

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 (DFW), 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 FCMCCP 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 “*intrinsicly 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 ESIAAs prepared by the concessionaires*.”¹¹⁹ The SFMPs and the ESIAAs 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 ESIAAs 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 ESIAAs 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 users, especially the rural poor in and near the forest.”¹²⁹ The QER further

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.

¹²⁹ Management Response, ¶ 18.

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.

E. Eligibility

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.

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 Request for Inspection were discussed. The Request for Inspection states that at

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.*”

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.