulfills a number of functions that are not substantially different from those required to develop a sustainable strategic forest management plan:

- Scope potential impacts based on an initial project design;
- Establish a reliable environmental and social baseline against which to measure future change;
- Establish environmental and social objectives, standards and performance indicators;
- Avoid or reduce impacts through early consideration in planning and design;
- Identify and quantify benefits and residual impacts or risks (i.e., those that cannot be avoided or mitigated);
- Establish monitoring programs, with "thresholds" that will trigger management action;
- Consult with affected communities and accommodate their needs in the management plan; and
- Provide guidance to more detailed planning which, in turn, will lead to operational approvals and implementation.

7. In light of the foregoing, ESIA in forest resource management should focus less on "academic" impact analysis, and more on ensuring that forest management planning avoids or minimizes environmental and social impacts by:

- Setting clear and appropriate goals, objectives and principles for sustainable forest management activities;

- Ensuring that government policies, legislation, regulations and institutional organization support and facilitate sound, sustainable natural resource management;
- Ensuring that management activities directed at natural ecosystems are as consistent as possible with the ecological processes that create and maintain those systems;
- Limiting site disturbance, soil degradation and watershed disruption through good operational practices;
- Incorporating long-term community co-management, planning and development programs into program design through constructive public consultation processes;
- Providing potential beneficiaries with the skills and information necessary to participate effectively in the project; and,
- Establishing well-conceived environmental and social monitoring programs.

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