Report No. 35556

The Inspection Panel

Investigation Report

Cambodia: Forest Concession Management and Control Pilot Project

(Credit No. 3365-KH and Trust Fund. 26419-JPN)

March 30, 2006

About The Panel

The Inspection Panel was created in September 1993 by the Board of Executive Directors of the World Bank to serve as an independent mechanism to ensure accountability in Bank operations with respect to its policies and procedures. The Inspection Panel is an instrument for groups of two or more private citizens who believe that they or their interests have been or could be harmed by Bank-financed activities to present their concerns through a Request for Inspection. In short, the Panel provides a link between the Bank and the people who are likely to be affected by the projects it finances.

Members of the Panel are selected *"on the basis of their ability to deal thoroughly and fairly with the request brought to them, their integrity and their independence from the Bank's Management, and their exposure to developmental issues and to living conditions in developing countries*."[1] The three-member Panel is empowered, subject to Board approval, to investigate problems that are alleged to have arisen as a result of the Bank having ignored its own operating policies and procedures.

Processing Requests

After the Panel receives a Request for Inspection it is processed as follows:

- The Panel decides whether the Request is *prima facie* not barred from Panel consideration.
- The Panel registers the Request—a purely administrative procedure.
- The Panel sends the Request to Bank Management, which has 21 working days to respond to the allegations of the Requesters.
- The Panel then conducts a short 21 working-day assessment to determine the eligibility of the Requesters and the Request.
- If the Panel does not recommend an investigation, and the Board of Executive Directors accepts that recommendation, the case is considered closed. The Board, however, may approve an investigation against the Panel's recommendation if warranted.
- Three days after the Board decides on whether or not an investigation should be carried out, the Panel's Report (including the Request for Inspection and Management's Response) is publicly available through the Panel's website and Secretariat, the Bank's Info Shop and the respective Bank Country Office.

[1] IBRD Resolution No. 93-10; IDA Resolution No. 93-6.

- If the Panel recommends an investigation, and the Board approves it, the Panel undertakes a full investigation, which is not time-bound.
- When the Panel completes an investigation, it sends its findings and conclusions on the matters alleged in the Request for Inspection to the Board as well as to Bank Management.
- The Bank Management then has six weeks to submit its recommendations to the Board on what actions the Bank would take in response to the Panel's findings and conclusions.
- The Board then takes the final decision on what should be done based on the Panel's findings and the Bank Management's recommendations.
- Three days after the Board's decision, the Panel's Report and Management's Recommendation are publicly available through the Panel's website and Secretariat, the Bank's Project website, the Bank's Info Shop and the respective Bank Country Office.

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The Panel also wishes to extend its gratitude to World Bank Staff in Washington D.C. and in the Phnom Penh and Bangkok offices. The Panel especially expresses its appreciation to the representatives of the Requesters for arranging visits with affected people and for showing the Panel areas of concern to them. The Panel thanks Bank Staff especially for their assistance in obtaining documents, for providing the Panel with information, for responding promptly to written requests, and for assisting with logistical arrangements.

The Panel is grateful for the expert advice provided by Don Gilmour, forestry expert, Ralph Schmidt, expert in forestry and environmental issues, and Paul Taylor, anthropologist. The Panel appreciates the professionalism exhibited by them at all times.

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Abbreviations and Acronyms

ADB	Asian Development Bank
BP	Bank Procedures
DANIDA	Danish International Development Agency
DFW	Department of Forestry and Wildlife
EA	Environmental Assessment
ESIA	Environment and Social Impact Assessment
FA	Forestry Administration
FAO	Food and Agriculture Organization of the United Nations
FCMCPP	Forest Concession Management Control and Pilot Project
IDA	International Development Association
IFSR	Independent Forest Sector Review
IPDP	Indigenous Peoples Development Plan
ITTO	International Tropical Timber Organization
LIL	Learning and Innovation Loan
MAFF	Ministry of Agriculture, Forestry and Fisheries
NGO	Nongovernmental Organization
OD	Operational Directive
OED	Operations Evaluation Department
OP	Operational Policy
OPN	Operational Policy Note
PAD	Project Appraisal Document
PID	Project Information Document
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
TORs	Terms of Reference
TRT	Technical Review Team
TWG	Technical Working Group
UNDP	United Nations Development Programme
USD	United States Dollar
WCS	Wildlife Conservation Society

MEASUREMENTS

ha	hectare
km	kilometer
m	meter
m^2	square meter
sq. ft.	square foot

Executive Summary

Introduction

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 Project is financed by an IDA Credit, approved in December 2000. Its objectives are "*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 is financed within the Learning and Innovation Loan (LIL) framework, and has four components: Forest Planning and Inventory; Concession Regulation and Control; Forest Crime Monitoring and Prevention; and Project Management and Institutional Strengthening.

Management states that the Project was modified in 2003 to address *"post concession management issues*" in areas released from concessions. The Project also was subject to a Quality Enhancement Review (QER) in October 2003, at the request of the East Asia and Pacific Region of the Bank.

The Requesters and the Substance of their Claims

The Requesters

The NGO Forum on Cambodia submitted the Request 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 respectively are home to concession areas of four different concession companies.

The NGO Forum on Cambodia states that it has received *"letters from a number of villagers signed in March 2004"* asking the Forum *"to represent their request (…).*" The Request also states that the "*local community representatives who signed the letters have requested that their names be kept confidential*." 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 help them substantiate the case and the alleged violation of Bank policies and procedures

Complaints related to Project Design and Implementation

The Requesters believe that the Bank did not comply with its policies and procedures in the design and implementation of the Project and that, as a result, the forest-dependent communities affected by the Project have suffered and will continue to suffer harm. The Requesters claim that through a flawed design and poor implementation the Bank promoted the interests of the logging concession companies, rather than those of the people.

In particular, the Requesters argue that by assisting the concessionaires in producing forest management plans and environmental and social assessments, the Bank used loan money to benefit logging companies with track records of, among other things, human rights abuses and illegal logging of resin trees, which are one of the main sources of livelihood of forest-dependent communities. The Requesters claim that the Bank Project made no attempt to correct the flaws of the concession system. They claim that the Bank Project strengthened the position of the concessionaires because it gave them the opportunity to present themselves as having the "seal of approval" from the World Bank and thus make themselves more immune from criticism. They also state that during Project implementation the Bank did not attempt to correct the Project approach in spite of available evidence of ongoing illegal activities by the concessionaires.

The Requesters also raise concerns regarding the use of a Learning and Innovation Loan (LIL) as the framework for the Project. According to the Requesters, "*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* [the Bank] *was therefore not bound by Bank operational policies.*"

Complaints in Relation to Specific Bank Policies and Procedures

In their claims, the Requesters allege that the Bank has failed to comply with a number of Bank policies and procedures, including safeguards policies such as OP/BP 4.01 on Environmental Assessment, OP/BP 4.36 on Forestry, OD 4.20 on Indigenous Peoples, OP/BP 4.04 on Natural Habitats, and OPN 11.03 on Cultural Property.

Environmental Assessment, Forests and Natural Habitats

The Requesters claim that in designing the Project, consideration of environmental and social impacts was "*very cursory at best and did not meet operational policy standards*." They claim that the Project was erroneously categorized as B, rather than A, under the Environmental Assessment Policy (OP/BP 4.01), and thus no environmental assessment was carried out. In addition, they state that consultations with affected people did not take place during Project preparation, and the consultations conducted by the concessionaires for preparing management plans were highly inadequate.

The Requesters claim that an environmental assessment ahead of the Project might have identified forests of high ecological value, in particular the Prey Long forest. Instead,

they claim, *"the project has advised the Cambodian government to allow another 25 years of logging by three concessionaires (…)*" (concessions in the Prey Long forest). They consider that the Bank has violated its Forestry Policy (OP/BP 4.36) by assisting and endorsing the concessionaires, thereby allowing them to continue logging in the same way as in the past, and by allowing the logging of a forest of high ecological value and thus further contributing to its degradation.

The Requesters assert that failure to recognize forests in the concessions as natural habitats has resulted in a poorly conceived Project. They allege that the Bank has allowed the Project to produce outcomes that increase the probability of severe and imminent damage to natural habitats that are part of Cambodia's natural heritage.

The Requesters also claim that the concessionaires' activities are a *"direct threat"* to the people whose livelihood depends on tapping resin, because the trees tapped for resin are the same commercial grade species that are of high commercial value to companies in producing plywood and veneer. They claim that, although the *"1988 Decree on Forest Practice Rules prohibited felling of trees that people were actively tapping for resin*" the companies "*consistently flouted this law (…) and cut them in vast numbers*", "*with impunity.*"

The Requesters state that even in the Management Plans prepared under the Project, the concessionaires included resin trees in their inventory and in their annual allowable cut which the companies use to justify their economic viability. According to the Requesters, the *"FCMCPP has endorsed management plans which indicate quite clearly the intention by some companies to log resin trees illegally and exclude communities from areas of forest."*

Social Issues, Indigenous Peoples and Cultural Property

The Requesters complain that although Cambodian indigenous peoples are affected by the logging concessionaires, the Bank did not identify any issue related to indigenous peoples during the Project preparation. The Requesters state that the Bank failed, without justification, to conduct social studies and prepare an Indigenous Peoples Development Plan (IPDP), and to consider the impacts of the concession operations on the indigenous communities whose vital link to the forest is economical, social and cultural.

The Request also claims that, before the Project started, the Bank did not carry out any survey of existing cultural property in the concession areas, which, according to the Requesters, "*contain both spirit forests and sites of archaeological importance*." The Requesters add that while evidence is available that many communities, in particular indigenous peoples, worship spirit forests, concession companies have logged them. The Requesters also complain that the Strategic Forest Management Plans (SFMPs) and Environmental and Social Impact Assessments (ESIAs) prepared by the concession companies do not take these sites into account, despite their importance for the forest-dependent communities.

The Request states that the concession areas contain archeological sites which have not been identified and excepted from production areas in the SFMPs. The Requesters state that logging of spirit forests will seriously harm the interests of local communities, and that similar lack of attention to archaeological sites could jeopardize cultural property that is part of the national heritage of all Cambodians.

Supervision

The Requesters believe that Management did not comply with the Bank Policy on Supervision because under the Project inadequate management plans and environmental assessments prepared by the concessionaires were approved. They claim that the review of the plans ignored the companies' bad track records and used a scoring system that did not take into consideration the concession's adverse impacts on forest-dependent communities. In addition, the Requesters claim that these plans were disclosed only for a 19-day consultation period, which was inadequate to allow the people to comment effectively on the plans.

Response from Bank Management

Management states that the Project's emphasis on gradual reform of concessions was the most appropriate choice at the time the Project was conceived. Management contends that this choice was shared by forest specialists and knowledgeable observers, and was built up through public discussions, dialogue with the Government and the work of other agencies. According to Management, the approach adopted in this Project was a responsible one and complied with Bank forest policies and practices.

The Project was designed to help Cambodia create a credible regulatory framework for concession operations. According to Management, when the Project was prepared the concession areas were already defined. Management also claims that through the concession management planning framework established under the Project, the area covered by concessions decreased.

Management states that the "*Bank has not financed logging or infrastructure in high ecological value areas*." Management notes that the Bank financed studies under the Biodiversity Management and Protected Area Project, which addressed, inter alia, the Prey Long forest. In addition, according to Management the Project complies with OP 4.04, as no concessions have been issued as a result of this Project. Management also states that the guidelines for the SFMPs include various provisions ensuring identification, assessment and planning for critical habitats.

Management claims that Bank supervision was always aware of the issues surrounding the Project and, for example, played an active role in the ban on logging and log transport issued by the Government in 2002. The Response also states that the Bank made its Phnom Penh office available for disclosing the forest management plans, although it recognizes that the process of disclosure could have been managed better.

Management acknowledges that no EA was prepared before appraisal, and that "*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*." Nevertheless, according to Management, these instances of noncompliance did not lead to any harm or potential harm to the people living in the Project area.

Management acknowledges that "*the Bank was not in full compliance with OD 4.20* [on Indigenous Peoples] *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*." However, Management claims that the issues in OD 4.20 are to be addressed in consultation guidelines, which have been under preparation since April 2004. (As of March 2006 these guidelines have not been completed). Management also claims that the lack of full compliance with OD 4.20 did not cause any harm or lead to potential harm to the people living in the Project areas.

Management believes that the Project complies with the Bank policy on Cultural Property, OPN 11.03. It states that the "[*g*]*uidelines developed under the project call for identification and designation of Special Management Areas and specifically refer to sacred groves, spirit forests and archaeological sites*."

According to Management, the Project may claim some successes, such as the formal adoption of guidelines and codes of practice for forest management, regular public reporting on forest crime, and reduction in the areas under concessions. However, Management also recognizes that involvement of local communities was not adequate, and that many issues, such as claims of forest-dependent communities to resin trees as their source of livelihood, should have been addressed at an early stage of the Project.

The Response states that the resin tree issue emerged to a large extent during Project implementation and that the Bank has since then supported studies to address it. With respect to the claims that the Project approved six forest management plans, Management asserts that the Bank never endorsed the plans nor recommended them for approval. Management also states that the Project did not finance any of the concessionaires; rather it aimed at building capacity within the Government.

The Response also contains lessons learned from this Project, taking into account the complexity of the situation and systemic problems (corruption, lack of transparency). The discussion highlights, among other things: constraints in pursuing options due to the Bank's position not to take sides on existing investment contracts between the Borrower and private companies; the importance of early local community involvement; the need to be outspoken, including with the Borrower, in the face of significant problems; and the potential value of specifying conditionalities related to social concerns in the legal agreement. **The Panel appreciates the effort by Management, in its Response to the Request, to identify lessons learned, and considers that this effort contributes constructively to promoting the effective design and implementation of development projects.**

The Investigation Report and Applicable Policies and Procedures

This Report concludes the Panel's investigation into the matters alleged in the Request for Inspection. Panel Member Tongroj Onchan led the investigation. Three expert consultants/advisers on social and indigenous peoples issues, forestry and environmental assessment assisted the Panel in the investigation.

The Report examines the merits of the claims presented in the Request. It also considers Management's response to the claims. In the investigation, the Panel reviewed relevant Project documents and other materials from the Requesters, Bank Staff, the Royal Government of Cambodia, local authorities, individuals and communities living in the areas affected by the Project, nongovernmental organizations, and other sources, including scholarly literature. The Panel interviewed Bank Staff in Washington and in the Bank offices in Phnom Penh and Bangkok, and visited the areas affected by the Project on two Panel visits in March and October of 2005.

During its visits, the Panel met with Requesters and other individuals and communities, local and national authorities, representatives of nongovernmental organizations, relevant experts and others. The Panel also gathered considerable data with which to evaluate the Requesters claims.

With respect to this Project, the Panel assessed whether the Bank complied with the following applicable operational policies and procedures:

OP/BP 4.01	Environmental Assessment
OP/BP 4.04	Natural Habitats
OD 4.20	Indigenous Peoples
OP 4.36[2]	Forestry
OP 8.40	Technical Assistance
OP/OB 10.00	Investment Lending: Identification to Board Presentation
OPN 11.03	Cultural Property
OD/OP/BP 13.05	Project Supervision

World Bank Policy on Disclosure of Information

President's Memorandum on Adaptable Lending, 1997 and subsequent directives on Learning and Innovation Loans (LILs).

The Project is supported by IDA Credit No. 3365-KH for SDR 3.6 million, 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. The Bank also granted a second request for extension until December 31, 2005, but only with respect to the Project Component C, *Forest Crime Monitoring and Prevention.* A Japanese Policy and Human Resources

[2] OP 4.36 (Forestry) issued in September 1993 applies to this Project because the Credit financing the FCMCPP was approved in June 2000 while the current Bank Policy OP/BP 4.36 (Forests) was issued in November 2002.

Development Fund Grant of USD 240,000 financed technical assistance during implementation. The IDA Credit is now closed.

Forests and Society in Cambodia

Cambodia is a forest-rich country, which has emerged in recent years from long periods of intense conflict and war. It is now at peace, the economy is stabilizing, and recent economic performance is promising, but the social and political environment remains considerably unstable. This instability significantly affects the resolution of issues in the forest sector, as in others.

Forest resources in Cambodia play critically important roles in the economy, culture and environment of the country. There is general agreement, however, that during the 1990's tens of millions of cubic meters of timber were extracted from these forests, and over ten percent of the forest, more than a million hectares, was lost to deforestation.

Forests form a crucial part of the survival strategy of the rural poor, who depend on and use forests in a great variety of ways. Forests are particularly important for indigenous peoples, who live in the more remote and isolated regions of the country. Forests comprise their cultural and spiritual home, and are the basis of their economic identity. One of the core concerns expressed in the Request for Inspection relates to the serious depletion, caused by intensified logging, of resin-producing trees from which indigenous peoples and local communities derive a major source of their incomes.

By the early 1990's, rich commercial forests such as those found in Cambodia had a very high value per hectare for industrial loggers. Up to that moment, Cambodia's high forests had been largely inaccessible to internationally supported industrial activity because of decades of war and a total lack of rural security, which ironically helped preserve them. The high value of the forests has since attracted a timber industry which had already been very active for more than 40 years in Asia, especially in the Philippines, Malaysia and Indonesia. This industry typically logs a very high volume (everything of value) where it operates, and moves systematically through all the available forests. The operations are not even close to sustainable.

Thus decision-makers in Cambodia during the 1990's were facing some tough choices. The immediately available commercial values of timber could make an important and desperately needed economic contribution to the country, but unsustainable exploitation of timber conflicted directly with the survival strategies of the rural poor, with the conservation of biodiversity, and with commitments to sustainable development. There were also cultural and gender issues involved, which have been recognized as high priorities in Bank policies.

The Government owns the forest land in Cambodia, although it recognizes prescribed access and use rights of local and indigenous communities. Starting in 1988, the Government adopted a number of laws, policies and instruments relating to forest concession planning and management. In the early 1990's, the Government decided to

introduce private industrial forest concessions as the main instrument of commercial forest management in the country.

In 1995, at the request of the Government, the Bank and other donors reviewed selected issues affecting the forest sector in Cambodia to bring about sectoral development policy reform. Their report, issued in 1996, expressed serious concerns about a Government program aimed at allocating almost all the country's forests to only a few concessionaires, a program resting on *"a level of timber exploitation which is likely to be unsustainable"* and *"unlikely to have significant impact on illegal logging."* In 2000, the Bank approved a Structural Adjustment Credit (SAC) aimed at tackling governance issues and pushing forward a program of reforms to improve public resource and forestry management, and enhance public sector management.

Findings

Project Focus on Concession System

Evaluations of the decisions taken regarding this Project need to be considered within the overall context of the Bank work in the forest sector and even in other sectors in Cambodia. Bank Staff interviewed by the Panel clarified that in 1995 the Bank began to take an interest in the forestry sector and considered what action might be feasible in order for Cambodia to switch from a political economy of forestry which was non-transparent and driven by private and individual interests into one that was sustainable and transparent.

The Panel, in principle, commends Management for engaging in forestry-related work in Cambodia. The Panel recognizes that this required the courage to be a risk taker, knowing that the work was important for poverty reduction and development, but also likely to lead to controversy and criticism. **The Panel also emphasizes that in such a context compliance with safeguard policies is essential, even though transaction costs may be higher**. Because of the strong economic incentives for unsustainable timber exploitation, the Bank has an important role to play and a comparative advantage in its effort to support sustainable forestry.

The record indicates, however, that the primary thrust of the Bank's efforts in the forest sector during the 1990's was focused on industrial logging. The major emphasis on concession logging (90 percent of all studies) relegated broader forest management considerations and alternative approaches to the margins. **The Panel finds that in the Project's focus on concessions, other aspects that were important to the Bank program in Cambodia and the Government were largely ignored or at least marginalized throughout the planning phase of the Project**. In particular, **the Project did not seem to take on the key objective of using the potential of forests to reduce poverty.**

In this regard, it could be expected that conflict would emerge if industrial logging failed to deal adequately and equitably with the legitimate needs and interests of indigenous and

local communities. **The Panel finds, however, that the Project did not give adequate attention to the vital interests of local communities and indigenous peoples in forest resources, and to the contested nature of the forest domain.**

Moreover, in addressing concession reform, studies on the technical/financial aspects of the concession system dominated the agenda. **The Panel finds that the Bank chose to give primary emphasis in the Project's design to the technical and financial aspects of concession reform at the expense of environmental and social aspects. It thereby lost an opportunity to lead the debate on much needed reform in the forest sector, so that forests could be sustainably managed for the benefit of all Cambodians.**

In this regard, the Panel notes that what may be referred to as "technical-level" work is important, but often not sufficient, to cause fundamental change, particularly in a forest-rich, post-conflict country such as Cambodia. Issues involving timber, illegal logging, the rights and welfare of rural communities and indigenous peoples, and biodiversity conservation go well beyond technical considerations. In line with relevant policies, they require well-informed, high-level and wide-spread political and strategic consultations and negotiations. **The skill sets and seniority level for technical forestry and strategic political dialogue are quite different. Operating on one level without the other will often prove futile and lead to problems as in the present case**. The Bank is one of few institutions that should be able to operate in an effective way on these two levels.

Guidelines and Procedures for Concession Areas

One of the Project objectives is to improve the effectiveness of forest use guidelines. From 1998 to 2000, several sets of guidelines were developed supported by funding from the Bank and other donors.

The Panel reviewed a sample of the guidelines, focusing on provisions related to social issues. The Panel found that while some of the provisions of the guidelines are consistent with Bank safeguard policies, others do not meet Bank policy requirements. The guidelines, for example, do not require that an IPDP-type plan should be prepared to address the impacts of concessions on affected indigenous peoples. They also do not include provisions to compensate people who would be involuntarily deprived of their traditional access to usufruct rights over resin trees.

The Panel is concerned that, with respect to the social aspects of the concessions, certain parts of the guidelines issued under the Project do not meet Bank safeguard policy requirements and do not provide an adequate framework for the Government of Cambodia to decide on any future forestry concessions. Unless this situation is properly remedied, the Project will not achieve one of its main objectives which is to *"demonstrate and improve the effectiveness of a comprehensive set of forest management and operational guidelines and control procedures in forest concession areas."*

Choice of Learning and Innovation Loan (LIL)

Learning and Innovation Loans (LILs) were established in 1997 in part to pilot operations in untested areas before scaling-up, and to test new approaches that are attractive but risky. Learning and hypothesis-testing are important elements of such projects.

Panel members asked during interviews with Management and Staff in Washington, Bangkok and Phnom Penh about the way in which learning was made explicit in the Project, and how this led to innovation. The questions were generally met with puzzlement. Staff referred to the Project as a *"technical assistance project"*—the LIL was evidently seen as a relatively quick and easy mechanism to mobilize a loan.

The Panel observes that the main aim of the loan was to support a legal and regulatory program on the basis of which long-term concessions were to be granted. This cannot easily be regarded as a "learning and hypothesis-testing" exercise. Moreover, while many things may certainly be learned about implementing sustainable forestry, the Project design did not focus on overcoming the major and widely-acknowledged difficulties affecting forest management in Cambodia. **The Panel finds that the elements conditioning the use of the LIL instrument do not apply convincingly to the Project.**

The Bank document establishing LILs as an instrument also states that a LIL may not be appropriate when the policy framework is poor and borrower commitment and ownership are especially weak. **The Panel finds that these two conditions were present at the time of the design of the Project. This provides a further indication of the problems of using a LIL as the framework for this Project.**

The Panel notes that the Project aimed to ameliorate past damage in the forests, and the Panel commends this intention. It is arguable, however, whether and the extent to which the Project had a positive impact in the field. The Panel observes that a Project of this scale, focused on technical aspects of forestry, was bound to have only a limited impact given the prevailing political context and the very high stakes and potential gains involved. This is the case notwithstanding the existence of the "Bank Policy Dialogue" relating to the SAC. **The Panel finds that Management could have foreseen that this type of Project might not be effective in the present political context, particularly by the time of Project inception when a number of sector studies had been carried out**.

Environmental Compliance

Bank Involvement in Project

Cambodian forests, at least in some locations, were highly valued in terms of hard currency as industrial raw material. A number of concession agreements had been concluded before Bank or other donor involvement in the sector. According to a 1998 World Bank paper, the terms of the 1990s Forest Concessions in Cambodia were negotiated behind closed doors, with no transparency, and with the highest levels of

Government (superior to anyone in the Forestry Department or Administration) directly representing the Government. In the face of these realities, the Bank decided to work in the forestry sector, and to attempt to work with the Government on the *"concession issue"*.

The Panel finds that the decision to work on the concession issue is not inconsistent with the objectives of OP 4.36. The Panel notes that had the Bank avoided the concession issue, it may have had little chance to reform a system that was increasing deforestation, degrading the environmental contribution of forests, and aggravating rural poverty. **The Panel also finds that the Bank is in compliance with the provision of OP 4.36 stating that the Bank does not finance logging or logging equipment.**

In assessing the Project under Bank policy, a key question becomes whether the Government had made a credible commitment to sustainable and conservation oriented forestry. The Panel believes that reasonable and neutral observers could differ in their conclusion.

In this regard, Management refers to expressions of commitment by the Government, and a range of new policy and regulatory developments, as indicative of a commitment to sustainable forestry. However, wide-spread unsustainable practices were occurring, and there was general belief that high level officials and military were involved. The Panel also notes that the Government could have been fully committed to sustainability in principle and still not have been able in practice to completely halt illegal logging

The Panel finds that the Bank's view that the Government's commitment to sustainability was consistent with OP 4.36 when the Project was formulated may have been based on wrong assumptions. Given the rampant forest destruction and community abuses already occurring, the Bank should have taken greater pains and exercised greater caution to ensure its compliance with Bank forestry policy.

The Panel's review of Project documents indicates that these concerns were noted but not addressed. The idea that the concession holders would manage community consultations or resource assessments is a very serious flaw, especially given that the forest concessions were exploiting a resource which rural poor people (including indigenous peoples) relied upon for an important part of their livelihoods. **The Panel finds that the Project's design created a structure likely to lead to inadequate levels of local involvement, community consultations, and social and environmental assessments. This does not comply with OP 4.36 and other Bank policies** (analyzed in more detail below).

Identification and Protection of Forests of High Ecological Value

One of the most valuable forest areas of Cambodia is known as Prey Long. It is a large forest to the west of the Mekong River in Stung Treng Province. From as early as 1975, the large block of forest containing the Prey Long area was identified as an important

area for biodiversity conservation. More recently, it was included in a listing of tentative natural sites for World Heritage consideration for Cambodia.

The Prey Long is one of the few remaining areas of relatively undisturbed dense semi-evergreen lowland forest in the Indo-Chinese province of the Indo-Malayan Realm, and has potential for holding populations of several threatened species. These forest types are considered to be particularly important for wildlife habitat. During the Panel's visit, villagers living on the periphery of Prey Long forest claimed to have seen tiger footprints and elephants in the forest. They were also unanimous in stating that it contained significant areas of spirit forest and large spirit trees.

The Prey Long forest is presently covered by three concessions, and is at risk of sustaining serious damage if industrial-scale logging is carried out.

In the view of the Inspection Panel there is no doubt that the Prey Long forest merits consideration as a "forest of high ecological value", and this should have been obvious to Bank Staff during both the design and implementation stages of the Project. An explicit acknowledgement of this status during the early stages of the Project could have influenced discussions and debates in Phnom Penh, and in particular should have guided input into the SFMPs of concessions covering the Prey Long area.

The Panel finds that while the Bank did not finance the harvesting of high value forests, it did not ensure that the potential high ecological value of the Prey Long forest was explicitly identified in the early years of the Project and taken into consideration during the development of relevant SFMPs, as is required by OP 4.36.

Identification and Protection of Natural Habitats

Most of Cambodia's forests that have been, or could be, subject to industrial logging fall into the category of natural habitats for the purpose of OP 4.04. This policy calls for the protection, maintenance and rehabilitation of natural habitats, and has an especially high standard of protection for critical natural habitats. Critical natural habitats under OP 4.04 include "*…areas initially recognized as protected by traditional local communities (e.g. sacred groves)…*"

It is apparent from a perusal of the literature and from discussions with local communities that there are many spirit forests and spirit trees in forests in their locality which are important to the cultural identity of local people. This is particularly the case with indigenous communities. It is also clear that industrial logging, as carried out by concessions in the past, has caused significant loss of natural habitat and destruction of spirit forests without any consideration of their spiritual or cultural values. It has also, in many cases, opened the door to the conversion of natural habitat to non forest land uses.

While the Project did not explicitly support the significant conversion of natural habitats, the Panel finds that the Project design and planning did not adequately recognize the existence of natural habitats, and particularly critical natural habitats.

As a result, essential information to enable their protection was missing in the concession planning and approval process. The Panel finds that this is not consistent with OP/BP 4.04 on Natural Habitats.

The Need for an Environmental Assessment

The Panel notes that one could hardly overemphasize the negative effects of the logging on a natural habitat of world class value and most importantly on very poor and vulnerable rural communities and indigenous peoples. Many moist tropical forests can be described as both fragile and resilient eco-systems. They can withstand, and in time recover from, certain kinds of disturbances, but more serious degrees of disturbance may cause damages that are irreversible for long time periods.

When unsustainable logging occurs on a large scale over large areas, the environmental damage to the forest may be very severe. But even more serious than the direct effects are the further disturbances which logging may facilitate. These kinds of collateral damages, discussed in the Report as "induced development", usually lead to irreversible changes.

As described in the Report, many measures may be considered to address such potential impacts, through "reduced impact" logging. These are the types of measures that a sustainable forest management project would support and implement, and that should be considered within an appropriate environmental assessment. Based on the economic realities in the context of the present Project, they are also the measures that were ignored by the concessionaires during their operations. **The Panel finds that the PAD and other Project formulation documents did not contain an adequate analysis of the environmental issues surrounding the Project, as is required by OP 4.01.**

OP/BP 4.01 assigns proposed projects to one of four categories, A, B C or FI. A project is assigned category "A" if it *"(…) is likely to have significant adverse environmental impacts that are sensitive, diverse, or unprecedented (…).* A project is classified as "B" if its potential impacts *"(…) are less adverse than those of Category A projects."* Category A projects require a much more extensive environmental assessment.

The Panel notes that logging under the concession system during the period of the formulation and execution of the Project undoubtedly had significant adverse environmental impacts that would be considered sensitive under OP 4.01. While the Project did not cause or directly fund logging, the Panel observes that the association of the Project with the logging – through technical assistance provided to the Government with the aim of managing such logging sustainably – also closely associates the Project with the very serious impacts of the concession system.

Given the very serious potential impacts, and the close association of the Project with these impacts, the Panel finds that the Project should have been placed in Category A and a full Environmental Assessment carried out. By failing to do this, the Bank did not comply with OP 4.01. The Panel finds that careful study and debate by multiple parties, as required for a Category "A" project under OP 4.01,

could have helped avoid serious errors in the design and implementation of the Project. This type of assessment might have led, for example, to a greater focus on alternative approaches to industrial scale logging, such as various types of community and partnership forestry.

At the same time, the Panel recognizes that overall Bank activity and discussions with the Government over the past decade, in combination with those of other important donors, may have ameliorated to some extent the damage to the forests and rural people in Cambodia by repeatedly raising the issue with Government at multiple levels. The Panel also notes that the activities of NGOs were critical in raising the issues and providing information on them for donors, including the Bank, and to Cambodia, including its Government.

Social Compliance

The Need for a Social Assessment

Both the policy on Environmental Assessment (OP 4.01) and the policy on Indigenous Peoples (OD 4.20) require evaluating and assessing the social issues that arise in connection with a Bank-financed project. As described in this Report, however, the Bank chose to give primary emphasis to the technical and financial aspects of concession reform, while giving only minor consideration to social and environmental issues. The Panel notes that even studies that Management cites in the Response as containing sufficient information to address social concerns warned that the forestry sector was focusing on industrial logging, while not giving adequate attention to aspects such as the needs of forest-dependent communities.

The Panel finds that the lack of a social assessment specific to this Project has had serious consequences for the ability of the Bank to comply with its operational policies, from the design through the implementation phases of the Project.

Identification of Affected Population and Project-Area

The Panel notes that, by failing to identify the affected population within the planning phase and to develop an IPDP for the affected indigenous peoples, the size of the affected population was in effect not estimated at all. Rather, the Project followed what Management refers to as a "*process-oriented*" approach, which left the development of this information to a later date when concessionaires would develop their ESIAs. **In this case, the Panel finds that a safeguard postponed is a safeguard denied, because by failing to identify beforehand the affected population, the Bank policies requiring consultation and participation of that population could not be properly followed.**

Even at the delayed date, the Bank focused only on the areas covered by the concessions to define the Project Area. The Panel finds that this led to an overly restrictive definition of the Project Area. Each concession was considered separately without looking at multiplier effects and interactions between the concessions. **As a**

result, the Project's social impacts were significantly understated and the Bank social and environmental safeguards not applied to the proper area and population. The Panel finds that this is not consistent with the applicable Bank policies, OP 4.01 and OD 4.20.

Impacts on Local People of Illegal Logging of Resin Trees

The issue of illegal logging of resin trees is a major concern of Requesters. The importance of resin harvesting for many rural Cambodians has been highlighted in recent surveys, and was apparent to the Panel. According to one study, the threat of logging concessions to trees tapped for resin is very severe because resin tapping makes up a significant portion of the income for approximately 100,000 people. The Panel constantly heard testimony during its visits regarding the importance of resin trees to the livelihoods of local communities.

As indicated in the Request, the issue of resin trees also involves ownership rights by people living near the forests, including rights to transfer ownership of trees. Numerous studies treat this as a matter of customary tenure, and identify how, according to custom, a person becomes an owner of a tree. Households may have (customary) ownership over many trees.

Bank policies, especially OD 4.20 and OD 4.30, require the Bank to recognize traditional rights even in the absence of local legislation, whether or not such rights are recognized in national law. Moreover, as acknowledged by Management, harvesting of resin trees is at present prohibited under Cambodian law.

Management claims, in its Response, that it was not informed about complaints of harms resulting from cutting of resin trees by concessionaires.[3] Most anthropologists and social foresters working in mainland Southeast Asia would be surprised by this claim, since this is a major issue for forest dependent communities in many parts of Southeast Asia. Furthermore, the tapping of resin is such an important part of life in communities located near forests that, if it is true that Management was unaware of the seriousness of the resin tree issue and the claims in areas of the concessions, it indicates a considerable failure of public consultation and input into the design of the Project – in addition to a lack of awareness of standard ethnographic literature on the region

However, the Panel has assembled numerous sources of information from the Royal Cambodian Government, local NGOs, and the Bank's own documents and reports, to indicate that Bank Management was frequently made aware of numerous complaints of harm to local communities due to the cutting of resin trees. The Panel notes that it is amply clear not only that the Bank *should have been* aware of the importance of resin tapping to forest dependent communities, and the harm that illegal cutting of resins was doing to those communities, but also that the Bank *was* aware of these issues.

[3] Management Response, p. 53, referring to complaints cited in the Request.

Under OP 4.01, an EA needs, among other things, to evaluate the potential environmental impacts of a proposed project and identify ways to prevent, minimize, mitigate or compensate for adverse environmental impacts, taking into account social aspects.[4] OP 4.36 requires social, economic and environmental assessments, and set-asides of adequate compensatory forests for biodiversity and for safeguarding the interests of forest dwellers.

In the present case, however, the Bank failed to consider or investigate complaints about illegal logging of resin trees on the part of concessionaries covered by the Project, and the associated harms to the local people. **The Panel finds that the illegal logging of resin trees has had major negative consequences on the Requesters and the local people. The Panel further finds that the Bank's failure to consider and investigate these problems does not comply with OP 4.01 or OP 4.36**.

The Bank also failed to carry out a careful assessment or inventory that might quantify resin trees and other timber and non-timber forest products traditionally used by indigenous peoples and others. **The Panel finds that such an assessment or inventory should have been part of a proper environmental assessment, and should have been the subject of a participatory survey and inventory at an early stage of the Project. The failure to do so does not comply with OP 4.01.**

The Panel also notes that the system to review concession plans failed to have a policy disqualifying concessionaires who were engaged in illegal logging of resin or other trees. This seems to constitute a flaw in the design which is inconsistent with the general spirit of the Bank's Forest Policy. In this sense, the Project missed an important opportunity to help reduce the potential incentive for illegal logging of resin trees and to resolve the basic conflict between resin-dependent communities and industrial loggers. This is of particular concern given that the traditional tapping of resin trees has been shown to be a long-term sustainable use of forests, which also contributes to poverty alleviation, one of the primary aims of O.P. 4.36.

Consultations with Affected People during Project Preparation

OP 4.01 contains requirements for consultations with affected communities and specifies that affected people and local NGOs should be consulted during the EA process about the Project's environmental impacts and their views should be taken into account. The policy calls for meaningful consultations, which may occur only when people receive relevant material about the project in a timely manner before consultations take place and in a language and form understandable and accessible to those consulted. In addition, OD 4.20 on Indigenous Peoples states that Bank policy requires informed participation of the indigenous peoples themselves.

Management states that consultations specific to the environmental assessment were not carried out because no EA was prepared prior to the Bank's approval of the LIL. In

[4] This applies both for Category A and Category B EAs, though the two types of EAs differ in terms of scope and other aspects (see Report).

addition, Management claims that environmental and social criteria would be incorporated in the ESIAs/SFMPs prepared by concessionaires for each concession, backed by a consultative process (the "*process-oriented*" approach, noted above).

The Panel finds that the Bank's decision to postpone an active social assessment and consultation procedure until the preparation of the ESIAs by concessionaires is not consistent with Bank policies, including OP 4.01, OP 4.04 and OD 4.20, which require early consultations and/or surveys in the preparation phase.

During the Panel's visit to Project-affected areas, villagers, including those who had signed letters requesting this Inspection, personally confirmed to the Panel that they had never been involved in any pre-Project consultation process, or (in most cases) any subsequent forms of consultation.

The Panel recognizes the challenges in carrying out early consultations, taking into consideration the political and social context in Cambodia at the time (noted above). This does not, however, diminish the importance and need for doing so. The failure to meet the provisions of Bank policies on consultations had significant effects on the path of this Project. Consultation with those affected by an action is critical to understanding potential impacts and identifying alternatives during project design and implementation to reduce and avoid such impacts. In the present situation, **the Panel finds that the lack of early consultation greatly reduced Management's capacity to be informed of critical concerns relating to indigenous peoples, resin tapping, local community ownership of trees, community forestry initiatives, and other matters of central importance to the affected communities**.

Preparation of an Indigenous Peoples Development Plan

The highland minority populations of northern and northeastern Cambodia (including Kouy, Kreung, and others), whose indigenous status has been emphasized in the Request for Inspection, have long been recognized as indigenous peoples. As described in the Report, these peoples live in the heart of lands subject to concessions.

Under OD 4.20, an IPDP is designed to address a number of important issues, including baseline data, land tenure, local participation, mitigation measures, institutional capacity and monitoring and evaluation. Management acknowledges that, in hindsight, screening studies and a framework IPDP, along with more discussion of the issues, would have been more appropriate during Project design.

The Panel notes this acknowledgement, and finds that in line with OD 4.20, an IPDP should have been prepared for this Project. The preparation of an IPDP is especially important in light of the close association of the Project with the possible approval of concession operations that could have highly adverse effects on indigenous peoples. There is, for example, a serious lack of information about baseline social structure and traditional land and resource use in these communities. This issue and others would have been addressed as part of the prerequisites of an IPDP under OD 4.20.

The Panel observes that even many of these prerequisites for an IPDP are lacking. Had they been developed, many of the problems that have afflicted the Project would have been recognized and might have been corrected.

Cultural Property: Spirit Forests and Archeological Sites

OPN 11.03 on Cultural Property adopts the United Nations definition of cultural property, and describes it as "*sites having archeological (prehistoric), paleontological, historical, religious, and unique natural values.*" The Bank policy aims at helping to preserve cultural property and to avoid its elimination by not financing projects that will significantly damage non-replicable cultural property, and by assisting in the protection and enhancement of cultural properties, rather than leaving that protection to chance

Spirit forests are recognized throughout Cambodia, and they have status as protected areas under Bank Policy OPN 11.03, and from Royal Government of Cambodia precedents in legislation. As noted above, the Inspection Panel heard direct testimony during its visits about the presence of spirit forests and spirit trees in concession areas covered by the Project.

The Panel notes that none of the means of handling the issue of spirit forests, provided for in the Bank policy, was carried out as part of the Project. **The Panel finds that to leave determinations about spirit forests to concessionaires to include within their ESIAs as they developed and presented their SFMPs for approval is not consistent with OPN 11.03.**

The Panel also observed that the Project made little preparation for the likelihood of finding archeological sites within the vast areas of forest concessions being considered for logging. Instead, based on the guidelines for the drawing up of ESIAs, surveys for archeological sites (as for spirit forests) were left in the hands of the concessionaires. This was the case notwithstanding the widespread presence of long-recognized, important archeological sites in Cambodia - including its heavily forested areas - and the importance of "archeological tourism" to Cambodia's economy.

Under OPN 11.03, the government of the country is responsible for managing cultural property, but "*Bank staff must determine what is known about the cultural property aspects of the proposed project site and, 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 Panel finds that the procedure used by the Project to identify important cultural properties relied on the concessionaires to include them within their proposed management plans, without provision for reporting their existence to appropriate agencies or including appropriate specialists. This does not comply with the minimum level of protection and enhancement of cultural properties envisioned within OPN 11.03. It also potentially entails serious damage to cultural properties because it fails to include provisions for protecting, from future looting, sites that may be discovered.**

Project Implementation and Supervision

The Panel reviewed carefully the significant events in the timeline of the Project, in light of a number of issues and concerns raised in the Request. These are considered below.

Technical Assistance

The Request raised concerns that technical assistance was provided directly to the concession companies. The Panel notes that a distinction needs to be made between the Project's attempt to build capacity within the Government, particularly the Forest Administration, and the provision of direct support to the concession companies. **The Panel did not find evidence that technical assistance was provided directly to the companies. Rather, consistent with OP 13.05, the Bank focused its technical assistance on building the capacity of the Forest Administration to oversee the development of SFMPs by companies.**

The Review of SFMPs/ESIAs

A major set of actions under the Project involved the review of draft SFMPs and ESIAs submitted by the concessionaires. The Panel noted efforts by Management to address problems in the review process and in the drafts submitted. Notwithstanding these efforts, significant problems persisted. For example, the criteria for reviewing the draft SFMPs created a disincentive for the identification of spirit forests, and failed to disqualify companies who had engaged in illegal logging practices. There were also concerns over conflicts of interest in the review process, and over the inclusion of resin trees in proposed annual allowable cuts.

The Project created a technical review team (TRT) to review the draft SFMPs and ESIAs. According to Management Response, the TRT completed its reviews in June 2004, and recommended six plans to go forward, allegedly "*bringing about a reduction in the area exposed to concession operations from 6.4 million hectares to just over one million*." Subsequently, the Bank and a Forestry and Environment Technical Working Group (TWG), composed of donor agency representatives and others, engaged an independent consultant, GFA Terra Systems (GFA), to evaluate the TRT review of the six plans that had been recommended to go forward.

These GFA independent reviews were quite damming of almost all aspects of the SFMPs and ESIAs. The Management Response agrees that each of the ESIAs submitted by concessionaires had severe weaknesses, and acknowledges that the Independent Review also pointed to the lack of adequate social and environmental assessments.[5] **After reviewing the available evidence, the Panel considers that the SFMPs and ESIAs were deficient in almost all regards, from process to content**.

[5] In a subsequent letter to the Borrower of November 2005 (discussed below), Management amplifies upon these concerns and makes recommendations to the Borrower.

The Panel recognizes that some Project Management and Staff consistently attempted to press the Government to improve the planning process and to press the concessionaires to conform to the various guidelines for preparing SFMPs. However, as detailed in the sections below, the Panel finds that Bank supervision of the planning and development of the SFMPs/ESIAs was inadequate in that the Bank's level of supervision in general did not match the magnitude of the problems caused by poor SFMPs and ESIAs.

Consultation and Disclosure in the Development of SFMPs/ESIAs

As indicated previously, the concessionaires were given responsibility for carrying out consultation and negotiations with local communities, even on issues such as the use of resin trees. With respect to indigenous peoples, OD 4.20 requires their "*informed participation*" and the identification of "*local preferences through direct consultation*" and "*incorporation of indigenous knowledge into project approaches*." **The Panel notes the unequal power relations between concession staff and local communities. The Panel finds that assignment of responsibility for consulting with the indigenous peoples to the concessionaires, who are planning to log the forests used by the indigenous peoples, led to a flawed and inadequate consultation process that was inconsistent with OD 4.20.**

The inadequacy of the consultations carried out by the concessionaires was emphasized in the GFA independent reviews (noted previously). The Panel also reviewed the concerns and tensions that arose with respect to the period for public comment on the draft SFMPs/ESIAs in late 2002. The Requesters identified serious concerns with this process, particularly with the short period of time made available for public review.

Management acknowledges that it should have managed the process better while noting steps it took to improve the process. **The Panel notes this acknowledgement. The Panel finds that the Bank's supervision of this process was not always consistent with OP/BP 13.05,** which require Management to assess risks to implementation, monitor activities, identify problems, and recommend to the Borrower ways to resolve those problems**.**

The Forest Cover Survey

The Requesters claim that the forest cover survey carried out in 2003 was inadequate and provided a distorted picture of forest quality and cover, which assisted proponents of the concession system to argue the case for continued industrial logging.[6] The Panel recognizes the limitations of the survey (short time for the work, limited resources and the inherent problems in carrying out such a survey). The Panel is also aware of the uncertainties and difficulties encountered when carrying out such a survey, because of numerous variables and issues related to categorizing forest and other land uses, defining

[6] The Requesters also claim that the survey wrongly "purported to show that Cambodia's forest cover had increased by more than 4 percent". The Panel's review of the forest cover survey did not confirm the Requesters' allegation, which seems to be based on a selective use of data provided in this document.

boundaries and interpreting data. **The Panel finds, however, that there is sufficient evidence to suggest that the work was not carried out to the standards that should be expected for such an exercise. Applying arbitrary factors to the raw data to align them with values that are perceived to be "more correct" constitutes an arbitrary correction that provides an inadequate estimate of this critical data. The Panel also finds that the supervision of the forest cover survey was inadequate and did not comply with OP 13.05.**

Conversion of Forests to Other Land Uses

For several decades there has been a steady reduction in forest cover throughout Cambodia with a shift from high forest to degraded forest and agricultural land. The reviews of the SFMPs indicated that the stocks of commercial timber in many forest concessions were depleted within a few years and there was little or no intention to manage them as sustainable enterprises. There is also substantial anecdotal evidence that many of these concessions have been re-allocated as land concessions.

It is the Panel's view that concession logging has contributed to significant degradation of Cambodia's natural forests and has hastened the conversion of forests to other forms of land use. In the contemporary world, land conversions are often under scrutiny because of, among other things, concerns about social equity and environmental impact. It is worth noting that donor funding is frequently used to regularize and legitimize various aspects associated with the process. In this case the Project played such a role, albeit not explicitly. By legitimizing concession logging the Project became a player, even if an unwitting one, in the overall land transformation process.

The Suspension of Forest Concession Logging Activities

In December 2001, the Government issued a Prakas (a decree or law) suspending the issuance of any logging permit to the remaining concessionaires until the approval of a new forest concession management plan consistent with the laws and regulations. This suspension of timber harvesting was a significant event.

The Prakas also required an inventory of logs legally felled prior to January 2002, and stopped the issuance of transport permits to concessionaires unless certain conditions were met. The Government, Bank and other donors were involved in discussions about mechanisms to allow logs already cut to be transported to processing plants. **It is the Panel's view that the Bank's participation in these discussions was appropriate and consistent with policy.** It could be argued, however, that proposing a system by which harvested logs could be transported actually encouraged illegal harvesting and log transport. **The Panel finds that supervision of the Borrower's actions related to the log transport ban could have been better performed to ascertain whether the Borrower implemented the Project with due diligence.**

Monitoring

The Panel reviewed the monitoring activities supported by the Project. Initially the activities of this component were implemented under a separate project financed by FAO/UNDP, with the NGO Global Witness serving as the independent monitor. In December 2002, growing tensions between Global Witness and the Government culminated in the dismissal of Global Witness in this role. In November 2003, the commercial firm Société Générale de Surveillance (SGS) was appointed as independent monitor under the FCMCPP.

The terms of reference (TOR) for the monitor under the Project called for it to review documents prepared by the Government with respect to actions relating to forest crimes, and from other sources such as NGOs, civil society, villagers and media. When reports received are in need of urgent action, they are first subject to a "credibility check" and then passed on to the Government's competent agency for action. The TOR called for "*field monitoring of Government actions and achievements*", and specified that *"there will be no random checking of reported illegal actions that have not already been passed on to the relevant agency for action*." Satellite data was available to screen areas selected on the basis of reports received indicating illegal activities. The TOR provided that Quarterly Progress Reports of the monitor are subject to a Government agency "verification review" before public release.

The Panel notes the importance of having an independent monitor, which was a stated Project objective. **The Panel is concerned, however, that the provisions of the TOR preventing the monitor from independently initiating field investigations, and making the release of the monitor's report subject to Government verification, conflict with the objective stated in the PAD to have *"an independent monitor to provide a check on the accuracy of Government reporting*."** During the Panel's visit, SGS confirmed that field monitoring activities are triggered only by reports received, and then passed on to the competent Government agencies. SGS also stated that they may not initiate independent investigations.

SGS also claimed that little illegal forest activity has gone unreported since it started its monitoring task and that illegal logging is no longer a critical issue in Cambodia. The Panel notes that SGS' view that the issue of illegal logging in Cambodian forests has been successfully tackled is not shared by other Project stakeholders. During the Panel visits, the existence of continuing and widespread illegal logging emerged perhaps as the only common ground between NGOs and concessionaires.

The Panel notes that the TORs for the forest monitor contain criteria regarding the required independence of the monitor. **The Panel observes that information about SGS was readily available from various sources at the time that SGS was appointed. However, the Panel could not find in the Project documents an evaluation or discussion of whether SGS fulfilled the criteria related to independence for the independent forest monitor. The Panel finds that this is not consistent with OP 13.05.**

Supervision Structures

The Project operated within a difficult and dynamic political and social environment. The reform process in the forest sector requires changes in many aspects of the way in which forests are perceived and managed in order to meet the relevant policy objectives. The Project team needed to develop (or be a part of) a broad based constituency for change that embraced Government, donors and NGOs, supported by good management and facilitation skills.

During the inspection, a consistent picture emerged that Project management was perceived as having a narrow focus on concession management (and particularly the technical aspects) and as not seeing the big picture. This led to the unraveling of relationships, with the Bank perceived as being an apologist for the concession system. As a result it became a target for wide spread dissatisfaction.

It was perceived within the Bank that Management did not handle the situation well. Numerous Supervision Missions took place, but none effectively addressed the underlying issues. The multi-level nature of Management structure appears not to have functioned effectively in engaging the skills, expertise and oversight needed for a Project of this nature.

The Region recognized the existence of significant problems and requested a Quality Enhancement Review. Management is to be commended for taking this step. It is not clear, however, that the key recommendations of the Review have been put into place, although some progress has occurred.

Notwithstanding the difficult context within which the Project was operating, **it is the Panel's view that many of the issues raised by the Requesters might not have arisen if the Project had received better supervision. Supervision should have aimed at ensuring that the unraveling of relationships that became apparent during the early years of the Project's implementation was addressed explicitly and quickly. In particular, supervision should have aimed at ensuring that the Project had the capacity throughout its life to develop a broadly based constituency, embracing donors, Government and NGOs, to advance forest sector reform.**

Cancellation of Concessions

The Panel examined the claim by Bank Staff in the October 2003 Quality Enhancement Review that among the Project's successes was the cancellation of 4 million hectares of land under concession. In this regard, The Panel observed that 26 concessions, covering 6.5 million hectares, were cancelled prior to the commencement of the Project, and 13 concessions, covering 2.7 million hectares, were current as of November 2005. The Panel also noted claims by some observers that almost all of the concessions that were cancelled no longer had a significant volume of commercial timber attractive to concessionaires**. It is the Panel's view that a natural attrition has been taking place,**

and it is arguable whether the Project played a significant role in reducing the number of concessions.

Management also stated, in its Response, that the Bank did not take sides regarding existing investment contracts between the Borrower and private companies, and that this limited the Bank's ability to pursue options under the Project. As noted above, however, Management also attributed the significant reduction in concessions to the Project. The fact that the Bank is willing to portray substantial influence on Project outcomes while also implying that the Bank did not seek cancellations of concessions is notable and appears to send, perhaps, mixed signals. It also raises the question of whether Bank concerns regarding potential liability in tort were well-founded, or rather functioned to justify a more limited, modest approach to concession reform.

Assessing the Project

The Panel observes that there are at least three points of view in assessing the World Bank Forestry Project in Cambodia in implementing the Bank's policies and procedures. These emerged from discussions with Management and Staff and other experts.

The first point of view is that the Project has been a success. In line with Bank policies, it intervened in the forestry sector at a critical period when there was widespread destruction of forests and focused successfully on canceling forest concessions, significantly slowing illegal logging and obtaining the public disclosure of the concessionaires' sustainable forestry management plans. In this view, the Project could have been even more successful in achieving the objectives of Bank policies if those who conceived and implemented it initially had been able to continue to focus on reforming the concession system. The LIL was an appropriate instrument for providing support quickly in the forest sector.

The second point of view is that the Project was consistent initially with Bank policies, because it resulted in the cancellation of a significant number of forest concessions that did not meet criteria established pursuant to Bank policies, and because it slowed illegal logging; but after this initial success, the focus of the Project should have shifted to other ways of achieving sustainable forest management in line with the objectives of Bank policy. These include community forestry which, while formally within the scope of the Project, was not implemented.

The third point of view is that the Project unintentionally contributed to the continued destruction of the forests in part because of its nearly exclusive focus on reforming the concession system, and in part from a failure to comply with Bank policies and procedures. According to this view, the Project did not result in significant cancellation of concessions that would otherwise have continued operations, and it appeared to legitimize the operations of concessionaires who had not yet drafted acceptable sustainable forestry management plans but could tout approval for the concession process from the World Bank. In this point of view, the exclusive focus on reforming concessionaires led to the neglect of other approaches to reform in the forestry sector,

such as community forestry. Associated with this view is the belief that the LIL was an inappropriate instrument for the Project, because it was used as an instrument of convenience for processing the Credit quickly and for bypassing normal safeguard procedures, rather than as a learning instrument for the application of results on a broader scale.

The Panel finds that the World Bank's willingness to become involved in the forestry sector at a time when others would not was commendable. It recognizes the dedication of Staff and the risks that they took. However, the Panel also finds that the third point of view has some merit. Certainly in the design and implementation of the Project, the Panel detected a nearly exclusive focus on reforming forestry concessions, a view that this could be done effectively on a technical basis, and a reduced emphasis on compliance with safeguard policies. Thus the necessary national strategic policy discussion that Bank policy requirements would have triggered did not occur. This may have unintentionally contributed in the long run to prolonging a bad situation and to some degree served to legitimize the concessions.

The Panel finds that the LIL was not designed for the kind of forestry project for which it was used in Cambodia, and the use of the LIL, while enabling the funds to be disbursed quickly, facilitated Project classification as Category B and lesser attention to Bank safeguard policies and procedures, which in the long run proved costly.

It is easy to judge in hindsight, and the Panel would like to reiterate that no Project could have produced perfect outcomes in the extremely difficult environment in Cambodia.

The Panel is particularly impressed that there may now be an important opportunity for Bank involvement in the forestry sector with a different and more diverse range of activities.

The Bank's November 2005 letter to the Government of Cambodia is especially noteworthy in this regard. In this letter, the Bank stated, in light of the findings of independent evaluations and on the basis of ongoing dialogue, that "*concessionaire performance is unlikely to improve and concessionaires are unlikely to meet their contractual and legal obligations*." The Bank recommended, as a result, that the Government "*take appropriate action in accordance with the rights available to it under Cambodian law and under the concession contracts (including any right it has to terminate these contracts) to bring this unsatisfactory state of affairs to a quick conclusion.*" The Bank further urged the Government to plan for sustainable management of areas that will be freed from concession and to conduct an assessment of these areas, especially those particularly threatened by illegal logging and land grabbing. In addition, the Bank recommended that the Government consider "*expansion of community or commune-based forest protection and/or land titling for small holders.*"

The Panel notes the Bank's consideration of the independent evaluations and ongoing dialogue on these matters, reflected in this letter, and **considers that the November 2005**

letter outlined productive ways of Bank support for the forestry sector which are consistent with the findings of the Panel's Report.

Chapter 1 Introduction

A. Events Leading to the Investigation

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 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.

2. 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 (…).*"[7] They also state that the "*local community representatives who signed the letters have requested that their names be kept confidential*."[8]

3. 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 help them substantiate the case and the alleged violation of Bank policies and procedures.[9]

4. The Panel registered the Request on February 4, 2005, and notified the World Bank Board of Executive Directors ("the Board") and the President.

5. On March 8, 2005, Management submitted its Response to the Request for Inspection.[10]

1. The Request

6. The following paragraphs briefly summarize the Request. The Requesters' specific claims will be addressed in more detail later in the Report.

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[7] Request for Inspection: Forest Concession Management and Control Pilot Project, Letter to Inspection Panel dated January 21, 2005, p.1, (hereinafter "Request Letter 1").
[8] Request, Letter 1, p.1.
[9] Request for Inspection, "Submission to the Inspection Panel World Bank Forest Concession Management and Control Pilot Project in Cambodia, Prepared for NGO Forum on Cambodia by Global Witness." February 2005 (hereinafter "Request, Attachment 1").
[10] Bank Management Response to Request for Inspection Panel Review of the Cambodia Forest Concession Management and Control Pilot Project (Credit No. 3365-KH)", March 8, 2005.

7. The Requesters submitted a Request for Inspection to the Panel because they believe that the Bank did not comply with its policies and procedures in the design and implementation of the Project and, as a result, that the forest-dependent communities affected by the Project have suffered and will continue to suffer harm. The Requesters claim that through a flawed design and poor implementation the Bank promoted the interests of the logging concession companies, rather than those of the people. They believe that the Bank pursued a "pro-concession agenda" despite evidence of harm to forest-dependent communities caused by the logging companies.

8. The Requesters argue that by assisting the concessionaires in producing forest management plans and environmental and social assessments the Bank used loan money to benefit logging companies with track records of, among other things, human rights abuses and illegal logging of resin trees, which are one of the main sources of livelihood of forest-dependent communities. According to the Requesters, the Project made no attempt to correct the flaws of the concession system and increased the likelihood that the concessionaires would continue to operate their concessions without effective controls. The Requesters claim that the Bank Project strengthened the position of the concessionaires because it gave them the opportunity to present themselves as having the seal of approval from the World Bank and thus make themselves more immune from criticism.

9. The Requesters state that during Project implementation the Bank did not attempt to correct the Project approach in spite of available evidence of ongoing illegal activities by the concessionaires. They claim that the Bank took instead an indulgent view of these crimes and kept working to ensure the concessionaires' six management plans are approved. The Requesters also argue that Bank loan-funded technical assistance was offered to the logging companies irrespective of their past offences and based on criteria that these companies do not meet.

10. According to the Requesters, the above-mentioned claims involve noncompliance with Bank policies and procedures, including safeguards policies such as OP/BP 4.01 on Environmental Assessment, OP/BP 4.36 on Forestry, OD 4.20 on Indigenous Peoples, OP/BP 4.04 on Natural Habitats and OPN 11.03 on Cultural Property.

11. The Requesters claim that in designing the Project, consideration of environmental and social impacts was "*very cursory at best and did not meet operational policy standards*." They claim the Project was erroneously categorized as B, rather than A under the Bank Policy on Environmental Assessment, and thus no environmental assessment was carried out. In addition, they state that no consultations of affected people took place during Project preparation, and the consultations conducted by the concessionaires for preparing management plans were highly inadequate.

According to the Requesters, the Project failed to consider the impacts of the concession operations on the indigenous communities whose vital link to the forest is economical, social and cultural.

12. The Requesters also believe that Management did not comply with the Bank Policy on Supervision because under the Project inadequate management plans and environmental assessments prepared by the concessionaires were approved. They claim that the review of the plans ignored the companies' bad track records and used a scoring system that did not take into consideration the concession's adverse impacts on forest-dependent communities. In addition, the Requesters claim that these plans were disclosed only for a 19-day consultation period, which was inadequate to allow the people to comment effectively on the plans.

2. Management Response

13. Management states that the Project's emphasis on gradual reform of concessions was the most appropriate choice at the time the Project was conceived. Management contends that this choice was shared by forest specialists and knowledgeable observers, and built up through public discussions, dialogue with the Government and the work of other agencies.

14. According to Management, the approach adopted in this Project was a responsible one and complied with Bank forest policies and practices. Management believes that, aside from some processing and documentation requirements in OP 4.01 and OD 4.20, the Bank is in compliance with all the policies and procedures raised in the Request. Management also claims that the lack of full compliance with some policies did not cause any harm or lead to potential harm to the people living in the Project areas. Management maintains that no full environmental assessment was carried out because social and environmental issues had been identified in background studies conducted, inter alia, under the Bank-financed Technical Assistance Project and considered sufficient to address these issues.

15. According to the Response, when the Project was prepared the concession areas were already defined. The FCMCPP was designed to help Cambodia create a credible regulatory framework for concession operations. Management also claims that through the concession management planning framework established under the FCMCPP, the area covered by concessions decreased. Out of 6.4 million hectares of concessions, the Technical Review Team created under the Project recommended only six concessionaires' management plans (out of the thirteen submitted), covering a total of one million hectares, to go forward to the next planning level.

16. Management claims that the Bank was always aware of the issues surrounding the Project and, for example, played an active role in the ban on logging and log transport issued by the Government in 2002. The Response also states that the Bank made its Phnom Penh office available for disclosing the forest management plans, although it recognizes that the consultation and disclosure process could have been planned better. Management claims that prioritizations were required and the assessment of social impacts was postponed to a later time when the proposed concession areas would be known and selection of concessionaires would be underway. Forest inventory, mapping and yield calculations were considered at that moment more important.

17. According to Management, the Project may claim some successes, such as the formal adoption of guidelines and codes of practice for forest management, regular public reporting on forest crime, and reduction in the areas under concessions. However, Management also recognizes that involvement of local communities was not adequate, and that many issues, such as claims of forest-dependent communities on illegally cut resin trees, should have been addressed at an early stage of the Project. The Response states that the resin trees issue emerged to a large extent during Project implementation and that the Bank has since supported studies to address it. Management also recognizes that consultations carried out by the concessionaires were inadequate and states that new consultation guidelines are under preparation.

18. With respect to the claims that the Project approved six forest management plans, Management asserts that the Bank never endorsed the plans nor recommended them for approval. Management also states that the Project did not finance any of the concessionaires; rather it aimed at building capacity within the Government.

19. The Response also contains lessons learned from this Project, taking into account the complexity of the situation and systemic problems (e.g. corruption and lack of transparency). The discussion highlights, among other things: constraints in pursuing options due to the Bank's position not to take sides on existing contracts between the Borrower and private companies; the importance of early local community involvement; the need to be outspoken, including with the borrower, in the face of significant problems; and the potential value of specifying conditionalities on social concerns in the legal agreement. **The Panel appreciates the effort by Management to identify lessons learned, and considers that this effort contributes constructively to promoting the effective design and implementation of development projects.**

3. Eligibility of the Request

20. To determine the eligibility of the Request and the Requesters the Panel reviewed the Request for Inspection and Management Response. The Panel Chairperson, Professor 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 Forum on Cambodia, 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.

21. The Panel determined that the Request fulfilled the eligibility requirements for inspection. Because the Request and the Management Response contain conflicting assertions and interpretations concerning the issues, the facts, compliance with Bank policies and procedures, actual harm, and potential harm, the Panel recommended an investigation to the Board of Executive Directors.

22. On April 14, 2005, the Board approved the Panel's recommendation to conduct an investigation into the matters alleged in the Request for Inspection. The Request, Management Response, and the Panel's Report and Recommendation were made public shortly after the Board authorized the inspection sought by the Requesters.

4. The Investigation

23. The purpose of the investigation was to establish whether the Bank complied with its own policies and procedures in the design, appraisal and implementation of the Project, and whether, if instances of noncompliance were found, they caused, or were likely to cause, harm to the Requesters and the people they represent. Panel Member Tongroj Onchan served as the Lead Inspector for the Panel's investigation.

24. The Panel conducted a two-part investigation. The first part involved detailed research into Bank records related to the Project, interviews with Bank Management and Staff, and a review of other relevant documents. The second part took the form of an in-country fact-finding visit. To assist in its investigation, the Panel hired three consultants, who are internationally recognized experts on forestry and environmental issues and

on social and indigenous peoples issues: Don Gilmour, Ralph Schmidt and Paul Taylor.[11]

25. Panel Chairperson Edith Brown Weiss, Panel Member Tongroj Onchan, and Panel Member Werner Kiene, together with Executive Secretary Eduardo Abbott, Deputy Executive Secretary Peter Lallas, Operations Officer Tatiana Tassoni, and two expert consultants visited Cambodia from October 20 to October 30, 2005. During the visit, the Panel met with Government authorities, Bank Staff, the Requesters and other people in Project-affected places, NGO representatives in Phnom Penh and in Stung Treng Province, representatives of the Cambodia Timber Industry Association (CTIA), prominent citizens and other interested parties.

26. The Panel interviewed Bank Management and Staff in Washington, D.C. before and after visiting the Project-affected area, and in the Bank offices in Phnom Penh and Bangkok. In its investigation, the Panel identified and carefully reviewed all documents relevant to the case that the Requesters, Bank Staff, and other sources provided to the Panel. The Panel also analyzed other evidence gathered during the field visits or otherwise in its research, including scholarly literature.

27. This Report presents the results of the Panel's investigation regarding the different sets of forestry, environmental and social issues the Requesters raise in their submission to the Panel.

5. Bank Operational Policies and Procedures Applicable to the Project

28. With respect to this Project, the Panel assessed whether the Bank complied with the following applicable operational policies and procedures:

OP/BP 4.01	Environmental Assessment
OP/BP 4.04	Natural Habitats
OD 4.20	Indigenous Peoples
OP 4.36	Forestry[12]
BP 8.40	Technical Assistance
OP/OB 10.00	Investment Lending: Identification to Board Presentation
OPN 11.03	Cultural Property
OD/OP/BP 13.05	Project Supervision

World Bank Policy on Disclosure of Information
President's Memorandum on Adaptable Lending, 1997 and subsequent directives on Learning and Innovation Loans (LILs)

[11] See Annex C of this Report for the expert consultants' biographies.
[12] Operational Policy (OP) 4.36 (Forestry) issued in September 1993 applies to this Project because the Credit financing the FCMCPP was approved in June 2000 while the current Bank Policy OP/BP 4. 36 (Forests) was issued in November 2002.

B. The Project

29. The Project has as its objectives, "*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.*"[13]

30. The FCMCPP has four components:[14]

- Component A (*Forest Planning and Inventory*) provides for 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 for 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*."

31. 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,*"[15] though the Development Credit Agreement did not require any amendment.[16] According to the Response, the RGC has

[13] 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.
[14] Credit Agreement, Schedule 2.
[15] Management Response, ¶ 60.
[16] Management Response, ¶ 9.

designated 1 million hectares in three post-concession areas as protected forests,[17] and has requested technical assistance to develop management plans for these areas. Management states that the FCMCCP, as amended, finances collaboration between the Forest Administration (FA) and the Wildlife Conservation Society (WCS) in one of the post-concessions areas, Mondulkiri.[18]

32. **Project Financing**: The Project is supported by IDA Credit No. 3365-KH for SDR 3.6 million,[19] approved on June 6, 2000, within the Learning and Innovation Loan (LIL) framework. 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. The Bank also granted a second request for extension to December 31, 2005, but only with respect to Project Component C, *Forest Crime Monitoring and Prevention.* A Japanese Policy and Human Resources Development Fund Grant of USD 240,000[20] financed technical assistance during implementation. The IDA Credit is now closed.

[17] Management Response, paragraph 60. The three areas are: Central Cardamom (401,313 ha), Mondulkiri (429,438 ha), and Preah Vihear (190,027 ha).
[18] Management Response, ¶ 60.
[19] USD 4.6 million equivalent at the time of Credit approval.
[20] Japanese Grant Agreement, (Forest Concession Management and Control Pilot Project), TF026419, January 11, 2001.

Chapter 2 Project Concept and Design

A. Forests and Society in Cambodia

33. Forest resources in Cambodia play critically important roles in the economy, culture and environment of the country.[21] Until the middle of the 20th Century forests totaled about thirteen million hectares, over 73 percent of the country.[22] However, there is general agreement that over the decade of the 1990's tens of millions of cubic meters of timber were extracted from these forests, and over ten percent, more than a million hectares (ha) of the forest, were lost to deforestation.[23] By 1996 it was estimated that more that 1 million hectares of deforestation had occurred and a further three million hectares of forest had been degraded during the preceding 30 years.[24] It was a decade of intense forest degradation and destruction in Cambodia, although it was by no means the only country where this kind of thing occurred.[25] At present, Cambodia is about 50 percent covered by high forest; an area of roughly nine million ha.[26]

1. Forestry in the Social, Economic and Political Context

34. The current situation of the forest sector in Cambodia needs to be seen in the context of a country that endured several years of repressive and bloody Khmer Rouge rule in the late 1970's, when structures were destroyed and considerable social dislocation occurred. This was followed by a decade of civil war. Cambodia is now at peace, the economy is stabilizing, and recent economic performance is promising[27] although the social and political environment is considerably still unstable. This instability significantly impinges on the forest sector, as it does on other sectors.

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[21] Forests are much more important than is indicated by the available economic statistics where the contribution of forests and logging to GDP ranges from about 7 percent in 1994 to 2 percent in 2002, and the forest taxes contribution to national revenues ranges from about 3.5 percent in the late 90s to 0.4 percent in 2002. See "The Forest Sector in Cambodia – Part I: Policy Choices, Issues and Options. Independent Forest Sector Review (IFSR)." 2004. p. 40.

[22] World Bank, UNDP, FAO. 1996. "Cambodia: Forest Policy Assessment. Joint World Bank, UNDP and FAO report." Washington, D.C.: World Bank, UNDP, FAO.

[23] McKenney Bruce, Yim Chea, Prom Tola and Tom Evans. 2004. Special Report 1. *Focusing on Cambodia's High Value Forests: Livelihoods and Management*. Development Resource Institute. Phnom Penh, Cambodia.

[24] The Forest Policy Assessment in 1996 noted that in the 20 years between 1973 and 1993 there was an 11.2 percent decline in total forest cover, a 113.9 percent increase in shrublands and a 26 percent increase in agricultural land. Since then deforestation has continued at alarming rates. See Forest Policy Assessment, p. 4.

[25] Between 1993 and 1997 a further 700,000 hectares of deforestation occurred, 345,000 hectares being converted to shrublands and a similar amount converted to agriculture. See Forest Policy Assessment, p. 4.

[26] See World Bank. Cambodia Environment Monitor: 2003. April 2003. p. 3. See also McKenny et al. 2004, p 26.

[27] Memorandum of the President of the IDA and IFC to the Executive Directors on a Country Assistance Strategy (CAS) of the World Bank Group for the Kingdom of Cambodia, Report No: 20077-KH, February 7, 2000.

35. In the early 1990's Cambodia, and any donor intending to cooperate with the country, faced a classic and very intense situation of conflict over forest resources: resources that were critical for the very survival of the poorest rural people, including indigenous people; resources that were of very high biodiversity and conservation value because of their inherent ecology and unusual general lack of disturbance; and resources that presented an enormous quick profit opportunity to the wealthy and powerful.

36. Forests form a crucial part of the survival strategy of the rural poor. An estimated 85 percent of the population depends on agriculture, fisheries and forest products.[28] In a country where the average annual per capita income is less than USD300,[29] and 90 percent of the population is rural, the poor depend on and use forests in a great variety of ways: food from fruits, nuts and mushrooms, fuel wood, resins and gums, medicines from wild plants, wildlife hunting for food, artisan use of poles and wood for construction. The forests can also maintain clear streams, ponds and lakes for direct water use and fish production.

37. Forests are particularly important for indigenous peoples, who live in the more remote and isolated regions of the country. Forests comprise their cultural and spiritual home, and are the basis of their economic identity. In fact, one of the core concerns expressed in the Request for Inspection relates to serious depletion, caused by intensified logging, of resin-producing trees from which indigenous peoples and local communities derive a major source of income.

38. In addition, over the last decade a large segment of the forests of Cambodia have been quite important for the not-so-poor and even for the very rich. These are the commercial-timber-rich forests, the rain forest dipterocarps of Southeast Asia, which range from mainland Malaysia through the central islands of Indonesia and the Philippines. The dipterocarp forests are biologically very diverse, but they contain a very high volume of a group of trees – dipterocarps, a family of tropical trees – which are the most commercially valuable of mixed high tropical forests. The dipterocarps are also resin-producing trees.

39. By the early 1990's, rich commercial forests such as those found in Cambodia had a very high value per hectare for industrial loggers, because of well developed markets and processing technology and increasing depletion of commercially valuable forests in neighboring countries. Up to that moment, Cambodia's high forests had been largely inaccessible to internationally supported industrial activity because of decades of war and total lack of rural security, which ironically helped preserving them. This high value, however, has since attracted an all too vigorous timber industry

[28] World Bank. "A Vision for Forest Sector Development, Background Note, Cambodia." 1999, p. iv.
[29] See Cambodia Country Brief, available at www.worldbank.org/kh.

which has been very active for more than 40 years especially in the Philippines, Malaysia and Indonesia. This industry typically logs a very high volume (everything of value) where it operates, and moves systematically through all the available forests. In general the demand for the products, mostly plywood and lumber, originates in more developed industrial economies so that the scale of utilization has been huge. These operations are not even close to sustainable, and large areas, even whole countries, have had their commercial forests depleted over the past four decades.[30]

2. Economics of Industrial Forestry and Concessions

40. From the time that Cambodia emerged from civil conflict in the 1980's its forests were seen as important resources that could be utilized for the development of the nation. The Fifth Party Congress in 1985 identified forestry as one of four "economic spearheads" and called for rapid expansion of forest production.[31]

41. Social forestry was identified as important at this time and it was noted that the "*…enhancement of social forestry should be encouraged as part of improved agricultural extension activities. The development of small scale family or community plantations … should be encouraged, where feasible.*"[32] However, this entreaty was largely overlooked in the following decade as the state focused on industrial forestry.

42. Because of the anarchic state of industrial logging during the mid to late 1990's, the major focus of Government and key donors was on the timber and conservation values of the forests.[33] These were seen as the priority areas of concern. Livelihood aspects and forest dependence of various rural communities, particularly in relation to management of concessions and protected areas, seemed to take a back seat.[34] Topics related to community interests in forest management were primarily relegated to NGOs to address through small-scale pilot testing of community forestry projects, generally in degraded areas.[35] As a result, the forest sector seemed to become compartmentalized.

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[30] Bryant, Dirk, 1997, *Last Frontier Forests: Ecosystems and Economies on the Edge*, Washington DC: World Resource Institute.
[31] Curtis, Grant, *Cambodia: A Country Profile*, August 1989, A Report Prepared for the Swedish International Development Authority, p.78.
[32] Curtis 1989, p. 83.
[33] GFA Terra Systems, August 2004, Cambodia. "Results of the Independent Review of Strategic Forest Management Plans prepared by Concession Companies Operating in Cambodia," Hinrichs, Alexander; McKenzie, Catherine, Phnom Penh, Cambodia: GFA, p.p.13-14.
[34] Cf. ibid.
[35] It should be noted that the ADB developed an investment program that included community forestry, but this was rejected by the government.

43. The timber that can be produced within timber rich forests often has commercial market values that are much higher than the immediate commercial values for the forest's other goods and services. For example, although biodiversity may be of immense value to society, the immediate marketing opportunities for it may have very little or no value.[36]

44. Resin tree tapping does not occur universally across Cambodia, but in the areas where it is practiced it can provide a major support to rural livelihoods. Studies in southern Mondulkiri Province reported that 86 percent of families owned resin trees, with an average of 77 trees per family.[37] The income from the sale of resin from these trees averaged USD 3.6 per tree per year (with a mean annual income per family ranging from USD 299 to USD 377 across four villages). The total annual income from resin sales across the four villages studied was USD 61,000. Clearly, a loss of all or part of this income will have a significant impact on people's livelihood.

45. The value "on the stump" of an average mature timber tree in Cambodia in the 1990s was at least USD 50. The value converted to lumber and plywood would have been USD 250 or more. Of course the resin value is, in principle, renewable each year, while the timber value in an individual tree may take 50 or more years to renew. Nevertheless, the timber value is available immediately in its totality. The precise values change with time and species and can be debated, but there is no question that in Cambodia in the 1990s the immediate market value of the timber and the immediate market value of all the other goods and services are orders of magnitude apart.

46. Thus policy makers in Cambodia during the 1990's were facing some tough choices, assuming they were ignoring any self-interest. The immediately available commercial values of timber could make an important and desperately needed economic contribution to the country, but unsustainable exploitation of timber conflicts directly with the survival strategies of the rural poor, with the conservation of biodiversity, and with commitments to sustainable development, as discussed below. There are also cultural and gender issues involved, which have been recognized as high priorities in Bank policies. Indigenous peoples of forests have their very cultural identity bound up in these eco-systems; and they seldom, if ever, work in timber industries. Women almost never work in timber extraction or processing, which are the main jobs that would be created by timber

[36] This is at present generally the case, but not always. For example in Costa Rica and a number of other countries the direct and immediate commercial value of nature-based tourism greatly exceeds the value of converting natural eco-systems to other commercial uses.

[37] Tom D. Evans, Hout Piseth, Phet Phaktra and Hang Mary (January 2003), *A Study of Resin-Tapping and Livelihoods in Southern Mondulkira, Cambodia, with Implications for Conservation and Forest Management*, Wildlife Conservation Society, Phnom Penh, Cambodia.

industries in rural Cambodia, but they are often directly involved in garnering the other goods and services provided by forests.

47. As echoed in some of the Cambodia literature, and as extensively documented elsewhere, sustainable forest management is not often found in practice, and the poorer the country, the rarer the occurrence. This is mainly due to basic economic realities rather than to any policy failure or lack of technical competence, although these latter two may compound the situation. Understanding the economics and policy choices surrounding sustainable forestry is key to the analysis of one of the central charges of the Inspection Request: that a World Bank-funded Project *"has promoted the interests of the logging concession system (…) despite abundant evidence that the companies have already caused harm to forest-dependent communities."*[38]

48. In simplest terms, any forest area has a measurable amount of commercial timber volume, and it also has an amount of commercial volume that it is growing or being produced per year. Sustainable management requires, at the very least, that annual harvests are no greater than annual biological production. However, a mature forest, such as many of those that existed in Cambodia in the 1990's can contain 50 to 100 times the volume of the annual growth. The complete harvest of the available volume as rapidly as is feasible maximizes the internal rate of return, the profits, to the forest owner and operator and directly conflicts with sustainable management and development. It is true, however, that sustainable harvesting can still be profitable, just not as profitable as unsustainable operations.

49. The above case assumes the owner has secure tenure over and access to the forest resource. In the case of Cambodia in the 1990's, private sector parties with interest in exploiting the forest resource will have judged that due to political instability, the security of the Government's tenure and consequently their own access to the resource was very weak. (Their agreements and deals would change if the Government changed.) This creates even greater economic incentives to liquidate the resource as rapidly as possible. These realities of sustainable/unsustainable forestry underlie and frame the development options available and decisions made in Cambodia over the past decade.

50. These difficulties surrounding commercial forestry sustainability certainly raise questions concerning the advisability of forest concessions. What are the alternatives? To understand the options available to Cambodia and its donor partners in the mid-90's, it is useful to follow the logic of a simple decision tree. Cambodia became aware in the early 1990's that with a minimum of stability and security established in some forested parts of the country there was a very valuable forest resource in place (hundreds of

[38] Request, Letter 1, p. 2.

millions if not billions of dollars of end product value as discussed above). The Government decided to harvest this resource. A valid, though questionable, explanation was that the country needed economic development and jobs above all. It is important to note that various military factions were alleged to be directly involved in and profiting from timber harvesting or guarding harvesting operations. This meant that the option of stopping the harvesting may not really have existed unless one were ready to field military units and wrest control of forest areas.

51. Under the legal system in Cambodia the Government owns the forest land, although prescribed access and use rights of local and indigenous communities are recognized in the regulatory framework.[39] There were several possibilities for sustainable harvesting to be carried out on an industrial scale (as opposed to local-level subsistence scale). Selling the forest land to private parties would not encourage sustainable management and could lead to rapid deforestation and conversion to other forms of land use.

52. If forests were to remain in Government hands and be harvested, the alternatives were for, (i) the Government to operate the harvesting itself, or (ii) some kind of agreement to be made between the Government and the private sector. It should be noted that even in affluent and technologically advanced countries, direct Government management of for-profit harvesting is almost never found, and was certainly not a viable option in Cambodia. Public-private agreements may take many forms in their details, but they fall into two basic categories: long-term permits (or concessions) to operate in a certain area; or shorter term or year by year permits to harvest specific volumes in smaller more clearly designated areas.[40] The decision tree described above is not meant to justify, but to explain how the concession

[39] See Chapter 4.A.2 for policy and legal settings that define the access and use rights of local and indigenous communities.

[40] The above does not consider local community involvement in timber extraction and production. This is often considered an ideal possibility as the economic benefits would be shared with local communities. It is by no means impossible, but has proved very difficult to implement. Governments are generally reluctant to devolve authority to manage valuable natural resources to local communities. There are also technical constraints. Industrial operations such as are common in Asia require very significant investments in heavy equipment, highly trained engineers to manage processing technology, and international marketing capability. Some communities with well developed capacity have achieved this, but very few. It is true that small scale technologies are available that are within the capacity of many communities. The Partnership Forestry proposed by the Independent Forest Sector Review of 2004 is a version of this concept. The rural communities of Cambodia of the 1990s had been isolated for decades and deprived of education, media and even outside contact. There is general agreement that their capacity for this kind of operation would have been minimal at the time that the government made the decision to embrace the concession system as its main form of industrial logging. However, this is not necessarily the case at the time that the Project was designed.

decision was reached by Government in the mid to late 1990's, and to a large degree accepted by its donor partners.[41]

53. In neighboring countries in Asia, and indeed in many other parts of the world, the presence of highly valuable commercial forests on public land has frequently led to pervasive corruption in the sector and to widespread and readily apparent illegal logging.[42] Amongst these many countries, Cambodia must be considered one of the most vulnerable to vertically integrated corruption and to illegal logging.

54. It should be noted that the Project's designers also seemed to accept the concession system as a given without giving serious consideration to alternative approaches to harvesting that would lead to the achievement of Cambodia's long term economic goals and conform to the Bank's forestry objectives as outlined in OP 4.36. Several possibilities existed at the time that could have been considered. These included various types of community and partnership forestry, as was discussed by the Independent Forest Sector Review in 2004. These options were being seriously discussed in the late 1990's at the time the Project was being designed.[43]

3. History of Concession Management

55. The Government of Cambodia decided in the early 1990's to introduce private industrial forest concessions as the main instrument of commercial forest management in the country (although concession-type arrangements had applied from the late 1980's). According to an Asian Development Bank-funded study, instead of creating a clear legal context for the concession system, the Government superimposed it on the existing permit system.[44] The number of concessions expanded rapidly to 33 by 1997. During the decade of the 1990's, concessions were continually being withdrawn, cancelled and/or reallocated to other entities as forest or land concessions. New concessions were also given.

[41] In terms of revenues, when the State owns the forest, as in Cambodia, and it has been decided to harvest some timber, the State should collect some money from those who harvest. This is the "stumpage" value of the trees standing in the forest, i.e., the value of the logs, or a finished product, minus the costs of extraction and processing, allowing for a reasonable return. In open, well-functioning systems, this often is decided by public auction. In revenue systems, the government must have someone in the field who monitors the quantity and types of logs, and that report becomes the basis for payment.

[42] Contreras-Hermosillo, A, 2002, *Law Compliance in the Forestry Sector. An Overview*, Working Paper. World Bank Institute, Washington DC.

[43] There are examples of large-scale community management of industrial logging in Mexico that could have provided useful guidance. See D.B. Bray, L. Merino-Perez and D. Barry (eds), 2005, *The Community Forests of Mexico. Managing for Sustainable Landscapes*, Austin: University of Texas Press.

[44] Fraser Thomas, GFA-AGRAR, ANZDEC, "Cambodia Forest Concession Review Report," Sustainable Forestry Management Project, Asian Development Bank (TA-3152-Cam), Ministry of Agriculture, Forestry and Fisheries, General Directorate of Forestry, Royal Government of Cambodia, Phnom Penh, April 28, 2000.

56. There is much that is not known with any degree of certainty about when and how various entities came to be cancelled or assumed new names and beneficiaries. There are strong indications that the granting of concessions was a highly political process.[45] Certainly, concessions were given well above the level of the Department of Forestry and Wildlife (now the FA).

57. The following table summarizes the cancellations and reallocations that occurred between 1994 and 2005 based on the best available information.

Table 1 History of the Concession System between 1994 and 2005

Time	No. of concessions	Remarks
1994	1	First concession granted, as part of the general liberalizing trend, to replace the system of annual coupes (although concession-type arrangements had applied from the late 1980s) aimed at bringing some control to the *"anarchic logging practice"*.[46]
1994-97	33	Concessions covered almost 7 million ha; significant uncontrolled and/or illegal logging activity occurred.
1996-98		A "collection permit" system (long in existence) was increasingly employed to allow the sale, transport and export of large volumes of confiscated logs produced by illicit logging. The system operated throughout much of the forest estate.
2000		Sub-decree on Forest Concession Management passed. Companies were required to submit full SFMPs by September 2001 (as decided by the "Forest Concession Management Working Group" meeting in May 2000). No companies met the deadline.
January 2002		Suspension of Forest Concession Logging Activities under a Prakas[47] issued in December 2001— suspension of issuance of logging permits to remain in effect until SFMPs approved consistent with laws and regulations.
January-August 2002		First drafts of SFMPs produced by companies and reviewed by Technical Review Team (FA Staff with support from FCMCPP).
Early 2003	13	2 companies were cancelled; 1 company dropped out (still retains concession); 2 companies missed the deadline (still retain concessions);

[45] Montgomery, P. 1998, World Bank Discussion Paper No. 15, *The Forest revenue System in Cambodia – Recommendations for Change.*
[46] GFA 2004.
[47] A Prakas is a ministerial declaration that forms an additional component of an existing law.

		9 companies remained in consideration (8 were required by the TRT to revise and resubmit their plans).
Mid 2004	13	Completion of last round of resubmissions of SFMPs. 8 companies submitted and a further 3 companies resubmitted.
	13	6 concessions provisionally approved by TRT for advancement to compartment level (5 year) planning stage.
August 2004	13	Review of SFMPs and ESIAs (general overview of 6 plans with a detailed review of 2 plans).[48]
August 2005	13	Review of SFMPs and ESIAs (detailed review of 4 plans not reviewed in detail in August 2004).[49]

Source: Cambodia. Results of the Independent Review of Strategic Forest Management Plans prepared by Concession Companies Operating in Cambodia. August 2004. Hinrichs, Alexander; McKenzie, Catherine. Phnom Penh, Cambodia: GFA; and GFA Terra Systems. Review of Strategic Forest Management Plans prepared by Concession Companies operating in Cambodia. Part II. Final Report. August 2005. Hinrichs, Alexander; McKenzie, Catherine. Phnom Penh, Cambodia: GFA.

4. Evolution of Forest Policy in Cambodia

58. Since the 1980's, numerous regulatory instruments have been developed with the primary aim of regulating the timber industry and ensuring that royalty payments are collected and used for national development. Limited rights of local communities to harvest forest products are also included in the regulatory framework. The following paragraphs summarize the key instruments that have been enacted.

59. The "*Forest Practice Rules of the People's Republic of Kampuchea*", Kret No 35 signed 25 June 1988, was the principal forestry law prepared by the People's Republic of Kampuchea. This law remained in force until 2002 and hence was in existence at the time all forest concession contracts were signed. It states that the forest resources in the entire country are the property of the state and are under its administration.[50] It provides that the Ministry of Agriculture shall make decisions on permits for "*harvesting of trees or the gathering of sub-products for familial or public uses.*"[51] Article 17 of this law prohibits the cutting of resin trees, stating that it "*shall be forbidden (…) to fell the trees that people have tapped for resins*"[52]

[48] GFA 2004.
[49] GFA Terra Systems, "Review of Strategic Forest Management Plans prepared by Concession Companies operating in Cambodia. Part II. Final Report," August 2005, Hinrichs, Alexander, McKenzie, Catherine. Phnom Penh, Cambodia: GFA.
[50] "Forest Practice Rules of the People's Republic of Kampuchea," State Council Decree No. 35 KR.C (1988), Article 1.
[51] State Council Decree No. 35 KR.C (1988), Article 7.
[52] State Council Decree No. 35 KR.C (1988), Article 17.

60. The "*Instructions on the Implementation*" of the 1988 law provides an administrative determination of what constitutes a resin tree. A resin tree is defined as having a diameter of less than 1.20 meters, larger diameter trees being considered too old to produce resin.[53] This size limitation was subsequently disregarded as complaints related to the cutting of resin trees gained prominence in 2000.

61. A sub-decree on the creation of a "*National Committee to Manage and Execute Forest Management Policy*" was passed in 1996. This committee was given responsibilities for "…*the development, research and evaluation of forest policy of the Kingdom of Cambodia*."[54] The committee had a high level membership, which included the then two Prime Ministers, along with senior representatives of the Council of Ministers, and the Ministries of Economics and Finance, Agriculture, Forestry and Fisheries, Defense, Interior, Planning, Commerce, Environment, the Council of Development and the Department of Forestry.[55] Clearly, forest policy was seen as an important national issue and one that required a dialogue across most sectors.

62. A sub-decree on "*Forest Concession Management"* was passed in 1999. The purpose of this sub-decree was to "[d]*evelop a forest concession planning, implementation and control system which will lead to balanced, sustainable and technically competent management of production forests in the Kingdom of Cambodia*."[56] The sub-decree also stated other purposes, including to:

> "*Ensure that concession forest management regimes conserve and protect natural biodiversity, ecosystem function and important forest services such as soil conservation and watershed regulation*;"[57]
>
> "*Protect, and maintain rights of access to, those forest resources occurring on concession areas that are of economic, subsistence and spiritual value to local communities*;"[58]
>
> "*Ensure regular consultation with, and participation by, local communities and other relevant stakeholders in the development of*

[53] Instructions on the implementation of Law Decree No. 35 (1988) on the Management of the Forestry Sector. Chapter 2 (3.3). Issued by the Ministry of Agriculture. November 8, 1988.
[54] Sub-Decree on the "Creation of the National Committee to Manage and Execute Forest Management Policy," July 1996, Article 6.
[55] Sub-Decree, July 1996, Article 2.
[56] Sub-Decree on "Forest concession Management," 1999, Article 2 (1).
[57] Sub-Decree,1999. Article 2 (3).
[58] Sub-Decree, 1999, Article 2 (4).

concession management plans and the monitoring of operational activities over the life of the concession;"[59]

"Establish a competent forest management planning and control system that will provide a context for, and encouragement to, applications by the Cambodian timber industry for international forest management certification (i.e. Forest Stewardship Council, ISO 14001, ITTO and any similar certification system)."[60]

63. This sub-decree was an important step forward in developing a regulatory framework for industrial logging. Of particular importance was the recognition of the rights of local communities to access and use forest resources in concession areas for economic, subsistence and spiritual value; and to participate (along with other relevant stakeholders) in the development of concession management plans and in monitoring operational activities. The sub-decree also provided the regulatory framework for the focus of the FCMCPP, which was under development at the time.

64. On April 26, 2001, the Director of the Department of Forestry and Wildlife wrote a letter to the Director of Cambodia Timber Industry Association and the directors of all concession forest investment companies. The letter called upon them to:

"(…) temporarily postpone felling trees from which the people are currently extracting resin in the forest coups 2001 or in the forest coups you are about to exploit, although you have negotiated and signed a contract agreeing to give and receive a full amount of the money for the trees from which resin is extracted."

65. This letter draws attention to comments made by the Prime Minister on April 18, 2001 about complaints by local residents regarding concession forest companies illegally felling trees from which they extract resin.

66. In July 2002, a "*National Forest Sector Policy*" was issued. This policy identified national goals for the forest sector of environmental protection, biodiversity conservation, poverty reduction, socio-economic development, and good governance.[61] It is stated that this set of national goals provides the overall development framework for the conservation and management of the country's forest resources. Among the tasks identified to achieve these national goals are:

[59] Sub-Decree, 1999, Article 2 (6).
[60] Sub-Decree, 1999, Article 2 (7).
[61] Statement of the Royal Government on "National Forest Sector Policy", July 26, 2002.

> *"To recognize legally and protect the traditional rights of local populations to use forest resources under the framework of food security and poverty reduction considerations,"*[62] and,
>
> *"To optimize the benefits to local populations from the use and management of forest resources through the implementation of forestry and wildlife conservation concept based on the participation of local populations."*[63]

67. The July 2002 Policy was followed by a new "Forestry Law" enacted in August 2002. This law provided the legal framework for the new forest sector policy. The law applies to all forests, whether natural or planted,[64] although it excludes flooded forests.[65] Among its provisions of direct relevance to this inspection are the following:

> *"This law shall be implemented to ensure full public participation in any government decision that have the potential for heavy impact on concerned general citizens, livelihoods of local communities and forest resources of the Kingdom of Cambodia. Consistent with the Cambodian code of forest management and the Environment Protection and Natural Resources Law, an Environmental and Social Impact Assessment shall be prepared for any major forest ecosystem related activity that may cause adverse impact on society and environment. Document of the Environment and Social Impact Assessment shall be made available for public comment."*[66]

68. Under this law, a Permanent Forest Estate is perceived as consisting of three categories of forest: Production Forests (including Community Forests); Protection Forests; and Conversion Forestland.[67] The law includes the following provisions:

> *"Local communities have customary user rights to collect Forest Products & By-products within the Protection Forest with minor impact on the forests."*[68]
>
> *"Concessionaires shall have the right to manage and conduct Forest Products & By-products harvesting operations within their concession, while ensuring that the operation does not interfere with the following:*

[62] Statement, July 26, 2002, p. 2.
[63] Statement, July 26, 2002, p. 2.
[64] Forestry Law, adopted by Parliament on August 31, 2002, as amended in 2003, Article 2.
[65] Forestry Law, Article 3.
[66] Forestry Law, Article 4.
[67] Forestry Law, Article 10.
[68] Forestry Law, Article 10 (2).

> *1-Customary user rights taking place on land property of indigenous community that is registered with the state consistent with the land law; and*
> *2-Customary access and user rights practiced by communities residing within or adjacent to forest concessions.*"[69]
>
> "*Unless authorized by Ministry of Agriculture, Forestry and Fisheries (…) it should be prohibited to harvest the following forest products & by-products within the Permanent Forest Reserve: (…)*
>
> *3-Tree species that local communities have tapped to extract resin following tradition*;
>
> *4-Trees that yield high-value resin.*"[70]

69. A number of Prakas (a decree or law) relating to forest matters also have been issued. Prakas No. 089, dated March 14, 2005, lists the resin tree species that cannot be cut without prior agreement of the local communities or permission from MAFF. A Prakas on "*Forestry Revenue Systems Management"* was issued in August 2003. A Prakas on "*Procedures for Entitlements to Exploit Forest By-Products in Productive Forest Areas Besides Concession Forests*" was approved on July 18, 2005. The first article of this Prakas of 2005 states:

> "*This Prakas sets forth the procedures for entitlement to exploit forest by-products in productive forest areas besides concession forests through public bidding in order to supply for local needs and exports in accordance with Article 20 of the Forest Law.*"[71]

The second article of the 2005 Prakas provides that

> "*all annual coups of productive forests besides concession forests that are declared for public bidding shall have* ***technical schemes*** *for the exploitation of forest by-products which are stipulated in the plan of managing productive forests besides concession Forests* ***prepared by the Forest Administration*** *and which were decided by the Forest Administration.*" (Emphasis added.)

70. As well as the various laws, sub-decrees and Prakas, several important guidelines have been developed and issued since 1998 that have provided

[69] Forestry Law, Article 15.
[70] Forestry Law, Article 29.
[71] Prakas on "Procedures for Entitlement to Exploit Forest By-Products in Productive Forest Areas besides Concession Forests," Ministry of Agriculture, Forestry and Fisheries, No: 316, July 18, 2005.

guidance for concession planning and management.[72] The most important of these are:[73]

- Cambodian Code of Practice for Forest Harvesting (1999)
- Social Forestry Guidelines (1998)
- Forest Concession Management Planning Manual (March 2001)
- Guidelines for Sustainable Forest Harvesting (2000) containing
    - Guidelines for Forest Concession Management Planning System
    - Construction Guidelines for Forest Engineering Works
    - Guidelines for Special Management Area Management
    - Biodiversity Conservation Guidelines for the Managed Forests
    - Guidelines for Socio-Economic Surveys of Communities Surrounding Forest Concession Areas
    - Guidelines for Environmental and Social Impact Assessments for Forest Concessions
    - Guidelines for the Evaluation of Environmental and Social Impact Assessment for Forest Concessions

71. In addition, the technical team of the FCMCCP prepared five handbooks, issued in mid 2004.

- Forest Inventory Handbook
- Forest Planning Handbook
- Guidelines for the Review of Forest Management Plans
- Forest Systems Research and Modeling Handbook
- Training Material

72. The involvement of local communities in forestry activities has been a part of the policy debate in Cambodia for 20 years.[74] It is only recently that it has been included more explicitly in the regulatory framework for forest management following increasing pressure from local communities NGOs and donors. The legal framework supporting community forestry is included in provisions in the Forestry Law (2002) and the Sub-Decree on Community Forestry Management (2003).

[72] GFA 2004, p. 22.
[73] See Chapter 2.C.2. for an analysis of the guidelines.
[74] Reid, *Forestry,* 1985.
See also "Future opportunities for community forestry in Cambodia," Concern Worldwide, Open Workshop, 1998.
"Forest resource use by local communities in Cambodia" IDRC and RECOFTC, 1998.
Ung Sam Ath, Vong Sarun and Sin Ravuth (edited by Paul Im), "National assessment of Cambodia's forest rehabilitation policy and practice" DFW, MAFF, 1999.
The Forest Sector in Cambodia, Part I: Policy Choices, Issues and Options, Independent Forest Sector Review, April 2004.

5. Ethnographic Context of Indigenous Peoples and Ethnicity in Cambodia

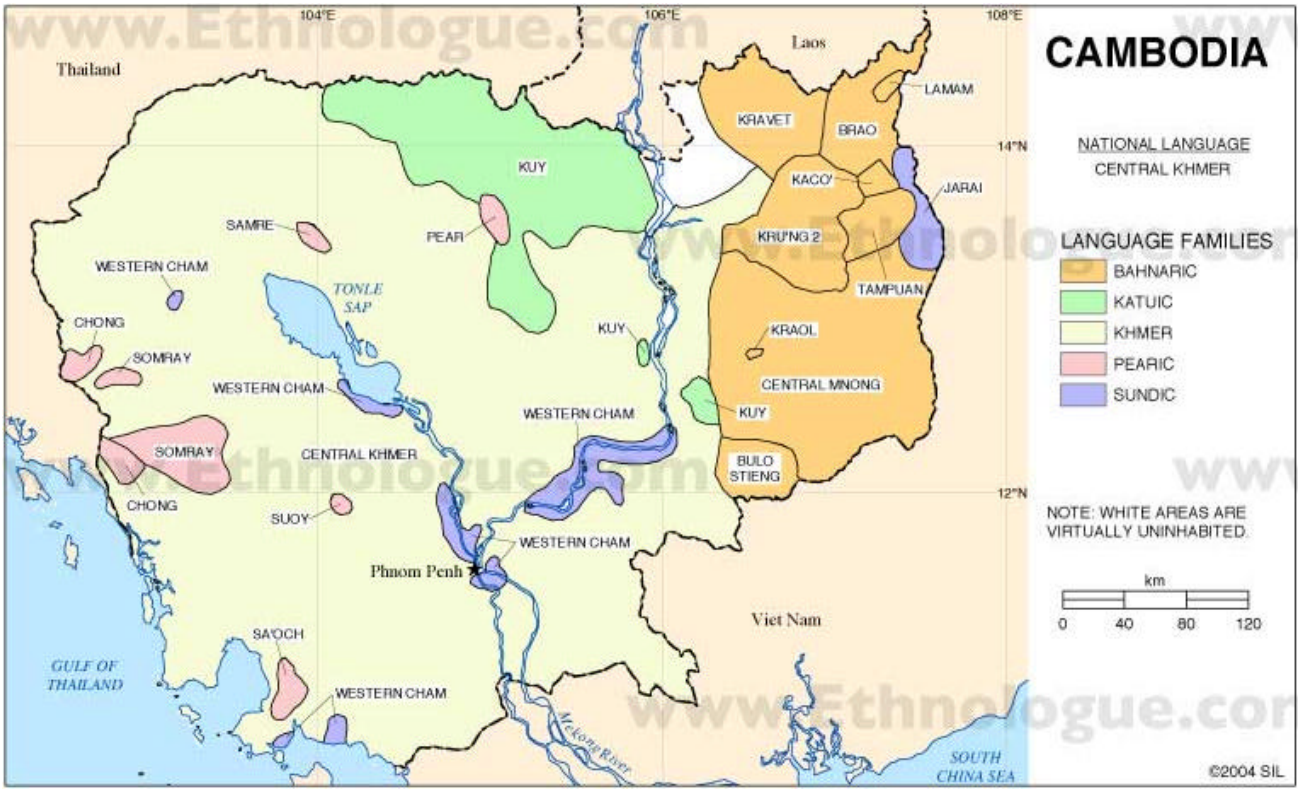
73. The following is a brief overview of the ethnographic context of indigenous minorities in Cambodia. Annex B provides a broader survey of this subject.

74. Cambodia is unusual within Southeast Asia for its small ethnic minority populations, both in absolute numbers and as a percentage of the population.[75] Of Cambodia's approximately ten million inhabitants, almost 90 percent are ethnic Khmer. Though Cambodia's Chinese, Thai, and Vietnamese are ethnic minorities, and are the subject of considerable literature on ethnic relations, these minorities do not fit the standard definitions of indigenous populations and have not been considered as such in other World Bank projects. Furthermore, although the historic ethnic composition of Cambodia during the Angkor kingdom is unknown, the dominance of this historic Khmer kingdom within and beyond the current boundaries of Cambodia has very probably entailed many centuries of significant linguistic and ethnic "Khmerization" (or convergence of other languages and ethnic traditions toward those of the Khmer who were historically dominant in the region).

75. The map below shows localities where five language families are spoken with names of selected languages spoken within each family. The national language of Cambodia is Central Khmer (Khmer family).

[75] Ovesen, Jan and Ing-Britt Trankell, 2004, Foreigners and honorary Khmers: Ethnic Minorities in Cambodia, Pp. 241-269 in: C. Duncan, ed., *Civilizing the Margins: Southeast Asian Government Policies for the Development of Minorities*, Ithaca: Cornell U. Press.

Figure 1 Ethnolinguistic Map of Cambodia: Localities where Five Language Families are Spoken



Source: Gordon, Raymond G., Jr. (ed.) 2005. *Ethnologue: Languages of the World.* (Fifteenth edition.) Dallas, Texas: SIL International. Online version: http://www.ethnologue.com/ .

76. Cambodia's first postcolonial ruler, Prince Norodom Sihanouk, aimed to promote national unity and to counteract the perceived economic dominance of the Vietnamese and Chinese minorities by devising an ethnic classification scheme in the 1960's according to which some non-Khmer ethnic minorities were to be included as *bona fide* Khmers.[76] Minority groups including the Kouy who lived in the northeastern provinces were labeled *"Khmer Loeu"* ("upland Khmer"); the Muslim Cham who speak an Austronesian language and are found in the central area of the country were labeled "*Khmer Islam*"; and Khmer-speaking ethnic Khmer living in the Mekong delta but on the other side of the Vietnamese border were labeled "*Khmer Krom*" (or "lowland Khmer"). The plain "Khmer" (without any adjectival modification) were the vast majority of (Khmer) Cambodians living in the center and most of the country.

77. The constitution of Cambodia says nothing about ethnic minorities. However, in the organization of Government ministries and their departments, and also in several pertinent areas of legislation or draft legislation, the current Royal Government of Cambodia does effectively

[76] Ovesen and Trankell, 2004 p. 245

recognize the distinctiveness of its ethnic minority populations.[77] Ongoing efforts to develop legislation relating to Indigenous Peoples should also be noted. Particularly relevant is Article 23 of the Royal Cambodian Government's Land Law of 2001 ("Part 2: Immovable Property of Indigenous Communities"), which defines "indigenous community" (literally "original ethnic minority" in Khmer) for purposes of the legislation as *"a group of people that resides in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural, and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use."*

78. Despite the lack of recognition in the present Constitution of indigenous peoples as a special category, there is ample recognition in past and present Cambodian Government practice and legislation for the status of some ethnic populations as having a *"social and cultural identity distinct from the dominant society that makes them vulnerable to being disadvantaged in the development process*" which is the definition used in the Bank policy on indigenous peoples, OD 4.20. The highland minority populations of northern and northeastern Cambodia especially (including Kouy, Kreung, and others), whose indigenous status has been emphasized in the Request for Inspection, have long been recognized as indigenous peoples.

79. The cultural and distinct identity of the populations is also evident in the particular relationship they have with the forests. General ethnographies of forest-dwelling Cambodian peoples refer to spirit forests, which are recognized throughout Cambodia, by Khmer Buddhists as well as all indigenous peoples of Cambodia. A recent study has documented more than twenty sites *"considered exceptionally sacred to the Kreung*" – most are spirit forests but also included are a few areas within local streams. The study found that while spirits are omnipresent, they are considered most powerful in very specific areas. As a result, logging of these areas has negative impacts *"not only on the physical environment but on the spiritual landscape as well."* The study also noted that the Kreung themselves *"want development, but not at the expense of their religion and culture"* – for which they consider these spirit forest areas exceptionally important.[78]

80. It is also important to note that spirit forests have status as protected areas under Bank Policy OPN 11.03 on Cultural Property, and from the Royal Government of Cambodia precedents in legislation, including the Land Law

[77] Cambodia's Ministry of Religious Affairs formerly included a Department of Ethnic Minorities, which in 1992 developed a list of 36 recognized ethnic minority groups totaling 309,000 persons (including Vietnamese and Chinese, thus approximately 3.5 percent of the then-total population of 8.9 million).
[78] Cultural Resource Study: Impacts of the Hero Taiwan Company Concession on Sites of Religious and Cultural Significance in O Chum District, Ratanakiri, January 2000.

of 2001 (Part 2) as it applies to Immoveable Property of Indigenous Communities and to religious properties.

6. Civil Society in a Post-Conflict Situation

81. Civil society in general, and NGOs in post-conflict Cambodia in particular, have been an important part of Cambodia's economy, social life, and system of government since the United Nations (UNTAC)-supervised elections of 1993.

82. According to a 2004 study, unlike in neighboring Vietnam and Laos, Cambodia's "*NGO community is very free to design stand-alone programme activities*" and partnering with Government agencies is not compulsory".[79] Prior to UN supervision, Cambodia suffered severe hardships and the breakdown of Government institutions, in such a way that after UN-supervised elections of 1993, NGOs were very heavily involved in "*post-conflict reconstruction, emergency relief work, repatriation and resettlement of refugees, and assisting with the implementation of basic services and infrastructure*." [80]

83. The same Curley study also noted a large influx of funds and resources to the NGO sector for these purposes, as well as "*human rights and democratization programmes*". In the late 1990's, the study observes, a trend emerged toward "*localization of NGOs to be run by Cambodian staff (…),*" and the growth of "*a more sectoral and 'issue specific' funding approach* [benefiting areas such as] *women and children, trafficking, HIV/Aids*" and apparently also a decline in funding for human rights and democratization. Curley presents evidence from numerous interviews about the role of NGOs in fostering broader civil society (of which NGOs form a part), and noted that there was growing interest among NGOs and donors in developing grassroots organizations (such as "*Buddhist organizations, village development groups, irrigation committees*" etc.), though NGO leaders recognized the inherent conflict in providing support to grassroots organizations without "*taking up the space for people to do it themselves.*"[81]

84. An additional study published in August 2000 by the Cambodia Development Resource Institute focused especially on the effects of international and multinational lender aid on the growth of civil society as well as on the growth of Cambodian Government capacity.[82] While also

[79] Curley, Melissa, *The role of the Non-Profit Sector in Transitional Asian Economicies: Cambodia Ten years after UNTAC,* Paper presented at the 15th Biennial Conference of the Asian Studies Association of Australia, 2004, p. 2 (hereinafter the "Curley study").
[80] Curley 2004, p. 4.
[81] Curley 2004, p. 11.
[82] Godfrey Martin, Chan Sophal, Toshiyasu Kato, Long Vou Piseth, Pon Dorina, Te Saravy, Tia Savora and So Sovannarith, 2000, *Technical Assistance and Capacity Development in an aid-dependent Economy: the Experience of Cambodia,* Working Paper 15, Development Resource Institute. Phnom Penh, Cambodia.

noting many positive accomplishments of international aid and of the NGO sector study, the study nevertheless pointed out several negative aspects of these sectors' growth within what it called Cambodia's "aid-dependent economy."

85. The study first notes that the scale of aid within Cambodia is so great that it "distorts the economy" in two important ways:

> *First, a high proportion of Cambodia's best-educated people either work for donor agencies or international* [NGOs] *or have been assigned to donors' projects as counterparts. This raises the price of educated labour and hinders the development of skill-intensive production and exports. Second, donors and NGOs have virtually taken over the funding of education, health care, social welfare, rural development etc., while government spends most of its funds on defence and security. In addition, donor funding eases pressure on government both to increase collection of revenue and to raise the salaries of government employees because so many top- and mid-level officials receive salary supplements as project counterparts.*
>
> (Godfrey et al. 2000:p. i.)

86. Overall, the study concludes that in Cambodia's experience since 1993, "*although some positive results have been achieved in the development of individual capacity, most projects in such a situation are donor-driven in their identification, design and implementation, to the detriment of institutional capacity development*". Noting that most former counterparts have left Government or moved to only part-time Government work, the study suggests that donors must develop a strategy to deal with this situation or technical assistance to Government "*will continue to be disappointing, and an escape from aid dependence will be postponed.*"

87. The unique role of civil society in Cambodia is directly relevant to the FCMCPP and to several issues raised in the Request for Inspection, such as lack of consultations with Project-affected people and NGO-driven monitoring of forest protection and forest concessionaire activities. The Request itself was facilitated through the NGO Forum on Cambodia. An NGO served as both Government monitor and public critic on illegal logging issues while being a Project contractor through a UNDP/FAO project.

B. Project Identification and Links with Other World Bank Projects

88. At the request of the Government of Cambodia, in 1995 the Bank and other donors (United Nation Development Programme – UNDP, and the United Nations Food and Agriculture Organization –FAO) reviewed selected

important issues affecting the forest sector in Cambodia to bring about sectoral development policy reform. Their report, the Forest Policy Assessment, was issued in 1996 (the "1996 Assessment"). It summarized the findings and recommendations of joint missions in Cambodia in November 1995.

89. The 1996 Assessment expressed serious concerns about the program of the Government that aimed at allocating almost all the country's forests to only a few concessionaires, a program resting on *"a level of timber exploitation which is likely to be unsustainable"* and *"unlikely to have significant impact on illegal logging."* It identified the concession system as a constraint to sustainable and socially responsible forestry in Cambodia because concessionaires appeared to have conducted inadequate resource assessments and overestimated timber availability, thus creating unsustainable demands leading to illegal logging.

90. The 1996 Assessment recommended, among other things, that the Government define a policy reform agenda to strengthen sector governance and organization, the incentive framework and resource mobilization. It also proposed that the Government: commission a review of the legal obligations of the concessionaires, and redesign the concession system; firmly commit to sustainable harvesting; and develop guidelines to review, monitor and enforce the concessionaires' management plans. The 1996 Assessment also suggested that the Government hire technical assistance to prepare proposals for reviewing the concession system, for designing and implementing pilot concession system trials, and for evaluating and revising forest management guidelines, resource assessments and inventory work.

91. In May 1996, a joint mission of the Bank, UNDP and FAO,[83] known as the Forest Policy Mission, prepared draft Terms of Reference to carry out the studies recommended by the Forest Policy Assessment. Support for this technical assistance was requested under the existing Bank-financed Technical Assistance Project (TA Project - Credit No. 2664-KH).

92. During the first TA Project annual review, also in 1996, assistance to the Government for forest management was added as a component of the TA Project. This component supported studies on forest concession management, forest policy reform,[84] legal counsel services, and log control and verification.[85] These studies were carried out during the time when the FCMCPP Project was being conceived and planned.

[83] Aide Memoire, May 1996 Mission.
[84] The studies on forest concession management were carried out by Fortech, while those on policy reform by ARD (Associates in Rural Development).
[85] Studies carried out by Development Alternatives.

93. A 1998 World Bank mission, conducted under the TA Project, reviewed progress in the forestry sector and the technical studies. The mission also noted the following: that field conditions in forestry had deteriorated; that illegal logging had reached alarming levels; and that harvesting was dominated by uncontrolled and uncoordinated issuance of log collection quotas. In addition, the mission found that, in this context, local communities were routinely harassed and forestry officials even killed. It added that the Government had acknowledged these issues and had expressed a commitment to change.

94. The 1998 mission further recommended that the Government consolidate the results of the technical studies and establish a policy framework for sustainable forestry. It noted, among other things, the proposal in these studies for the Government to create a forest concession management system.

95. This proposed concession system would manage the allocation of land, the procedures for bidding and award of concessions, revenue systems and other aspects of forest management. The proposal envisioned that concessionaires would prepare management plans for approval by the then Department of Forestry and Wildlife, in compliance with specific rules and guidelines (under preparation at the time). The mission also identified the possibility of implementing a pilot Sustainable Forest Management Project that could be supported by a learning and innovation loan, to test the regulatory proposals included in the technical assistance studies.

96. In 2000, the Bank also approved a Structural Adjustment Credit (SAC) aimed at tackling governance issues and pushing forward reforms to improve public resource and forestry management and enhance public sector management.[86] The Report and Recommendation of the President of IDA to the Executive Directors on the proposed SAC noted that conditions in forestry had deteriorated considerably during the 1990's – with worrying levels of illegal logging, revenue losses and local communities negatively affected by forestry operations. It also stated the need for fundamental reforms in the forestry sector, especially in relation to concession management, forest crime monitoring and forest law. The Report and Recommendation added that, in fulfillment of conditions for Board presentation of the proposed credit, the Government had developed and implemented a work program for establishing forestry crime monitoring capacity, reported quarterly on the forest crime monitoring to the public, and adopted the sub-decree on Forestry Concession Management.[87]

[86] Report and Recommendation of the President of the International Development Association to the Executive Directors on a Proposed Structural Adjustment Credit of Sdr 21.9 Million to The Kingdom Of Cambodia, February 7, 2000 Report No. P-7359-Kh, ¶ 22.
[87] Report and Recommendation, SAC, p. 26.

97. The Report and Recommendation specified several forestry related conditions for releasing the second tranche of the SAC. These were: completing a forestry concession review and taking actions based on the review's results to terminate non-performing contracts, where appropriate; requiring other concessionaires to present restructuring programs; and not awarding any contracts outside the scope, rules, and procedures set out in the Sub-Decree on forestry concession management.[88] The Government was also expected to support community forestry, to adopt a related sub-decree and to submit a draft Forestry Law to the National Assembly.

98. According to Management Response, the SAC as well as the FCMCPP were part of a series of tools and approaches to address the serious problems affecting the Cambodia forestry sector. The SAC provided a means for the Bank to exercise leverage through conditionalities that the FCMCPP, because of its small size, did not allow. However, some important Government commitments, such as establishing the Independent Forest Crime Monitoring program and disclosing the SFMPs/ESIAs prepared by the concessionaires, were formulated as an integral part of the SAC program and the FCMCPP.

C. Project Focus on Concession System

99. The Requesters complain that with a *"flawed project design (…) the World Bank has promoted the interests of the logging concession system and the concessionaires."*[89] In their view, "*abundant evidence*" and information collected over a period of five years about the concessionaires' track record and the harm the companies caused to forest-dependent communities was available before the Bank loan funding the Project was approved.[90] The Request claims that during the Project preparation and implementation phases the Bank did not comply with its social and environmental policies and procedures, in particular with the policies on environmental assessment, forestry, natural habitats, indigenous peoples and cultural property.[91]

100. The Requesters state that the FCMCPP "*was premised on the validity of the existing concession system and its operators*" while ignoring the flaws of this system and the "*persistent and well documented*" illegal activities of the concessionaires.[92] They state that Bank Staff confirmed in two meetings (in 2002 and 2004) that the World Bank's *"operational focus"* was to make the concession system work, at whatever operational scale this may occur.[93]

[88] Report and Recommendation, SAC, p. 27 and Annex 1 (Letter of Development Policy), ¶ 14.
[89] Request, Letter 1, p. 2.
[90] Request, Letter 1, p. 2.
[91] Request, Attachment 1, p. 5.
[92] Request, Attachment 1, p. 16.
[93] Request, Attachment 1, p. 7, at note 7.

101. The Requesters also quote a 1999 World Bank paper on Cambodian forestry, according to which the "*center piece*" for the forestry sector in Cambodia could be a "*sustainably managed industrial concession system*."[94] According to the Request, the FCMCPP was premised on wrong assumptions, that is, among others, "*if the concession system disappears, the project is, on its own terms, a failure*", and "*successful project outcomes* [are linked] *to the continued tenure of the incumbent concessionaires.*" As a result, the Requesters believe that, given the "*discredit*" of the concessionaires, the Bank committed a "*serious error of judgment*."[95]

102. Management states that "*the choice of working for gradual reform of the* [concession] *system was the most appropriate at the time.*" This strategy, it adds, was "*widely shared by knowledgeable observers*" and "*grew logically from the work of other agencies and was built on dialogue with the Government*."[96] According to Management, a design alternative consisting of targeting a few concessions "*for intensive technical assistance and development as model operations*" was considered but 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*."[97]

103. The Response states that the Bank's objective in Cambodia, reflected in the Country Assistance Strategy (CAS), was to help build the conditions for sustainable development and poverty reduction. The LIL[98] was conceived in this context, says Management, to make the regulation of the forestry sector more "*effective and equitable*" way, but "*did not seek to promote the existing concession system*."[99] Management Response also states that in the 1990s it became evident that the concession system, created by the Government with no Bank consultation, needed to be managed and controlled in a transparent and accountable way.

104. Studies funded by ADB and the Bank under the TA Project had identified the responsibilities to regulate the system and the challenges posed by it. However, Management states that, alone among the donors, the Bank decided to take up such challenges, while at the same time being aware of problems such as "*conflicts of interest, capacity constraints, and the public sector's lack of familiarity with a fair and well-governed system.*"[100]

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[94] Request, Attachment 1, p. 7 and note 6, quoting the World Bank "Background Note: Cambodia – A Vision for Forest Sector Development" February 1999, p. 7 (Request, at note 6).
[95] Request, Attachment 1, p. 9.
[96] Management Response, ¶ 37.
[97] Management Response, ¶ 15.
[98] See infra discussion on LIL, Chapter 2.D.
[99] Management Response, p. 25.
[100] Management Response, p. 25.

105. In assessing the focus of the FCMCPP, it is important to refer to the basic objectives in Bank policies relating to work in the forest sector. The Bank Policy on Investment Lending (Investment Lending: identification to Board presentation OP/BP 10.00) states that the Bank finances projects that contribute to the sustainable development of countries by helping them to make the best use of their resources, so as to fight poverty, protect the environment and make the public and private sector more effective. Operational Policy 4.36 Forestry (1993) states that the Bank's involvement in the forestry sector aims to "*reduce deforestation, enhance the environmental contribution of forested areas, promote afforestation, reduce poverty, and encourage economic development*."[101] OP 4.01 requires that projects proposed for Bank financing be subject to an environmental assessment to "*ensure that they are environmentally sound and sustainable, and thus to improve decision making*." (OP 4.01, paragraph 1.) [102]

106. The decisions taken regarding this Project also need to be considered within the overall context of the Bank work in the forest sector and even in other areas in Cambodia. Bank Staff interviewed by the Panel clarified that in 1995 the Bank began to take an interest in the forestry sector and considered what action might be feasible to switch from a non-transparent political economy of forestry driven by private and individual interests into one that involves sustainable and transparent forest management.[103] According to Bank Staff, at the time of Project identification and conception in 1999, amidst the last years of civil war, with some areas still under the control of the Khmer Rouge, concession companies reportedly carried out a string of illegal operations harming rural populations as well as forests.

107. In such a difficult environment, Staff stated that the Project was an attempt to improve an almost unmanageable situation. This was based on the perception that forest resources in Cambodia were critical for poverty reduction, biodiversity conservation, economic development and revenue flow to Government. A number of other donors were also concerned, and the IMF had raised the issue of unsustainable forest exploitation as a concern blocking one of its credits to Cambodia (a highly unusual occurrence at that time).

108. **The Panel, in principle, commends Management for engaging in forestry-related work in Cambodia. The Panel recognizes that this required the courage to be a risk taker, knowing that the work was important for poverty reduction and development**, but also likely to lead

[101] OP 4.36, (Forestry), September 1993.
[102] Operational Policy (OP) 4.01 (Environmental Assessment), July 1991, also calls for, inter alia, the analysis of project alternatives, by comparing "feasible alternatives to the proposed project site, technology, design, and operation--including the "without project" situation--in terms of their potential environmental impacts".
[103] Staff interviews, Washington DC.

to controversy and criticism. However, while recognizing the danger that projects dealing with natural forests might be avoided in the future, simply to avoid controversy and criticism, **the Panel also emphasizes that in such a context compliance with safeguard policies is essential, even though transaction costs may be higher**. It is precisely because of the strong economic incentives for unsustainable timber exploitation that the Bank has an important role to play and a comparative advantage in its effort to support sustainable forestry. And in this regard donor partnership and cooperation is equally important.

109. The Panel's investigation has revealed, however, that, in a number of cases, compliance with Bank policies during Project design and preparation fell short of what the policies require, giving rise to a set of problems that lasted throughout implementation. The sections below addresses these issues in general and with specific reference to the Requesters' claims related to the Bank compliance with the policies on Environmental Assessment, Forestry and Natural Habitats. This is followed by a review of compliance with Bank policies on Indigenous Peoples, Cultural Property and Supervision.

1. The Bank Forestry Agenda in Cambodia

110. The record indicates that the primary thrust of the Bank's efforts in the forest sector during the 1990's was focused on industrial logging. The 1996 Forest Policy Assessment (carried out by the Bank, FAO and UNDP) acknowledged that it "…*focuses largely on commercial and industrial forest uses*…."[104] although it goes on to note that "…*there remains a large agenda for further policy analysis and development related to agroforestry, wood energy production, biodiversity conservation and human resource development"*.[105]

111. Interestingly, there is scant mention of the importance of forests for local development or poverty alleviation, although the Government's goal of, among other things, "…*protection of traditional users*…."[106] is noted. In a later part of the document a cautionary note is included that "[i]*n some countries the damage that results from neglecting local communities in providing access to, and control of, forest resources is being recognized and is leading to change*."[107] The Panel notes, in hindsight, that if this caution had been heeded and acted upon, many of the conflicts that arose in the following years might have been avoided.

112. As already noted, the Bank carried out a series of studies between 1997 and 1999, as part of the Technical Assistance Credit, with the objective of

[104] Forest Policy Assessment, p. 1.
[105] Forest Policy Assessment, p. 1.
[106] Forest Policy Assessment, p. 2.
[107] Forest Policy Assessment, p. 18.

providing "*assistance to the Secretariat of the National Committee for Forest Policy in the formulation of a long-term forest policy*".[108] These studies provided most of the background documentation that guided the formulation of the Project. However, as noted in the Management Response, there were other studies and consultations that added to the environmental and social knowledge base, and Management claims that "*…by the time of project appraisal, it was determined that there was sufficient information about the social and environmental aspects of the concession management system to design a process to address these aspects.*"[109]

113. This analysis looks at whether Management acted consistently with Bank policies, in light of the information available at the time of Project appraisal.

114. As noted above, OP 4.36 Forestry (1993) states that the Bank's involvement in the forestry sector aims to "*reduce deforestation, enhance the environmental contribution of forested areas, promote afforestation, reduce poverty, and encourage economic development*."[110] The conditions outlined in the 1991 Forest Sector Policy Paper for the Bank's involvement in the forest sector include "[u]*ndertaking social, economic and environmental assessments of the forests being considered for commercial utilization.*"[111] All of these aspects are important and all should be given attention. Best practices in forestry, as encapsulated in the various Criteria and Indicators for Sustainable Forest Management, similarly calls for a form of forestry practice that explicitly embraces economic, environmental and social considerations.[112]

115. A useful indication of the direction of the Bank's primary focus can be obtained from an analysis of the studies carried out under the TA Project, noted previously. The studies were designed primarily to provide the technical background to reform the concession system. The studies provided an opportunity to ensure that the relevant key aims for the Bank's involvement in the forest sector, outlined in OP 4.36, were addressed explicitly. The following table gives an indication of the major focus of the studies.

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[108] Technical Assistance Credit (Credit No. 2664-KH), "Implementation Completion Report" Report No. 23664, June 27, 2002.
[109] Management Response, p.p. 31-32.
[110] OP 4.36, ¶ 1 .
[111] World Bank, *The Forest Sector, a World Bank Policy Paper*, Washington, D.C. 1991, p. 20. The requirement for a client country to carry out such assessments is also given in OP 4.36.
[112] International Tropical Timber Organization (ITTO), Criteria and Indicators for Sustainable Forest Management. Cambodia is a Producer Country in the ITTO, and consequently would be expected to conform to the ITTO Criteria and Indicators.

Table 2 Studies under the Technical Assistance Project (1997-1999)

Number of studies related to industrial (concession) logging			Number of studies not directly related to industrial (concession) logging
Technical/financial	**Zoning**	**Environmental/Social**	
28	4	3	4

Source: Project documents files and information provided in Management Response

116. As indicated by the table, studies on the technical/financial aspects of the concession system dominated the agenda, and environmental and social/cultural aspects were given only minor consideration. The major emphasis on concession logging (90 percent of all studies) relegated broader forest management considerations and alternative approaches to the margins.

117. The background studies emphasized the technical aspects of industrial logging, although several studies were included to explore some aspects related to people-forest interactions. Arguably, if the high dependence of local communities on forests for economic and cultural purposes had been given focused attention, poverty reduction and local economic development would have come more to the fore in the national debate that was occurring at the time, and also received a higher profile in Project design and implementation.

118. It appears that the Bank failed to recognize that forests in Cambodia (as in many countries in the region) are contested domains, with local communities being one of the key contestants. The Government has *de jure* control over forest land, but local communities claim and exercise usufruct rights, some of which have a legal basis, such as the rights to tap resin trees. Once the Government gives use rights to concession companies to access forest land and harvest timber, it is setting up a situation where these two key stakeholders, concessionaires and local communities, will contest their rights of access and usage. It could be expected that conflict would emerge if industrial logging failed to deal adequately and equitably with the legitimate needs and interests of indigenous and other local communities. This should have been anticipated by anyone knowledgeable about the topic.

119. The Asian Development Bank (ADB)-funded Fraser Thomas study warned of the consequences of focusing on industrial logging to the exclusion of other aspects in 2000: *"One of the major criticisms of the forestry sector is that for too long its primary focus has been the sustained supply of wood products for forest processing facilities, and that inadequate attention has*

been given to the needs of forest dependent communities, to the broad hydrological and soil conservation functions of forests, their conservation value and their broader significance in cultural and other terms."[113]

120. The Management Response noted that the 1991 Forest Sector Policy Paper (the "1991 Forest Strategy") emphasized preservation of intact forest areas and included a Bank commitment not to finance commercial logging in primary moist tropical forests. The Response also notes that the broad goals of the 1991 Forest Strategy were to prevent or significantly reduce deforestation and to stimulate plantations and creation of additional forest resources.[114]

121. The Management Response also states that the Project benefited from the insights of the review conducted by the then Operation and Evaluation Department (OED) of the Bank in 1999-2000. This was about the time that the Project was appraised and approved by the Bank.

122. Following this review, according to Management, the Bank carried out a two year analysis and consultation that led to a new forestry strategy. The strategy identifies three objectives for forestry work: to harness the potential of forests to reduce poverty; to integrate forests within sustainable economic development; and to protect vital local and global forest services and values. The strategy also put an emphasis on governance and forestry reform.

123. The Panel notes that the Project did seek to address certain issues of governance in relation to concession management and illegal logging. **The Panel finds, however, that the Project did not seem to take on other key aspects identified by the strategy, especially the emphasis on using the potential of forests to reduce poverty**."[115] The decision not to prioritize assessment of social issues, noted in Management Response, [116] is a further reflection of the lack of attention given under the Project to social and poverty reduction issues (The question of social assessment is analyzed in more detail in Chapter 4.A. of this Report).

124. The lack of an explicit emphasis on poverty in the Project design is particularly surprising given the assertion by the Cambodian Government in the Letter of Development Policy for the SAC to the World Bank President in 2000 that poverty in Cambodia is overwhelmingly a rural phenomenon, and *"(…) forest resources must also be used as a means of supporting*

[113] Fraser Thomas, 2000, p. 26.
[114] Management Response, p. 16.
[115] Management Response, p. 16.
[116] Management Response, ¶57.

agriculture and rural development."[117] The Letter goes on to note that "*the Royal Government needs to develop means for awarding long- term forest tenure rights to local communities, indigenous peoples, and other target groups*."[118]

125. **The Panel finds that in the Project's focus on concessions, other aspects that were important to the Bank program in Cambodia and the Government were largely ignored or at least marginalized throughout the planning phase of the Project**. In this regard, **the Panel finds that the Project did not give adequate attention to the vital interests of local communities and indigenous peoples in forest resources, and to the contested nature of the forest domain.**

126. While there may be a certain logic in narrowly focusing on improving the FA capacity to improve the existing concession system, it might have been more effective in pursuit of Bank policy objectives to have a detailed assessment of (and potentially also, support for) alternatives to the entire forest concession system. For example, many NGOs and publications have argued that resin-tapping and community forest management have been more effective at both long-term sustainable forest maintenance and also poverty reduction. In addition, by turning over to concessionaires what are essentially social science functions (social surveys, public consultation), rather than developing the social science capacity of local institutions, a great opportunity for obtaining the Bank's stated goal of "*strengthening good governance through a more efficient and accountable public administration*" has very likely been missed.

127. The Panel finds merit in the contention of the Request for Inspection that the Project's association with concession management to some degree served to legitimize the concessions. This does not contradict the finding that working on sustainable forestry in some way, was well justified, and that such risk-taking is commended; it merely reemphasizes the need for a meticulous application of the appropriate safeguard policies.

128. **The Panel finds that the Bank (i) biased the collection of information needed to design the Project towards technical and financial aspects, and (ii) ignored the important role of forests in Cambodia as livelihood and cultural assets for local and indigenous communities. The Panel further finds that the Bank chose to give primary emphasis in the Project's design to the technical and financial aspects of concession reform at the expense of environmental and social aspects. It thereby lost an opportunity to lead the debate on much needed reform in the**

[117] Letter of Development Policy sent to the President of the World Bank by H.E. Keat Chhon, Minister of Economy and Finance, Royal Government of Cambodia, PAD, Annex 1, ¶ 15.
[118] Letter of Development Policy, PAD, ¶ 15.

forest sector so that forests could be sustainably managed for the benefit of all Cambodians.

129. In this regard, the Panel notes that what may be referred to as "technical-level" work is important, but often not sufficient, to cause fundamental change, particularly in a forest-rich, post-conflict country such as Cambodia. Issues involving timber, illegal logging, the rights and welfare of rural communities and indigenous peoples, and biodiversity conservation go well beyond technical considerations. In line with relevant policies, they require well-informed, high-level and wide-spread political and strategic consultations and negotiations. **The skill sets and seniority level for technical forestry and strategic political dialogue are quite different. Operating on one level without the other will often prove futile and lead to problems as in the present case.** The Bank is one of few institutions that can operate in an effective way on these two levels.

2. Guidelines and Procedures for Concession Areas

130. One of the stated Project objectives is *"to demonstrate and improve the effectiveness of a comprehensive set of forest management and operational guidelines and control procedures in forest concession areas."* [119] The Panel notes that the above-mentioned guidelines must be consistent with the Bank operational policies and procedures, including the Safeguards Policies (Environmental Assessment, Involuntary Resettlement, Indigenous Peoples, Cultural Property, Forestry, Natural Habitats etc.).

131. Several guidelines were developed from 1998 through 2001 with funds and technical support from the World Bank as well as other donors (FAO, ADB etc.).[120] They were prepared to guide the sustainable forest management at strategic, compartment and coupe levels. [121] They relate to *"planning, inventory, community consultation and participation, biodiversity*

[119] The 1996 Cambodia Forest Policy Assessment identified concessionaires' unsustainable timber exploitation as one of the major problems of the Cambodia forestry sector and recommended that the government adopt a "*precautionary approach to logging through its evaluation process for concession management plans*" and monitoring of compliance with the concession terms. Among various follow up actions, the Report suggested that the Government develop and issue guidelines for review, monitoring and enforcement of forest management. Terms of Reference (TOR) for these guidelines were developed in the context of a joint Bank/UNDP/FAO mission to Cambodia conducted in May 1996. The TOR required the guidelines to be environmentally sound and in compliance with accepted international practice. .According to the TOR the guidelines were to, inter alia, reflect existing Cambodian legislation and codes, take into account traditional and standard practices in Cambodia's forestry sector, be enforceable in the context of the concession agreements and national environmental legislation, promote and facilitate participation of forest-based communities and be compatible with international forest practices and codes. The guidelines were to cover, among others, forest management planning, harvest planning, forest use zoning and post harvest assessment and management.

[120] See Chapter 2 for a comprehensive list of these guidelines and handbooks.

[121] Management Response at Annex 6 describes Cambodia's Forest Management Regulatory Regime, which is composed of six elements: National Legislation, Legal Regulations, Legal Standards, Planning Process, Guidelines, and Contracts, Permits and Licenses. Management Response, Annex 6, p. 117.

conservation, watershed and riparian zone delineation and protection, reduced impact logging, access management (road design, construction, maintenance and de-commissioning), and forest engineering."[122] They include the Cambodian Code of Practice for Forest Harvesting, the Guidelines for Sustainable Forest Management (which contains a number of area-specific guidelines), the Social Forestry Guidelines, the Community Forestry Guidelines and the Forest Concession Management Planning Manual (Planning Manual).[123]

132. According to the Requesters, although the FCMCPP was intended to reform concession operations, the "*set of prescriptions*" to be applied under the Project "*consisted less of 'time-bound milestones' than a package of assistance, advice and elastic guidelines*." As a result, the Requesters claim, "*the FCMCPP provided a useful alibi*" to the Government for not choosing "*between either terminating defaulting companies or having its professed attempts at reform exposed as hollow and insincere*." [124]

133. Staff interviewed by the Panel stated that, in their view, the guidelines comply with Bank policies. For example, with respect to cultural property, Management states that the guidelines developed under the Project refer specifically to sacred groves, spirit forests and archeological sites.[125] In supervision missions, however, the Bank itself had acknowledged some weaknesses in the same guidelines. Specifically, the Panel notes that the Project's Mid-Term Review Report states that "*certain deficiencies in the Guidelines for Sustainable Forest Management have led to a situation where most of the plans had the same weaknesses*."[126] The Panel also notes that the GFA reports, which independently reviewed the SFMPs/ESIAs prepared by the concessionaires, examined these guidelines and expressed concerns about the adequacy of some of their provisions, especially with respect to the social ones. The GFA Report also observed that ideas for promoting "social accountability" amongst concessionaires at the time of planning did not go much further than the 1998 Social Forestry Guidelines, a document which was apparently never properly disseminated.[127]

134. In light of the Requesters' allegation and the Panel's finding that Project preparation chose to give emphasis to technical aspects of concession operations and set aside social and environmental considerations, the Panel reviewed a sample of the guidelines. The review focused particularly on requirements, or lack thereof, included in the guidelines to deal with social aspects of concession operations.

[122] Management Response, Annex 6, p. 117.
[123] PAD, p. 16.
[124] Request, Attachment 1, p. 55.
[125] Management Response, p. 40.
[126] Aide Memoire, Mid-Term Review Mission, February/March 2003, p. 15.
[127] GFA 2005, p. 8.

135. The Panel found that the guidelines provide for some measures which are consistent with Bank safeguard policies, including the concessionaires' obligations to consult appropriately on local rights to, and uses of, the forest, in order to avoid or negotiate compensation for traditionally used forest products. Also, according to these guidelines, the concessionaires must survey and avoid culturally and historically important sites. The guidelines do not, however, set up a method of confirming that local people have been informed of the concessionaires' plans, nor do they set up a transparently monitored grievance procedure that allows affected people to dispute the characterization of their lands, their cultural properties, and the value that should be placed on, or recognized for, their traditional uses of forest products.

136. The Panel notes that, particularly in a situation like that of remote parts of Cambodia (and many other countries), where the power relationship between local forest dependent communities and industrial logging concessionaires is so unequal, the absence of an effective grievance procedure and monitoring mechanism can be an open license for the suppression of the poorest and most vulnerable populations' rights, whom Bank policies were developed to protect.

137. Bank Management rightly recognizes that it failed to prepare a framework Indigenous Peoples Development Plan (IPDP) for the Project as required by OD 4.20. Similarly, the guidelines did not require that an IPDP-type plan be prepared to address the concessions' impacts on affected indigenous peoples.

138. In addition, Management did not ensure that the guidelines included any of the requirements that would effectively constitute a resettlement or compensation plan for all those people who would be involuntarily deprived of their traditional access to usufruct rights over resin trees, as required by the Bank policy on Involuntary Resettlement (OD 4.30). In its constructive section on lessons learned, Management acknowledges that it could have dealt better with the problem of "*restriction of access to livelihood resources.*"[128]

139. With respect to cultural property of the forest-dependent communities, the Panel notes that the Project included in the guidelines a process for safeguarding spirit forests. However, while the guidelines require that archeological, religious, and historical sites be protected, they do not require that concessionaires involve specialists in these fields to address questions of cultural property, as OPN 11.03 provides.[129] The guidelines are also

[128] See Management Response, ¶ 64.
[129] The policy states that: "*Bank Staff : (1) determine what is known about the cultural property aspects of the proposed project site. The government's attention should be drawn specifically to that aspect and appropriate agencies, NGOs or university departments should be consulted; (2) If there is any question of*

inadequate for protecting these cultural properties because they provide that the concessionaires, who would benefit from the logging, are in charge of determining areas that should be excised from logging operations.

140. **The Panel is concerned that, with respect to the social aspects of the concessions, certain parts of the guidelines issued under the Project do not meet Bank safeguard policy requirements and do not provide an adequate framework for deciding on any future forestry concessions by the Government of Cambodia. Unless this situation is properly remedied, the Project will not achieve one of its main objectives which is to *"demonstrate and improve the effectiveness of a comprehensive set of forest management and operational guidelines and control procedures in forest concession areas."***

D. Choice of the Learning and Innovation Loan as Financing Instrument

141. One of the concerns raised by the Requesters relates to the applicability of Bank policies to a project financed through a Learning and Innovation Loan (LIL), as is the case of the FCMCPP. According to the Requesters, *"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."*[130] A further question that arose in meetings between the Panel and the Requesters is whether the LIL was the appropriate financing instrument to support this Project.

142. LILs were established in 1997 in part to pilot operations in untested areas before scaling up, and to test new approaches that are attractive but risky. Learning and hypothesis-testing are important elements of such projects.[131] According to the Bank document establishing and describing the LIL, it "*would be used: (i) when institutional capacities need to be built up in preparation for a large scale program; (ii) in an uncharted but promising territory for which viable technical, financial, social and environmental solutions are not yet known; (iii) to pilot a potentially good development effort when the time is right and the ground has already been laid through a local initiative, a social assessment, other participatory exercise or another partner's efforts; or (iv) some combination of these conditions*."[132] In addition, "[LILs] *may not be appropriate when: the policy framework is poor; and (ii) borrower commitment and ownership are especially weak*."[133]

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cultural property in the area, a brief reconnaissance survey should be undertaken in the field by a specialist." OPN 11.03 (Cultural Property), ¶ 3.

[130] Request, Attachment 1, p. 61.

[131] Fourth Review of Adaptive Lending, Volume I: Main Report, Operations Policy and Country Services, July 20, 2005, p. i.

[132] Adaptable Lending, 1997, p. 7.

[133] Adaptable Lending, 1997, p.7.

143. Panel members asked during interviews with Management and Staff in Washington, Bangkok and Phnom Penh about the way in which learning was made explicit within the Project, and how this led to innovation. The questions were generally met with puzzlement. Staff referred to the Project as a "*technical assistance project*"—the LIL was evidently seen as a relatively quick and easy mechanism to mobilize a loan. **The main aim of the loan was to support a legal and regulatory program on the basis of which long-term concessions were to be granted. The Panel notes that this cannot easily be regarded as a learning and hypothesis-testing exercise.**

144. While many things may certainly be learned about implementing sustainable forestry, the Project design did not focus on overcoming the major difficulties affecting forest management. The anarchic nature of the forest sector in Cambodia is widely acknowledged, with corruption alleged to be embedded at all levels of the public sector.[134] The Panel notes that the Project attempted to reform the way in which commercial timber harvesting was managed by improving the technical, social and environmental aspects of concession management, and it put a major emphasis on the technical aspects at the expense of the others.[135] The Panel observes that this was bound to have only a limited impact unless the broader governance issues were addressed.

145. The Project design targeted mainly technical fixes that, given the "*total system failure,*"[136] emphasized in the ADB-funded Fraser Thomas study, were largely irrelevant. To the Panel, the PAD statement that, "[p]*etty and large scale corruption are characteristic of the forestry sector and learning is needed to discover how regulations can be made more effective in the face of extremely low salaries and difficult working conditions,*"[137] does not provide a convincing justification for the use of the LIL instrument. **The Panel finds that the elements conditioning the use of the LIL instrument do not apply convincingly to the Project.**

146. In addition, the Bank document establishing LILs as an instrument states that a LIL may not be appropriate when the policy framework is poor and the borrower commitment and ownership are especially weak. **The Panel finds that these two conditions were present at the time of the design of**

[134] Global Witness, *Taking a Cut. Institutionalized corruption and illegal logging in Cambodia's Aural Wildlife Sanctuary*, London, 2004. See also World Bank, Country Assistance Strategy (CAS) for the Kingdom of Cambodia, Report No: 20077-KH, 2000, p 2.
[135] The 2005 GFA review of the SFMPs noted that "*…the FCMCPP's assistance…appears primarily designed as a technical advice and focusing on forest inventories and yield calculation; other aspects, such as, to take regard of social and environmental issues and to obtain support by local communities for forest management, have been given lesser attention.*" GFA 2005, p 8.
[136] Fraser Thomas, p.5.
[137] PAD, p. 4.

the Project. This provides a further indication of the problems of using a LIL as the framework for this Project.

147. The Panel also notes that to address issues raised under the Project, the Project team needed to create a broad coalition of interests within the Government, donor and NGO communities to promote change. This agenda did not become explicit in the way the Project team carried out its tasks. It focused primarily on the concession system itself, when the major problems were elsewhere. The Mid Term Review of the Project in February/March 2003 likewise noted that "*…many of the forestry sector's problems are deeply rooted forest governance problems that cannot be solved through technical solutions.*"[138]

148. The Panel notes that opportunities were missed to use the LIL as an explicit vehicle to **learn** more about the context within which the Project was operating, and to **innovate** based on the learning. The Project was narrowly focused and technically driven and failed to occupy the institutional space created by the moratorium on logging and the disengagement of the ADB from the forest sector, and to advance a broader governance agenda in the sector.

149. The Panel reiterates that the Project did not directly cause the damages from the large scale unsustainable logging in Cambodia over the past decade. Indeed the Project aimed to ameliorate the extent of damage, and the Panel commends this intention. However, it is arguable whether and the extent to which the Project had a positive impact on what actually happened in the field.

150. The Panel is aware of the *"Bank policy dialogue"* conducted through the SAC, which contained conditions on various forestry issues.[139] Notwithstanding this, it was likely to be difficult for a Project of this scale focused on the technical aspects of forestry to have a large impact, because of the prevailing political context and the high stakes and potential gains involved. **The Panel finds that Management could have foreseen that this type of Project might not be effective in the present political context, particularly by the time of Project inception when a number of sector studies had been carried out.**

151. With respect to the applicability of Bank policies to a Project financed with a LIL, the Panel notes that the Bank document defining LILs as financing instruments reads, *'LILs would conform to the Bank's basic operational policies.*"[140]

[138] Aide Memoire, Mid-Term Review Mission, Febraury/March 2003, p. 10.
[139] Management Response, p. 29.
[140] Adaptable Lending, 1997, p 12.

Chapter 3 Environmental Compliance

A. Basis for Bank Involvement in the Project

152. Drawing from the Bank policy on Forestry, OP 4.36, the Requesters state that when there is commitment from the Government *"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."*[141] In the Requesters' view, however, not only did the Bank *"go beyond this in its active support of the concessionaires"* but it is also *"doubtful that the Cambodian Government can be considered in compliance"* with the criteria the policy on forestry lays out to measure a Government commitment.[142]

153. According to the Requesters, the Government has maintained a concession system where *"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.'"*[143] The Requesters believe that this does not meet the first OP 4.36 criteria of commitment requiring the adoption of policies and the institutional framework to ensure conservation, sustainable use of forests and active participation of local people.[144]

154. The Requesters also claim that, at the start of the FCMCPP, the Government did not develop any plan to define the role of the public and private sectors and local people in forest management, and to promote sound forestry conservation, as provided in OP 4.36. They add that no *"social, economic, and environmental assessments of the forests being considered for commercial use"* has been undertaken, in noncompliance with the third criterion defined in the Bank's forestry policy.

155. With respect to policy criterion to *"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"* – the Requesters allege that, although it has been met *"on paper"*, *"in practice however, concession companies' have consistently disregarded forest dwellers' rights and interests."*[145] In addition, the Requesters allege, the management plans *"approved by the FCMCPP"* did not bring about any improvement. The fifth criterion provided in OP 4.36 requires the Government to establish institutional capacity to enforce these

[141] Request, Attachment 1, p. 68.
[142] Request, Attachment 1, p. 68.
[143] Request, Attachment 1, p. 69, citing an internal World Bank memorandum dated February 2001, at note 164.
[144] Request, Attachment 1, p. 69, citing OP 4.36 (Forestry).
[145] Request, Attachment 1, p. 69.

commitments. The Requesters claim that no such capacity was present at the start of the Project, and that, as this is indeed an objective of the FCMCPP, the Project *"has signally failed to meet"* it.[146]

156. Management responds that the design of activities slated for financing and the Bank's assessment of the Government commitment followed the "*guidance of OP 4.36*" and were "*based on frank dialogue with the Government and consultation with other donors and NGOs*."[147] Management maintains that, pursuant to the 1993 Policy on Forestry, if there is "*sustainable and conservation-oriented forest management*" the Bank may provide financing.

157. Management further states that this 1993 Policy is based on a 1991 Bank paper according to which, when the commitment is present, "*projects will be judged on their individual merits*". On the other hand, states Management, if no commitment is shown, the Bank is to restrict its operations to help the country achieve the conditions to obtain such commitment. Management immediately adds that "*this is the approach the Bank adopted for the FCMCPP*" based on consultations with the Government, which gave "*repeated assurances of commitment to a sustainable forest policy*." The Bank's view then was to "*convert that commitment to an ongoing program*." [148]

158. Management maintains that the Government: (a) developed measures to strengthen the control over the concessionaires' compliance with their obligations; (b) established a National Committee on the Organization and Implementation of Forest Policy, which, although not working as expected, "*has functioned as the counterpart for the contemporary donor-government policy dialogue*"; (c) committed to develop means to award long-term forest tenure rights to local communities;[149] and (d) issued a "*Declaration on Management of Forests and Elimination of Forest Illegal Activity*," in 1999 "*mandating a 'crackdown' on illegal logging*."

159. Management also claims that, although recognizing that the Government has shown "*uneven*" progress on the reform agenda, it has "*provided encouragement shared by the Bank and NGOs, including Global Witness*."[150] Moreover, it is Management's view that the Government showed its commitment in its readiness to carry on the "*Independent Monitor of Forest Crime Reporting*."

[146] Request, Attachment 1, p. 70.
[147] Management Response, p. 36.
[148] Management Response, p. 36.
[149] Management Response, p. 37, citing the Letter of Development Policy for the SAC.
[150] Management Response, p. 37.

160. To address the Requesters' concerns, a short review of some the existing conditions and knowledge available to the Bank at the time of Project preparation is helpful. Cambodian forests, at least in some locations, were highly valued in terms of hard currency as industrial raw material. The concession agreements had been concluded before Bank or other donor involvement in the sector. Many of the private sector partners were wealthy and powerful actors who had been involved in unsustainable logging in neighboring countries. Some concession companies were tied to neighboring centrally-planned economy countries (countries which supported the Cambodia regime in various ways). Forestry systems in "open market" neighboring countries were described as notoriously corrupt, in that private sector actors made unofficial payments to gain access to valuable public resources.[151]

161. According to a 1998 World Bank paper, in Cambodia, the 1990's forest concession terms were negotiated behind closed doors, with no transparency, and with the highest levels of Government (superior to anyone in the Forestry Department or Administration) directly representing the Government.[152] In addition to these concession agreements, there was also considerable chaos and lack of central Government control in the forest areas. NGO programs of observation and public disclosure indicate that local military chiefs were involved in logging, both with concession companies and without them.[153] The exact extent is debated in the documents, but there is no disagreement that illegal logging was abundant, which is the important point for this analysis.

162. In the face of these realities, one may consider the Bank Operational Policy on Forestry which states (as noted above) that "*Bank involvement in the forestry sector aims to reduce deforestation, enhance the environmental contribution of forested areas, promote afforestation, reduce poverty, and encourage economic development*."[154]

163. The Bank decided to work in the forestry sector, as discussed above, and to attempt to work with Government on the *"concession issue."* **The Panel finds that the decision to work on the concession issue is not inconsistent with the objectives of OP 4.36**. The Panel notes that had the Bank avoided the concession issue, it may have had little chance to reform a system that was increasing deforestation, degrading the environmental contribution of forests, and aggravating rural poverty.

[151] Contreras-Hermosillo 2002.
[152] Montgomery 1998.
[153] Global Witness, 1999, *The Untouchables: Forest Crimes and the Concessionaires – Can Cambodia Afford to Keep Them.?* London: Global Witness.
[154] OP 4.36, ¶ 1.

164. The Bank policy on Forestry states that "*The Bank does not finance commercial logging operations or the purchase of logging equipment for use in primary tropical moist forest*." **The Panel finds that the Bank is in compliance with this section of the Policy, because it did not finance logging or logging equipment.**

165. OP 4.36 provides that if logging is being done in tropical moist forests, the Bank seeks "*the government's commitment to move toward sustainable management of those forests (…).*" The policy also notes the conditions to evaluate whether a Government is committed to sustainable forest management. Among these are: adoption of a legal and institutional framework to ensure the conservation and sustainable management of forests and the participation of local people and of the private sector; adoption of a comprehensive and environmentally sound forestry conservation and development plan; undertaking of social and of environmental assessments of the forests; setting aside of compensatory preservation forests for protection of biological diversity to safeguard the interests of forest dwellers; and establishment of institutional capacity to implement these commitments.[155]

166. In assessing the Project under these and other provisions of the Bank policy, the key question becomes whether the Government had made a credible commitment to sustainable and conservation oriented forestry. The Panel believes that reasonable and neutral observers could differ in their conclusion.

167. According to Management, the Government had expressed its commitment in numerous meetings and documents. The increase in various policy and other regulatory instruments (numerous Prakas, the 2005 National Forest Policy and 2005 Forest Law) promulgated during the past five years aimed at reforming and regulating the industry may also be viewed as an indication of commitment to sustainable forestry. However, rampant unsustainable practices were occurring, and there was general belief that high level officials and military were involved. The Panel also notes that the Government could have been fully committed to sustainability in principle and still have been able in practice to halt illegal logging.

168. **The Panel finds that the Bank's view, that the Government's commitment to sustainability was consistent with the requirements of OP 4.36 when the Project was formulated, may have been based on wrong assumptions. Given the rampant forest destruction and community abuses already occurring, the Bank should have taken greater pains and exercised greater caution to ensure its compliance with Bank forestry policy.**

[155] OP 4.36, ¶ 1 (d).

169. The Panel's review of the Project Appraisal Document and other Project documents indicates that these concerns were noted but not addressed. The idea that the concession holders would manage community consultations or resource assessments is a serious flaw, especially given the known fact that the forest concessions were exploiting a resource which rural poor people (including indigenous peoples) relied upon for an important part of their livelihoods. **The Panel finds that the Project's design created a structure likely to lead to inadequate levels of local involvement, community consultations, and social and environmental assessments. This does not comply with OP 4.36 and other Bank policies** (analyzed in more detail below)**.**

B. Identification and Protection of Forests of High Ecological Value

170. The Requesters claim that the Bank did not undertake an environmental assessment ahead of the Project that might have identified forests of high ecological value, in particular the Prey Long forest. Instead, they claim, "*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)*." The Requesters consider that the Bank has violated OP 4.36, by assisting and endorsing the concessionaires, thereby allowing them to continue logging in the same way as in the past, and by allowing the logging of a forest of high ecological value and thus increasing its degradation.[156]

171. Management states that the "*Bank has not financed logging or infrastructure in high ecological value areas*."[157] The Bank also financed studies under the Biodiversity Management and Protected Area Project which addressed, inter alia, the Prey Long forest. Management also states that the FCMCPP standards and guidelines were developed to "*address micro-level considerations by requiring the mapping of forest use, including environmentally and socially sensitive Special Management Areas*."[158] Management adds that the 25-year forest management plans to be developed by the concessionaires, as well as the five-year compartment plans and the annual plans "*are expected to address areas of ecological and other values.*" Indeed, Management states that in 2002, when the Government removed from the compartment planning the requirement related to high ecological value forests, the Project was rated U as unsatisfactory. The requirement was reinstated in 2003.[159]

172. OP 4.36 states that "[i]*n forests of high ecological value, the Bank finances only preservation of light, nonextractive use of forest resources*." OP 4.01

[156] Request, Attachment 1, p. 70.
[157] Management Response, p. 37
[158] Management Response, p. 37.
[159] Management Response, p. 38.

also states that a project environmental assessment *"evaluates a project's potential environmental risks and impacts in its area of influence*" and compensates and mitigates for adverse environmental impacts. Importantly, the policy states that, when feasible, the *"Bank favors preventive measures over mitigatory or compensatory measures*."

173. One of the most valuable forest areas of Cambodia is known as Prey Long. It is a large forest to the west of the Mekong River in Stung Treng Province. From as early as 1975 the large block of forest containing the Prey Long area was identified as an important area for biodiversity conservation.[160] More recently, it was included in a listing of tentative natural sites for World Heritage consideration for Cambodia.[161] It is one of the few remaining areas of relatively undisturbed dense semi-evergreen lowland forest in the Indo-Chinese province of the Indo-Malayan Realm,[162] and has potential for holding populations of several threatened species. These forest types are considered to be particularly important for wildlife habitat.[163] During the inspection, villagers living on the periphery of Prey Long forest claimed to have seen tiger footprints and elephants in the forest. They were also unanimous that it contained significant areas of spirit forest and large spirit trees.

174. The Prey Long forest is presently covered by three concessions, and is at risk of sustaining serious damage if industrial scale logging is carried out. It was claimed that one of the reasons why it was not included in the protected area network for Cambodia is that senior people in the Government have interests in some of the logging concessions covering the area.[164]

[160] McNeely, Jeffrey, *Draft Report on Wildlife and National Parks in the lower Mekong Basin*, 1975, UN Economic and Social Commission for Asia and the Pacific, Committee for the Coordination of Investigations of the Lower Mekong Basin.
[161] IUCN, *A Natural Tentative World Heritage List for Cambodia*, 2002, Discussion Paper, IUCN Bangkok,
[162] IUCN Discussion Paper 2002.
McDonald, J.A, *Ecological survey of Prey Long, Kampong Tom, A proposal for Indo-China's last undisturbed lowland rainforests*, 2004, Austin: University of Texas press.
[163] McNeely 1975.
[164] Staff Interviews, Washington DC.

Picture 1 Prey Long Forest

175. The independent review of the SFMPs was critical of the fact that none of the concessions covering the area of Prey Long considered it as part of a joint conservation network.[165] The reviewers considered that the Prey long area should be brought to a higher level (above that of the concession) for public discussion considering national and international interests. They noted that the Technical Advisor in the Bank-supported Biodiversity Planning and Management Project commented that "*the remaining lowland rainforests are under-represented in the present system of protected areas in Cambodia; a new system is being prepared*."[166]

176. **In the view of the Inspection Panel there is no doubt that the Prey Long forest merits consideration as a "forest of high ecological value"**, **and this should have been obvious to Bank Staff during both the design and implementation stages of the Project.** An explicit acknowledgement of this status during the early stages of the Project could have influenced discussions and debates in Phnom Penh, and in particular should have guided input into the SFMPs of concessions covering the Prey Long area.

177. The Management Response indicated that the Bank had not financed logging or infrastructure in high ecological value areas (or any others). While this is true in a strict sense, by not raising the Prey Long issue explicitly, there is an implicit acknowledgement that logging in the Prey Long area may be acceptable.

[165] GFA 2005, p. 11.
[166] GFA 2005, p. 11.

178. The Management Response stated that, during a supervision mission in October 2004, the Bank sought and received commitment from the FA to explore opportunities for landscape level conservation in the Strung Chinit-Prey Long area. Specifically, the Bank agreed with the Government to use an ongoing review of protected areas under the Biodiversity Management and Protected Areas Project to assess conservation needs in the Prey Long area. However, there are no indications that the results of these studies have been integrated into the thinking of the FCMCPP, the FA or the concessionaires preparing SFMPs.

179. The Management Response also indicated that the 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. This approach is certainly needed during five year and annual planning, but there is no escaping the need for planning at the larger strategic (landscape) level. Micro-level planning cannot effectively identify large areas that are of national and/or international significance for their ecological value.

180. **The Panel finds that while the Bank did not finance harvesting of high value forests, it did not ensure that the high ecological value of the Prey Long forest was explicitly identified in the early years of the Project and taken into consideration during the development of relevant SFMPs, as is required by OP 4.36.**

C. Identification and Protection of Natural Habitats

181. The Requesters claim that failure to recognize forests in the concessions as natural habitats has resulted in the commissioning of a poorly conceived Project. They also allege that 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.

182. According to Management the Project is in compliance with OP 4.04 because no concessions have been issued as a result of this Project. In addition, Management states that the guidelines for the SFMPs include various provisions ensuring identification, assessment and planning for critical habitats.[167]

183. Most of Cambodia's forests that have been, or could be, subject to industrial logging fall into the category of natural habitats for the purpose of OP 4.04. This policy calls for, inter alia, the protection, maintenance and rehabilitation of natural habitats. It has an especially high standard of protection for "*critical natural habitats*", stating that "*The Bank does not support projects that, in the Bank's opinion involve the significant*

[167] Management Response, p. 38.

conversion or degradation of critical natural habitats."[168] Critical natural habitats under OP 4.04 include "*(…) areas initially recognized as protected by traditional local communities (e.g. sacred groves) (…).*"[169]

184. It is apparent from a perusal of the literature and from even rudimentary discussions with local communities that there are many spirit forests and spirit trees in forests in their locality which are important to the cultural identity of local people.[170] This is particularly the case with indigenous communities.

185. Thus, there are many areas within the general forest estate that need to be considered as critical natural habitats. The regulatory framework developed in Cambodia for forest management also acknowledges the need to "[p]*rotect and maintain rights of access to those forest resources occurring on concession areas that are of economic, subsistence and spiritual value to local communities*."[171] As a consequence, the Bank's operational policies and Cambodia's regulatory framework contains specific provisions to protect natural habitats and especially critical natural habitats, and the Bank is not to support projects that involve the significant conversion or degradation of critical natural habitats.

186. It was evident during the planning and design phases of the Project that many forest concessions were being depleted of easily available commercial timber and being partially converted to non forest land uses.[172] BP 4.04 makes it clear that "*If, as part of the environmental assessment process, environmental screening indicates the potential for significant conversion or degradation of critical or other natural habitats, the project is classified as Category A.*"[173]

187. **It is clear that industrial logging as carried out by concessions has, in the past, caused significant loss of natural habitat and in many cases has opened the door to the conversion of natural habitat to non forest land uses**.[174] There are also numerous documented cases of spirit forests (critical natural habitats) being logged and destroyed without any consideration of their spiritual or cultural values.[175]

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[168] OP 4.04 (Natural Habitats), June 2001, ¶ 4.
[169] Annex A to OP 4.04 – Definitions, (2001).
[170] Colm, Sara, "Options for land security among indigenous communities, Ratanakiri, Cambodia", Non-Timber Forest Products Project, Banlung, Cambodia, 1997. Also, Panel visits to several villages in Stung Treng Province, October 2005.
[171] Sub-Decree on "Forest Concession Management" 1999, Article 2(4).
[172] A Vision for Forest Sector Development, Background Note, Cambodia, 1999.
[173] BP 4.04 (Natural Habitats) June 2001, ¶ 2.
[174] A Vision for Forest Sector Development, Background Note, Cambodia, 1999.
[175] Examples cited in Request for Inspection and recounted by villagers during Panel field visits in Stung Treng Province, 2005.

188. **While the Project did not explicitly support the significant conversion of natural habitats, the Panel finds that the Project design and planning did not adequately recognize the existence of natural habitats, and particularly critical natural habitats. As a result, essential information to enable their protection was missing in the concession planning and approval process. The Panel finds that this is not consistent with OP/BP 4.04 on Natural Habitats.**

D. Need for an Environmental Assessment

189. The Requesters claim that the Bank breached its environmental assessment policy (OP 4.01) regarding the classification of the Project and failed to observe the policy requirements for assessing the Project's likely impacts. They claim that, although the PAD indicates that the environmental impacts of the concession activities would be assessed during Project implementation rather than Project preparation, no such analysis was carried out in the Project's first four years of execution. In the Requesters' view *"had proper environmental assessment been carried out, it is unlikely that the Bank would have decided to support the activities of environmentally destructive companies*."[176]

190. Management acknowledges that no EA was prepared before appraisal, and that "*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*." Nevertheless, according to Management, these instances of noncompliance did not lead to any harm or potential harm to the people living in the Project area.[177]

191. Management asserts that the Project design recognized that "*environmental and social problems existed in the management of forest concessions and incorporated measures to address them*." In addition, according to Management, no specific decision to conduct an environmental assessment during Project preparation could be made because the locations to be examined for these purposes *"could not be known in advance*." The Project thus elected to adopt a "*process-oriented approach*."[178] This approach was to include a consultation process that incorporated environmental and social criteria in the forest management planning procedures to be applied in all concessions.[179]

[176] Request, Attachment 1, p. 62.
[177] Management Response, ¶ 39.
[178] Management Response, p 31.
[179] Management Response, p. 30.

192. OP 4.01, paragraph 2, states that *"EA is a process whose breadth, depth, and type of analysis depend upon the nature, scale and the potential environmental impacts*" of the Project. An environmental assessment must evaluate the potential risks and impacts in the area of influence of the Project; analyze Project alternatives; and prevent, minimize, mitigate or compensate for negative impacts and enhance the positive ones, during Project preparation and throughout implementation.

193. The policy clarifies also that an *"EA is initiated as early as possible in project processing and is integrated closely with the economic, financial, institutional, social, and technical analyses of a proposed projec*t." In addition, various instruments are available to meet the requirements of OP 4.01, such as *"environmental impact assessment (EIA), regional or sectoral EA, environmental audit, hazard or risk assessment, and environmental management plan (EMP) (…). When the project is likely to have sectoral or regional impacts, sectoral or regional EA is required*."

194. **The Panel notes that one could hardly overemphasize the negative effects of the logging on a natural habitat of world class value and most importantly on very poor and vulnerable rural communities and indigenous people.** Many moist tropical forests can be described as both fragile and resilient eco-systems. They can withstand, and in time recover from, certain kinds of disturbances, but more serious degrees of disturbance may cause damages that are irreversible for long time periods. Commercial tropical trees of the kind found in Cambodia's forests normally have quite large crown areas. When felled without planning they can take other trees with them in a kind of domino effect and destroy large areas of vegetation. Unplanned skid trails, roads and logging yards crisscross forests and add to vegetation destruction, expose bare soil that can exceed 25 percent of the area logged,[180] and disturb streams damaging water quality and causing erosion. With proliferation of vines and shrubs, forests may lose their original eco-system qualities and productivity for decades. Research indicates that these levels of disturbance seriously impact wildlife, reducing or removing many species because of habitat destruction.

195. But even more serious than the direct effects are the further disturbances which logging may facilitate. These include large and small scale individual clearing by developers or farmers; the use of fire and the greatly increased danger of wildfire; and newly provided access for hunting and further harvesting. These kinds of collateral damages, discussed later in the report as "induced development", usually lead to irreversible changes. Damages to water courses and wildlife may have impacts far beyond the

[180] Gilmour, D.A., 1977, "Logging and the environment with particular reference to soil and stream protection in tropical rainforest situations," in Guidelines for Watershed Management FAO Conservation Guide Number 1, Food and Agricultural Organisation of the United Nations, Rome , 1977, p.p. 223-235.

immediate area. Where there is no interest in sustainability or future harvests, abandonment after harvest invites further damage as described above. When rural communities and indigenous people are dependent on the original forest resources for their livelihoods or aspects of them, then the environmental damage is compounded by further impoverishing them and/or changing their livelihood systems.

196. The extent of the damage to forest eco-systems that has occurred in Cambodia over the past two decades has not been scientifically quantified in the field. However, given that the sub-contractors had no training and that there was little or no control or accountability, it is highly likely that the damage has been severe. Even without field evidence, the Bank clearly should have taken a precautionary position on the level of damage that could be expected.

197. The Panel notes that reduced impact logging consists of: harvesting no more than a certain maximum volume (which translates to a limited number of trees) per hectare; careful advance planning of roads, skid trails and yards to minimize their footprint; advance cutting of vines if abundant to lower disturbance levels; directional felling of trees to lessen damage to smaller trees. These measures all have some cost, and the first measure can significantly reduce the immediate log production from a given area. These are the types of measures that a sustainable forest management project would support and implement, and would be considered in a proper environmental assessment. It is generally, although not universally, accepted that moist tropical forests where slopes are not too steep and soil is not too saturated can recover and maintain most of their productivity after carefully planned and executed selective harvesting (partial cutting where no clear cuts are applied). This is the main technical field technique employed in sustainable, as opposed to unsustainable, forest management. The Panel observes that, based on the economic realities reviewed above, they are also precisely the measures that were ignored by the concessionaires during their operations.

198. With respect to the "*process-oriented approach*" Management claims to have adopted, the Panel notes that, in such a dynamic situation, a process could be applied that was designed with explicit planning, action, reflection, learning and re-planning loops and subsequent feedback to Project management (i.e. applying action-research and adaptive management approaches to implementation). However, it is not clear what the "*process-oriented approach*" is, how it is applied and how the results are used to advance knowledge and implementation. Further, there is no mention of applying a "process-oriented approach" in the PID or the PAD. One is left with the impression that the phrase may have been coined in hindsight, rather than used at the time as an explicit approach to advance the Project and take advantage of the LIL structure.

199. **The Panel finds that the PAD and other Project formulation documents did not contain an adequate analysis of the environmental issues surrounding the Project, as is required by OP 4.01.**

E. Environmental Categorization of the Project

200. According to the Requesters the Bank "*erroneously categorized*" the Project as a "*Category B*" although the concession system and the concessionaires have "*comprehensively demonstrated*" that they have sensitive, diverse and unprecedented environmental impacts, such as degradation caused by industrial-scale logging or damage to watershed.[181] The Requesters, therefore, believe that the Project should have been categorized as a "*Category A*" project because the impacts of the concessions affect a "*significant portion of Cambodia's forest reserve and large populations who inhabit or depend on it for their livelihoods*" and may be considered "*irreversible*."[182] In addition, the Request asserts that, after the Project was assigned Category B, no environmental assessment was carried out to conform to the requirements for a Category B project.

201. Management states "*that the decision to classify this project as a "B" was correct and appropriate.*"[183] 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*."[184]" 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 it supported "*interventions*" which were to strengthen the capacity of Cambodia and forest crime monitoring and reporting, rather than physical works. In addition, the Response notes that social and environmental impacts had already been addressed in background studies.[185]

202. OP 4.01 and BP 4.01 require that the project Task Team, with Regional Environment Sector Unit's concurrence, assign proposed projects to one of four categories (A, B C or FI). An "A" project "*is likely to have significant adverse environmental impacts that are sensitive, diverse, or unprecedented…. A potential impact is considered 'sensitive' if it may be irreversible (e.g. lead to loss of a major natural habitat or raise issues covered by OP 4.01 Natural Habitats*, [and] *OP/BP 4.10 Indigenous Peoples (…).*"[186] A project is classified as "B" "*if its potential adverse*

[181] Request, Attachment 1, p. 59.
[182] Request, Attachment 1, p. 59.
[183] Management Response, p. 29.
[184] Management Response, p. 29
[185] Management Response, ¶ 39.
[186] OP 4.01 (Environmental Assessment) ¶ 8(a) and note 10. OP 4.01 refers to OP/BP 4.10 on Indigenous Peoples, issued in July 2005. It should be noted, however, that the Bank policy on Indigenous Peoples

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." Category A projects require a much more extensive environmental assessment than Category B projects.

203. The Panel notes that the concession logging that occurred during Project design and execution undoubtedly had significant adverse environmental impacts that would be considered sensitive under OP 4.01. While the Project did not cause or directly fund this logging, the Panel observes that the association of the Project with the logging through the technical assistance provided to the Government to manage such logging sustainably– also closely associated the Project with the very serious impacts of the concession system.

204. According to OP 4.01 the nature and magnitude of a Project's potential impact determines the categorical placement. The Panel recognizes that a substantial number of technical studies on the forest concession system had been carried out before the Project commenced but it is quite clear at the end of the Project that the design and implementation did not adequately recognize and address the environmental and social problems existing within the forest concessions. Properly categorizing the Project could have brought this to light before rather than after the Project was carried out.

205. **Given the very serious potential impacts, and the close association of the Project with these impacts, the Panel finds that the Project should have been placed in Category A and a full Environmental Assessment carried out. By failing to do this, the Bank did not comply with OP 4.01. The Panel finds that careful study and debate by multiple parties, as required for a Category A project under OP 4.01, could have helped avoid serious errors in the design and implementation of the Project.** This type of assessment might have led, for example, to a greater focus on alternative approaches to industrial scale logging, such as various types of community and partnership forestry.

206. At the same time, the Panel recognizes that overall Bank activity and discussions with the Government over the past decade, in combination with those of other important donors, may have ameliorated to some extent the damage to the forests and rural people in Cambodia by repeatedly raising the issue with Government at multiple levels. The Panel also notes that the activities of NGOs were critical in raising the issues and providing information on them for donors, including the Bank, and to Cambodia, including its Government.

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applicable to the FCMCPP is the now retired policy OD 4.20, because the new policy (OP/BP 4.10) applies "*to all projects for which a Project Concept Review takes place on or after July 1, 2005*."

Chapter 4 Social Compliance

A. Need for a Social Assessment

207. With respect to the analysis of social issues surrounding the Project, the Requesters believe that, perhaps due to the lack of a proper environmental assessment, the Bank did not identify any concern related to indigenous peoples in either Project preparation or implementation.[187] They add that Bank Staff did not give convincing reasons as to why no social studies were conducted and no indigenous peoples plan prepared.[188] In the Requesters' view the existence of a specific Bank policy on Indigenous Peoples implies that this issue *"is distinct from broader questions of social impacts."* They emphasize that Cambodia's indigenous peoples- among them the Kuoy people- are directly and adversely affected by logging operations because their livelihood and their culture *"are intrinsically linked with the forests."*[189]

208. As noted above, Management acknowledges that no Environmental Assessment, which would examine a project's social impacts as well, was prepared before the Project was appraised. Management also believes that existing information about the social issues of concession operations was sufficient and that the Project addressed them. According to the Response, the Social Forestry Guidelines for Forest Concessions, prepared by a social scientist of the Bank team during Project preparation, was the foundation for addressing social aspects and consultation processes during the Project. Management adds that the Project also *"builds on the previous TA Project, ADB supported consultations and Bank work during the identification mission"* as well as *"several studies done during the prior TA Project that addressed logging impacts on communities and for which consultations were conducted."*[190]

209. Management recognizes that the Bank was not in full compliance with OD 4.20 and that, in hindsight, screening studies and a framework IPDP, and more discussion of the issue, would have been more appropriate during Project design. The Response clarifies 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, including issues such as customary use of resources, traditional property rights and symbolic value and religious practices associated with forests."*[191] In the Project design, this was to lead to

[187] Request, Attachement 1, p. 65.
[188] Request, Attachement 1, p. 66.
[189] Request, Attachement 1, p. 64.
[190] Management Response, p. 31
[191] Management Response, p. 34.

"Indigenous Peoples issues (…) embedded in the SFMPs and ESIAs prepared by the concessionaires"[192]

210. Both the policy on Environmental Assessment (OP 4.01) and the policy on Indigenous Peoples (OD 4.20) require evaluating and assessing the social issues that arise in connection with a Bank-financed project. Paragraph 3 of OP 4.01 requires that the EA takes into account, among other things, the natural environment, human health and safety, as well as the social aspects, in particular involuntary resettlement, indigenous peoples, and cultural property, in *"an integrated way*." OD 4.20, paragraph 6, provides guidance to ensure that indigenous peoples receive social and economic benefits and do not suffer adverse impacts as a consequence of a Bank-supported project. The policy recognizes that issues related to these populations may arise in various sectors in which the Bank works, such as agriculture, road construction, forestry, hydropower, mining etc. The policy adds that "[i]*ssues related to indigenous peoples are commonly identified through the environmental assessment or social impact assessment processes, and appropriate measures should be taken under environmental mitigation actions*" (OD 4.20, paragraph 10).

211. **The Panel finds that the lack of a social assessment specific to this Project has had serious consequences for the ability of the Bank to comply with its operational policies, from the design through the implementation phases of the Project**. The following paragraphs address specific problems which resulted from the lack of a proper social assessment.

1. Identification of Affected Population and Project Area

212. The Project records and Management Response show that the Project failed to identify the population affected by it and to develop an IPDP for the affected indigenous peoples during the planning phase. The Project left the development of this information to the concessionaires in their ESIAs. **In this case, the Panel finds that a safeguard postponed is a safeguard denied, because by failing to identify beforehand the affected population, the Bank policies requiring consultation and participation of that population could not be properly followed.**

213. In addition, aside from the question of timing of (or postponement of) consideration of social impacts, the Terms of References (TOR) for the SFMPs and especially the ESIAs do not properly correspond to the requirements of identifying the size and boundaries of the impacted populations provided by OP 4.01 and OD 4.20,[193] no matter *when* they get done. This is because, even if and when they are done at a level envisioned

[192] Management Response, p. 35.
[193] See OP 4.01, Annex B, ¶ 2 (d) (Baseline data). See also OD 4.20, ¶ 16.

as acceptable by the Project, there is no requirement in the TOR that the plans prepared by the concessionaires consider the secondary or cumulative effects of their activities as is required within a proper environmental or social assessment in compliance with OP 4.01.

214. The Panel notes, for example, that it is extremely likely that *"unplanned development induced by the project,"*[194] whose assessment is required by Bank policy, will occur with major social impacts – potentially changing the size and spatial boundaries of the Project Area beyond the boundaries of the concession itself. Such induced development can be in the form of squatters following logging roads to farm, or other induced development along new roads, or in the form of conversion of forest land to plantation (which has been documented in many areas previously logged by concessionaires in Cambodia). In addition, the potential impact of watershed changes as a result of deforestation can also be felt outside the concession area, and add to the impacted population.

215. **The Panel finds that even at the delayed date, the Bank focused only on the areas covered by the concessions to define the Project area. The Panel finds that this led to an overly restrictive definition of the Project Area**. Each concession was considered separately without looking at multiplier effects and interactions between the concessions. **As a result, the Project's social impacts were significantly understated and the Bank social and environmental safeguards not applied to the proper area and population. The Panel finds that this is not consistent with the applicable Bank policies, OP 4.01 and OD 4.20.**

216. These failures have significant consequences for the Requesters and the local communities. Absent a means to assess the full size of the affected population and the spatial boundaries of the Project, the Project will not be able to measure adequately the social and environmental impacts within that population or that area.

2. Impacts on Local People of Illegal Logging of Resin Trees

217. The Requesters claim that the concessionaires' activities are a "*direct threat*" to the people whose livelihood depends on tapping resin, because the trees tapped for resin are the same commercial grade species so valuable for companies in producing plywood and veneer.[195] They also claim that, although the *"1988 Decree on Forest Practice Rules prohibited felling of trees that people were actively tapping for resin*" the companies "*consistently flouted this law (…) and cut them in vast numbers*",[196] *"with*

[194] OP 4.01 Annex A (Definitions), ¶ 5 (Project Area of Influence).
[195] Request, Attachement 1, p. 14.
[196] Request, Attachement 1, p. 37

impunity."[197] They cite a study according to which the harvesting records of two concession companies include a range from 80 to 89 percent of resin-producing trees. The Requesters also state that even in the SFMPs prepared under the Project, the concessionaires included resin trees in their inventory and annual allowable cut by which companies justified their economic viability. According to the Requesters, the "*FCMCPP has endorsed management plans which indicate quite clearly the intention by some companies to log resin trees illegally and exclude communities from areas of forest*."[198]

218. The importance of resin harvesting for many rural Cambodians has been surveyed in the works of Prom and McKenney (2003), McKenney et al. (2004). As Prom and McKenney point out, the threat of logging concessions to trees tapped for resin is very severe because resin tapping makes up a significant portion of the income for approximately 100,000 people in Cambodia.

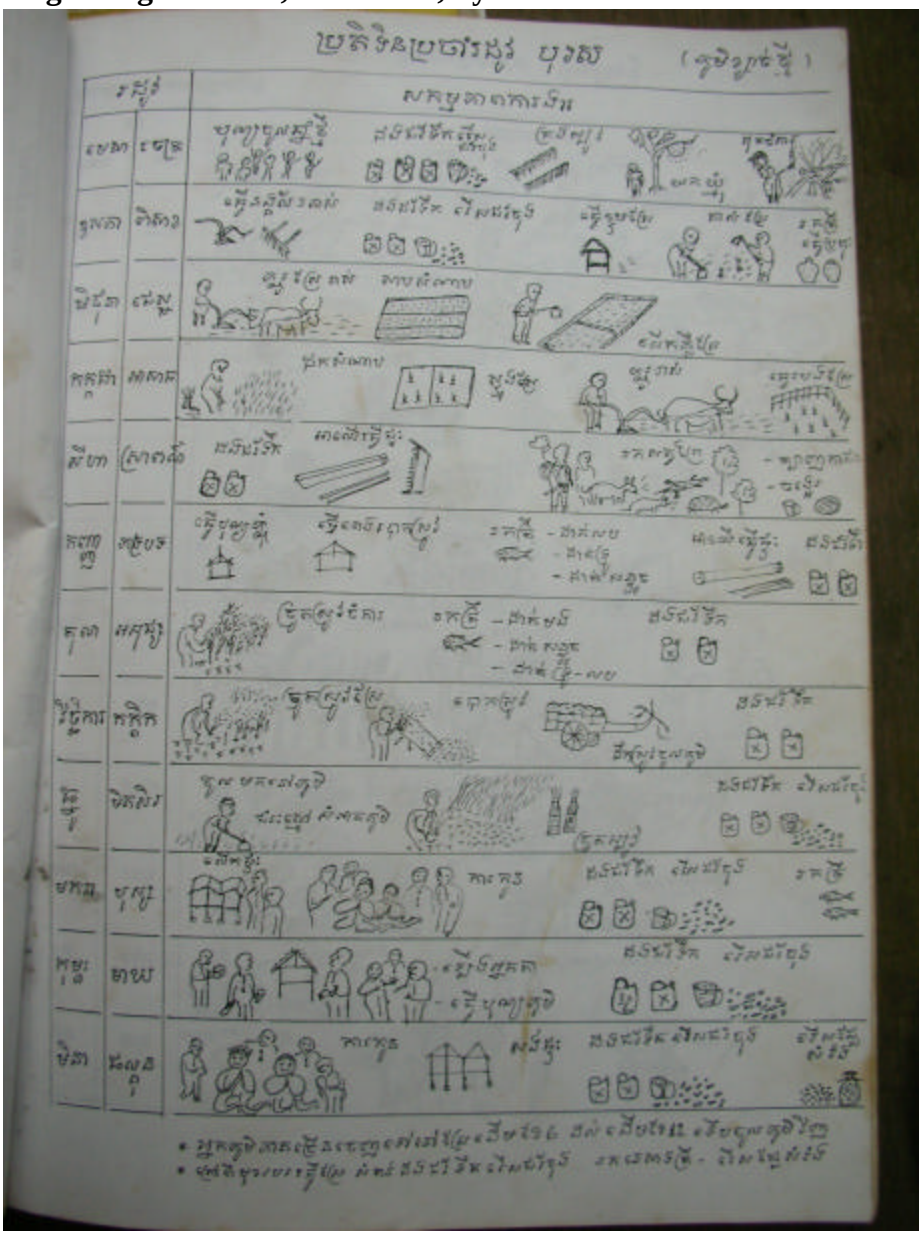
219. The Request for Inspection uses this figure and compares the importance of resin harvesting as a source of employment compared to employment in the logging concession (industrial logging) industry as follows: "*Resin tapped from various species of dipterocarp tree is an economically valuable commodity both within Cambodia and abroad. An estimated 100,000 Cambodians derive a portion of their income from resin collection. This far exceeds the numbers of people concessionaires can claim to be employing. Resin tapping is a sustainable activity that causes little or no harm to the trees that are tapped. As such it is regarded as complementary to forest conservation*."[199]

220. During the Panel's visit to affected areas, villagers described the severe hardships they had suffered when, in the past, logging concessions had cut their resin trees, either without any compensation or with negligible compensation determined unilaterally by concession Staff or representatives. Villagers also described the importance of resin-tapping as a source of cash income. This fact, as it turns out, had been graphically illustrated in many "*Village Timeline*" drawings of the kind which the Inspection Team saw at Kasach Thmei village in Stung Treng (Figure 2). Such drawings express in a local, highly visual way, the same conclusions demonstrated in the studies noted above – that resin tapping is an extremely important economic activity for the people in these communities. "Village Timelines" like the one shown below were developed by village "*PRA Committees*" for the "*Participatory Rural Appraisal (PRA) Reports*" of the Northeast Cambodia Community Development Program, implemented by Partners for Development (PfD). The tapping and collecting of resin,

[197] Request, Attachement 1, p. 14.
[198] Request, Attachement 1, p. 15.
[199] Request, Attachement 1, p. 14.

indicated by the resin-holding buckets marked with an "X," is considered economically important in 10 of the 12 months – every month of the annual economic except March and April, which are intensively dedicated to planting rice.

Figure 2 "Village Timeline" of Annual Economic Activities in Village, Stung Treng Province, Cambodia, by Month.



Source: Stung Treng, Cambodia, office of Northeast Cambodia Community Development Program. Published in the (unpaginated) report on Kasach Thmei Village, dated 10 December 2000.

221. Regarding the legal status of usufruct rights to resin trees, the Request for Inspection states that it is illegal to cut trees that people tap for resin under the 1988 Decree on Forest Practice Rules and recently under the 2002

Forestry Law. Management also recognizes that *"at present harvesting of resin trees is prohibited*."

Picture 2 Resin Trees

222. "Ownership" and particularly the "ability to transfer title to" resin trees are treated by numerous authors more as a matter of customary tenure than of national Cambodian law. According to a 2003 study, the owner of a resin tree is considered the first person who marks the tree. Villagers recognize ownership of resin trees as private property. However, such ownership has no formal legal basis. Under the 2002 Forestry Law (2002), forests are the property of the State (Article 2.B), which can grant customary user rights to timber products and non-timber forest products (Article 2.C). Although such rights provide less security of tenure than owning private property because the State can remove the user rights in the future, the study also notes that considerable protection is still assured for user rights (as opposed to ownership) under the Forestry Law.[200]

[200] See Prom and McKenney, 2003, p. 6. See also Forestry Law, 2002, Article 40 reads: "(A) For communities living within or near the Permanent Forest Reserve, the State shall recognize and ensure their customary user rights for the purpose of traditions, customs, religious and livelihood as defined in this Law; (B) The customary user rights of a local community for timber products and NTFPs shall not require a permit and include the following: (1) The collection and use of dead wood, wild fruit, products from bee hive or comb, resin, and other NTFPs; (…) The right to barter or sell NTFPs without a permit provided such sale does not threaten the sustainability of the forest. A transport permit is required for any third party who buys NTFPs for The right to barter or sell NTFPs without a permit provided such sale does not threaten the sustainability of the forest. A transport permit is required for any third party who buys NTFPs

223. There are differences between the customary tenure system and these legal provisions regarding usufruct rights, especially since the former allows for tree ownership and transfer of ownership. Additional legal rights to resin trees for indigenous groups, including the Kouy group discussed in the Request for Inspection, will undoubtedly be recognized under the provisions mentioned in Section 1.3 above regarding Indigenous Peoples, contained within Chapter 3 Part 2 (articles 23-28) of the Royal Cambodian Government's Land Law of 2001 ("Part 2: Immovable Property of Indigenous Communities"). These provisions define "*indigenous community*" (literally "*original ethnic minority*" in Khmer") for purposes of the legislation, while postponing a precise determination on which communities qualify, as follows:

> *An indigenous community is a group of people that resides in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, altural, and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use.*
>
> *Prior to their legal status being determined under a law on communities, the groups actually existing at present shall continue to manage their community and immovable property according to their traditional customs and shall be subject to the provisions of this law.*
>
> (Royal Cambodian Government, Land Law of 2001, Article 23)

224. The Kouy and many other ethnic groups meet the Bank's definition of indigenous peoples. The Bank has recognized this in various other Bank-financed projects, as has the Royal Government of Cambodia in various documents. Presumably, detailing their communal rights to immovable property will, in the future, be part of the as-yet-unfinished implementation steps in implementing the 2001 Land Law legislation.

225. The Panel notes that traditional dependence on, and usufruct rights to, forest products (including resin and fruit trees, medicinal plants, animal life whose range and habitat would change significantly as a result of logging, and other timber and non-timber forest products) are not limited to the indigenous peoples of Cambodia. Khmer, Lao. Other populations who do not meet the criteria of "indigenous peoples" in Cambodia also have long depended on traditional access to such forest products.

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for commercial purpose from a local community, in accordance with the provisions of this Law and after payment of any applicable royalties and premiums."

Picture 3 Sale of Resin Torches at Market

3. Assessment of the Impacts of Concession Operations on the Affected Population

226. The Request describes extensive cutting of resin trees by specific concession companies and the impacts of these actions on the livelihoods of forest-dependent communities.[201] Management states that "[p]*rior to the Request,* ***the Bank was not informed about the cited logging*** *and claims of harm and has not had an opportunity to investigat*e" (emphasis added).[202] Management claims that only during project implementation has the issue of resin trees emerged in its *"full extent*."[203] However, the Response also reiterates that 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*."[204]

227. Management recognizes in its Response that tapping resin is an important source of income for rural Cambodians, that industrial forestry can be in "*direct conflict with resin utilization*" and that, as a result, "*careful planning to exclude trees used for resin from the harvesting program*" is required.[205] With respect to the forest management plans, Management states that the inclusion of standing trees in the forest inventory does not determine the harvesting strategy. Management claims that concessionaires "*plan their*

[201] Request, Letter 2, p. 1.
[202] Management Response, p. 53.
[203] Management Response, p. 48.
[204] Management Response, p. 53.
[205] Management Response, p. 53.

operations at their own risk" and have no guarantee of concession continuation.[206]

228. Under OP 4.01, an EA needs to, among other things, evaluate the potential environmental impacts of a proposed project and develop appropriate mitigation measures, taking into account social impacts.[207] OP 4.36 on Forestry also requires social, economic and environmental assessments of forests considered for commercial use, and adequate compensatory preservation forests for biodiversity and to safeguard the interests of forest dwellers and their rights to access to and use designated forest areas.

Picture 4 List presented to the Panel by Local Communities Detailing Numbers of Resin Trees Cut by Concessionaires

229. The ample literature on the importance of resin tapping in Cambodia and nearby areas of Southeast Asia should indicate that there was widespread knowledge about the economic importance of resin tapping for communities living in and near Cambodia's forests.[208] A broader survey of traditional

[206] Management Response, p. 53.

[207] This applies both for Category A and Category B EAs, though the analysis in a Category B EA is narrower and less detailed.

[208] These sources include Prom and McKenney (2003), McKenney et al. (2004), Baird 2000 (each of which contains a more substantial bibliography). Burkill (1966 [orig. 1935]:vol. 1, p. 853) notes both the antiquity and the widespread practice of traditional resin tapping from *Dipterocarpus* trees: "*In the East, from time immemorial, there has been a trade in it* [Dipterocarpus resin] *which contact with western civilization has weakened by bringing other illuminants into the local markets. This oleo-resin, at one time, was among the first products to be exploited in the forests for sale to settled populations outside. (…) Right throughout the whole area of the distribution of the genus tapping for it is, or has been done. (…) The custom of extracting resins extends to all places where the trees grow, and in a great measure the product is one and the same*

resin tapping and use as reported in historical, archeological, and ethnographic literature (including historical references from ancient writers such as Herodotus, Theophrastus, and Pliny the Elder, up through numerous contemporary ethnographic accounts) is provided in Gianno's study of *Semelai Culture and Resin Technology* (1990:8-11 and bibliography, p. 217-125).

230. Most anthropologists and social foresters working in mainland Southeast Asia would be surprised by Management's claim, in its Response, that it was not informed about complaints of harms from cutting of resin trees by concessionaires,[209] since this is a major issue for forest dependent communities in many parts of Southeast Asia. Furthermore, the tapping of resin is such an important part of life in communities located near forests that, if it is true that Management was unaware of the seriousness of the resin tree issue and the claims in areas of the concessions, it indicates a considerable failure of public consultation and input into the design of the Project – in addition to a lack of awareness of standard ethnographic literature on the region.

231. The Panel has assembled numerous sources of information from the Royal Cambodian Government, local NGOs, and the Bank's own documents and reports, to indicate that Bank Management was frequently made aware of the potential and alleged harm to local communities due to the cutting of resin trees.

232. For example, the Bank's *"Social forestry guidelines for forest concessions"* (1999) notes on page 3 that social issues have received very little attention in Cambodia's forest concession system. The guidelines also state that:

> *"Concessions have been established with little or no regard to local settlement and land use patterns (…). Concessions frequently initiate operations under the assumption that they can plan and conduct timber extraction across the concession area. Again, little or no attention is given to local people. Consequently, soon after operations start, conflicts develop as gum-tapping trees are cut, spiritual forests are disturbed and concessionaires curtail access to the forest to local people."*

233. In addition, the Bank organized a *"Cambodia Forestry Consultation Workshop*" in Phnom Penh on Nov 21, 2003 (well before the Request for Inspection was lodged). The report on the workshop contained a World Bank Briefing Paper as an annex. The Report states, in page 13, that:

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thing wherever met with, except that it is sometimes thicker and sometimes thinner as it lies in the big cuts that the tappers make in the tree trunks."

[209] Management Response, p. 53, noted above (referring to complaints cited in the Request).

"The recently approved Sub-Decree on Community Forestry ought to enable the Forest Administration to strengthen the quality of its engagement with local communities on forestry issues and should go along with stronger efforts to manage conflicts between commercial forest users and other demands (e.g. resin collection)."

234. Many documents from the Royal Government of Cambodia relating to the Forestry Sector also make clear that the rights of resin tappers are a major concern. Complaints forwarded to the Ministry of Agriculture, Forestry, and Fisheries with copies to the complainants, which were in turn received by NGOs and (according to representatives of those NGOs) provided to Bank Staff by the same NGOs, testify to the fact that this issue was well known.

235. Among these, for example, are the following:

- The Ministry of Agriculture's Guidelines on Implementation of the Forestry Law, including *"Instructions on Implementation of Kret chbab number 35 krar char"*, signed 25 June 1988 on the management of the forestry sector; see Section 3.3 *"About cutting trees which villagers have tapped for resin."*

- Correspondence number 022 K.Sor.B. P, dated 10 Jan. 2001, from Kingdom of Cambodia Commission on Human Rights and Reception of Complaints to Minister of Agriculture, Forests, and Fisheries, regarding complaints that four concessions have been *"violating resin trees of people."*

- Letter from Ty Sookhun to "Director of Cambodia Timber Industry Association (CTIA), dated 26 April 2001, on the subject *"Request a suspension of the cutting of resin trees,"* referencing *"complaints of local people concerning the cutting of resin trees by forest concession companies"*; and insisting: *"Please suspend temporarily the cutting of all trees from which people collect resin in the 2001 coupes of each forest concession or in the forest reserved for exploitation, even if you have negotiated and signed an agreement on suitable compensation for cutting resin trees."* This letter notes that the companies who receive it are preparing *"new forest concession plans in which a Social and Environmental Impact Assessment should be incorporated."* It then states, *"Permission to resume the cutting of resin trees can be discussed after you have finished and presented the results of the above study."*

- Letter from Sum Munit (for, Senior Minister and Minister in Charge of Council of Ministers, Sec. of State, Kingdom of Cambodia) to Minister of Agriculture, Forestry, & Fisheries (MAFF), dated 29 May 2001, on

the subject *"Complaints of local people over the abuse of resin tree exploitation by concessionaires."*

- Letter from Ty Sokhun to *"Mr Director of CTIA / Mr Directors of All Concessionaires"* dated 29 Aug. 2001, on the subject *"Temporary suspension of timber product and NTFPs, especially round logs transport on road"*. Paragraph 2, point 2 requests the Directors "[t]*o halt harvesting resin trees being tapped by local people as stipulated in letter No. 740 (…) already forwarded to CTIA and all concessionaire directors (…).*"

236. In addition to correspondence from Government officials, there were also popular articles published in the Phnom Penh Post about communities deprived of their economic basis in resin-tapping by logging of resin-producing trees, including one published by Stephen O'Connell and Bou Saroeun, a Staff member, in May 2000.[210]

237. There were also numerous reports of NGOs, including Global Witness, which were sent to the Bank. These include the Global Witness Forest Crime Report for Sandan District, Kompong Thom, dated July 30, 2000, which documented the murder of a resin collector as well as current illegal logging activities being carried out by concessionaires and others, providing detailed GPS coordinates and witness accounts. In addition, the Global Witness Independent Monitoring and Verification report of Oct. 2000, entitled "Forest Crime Monitoring and Reporting Project CMB/99/A04 (UNTS/CMP/001/DFI)," states:

> *Much of the information gathered by Global Witness relates to the illegal logging activities and intimidation of villagers by concessionaires in 1997. However, Colexim employees have recently told villagers that the concessionaires intend to resume cutting of resin trees and the villagers are, following the alleged murder of a resin collector in 1997 by one of Colexim's security guards, understandably concerned.*[211]

[210] "Ethnic oiltappers feel logging company heat" by Stephen O'Connell and Bou Saroeun. Phnom Penh Post, Issue 9/10, May 12-25, 2000.
[211] Global Witness Independent Monitoring and Verification report, Oct. 2000, p. 5

Picture 5 Cut Resin Tree

238. The evidence indicates that, even though the quality of consultations was poor overall, Bank Staff knew about the harm caused by previous examples of unlawful cutting of resin trees, and were aware of "claims of harm" from this source. Undoubtedly such past history of activity by logging concessionaires is one reason for strong local opposition to the forest concession system.

239. The Panel notes that not only that the Bank *should have been* aware of the importance of resin tapping to forest dependent communities, and the harm that illegal cutting of resins was doing to those communities, but also that the Bank *was* aware of these issues.

240. Management Response notes that such past activities of concessionaires cannot be considered a failure of Management to comply with Bank policy, since they were carried out prior to, or at least not as part of or within the scope of, the FCMCPP. Management also noted that the guidelines for the development of SFMPs and ESIAs by concessionaires include requirements for surveying local community uses of forest products.

241. In the present case, however, in the critical early stages of the Project, the Bank failed to consider or investigate complaints about illegal logging of resin trees on the part of concessionaires covered by the Project, and the associated harms to the local people. **The Panel finds that the illegal logging of resin trees has had major negative consequences on the**

Requesters and the local people. The Panel further finds that the Bank's failure to consider and investigate these problems does not comply with OP 4.01 and OP 4.36.

242. In addition, the Bank failed to carry out a careful assessment or inventory that might quantify resin-trees, other timber and non-timber forest products traditionally used by indigenous peoples and others. **The Panel finds that such an assessment or inventory should have been part of a proper environmental assessment, and should have been the subject of a participatory survey and inventory at an early stage of the Project. The failure to do so does not comply with OP 4.01.**

243. The Panel also notes that the system to review concession plans, described later in this Report, failed to have a policy disqualifying concessionaires who were engaged in illegal logging of resin or other trees. This seems to constitute a flaw in the design which is inconsistent with the general spirit of the Bank's Forest Policy. In this sense, the Project missed an important opportunity to help reduce the potential incentive for illegal logging of resin trees and to resolve the basic conflict between resin-dependent communities and industrial loggers. This is of particular concern given that the traditional tapping of resin trees has been shown to be a long-term sustainable use of forests, which also contributes to poverty alleviation, one of the primary aims of O.P. 4.36.

B. Consultation with Affected People during Project preparation

244. The Requesters claim that "*it is not clear what consultation, if any, took place before the project began,* " while they believe that it "*is certain 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*."[212] The Requesters also raise several issues with respect to the consultations with affected communities carried out by the concessionaires for the preparation of the SFMPs/ESIAs. This Report addresses these latter claims in Chapter 5, Project Implementation and Supervision, Review of the SFMPs/ESIAs.

245. Management states that consultations specific to the environmental assessment were not carried out because no EA was prepared prior to the Bank's approval of the LIL. In addition, the Project Information Document (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 stating that "*local-level consultations on the proposed project concept should have been held at selected concession locations*", Management recognizes that the Bank did not comply fully with OP 4.01.[213]

[212] Request, Attachment 1, p. 62.
[213] Management Response, ¶ 39.

However, Management also claims that the Project "*builds on the previous TA Project, ADB supported consultations and Bank work during the identification mission*"[214], on consultations which were conducted during the ADB-funded Fraser Thomas study on community forestry, and on consultations related to studies on logging impacts on communities done before the TA Project.

246. According to Management, in 1998 the Bank also held consultations with conservation and social NGOs to assist the Government in preparing forestry regulations, guidelines and codes, and in 1999 it discussed the Project with Government, industries and NGOs before the Loan approval at a workshop on forest certification.[215] Management states that this "*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*."

247. Management also recognizes that the "*quality of some consultations may have been affected by the presence of higher level government officials, especially forest officials*" but believes that "*by the time of project appraisal, it was determined that there was sufficient information about the social and environmental aspects of the concession management system to design a process to address these aspects.*"[216]

248. As already noted, Management claims that the Project adopted a "*process-oriented approach,*" "*backed by a consultative process,*" according to which environmental and social criteria would be incorporated in the ESIAs/SFMPs prepared by the concessionaires for each concession.

249. OP 4.01 contains requirements for consultations with affected communities and specifies that affected people and local NGOs should be consulted during the EA process about the project's environmental impacts and their views should be taken into account. The policy calls for meaningful consultations which may occur only when people receive relevant material about the project in a timely manner before consultations take place and in a language and form understandable and accessible to those consulted.

250. In addition, OD 4.20 on Indigenous Peoples states that Bank policy requires informed participation of the indigenous peoples 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*." OP

[214] Management Response, p. 31.
[215] Management Response, p. 31.
[216] Management Response, p. 32.

4.04 expects that the views, roles and rights of local communities and NGOs, affected by the Bank-financed project involving natural habitats, are taken into account so that the affected people may participate in planning designing, implementing, monitoring, and evaluating such projects.

251. During the Panel's visit to Project-affected areas, Project-affected villagers personally confirmed to the Panel that they had never been involved in any pre-project consultation process, nor (in most cases) any subsequent forms of consultation.

Picture 6 Panel Meets with Interested Local Community Members in Stung Treng Province

252. The Panel notes that surveys and consultations specific to the proposed design of this Project should have been undertaken, or a detailed examination of prior surveys and consultations as they relate specifically to the proposed design of this Project should have been presented to show in detail why further consultations and surveys were unnecessary at this stage. It is unlikely that the latter could be done, since the Bank admits in Management Response (and in fact uses as justification for the "process oriented approach") that "*Specific planning decisions to be made at each location could not be known in advance*." Yet it is always at specific locations that problems arise, and it was to prevent that outcome that the social safeguard policies (including requirements for surveys and assessments early in the process) were devised.

253. The Panel regards as a flaw in the design of the Project and a flaw in the timing of the consultations, rather than a "*specific planning decision*", the failure to carry out surveys and assessments early in the process, to postpone them to a later phase when concessionaires were expected to follow guidelines developed by the Project. **The Panel finds that the Bank's decision to postpone an active social assessment and consultation procedure until the preparation of the ESIAs by concessionaires is not consistent with Bank policies, including OP 4.01, OP 4.04 and OD 4.20, which require early consultations and/or surveys in the preparation phase**.[217] In making this finding, the Panel recognizes the challenges in carrying out consultations in this early phase, taking into consideration the context at the time.

254. The question of adequacy of consultations during the design and preparation phases also relates closely also to the requirement in OP 4.01 that the Project's environmental assessment should have considered alternatives; and to the requirement in OD 4.20 that projects affecting the subsistence base of indigenous peoples should look carefully for ways to avoid this outcome in the design of the Project. All these examples of seeking alternatives in the design of this Project could have benefited from consultations with the local population – since all these policies recognize that severe disruptions can occur unless alternatives are examined. Thus early consultations with these alternative potential designs in mind are comparable (in the social realm) to early studies of siting for a dam, or other preparatory design studies of dam safety, in the realm of physical engineering. Within the social sphere, the effect of postponing such consultations and surveys until after the general design of the concession system has been finished, and concession boundaries drawn and allocated, is like deciding to postpone the studies of where a dam should be located, or how it can safely be designed, until after that dam has already been built.

255. The Panel recognizes the challenges in carrying out consultations in the early phases, taking into consideration the political and social context in Cambodia at the time (reviewed earlier in this Report). This does not, however, diminish the importance and need for doing so. The failure to meet the provisions of Bank policies on consultations had significant effects on the path of this Project. Consultation with those affected by an action is critical to understanding potential impacts and identifying alternatives during Project design and implementation to reduce and avoid such impacts. In the present situation, **the Panel finds that the lack of early consultation greatly reduced Management's capacity to be informed of critical concerns relating to indigenous peoples, resin tapping, local community**

[217] In some cases, cultural properties covered under OPN 11.03 can only be identified through consultations – for example, the case of (locally recognized) spirit forests recognized by indigenous peoples in Cambodia.

ownership of trees, community forestry initiatives, and other matters of central importance to the affected communities.

C. Indigenous Peoples Development Plan

256. As noted above, the Requesters complain that although Cambodian indigenous peoples are affected by the logging concessionaires, the Bank did not identify any issue related to indigenous peoples during the Project preparation. The Request indicates that the Kuoy people and other indigenous groups live in the forested area in the north and north-east of Cambodia, which is the heart of the logging concession system. The Requesters claims that, since the concessions threaten the livelihood and culture of these groups, the Bank should have required the preparation of an Indigenous Peoples Development Plan (IPDP) to address these social impacts. According to the Requesters, the Bank has failed to comply with OD 4.20 because it did not take into account the impacts of the concessions on the indigenous peoples, which in turn has allowed the concession companies *"to ignore these issues completely."*[218]

257. "*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.*"[219] Management states that *"the Bank has recognized the importance of this issue"* and that various mission reports have noted that social problems were not address adequately in the past. [220] The Bank, therefore, decided to assist the Government in preparing community consultation guidelines which would include a step-by-step manual with provisions specifically related to indigenous peoples.

258. OD 4.20's overall objective 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.*" According to the policy "[t]*he key step in project design," "is the preparation of a culturally appropriate development plan based on full consideration of the options preferred by the indigenous people affected by the project*." Paragraph 14 (a) through (h) outline the prerequisites of such an IPDP; paragraph 15 (a) through (i) outline the contents of such a plan. [221]

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[218] Request, Attachment 1, p. 67.
[219] Management Response, p. 34.
[220] Management Response, p. 35.
[221] "*Prerequisites of a successful development plan for indigenous peoples are as follows: (…) the preparation of a culturally appropriate development plan based on full consideration of the options preferred by the indigenous people affected by the project (…) anticipate adverse trends likely to be induced by the project and develop the means to avoid or mitigate harm (…) institutions responsible for government interaction with indigenous peoples should possess the social, technical, and legal skills needed for carrying out the proposed development activities* [and] *involve appropriate existing institutions,*

259. The Panel notes that unlike with the FCMCPP, in other projects in Cambodia the Bank paid considerable attention to indigenous peoples issues, regardless of the environmental categorization.[222] The Health Sector Support Project (IDA 37280, USD 17,200,000, effective 14 Aug. 2003, closing 31 Dec. 2007) has no IPDP but does have an initial Environmental Assessment, Social Assessment, and Resettlement Plan. The Land Management and Administration Project (IDA Credit No. 3605-KH, USD 24,300,000, effective 19 June 2002 and closing 31 Dec. 2007) is also relevant since it includes issues of land tenure (including those among indigenous and non-indigenous people). This Land Management project includes an "*Indigenous Peoples Policy Framework*" as well as environmental and social safeguard reports. In addition, the Bank-financed Provincial and Peri-Urban Water and Sanitation Project (IDA Credit No. 3746-KH for USD 16,900,000 effective 16 November 2003, closing 30 June 2008), which is the only Project given an "A" level environmental classification, includes an "*Ethnic Minorities Development Strategy and Indigenous Peoples Framework*" as well as an Environmental Assessment and a Resettlement Plan. The Rural Electrification and Transmission Project (IDA Credit No. 3840-KH for USD 40,000,000, effective 29 March 2005, closing 30 June 2009) has developed a "*Highland Peoples Development Plan*." Except for the A-level Provincial and Peri-Urban Water and Sanitation Project, all these projects were given a "B" level EA classification.

260. **The Panel notes Management's acknowledgment that developing a framework IPDP would have been more appropriate during Project design. The Panel finds that in line with OD 4.20, an IPDP should have been prepared for this Project.**

261. With respect to the prerequisites for an IPDP set forth in OD 4.20, the Panel notes that the Project shows a serious lack of information about baseline social structure and about traditional land and resource use, and no information about the inheritance of traditional land and passageway rights across generations. This lack of adequate baseline data, even for the area within the overly restricted boundaries of the "*Project area*" as designated

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local organizations, and nongovernmental organizations (NGOs) with expertise in matters relating to indigenous peoples (…) resource use should be taken into account in the plan's design (…) Planning should encourage early handover of project management to local people. As needed, the plan should include general education and training in management skills for indigenous people from the onset of the project."

[222] Along with the FCMCPP, an exception is the Biodiversity and Protected Areas Management Project (IDA Credit No 3320-KH) financed within the framework of LILs, which was classified as a "B" and no IPDP was prepared because according to the Project Appraisal Document, the "*definition of provisions for indigenous people will be an integral part of both the Park Management and the Community Development components*". *Cambodia Biodiversity and Protected Areas Management Project*, Project Appraisal Document, Report No. 20040 KN, p. 2 (Jan. 10, 2000), p. 14.

by Management, severely hampers any attempt to determine potential adverse impacts of the Project on the indigenous peoples affected by it. As already noted, even less baseline information is available about the wider area that will be impacted by the Project.

262. The Panel also found that no attempt was made to develop social, technical, and legal capacity within the institutions responsible for Government interaction with indigenous peoples as required by OD 4.20. On the other hand, no provision was made for early handover of project management, and for the education and training in management skills for indigenous people. The Panel team observed such skills at work in villages where indigenous people had formed committees to protect forests from illegal logging.

263. **The Panel observes that even many of the prerequisites for an IPDP are lacking. Had they been developed, many of the problems that have afflicted the Project would have been recognized and might have been corrected.**

D. Cultural Property: Spirit Forests and Archeological Sites

264. The Request for Inspection claims that, before the Project started, the Bank did not carry out any survey of existing cultural property in the concession areas, which, according to the Requesters, "*contain both spirit forests and sites of archaeological importance*." The Requesters add that while evidence is available that many communities, in particular indigenous peoples, worship spirit forests, concession companies have logged them. For example, the communities living in the Kompong Area have complained that Colexim company has "*previously logged their spirit forests in both 1997 and 2002*." The Requesters also complain that the SFMPs/EIAS prepared by the concession companies do not take these sites into any account, despite their importance for the forest-dependent communities.[223]

[223] Request, Attachment 1, p. 75.

Picture 7 Discussion with Villagers of Local Forest Issues, particularly related to Cutting of Resin Trees and Destruction of Spirit Forests

265. The Request for Inspection also states that the concession areas contain archeological sites which have not been identified and removed from production areas in the SFMPs prepared by the concessionaires. A lack of attention to archaeological sites could jeopardize cultural property that is part of the national heritage of all Cambodians.[224]

266. Management believes that the Project is in compliance with the Bank policy on Cultural Property, OPN 11.03. Management claims that not only has the Bank not endorsed the SFMPs but it expressed its concerns and reservations specifically with respect to spirit forests, archeological and other sites culturally important for the communities.[225]

267. OPN 11.03 on Cultural Property adopts the United Nations definition of cultural property, and describes it as "*sites having archeological (prehistoric), paleontological, historical, religious, and unique natural values*".[226] The Bank policy aims at helping to preserve cultural property and to avoid its elimination by not financing projects that will significantly damage non-replicable cultural property and by assisting in the protection and enhancement of such cultural properties, rather than leaving that protection to chance. OPN 11.03 also provides that the scope of projects should include the training and strengthening of institutions entrusted with safeguarding a nation's cultural patrimony rather than postponing this to the

[224] Request, Attachment 1, p. 75.
[225] Management Response, p. 40.
[226] OPN 11.03 (Cultural Property), ¶ 1.

future, so as to internalize the costs in computing overall project costs. The policy also allows deviations from its provisions only when these can be justified with great project benefits and unavoidable, minor or otherwise acceptable loss of damage to cultural property.

268. **Spirit Forests.** Issues related to spirit forests should be treated somewhat separate from those concerning archeological and other culturally important sites –even though requirement for their protection derives from the same Bank policy– because the status and boundary of any particular forest as a "Spirit Forest" derives from the traditionally recognized presence of spirits, whose presence in turn can fundamentally be known and mapped only through consultations with local populations and not by any other archeological survey or any similar known scientific means.

269. During its visits to communities in northeastern Cambodia, the Panel Team heard very sincere and heart-wrenching accounts from villagers about sicknesses and difficulties in their villages, attributed to the fact that spirit forests had been cut by loggers.

270. Spirit forests are not among those "*structures*" that, according to OPN 11.03, can sometimes be "*relocated, preserved, studied, and restored on alternate sites*" nor are they appropriate for "*selective salvage, and museum preservation before destruction (…).*" The only way to preserve spirit forests is to determine where they are located through a process of survey by specialists along with public consultation, and having mapped them, assure that they are not logged or otherwise destroyed.

271. In addition to the conflict of interest in that concessionaires would benefit from reducing the size of or denying the legitimacy of spirit forests, there is also another form of conflict of interest related to the scoring system adopted in the review of the SFMPs/ESIAs.[227] In particular, by excising spirit forests from the size of the potential logging area, the concessionaires would score lower in the ranking by FCMCPP Staff as they judge concessions for approval – thus the scoring system developed by the FCMCPP has a built-in disincentive for accurately reporting the size of Spirit Forests and other locally used forest areas.

272. The Panel finds that none of the means of handling the issue of spirit forests, provided for in the Bank policy, was carried out as part of the Project. **The Panel finds that to leave determinations about spirit forests to concessionaires to include within their ESIAs as they developed and presented their SFMPs for approval is not consistent with OPN 11.03**. The Panel also notes that **t**here are excellent institutes within Cambodia with world-class ethnographers capable of handling surveys of this kind, and those could have been strengthened instead as part of this Project.

[227] See infra Review of the SFMPs and ESIAs for a more extensive discussion on the scoring system.

273. **Archeological Sites.** Unlike Spirit Forests, whose locations can only be determined by consulting local people, very important subsurface archeological sites may be present but completely unknown to or unrecognized by local people.

274. A first approach to determining the presence of archeological sites is normally through preliminary checking of whether archeological sites within areas of a forest concession are already listed on existing registers of cultural properties. Though such registers have been maintained since French colonial times, and continue today, the record show that the FCMCPP Staff did not include checking those registers as part of Bank preparatory activities for the Project, nor as part of the guidelines for concessionaires.

275. Archeologists interviewed by the Panel Team unanimously expressed the opinion that archeological surveys would be productive, although they also expressed concerns about who would have specialist training to carry them out and how the results might be used or mis-used.[228]

276. Especially important was the observation that if a forest logging operation did not disturb below the surface of the ground, it might not be necessary to survey an area for subsurface archeological sites, especially if there were inadequate preparations to protect any site so located.

277. Considering the widespread presence of long-recognized, important archeological sites in Cambodia - including its heavily forested areas - and the extreme importance of "*archeological tourism*" to Cambodia's economy, it is surprising that the FCMCPP made so little preparation for the likelihood of archeological sites within the vast areas of forest concessions being considered for logging. Instead, the guidelines for the drawing up of ESIAs, including surveys for archeological sites as with the spirit forests discussed above, was left in the hands of the Concessionaires themselves.

278. OPN 11.03 states that the Government of the country is responsible for management of cultural property. However, paragraph 3 states that "[b]*ank staff must (1) determine what is known about the cultural property aspects of the proposed project site. The government's attention should be drawn specifically to that aspect and appropriate agencies, NGOs or university*

[228] Some expressed dissatisfaction with many archeological surveys done as part of development projects in Cambodia, since only trained specialists could recognize the presence of prehistoric sites from evidence of surface debris such as stone tools. Consequently this specialist felt that many sites were being destroyed for construction of buildings, ports, etc., due to inadequate surveys. Others also feared that if a private company discovered an archeological site through conducting a survey on its own, there would be a strong incentive to "loot" the site (that is, improperly excavate a site for saleable artifacts without recording provenance of items and arranging for their permanent disposition in a proper Cambodian museum or educational institution).

departments should be consulted: (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."

279. **The Panel finds that the procedure used by the Project to identify important cultural properties relied on the concessionaires to include them within their proposed management plans, without provision for reporting their existence to appropriate agencies or including appropriate specialists. This does not comply with the minimum level of protection and enhancement of cultural properties envisioned within OPN 11.03. It also potentially entails serious damage to cultural properties because it fails to include provisions for protecting, from future looting, sites that may be discovered.**

Chapter 5 Project Implementation and Supervision

280. This Chapter analyzes various issues relating to Project implementation and supervision, in light of claims made in the Request, Management Response, and the relevant Bank policies.

281. In their submission to the Panel, the Requesters claim that the Bank has been negligent in its supervision of the Borrower's implementation, and has thus contravened several aspects of OP 13.05. In particular, they claim that Management repeatedly contravened the requirement for Project supervision to *"ascertain whether the borrower is carrying out the project with due diligence to achieve its development objectives in conformity with the legal agreements."* According to the Requesters, *"the lack of supervision has accounted for many of the FCMCPP's damaging acts and omissions*." They believe that as a result of this the Project has had an overall negative impact because it has legitimized a flawed concession system and the harm being done to the forest-dependent communities.[229]

282. As support for their claim, the Requesters allege that the Bank has:

> i. Allowed Project technical assistance to be offered to companies that should have been excluded under the terms of reference given to the TA consultants;
>
> ii. Not ensured that the planning processes for SFMPs and ESIAs carried out under the auspices of the Project included adequate and appropriate consultation of the affected people
>
> iii. Failed to ensure the timely disclosure of the ESIAs/SFMPs;
>
> iv. Failed to ensure the observance of minimum standards in the 2003 forest cover survey;
>
> v. Did not take any action to change the flawed methodology of the FCMCPP's review of the SFMPs and ESIAs, in particular the Project's refusal to take account of the legal prohibition on cutting resin trees;
>
> vi. Attempted repeatedly to help a company overturn the log transport ban and profit from its illegal logging of villagers' resin trees.

283. Management claims that it complied with the Bank policy on Supervision (OD 13.05 until July 19, 2001, and OP/BP 13.05 onwards). It notes that since mid 2000, Bank Staff conducted nine formal supervision missions,

[229] Request, Attachment 1, p. 73.

including a mid-term review. In addition, from August 2002 to January 2004 the Project Task Team Leader was based in Cambodia.[230] Management also states that the Bank's Quality Assurance Group conducted a "voluntary" Quality Enhancement Review (QER) in 2003 at the Request of the East Asia Region of the Bank.[231]

284. Management believes that during Project implementation the Bank faced many challenges which the Project PAD had identified as key risks of the Project. Management notes that these are flagged in the Request for Inspection itself. Among these, the Response notes the tensions that arose during Project implementation among the various stakeholders - - the Bank, the Government, NGOs, other donors and the concessionaires. According to Management, disputes especially between Global Witness and the Government contributed to the removal of Global Witness as the Independent Monitor and this deepened the mistrust of the NGOs towards the Government's commitment to the reforms.

285. The sections below analyze these various issues and, more broadly, Management supervision of Project implementation under relevant Bank policy. To inform this analysis, the chapter begins with a brief overview of the organizational basis of the Project and the Project implementation timeline.

A. Project Organizational Framework

286. As described in Chapter 1, the Project has four basic components. These components are: Forest Planning and Inventory; Concession Regulation and Control; Forest Crime Monitoring and Prevention; and Project Management and Institutional Strengthening.

287. The Management Response describes the *"Project Organization"* upon which implementation actions would be founded.[232] The Project is being implemented by the former Department of Forestry and Wildlife (DFW), which was reorganized in 2003 and became the Forestry Administration (FA), an agency of the Ministry of Agriculture, Forestry and Fisheries (MAFF). The Project Director is a Deputy Director in MAFF.[233]

288. Under the FCMCPP, the FA created a Technical Review Team (TRT) with responsibility to review the SFMPs to be prepared by the concessionaires. The forest crime monitoring and prevention role, provided in Component C of the Project, was initially carried out under a project financed by the United Nations Food and Agriculture Organization (FAO) and the United

[230] Management Response, ¶ 16.
[231] Management Response, ¶ 18.
[232] Management Response, ¶ 10.
[233] Management Response, ¶ 10.

Nations Development Program (UNDP). The NGO Global Witness served as "*independent monitor*" within this initial framework. For reasons indicated below (see next section), the function of independent monitor subsequently became the responsibility of a commercial firm contracted under the FCMCCP, the Société Générale de Surveillance (SGS).

289. In January 2001, a Japanese grant in the amount of USD240,000 was provided to the Government to assist in the implementation of the FCMCPP. The grant financed advisory services to *"develop and introduce procedures for better integration of environmental and social safeguards into concession planning."* These included guidelines and procedures for planning and plan approval, and guidelines and procedures to address gaps in the Recipient's forest management standards. The Grant also supported advisory services to *"assist in the preparation of revised forestry legislation and development of forest revenue system."*[234]

B. History of Project Implementation: A Brief Overview

290. This section provides a brief overview of certain significant events that have marked the implementation of the FCMCPP, including steps to develop and review the proposed SFMPs and ESIAs. A detailed analysis of these events is provided in the subsequent sections.

Table 3 Timeline of Significant Events Prior to and During the Project

Prior to Approval of Credit	
November 1995	Joint World Bank/UNDP/FAO Forest Policy Assessment Mission
June 1997-January 1999	Forestry studies and dialogue leading to National Forest Sector Policy under Technical Assistance Project
December 1998	Identification mission of FCMCPP
May 6, 1999	Project Concept review meeting
May 7, 1999	Project preparation initiated
June 12, 1999	Project appraisal initiated
October 22, 1999	First PID sent/received by Infoshop
November 12,1999	Appraisal Completion Note
February 2000	Structural Adjustment Credit (SAC) approved Cambodia CAS
March 15, 2000	Notice and invitation to negotiations of Credit Agreement
March 16, 2000	Negotiations of Credit Agreement initiated
May 2000	ADB Forest Concession Review Workshop
Implementation phase	
June 5, 2000	Bank approves Credit Agreement

[234] Cambodia: Forest Concession Management and Control Pilot Project, Japanese Grant Agreement, February 20, 2001, Grant No. TF026419, Article 1(1.1)(a) and (b).

July 6, 2000	Legal agreements signed
October 20, 2000	Credit becomes effective
September 2001	Initial deadline for submission of draft SFMPs
December 31, 2001	Progress Status Report
January 2002	Prakas on Suspension of Forest Concession Logging Activities takes effect (issued December 2001)
April, October-November 2002	Series of incidents and confrontations linked to SFMP review process
August 2002	Forestry Law enacted
September 2002	Extended deadline for submission of draft SFMPs
November 2002	Draft SFMPs and ESIAs disclosed
March 2003 – June 2004	Independent Forest Sector Review, preparation through distribution
April 2003	Government MTR publicly available
August 2003	Prakas on Forestry Revenue Systems Management
October 23-29, 2004	Supervision mission
December 2003	Credit closing date extended Quality Enhancement Review (QER)–final report
April 20 30, 2004	Supervision mission
June 2004	TRT concluded review of SFMPs and ESIAs
July 2004	First independent review (GFA Terra Systems) of SFMPs and ESIAs
October 18-28, 2004	Supervision mission
January 1, 2005	Inspection Panel receives Request for Inspection
February 4, 2005	Inspection Panel registers request
March 3, 2005	Panel Eligibility Report submitted to the Board
April 14, 2005	Board approves Panel recommendation / investigation authorized
June 30, 2005	Closing date of the credit Extension of closing date to December 31, 2005
August 2005	Second independent review (GFA Terra Systems) of SFMPs and ESIAs
October 2005	Inspection Panel visit to Bangkok and Cambodia
November 2005	Letter from Management to Government regarding concessions

Source: Project document files and information provided in Management Response

291. Several points relating to this timeline are highlighted below.

- **Submission of draft SFMPs**.

292. As indicated in the Table, the deadline for the submission of the draft SFMPs initially was September 2001. No companies met the target date.

The Government granted the concessionaires an additional year, until September 2002, for completing the draft SFMPs/ESIAs.

293. The Requesters believe that failure by the concessionaires to meet the deadline constituted grounds to cancel the concession contracts. They complain that the World Bank let this "slip" without requesting a penalization of the concessionaires. In their view, this allowed the companies to continue their logging operations through the end of 2001 "*before pressure from international donors other than the Bank*" convinced the Government to suspend logging operations in 2002. The Requesters believe that these events show the Bank's willingness to "*shield*" the concessionaires.

294. Management states, in response, that the Bank considered the extension of the deadline reasonable because of the delay in "selecting *technical assistance under the Project*" but expressed its concerns about the continuation of logging.[235] Management also claims that it was a Bank mission which reached an agreement with the Government to issue a Prakas suspending logging operations.

- **The SFMP Process and Confrontations with the Public**

295. On December 16, 2001, the Government issued a Prakas on the Suspension of Forest Concession Logging Activities (described in more detail below). However, tensions that had been building up among various Project stakeholders in the previous months, in particular between the Government and the NGO community, erupted when the director of Global Witness was attacked and beaten in April 2002.

296. Later, in November and December of 2002, conflicts worsened. The Requesters highlight the problems they faced because the SFMPs/ESIAs prepared by the companies were disclosed for public review and consultations for only 19 days, which included a public holiday.[236] In addition, there were reports that physical force was used to disperse affected communities that gathered in front of the FA in Phnom Penh to request a meeting with FA Staff about the recently disclosed SFMPs.[237]

297. After this incident the Government removed Global Witness as Independent Monitor and this function was contracted to a commercial enterprise, SGS. The actions of Bank Management in relation to these events and the relevant Bank policies and procedures are reviewed in more detail in the sections below.

[235] Management Response, ¶ 33.
[236] Request, Attachment 1, p. 30.
[237] Management Response, ¶ 29.

o Actions to Review the Project and the draft SFMPs/ESIAs

298. As indicated by Table 6, above, several actions were taken in 2003-2005 to review Project implementation and, more specifically, the draft SFMPs and ESIAs. The first of these was the Quality Assurance Group (QAG)[238] review, in the form of a Quality Enhancement Review (QER). This QER was initiated at the request of the East Asia and Pacific Region of the Bank.

299. The QER drew attention to some "*successes*" of the Project as well as various shortcomings. The QER cited as successes, among others, a reduction of 4 million ha of areas under concession and a "*substantial empowerment of civil society and donors in their battle to create a transparent forestry industry operating within the public interest*."[239]

300. At the same time, the QER indicated that the Bank's effectiveness had been damaged, among other things, by the "*inability of the country team to coalesce around a shared strategy on substance and process*," "*not having in place a clear and well articulated vision of how the recently liberated 4 million hectares are to be occupied*," and "*an insufficiently well-articulated Bank commitment to non-concessionaires forest users, especially the rural poor in and near the forest*." The review also noted that the LIL had limitations as instrument "*in addressing the long-term structural nature of Cambodia's forest governance problem*."

301. The TRT was created by the FA under the Project to review the concession Management plans. It was composed of FA Staff trained under the Project to review and evaluate the SFMPs and the ESIAs. The TRT completed its review in June 2004. Among other things, its report recommended that six SFMPs/ESIAs go forward.[240]

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[238] The Quality Assurance Group (QAG) was set up in 1996 to improve the quality of World Bank performance by increasing accountability of management and Staff. QAG conducts real-time assessment of Bank operations and identifies issues affecting Bank performance in the project design, preparation, or in project supervision. A QER is a "*on-demand' technical assistance*" to Staff and managers working on a project or an analytical work to improve the quality of its design or implementation.

[239] Quality Enhancement Review, Cambodia Forestry, in Management Response, Annex 4, p. 1.

[240] Management Response asserts that, in 2003, after completing its first review of the plans, the TRT team requested comments on such evaluation from the Forestry and Environment Technical Working Group (TWG), one of the groups emerged from the restructuring of the Working Group on Natural Resource Management, which is associated with the Government-Donor Consultative Group (CG) chaired by the Bank. The TWG is chaired by the Director of the FA and DANIDA, the Danish International Development Agency, is the Lead Donor Facilitator. Management states that although the TWG endorsed the methodology and the conclusion of the TRT's first review of two SFMPs/ESIAs, it could not review all the submitted plans. In March 2004 the TWG promoted a multi-donor sponsored Independent Forest Sector Review (IFSR), which was to examine the entire forest sector and to evaluate both the FCMCPP and the draft SFMPs/ESIAs. However, since the IFSR did not complete the review of the concessionaires' management plans, the Bank and the TWG decided to engage GFA Terra System (GFA), a German consulting firm, as an independent consultant to evaluate the TRT review of the six concession plans recommended to go forward. Management Response, ¶ 35-36

302. The Bank and other donors, working within the Technical Working Group, then contracted GFA Terra, a German consulting firm, in 2004 to carry out an independent evaluation of the TRT review. The two GFA reports, issued in 2004 and 2005, heavily criticized the concessionaires' plans and identified several inadequacies and deficiencies, especially in the consultation process. The GFA evaluation concluded that none of the six plans could be an adequate basis for sustainable forest management. These reports were followed by a letter from Bank Management to the Government in November 2005 regarding the concessions and concession review process.

303. The findings and recommendations issued by the TRT and GFA, as well as those contained in the November 2005 letter from Management, are reviewed in more detail below as part of the discussion of key issues raised in the Request relevant to Project implementation.

C. Issues Related to Implementation and Supervision

1. Provision of Technical Assistance

304. The Requesters claim that the Project allowed technical assistance to be offered to the concession companies. They state that such assistance should have, however, been excluded under the terms of reference for the consultants because the companies were *"unable or unwilling"* to develop plans in compliance with international standards, as the Government required under the FCMCPP. According to the Requesters, providing loan-funded assistance to the concessionaires *"reduces 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."*[241]

305. The Management Response noted that the Project did not target concessionaires as recipients of technical assistance and none was provided. However, to meet the standards set by the Government, concessionaires could do so by using their own resources of contracting technical expertise. Management claims that "[t]*echnical direction by the regulatory authority is necessary and was not considered as technical assistance as such.*"[242]

306. The Panel observes that the technical assistance provided was primarily in the nature of contracted experts to assist the TRT, established by the FA to review the SFMPs. This effort was intended to assist in building the capacity of the FA to manage concessions more effectively. The relevant tasks included, among others, carrying out assessments of timber volumes in individual concessions.

[241] Request, Attachment 1, p. 20.
[242] Management Response, p. 41.

307. The Panel notes that a distinction needs to be made between the Project's attempt to build capacity within the Government, particularly the FA, and the provision of direct support to the concession companies. **The Panel did not find evidence that technical assistance was provided directly to companies. Rather, consistent with OP 13.05, the Bank focused its technical assistance on building the capacity of the Forest Administration to oversee the development of SFMPs by companies.**

2. Review of SFMPs and ESIAs

308. According to Management, the "*core of the Project*"[243] was to establish a system through which the Government could review and manage sustainable forest management plans (SFMPs) and related environmental and social impact assessments (ESIAs) prepared by concessionaires. The preparation and review of the SFMPs was to be based upon a set of regulations and guidelines which have been developed since 1998 with support from the World Bank (including the TA Project and the FCMCPP) and other donors. This section addresses several issues raised in connection with the review of draft SFMPs and ESIAs during Project implementation.

o Consideration of Past Conduct

309. The Requesters claim that when the plans submitted by the concessionaires were reviewed, the FCMCPP did not take into account the companies' illegal activities and "*closed its eyes to all past offences*". The Requesters believe that reviewing the plans without considering the past practices of the companies "*introduced basic errors into the review process*." [244]

310. Management responds that the Bank has "*endorsed using 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.*"[245] According to the Response, the companies' backgrounds were reviewed and certain "*suspect practices*", such as the "*irresponsible use of subcontractors*", were raised with the Government. Management also states that "*ultimately the FA refused to accept unproven allegations in its assessment methodology*," though the TRT "*addressed a number of issues, including the quality and completeness of the environmental and social assessments.*"[246]

[243] Management Response ¶ 33.
[244] Request, Attachment 1, p. 36.
[245] Request, Attachment 1, p. 36.
[246] Management Response, p. 47.

311. The file on this Project contains information relevant to this issue. A letter from Management to the Government, dated October 19, 2001 states as follows:

> *"Government should (…) 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 instance*[s] *of serious default and deviation by various concessionaires. These include cases of convictions for involvement in illegal logging*."[247]

312. A letter from Bank Management dated December 12, 2001, contains similar warnings:

> *"(…) we do also believe that Government needs to act definitely with respect to concessionaires that are in clear and persistent non-compliance* [with requirements and standards for sustainable forest management] *and which are unlikely to be viable long term partners*."[248]

313. The Panel notes these efforts by Management to underline the need to take into account the issue of illegal logging. Nonetheless, the system to review concession plans did not have a policy disqualifying concessionaires that have engaged in illegal logging of resin or other trees. The Panel finds that this is inconsistent with the general spirit of the Bank's Forest Policy.

- **Conflicts of Interest**

314. The Requesters also raise issues of conflict of interest in the process of preparing and reviewing the plans. They claim that the plans actually were drafted for the concessionaires by Government Staff (from FA and the Forest Research Institute), who work for the same Government agency responsible for deciding whether or not to allow the companies to resume their operations. The Requesters state that the Bank did not heed concerns raised about these conflicts of interest.[249]

315. In this regard, Management states that the Bank has been aware of this issue since Project preparation. Management indicates that the PAD notes *"both petty and large scale corruption"*, and that the Bank discussed with the Government the issue of its Staff working for concessionaires and "*cautioned*" against it. However, according to Management, this situation stems from a limited number of experts in forest issues in Cambodia and

[247] Letter from World Bank to Government, dated October 19, 2001, in Management Response, Annex 4.
[248] Letter from World Bank to Government, dated December 12, 2001, in Management Response, Annex 4.
[249] Request, Attachment 1, p.p. 41- 42.

poor salaries paid to Government employees, who, as a result, seek outside employment. [250]

316. However, Management also states that the Bank "*established its prerogative to review and comment on forest management plans prior to their submission for final approval*."[251] In the Response, Management claims that "*the Bank is aware of the deficiencies*" of the plans and has not endorsed or recommended them for approval. [252]

317. The Panel notes Management's acknowledgement of this issue, and observes that such concerns raise significant questions about the review process established under the Project.

- **Inclusion of Resin Trees in Inventories for Logging**

318. The Request also claims that the companies included resin trees in their inventories and annual allowable cut (AAC), despite the prohibition in the 1988 Decree on Forest Practice Rules and the 2002 Forest Law on the cutting resin trees. According to the Requesters, the FCMCPP's review of the plans accepted these inventories and annual allowable cut provisions as legitimate.

319. Management responds that the "[r]*egulatory provisions regarding resin trees have evolved during the period of project implementation*" and that the inclusion of all standing trees in the forest inventory depends on the purpose of such inventory. Management adds that "[v]*olume 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*." Management also recognizes that "*at present harvesting of resin trees is prohibited*." [253]

320. The Panel notes the actions taken by Management to address this issue. However, the Panel reiterates its findings that the illegal logging of resin trees has had major negative consequences on the Requesters and local people, that the Bank failed to consider and investigate these problems as required under Bank policies, and that the Project has failed to carry out an assessment or survey of resin trees and other forest products traditionally used by indigenous peoples and others.

[250] Management Response, p. 25.
[251] Management Response, p. 47.
[252] Management Response, p. 47.
[253] Management Response, p. 48.

- **The Scorecard System for Assessing the SFMPs and ESIAs.**

321. One of the Requesters' concerns about the review conducted by the TRT relates to the scorecard system adopted to assess the SFMPs/ESIAs. They believe that the system is *"very heavily weighted towards consideration of the amount of timber the company has left in its concessio*n." As a result, the Requesters note that, if in a concession area there is still *"viable forest,"* the company's plan will be approved, regardless of the poor quality of the plan itself or the quality of consultations, or lack thereof, carried out to prepare it.[254]

322. Management Response does not deny this quirk of the scoring system but does note that no SFMP has yet been approved in any case.[255] According to the Response, the scorecard system is an evaluation methodology created within the FA. The results of the first phase of review *"generally support the validity of the system"* as 9 out of 15 concessions were recommended for rejection.[256]

323. As noted previously in this Report, the Panel found that the scoring system creates a built-in disincentive for accurately reporting the size of spirit forests and other locally used forest areas, because the removal of such areas from the size of the potential logging area in the proposed SFMP would lead to a lower score in the rankings of the SFMP for approval (see Chapter 4.D., Cultural Property).

324. The Panel notes concerns about the scoring system, and observes that they raises significant questions about how the criteria used in the assessment system could be applied in a manner consistent with the basic objectives of Bank policies.

- **The TRT and GFA Reviews of the draft SFMPs/ESIAs**.

325. As noted above, the TRT review of the draft SFMPs/ESIAs was completed in June 2004. The TRT recommended six plans to go forward, allegedly "*bringing about a reduction in the area exposed to concession operations from 6.4 million hectares to just over one million*."[257]

326. The Bank and other donors then contracted GFA as an independent consultant to evaluate the TRT review. The GFA thoroughly and comprehensively analyzed a total of six strategic plans (corresponding to the six concessionaires recommended for approval previously by the TRT).

[254] Request, Attachment 1, p. 37.
[255] Management Response, p. 47.
[256] Management Response, p. 47.
[257] Management Response, ¶ 69.

327. The first GFA assessment, in August 2004, covered the management planning process, a detailed field assessment of two plans and desk reviews of the remaining four plans. The second review, in August 2005, assessed the four plans subjected to desk review in 2004 in greater detail and made recommendations for the individual concessions under review.

328. The GFA assessment noted that the *"Frame conditions for sustainable forestry and related long-term management planning are still extremely poor (…)"*[258] and concluded that *"(…) we do not see much chance for a sustainable forestry concession system and we do not see the possibility to protect forests from further destruction."*[259]

329. The GFA reviewers were quite damming of almost all aspects of the SFMPs and ESIAs, and they noted that *"None of the SFMPs (…) comply with the basic idea of multiple-use forestry on principles of SFM; none (…) fulfil the primary purposes of strategic forest management plans as these are clearly (…) formulated in the DFW's Planning Manual."*[260]

330. In judging the compliance of the plans with Cambodian guidelines and general SFM principles, the review drew the following conclusions:

> *"(…) the concession planning did not obtain community support for, and participation in, forest management, nor did they optimize social, environmental and economic benefits from their plan areas. With a strong bias towards timber exploitation for the benefit of the companies all plans fail to meet SFM requirements (…)."*[261]
>
> *"The plans certainly do not reflect the ability of the companies to finally implement SFM."*[262]
>
> *"(…) the result of the Forest Function Zoning is also unsatisfactory, and consequently, the calculated net operable area of all concessions appears to be inflated."*[263]
>
> *"Social issues of forest management in all plans are inadequately dealt with."*[264]
>
> *"There is no evidence that biodiversity surveys have been conducted seriously by any of the concessions."*[265]

[258] GFA 2005, p. 2.
[259] GFA 2005, p. 143.
[260] GFA 2005, p. 9.
[261] GFA 2005, p. 9.
[262] GFA 2005, p. 140.
[263] GFA 2005, p. 144.
[264] GFA 2005, p. 144.

331. The Panel observes that the findings of the GFA reviews, which identify major flaws in each proposed concession plan, provide an indication of the magnitude and scale of problems that arose during Project implementation.

- **Management Views on the draft SFMPs**

332. The Requesters contend that *"(…) the World Bank's project had recommended that the Cambodian government approve the logging plans of six of the companies."*[266] In its Response to the Request for Inspection Management claimed that it had not endorsed the plans and recommended them for approval.

333. In this regard, one of the conditionalities of the LIL was that *"Prior to Department of Forestry and Wildlife approval of any management plan prepared under the project, the Borrower shall furnish the Association a copy of the plan for review and comment."*[267] Implicit in this requirement is that the Bank will review the actions and proposed decisions of the Government, and express its views before action is taken.

334. The Panel can find no evidence that the Project endorsed the plans or recommended that any of them be accepted. In fact, in its letter of November 2005, Management recommended to the Government not to approve the deficient SFMPs, and to pursue alternative forest management systems. (This letter is reviewed in more detail below.) At the same time, the Panel notes that the role of the Project and the role of the FA have become conflated in the minds of many observers.

- **Observations and Findings: the Review of SFMPs and ESIAs**

335. The Management Response acknowledges the weaknesses and deficiencies, highlighted by the GFA independent review, in each of the SFMPs submitted by concessionaires. The Response also acknowledges that the GFA Independent Review of the Strategic Forest management Plans also pointed to the lack of adequate social and environmental assessments. [268]

336. **After reviewing the available evidence, the Panel finds that the SFMPs and ESIAs are deficient in almost all regards from, process to content.** The SFMPs and ESIAs are especially inadequate in four important and interrelated respects: (i) a failure to ensure that local communities will not be adversely impacted by Project-supported activities, (ii) a failure to ensure that appropriate consultation occurred, (iii) a failure to ensure that

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[265] GFA 2005, p. 144.
[266] Request, Attachment 1, p.p. 19, 43.
[267] PAD, p. 11.
[268] Management Response, p.p. 48-49.

appropriate and effective environmental guidelines are in place and (iv) a failure to ensure that concession operations can be carried out to achieve long-term sustainable management of Cambodia's forests.

337. **The Panel recognizes that some Project Management and Staff consistently attempted to press the Government to improve the planning process and to press the concessionaires to conform to the various guidelines for preparing SFMPs. However, as detailed in the sections below, the Panel finds that Bank supervision of the planning and development of the SFMPs/ESIAs was inadequate in that the Bank's level of supervision in general did not match the magnitude of the problems caused by poor SFMPs and ESIAs**.

3. Consultation in Development of SFMPs and ESIAs

338. The Request for Inspection provides numerous examples to indicate that Environmental and Social Impact Assessments prepared by Concessionaires, in fulfillment the Project's goals of consulting with local populations, were woefully inadequate in terms of meeting the Bank's requirements for consultations with local populations.

339. Management reiterates that the Bank "*did not finance any activities of concessionaires and has not accepted or endorsed the claims of concessionaires to have consulted villagers adequately*." On the contrary, according to Management, concession companies have conducted some consultations "*because of the Bank's efforts to improve the Government's management and control over the concession system*."

340. Management also recognizes that it was evident since 2002 that the consultations carried out for preparing the ESIAs/SFMPs were inadequate. As a result, the Bank recommended to hire an international consultant "*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*." Management claims to have monitored the consultation process and raised its inadequacy and weaknesses with the Government. However, Management emphasizes that in "*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*."[269]

341. The inadequacy of the consultations carried out by the concessionaires was also emphasized in the GFA reports. That report, for example, provides a "Synopsis of Conclusions and Recommendations"[270] which contains a

[269] Management Response, p. 32.
[270] GFA 2005, p. 139-157.

summary of "common observations" on all the concessions regarding the quality of their SFMPs and ESIAs (each of which had been the subject of earlier specific observations within the report).

342. Three exemplary paragraphs from that review are quoted below in full. These regard the quality of the handling of social issues within these plans submitted by Concessionaires are paragraphs 16 on consultations and social issues; paragraph 17 on biodiversity issues which mentions also the social issue of cultural and historical sites (about which information must also be obtained by consultation and survey), and paragraph 18 which concludes, from the two prior paragraphs, that the economic viability of the concessions is inflated due to the inadequacy of these surveys and consultations.

> *(16) Social issues of forest management in all plans are inadequately dealt with. Village consultations and participation of communities in the designation of community use areas did take place in some instances, but were inadequate and certainly not following the spirit of the guidelines. Village buffer zones and community use set-asides are incomplete in all plans, and the whole social context of the concession's planning is more than problematic as a result. Even though the TRT initiated community consultations as part of their review process, this should have been performed beforehand by the companies. In none of the concessions permanent Community Consultation Committees (CCCs) were established as stipulated in the Sub-decree on the Forest Concession Management. The critical issue of respect of the legitimate rights of the communities to free access to the use of resin trees and exclusion of traditionally used resin tree species from the harvest, is not accounted for in the SFMPs, particularly no deductions are made from the estimated available yield (EAAY).*
>
> *(17) There is no evidence that biodiversity surveys have been conducted seriously by any of the concessions. The biodiversity set-asides have been allocated to the minimum required size only, located in mostly inappropriate locations and without consideration of the broader landscape within and outside the concession. Other special management areas such as for the protection watershed and soil conservation areas, cultural and historical sites or seed trees were not properly dealt with.*
>
> *(18) As a consequence of deficiencies mentioned under 16 and 17, the result of the Forest Function Zoning is also unsatisfactory, and consequently, the calculated net operable area of all concessions appears to be inflated.*
>
> GFA Terra Systems Report, 2005, p. 144

343. An unusual feature of the Project design is that the concessionaires were given responsibility for carrying out consultation and negotiations with local communities, even on issues such as the use of resin trees. This procedure is problematic under Bank policies.

344. First, as discussed elsewhere in this Report, it is highly unlikely that the concessionaires can impartially carry out the *"meaningful consultations"* required under OP 4.01 when they so clearly have a conflict of interest in the outcome of the consultations and negotiations. It is also unlikely that such a procedure can meet the requirements of OD 4.20 to ensure the "*informed participation*" of the indigenous peoples in addressing issues pertaining to them, and the "*identification of 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*." (OD 4.20 par. 8.)

345. Second, unequal power relationships between the concession companies and the affected people make this type of consultation an inequitable situation. Within the context of recent Cambodian history and conditions, it also makes it very difficult for individuals or local communities to defend their rights.[271]

346. **The Panel notes the unequal power relations between concession staff and local communities. The Panel finds that assignment of the responsibility for consulting with the indigenous peoples to the concessionaires, who are planning to log the forests used by the indigenous peoples, led to a flawed and inadequate consultation process that was inconsistent with OD 4.20.**

[271] The records examined by the Panel show that raw data for any consultation surveys carried out by concessionaires has not been obtained, and would be difficult to compile or check, since the "surveys" or "consultations" generally consisted of meetings at which information on the Project was provided and opinions elicited then written down. Nevertheless, for purposes of eliciting opinions about a project, there is an obvious conflict of interest here on the part of the interviewer, in addition to the fact that respondent confidentiality is not being guaranteed. Insofar as opinion surveys are part of any consultations about the design of a project, results are always questionable unless one can guarantee respondent confidentiality in any opinion survey.

Picture 8 Panel Meets with Project-affected People in Preah Vihear Province

347. The Panel also notes that this kind of arrangement missed the opportunity to fulfill an objective of Bank policies, which is to develop local governmental and nongovernmental capacity within this sector. In this regard, Bank policies encourage lending and development projects to invest in specific kinds of local capacity building. OD 4.20, para 14(c), for example, indicates that the "*institutions responsible for government interaction with indigenous peoples should possess the social, technical, and legal skills needed for carrying out the proposed development activities.*…" It adds that they "*should normally involve appropriate existing institutions, local organizations, and nongovernmental organizations (NGOs) with expertise in matters relating to indigenous peoples*."

4. Public Disclosure of SFMPs and ESIAs

348. The Requesters claim that the Government decided to disclose the SFMPs and ESIAs to the public only for a 19-day period, which included a public holiday, thus reducing the actual time for reviewing the plans and providing comments to two weeks. The tense events surrounding this time period, in October of 2002, are noted above. According to the Requesters, the Bank criticized this limited consultation period but also indicated that it was sufficient to meet the condition of the SAC, and thus did not act to remedy this situation.

349. It is also not clear to the Requesters why the Bank agreed to take up the responsibility to disclose the plans but then "*failed to discharge this responsibility competently.*" They note that the Bank did not have all the

documents, or had only one copy of the plans actually received, and that these copies were in black and white, which would make color maps not understandable. The Requesters also allege that the Bank agreed with the Cambodia Timber Industry Association to release edited copies of the SFMPs in which economic data were omitted.[272]

350. Management Response notes that tensions had developed between the Bank, the FA and NGOs about many aspects of the disclosure of the SFMPs and the subsequent consultation. Management also claims that the disclosure of the SFMPs/ESIAs was an important concern for the Bank "*although not required under Bank policies*."[273] Management also claims that the Government agreed to such disclosure only after pressure from the Bank, and that the consultation period was extended beyond the 19 days from October 29, 2002 to January 31, 2003.

351. In addition, the Response claims that, because of practical issues, color copies were not readily available, but, on November 12, some NGOs representatives were given available color copies at the Bank office and several copies were subsequently provided to NGOs and other interested groups. Management also states that the Bank "*stated the consultations were to be continued with affected communities until there was agreement on a satisfactory plan* [beyond January 31, 2003]; *and only then would plans be approved*." In any event, Management recognizes that the disclosure process and the related expectations could have been planned and managed better. [274]

352. It is evident that the Bank took on some of the responsibility of the borrower with respect to disclosure and related consultations, perhaps with the best of intentions. Not surprisingly, the responsibilities of the Bank and the Government became conflated in the minds of many people. The Requesters therefore perceived the Bank as being complicit in restricting access to full documentation of the SFMPs and in being a party to a faulty consultation process, which included the imposition of unrealistically short periods for the review. The Bank was also increasingly seen as an apologist for the concession system, and was perceived to be going out of its way to push for the legitimization of the concession system at all costs.

353. Management acknowledges that it should have managed the process better, while noting steps it took to improve the process. **The Panel notes this acknowledgement. The Panel finds that the Bank's supervision of this process was not always consistent with OP/BP 13.05,** which require Management to assess risks to implementation, monitor activities, identify problems, and recommend to the Borrower ways to resolve those problems**.**

[272] Request, Attachment 1, p.p. 29-30.
[273] Management Response, p. 40.
[274] Management Response, p. 41.

5. Forest Cover Survey

354. The Requesters claim that the forest cover survey carried out in 2003 was poor in quality and provided a distorted picture of forest quality and cover, which assisted proponents of the concession system to argue the case for continued industrial logging.[275] The Requesters also claim that the study contained internal inconsistencies, methodological weaknesses and basic errors, and that at the very least, poor oversight of this study constituted a breach of OP 13.05 on Project Supervision.

355. The Management Response notes that the FA, with assistance from a qualified international consultant, prepared the forest cover survey, which was intended to provide information about "recent land cover trends" as a basis for discussions of forest management issues nationwide.[276] Management states that the Bank reviewed the TOR of the study with the help of independent specialists and consulted with FA advisers. According to Management, the study methodology does not show specific defects. The Independent Forest Sector Review – a multi-donor sponsored study initiated in 2003 to look into the forestry sector in Cambodia – noted some limitations related to the forest cover survey but "does not dispute its workmanship or technical quality."[277]

356. The Panel is aware that carrying out forest cover surveys and comparing the results with earlier surveys is almost always fraught with uncertainties and difficulties because of numerous variables, such as different photo scales, different standards for categorizing forest and other land use cover and uncertainties with defining boundaries between different land use and vegetation types. Such exercises are generally open to various interpretations and frequently give rise to debate and contention. The present study is no exception.

357. The questionable reliability of some of the data in this study was noted in the report on the forest cover survey.[278] In particular, it was noted that there were *"(…) uncertainties associated with differentiating boundaries in deciduous forest and wood and shrubland non-forest categories (…)."*[279] However, it was felt that there was a *"(…) high degree of precision, especially with regard to the results provided for evergreen and semi-*

[275] The Requesters also claim that the survey wrongly "purported to show that Cambodia's forest cover had increased by more than 4%". The Panel's review of the forest cover survey did not confirm the Requesters' allegation, which seems to be based on a selective use of data provided in this document.
[276] Management Response, p. 46.
[277] Management Response, p. 46.
[278] Fesneau, Vincent, "Trends in land cover changes detection between 1996/97 and 2002 by remote sensing analysis,")Technical assistance to the Forest Concession Management and Control Pilot Project. June 2003, (hereinafter "Forest Cover Survey"), p. 17.
[279] Forest Cover Survey, p.16.

evergreen forests."[280] The raw data for the three cover types: deciduous forest, other forest and non-forest was considered to be unreliable, and the areas estimated for these cover types was considered to be too high.

358. To compensate for the perceived overestimate in area for these categories, arbitrary reductions were applied to the area of deciduous forest to bring them to more realistic values. Three adjustments were tested, 10, 15 and 20 percent, with 15 percent considered to be the *"balancing point…on the basis of its consistency with a probable annual decline of almost 1% from the interpreted area of deciduous forest reported in 1996/1997."*[281]

359. On this basis, a 15 percent reduction was applied to the gross areas of deciduous forest. No adjustments were applied to the areas determined for evergreen and mixed evergreen forest, as the ability to determine the boundaries for these categories was considered to be satisfactory.

360. On the basis of these adjustments, the forest cover report concluded that in 2002, 55 percent to 60 percent of the country was forested,[282] and in the period 1996/1997 to 2002:

> *"There was an average annual rate of loss of forested area in Cambodia that ranged from 0.5% to 1%."*
>
> *"During this same period, there was an annual rate of increase in the non-forested area in Cambodia that ranged from 0.7% to 1.9%."*
>
> *"There was a loss during this period of almost 325,000 ha of evergreen and semi-evergreen forests."*
>
> *"The average annual rate of loss of evergreen and semi-evergreen forests during this period was 1.0%."*[283]

361. The Panel recognizes the limitations of the study (short time for the work, short period of supervision by international consultant, limited financial resources, and the inherent problems associated with carrying out this type of survey). **The Panel, however, finds that there is sufficient evidence to suggest that the work was not carried out to the standards that should be expected for such an exercise. Applying arbitrary factors to the raw data to align them with values that are perceived to be "more correct" constitutes an arbitrary correction that provides an inadequate estimate of this critical data. The Panel also finds that the supervision**

[280] Forest Cover Survey, p.16.
[281] Forest Cover Survey, p.17.
[282] Forest Cover Survey, p.18.
[283] Forest Cover Survey, p.19.

of the forest cover survey was inadequate and did not comply with OP 13.05.

6. Conversion of Forest to Other Land Uses

362. For several decades there has been a steady reduction in forest cover throughout Cambodia with a shift from high forest to degraded forest and agricultural land. Some of the conversion to agriculture has been small-scale, both permanent and shifting, although much has been to larger scale plantation enterprises.

363. It was reported in 2003 that more than 900,000 ha of land had been allocated as agricultural land concessions.[284] It is not known how much of this land originated as forest concessions and was transferred to agricultural concessions once most of the commercial timber was harvested. At the present time many of the forest concessions are depleted of commercial timber, and there are numerous examples of land being converted to large-scale plantations of eucalypts, acacias, rubber and various horticultural crops.[285]

Picture 9 Land Clearing

364. Field inspections carried out during the independent review of the strategic forest management plans reported *"(…) large-scale forest conversion, encroachment for various purposes, of which swidden agriculture by poor new settlers may be the least destructive one. Reportedly, military and other*

[284] Forest Cover Survey, p.15.
[285] Panel interviews in Phnom Penh and observations in the field.

'power-full people' and land speculation play a major role, e.g. in the TPP and Colexim concession areas."[286]

365. A specific example of the scale of the conversion comes from a recent report which refers to a letter written in October 2003 by a provincial politician to the Prime Minister in support of a company requesting permission to construct a 400 km road to connect Mondulkiri to Ratanakiri along the Cambodian-Vietnamese border in exchange for *"(…) land concession with 1 kilometre wide along the road sides (left and right) so that the company will plant rubber-acacia-Chan Kreusna trees and various plants for the company's income source of income (…)*(sic)*."*[287] To allay concerns about any potential damage to the forest it was noted that *"(…) the forest in this region suffered completely destruction (…)"*[288] If this land concession is granted it would encompass an area of 800 sq km.

366. Land conversion and the associated commodification of land (the treatment of land as an article of trade) seems to be developing into a significant movement which some describe as *'land grabbing."*[289] Several observers claimed that *"first the forests were plundered, now the land is being plundered."*[290]

367. It is clear from the reviews of the SFMPs that the stocks of commercial timber in many forest concessions were depleted within a few years and there was little or no intention to manage them as sustainable enterprises.[291] There is also substantial anecdotal evidence that many of these concessions have been re-allocated as land concessions.

368. It is the Panel's view that concession logging has contributed to significant degradation of Cambodia's natural forests and has hastened the conversion of forests to other forms of land use. In the contemporary world, land conversions are often under scrutiny because of, among other things, concerns about social equity and environmental impact. It is worth noting that donor funding is frequently used to regularize and legitimize various aspects associated with the process. In this case the Project played such a role, albeit not in an explicit manner. By legitimizing concession logging the Project became a player, even if an unwitting one, in the overall land transformation process.

[286] GFA 2005, p. 7.
[287] Hibou, Beatrice, *Cambodge: quel modèle concessionnaire ?*, FASOPO, 2005, p. 69.
[288] Hibou 2005, p. 69.
[289] Panel interviews in Phnom Penh. Also, GFA 2005, p. 7.
[290] Panel interviews in Phnom Penh.
[291] GFA 2004 and 2005.

7. Suspension of Forest Concession Logging Activities

369. In December 2001, the Government issued a Prakas (a decree or law) suspending the issuance of any logging permit to the remaining concessionaires until the approval of a new forest concession management plan consistent with the laws and regulations. This suspension of timber harvesting was a significant event.

370. The Prakas required an inventory of logs legally felled prior to January 2002, and stopped the issuance of transport permits to concessionaires unless certain conditions were met. The Government, Bank and other donors were involved in discussions about mechanisms to allow logs already cut to be transported to processing plants. The Bank proposed the establishment of a system that would allow harvested logs to be transported subject to meeting prescribed conditions, including the prior payment of royalties.

371. It is widely claimed that this led to further illegal harvesting of trees, and further illegal log transport. The Requesters claimed that the Bank repeatedly attempted to help a company to overturn the log transport ban. **It is the Panel's view that the Bank's participation in these discussions was appropriate and consistent with policy.** It could be argued, however, that proposing a system by which harvested logs could be transported actually encouraged illegal harvesting and log transport. **The Panel finds that supervision of the Borrower's actions related to the log transport ban could have been better performed to ascertain whether the Borrower implemented the Project with due diligence.**

Picture 10 Logging Truck, March 2005

8. Forest Crime Monitoring: The Independent Monitoring Function

372. Component C of the FCMCPP aimed at strengthening the capacity of the FA to monitor illegal logging and to prevent illegal activities in a regular and systematic way. This Project component was to be implemented through data collection and analysis and by providing equipment, contractual service, training and technical assistance. According to the FCMCPP's PAD, an *"international NGO will function as an independent monitor to provide a check on the accuracy of Government's reporting."*[292] The creation of a Forest Crime Reporting Unit within the Government and reporting quarterly to the public on forest crime monitoring were also Board presentation conditions for the SAC.

373. Initially, the activities of this component were implemented under a separate project financed by FAO/UNDP, the Forest Crime Monitoring and Reporting Project (FCMRP). Global Witness served as the independent monitor from 1999 to 2003. As such, observers widely agree, including Bank Staff interviewed by the Panel, that Global Witness independently and effectively investigated, and reported to the Government, forest crimes and bad practices occurring in Cambodian forests.

374. However, in December 2002, growing tensions between Global Witness and the Government over Global Witness' actions as forest monitor, culminated in the dismissal of the NGO as the international independent monitor. In November 2003, a Swiss commercial firm, Société Générale de Surveillance (SGS), was awarded the contract as independent monitor under the FCMCPP. The FAO/UNDP-funded FCMRP Project closed in December 2003.

375. The contract between SGS and RGC was signed on November 23, 2003. According to its TOR, the monitor is, inter alia, to *"validate that all forest crimes are being reported and that reported actions have been accomplished by the competent agencies of the RGC."*[293] The monitor is thus responsible for verifying the *"government's accomplishments to control forest illegal activity in parks, protected areas and forests."*

376. One component of the monitor's activities is to review documents, including all reports prepared by the Government with respect to the actions taken to report and control forest crimes, and reports provided by alternative sources, such as NGOs, civil society, villagers and media. When reports received are in need of urgent action, they are first subject to a *"credibility*

[292] PAD, p. 5.
[293] Terms of Reference for Independent Monitoring Function. From this point onward all quotations in this section of the Report (Section 8 – Forest Crime Monitoring: Independent Monitoring Function) are drawn from the Terms of Reference for the Independent Monitoring Function

check" and immediately after they are passed on to the Government's competent agency for action.

377. A further critical component of the independent monitor's work, laid out in the TOR, is "*field monitoring of Government actions and achievements.*" This field monitoring is to cover all forest areas by ground check, aerial reconnaissance and analysis of satellite imagery. Selection of the areas for field monitoring depends upon the reports received by the monitor and passed on to the Government's agencies.

378. The TOR also specified that "*there will be no random checking of reported illegal actions that have not already been passed on to the relevant agency for action*." Ground checks will be conducted every quarter over a two or three week period and one day of aerial reconnaissance is to be undertaken each quarter. As to the analysis of satellite data, the areas to be screened are selected based on reports received indicating that illegal activities have taken place. This type of monitoring was to be carried out once in the first year and again in the second and third year at intervals to be agreed at the end of the first year.

379. SGS is to prepare Quarterly Progress Reports, which review the reports from all sources and evaluate the Government's performance, including its response to the so-called incident reports. Incident reports, from NGOs or civil society, provide factual information of incidents or suspected illegal activities. They may also arise from activities that the monitor has discovered accidentally while carrying out its regular tasks. The TOR clarified, however, that the monitor is "*not responsible for undertaking any monitoring or inspections activities for the primary purpose of detecting and investigating such incidents.*"

380. The TORs provided that the monitor's Quarterly Progress Reports are subject to a verification review by the competent Government agency before their public release. The Panel notes that the TORs are not entirely clear regarding how this procedure affects the public release of these Reports. One provision states that the Reports can be released after being verified by the Government agencies, and adds that after 30 working days from submitting reports to the agencies the monitor has the right to release the Reports "*regardless of the verification*."[294] A separate provision states the monitor will disseminate its reports to the public "*after verification*" by the concerned agencies, and adds that "[i]*f the government does not respond within 30 working days*" then the monitor has the right to release the Report.[295] When asked about this verification procedure, SGS indicated that it gives the Government a chance to address the issues before its progress report is released.

[294] TOR, Appendix A, Activity 4.2 (Quarterly Progress Reports).
[295] Ibid, Appendix B (Reporting Requirements)

381. The Panel notes the importance of the task of supporting an independent monitor, an objective of the Project. **The Panel is concerned, however, that the provisions of the TOR preventing the monitor from independently initiating field investigations, and making the release of the monitor's report subject to Government verification, conflict with the objective stated in the PAD to have *"an independent monitor to provide a check on the accuracy of Government reporting."*** The Government verification role may be detrimental to the independence of the monitor, as the reviewing agency may amend monitor's reports before their public release.

382. During its visit to Cambodia, the Panel team met with SGS officials. SGS confirmed to the Panel that field monitoring activities are triggered only by reports received and then passed on to the competent Government agencies. SGS also stated that it may not initiate independent investigations, nor does it have a network of people who can provide additional independent information.

383. During the meeting with the Panel, SGS claimed that little illegal forest activities have gone unreported since it started its monitoring task, and that SGS receives on average one or two reports about alleged illegal activities per month. SGS also maintained that illegal logging is no longer a critical issue in Cambodia.

384. The Panel notes that SGS' view that the issue of illegal logging in Cambodian forests has been successfully tackled is not shared by other Project stakeholders. During the Panel visit, the existence of continuous and widespread illegal logging emerged as perhaps the only common ground between NGOs and concessionaires. (Bank Staff themselves emphasized, in a number of meetings, that illegal logging is still a pressing issue.)

385. The TOR also lay out the criteria that an independent monitor should meet. These include *"at least 15 years working experience in forest resource management and crime monitoring;"* "*significant international context experience related to tropical forests;*" and understanding of the political, economic and institutional issues related to forestry management within the Cambodia context. The independent monitor should also be *"genuinely independent, neutral, credible and responsible"* and *"not connected with any activity besides the activities of forest crime monitoring and reporting*."

386. The records, including information contained in SGS's own webpage, show that the Government of Cambodia awarded SGS a new contract for *"pre-shipment inspection of imports for Cambodia"* in 2004. Research has also shown that SGS has been the pre-shipment inspector since 1995 when the

Government launched pre-shipment inspection services.[296] Media sources also refer to problems SGS has encountered in other countries.[297]

387. **The Panel observes that information about SGS was readily available from various sources at the time that SGS was appointed. However, the Panel could not find in the Project documents an evaluation or discussion of whether SGS fulfills the criteria related to independence required for the independent forest monitor. The Panel finds that this is not consistent with OP 13.05 on Project Supervision.** OP 13.05 requires, among other things, that Management *"identify problems promptly as they arise during implementation and recommend to the borrower ways to resolve them"* and *"ascertain whether the borrower is carrying out the project with due diligence to achieve its development objectives in conformity with the legal agreements."*

9. Bank Supervision Structures

388. The sections above consider specific issues relevant to Project implementation and Management supervision. This section focuses, more generally, on the nature and structure of Management supervision of the Project.

389. The Project operated within a difficult and dynamic political and social environment in Cambodia. The reform process in the forest sector requires change to take place in many aspects of the way in which forests are perceived and managed to ensure that national policy objectives (not least being poverty alleviation) are achieved.

390. In this context, the Project team needed to develop (or be a part of) a broad based constituency for change that embraced Government, donors and NGOs. Implicit in this is the requirement for good management and facilitation skills within the Project team so that a coalition for change could develop momentum and influence outcomes by articulating and pursuing a broadly based agenda.

391. During the inspection, a consistent picture emerged that Project management was perceived as having a narrow focus on concession management (and particularly the technical aspects), as not seeing the big picture, and as being confrontational and divisive with civil society. This led to the unraveling of relationships, with the Bank perceived as being an apologist for the concession system. As a result it became a target for wide spread dissatisfaction.

[296] Pre-shipment inspection identifies goods prior to shipment in terms of quality, quantity, tariff classification, import eligibility etc. so as to assess custom duties and facilitate foreign trade.
[297] See for example, Financial Times, March 13, 1998 edition.

392. It was perceived within the Bank that Management did not handle the situation well. Numerous Supervision Missions took place, but none effectively addressed the underlying issues. The multi-level nature of Management structure appears not to have functioned effectively in engaging the skills, expertise and oversight needed for a Project of this nature.

393. **The Region recognized the existence of significant problems and requested a Quality Enhancement Review.** This was conducted in October 2003, and was an important step in identifying many of the underlying issues and suggesting ways ahead. **Management is to be commended for taking this step**. It is not clear that the key recommendations of the Review have yet been put into place, although some progress has occurred. The results of the QER were discussed at a workshop in Phnom Penh with donors, NGOs and the Government in November 2003 prior to releasing the final tranche of the SAC and extending the Project closure date.

394. Notwithstanding the difficult context within which the Project was operating, **it is the Panel's view that many of the issues raised by the Requesters might not have arisen if the Project had received better supervision. Supervision should have aimed at ensuring that the unraveling of relationships that became apparent during the early years of the Project's implementation was addressed explicitly and quickly. In particular, supervision should have aimed at ensuring that the Project had the capacity throughout its life to develop a broadly based constituency, embracing donors, Government and NGOs, to advance forest sector reform.**

D. Consideration of Project Outcomes

1. Cancellation of Concessions

395. Bank Staff claimed that among the Project's successes is the cancellation of 4 million hectares of land under concessions.[298] As noted above, the QER of the Project carried out in October 2003 also records the 4 millions ha reduction in areas under concession among the successes of the FCMCPP.

396. The table below presents a summary of the concessions cancelled and/or reallocated from 1994 to 2005.

[298] Staff interviews, Washington DC, 2005. See also, Management Response, ¶ 69; and Quality Enhancement Review, p. 2.

Table 4 Concession Cancellation or Reallocation from 1994 to 2005

Year	Concessions cancelled or reallocated	Area of cancelled or reallocated concessions
1994	2	232,374
1996	6	936,841
1997	3	396,960
1998	3	2,137,960
1999	8	2,470,446
2000	4	363,724
FCMCPP commenced October 2000		
2001	No cancellations	0
2002	3	448,700
2003	3	1,171,782
2004	No cancellations	0
2005	No cancellations	0
Total concessions cancelled or reallocated before FCMCPP commenced		
	26	6,538,305
Total concessions cancelled or reallocated after FCMCPP commenced		
	6	1,620,482
Concessions remaining as at November 2005		
	13	2,713,828

Source: Andrew Cock, "A ruling elite's interaction with an externally promoted policy reform agenda: the case of forestry under the second Kingdom of Cambodia 1993-2003," draft PhD dissertation, Latrobe University, expected submission July 2006. The thesis cites multiple sources for the information included in the table above including: Kingdom of Cambodia, Annual Conference on Agriculture, Forestry and Fisheries 2003-2004, 10-11 April 2003; Kingdom of Cambodia, Decision on Cancellation of the Contract of Forest Concessions of 3 Investment Companies, January 18, 1999; Down Jones and Reuters; and Phnom Penh Post.

397. The table above shows that 26 concessions covering 6.5 million hectares were cancelled prior to the commencement of the Project, and only 6 concessions covering 1.6 million hectares were cancelled after the Project commenced. Thirteen concessions covering 2.7 million hectares were still current as at November 2005.

398. The Management Response states that "*Concessions of around one million hectares remain under review*."[299] However, this figure ignored the other seven concessions that are still current. It is claimed by some observers that almost all of the concessions that were cancelled no longer have a significant volume of commercial timber that is attractive to concessionaires.[300] **It is the Panel's view that a natural attrition has been taking place, and it is arguable whether the Project played a significant role in reducing the number of concessions.**

[299] Management Response, p. 9.
[300] Interviews with NGOs in Phnom Penh.

399. In addition, one of the 2003 ESIAs notes the following with respect to the timing of concession systems and the onset of illegal logging in the 1990's:

> *"Almost concurrently with the development of the concession management system in 1994, illegal logging on commercial scales began to appear, fuelled in part by the "Permit to Collect" system and the freedom of provincial and para-military units to seek their own revenue. Most of these collection permits were not issued by the Forest Administration*."[301]

400. It became widely acknowledged that there were many vested interests (national and international) involved in concession and other logging in the country. Capacity within the Government to manage the vested interests and a concession system covering such a vast area of the country was extremely limited, and by 2000 the situation had developed to the stage where it was described as *"a total system failure, resulting from greed, corruption, incompetence and illegal acts that were so wide spread and pervasive as to defy the assignment of primary blame."*[302]

401. The Panel also notes the statement by Management, in its Response, that the Bank does not take sides regarding existing investment contracts between its members and the private sector.[303] Management indicates how this position limited its ability to pursue options relating to the concession process.[304]

402. In the context of potential grounds for cancellation of concessionaire contracts, Management states that the Bank encouraged the Government to seek legal advice on its options, but did not urge the Government to breach existing concession agreements, nor did the Bank encourage any such breach.[305] Management said that in the past, it had been alleged that Bank involvement in review of contracts between members and the private sector amounted to tortious interference.[306] Therefore, Management indicated that reform could only occur gradually and as a result of Government, not Bank, action.

403. At the same time, however, Management also attributed the significant reduction in concessions directly to the FCMCPP.[307] The Bank states that "*much of the information and standard-setting arising from Bank projects*

[301] "Consolidated ESIA Report as integral part of the Strategic Forest Management Plan" for Kratie/Stung Treng Forest Concession of Everbright CIG Wood Co. Ltd. September 2003. p. 4.
[302] Fraser Thomas 2000, p. v.
[303] Management Response, p. 27.
[304] Management Response, ¶ 64.
[305] Management Response, p. 27.
[306] Management Response, p. 27.
[307] Management Response, p. 27.

has influenced the cancellations."[308] Under this view, Bank action had a direct effect on the cancellation decisions ultimately made by the Government, and furthermore, this effect was desirable.[309]

404. As noted above, the Panel found that natural attrition is taking place in concessions. The fact that the Bank is willing to portray substantial influence on Project outcomes, however, while also implying that the Bank did not seek cancellation of concessions, is notable. The Panel notes that this could be viewed, perhaps, as sending mixed signals. It also raises the question of whether Bank concerns regarding potential liability in tort were well-founded, or rather functioned to justify a more limited, modest approach to concession reform.

2. Assessing the Project

405. The Panel observes that there are at least three different points of view in assessing the World Bank Forestry Project in Cambodia in implementing the Bank's policies and procedures. These emerged from discussions with Management and Staff and other experts.

406. The first point of view is that the Project has been a success. In line with Bank policies, it intervened in the forestry sector at a critical period when there was widespread destruction of forests and focused successfully on canceling forest concessions, significantly slowing illegal logging and obtaining the public disclosure of the concessionaires' sustainable forestry management plans. In this view, the Project could have been even more successful in achieving the objectives of Bank policies if those who conceived and implemented it initially had been able to continue to focus on reforming the concession system. The LIL was an appropriate instrument for providing support quickly in the forest sector.

407. The second point of view is that the Project was consistent initially with Bank policies, because it resulted in the cancellation of a significant number of forest concessions that did not meet criteria established pursuant to Bank policies, and because it slowed illegal logging; but after this initial success, the focus of the Project should have shifted to other ways of achieving sustainable forest management in line with the objectives of Bank policy. These include community forestry which, while formally within the scope of the Project, was not implemented.

408. The third point of view is that the Project unintentionally contributed to the continued destruction of the forests because of its nearly exclusive focus on

[308] Management Response, p. 27.
[309] See Management Response, ¶ 53, states: "*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*."

reforming the concession system, which resulted at least in part from a failure to comply with Bank policies. According to this view, the Project did not result in significant cancellation of concessions that would otherwise have continued operations, and it appeared to legitimize the operations of concessionaires who had not yet drafted acceptable sustainable forestry management plans but could tout approval for the concession process from the World Bank. In this view, the exclusive focus on reforming concessionaires led to the neglect of other approaches to reform in the forestry sector, such as community forestry. Associated with this view is the belief that the LIL was an inappropriate instrument for the Project, because it was used as an instrument of convenience for getting support quickly to the country and led to bypassing normal safeguard procedures, rather than as a learning instrument for the application of results on a broader scale.

409. **The Panel finds that the World Bank's willingness to become involved in the forestry sector at a time when others would not was commendable. It recognizes the dedication of Staff and the risks that they took. However, the Panel also finds that the third point of view has some merit**. Certainly in the design and implementation of the Project, the Panel detected a nearly exclusive focus on reforming forestry concessions, a view that this could be done effectively on a technical basis, and a reduced emphasis on compliance with safeguard policies. Thus the necessary national strategic policy discussion that Bank policy requirements would have triggered did not occur. This may have unintentionally contributed in the long run to prolonging a bad situation. In addition, the Project's focus on concession management to some degree served to legitimize the concessions.

410. **The Panel finds that the LIL was not designed for the kind of forestry project for which it was used in Cambodia, and the use of the LIL, while enabling the funds to be disbursed quickly, facilitated Project classification as Category B and lesser attention to Bank safeguard policies and procedures, which in the long run proved costly**.

411. It is easy to judge in hindsight, and the Panel would like to reiterate that no Project could have produced perfect outcomes in the extremely difficult environment in Cambodia. **The Panel is particularly impressed that there may now be an important opportunity for Bank involvement in the forestry sector with a different and more diverse range of activities**.

412. The Bank's November 2005 letter to the Government of Cambodia is especially noteworthy in this regard. In this letter, the Bank stated that, in light of the independent evaluations of the SFMPs and based on ongoing dialogue, *"concessionaire performance is unlikely to improve and concessionaires are unlikely to meet their contractual and legal*

obligations." The Bank recommended, as a result, that the Government "*take appropriate action in accordance with the rights available to it under Cambodian law and under the concession contracts (including any right it has to terminate these contracts) to bring this unsatisfactory state of affairs to a quick conclusion.*" The Bank further urged the Government to plan for sustainable management of areas that will be liberated from concession and to conduct an assessment of these areas, especially those particularly threatened by illegal logging and land grabbing. In addition, the Bank recommended the Government to consider "*expansion of community or commune-based forest protection and/or land titling for small holders*."

413. **The Panel** notes the Bank's consideration of the independent evaluations and ongoing dialogue on these matters, reflected in this letter, and **considers that the November 2005 letter outlined productive ways of Bank support for the forestry sector which are consistent with the findings of the Panel's Report.**

Annex A

Table of Findings

ISSUE	MANAGEMENT RESPONSE	PANEL'S FINDINGS
	PROJECT CONCEPT AND DESIGN	
Project Focus on Concession System	Bank's objective in Cambodia was to help build foundations for sustainable development and poverty reduction. LIL did not seek to promote existing concession system, but instead sought to assist Government to make regulation of forestry sector more effective and equitable. Working for gradual reform of concession system was most appropriate at the time. Project was based on extensive prior studies as well as Bank supervision of TA Project and Bank/FAO/UNDP Forest Policy Assessment.	Panel, in principle, commends Management for engaging in forestry-related work in Cambodia. Panel recognizes that this required the courage to be a risk taker, knowing that the work was important for poverty reduction and development. In such context compliance with safeguard policies is essential, even though transaction costs may be higher. In Project's focus on concessions, other aspects that were important to Bank program in Cambodia and to Government were largely ignored or at least marginalized throughout the planning phase of the Project. In particular, Project did not seem to take on using the potential of forests to reduce poverty. Project did not give adequate attention to vital interests of local communities and indigenous peoples in forest resources, and to contested nature of forest domain. Bank chose to give primary emphasis in Project's design to the technical and financial aspects of concession reform at the expense of environmental and social aspects. It thereby lost opportunity to lead debate on much needed reform in forest sector so that forests could be sustainably managed for the benefit of all Cambodians.
Guidelines and Procedures for Concession Areas	Planning and operational guidelines were prepared to guide planning of forest management at strategic, compartment and coupe levels, and are in compliance with Bank policies.	Panel is concerned that, with respect to social aspects, certain parts of guidelines developed under Project to guide concession review process do not meet Bank safeguard policy requirements and do not provide adequate framework for Government to decide on any future forestry concessions. Unless properly remedied, Project will not achieve one of its main objectives to demonstrate and improve effectiveness of comprehensive forest management and operational guidelines in forest concession areas.

		For example, guidelines do not require IPDP-type plan be prepared to address impacts of concessions on affected indigenous peoples, and do not include provisions to compensate people who would be involuntarily deprived of tradition access to usufruct rights over resin tress
Choice of LIL as Financing Instrument	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. Bank policy dialogue was conducted through 2000 SAC, which contained conditions regarding a broad range of forestry issues raised by earlier Bank-supported analysis. Strategy chosen enabled Bank to carry out more intensive and higher level dialogue than would otherwise have been possible.	Main aim of loan was to support a legal and regulatory program on the basis of which long-term concessions were to be granted. This cannot easily be regarded as a "learning and hypothesis-testing" exercise. Elements conditioning use of LIL instrument do not apply convincingly to the Project. LILs may not be appropriate when policy framework is poor and borrower commitment and ownership especially weak. These two conditions were present at time of design of Project and provide further indication of problems of using LIL as framework for Project. Management could have foreseen that this type of Project might not be effective in present political context, particularly by time of Project inception when a number of sector studies had been carried out.
ENVIRONMENTAL COMPLIANCE		
Bank Involvement in Project	Project is in compliance with OP 4.36. Both design of activities to be financed and assessment of Government commitment followed the guidance of OP 4.36 and were based on frank dialogue with Government and consultation with other donors and NGOs. Bank consulted with Government and received repeated assurances of commitment to a sustainable forest policy.	Decision to work on concession issue is not inconsistent with objectives of OP 4.36. Bank is in compliance with paragraph 1 (a) of OP 4.36, because it did not finance logging or logging equipment. Bank's view that Government's commitment to sustainability was consistent with OP 4.36 when Project was formulated may have been based on wrong assumptions. Given rampant forest destruction and community abuses already occurring, Bank should have taken greater pains and exercised greater caution to ensure its compliance with Bank Forestry policy. Project's design created a structure likely to lead to inadequate levels of local involvement, community consultations, and social and environmental assessment. This does not comply with OP 4.36 and

		other Bank policies.
Identification and Protection of Forests of High Ecological Value	Bank has not financed logging or infrastructure in high ecological value areas (or any others). Bank has supported studies under Biodiversity Management and Protected Areas Project to address Prey Long. Standards and guidelines developed for and under FCMCPP address micro-level considerations by requiring mapping of forest use, including environmentally and socially sensitive Special Management Areas.	Prey Long forest is one of few remaining areas of relatively undisturbed dense semi-evergreen lowland forest in Indo-Chinese province of the Indo-Malayan Realm. It merits consideration as "forest of high ecological value" and this should have been obvious to Bank Staff during both design and implementation stages of Project. Prey Long forest is presently covered by three concessions, and is at risk of sustaining serious damage if industrial scale logging is carried out. While Bank did not finance harvesting of high value forests, it did not ensure that potential high ecological value of Prey Long forest was explicitly identified in early years of Project and taken into consideration during development of relevant SFMPs, as required by OP 4.36.
Identification and Protection of Natural Habitats	Project is in compliance with OP 4.04 because no concessions have been issued as a result of Project. Guidelines for SFMPs include various provisions ensuring identification, assessment and planning for critical habitats.	Most of Cambodia's forests that have been, or could be, subject to industrial logging fall into the category of natural habitats for the purpose of OP 4.04. Industrial logging, as carried out by concessions in past, has caused significant loss of natural habitat and destruction of spirit forests without any consideration of their spiritual or cultural values. It has also, in many cases, opened door to conversion of natural habitat to non forest land uses While Project did not explicitly support significant conversion of natural habitats, Project design and planning did not adequately recognize existence of natural habitats, particularly critical natural habitats. As a result, essential information to enable their protection was missing in concession planning and approval process. This is not consistent with OP/BP 4.04 on Natural Habitats.
Need for Environmental Assessment	No EA was prepared before appraisal. However, Project design explicitly recognized environmental and social problems existed in 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. Value added of additional up-	One could hardly overemphasize negative effects of logging on a natural habitat of world class value and most importantly on very poor and vulnerable rural communities and indigenous peoples Many alternative approaches and measures exist to reduce or avoid impacts of logging. These could and should have

	front impact analysis was, therefore, questionable, and a "process-oriented" approach was considered preferable. Furthermore, prior to project appraisal, studies under TA Project examined social and environmental issues. Since this was not a Category "A" Project, no "A"-level EA process was required. In this case, because no form of prior EA report was undertaken, no findings or results could be described in either PAD or PID, as stated in OP 4.01. In addition, PID did not record type of environmental impacts, make note of the type of EA or EA instruments needed or of a proposed consultation schedule. Processing requirements for LIL were not well developed at the time. Bank was not in full compliance with OP 4.01.	been considered within appropriate environmental assessment. PAD and other project formulation documents did not contain adequate analysis of environmental issues surrounding the Project, as is required by OP 4.01.
Environmental Categorization of the Project	Decision to classify Project as a "B" was correct and appropriate. Categorization of a project depends on various factors, including nature and magnitude of its potential environmental impacts, and is normally based on expected impacts on-the-ground. Forestry projects in region have been categorized as "A" typically when they involve direct investment in production forestry or in plantation activities. Other recent forestry projects have been categorized as "B" when their primary goal is improved forest regulation, planning or conservation. "B" rating was based on Project 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.	Given very serious potential impacts, and close association of Project with these impacts, Project should have been placed in Category A, and a full EA should have been carried out. By failing to do this, Bank did not comply with OP 4.01. Careful study and debate by multiple parties, as required for Category A project under OP 4.01, could have helped avoid serious errors in design and implementation of Project. This type of assessment might have led, for example, to greater focus on alternative approaches to industrial scale logging, such as various types of community and partnership forestry.
	SOCIAL COMPLIANCE	
Need for Social Assessment	"Social Forestry Guidelines for Forest Concessions" provided foundation for addressing social aspects and consultation processes during Project. Project also builds on previous TA Project, ADB supported consultations and Bank work during the identification mission as well as several studies done during the prior TA Project that addressed logging impacts on communities and for which	Forests form a crucial part of the survival strategy of the rural poor, who depend on and use forests in a great variety of ways. Forests are particularly important for indigenous peoples, who live in the more remote and isolated regions of the country. Forests comprise their cultural and spiritual home, and are the basis of their economic identity. Lack of social assessment specific to this

	consultations were conducted. Bank was not in full compliance with OD 4.20 and in hindsight, screening studies and a framework IPDP, and more discussion of the issue, would have been more appropriate during Project design. Bank has been concerned from 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. Intention was to give attention to social issues at all levels, but it was anticipated that deficiencies would occur especially at strategic level, because of large areas, large number of villagers, and long-term planning horizon (25 years).	Project has had serious consequences for Bank's ability to comply with its operational policies from design through implementation phases of Project.
Identification of Affected Population and Project Area	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. Value added of additional up-front impact analysis was, therefore, questionable, and a "process-oriented" approach was considered preferable. In this case, Bank advised 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.	In this case, a safeguard postponed is a safeguard denied, because by failing to identify beforehand affected population, Bank policies requiring consultation and participation of that population could not be properly followed. Even at delayed date, Bank focused only on areas covered by concessions to define Project area. This led to overly restrictive definition of Project Area. As a result, Project's social impacts were significantly understated and Bank social and environmental safeguards not applied to proper area and population. This is not consistent with the applicable Bank policies, OP 4.01 and OD 4.20.
Impacts on Local People of Illegal Logging of Resin Trees	Prior to Request, Bank was not informed about logging of resin trees and claims of harm by concessionaires, as cited in Request, and has not had an opportunity to investigate. Full extent of the resin tree issue in Cambodia emerged during implementation of the Project and the Bank has supported studies to address issues (BNPP-supported work on biodiversity by WCS), including those cited in Request. Bank has not financed any logging and is not responsible for damages that may be result of third parties, including concessionaires, guards, military forces or others acting in violation of Cambodian law. Inclusion of standing	Importance of resin harvesting for many rural Cambodians was apparent to the Panel. Information indicates threat of logging concessions to trees tapped for resin is very severe because resin tapping makes up a significant portion of the income for approximately 100,000 people. Illegal logging of resin trees has had major negative consequences on Requesters and local people. Bank was frequently made aware of numerous complaints of harms to local communities due to cutting of resin trees. Bank's failure to consider and investigate these problems does not comply with OP 4.01

	trees in the forest inventory does not determine the harvesting strategy. Management recognizes that tapping resin is an important source of income for rural Cambodians, that industrial forestry can be in "direct conflict with resin utilization" and that, as a result, "careful planning to exclude trees used for resin from the harvesting program" is required. Concessionaires plan their operations at their own risk, and nothing in the TRT work implies a commitment to or guarantee of concession continuation.	and OP 4.36. An assessment or inventory should have been part of a proper environmental assessment, and should have been subject of a participatory survey and inventory at early stage of Project. Failure to do so was not in compliance with OP 4.01. System to review concession plans failed to have a policy disqualifying concessionaires who were engaged in illegal logging of resin or other trees. This seems to constitute flaw in design which is inconsistent with the general spirit of the Bank's Forest Policy
Consultations with Affected People during Project Preparation	Consultations specific to EA were not carried out because no EA was prepared prior to the Bank's approval of the LIL As no EA was undertaken prior to project appraisal, there were no consultations specific to the EA process. Local-level consultations on the proposed Project concept should have been held at selected concession location. Project builds on the previous TA Project, ADB supported consultations and Bank work during the identification mission. In 1998, Bank held consultations with conservation and social NGOs to assist Government in preparing forestry regulations, guidelines and codes, and in 1999 it discussed the Project with Government, industries and NGOs before the Loan approval at a workshop on forest certification The quality of some consultations may have been affected by presence of higher level Government officials, especially forest officials. However, by the time of project appraisal, it was determined that there was sufficient information about social and environmental aspects of the concession management system to design a process to address these aspects.	Bank's decision to postpone active social assessment and consultation procedure until preparation of ESIAs by concessionaires is not consistent with Bank policies, including OP 4.01, OP 4.04 and OD 4.20, which require early consultations and/or surveys in preparation phase. Panel recognizes challenges of consultation at time of Project design, but notes that this does not diminish need and importance for such consultations. Lack of early consultation greatly reduced Management's capacity to be informed of critical concerns relating to indigenous peoples, resin tapping, local community ownership of trees, community forestry initiatives, and other matters of central importance to the affected communities.
Preparation of an Indigenous Peoples Development Plan	Applicability of OD 4.20 was recognized during preparation but no efforts were made to develop policies and plans in accordance with OD 4.20. Rather, project approach was to develop, together with and as part of general consultation process, criteria and guidelines for community	Indigenous peoples live in heart of lands subject to concessions. As noted above, forests comprise their cultural and spiritual home and are the basis of their economic identity. Panel notes Management's acknowledgement that framework IPDP

	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. Bank was not in full compliance with OD 4.20 and, in hindsight, screening studies and framework IPDP, along with more discussion of the issue, would have been appropriate during project design.	would have been more appropriate during Project design and finds that in line with OD 4.20, IPDP should have been prepared for this Project. Many of prerequisites for IPDP are lacking. Had they been developed, many of the problems that have afflicted Project would have been recognized and might have been corrected.
Cultural Property: Spirit Forests and Archeological Sites	Project complies with OPN 11.03. SFMPs and ESIAs have not been "approved" (Government review process is ongoing) and the Bank has not conveyed any endorsement. On the contrary, Bank has expressed serious reservations, specifically concerning spirit forest/sacred sites and other sites of social and cultural significance to local communities. Guidelines developed under Project call for identification and designation of Special Management Areas and specifically refer to sacred groves, spirit forests and archaeological sites.	Spirit forests are recognized throughout Cambodia, and have status as protected areas under Bank Policy OPN 11.03. To leave determinations about spirit forests to concessionaires, to include within their proposed SFMPs, is inconsistent with OPN 11.03. There is widespread presence of long-recognized, important archeological sites in Cambodia, including in heavily forested areas, and "archeological tourism" is important to Cambodia's economy. Procedure used by Project to identify important cultural properties relied on the concessionaires to include them within their proposed management plans, without provision for reporting their existence to appropriate agencies or including appropriate specialists. This does not comply with the minimum level of protection and enhancement of cultural properties envisioned within OPN 11.03. It also potentially entails serious damage to cultural properties because it fails to include provisions for protecting, from future looting, sites that may be discovered.
PROJECT IMPLEMENTATION AND SUPERVISION		
Technical Assistance Provided	Project did not target concessionaires as recipients of TA and none has been provided through FCMCPP. Nevertheless, as part of implementation of its regulatory process, Government provided direction to ensure consistency and quality in data gathering, analysis and presentation. Government establishes and explains objectives and standards; private industry must meet standards, either from own resources or by hiring competent technical expertise, in	Panel did not find evidence that technical assistance was provided directly to companies. Rather, consistent with OP 13.05, Bank focused its technical assistance on building capacity of the Forest Administration to oversee development of SFMPs by companies.

	seeking approval. Technical direction by regulatory authority is necessary and was not considered as technical assistance as such.	
Review of SFMPs/ ESIAs	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 noncompliance with Cambodian forestry regulations. 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. Scorecard system is evaluation methodology created within the FA, and results generally support the validity of the system as 9 out of 15 concessions were recommended for rejection. Bank established its prerogative to review and comment on forest management plans prior to their submission for final approval. Bank is aware of deficiencies of the plans and has not endorsed or recommended them for approval.	Notwithstanding efforts by Management to address problems that arose, significant problems persisted in reviews and drafts. These included: failure to disqualify companies who had engaged in past illegal logging practices; disincentive to identify and remove spirit forests from areas proposed for logging; conflict of interest issues; and inclusion of resin trees in proposed annual allowable cuts. After reviewing available evidence**,** Panel considers that SFMPs and ESIAs were deficient in almost all regards, from process to content. Panel recognizes that some Management and Staff consistently attempted to press the Government to improve planning process and to press concessionaires to conform to the various guidelines for preparing SFMPs. However, Bank supervision of planning and development of SFMPs/ESIAs was inadequate in that Bank's level of supervision in general did not match magnitude of the problems caused by poor SFMPs and ESIAs.

Consultations and Disclosure in the Development of SFMPs/ ESIAs	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 Bank's efforts to improve Government's management and control over the concession system. 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: in April 2004, a social forestry consultant was selected to begin these tasks, which are still ongoing. Bank has monitored consultation process and called Government's attention to weaknesses and limitations in repeated Management letters and meetings. Disclosure of SFMPs/ESIAs was important concern for Bank although not required under Bank policies. Government agreed to such disclosure only after pressure from Bank, and the consultation period was extended beyond the 19 days from October 29, 2002 to January 31, 2003. Bank stated the consultations were to be continued with affected communities until there was agreement on a satisfactory plan and only then would plans be approved. Disclosure process and related expectations could have been planned and managed better.	Panel notes unequal power relations between concession staff and local communities. Assignment of responsibility for consulting with indigenous peoples to the concessionaires, who are planning to log the forests used by the indigenous peoples, led to a flawed and inadequate consultation process inconsistent with OD 4.20. Panel noted significant concerns and tensions that arose during the consultation and disclosure process, referred to both in Request and Response. Management acknowledges that it should have managed the process better. The Panel notes this acknowledgement, and finds that Bank's supervision of this process was not always consistent with OP/BP 13.05.
Forest Cover Survey	FA, with assistance from qualified international consultant, prepared the forest cover survey, which was intended to provide information about recent land cover trends as a basis for discussions of forest management issues nationwide. Bank reviewed TORs of the study with the help of independent specialists and consulted with FA advisers and concluded that study methodology does not show specific defects. Independent Forest Sector Review noted some limitations related to forest cover survey but does not dispute its workmanship or technical quality. Bank states there have been complaints that the results of the study have been misquoted.	Recognizing limits in conducting the forest cover survey (e.g., short time for work, limited resources), there is sufficient evidence to suggest that work was not carried out to standards expected for such an exercise. Applying arbitrary factors to raw data to align them with values perceived to be "more correct" constitutes an arbitrary correction that provides an inadequate estimate of this critical data. Supervision of the forest cover survey was inadequate and did not comply with OP 13.05.

Conversion of Forest to Other Land Uses Claims	In 2003, Bank mobilized a resettlement specialist to consider claims by NGOs that stockpiles associated with Colexim concession and an adjacent rubber plantation resulted from socially disruptive logging and land development. Bank noted serious problems with land development process and absence of adequate planning and social safeguards in rubber plantation project (which was not Bank financed).	Concession logging has contributed to significant degradation of Cambodia's natural forests and has hastened conversion of forests to other forms of land use.
Suspension of Forest Concession Activities	Bank endorsed December 2001 Prakas banning log transportation and suspending harvesting operations. Bank has been cautious in its approach and mindful of local community and civil society concerns.	Suspension of issuance of logging permits to remaining concession companies, until approval of new forest concession management plan consistent with laws and regulations, was significant event. Bank's participation in discussions about mechanisms to allow logs already cut to be transported to processing plants was appropriate and consistent with policy Supervision of Borrower's actions related to log transport ban could have been better performed to ascertain whether Borrower implemented Project with due diligence.
Monitoring	Forest crime is independently monitored by SGS. 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." Since 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.	Panel notes importance of having independent monitor, which was a Project objective. Panel is concerned, however, that provisions of the TOR preventing the monitor from independently initiating field investigations, and making the release of the monitor's report subject to Government verification, conflict with the objective stated in the PAD to have *"an independent monitor to provide a check on the accuracy of Government reporting*." Panel could not find in the Project documents evaluation or discussion on whether SGS fulfills criteria related to independence for independent forest monitor. This is not consistent with OP 13.05.
Supervision	Since approval of Project in June 2000,	Many issues raised by Requesters might

Structures	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 Government, donors, and other partners. Bank has utilized a substantial supervision budget including trust funds, especially relative to the Credit amount. Actual resources devoted to supervision are greater than accounting records indicate, since forestry policy and governance issues were also supervised under SAC and the project has benefited from these efforts. Bank-led multi-donor supervision mission, proposed to coincide with Government's MTR, was cancelled due to criticism by several NGOs of the TOR and proposed mission Staff composition. Small Bank supervision mission was later fielded to discuss MTR findings in May 2003. At request of East Asia and the Pacific (EAP) Region, a voluntary QER was organized by Quality Assurance Group (QAG) in October 2003.	not have arisen if Project had received better supervision. Consistent picture emerged of Project management perceived as narrowly focused and not seeing big picture. Multi-level nature of Management structure appears not to have functioned effectively in engaging skills, expertise and oversight needed for Project of this nature. Region recognized existence of significant problems and requested a Quality Enhancement Review. Management is to be commended for taking this step. Supervision should have aimed at ensuring that the unraveling of relationships that became apparent during the early years of the Project's implementation was addressed explicitly and quickly. In particular, supervision should have aimed at ensuring that the Project had the capacity throughout its life to develop a broadly based constituency, embracing donors, Government and NGOs, to advance forest sector reform. Panel appreciates effort by Management, in its Response, to identify lessons learned, and considers that this effort contributes constructively to promoting effective design and implementation of development projects
CONSIDERATIONS RELATED TO PROJECT OUTCOMES		
Cancellation of Concessions	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. While cancellations are Government's responsibility, much of information and standard-setting arising from Bank projects has influenced the cancellations. Bank does not intervene nor take sides on existing investment contracts between its member countries and private sector. Among Project's successes is the cancellation of 4 million hectares of land under concessions. Concessions of around one million hectares remain	Twenty-six concessions, covering 6.5 million hectares, were cancelled prior to commencement of Project, and thirteen concessions, covering 2.7 million hectares, were current as of November 2005. Some claimed that almost all concessions cancelled no longer had a significant volume of commercial timber attractive to concessionaires. Natural attrition has been taking place, and it is arguable whether Project played a significant role in reducing number of concessions.

	under review.	
Assessing the Project	Bank recognizes risks posed by Cambodian forest concession management system and has consistently tried to mitigate risks concessions pose to local communities and environment throughout its work. This is why Bank has promoted development of a formal system for concession planning that includes predictable opportunities for transparency and public input. 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, Bank ensured that draft SFMPs were made available through its Cambodia office, has endeavored to bring social forestry expertise into management of concession system, and commissioned independent consultants to review the assessments of concession plans prepared under the project. 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. Within forestry sector, and again in consultation with other donors, 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, taking into account the complexity of the situation and systemic problems (corruption, lack of transparency). The discussion highlights, among other things: constraints in pursuing options due to the Bank's position not to take sides on existing legal concession contracts; the importance of early local community involvement; the need to be outspoken, including with the	Bank's willingness to become involved in forestry sector at a time when others would not was commendable. Panel recognizes dedication of Staff and risks they took. However, in design and implementation of Project, Panel detected a nearly exclusive focus on reforming forestry concessions, a view that this could be done effectively on a technical basis, and a reduced emphasis on compliance with safeguard policies. Thus the necessary national strategic policy discussion that Bank policy requirements would have triggered did not occur. This may have unintentionally contributed in the long run to prolonging a bad situation and to some degree served to legitimize the concessions Panel finds that LIL was not designed for the kind of forestry project for which it was used in Cambodia, and use of LIL, while enabling funds to be disbursed quickly, facilitated Project classification as Category B and lesser attention to Bank safeguard policies and procedures, which in the long run proved costly. Panel notes that no Project could have produced perfect outcomes in the extremely difficult environment in Cambodia. There may now be important opportunity for Bank involvement in the forestry sector with a different and more diverse range of activities. Panel considers Bank letter to Government of November 2005 outlined productive ways of Bank support for the forestry sector which are consistent with the findings of Panel's Report.

	Borrower, in the face of significant problems; and the potential value of specifying conditionalities on social concerns in the legal agreement.	

Annex B

Ethnic Minorities and Indigenous Peoples of Cambodia

Dr. Paul Michael Taylor

This Annex to the World Bank Inspection Panel's report on Cambodia's Forest Concession Management and Control Pilot Project (FCMCPP) summarizes recent literature, cited below, about the designation or classification of indigenous peoples of Cambodia. The World Bank's Operational Directive 4.20 (par. 3), which was the policy in effect at the time of the FCMCPP, defines "*indigenous peoples*" as "*social groups with a social and cultural identity distinct from the dominant society that makes them vulnerable to being disadvantaged in the development process*." The same Directive (par. 4) notes that "*national constitutions, statutes, and relevant legislation*" of many member countries "*include specific definitional clauses and legal frameworks that provide a preliminary basis for identifying indigenous peoples*." The subsequent paragraph, after admitting that "[b]*ecause of the varied and changing contexts in which indigenous people are found, no single definition can capture their diversity,*" provides substantial additional guidance:

> *Indigenous people are commonly among the poorest segments of a population. They engage in economic activities that range from shifting agriculture in or near forests to wage labor or even small-scale market-oriented activities. Indigenous peoples can be identified in particular geographical areas by the presence in varying degrees of the following characteristics:*
> *(a) a close attachment to ancestral territories and to the natural resources in these areas;*
> *(b) self-identification and identification by others as members of a distinct cultural group;*
> *(c) an indigenous language, often different from the national language;*
> *(d) presence of customary social and political institutions; and*
> *(e) primarily subsistence-oriented production.*
>
> (Operational Directive 4.20, par. 5)

The policy recognizes that the definition of "*indigenous peoples*" is not clear-cut, and it states that "*Task managers (TMs) must exercise judgment in determining the populations to which this directive applies;*" adding that they should also "*make use of specialized anthropological and sociological experts throughout the project cycle*."

While much advocacy and anthropological literature on indigenous peoples has concentrated on the Americas, a considerable body of recent literature also assesses the concept of "*indigenous peoples*" in Asia.[310] There is also ample precedent within Cambodian ethnology, past Constitutions, and past and current legislation and political

[310] See survey in Barnes et al. 1995 (including Kingsbury 1995); and the survey of development efforts and indigenous peoples of Southeast Asia by McCaskill and Kampe (1997); and also Duncan 2004. For English-language discussions of indigenous peoples of Cambodia, see especially ADB 2002, ICES 1995, White 1996, and Ovesen and Trankell 2004.

practice since the French colonial period for special consideration of the vulnerable status of Cambodian indigenous peoples in development projects, including those populations mentioned in the FCMCPP Request for Inspection.

Cambodia's difficult, war-torn recent history, with changes in government associated with substantial changes in national legislation, has had significant implications for the status of Cambodia's ethnic minorities. And yet, as Ovesen and Trankell (2004) point out, Cambodia is unusual within Southeast Asia for its small ethnic minority populations, both in absolute numbers and as a percentage of the population. Of Cambodia's approximately ten million inhabitants, almost 90 percent are ethnic Khmer. Furthermore, although the historic ethnic composition of Cambodia during the Angkor kingdom is unknown, the dominance of this historic Khmer kingdom within and beyond the current boundaries of Cambodia has very probably entailed many centuries of significant linguistic and ethnic "*Khmerization*" (or convergence of other languages and ethnic traditions toward those of the Khmer who were historically dominant in the region).

Much of the literature on minority populations within Cambodia contrasts images of minority groups with those of Khmer. Such literature has often emphasized the image of Cambodia, or of the Khmer, as an agrarian society whose primary crop is paddy rice. Ovesen and Trankell note that for many Khmer "*the ideal society is one of rice-farming peasants, for whom cities are alien and unnecessary*."

> *This ideal was most explicitly pursued by the Khmer Rouge, but has been implicit through all postcolonial regimes. Apart from being the sites of royal palaces and religious monuments, cities do not figure positively in the Khmer imagination. Trade and commerce was traditionally the province of women and foreigners, and state administration used to be handled by the semidivine king and his appointed mandarins (until the French took over, but in any case it was not the affair of ordinary Khmer people). Thus there is an implicit association between urban life and foreign, non-Khmer customs. The traditional "foreigners" in Cambodia are the Chinese and Vietnamese, and these have always to a large extent been urban populations (…). The rural-urban opposition is thus a significant dimension of ethnic relations.*
>
> Ovesen and Trankell 2004:244

Although Cambodia's Chinese, Thai, and Vietnamese are ethnic minorities, and are the subject of considerable literature on ethnic relations, these minorities do not fit the standard definitions of indigenous populations and have not been considered as such in other World Bank projects.

The ethnographic study of Cambodia's other non-Khmer populations has a long history, and the French colonial government employed ethnic categories it its administration while French ethnologists extensively studied the linguistic and cultural classification of the non-Khmer ethnicities (Bourdier 1996; see also bibliographies of studies on each ethnic group in Lebar, Hickey, and Musgrave 1964). Edwards (1996) has

argued that such classifications were marred by the blurring of ethnic and racial (or biological) characteristics, and that this French colonial legacy was passed on to many contemporary Cambodians who may think of other indigenous ethnic groups primarily in terms of innate racial characteristics rather than cultural differences. Whether or not this is the case, in legal matters Cambodians did recognize that individuals might modify their own ethnic identification, most commonly through processes that might be considered a continuation, in recent times, of the historic "*Khmerization*" process. For example, Ovesen and Trankell (2004:243) note that in the *Sangkum* or "*People's Socialist Community*" period under Sihanouk (1953-1970, from independence to the Lon Nol *coup d'état* it was officially recognized that any minority could "*become Khmer*" (or "*coul kmae*" in the Khmer language) by adopting Khmer language and customs. Thus during the Pol Pot regime the persecution of non-Khmer minorities often did not extend to those who "*converted*" to a Khmer identity (Ovesen and Trankell 2004:243). Kiernan (1996:266-7) also describes, in reference to the Cham minority, Khmer Rouge instructions "*to force Cham people to carry out orders just like normal Khmers*"; and instructions that "*everybody is to join the same, single, Khmer nationality*" (Kiernan 1996:269, cited in Ovesen and Trankell).

As mentioned above, OD 4.20 (par. 4) suggests that Bank staff look to "*national constitutions, statutes, and relevant legislation*" within borrower countries for "*specific definitional clauses and legal frameworks that provide a preliminary basis for identifying indigenous peoples*." In attempting to apply this standard to the definition of Cambodia's indigenous peoples, Bank staff undoubtedly confronted recent Cambodian history and the numerous changes to Cambodia's legislation and constitutions with regard to ethnic minorities.

In fact, Cambodia's first postcolonial ruler, Prince Norodom Sihanouk, aimed to promote national unity and to counteract the perceived economic dominance of the Vietnamese and Chinese minorities by devising an ethnic classification scheme in the 1960s according to which some non-Khmer ethnic minorities were to be included as *bona fide* Khmers (Ovesen and Trankell, 2004:245). Minority groups including the Kouy who lived in the northeastern provinces were labeled "*Khmer Loeu*" ("*upland Khmer*"); the Muslim Cham who speak an Austronesian language and are found in the central area of the country were labeled "*Khmer Islam;*" and Khmer-speaking ethnic Khmer living in the Mekong delta but on the other side of the Vietnamese border were labeled "*Khmer Krom*" (or "*lowland Khmer*"). The plain "*Khmer*" (without any adjectival modification) were the vast majority of (Khmer) Cambodians living in the center and most of the country (ibid).

However, besides re-defining indigenous populations as a type of "*Khmer,*" this classification often assumed that upland and other Khmer would become more like the majority Khmer. That process of "*Khmerization*" (a term applied by scholars, not used by the Cambodian government) was helped by government programs encouraging Khmer peasant and soldier families from the lowlands to settle in the sparsely populated hill areas in the northeast. "*In return for being allowed by the government to help themselves to land, these 'pioneers' were supposed to provide a good example for the uplanders to*

follow, such as cultivating paddy and wearing proper clothes" (Ovesen and Trankell 2004:246). White (1996:344) also notes that other government programs targeted upland youths to *"persuade their elders to transform their archaic way of life."*[311]

Scholarly discussions of treatment of minority populations during the Khmer Rouge period (or *"Democratic Kampuchea"* period under Pol Pot, 1975-79), like most other discussions of that period, have focused on its well-documented atrocities. Chandler (2000:3-4) notes that events of this period led French author Jean Lacoutre to coin the term "*autogenocide"* to differentiate these Cambodian events (in which the great majority of victims, as well as perpetrators, were ethnically Khmer) from prior pogroms, holocausts, purges, etc. *"In less than four years, more than one million Cambodians, or one in seven, probably died from malnutrition, overwork, and misdiagnosed or mistreated illness. At least one hundred thousand, and probably more, were executed for crimes against the state" (ibid.)* Nevertheless, Chandler finds this less like *"genocide"* and more parallel to China's Great Leap Forward in the 1950s or the Soviet collectivization of Ukraine in the 1930s. Kiernan (1996), by contrast, considered "*genocide"* to be an appropriate term precisely because some non-Khmer groups (particularly Vietnamese) suffered disproportionately.

In any case, according to Ovesen and Trankell, indigenous upland minority people were treated as distinct under the Khmer Rouge.

> *The indigenous upland minorities in the northeast held a special place in Pol Pot's revolutionary imagination. They represented the Khmer ideal of purity because they were the least contaminated by foreign influences; their society could be taken as an example of the "primitive communism" of Karl Marx's fantasies, not yet touched by the slavery and feudalism stages in the universal historical materialist scheme. Pol Pot actually spent a year or so in the late 1960s among these people (…) while he imbibed the "Ur-communist" tenor of their social institutions. Khmer Rouge admiration of the uplanders did not go so far as general cultural acceptance, however, and most of their religious institutions, notably animal sacrifices accompanied by large quantities of rice wine – concrete manifestations of the social and ecological solidarity that characterizes their worldview – were rigorously suppressed.*
>
> (Ovesen and Trankell 2004: 248-9)

Another major change in the ethnic "map" of Cambodia during this period was an unintended result of the massive expulsions of the population out of cities and into the countryside, further resulting in the mixture of Khmer population in formerly largely indigenous villages in many parts of Cambodia.

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[311] Sihanouk's approach to these indigenous population minorities contrasts with his approach to the large Chinese and Vietnamese ethnic minority. Despite a long history of living within Cambodia, Chinese and Vietnamese communities were categorized as "foreign resident" Cambodians who were not entitled to Cambodian citizenship. A process was developed by which they could become Khmer through ethnic tests proving fluency in the Khmer language, etc. From this contrast, one can recognize an implicit distinction between "indigenous peoples" and non-indigenous minority populations during this period.

During the subsequent period of the People's Republic of Kampuchea (1979-89) under Vietnamese *"Guidance"* (the ten-year occupation following the January 1979 Vietnamese invasion of Cambodia and overthrow of the Khmer Rouge), anti-Vietnamese policies of prior governments were removed from the agenda toward national minorities. Furthermore, distinctions among types of minority populations were removed from the Constitution. In reference to OD 4.20's guidelines on the definition of indigenous peoples, there would no longer be a justification within the constitution or national legislation to distinguish *"indigenous peoples"* from other national minorities (a fact that is relevant to OD 4.20's requirements to look at constitutions and legislation of borrowing countries). These differences in Constitutional approaches to minorities are among the changes documented in Jennar's (1995) book, *The Cambodian Constitutions, 1953-1993*. Thus Article 5 of the new People's Republic of Kampuchea's Constitution seems to both prohibit special treatment of any ethnic group by individuals or groups, and to insist that the State has special responsibilities for certain minorities or communities, as follows:

> *The State carries out a policy of unity and equality among the people of all nationalities living in the national community of Kampuchea.*
> *All nationalities must love and help each other. All acts of discrimination against, oppression of and division among the nationalities are prohibited.*
> *The State takes care of ethnic minorities so that they can rise to the common level.*
> *The State pays special attention to the development of economy, education, culture, social affairs, health and communications in the mountainous regions and remote areas.*
>
> (Constitution as quoted in Jennar 1995:93-94)

A party conference on Policy toward Ethnic Minorities in 1984 stated that *"the minorities are always considered as an integral part of the Kampuchean nation*," and that they should be *"encouraged to participate in collectivization and to join solidarity groups*." Furthermore, in a policy that was parallel to domestic Vietnamese policy toward their own ethnic minority regions, lowland Khmers were (again) encouraged to settle among ethnic minority communities (Vickery 1986:167-168, cited in Ovesen and Trankell 2004:250).

This issue of the potentially special status of indigenous ethnic minorities was only slightly modified under the new constitution of the State of Cambodia (1989-93). One such modification required that *"the languages and scripts and the morals and customs of ethnic minorities be respected"* (Jennar 1954:113). This respect did not extend to religion; despite the fact that some ethnic minorities are not primarily Buddhist, Buddhism was reinstated as the state religion as it had been until 1975. The status of minorities was not directly addressed during the United Nations period, other than very indirectly (mostly for the Vietnamese, Thai, or Chinese minorities) by UNTAC decisions on eligibility to vote for the establishment of the new government after the 1993 elections.

The Constitution of the Kingdom of Cambodia (after 1993) says nothing about ethnic minorities. There was some concern expressed by human rights group that the constitution only refers to "Khmer citizens" while the Cambodian territory is referred to as *"Cambodia"* (*"Kingdom of Cambodia"*). However, article 31 paragraph 2 of the Kingdom of Cambodia's current constitution makes it clear that *"Khmer citizen"* does not imply ethnicity (or imply that non-Khmer speakers are not citizens). That article states that *"Every Khmer citizen shall be equal before the law (…) regardless of race, colour, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status*."

In the organization of government ministries and their departments, and also in several pertinent areas of legislation or draft legislation, the current Royal Government of Cambodia does effectively recognize the distinctiveness of its ethnic minority populations in ways that are applicable to OD 4.20's definitional requirements for indigenous peoples. Cambodia's Ministry of Religious Affairs formerly included a Department of Ethnic Minorities, which in 1992 developed a list of 36 recognized ethnic minority groups totaling 309,000 persons (approximately 3.5 percent of the then-total population of 8.9 million), including Vietnamese and Chinese. After the dissolution of that Department, the Ministry of the Interior in 1995 and the National Population Census of 1998 developed other estimates of ethnic minority population using different methods. The formation of a Royal Cambodian Government Inter-Ministerial Committee for Highland Peoples' Development (IMC 1997), and particularly the on-going efforts that have developed draft legislation relating to indigenous peoples within the Ministry of the Interior, indicate that the Bank's guidelines for seeking confirmation of *"indigenous peoples"* status within the borrowing country's constitution and legislation can be met. Of the Ministry of the Interior's legislative and draft legislative efforts on behalf of indigenous peoples, particularly relevant is Chapter 3 Part 2 (articles 23-28) of the Royal Cambodian Government's Land Law of 2001 (*"Part 2: Immovable Property of Indigenous Communities"*), which defines "*indigenous community*" (literally "*original ethnic minority*" in Khmer) for purposes of the legislation, while postponing a precise determination on which communities qualify:

> *An indigenous community is a group of people that resides in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural, and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use.*
> *Prior to their legal status being determined under a law on communities, the groups actually existing at present shall continue to manage their community and immovable property according to their traditional customs and shall be subject to the provisions of this law.*
>
> (Royal Cambodian Government, Land Law of 2001, Article 23)

This brief overview indicates that despite the lack of recognition in the present constitution for indigenous peoples as a special category, there is ample recognition in past and present Cambodian government practice and legislation for the status of some ethnic populations as having a *"social and cultural identity distinct from the dominant*

society that makes them vulnerable to being disadvantaged in the development process" (the definition used in OD 4.20). The highland minority populations of northern and northeastern Cambodia especially (including Kouy, Kreung, and others), whose indigenous status has been emphasized in the Request for Inspection, have long been recognized as indigenous peoples.

In addition to Cambodia's own past practices and legislation recognizing indigenous peoples, as well as scholarship about the ethnolinguistic makeup of Cambodia that includes many minority languages and peoples, there are two other sources to which we may turn for recognizing Cambodian ethnic groups as "*indigenous peoples*" under the definition used in OD 4.20. These are: first, that this is the practice of other organizations; and second, that the World Bank itself has accepted the applicability of OD 4.20 for some Cambodian ethnic minorities (including those raised in the Request for Inspection).

Turning first to the comparative example of the Asian Development Bank, which uses a definition of "*indigenous peoples*" very similar to that of the World Bank, we find that the ADB has also listed the highland ethnic groups of Cambodia to which its definition applies (and it does include all those ethnic groups named in the Request for Inspection). There is no reason to think that the definition used by the World Bank would, if properly applied, arrive at any smaller number of ethnic groups.

In 1998, the Asian Development Bank approved its Policy on Indigenous Peoples, requiring that the ADB's interventions in development support or assistance not affect indigenous peoples' situation negatively, and that adequate and appropriate compensation be provided if necessary. The ADB uses the term *"indigenous peoples"* in the sense of its own working definition (ADB 1999) to include *"those with specific social or cultural identity distinct from the dominant or mainstream society, which makes them vulnerable to being disadvantaged in the process of development*."

The Asian Development Bank's recently carried out a study of Cambodia's indigenous peoples (ADB 2002). It provides a list of indigenous peoples in northern and northeastern Cambodia, by language. But it does not review the legal status in reference to past Cambodian legislation, and it notes the lack of population studies and the consequent difficulty in quantifying the number of ethnic groups in Cambodia. It also notes that many indigenous peoples straddle the borders of Cambodia as well as Thailand and Laos, due to the fact that the border was imposed by the French in 1903 and has artificially divided these groups and restricted their movements. It further raises many pertinent questions about the use of language (or stated primary language) as a proxy for ethnic identification, for example in the National Population Census. The report specifically notes that many Kuy, Saoch, or Stieng people, "*who live closely with the mainstream population, would not be likely to tell outsiders their true identity*" as indigenous peoples, for example when answering a census question about what language is their mother tongue (ADB 2002 Chapter 2 p. 6).[312] Also, while the report documents

[312] The report thus notes large discrepancies in population estimates for indigenous people. For example, Bourdier (1996) considers the whole country's indigenous population to have been 142,700 in 1995; in contrast, the Inter-Ministerial Committee for Highland Peoples' Development (IMC 1997) estimated a total

and emphasizes the distinctiveness of indigenous peoples from the "mainstream" Cambodian population, it also notes that some speakers of linguistically unrelated indigenous languages (e.g. the Jarai, who speak a language of the Austronesian phylum, and the Tampuon who speak a Mon-khmer language – thus languages as linguistically unrelated as English and Chinese) live near each other and intermarry frequently, thus have become culturally very similar. Turning to other ethnic terms used in self-identification, rather than a linguist's classification of the languages, the report also notes that census reports do not include some named indigenous groups, *"such as Saoch in Sihanoukville, Suoy in Kampong Speu, or Poar in Pursat."*[313] Finally, the report emphasizes the ethnic groups of northern and northeastern Cambodia[314] but does not consider the Muslim, Austronesian-speaking Cham people of lowland central Cambodia, who form Cambodia's second largest ethnic group after Khmer, to be indigenous people. But the report does include the Jarai (of Ratanakiri) and Rhade (of Mondulkiri), who speak Chamic languages.

The second reason for recognizing Cambodian ethnic groups as *"indigenous peoples"* under the definition used in OD 4.20 is that the World Bank itself, while it has not published a definitive list of groups to which its definition applies (unlike the ADB), has funded projects affecting indigenous peoples of Cambodia and has in several cases developed Indigenous Peoples Development Plans under auspices of those projects (though not for the FCMCPP). Thus, for its lack of attention to indigenous peoples' issues, the FCMCPP was rather unusual among World Bank projects in Cambodia that affect areas inhabited largely by indigenous populations.

The World Bank did in fact develop Indigenous Peoples Development Plans for affected ethnic groups mentioned in the Request for Inspection in other Cambodian World Bank projects. In doing so, relevant Project documents sometimes cite the difficulties of relating the definition and characteristics of *"indigenous peoples"* found in OD 4.20 to the somewhat contradictory definitions of ethnic minority status in Cambodia's recent legislative and political history. For example, the Bank's *"Cambodia: Rural Investment and Local Governance Project"*[315] has developed a *"Highland Peoples Development Plan"* which includes a section on Cambodia's *"Highland Peoples and OD 4.20"*:

105,000 in three northeastern provinces of Mondulkiri, Ratanakiri, and Stung Treng. Provincial sources in the same provinces and the province of Kratie provided an estimate of 102,000.

[313] Despite the caveats in this report about linguistically dissimilar groups that live near each other and have become culturally similar, most classifications since the French period do classify by linguistic criteria, and for classificatory purposes subsume self-identified groups under those criteria. Nevertheless, self-identification and linguistic classification often yield different results. To take an example from Europe, a linguist might classify speakers of Spanish and Portuguese as speakers of two dialects of the same language; they would be considered one "ethnolinguistic group" in such a classification. But of course this would have no bearing on self-identification of the populations as members of separate ethnic groups.

[314] The report notes that the "northeastern region of Cambodia" is "home to the ethnic groups of this study" (Chapter 2 p. 6), and refers to the "sparsely populated areas of the north and northeast" along the Thai, Lao, and Vietnamese border, as the "predominant dwelling areas of the indigenous populations" (ibid., p. 5).

[315] IDA 37470 for USD 22,000,000, effective 16 September 2003 and closing 30 June 2007.

> *The Cambodian government does not maintain official statistics regarding its ethnic minorities, and available estimates of ethnic demographics and geographic distribution are scarce and contradictory. In 1992, prior to its discontinuance, the Department of Ethnic Minorities listed 35 ethnic minority groups and estimated their total share of the national population at about four percent. The same proportion was estimated in 1995 by the Ministry of the Interior.*
> *The largest ethnic minority groups, including Vietnamese and Chinese descendants, Muslim Chams and ethnic Lao, generally are not considered to be "indigenous peoples" in the Cambodian context, and do not generally exhibit characteristics of potential vulnerability as listed in OD 4.20. The Khmer majority, however, does generally consider a set of minorities known generically as "Khmer Loueu" (or upper Khmer, or "Highland Peoples" in common English usage) to be indigenous and distinctive in their cultural and economic practices. These groups generally exhibit most or all of the characteristics of potential vulnerability listed in OD 4.20 (…).*[316]

Nevertheless, the Plan makes clear that as a condition of involvement the Bank will require that OD 4.20's policy requirements apply to the highland minority populations affected by the Project, the purpose of which is "*to support expansion of the Royal Government of Cambodia's Seila Program (…) within a broader official campaign promoting decentralization of, and heightened local-level participation in, development planning*." Further noting that "[a]*t present, Seila objectives and procedures do not explicitly consider program impacts on the various ethnic minorities residing within program provinces*,"[317] the Plan insists that, as a condition of Bank assistance to the Cambodian government for that project, the Project's activities must conform to OD 4.20's requirements insofar as "*Highland Peoples*" may be affected:

> *The Bank has determined that OD 4.20 applies with reference to "Highland Peoples" who maintain cultural and socioeconomic practices different than [sic] those practiced by the Khmer national majority. This document describes actions taken, or to be taken, by the Royal Government of Cambodia to ensure that project arrangements meet the requirements of OD 4.20.*[318]

Thus, in contrast to the procedure that Management used with FCMCPP, Bank management has paid considerable attention to indigenous peoples issues in other projects. The FCMCP and the Biodiversity and Protected Areas Management Project[319] both of which received a "B" EA classification, had no IPDPs available. By contrast, the Health Sector Support Project[320] has no IPDP but does now have an initial EA, Social Assessment, and Resettlement Plan. The Land Management and Administration

[316] "Highland Peoples Development Plan," pars. 7-8., in Vol. 2, Cambodia: Rural Investment and Local Governance Project. Phnom Penh: Seila Task Force, The Royal Government of Cambodia's Seila Program. March 11, 2003.
[317] Ibid., par. 2.
[318] Ibid., par. 3.
[319] Project ID P065798, Loan IDA 33200, closed 3 May 2000.
[320] IDA 37280, USD 17,200,000, effective 14 Aug. 2003, closing 31 Dec. 2007.

Project[321] is especially relevant since it includes issues of land tenure (including those among indigenous and non-indigenous people); this project does include an "*Indigenous Peoples Policy Framework*" as well as environmental and Social Safeguard reports. The Bank's Provincial and Peri-Urban Water and Sanitation Project,[322] which is the only project given an "A" level environmental classification, includes an "*Ethnic Minorities Development Strategy and Indigenous Peoples Framework*" as well as an Environmental Assessment and a Resettlement Plan. The Rural Electrification and Transmission Project[323] has developed a "*Highland Peoples Development Plan*." Except for the A-level Provincial and Peri-Urban Water and Sanitation Project, all these projects were given a "B"-level EA classification.

The discussion above thus far has summarized recent literature on the status of ethnic minorities and indigenous peoples of Cambodia, especially with regard to their status within the changing legal frameworks of Cambodia's difficult recent history. It has also examined the application of the concept of indigenous peoples in other Bank projects as well as by the Asian Development Bank (which uses a slightly different definition of indigenous peoples). It may now be useful to review estimates of the current distribution and size of minority ethnolinguistic populations of Cambodia. This is not intended as a definitive list but rather a summary drawn from existing sources of information. "*Primary language spoken*" is often used as a proxy measure of ethnicity. In identifying indigenous peoples for purposes of Bank policy (at the time of the FCMCPP), this applies also to the definitional criterion in OD 4.20 par. 5c, namely a population's use of "*an indigenous language, often different from the national language.*"

A comprehensive attempt to develop a classification of Cambodia's ethnic groups according to the primary language spoken is provided in the *Ethnologue* listing of the world's languages (Gordon 2005). According to this source, 12,601,706 or 94.3 percent of Cambodia's 13,363,421 people speak Austro-Asiatic languages (including Khmer, the national language, as well as almost all languages spoken by indigenous peoples), while only 235,000 or 1.76 percent of them are speakers of unrelated indigenous Austronesian indigenous languages (such as the Jarai of northeastern Cambodia and the Muslim speakers of Cham in central Cambodia, the latter not generally considered an indigenous people). In addition, there are speakers of additional languages that are not considered those of indigenous peoples: especially Lao (17,000), Mandarin Chinese (350,000), and Vietnamese (393,121). Of Cambodia's known languages, all are living languages (since no record of extinct spoken languages has survived).

Thus, based on this ethnolinguistic classification[324] only (fully recognizing that use of an indigenous language is only one of the definitional criteria), one example of a

[321] IDA 36050, USD 24,300,000, effective 19 June 2002 and closing 31 Dec. 2007.
[322] IDA 37460 for USD 16,900,000 effective 16 November 2003, closing 30 June 2008.
[323] IDA 38400 for USD 40,000,000, effective 29 March 2005, closing 30 June 2009.
[324] In this system of classification, "Khmer" (or Central Khmer), though not the language of "*indigenous peoples*," has a population of 12,100,065 in Cambodia, and is spoken throughout the country. The classification of the language itself is: Austro-Asiatic, Mon-Khmer, Eastern Mon-Khmer, Khmer. This summarizes the relationship of Khmer to other languages in subgroupings of the highest ("phylum") level, which in this case is Austro-Asiatic.

posited list of indigenous populations of Cambodia, along with their most recent population estimates[325] and the locations of their primary speakers, would be indicated by the list in the following table (Table 1), as depicted on the map reproduced as Figure 1 of this Inspection Panel Report (p. 24). This ethnolinguistic list, however, includes Cham, a large and well established minority language spoken in both Cambodia and Vietnam. Cham was presumably not considered (due to size of population and integration into the national economy) vulnerable or likely to be disadvantaged in development projects, and was not treated as an indigenous people in Bank documents. The relatively small number of remaining native speakers of other minority languages, and the small size of communities, is one source of the vulnerability of these unique Cambodian peoples to language extinction or to other forms of culture-loss.

TABLE 1: INDIGENOUS PEOPLES/LANGUAGES OF CAMBODIA
(per ethnolinguistic group, including Cham within Austronesian phylum) (Modified from: Gordon 2005)

Mon-khmer languages:

Brao 5,286 in Cambodia. (Northeastern Cambodia on the Laos border, Ratanakiri Province; with alternate names: Braou, Proue, Brou, Love, Lave, Laveh; classification: Austro-Asiatic, Mon-Khmer, Eastern Mon-Khmer, Bahnaric, West Bahnaric, Brao-Kravet.)

Chong 5,000 in Cambodia. (Thai-Cambodia border southeast of Chantaburi, Pursat Province. Also spoken in Thailand. Alternate names: Chawng, Shong, Xong. Dialects: Somray in Cambodia is a separate but related language. Classification: Austro-Asiatic, Mon-Khmer, Eastern Mon-Khmer, Pearic, Western, Chong.)

Kaco' 2,000. (Ratanakiri Province. Alternate names: Kachah'. Dialects: Not intelligible to Tampuan speakers. Classification: Austro-Asiatic, Mon-Khmer, Eastern Mon-Khmer, Bahnaric, Central Bahnaric.)

Kraol 2,600. (Kratie Province. Dialects: Not intelligible to Mnong speakers. Classification: Austro-Asiatic, Mon-Khmer, Eastern Mon-Khmer, Bahnaric, South Bahnaric, Sre-Mnong, Mnong, Southern-Central Mnong.)

Kravet 3,012. (Northeastern Cambodia. Alternate names: Kowet, Khvek, Kavet. Classification: Austro-Asiatic, Mon-Khmer, Eastern Mon-Khmer, Bahnaric, West Bahnaric, Brao-Kravet.)

Kru'ng [= Kreung] 9,368. (Northeastern, Ratanakiri Province and eastern Stung Treng. Alternate names: Krueng. Dialects: Brao, Kravet, Krung 2 in Cambodia are inherently intelligible with each other. Classification: Austro-Asiatic, Mon-Khmer, Eastern Mon-Khmer, Bahnaric, West Bahnaric, Brao-Kravet.)

Kuy [= Kouy] 15,495 in Cambodia. (Northeastern Cambodia, most districts of Preah Vihear, eastern Siem Reap, northern Kampong Thom, western Stung Traeng, and several areas of Kratie Province. Alternate names: Kuay. Dialects: Kuy Antra, Kuy Anthua, Kuy May (Kuy Ma'ay), Kuy

[325] Only that portion of the population residing in Cambodia is counted in population estimates as shown in this source. Many ethnolinguistic groups (including Cham) also live across Cambodia's borders with Thailand, Laos, or Vietnam. See Gordon 2005 for sources of these population estimates, and other explanations.

Mlor. Classification: Austro-Asiatic, Mon-Khmer, Eastern Mon-Khmer, Katuic, West Katuic, Kuay-Nheu.)

Lamam 1,000. (Near northeast corner on the Viet Nam border. Alternate names: Lmam. Dialects: Related to Bahnar, Tampuan, Alak 1. Classification: Austro-Asiatic, Mon-Khmer, Eastern Mon-Khmer, Bahnaric, Central Bahnaric.)

Mnong, Central 20,000 in Cambodia. (Northeastern, 80 percent of Mondolkiri Province, all districts. Alternate names: Phong, Phnong, Bunong, Budong, Phanong. Dialects: Biat, Preh, Bu Nar, Bu Rung, Dih Bri, Bu Dang. Classification: Austro-Asiatic, Mon-Khmer, Eastern Mon-Khmer, Bahnaric, South Bahnaric, Sre-Mnong, Mnong, Southern-Central Mnong.)

Pear 1,300. (Southwestern, Kompong Thom. Alternate names: Por, Kompong Thom. Classification: Austro-Asiatic, Mon-Khmer, Eastern Mon-Khmer, Pearic, Eastern.)

Samre 50 (Ethnic population: 200).[326] (Just north of Siemreap. Dialects: Related to Sa'och, Suoy, Pear. Classification: Austro-Asiatic, Mon-Khmer, Eastern Mon-Khmer, Pearic, Western, Samre.)

Sa'och 500. (Southwest near Kompong Som on the coast. Alternate names: Sauch, Saotch. Dialects: Related to Samre, Suoy, Pear. Classification: Austro-Asiatic, Mon-Khmer, Eastern Mon-Khmer, Pearic, Western, Chong.)

Somray 2,000. (West; north, east, and west of Phum Tasanh, and Tanyong River around Phum Pra Moi; 2 areas. Dialects: Related to Chong. Classification: Austro-Asiatic, Mon-Khmer, Eastern Mon-Khmer, Pearic, Western, Samre.)

Stieng, Bulo 6,059 in Cambodia. (Eastern, Kratie Province, Snuol District, and southern Mondolkiri. Alternate names: Kajiang. Dialects: Budip, Bulo. Classification: Austro-Asiatic, Mon-Khmer, Eastern Mon-Khmer, Bahnaric, South Bahnaric, Stieng-Chrau.)

Suoy 200. (Central, northwest of Phnom Penh. Dialects: Related to Sa'och, Samre, Pear. Classification: Austro-Asiatic, Mon-Khmer, Eastern Mon-Khmer, Pearic, Western, Suoy.)

Tampuan 25,000. (Northeast border area, south of Brao, west of Jarai, Central Ratanakiri Province. Alternate names: Tamphuan, Tampuen, Tampuon, Kha Tampuon, Campuon, Proon, Proons. Dialects: Related to Bahnar, Lamam, Alak 1, but geographically separated. Classification: Austro-Asiatic, Mon-Khmer, Eastern Mon-Khmer, Bahnaric, Central Bahnaric.)

Austronesian languages

Jarai 15,000 in Cambodia. (Ratanakiri Province, principally the districts of Bokeo, Andons, Meas, O Yadou, along northeast border near Viet Nam. Alternate names: Djarai, Gia-Rai, Jorai, Cho-Rai, Chor, Mthur, Chrai, Gio-Rai. Dialects: Puan, Hodrung (Hdrung), Jhue, Aráp, Habau (Ho-Bau), To-Buan, Sesan, Chuty, Pleikly, Golar. Classification: Austronesian, Malayo-Polynesian, Malayic, Achinese-Chamic, Chamic, South, Plateau.)

Cham[327] [=Western Cham] 220,000 in Cambodia. [1992 govt. figure]; population estimate for all countries: 253,100. (Near the major cities and along the Mekong. Also spoken in Australia,

[326] In the case of the Samre people of Siem Reap province, sources distinguish the number of speakers of this nearly extinct language (approx. 50) from the self-identified "ethnic" population of approximately 200.
[327] The Muslim Cham of Cambodia (linguistically speakers of "Western Cham"), and the Cham of Vietnam, are not considered indigenous people in World Bank documents. The Cham and the indigenous highland Jarai people are Cambodia's only speakers of Malayo-Polynesian languages (related to Indonesian, Tagalog, Hawaiian and other languages of Polynesia, as well as Taiwanese aboriginal

France, Indonesia, Libya, Malaysia, Saudi Arabia, Thailand, USA, Viet Nam, Yemen. Alternate names: Cambodian Cham, Tjam, Cham, New Cham. Dialects: The language differs somewhat from Eastern Cham of central Viet Nam. Classification: Austronesian, Malayo-Polynesian, Malayic, Achinese-Chamic, Chamic, South, Coastal, Cham-Chru.)

References cited

Asian Development Bank
1999 *The Bank's Policy on Indigenous Peoples*. Manila: Asian Development Bank.

2002 *Indigenous Peoples, Ethnic Minorities and Poverty Reduction: Cambodia*. [Background document for discussion at national workshop for development of indigenous communities in northeastern Cambodia; 48 p.] http://www.adb.org/Documents/Reports/Indigenous_Peoples/CAM/default.asp

Barnes, R.H., Andrew Gray, and Benedict Kingsbury
1995 Indigenous Peoples of Asia. Monographs and Occasional Papers series, no. 48. Ann Arbor, Michigan: Association for Asian Studies.

Bourdier, Frédéric
1996 Relations interethniques et spécificité des populations indigènes du Cambodge." Pp. 376-433 in: Interdisciplinary Research on Ethnic Groups in Cambodia. Phnom Penh: Center for Advanced Study.

Chandler, David P.
2000 Brother Number One: A Political Biography of Pol Pot. Revised ed. Bangkok: Silkworm Books.

Duncan, Christopher R.
2004 Civilizing the Margins: Southeast Asian Government Policies for the Development of Minorities. Ithaca: Cornell Univ. Press.

Edwards, Penny
1996 "Imagining the Other in Cambodian Nationalist Discourse before and during the UNTAC Period." Pp. 40-72 in: *Propaganda, Politics, and Violence in Cambodia: Democratic Transition under United Nations Peace-keeping*, edited by S. Heder and J. Ledgerwood. New York: M.E. Sharpe.

Gordon, Raymond G., Jr. (ed.)
2005. *Ethnologue: Languages of the World.* (Fifteenth edition.) Dallas, Tex.: SIL International. Online version: http://www.ethnologue.com/.

IMC [Inter-Ministerial Committee for Highland Peoples Development]
1997 Project Activities for the Highland Peoples' Development in the Northeast of

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languages). They descend from ancient populations of Malayo-Polynesians who migrated from the Pacific to the Indochinese mainland.

Cambodia. Paper prepared for the HPP/ILO Conference on Grassroots Development, 12 November 1997. Chiang Mai Workshop, 17-21 Nov. 1997. Phnom Penh: Inter-Ministerial Committee for Highland Peoples Development. [quoted in ADB 2002]

Jennar, Raoul.Marc
1995 *The Cambodian Constitutions, 1953-1993*. Bangkok: White Lotus.

Kiernan, Ben
1996 *The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1976-1979*. New Haven: Yale University Press.

Kingsbury, Benedict
1995 "Indigenous Peoples' as an International Legal Concept." Pp. 13-34 in: R.H. Barnes, Andrew Gray, and Benedict Kingsbury (eds.) *Indigenous Peoples of Asia*. Ann Arbor, Michigan: Association for Asian Studies, Monograph and Occasional Paper series, no. 48.

Lebar, Frank M.; Gerald C. Hickey; and John K. Musgrave
1964 *Ethnic Groups of Mainland Southeast Asia*. New Haven: Human Relations Area Files Press.

McCaskill, Don N. and Kampe, Ken (editors)
1997 Development or Domestication? Indigenous Peoples of Southeast Asia. Chiang Mai, Thailand: Silkworm Books.

ICES [International Centre for Ethnic Studies], and David Hawk
1995 *Minorities in Cambodia*. London: Minority Rights Group International.

Ovesen, Jan and Ing-Britt Trankell
2004 Foreigners and honorary Khmers: ethnic minorities in Cambodia. Pp. 241-269 in: C. Duncan, ed., *Civilizing the Margins: Southeast Asian Government Policies for the Development of Minorities*. Ithaca: Cornell U. Press.

White, Joanna
1996 The indigenous Highlanders of the Northeast: an uncertain future." Pp. 333-74 in: *Interdisciplinary Research on Ethnic Groups in Cambodia. Phnom Penh*: Center for Advanced Study.

Vickery, Michael
1986 *Kampuchea: Politics, Economy and Society.* London: Pinter.

Annex C

Biographies

Panel Members

Ms. Edith Brown Weiss was appointed to the Panel in September 2002. She has taught and published widely on issues of international law and global policies, including environmental and compliance issues. She is the Francis Cabell Brown Professor of International Law at Georgetown University Law Center, where she has been on the faculty since 1978 and has directed international multi-disciplinary research projects. Before Georgetown, she was a professor at Princeton University. Ms. Brown Weiss has won many prizes for her work, including the Elizabeth Haub prize from the Free University of Brussels and the International Union for the Conservation of Nature (IUCN) for international environmental law, and the 2003 American Bar Association Award in recognition of distinguished achievements in Environmental Law and Policy. She has also received many awards for her books and articles. She served as President of the American Society of International Law and as Associate General Counsel for the U.S. Environmental Protection Agency, where she established the Division of International Law. Ms. Brown Weiss is a member of 10 editorial boards, including those of the American Journal of International Law and the Journal of International Economic Law. She has been a board member, trustee, or advisor for the Japanese Institute for Global Environmental Strategies, the Cousteau Society, the Center for International Environmental Law, and the National Center for Atmospheric Research, among others. Ms. Brown Weiss has been a Special Legal Advisor to the North American Commission on Environmental Cooperation. She has been a member of the U.S. National Academy of Sciences' Commission on Geosciences, Environment, and Resources; the Water Science and Technology Board; and the Committee on Sustainable Water Supplies in the Middle East. She is an elected member of the American Law Institute, the Council on Foreign Relations, and the IUCN Commission on Environmental Law. Ms. Brown Weiss received a bachelor's of arts degree from Stanford University with Great Distinction, an LL.B. (J.D.) from Harvard Law School, a Ph.D. in political science from the University of California at Berkeley, and an Honorary Doctor of Laws from Chicago-Kent College of Law.

Mr. Tongroj Onchan was appointed to the Panel in September 2003. He has a Ph.D. in agricultural economics from the University of Illinois. Professor Onchan taught on the Faculty of Economics at Kasetsart University in Thailand for 26 years, including a term as Dean. He later served as vice president of Huachiew Chalermprakiat University; then joined the Thailand Environment Institute (TEI) as vice president. In 1998, Mr. Onchan was appointed president of TEI. He helped establish and was appointed president of the Mekong Environment and Resource Institute (MERI) in 2000. He has served as advisor to the Prime Minister and to the Minister of Science, Technology and Environment, as member of the National Environmental Board, chairman of the National EIA Committee, chairman of the Committee on the Preparation of State of the Environment Report for Thailand, and member of the National Audit Committee. Mr. Onchan is on many

editorial boards, among them the Asian Journal of Agricultural Economics and the International Review for Environmental Strategies. He has consulted for a number of international organizations, including the Asian Productivity Organization, ESCAP, the World Bank, the Asian Development Bank, the Food and Agriculture Organization, the International Labor Organization, USAID and the Ford Foundation. He has been project director of over thirty research projects and author or co-author of numerous technical and research papers on rural development, natural resources and environmental management. Currently, he serves in several capacities: chairman of the Board of Directors of the MERI, member of National Research Council for economics, and a director of the International Global Environment Strategy (IGES) based in Japan. Mr. Onchan was appointed as eminent person to serve as a member of the Asia and Pacific Forum for Environment and Development (APFED).

Mr. Werner Kiene was appointed to the Panel in November 2004. He holds a Masters of Science degree and a Ph.D. in Agricultural Economics from Michigan State University. He has held leadership positions with the Ford Foundation and German Development Assistance. In 1994, Mr. Kiene became the founding Director of the Office of Evaluation of the United Nations World Food Programme (UN WFP). He was the World Food Programme Country Director for Bangladesh from 1998 through 2000 and also served as UN Resident Coordinator during this period. From 2000 to 2004 he was a Representative of the UN WFP in Washington, D.C. Mr. Kiene's focus has been on the design, implementation and assessment of sustainable development initiatives. His professional writings have dealt with issues of rural poverty and social services delivery; food security, agricultural and regional development; emergency support and humanitarian assistance; international trade and international relations. Mr. Kiene is involved in professional organizations such as the American Evaluation Association; the Society for International Development; the American Association for the Advancement of Science; and the International Agriculture Economics Association.

Consultants/Advisors

Donald Allan Gilmour holds a MSc from the Australian National University and a PhD from James Cook University of North Queensland. He currently works as a private consultant, and has extensive work experience in developing countries, mainly in Asia and Africa. He was Head of the Forest Conservation Programme of IUCN, The World Conservation Union, based in Switzerland during the mid-1990s; he spent eight years in Nepal working on a community forestry project in the 1980s, and he has 18 years previous experience in forestry education and forest hydrology research in the wet tropics of northern Australia. He was a founding member and Vice Chair of the Board of Trustees of the Regional Community Forestry Training Center in Bangkok and chaired an international advisory group for a major research program of the Center for International Forestry Research in Indonesia. He is a member of the Institute of Foresters of Australia and several of IUCN's scientific commissions (on ecosystem management, environmental economics and social policy and protected areas). He is also a member of the editorial advisory boards of two scientific journals. Dr Gilmour has authored or co-

authored several books and monographs on community forestry, forest rehabilitation and forest hydrology, and is author/co-author of more than 130 other scholarly publications covering a range of policy and practical aspects of forestry and land management.

Ralph Schmidt is currently the CEO of the Candlewood Forest Group in New York. Candlewood is developing a certified sustainable forest products company, and owns 100,000 ha of hardwood forest in Northwest Argentina. For ten years prior to Candlewood, Schmidt served as Senior Adviser and (from 1996) Director of Forest Programs at the United Nations Development Program in New York. He represented UNDP in the Forestry Advisers Group, in the International Forum on Forests and in the Interagency Task Force on Forests with a strong focus on economics and finance of sustainable forest management. In the 1980s he served as Assistant Secretary (Vice Minister) and Chief of the Puerto Rico Forest Service and as a State Forester of Puerto Rico. Later he became the Forest Management Officer for the Food and Agriculture Organization of the United Nations in Rome. While there he authored and edited Technical Publications and supervised forest management field projects on all aspects of forest management in the tropics. Schmidt received a B.A. ('69) and a Masters of Forest Science ('78) from Yale University. Schmidt has worked on forest policy and management in the following countries: Argentina, Belize, Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Peru, Suriname, Venezuela, Cameroon, Ghana, Guinea, Kenya, Mozambique, Uganda, Bangladesh, Bhutan, Cambodia, Indonesia, Malaysia, Nepal, Papua New Guinea, Philippines, Thailand, Vietnam.

Paul Michael Taylor holds a Ph.D. from Yale University, 1980. Mr. Taylor is a cultural anthropologist based in Arlington, Virginia. He served while on leave from his position as research anthropologist and Director of the Asian Cultural History Program (Department of Anthropology), Smithsonian Institution. He has produced four books and numerous other scholarly publications on the ethnography, ethnobiology, and languages of Asia, especially Indonesia; he has also curated seventeen museum exhibitions and served as anthropological consultant for five films. The recipient of numerous international grants and awards, he has served on the Board of Directors of the Association for Asian Studies, and currently serves on the Advisory Board of the US-Indonesia Society. His research on rural social and ecological issues has included living for over three years in rural village or tribal communities of Southeast Asia. Dr. Taylor also served as senior consultant for social and resettlement issues during the Inspection Panel's investigation of the Qinghai component of the China: Western Poverty Reduction Project.