

Capacity Building for Law Compliance in the Forest Sector

Case study: Cambodia

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Abbreviations

CITES	Convention on the International Trade in Endangered Species of Flora and Fauna
DBH	Diameter in Breast Height
DFW	The former Department of Forestry and Wildlife at MAFF
DNCP	Department of Nature Conservation and Protection at MOE
ESIA	Environmental and Social Impact Assessment
FAO	Food and Agriculture Organisation of the United Nations
FA	The Forest Administration at MAFF
FMU	Forest Management Unit
GAP	Governance Action Plan
GDP	Gross Domestic Product
GTZ	German Technical Cooperation
IFM	Independent Forest Monitor
IMF	International Monetary Fund
IM	Independent Monitor
ITTO	International Tropical Timber Organisation
MAFF	The Cambodian Ministry of Agriculture, Forestry and Fisheries
MOE	The Cambodian Ministry of Environment
NGO	Non-Governmental Organisation
ODI	Overseas Development Institute
PLUAC	Provincial Land Use Allocation Committee
PRDC	Provincial Rural Development Committee
RGC	The Royal Government of Cambodia
SFM	Sustainable Forest Management
SFMP	Sustainable Forest Management Plan
SGS	Societe Generale de Surveillance
TI	Transparency International
TRT	Technical Review Team at FA
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
USD	United States Dollars
WGNRM	Working Group on Natural Resources Management
WRI	World Resources Institute

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Executive Summary

During the last decade, illegal activities in the Cambodian forestry sector contributed to a pronounced degradation and depletion of the forest resources, resulting in an annual deforestation rate of 1%.

Illegal logging, uncontrolled exploitation and encroachment were the main illegal acts that plagued the forestry sector in Cambodia during this period. Additionally, illegal hunting/poaching, illegal wood transport and export, tax evasion, and widespread corruption complete the broader picture of illegal activities.

The main causes of these illegal activities include a faulty legal system, insufficient knowledge and poor knowledge management, excessive discretionary powers in the public and private sectors, poor implementation capacity of the public forest administration and enforcement agencies and lack of transparency in decision-making in the forestry sector at all levels. Additionally, corruption, which can be regarded as a illegal act *per se*, is at the same time a contributing factor that generated other patterns of illegal behavior. Other contributing factors are the unclear tenure and use rights, the overall governance situation in Cambodia, involving different policy setting processes taking place simultaneously, highly centralized decision-making processes dominated by individuals, the importance of party loyalty in the political life and the functioning of the Government, and the competition between central agencies regarding both resources and on a competencies.

During the last five years, the Cambodian Government took a series of measures to tackle illegal activities and improve governance in the forestry sector. These include institutional reform, new and updated legislation, the use of Independent Monitors, collaboration with international donors, a moratorium on logging activities since January 2002, a restructuring of the forest concessions system and the more active promotion of community forestry.

However, an analysis of legal compliance in the Cambodian forestry sector indicates that all these measures and initiatives have not been fully effective in addressing illegal acts and combating their causes and contributing factors. While large-scale illegal logging related to the concession system has been reduced substantially, the nature of illegal activities, and the main actors have changed to a certain extent, without a significant overall improvement in legal compliance at the level of the forestry sector as a whole.

Through the results of the recent Independent Forest Sector Review, the experience in Cambodia shows that before compliance with legislation can be ensured as part of an improved governance of the forestry sector, a participatory process is needed to define the strategy to be pursued towards achieving sustainability in the management of the forest resources.

Case study: Cambodia

1. Introduction

The present study is aimed at offering input to the FAO/ITTO study “Capacity Building for Law Compliance in the Forest Sector”. It addresses directly the first objective of this project, that of producing “**guidelines for improving law compliance in the forest sector**”, and also its third stated objective, to “**create a sound framework for facilitating FAO and ITTO’s normative advise to countries**”.

The objective of this case study is to identify the main categories of illegal acts prevailing in the forestry sector in Cambodia, and the corrective actions planned and adopted, including institutional and legal reforms, and their effectiveness in dealing with illegal acts and improving overall compliance with legal requirements.

The analysis is based on a brief diagnosis of the Cambodian forestry sector, including its main social, environmental, economic, institutional, policy and legal features, the way the forest resources are managed, the structure of ownership and government control. Additionally, this analysis includes the legal framework, and it looks at policies and laws related to the forestry sector, and also at the way the government monitors and enforces them.

The present study draws on the results of the recent multi-stakeholder forest sector review conducted by a team of independent consultants, under the coordination of a Joint Coordinating Committee including representatives of a consultative body, the Working Group on Natural Resource Management (WGNRM), forestry authorities, and donors.

2. The forestry sector in Cambodia

2.1 The forest resource

The forest cover in Cambodia extends over 55% of the 18.1 million Ha that constitute the national territory of the country. In absolute terms, this represents 10 million Ha of forests. All forests are natural forests, there is no significant plantation forestry in Cambodia (0.1% of forest cover). The wood volume in forests is estimated at 40m³/ha, with a total of 376 million m³ of wood in Cambodia’s forests (FAO, 2003).

The annual rate of change in the forest cover between 1997 and 2002 was –1.0%. During the last 40 years, the net loss of forest cover was more than 20%, with uncontrolled exploitation, illegal logging, and encroachment by incoming people or local rural communities being the main cause of deforestation. The greatest gross reductions have been observed in concessions or former concession areas. Limited success in tackling the flagrant disrespect of forestry regulation, resulting in widespread illegal logging and deforestation led to a moratorium on logging, issued in January 2002 (Miller, 2004).

A forest cover assessment conducted in 1996/97 identified 18 forest types. A more recent assessment, conducted in 2004 aggregated these forest types into four broader categories: evergreen, semi-evergreen, deciduous and other forests (bamboo, mangrove, rubber plantations, re-growth). Commercial logging is focusing on the evergreen and semi-evergreen forest types. Table 1 indicates the extension of these forest types.

Table 1: Cambodia forest cover by types, 2002

Forest type ¹	Area (ha x 1 000)	% country wide	% land area
Evergreen	3 717	20.5	21.1
Semi-evergreen	1 455	8	8.3
Deciduous ²	4 109	20.4	21
Other	1 098	6	6.2
Total	10 379	54.9	56.5
Non-forest ²	7 781	45.1	43.5

Source: FA, 2003

1. 5 global categories were used in the 2002 forest cover estimates in comparison with 18 categories identified in the 1996/1997 forest cover assessment
2. A 15% adjustment has been applied to the originally calculated area figures for deciduous (reduction) and non-forest (increase) areas only, because of a suggested 'probable overestimation of the extent of the deciduous forest and a comparable underestimation of the extent of the non-forest'.

While the legal framework for protected forest areas is not complete, there is a certain level of conflict between the forest protection and commercial forestry activities. The current network of forest areas with different levels of protection covers about 25% of the country's forests.

2.2 The main forest products and related trade

The Cambodian forest products industry, consisting mainly in mills, (for sawn wood, plywood and veneer) was built up mainly by concessionaires, who did not fully deliver on their initial commitment to invest in the forest industry. However, even if the concessionaires invested less in the processing industry than they committed to at the time concessions were allocated, the current processing capacity is larger than the annual sustainable levels of harvesting, which is considered to be one of the main drivers of deforestation. In addition to registered mills, a significant number (about 1000) of non-registered mills, many of them mobile, operating in the forest, completes the picture of the Cambodian forest-based industry.

The main forest products are logs, sawn wood, veneer and plywood. Trade in forest products is limited to the internal market since the logging moratorium was introduced in 2002, with only very limited exports of sawn wood, plywood and veneer during 2001 and 2002. Future demand of internal markets is expected to increase, in line with the population growth.

Cambodia's traditional export markets are China, Taiwan, Japan, Thailand and Vietnam. Demand from these countries is likely to remain strong, with demand from China likely to increase significantly during the coming years.

While the logging moratorium imposed in 2002, clearly affected timber supply, its impact on illegal logging is not clear due to the lack of accurate and/or trustworthy statistics.

Table 2 presents statistics relating to the export of wood products from Cambodia.

Table 2. Timber exports from Cambodia by type and volume (X 1000 m³) (Source: FA, 2002, quoted in Miller, Boscolo, 2004)

Product type	Year								
	Pre '96	1996	1997	1998	1999	2000	2001	2002	Total ⁴
Round logs	840.5	161.7	0	0	0	0	0	0	1002.2
Sawn timber ¹	336.0	69.0	72.6	39.8	10.3	2.6	4.7	2.3	537.2
Plywood and veneer	44.4	28.5	182.5	197.0	83.1	71.2	36.8	10.4	653.8
Other ² panels					0.2	0.3	0	0	0.5
Other ³						0.2	0	0.1	0.2
Total ⁴	1 220.9	259.2	255.0	236.7	93.5	74.3	41.6	12.7	2195.0

Source: FA, 2002

1. sawn timber, S2S (smooth two sides), S4S (smooth four sides), railway sleepers
2. particle board
3. toys and furniture
4. allow for rounding errors

In addition to wood products, firewood, charcoal and resin play an important role for many communities in Cambodia, generating a substantial income for many rural families. It is estimated that 20,000 tons of resin are collected annually in Cambodia, benefiting around 100,000 people living near forests (Miller and Boscolo, 2004).

2.3 Forest ownership, management and government control

Forests in Cambodia are in state ownership and the Government controls forest management activities. Lack of clarity with regards to forest use rights and titles to forest areas is an important factor that affects the quality of forest management performed by different groups such as concessionaires and communities.

While concessions were granted during the 90's to many forest management enterprises, the classification of forest areas is not yet completed, due to some gaps in regulation.

Prior to the restructuring of the forestry sector in 2002/2003, the Government retained both the regulatory function and the implementation of regulations, a difficult task for government agencies operating on a low budget.

While new regulations relating to protected forest areas are yet to come, the existing protected areas system includes in addition to some significant areas, also degraded areas that do not seem to have a high protection value. On the other side, some areas, such as the Strung Chinit- Prey Long area, is considered by many stakeholder groups as highly interesting from a conservation perspective. However, it is currently a production area, and it might be proposed as a concession.

Production forests are managed either through commercial concessions (33 concessions until 2001) or through community forestry. Additionally, illegal logging takes place on concession areas both during the concession life time and after the expiry of concessions, and unorganized forest management, largely illegal, takes place throughout the forest area.

Due to the high incidence of illegal activities, a moratorium on logging activities was imposed on the forest industry in 2002. After that date, under pressure from international donor agencies, the Royal Government of Cambodia initiated a process aimed at restructuring the whole forestry sector. As a result of this process, institutional reforms were initiated, that affected also the concessions system. Concessions holders were asked to submit Sustainable Forest Management Plans prior to the renewed approval of their concessions. Finally, in 2004, only six concessions a Technical Review Team of the Forest Administration (FA) approved only 6 concessions for the next stage of the planning process (GFA, 2004).

Community forestry is developing as an alternative to commercial concessions in Cambodia. It managed to demonstrate that communities can manage forests and that they are respected by other groups when community title is clearly established. However, community forestry takes place at a reduced scale, and it involves mainly degraded forest areas, left over after the allocation of forest concessions.

The scale of illegal logging of commercial quality timber, driven mainly by the oversized milling capacity, the unorganized forest management, both facilitated by weak enforcement of regulations and corruption show that the Government does not have control over the forest resources and the way they are managed, and that it was not able enforce forestry regulations during the past years.

2.4 The social and environmental importance of Cambodia's forests

From a social perspective, Cambodia's forests play an important role, especially with regards to the livelihood of forest dependant people. In addition to the traditional use of non-wood forest products, such as fruit, bush meat and medicinal plants, the emerging community forestry sector opens additional opportunities for forest dependant communities to get involved in forest management and forest products processing.

From the perspective of the livelihood of forest dependant people, forests in Cambodia present a series of opportunities and also some aspects that make livelihood vulnerable. These aspects are described in Box 1.

Box 1. Opportunities and vulnerability for forest livelihoods in Cambodia.
Source: Turton, 2004

Opportunities

- Forests provide some livelihood opportunities for most people living in or close to forests
- But these are often limited to subsistence use, low value or labour intensive forest products
 - Examples wild foods, firewood, charcoal and resin
- Markets for forest products will grow as the economy develops
 - E.g. timber, fuel wood, charcoal, resin, bush meat
 - But primary producers often receive a small proportion of final value due to inefficient market chains
- Where forest land coincides with access and markets there are important [and unstoppable?] livelihood opportunities

Vulnerability

- Unequal power relations and lack of rights leads to exploitation
- Lack of property rights acts as a push and pull factor in the movement of households across Cambodia
 - They creates vulnerability and state instability
- Forest livelihoods are less vulnerable to seasonal/annual fluctuations
- Forest livelihoods are more vulnerable to actions of powerful people/ organisations
 - E.g. confiscation of products, extraction of rents
- Illegal but customary/traditionally accepted rights are vulnerable under current, and potentially, more formal institutional arrangements

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Current non-sustainable patterns of forest use, involving illegal logging, the lack of a proper regulatory framework and corruption represent a threat to the sustainability of forest livelihoods, especially considering the population growth and patterns relating to the establishment of new settlements, where forests play an important role in decision-making.

Under the prevailing conditions in the Cambodian forestry sector, rural communities do not benefit much from forest resources, except in those cases where they managed to maintain their claims and rights to use non-timber forest products, and, to a certain extent, where community forestry was introduced.

On the environmental side, Cambodia is a highly biodiverse country, and most of the biodiversity is linked with forest ecosystems. From a conservation perspective, Cambodia's forests are relevant at international level. Close to 10% of the country's flora species are endemic to Cambodia, and many more species are endemic to the Indochinese floristic province. Additionally, threatened forest formations such as the very humid, low elevation evergreen forests (wet tropical rainforests) from the coastal hinterland, or the very humid medium elevation evergreen forests of southwestern Cambodia, are some of the most extensive remaining forests of these types. Furthermore, Cambodia's forests constitute the habitat of more than 100 species of mammals and 600 species of birds. Among the mammals, the most charismatic species, of high international conservation relevance are the tiger, the clouded leopard, the elephant, the gaur, the elds deer, and the banteng (Ashwell et al, 2004).

2.5 The economic impact of forests

From an economic perspective, Cambodia's forests play an important role at local, regional and national level. At local level, forests play an increasingly important role through the development of the community forestry sector, albeit still in its initial phase and somewhat marginalized to degraded forest areas. At national level they represent a source of revenue for the government, while at regional level, increased demand on the regional markets, especially the expectation of significant increases in demand of forest products from China, make Cambodia's forests even more relevant for the forest products trade in the region.

At national level, the main economic interest of the Government is to raise revenue from the forest estate. However, due to the poor enforcement of legislation with regards to the concessions system in place until 2002, and also due to the reduced capacity to collect taxes, the Government lost significant potential revenue due to illegal activities. An analysis conducted within the framework of the recent independent forest sector review (see Box 2) indicates that the government has the potential to capture up to 30% of the total revenue resulting from the implementation of the concessions regime.

Box 2. Economics of timber extraction in Cambodia. (Source: Boscolo, 2004)

Timber is the most valuable product currently extracted from the forest. The value of a single harvest can exceed US\$2,000/ha in good forests, net of production costs. Managed on a regulated basis (meaning here that only 1/25th of the area is harvested annually and only 50% of commercial trees above 60 cm are cut) a good forest can yield net returns of about US\$80-\$100/ha/year. Allowing for more intense harvesting and accounting for non-timber products brings this value to US\$160-\$180/ha/year. Our analyses reveal that this value is primarily captured by illegal loggers (almost 30%), the central government (almost 30%, if royalties are paid on all the legal commercial volume harvested), and informal tax collectors (15%)¹⁶. Only about 10% of the harvest value is captured by forest users (e.g., the concessionaires) if they comply with all regulations.

It is estimated that the revenue of the Government from the forestry sector between 1994 and 2000, was UD\$ 92 million. On the other side, the damage produced by floods in 2000 is estimated at US\$ 156 million and, according to the UN it was caused by deforestation (Global Witness, 2002).

Non-timber forest products such as fuelwood, charcoal and resin, while important for many people living close to forests, are estimated to bring a revenue of about US\$15-25 Ha, and they do not seem to be alone a source of revenue capable of alleviating rural poverty in forest areas (Boscolo, 2004).

In terms of potential economic benefits, forests score better than other types of land use, like rice cultivation, especially on low productivity soils. However, the incentives to convert forest areas to agricultural use are high, mainly because it brings a relatively high immediate gain, and also because of the uncertainty with regards to land use. Clearance is perceived to enhance the chances to be recognized as legitimate land owner.

In terms of exports, during the last 3-4 years, the earnings were low, mainly due to the moratorium on logging issued in 2002. This is not to say that some groups, like the military, have not benefited from timber harvested and exported illegally during this period.

Overall, the management systems used to manage Cambodia's forests, do not seem to maximize the net economic benefits the Government itself and other stakeholder groups like local communities could obtain from forest management.

3. The policy and legal framework

3.1 The main stakeholder groups

The dominant players in the forestry sector in Cambodia are **the Government**, as the owner of the forest resource, **the private sector**, represented by forest industry companies, mainly very few powerful individuals, **the communities, unions and NGOs**. An additional stakeholder group that has been very active in shaping the forest policy and legal framework during the last decade is **the international donor community**, acting through organisations such as the World Bank, the European Union, FAO, UNDP, and the IMF, also the independent observers such as Global Witness and SGS, consultancy companies such as GFA, and also some development aid agencies.

An important trend points towards the strengthening of the civil society involvement in the forestry sector. Currently, there are more than 1,000 NGOs operating in Cambodia, including NGOs involved in grassroots work, advocacy NGOs, and also networking and capacity building NGOs. The development of the NGO sector and more generally the increased involvement of the civil society in forestry is a positive sign in a country where traditionally the accountability of the Government to the society used to be very low, facilitating the malfunctioning of the forestry sector with the

associated depletion of the forest resource base and low compliance with regulations.

The relationship between the Government and the NGO sector depends on the activities implemented by each NGO. While NGOs working on community forestry are accepted, there seems to be a certain antagonism with those dealing with human rights.

Another important player in Cambodia's forestry sector is the military, who is involved in forest use, illegal harvesting and exporting activities to neighboring countries,

3.2 The forest policy

From a policy development and implementation perspective, even if Cambodia went through a significant democratization process during the last decade, it can be considered as a post-conflict country. Decision-making processes are dominated by individuals at the highest level in the Government hierarchy and party loyalty is essential in the functioning of the Government (Hobley, 2004).

As a result of the country's recent history, the level of confidence and trust in public institutions is low. In the forestry sector, this is exacerbated by the widespread illegal activities, impunity and corruption.

Forest policy development and implementation in Cambodia is a complex issue, involving different government agencies and also other stakeholder groups such as the private sector, the military, the NGOs and donors. There seems to be no coherent policy framework allowing opportunities for meaningful interaction at a strategic level, which made the development of a coherent forest policy impossible during the last decade. The diverse interest groups often with conflicting interests over the forest resource seem not to have defined a forum within which they can interact and build agreements.

Factors that limited the development of public sector management in the forestry sector include the pervasive clientelism operating within clearly defined and rigid hierarchies in forestry and environment public services, and a major discrepancy between the private agendas of the main public actors and their formal public agenda.

Contributing factors that shape the policy development in the forestry sector include:

- Insecure land tenure, based on customary practice
- The absence of an inventory and classification of state-owned land, generating disputes between ministries over jurisdiction
- No genuine separation of the Judiciary function of the state from Executive and Legislature, with widespread interference in the affairs

of the judiciary and grand corruption at all levels, including the highest levels of the political hierarchy that are expected to initiate positive changes.

- Low Government revenues, (currently estimated at 12% of the GDP), due mainly to low enforcement capacity of existing laws and leakage of revenue, common in the forestry sector.
- No clear independence of audit and inspection offices within ministries.
- A persisting high level of centralisation in the economy, in spite of recent efforts aiming at decentralization.
- Low salaries of public officers, below subsistence levels (US\$ 28/month), meaning that public sector remuneration does not promote professionalism, on the contrary, it creates incentives for corruption.

Various ministries and departments involved in policy making and implementation, such as the Forestry administration (formerly the Department of Forestry and Wildlife), the Department of Fisheries and the General Department of Rubber Plantations under the Ministry of Agriculture, Forestry and Fisheries (MAFF), and also the Department of Nature Conservation under the Ministry of Environment, seem to compete for resources rather than for policy areas. Additionally as clarification of what constitutes state public property emerges as an issue on the forest policy agenda, a new area of potential conflict between MAFF and the Ministry of Land Management, Urban Planning and Construction can be envisaged.

Policy in the forestry sector is framed by other national policy frameworks such as the Socio-Economic Development Plan II, the National Poverty Reduction Strategy, wider policies such as those referring to “decentralization” and “deconcentration” (including here the envisaged Organic Law, not yet passed), and the Governance Action Plan (GAP) (a time-bound action plan that includes a performance matrix with responsibility for delivery of a set of actions assigned to a particular authority).

As long as these policy frameworks are evolving, with reforms ongoing in many sectors (e.g. public sector, relationship between and responsibilities of different levels of government), and in the absence of a broad-based policy process, it cannot reasonably be expected that the forestry sector can improve significantly in terms of policy making and implementation. However, it seems that the new Forest Administration managed to address in a serious manner the actions suggested by the GAP, with one important exception, that of establishing public consultation mechanisms (Hobley, 2004).

The analysis of policy-making and implementation in the forestry sector reveals deep structural problems that are not limited to this sector, but permeate all economic sectors in Cambodia. The Independent Forest Sector Review conducted during 2003 and 2004 describes the forest sector as being characterized by “institutional disarray” (See Box 3)

Box 3. Main features of the forestry sector in Cambodia.

(Source: Hobbey, in the Independent Forest Sector Review, 2004)

Institutional disarray

It is not too extreme to say that the forest sector can best be characterised as a sector in disarray where formal rules of the game are unclear, contradictory and incomplete, allowing informal and hidden rules to operate. Roles and relationships of actors both those with formal positions as well as those operating informally are confused, contradictory and allow the continued poor implementation of policy and legislation on the ground.

The Government of Cambodia identified poverty alleviation as its main policy objective. However, the policy framework in the forestry sector is not yet articulated to address the Government's main policy objective, and it is not yet clear how forestry will contribute to alleviating poverty, improving governance and enhancing national growth. With a simultaneous shift in conditionalities of donor financial assistance, the forestry sector in Cambodia will be subject to further assistance only if it manages to create the link to and have an impact on poverty.

While the predominant forest management policy during the last decade was the commercial forestry, community forestry was regarded as an add-on to this policy, and became a way to manage residual forest areas after the allocation of the high production value forests to the commercial concessions sector. However, a recently approved sub-decree on community forestry is regarded as an important step to redress the balance between commercial and community forestry.

The results of the recent Independent Forest Sector Review include the recommendation to close down the concessions system, and focus on a more participatory approach, labeled "Partnership Forestry" based on a partnership between the State and communes in the form of a Commune Forest Plan to be approved by the regulatory authority, with all royalty and fees to be assigned to the commune. This contrasts with the position of the World Bank Forest Concessions Management and Control project, which seems to be seeking to maintain the concessions regime.

On the 29th of July 2004, Global Witness issued a press release (see Annex 2) criticizing the World Bank for ignoring the recommendations of the Independent Forest Sector Review and trying to maintain the concessions regime, especially since the six concessions proposed for approval have a record of having breached Cambodian law and the terms of their contracts and have no technical capacity to perform their role in forest management. In August 2004, the World Bank responded to criticism related to its activities in Cambodia's forestry sector explaining its position (see Annex 2).

In July 2004, the German forest consultancy company GFA Terra Systems was commissioned to conduct an external review of the Strategic Forest Management Plans (SFMP) and Environmental and Social Impact Assessments (ESIA) of the six concession companies that were approved by

the Technical Review Team (TRT) of the Forest Administration (FA) for the next planning stage relating to forest concessions. According to GFA, *“in the best cases, plans still fall quite well short of what is needed, and in the worst cases, companies create the impression of fulfilling requirements, while in reality doing the minimum and betraying the spirit of the exercise”* (GFA, 2004).

3.3 The regulatory framework

Cambodia’s Constitution (amended in 1999) provides the overarching legislative framework for other, more specific regulations in different sectors of the economy.

In the forestry sector there are two main areas of legislation. One refers to the nature and extent of the forest resource, as well as the management regimes in place. In this category, the most important pieces of legislation are the Land Law, the Forestry Law, the Law on Environmental Protection and Natural Resources Management, the Royal Decree on Creation and Designation of Protected Areas, and the draft Protected Areas Law. (Annex 1 provides a full list of relevant legislation that relates to the Cambodian forestry sector).

The second area of legislation refers to the broader direction of the forestry sector, and relationships between different players. In this category, the most important laws are the proposed Organic Law on Provincial Administration (not yet approved), and the Commune Administration.

An essential element for the regulatory framework in the forestry sector is whether land use is considered from a fiscal perspective, with the main role of creating a sustained public revenue, or from a development perspective as an important element in a wider policy context, an instrument to create incentives for sustainable economic and social development as well as environmental protection (Kirk, 2003, quoted in Hopley, 2004).

In the last decade, the forestry sector in Cambodia seems to have regarded land use from a fiscal perspective, with poor results, considering the poorly functioning governance of the sector. This approach is not consistent with the primary policy goal of the Government, that of alleviating poverty.

Some of the most important weaknesses of current legislation, represent at the same time root causes for illegal acts, and they are described in Part 4.3 of the present report.

4. Main illegal acts in the forestry sector and their causes

4.1 Main illegal acts

Through various measures, such as the restructuring of the institutions dealing with forestry issues, including the creation of the new Forest Administration at MAFF, and use of independent forest monitors and observers, the moratorium on

logging from 2002, the development of the community forestry sector, and the reshuffling of the concessions system, Cambodia's Government shows that it is committed to improving governance in the forestry sector, including law compliance.

A comprehensive analysis of illegal acts requires a clear definition of what illegal acts are in the context of the forestry sector in Cambodia. In the absence of an international standard for legal compliance in the forestry sector, and of a clear and internationally accepted definition of legality, the present study is not aiming at identifying all possible law infringements that relate to the forestry sector in Cambodia. Its objective is limited at identifying the most common illegal acts prevailing in Cambodia's forestry sector, and analysing their probable causes and contributing factors. The study focuses also on the main conditions that either induce and/or forces illegal activities.

Linking the legality aspect with social considerations, the main illegal activities in the forestry sector in Cambodia can be classified into two groups: illegal acts that are at the same time socially unacceptable, and illegal acts that are socially accepted, such as **charcoal production** by local people living close to forests and **land encroachment**. The second category constitutes a more difficult area to deal with, a "grey area" that involves not only legality in the strict sense, but also other social considerations like the livelihood of local people.

This is not to defend or justify these illegal acts, but just to underpin that the root causes of these illegal acts can be found outside the forestry sector, and dealing with illegal acts belonging to the "grey area" requires more complex strategies, that have implications not only on the forestry sector, but also on other sectors of the Cambodian economy.

From a different perspective, that of law compliance alone, there are two main areas of illegal acts in the Cambodian forestry sector: **land grabbing** and **(illegal) logging**. Within these areas, the level of damage to the forest resource varies from complete removal of the forest vegetation to severe damage to the forest ecosystem.

Considering that **land grabbing** and illegal logging are the main illegal acts, in conjunction with these activities, a series of other illegal acts can be identified, such as:

- **unlawful transportation of wood**
- **tax evasion**
- **green washing of illegally felled wood**
- **illegal disposal of confiscated timber**
- **illegal wood export**
- **harvesting in protected areas**

- **re-cutting on concession areas**
- **harvesting outside of the concession area.**

Hunting/poaching is an additional illegal activity, highlighted on several occasions by the Independent Monitor (Global Witness) in its regular reports to the Cambodian Government.

The main groups involved in illegal activities are the military, powerful people, including concessionaires and their contractors, local business people, also business people operating at national level, and officials, as well as local and migrant encroachers.

According to the Independent Monitor Global Witness, the award of 32 forest concessions in 1994, covering 6.4 million Ha, representing about 35% of the national territory, was against the Cambodian Constitution, and thus an illegal act (Global Witness, 2002). The lack of transparency in the way concessions were awarded was debated for years among stakeholder groups in Cambodia, and remained an issue that marked the relationship between the Government and other stakeholder groups.

Most of the illegal activities are related either to the concessions system, including sub-contractors to concessionaires and the informal, or unorganized forestry sector. After the moratorium imposed on logging in 2002, the unorganised forest sector became the main area from the perspective of the incidence of illegal acts. At the same time, it became the main supplier of the domestic market.

The area in which unorganised forestry occurs is greater than the area under effective management as community forestry or concessions. Its extension is estimated at 75% of the total forest area, and it includes areas that have been withdrawn from concession management, many of which are highly degraded. It is estimated that more than 4 million Ha, representing about 40% of the total forest area have been cancelled as concessions, as a result of the logging moratorium and the subsequent overhaul of the concessions system (Independent Forest Sector Review, 2004).

A series of illegal acts have been widely publicized by the independent monitor Global Witness. Box 5 presents some of these findings, relating to the activities of a single business person.

4.2 Corruption – an additional illegal act

Corruption represents per se an illegal behavior, and at the same time it is one of the main contributing factors for other illegal acts in the forestry sector. According to Contreras (2002), corruption is one of the prominent illegal acts in the forestry sector. There are many interpretations and definitions of what constitutes corruption. The position of the UN Convention against Corruption adopted by the UN General Assembly in October 2003 and signed in December 2003 is reflected in Box 4.

Box 4. Definition of corruption according to the UN Convention against Corruption

Source: UN Office on Drugs and Crime

- **Does the Convention define corruption?**

The Convention has taken the approach that a comprehensive definition of corruption was neither necessary nor feasible. Corruption is a fluid concept, signifying different things to different people. More importantly, it is an evolving concept. The Convention is designed to function in a global environment and is geared towards the future. In light of those objectives, and in view of the multifaceted nature of the phenomenon and the consequent difficulty of constructing a legal definition, the Convention adopted a descriptive approach, covering various forms of corruption that exist now, but also enabling States to deal with other forms that may emerge.

Legal compliance in the forestry sector depends to a large extent on good governance. In most cases where illegal activities constitute a problem for the forest sector, governance in general, and particularly governance in the forestry sector is poor.

According to TI surveys conducted at global level, corruption affects more the livelihood of poor individuals than the livelihood of better-off individuals. Two out of five respondents on a low income consider that corruption has a very significant effect on their personal and family life, while in the case of respondents on a high income the same answer came from one out of four respondents (Transparency International, 2004).

Cambodia is not included in the corruption surveys and rankings of Transparency International (TI). However, most reports about the forestry sector in Cambodia mention corruption at all levels as one of the most evident patterns of illegal behavior, that generate a series of other illegal activities.

According to the independent monitor Global Witness, a key issue in Cambodia is that corruption is driven from top down across all levels of Government. Individuals who are expected to make a real difference and initiate change are actually part of the problem, which represents a significant challenge for any donor driven initiative. Existing programmes and initiatives have yet to overcome this problem. (Global Witness, personal communication, 2004).

"A tough line from the donors on governance, corruption and forest sector reform is routinely parroted and then disregarded by the government. The RGC is never held to account for failing to meet its commitments, the aid continues to flow and the status quo prevails. Does this benefit Cambodians outside the entrenched elite?" (Global Witness, 2004,a)

Between July 2003 and March 2004, Yeay Chhun employed loggers to undertake illegal harvesting of trees in the O'Rove forest, north west O'Reang district capital, Mondulakiri, inside an area designated as protection forest. This operation targeted grade one Koki timber, as well as grade two trees, and local inhabitants report over a hundred trees being cut. In April 2004, stumps of at least 30 recently felled Koki trees were inspected around UTM 723 334 1375482.

In early March 2004, Yeay Chhun's workers used heavy machinery to bulldoze a road from a location near Pu Hyam village, O'Reang district, approximately 30km north west into O'Rove forest, to facilitate extraction of the timber. Upon completion of the road in mid March, Yeay Chhun began using two tractors and two trucks to haul the logs out of the forest and then transport them to her sawmill in O'Reang district capital. Each truck carried loads of between three and six logs and was making either one or two trips into the forest each day up until the second week of April. These activities stand in clear contravention of the moratoria on cutting and transportation of round logs, as well as several provisions of the 2002 Forestry Law.

From Yeay Chhun's sawmill, the logs have either been processed into sawn timber, or transported on to locations closer to Phnom Penh, purportedly for the construction of racing boats for pagodas. In this regard it is important to note that in a number of other recent cases, the supposed provision of Koki logs to pagodas in Prey Veng and Kandal provinces has provided a pretext for illegal logging. In several instances, representatives of high-ranking Government officials have persuaded monks to sign requests for logs. Once cut, however, the Koki logs have often been sold to timber traders, with the monks left empty-handed.

The main pretext for Yeay Chhun's logging operation in Mondulakiri is 'old log collection'. 'Old log collection' was the device most commonly used by illegal loggers during the late 1990s. Under this system, companies, military personnel and others would claim to have discovered quantities of old logs in the forest and request official permission to collect them. Upon receiving approval, they would log new areas and then extract the fresh-cut logs, claiming that they were 'old'. In 1998, the World Bank estimated that 'old log collection' was the cause of 95% of illegal logging in Cambodia. In recognition of the gravity of the problem, Prime Minister Hun Sen prohibited the further issuing of 'old log collection' permits in January 1999, as part of his Declaration Number One on forest sector reform.

Despite the Prime Ministerial injunction on 'old log collection', in July 2001 Mondulakiri Department of Forestry and Fisheries officials admitted that they had sold to Yeay Chhun the rights to collect a quantity of old logs which they said had been felled illegally and then confiscated. Disposal of confiscated timber is required to take the form of a public auction, which in this instance did not happen. DAFF and other provincial officials reported that the old logs were scattered across a broad area of forest encompassing parts of O'Reang, Pichreada and Sen Monorom districts in Mondulakiri. In August 2002, FA and provincial officials permitted Yeay Chhun to establish temporarily a sawmill in O'Reang district, supposedly to process her old logs.

In line with well-established practice, Yeay Chhun proceeded to use 'old log collection' as cover for a large-scale illegal logging and processing. With the assistance of Mondulakiri Deputy Governor Khouy Khun Hour, moreover, she has succeeded in turning what was styled as a temporary operation into something rather more long-term. On 10th February 2004, Khouy Khun Hour wrote to the district chiefs of O'Reang and Pichreada districts to inform them that he had extended permission for Yeay Chhun's sawmill operations by a further six months, effective from 1st February. The explanation given was that Yeay Chhun required more time to complete her timber processing activities.

Yeay Chhun has acquired a range of additional documentation in order to give her operations an appearance of legitimacy. These include letters sent by a certain Okhna Louv Hing to Prime Minister Hun Sen and his wife Bun Rany, requesting permission to obtain 30 cubic metres of luxury wood to build a house and six Koki logs to donate to pagodas for racing boat construction. Luxury tree species are protected by law, while felling of Koki logs is illegal under the terms of the 2002 moratorium on logging. Yeay Chhun presents herself as Okhna Louv Hing's representative, and has obtained documents signed by Khouy Khun Hour and Mondulakiri provincial Department of Agriculture official Chan Chesda requesting that local authorities co-operate in her efforts to buy timber. The purchase of wood outlined in these letters bears no relation to Yeay Chhun's illegal harvesting of over a hundred trees. However, it does provide further evidence of her capacity to obtain from officials, letters and permits that purport to authorise activities that are in fact contrary to the law.

4.3 Illegal acts in Cambodia's forestry: causes and contributing forces

A framework analysis of illegal acts in the forestry sector and its contributing causes must consider the fact that a forestry sector plagued by illegal acts is the result of interactions between different factors, and that none of these factors alone is likely to be sufficient to generate conditions that could explain the propagation of illegal acts.

On a general level, the main underlying factors that facilitate illegal actions in the forest sector are (Contreras, 2002):

- A faulty legal system
- Insufficient knowledge and poor knowledge management
- Excessive discretionary powers in the public and private sectors
- Poor implementation capacity of the public forest administration and enforcement agencies and
- Lack of transparency

Corruption might be considered as an additional underlying cause, although it constitutes *per se* an illegal act. (See 4.2). According to the findings of the Independent Observer Global Witness, corruption is one of the main drivers for illegal acts in Cambodia (Global Witness, 2002).

Considering the framework analysis of underlying causes of illegal acts developed by Contreras (2002), the situation in Cambodia could be described as follows.

4.3.1 Faulty legal system

The legal system governing the operation of the forestry sector in Cambodia includes several laws, as described in section 3.3 above.

Some of the most important weaknesses of the current legal system, with major impacts for law compliance in the forestry sector, are:

- Lack of connection between the Forestry Law and the Land Law, and, more generally between different laws that are relevant for the forestry sector, with the main problem being the conflicts between conservation and production and the balance of land use around these functions
- Lack of clear definitions in legislation, including the definition of forest, which is ambiguous and open to interpretation
- The definition of the state public property and lack of appropriate means to define and demarcate it

- Unclear definition of different forest categories (permanent forest reserve, permanent forest estate, conversion forests, etc.)

In addition to detected weaknesses of current legislation, there are also some gaps in forest-related legislation, which makes the governance of the sector even more difficult. One area of legislation that is relatively incomplete is relating to rules and regulations for environmental protection and protected areas. Currently there is a draft Protected Areas Law under discussion and debate between the Ministry of the Environment and MAFF. As long as this law is not approved, it will be difficult for the Ministry of Environment to manage properly protected areas. The major pieces of legislation mirror the structure of the bureaucracy and the relationships between institutions involved in the forestry sector.

The lack of clear definition in the allocation of responsibilities for the forestry sector between different levels of government constitutes yet another gap in legislation that affects the way this sector is managed. Once it is approved, the Organic Law is supposed to close this gap.

The regulatory framework for community forestry does not provide for the development of a sense of ownership, rights and involvement by communities in forest management activities. Additionally, it lacks independent arbitration mechanisms that would allow communities to question decisions taken by the Forest Administration, and it does not offer incentives for getting involved in forestry activities (relatively short time-frame given for management plans, 15 years, with no secure rights over forest produce).

The way legislation deals with use rights is essential for ensuring a proper environment for the effective engagement in forest management activities. This is not limited to community forestry, it refers to all forest use in Cambodia.

4.3.2 Insufficient knowledge and poor knowledge management

Throughout the 1990's the main forest management policy pursued by the Cambodian Government was the concessions system. In exchange for concession areas, concessionaires committed to make significant investments in the forest-based industry.

By the time the moratorium on logging was introduced in January 2002, concessionaires had not fully delivered on this commitment. However, even in this situation, with a sawmilling capacity that was lower than the predictions and expectations of the Government, the installed capacity is higher than the forests under concession regime can yield in a sustained manner. Sawmills operating at low throughput is considered to be one of the main drivers for illegal logging in the concessions area and for continued plundering of Cambodia's forests.

This situation shows clearly that the concessions system was launched in 1994 without a sufficient knowledge base about the potential yield from forests placed under the concessions regime. Similarly, no social and

environmental impacts seem to have been assessed prior to the decision to award 32 concessions to a largely unqualified business sector in 1994.

The Independent Forest Sector Review conducted between 2003 and 2004 produced a wealth of valuable information about many significant aspects of the forestry sector. However, during the implementation of this project, the Government made some strategic decisions, such as the decision to continue operating a concessions system, without waiting for the results of the review process, which in the end recommended not to pursue any further concessions as a viable management regime for Cambodia's forests.

4.3.3 Excessive discretionary powers in the public and private sectors

The activities of the Independent Observer, Global Witness, identified the excessive discretionary powers in the public sector as one of the most important aspects to address in order to improve legal compliance in the forestry sector. In 2002, the former Department for Forests and Wildlife was perceived to have excessive discretionary powers in deciding how to deal with forest crime. Jurisdiction to address forest crime is spread over several government agencies, but it was not clear which agency had precedence, or which procedures were applied to ensure that these agencies collaborate on tackling forest crime. (Global Witness, 2002).

Excessive discretionary powers of public institutions is further illustrated by the decisions of the Royal Cambodian Armed Forces to log and encroach forest, for "reasons of national defense", or by Governors authorizing themselves timber transports, logging and land grabbing.

Considering the intense reporting of the Independent Observer to the forest administration, and the weak results of subsequent investigations by the forest authority, followed by no measures at all or arbitrary measures taken against illegal acts, it can be concluded that the forest authority applies excessive discretionary power in enforcing legislation, even in the presence of objective evidence of widespread illegal acts.

Similar discretionary powers can be identified also in the private sector, where concessionaires, disregarding legal requirements, have taken decisions to log in areas that were either outside of their forest concessions or to ignore the memorandum on logging from 2002.

Excessive discretionary powers are the consequence of weak legislation and the resulting lack of accountability mechanisms within public institutions. Inspection offices within ministries are not independent and they are often subject to political pressure. The lack of accountability mechanisms refers both to the internal accountability, within the government agencies, and also to the accountability to the society at large.

Another important aspect that underpins the systemic problems of the forestry sector is the profound lack of public confidence in the judicial system, which results in lack of confidence in the ability of courts to deal with

corruption and abuse of decisional powers at the level of governmental institutions.

4.3.4 Poor implementation capacity of the public forest administration and enforcement agencies

The most important government institutions that are responsible for the administration of the forestry sector are the Ministry of Environment (MOE) and the Ministry of Agriculture, Forestry and Fisheries (MAFF).

MOE's capacity to perform its functions is limited by the fact that it is a relatively new institution, and its relative power to influence other ministries is limited. Additionally, the incomplete legal framework also hinders its effectiveness. MAE is also perceived as having limited operational capacity to deal with protected areas. Consequently, operational responsibility for the management of protected areas has been contracted out to NGOs, with DNCP staff seconded to work on individual projects. At the same time, there is only limited coordination between DNCP and NGOs (Independent Forest Sector Review, 2004).

At MAFF, as part of a broader organizational reform, the former Department for Forestry and Wildlife (DFW) was transformed into a Forest Administration (FA). Many of the arguments for this change relate to the poor implementation capacity of DFW, including inadequate plans, strategies and systems to implement them, lack of clear lines of authority, a set of staff skills and competence not matching the requirements of an agency in charge of administering forest resources, high absenteeism and low motivation of staff derived from low salaries, as well as poor working environment at province and district level. Many of these problems identified in relation to the operation of the former DFW, are common to most governmental institutions involved in one way or another in the administration of the forestry sector.

One of the objectives of this restructuring of the forest administration was to remove forestry from the influence of provincial authorities. While this in principle a positive aspect, it has some negative implications that have not yet been addressed, such as the lack of participation and voice for forestry in two important regional committees (the Provincial Rural Development Committee (PRDC) and the Provincial Land Use Allocation Committee (PLUAC)).

Since the Forest Administration emerged as a new structure only recently (September 2003), it is premature to judge how it managed to address weaknesses in the administration of forest resources that had been identified in relation to the functioning of the former DFW. At the beginning of 2004, a long list of items still needed clarification, including the relationship between FA and MAFF, and many questions relating to the internal structures of the FA.

4.3.5 Lack of transparency

A clear example of lack of transparency in the management of the forestry sector was the Government decision in 1994 to allocate forest area to 32

companies as forest concessions on an ad-hoc basis, prior to any assessment of their value.

Transparency is linked to the discretionary power in the public and private sector and also with the lack of accountability of government agencies. Since decision-making is highly centralized, transparency is threatening interests of senior officials, many of whom are suspected to have close links with the business sector. As a means to provide increased transparency, the Independent Forest Sector Review, which identified transparency as an important element to address, recommended to set up a Private Interests Register in which senior public servants should declare any private interest in the sector.

In the context of the Cambodian forestry sector, the need for transparency refers to a wide range of issues such as:

- The need to develop and implement mechanisms for the participation of stakeholder groups in policy making
- The need to publish all forest laws, rules, regulations, practices and procedures, including those referring to granting of concessions, cutting licenses, sawmill licenses and transportation licenses
- The need to maintain a full, updated and publicly available list of legal concessions as well as all concession details, including maps and the location of sawmills
- The distribution of reports produced by the Independent Observer (now SGS, who replaced Global Witness in 2003).
- The need to facilitate access of the Independent Observer to documentation needed to comply with its mandate, and also the need to grant independence to the observer in assessing performance in the field

4.3.6 Other contributing factors

In addition to the direct causes of illegal acts committed in the Cambodian forestry sector, a series of other aspects have to be considered in order to draw a full picture of legal compliance in this sector. These aspects may not be directly linked with certain patterns of illegal behavior, but they are contributing to the overall state of anarchy in the forestry sector perceived by many analysts. The potential list of contributing factors include:

- The overall governance situation in Cambodia, involving different processes that are taking place simultaneously, such as public sector reform, decentralization and deconcentration, the development of new legislation, the re-distribution of roles and responsibilities between different levels of government and between different government agencies within the same level of government.

- The democracy-building process in a country that still presents a number of features that characterize a post-conflict country such as highly centralized decision-making processes dominated by individuals, the importance of party loyalty in the political life and the functioning of the Government, and the competition between central agencies regarding both resources and a competencies.
- The unclear tenure and use rights, which can be singled out as an issue relating to the legal system that has a great influence on legal compliance.
- The contradicting messages from the international donor community involved in Cambodia, with regards to the balance in policy setting between commercial/rent seeking approach of the state and socially oriented management of the forest resources. In this regard, the recommendations of the Independent Observer (Global Witness) and the Independent Forest Sector Review to close down the concession system and focus on a more socially oriented forest policy seem to contradict the apparent position of the World Bank, who was perceived by other groups at international level as supporting the reform, rather than the closure of the concessions system.

5 Corrective measures planned or adopted

5.1 Policy framework and the institutional setting

a) Policy framework

Following the high deforestation rate and the high frequency of illegal acts, in 1994 the Royal Government of Cambodia started to replace the former regime of chaotic plundering of the forest resources by a more organized concessions system that would allow to make concessions responsible for any illegal acts. However, due to a series of factors, such as gaps in legislation, insufficient institutional capacity, and corruption, the new concessions regime did not manage to improve significantly legal compliance in the forestry sector, and the depletion of forest resources continued since concessions were granted after 1994.

After the moratorium on logging from January 2002, with the support of several donor institutions, the Government started to restructure the concession system and made the approval of concessions dependant upon more stringent rules, especially regarding social and environmental impacts and the sustainability of the forest management applied through forest concessions. As a result of this process, out of 32 concessions awarded initially (after 1994) only six remained in the race for a final approval based on the updated requirements (GFA, 2004).

At the end of the 1990s a new policy approach started to develop, that of community-involvement in forest management. Even if this approach received limited attention initially, and was applied on areas that had not been allocated to concessions, later on, through the recognition in law of community forestry (Forestry Law and

community forestry Sub-Decree from 2003), it has managed to establish itself as a viable option for forest management.

The areas under community forestry are still small, with intensive protection and management regimes, and communities have still a limited confidence in the approach (Independent Forest Sector Review, 2004). However, depending on the way recommendations of the recent Independent Forest Sector Review will be implemented, community forestry has the potential to develop into a viable option for a larger share of Cambodia's forests in the future.

b) The institutional setting

The major changes implemented as a reaction to the poor governance of the forestry sector during the last decade, relate to recent changes in the structure of the Ministry for Agriculture, Forestry and Fisheries (MAFF). These changes follow the conditionalities related to donor funding, such as the World Bank Structural Adjustment Loan (30 million USD).

During the last few years, MAFF has made attempts to separate itself from the provincial administrations in order to better fulfill its responsibilities through a centralized delivery of services down to the local level. This strategy constitutes a response to pressures to bring control back to the center over actions in the provinces, and is in line with specific recommendations included in the Governance Action Plan from 2001, to look at single lines of control.

In September 2003, the former Department for Forestry and Wildlife (DFW) was renamed and restructured as the Forestry Administration (FA). While responding broadly to the overall restructuring needs of MAFF, the reasons for restructuring the administration of the forestry sector included specifically aspects that relate to legal compliance, such as the anecdotal evidence of widespread illegal payments to supplement salaries and operational budgets, and the evidence of the adverse influence of various interest groups, including the military in the operation of the Administration.

Additional changes at institutional level in support of better governance and improved legal compliance include the founding of a Community Forestry Unit within the MAFF, followed by its evolution into an own, separate office, during the restructuring that led to the founding of the new FA.

Since the new Forestry Administration is only one year old, it might be premature to judge how it managed to improve the implementation of forestry regulations and law compliance in the forestry sector. Additionally, documented evidence in support of an evaluation of performance of the FA is scarce.

An additional step that was intended to improve the governance of the forestry sector, and implicitly legal compliance in this sector is the creation of the Ministry of Environment, which has the mandate to protect Cambodia's natural resources, and prevent environmental degradation and advise other relevant ministries on the conservation, development and management of natural resources.

Due mainly to ongoing conflicts with MAFF over jurisdictional control of protected areas, which has its roots in the incomplete legal framework for environmental protection, and also due to the limited operational capacity at MOE, its effectiveness in delivering on its mission is questioned.

5.2 The Independent Monitor

The history of the Independent Observer in Cambodia starts in 1999 when, as part of the Forest Crimes Monitoring and Reporting Project, implemented by the Cambodian Government (through MAFF and MOE) Global Witness was contracted as the independent Monitor of the Project.

The main objective of this project was to build capacity within existing government structures to detect, investigate and suppress forest crime. The role of the Independent Monitor (Global Witness) was to audit government records and determine if the Department of Forestry and Wildlife at MAFF and the Department of Inspections at MOE are effective in carrying out their corresponding mandates within the framework of the project.

Global Witness has been calling for the cancellation of concession agreements since 1996. During its operation as Independent Monitor, it faced serious obstacles in carrying out its role, such as the inability of the Government to conduct swiftly research on reported illegal acts and make decisions to tackle illegal activities, and difficulties in obtaining access to sensitive information relating to the operation of forest concessions.

In its July 2002 report, Global Witness made a series of recommendations to the Cambodian Government, aimed at improving the governance of the forestry sector. These recommendations (See Box 6) are based on the observations the Independent Monitor made in the field and through the review of documental evidence.

Between 2001 and 2003, the RGC had a difficult relationship with Global Witness, involving the public release of information relating to continued illegal activities that questioned seriously the willingness of the RGC to ensure the implementation of regulations in the forestry sector.

In 2003, the RGC decided to replace Global Witness with the Swiss based Soci t  Generale de Surveillance, who took over the role of independent Monitor effective 1st of December 2003. The services of SGS are priced at 425,000 USD/year for three years, and they are going to be paid by the Government of Cambodia through a 5 million USD World Bank loan (Forest Certification Watch, 2004).

The main objective of SGS's involvement in Cambodia as an Independent Monitor is to provide the RGC with an informed, independent assessment of the efforts and achievements of its agencies in investigating and suppressing reported forest crime and make recommendations for improvements to the current system.

To complete this task, SGS gathers data from a variety of sources, including reports from RGC agencies, forest industry, media sources, NGOs and civil society.

Verification activities include reviews of RGC files, reports and records as well as reports and information from civil society and media sources. Field verification comprise ground checks, aerial reconnaissance and analysis of satellite imagery.

Box 6. Global Witness recommendations to the RGC from July 2002

The Royal Government of Cambodia should:

- Ensure that all current concession companies that fail to meet the standards set out in Article 4 of the Sub-Decree on Forest Concession Management are barred from the contract renegotiation process.
- Ensure that the process of evaluation of the Environmental and Social Impact Assessments (ESIAs) and Sustainable Forest Management Plans (SFMPs) is open and transparent.
- Ensure that all ESIAs and SFMPs submitted by the concession companies are made available to the public prior to their approval.
- Ensure regular consultation with, and participation by, local communities and other relevant stakeholders in the development of the SFMPs in accordance with Article 2 of the Sub-Decree on Forest Concession Management.
- Cancel the concession agreements of concession companies that have logged illegally.
- Prioritise the elimination of corruption from the Department of Forestry and Wildlife (DFW).
- Ensure complete transparency in the forest sector including the publication of all forest laws, rules, regulations, practices and procedures, and all concession details including maps.
- Ensure that politicians and government officials declare any financial and familial links to the forestry industry.

From these verification activities and based on objective evidence gathered, SGS reports on the effectiveness of the work of RGC agencies, highlighting both positive achievements and problem areas as well as making suggestions for improvement. Public Reports are released on a quarterly basis (SGS, 2004).

The release of the first SGS quarterly report on its activities as Independent Monitor in May 2004 was followed by harsh criticism from the previous Independent Monitor, Global Witness, and also from the World Bank.

Criticism from Global Witness referred both to the apparently restricted mandate of the new Independent Monitor, which does not allow for the release of uncensored findings in the field by the IM, and provides for a facilitating role of the Cambodian FA when it comes to field visits, giving the FA effective control over the activities of the IM.

This change in the mandate of the IM results from the Terms of Reference of its assignment, which were agreed between the Government of Cambodia and the World Bank.

Criticism of the first SGS quarterly report from the World Bank referred to the lack of a complete and conclusive judgment of the current status of the monitoring system that was required according to the Terms of Reference. (Forest Certification Watch, 2004)

The apparently limited mandate of SGS as IM, and the critical reactions of the

former IM, Global Witness and the World Bank to the first SGS quarterly report, question the effectiveness of the IM in fulfilling its objectives and also the independence of SGS in this role.

The use of the Independent Monitor in Cambodia in support of governance of the forestry sector shows that this institutional arrangement is not in a position to deal with all possible barriers to legality, such as complex and inconsistent laws, failure to recognize legal rights and claims, lack of transparency, and unclear distribution of power between different levels of government.

Independent monitors play an important but incomplete role in ensuring legal compliance in the forestry sector. Box 7 presents the conclusions of a recent study conducted by the UK Overseas Development Institute on some recent cases where Independent Forest Monitors (IFM) have been used as an institutional mechanism to improve governance and legality in the forestry sector.

Box 7. Enabling environment for the Independent Forest Monitor (IFM)

The overall picture which emerges is one in which IFM plays an important – but inevitably incomplete – role in the promotion of legality and the suppression of illegality. Agencies undertaking IFM need to be protected in carrying out this task, and to be equally protective of their impartiality and integrity. Institutional rules and structures need to be put in place to enhance both of these elements. A range of complementary strategies need to be adopted to develop sectoral policy and practice. These may include other approaches to broaden public ownership and supervision, increase revenue capture and ensure that revenues are put to good effect. The particular forms that such activities take will depend on the national context and its trading relationships.

5.3 The Independent Forest Sector Review

In 2003, the Joint Coordinating Committee of Government and Donors commissioned an Independent Forest Sector Review, which was conducted by a team of independent consultants between October 2003 and March 2004.

The results of this review process, including its overall conclusions and recommendations were presented at a critical junction for the forestry sector in Cambodia. Many of the issues under debate could be described generically as “forest sector reform”. Some of these issues refer to forest management (including the concessions system, community forestry and illegal logging), rights and claims to forest areas, including indigenous peoples’ claims, institutional roles such as administrative functions and structures, roles of stakeholder groups both at national and international level, the national context in Cambodia, including public sector reform, decentralization and deconcentration, and the international donor community.

The Independent Forest Sector review addressed these issues using a holistic approach, attempting to determine their importance within an overall framework rather than considering them as separate issues. This seems to be a valuable

approach, because the lack of significant progress in the governance of the Cambodian forestry sector during the last decade is likely to be the result of a lack of a coherent and overarching approach, looking not only at particular issues related to the forestry sector and the management of forest resources, but taking into account at the same time the numerous and profound links to other sectors, and the broader picture of the democratization process in Cambodia.

Through the detailed analysis of essential aspects, such as the forest resource, the main actors involved in the forestry sector, pressures and opportunities under different management regimes, the institutional setting and the rules that governs it, both formal and informal, the Independent Forest Sector Review attempted to determine the importance of these elements in an overall framework, and make recommendations for improving governance in the forestry sector.

The Independent Forest Sector Review concluded that the way forests should be managed represents a strategic decision based on a balance between livelihoods, economy and ecology. In terms of the forest management regime, the review recommends to discontinue the concessions system and promote community forestry. Additionally it proposes consideration of a radical alternative, “partnership forestry”, based on a partnership between the state and communes.

During the implementation of the review process, the Cambodian Government took some important decisions that preempted the results of the review, which was interpreted by the authors of the review as a missed opportunity to open a broad public discussion about governance of the forestry sector and base its strategy on the results of such an open and participatory process.

5.4 The role of the international donor and NGO community in addressing governance and legality in the Cambodian forestry sector

International donor agencies like the World Bank, and also international NGOs like Global Witness played an important role in the Cambodian forestry sector during the last decade.

At the beginning of the 1990s, following years of civil strife, international donors such as the World Bank and the IMF (who pulled out of the programme later on) started to support the efforts of the Cambodian Government aimed at rebuilding the Cambodian economy.

The World Bank and other donors made sustainable forest management a condition for Cambodia to receive a US\$30 million World Bank structural Adjustment Loan, to be released in several installments. The release of a second installment (US\$15 million) in 1999 was associated with conditions established within the framework of a 1999 Consultative Group of Donors for Cambodia. These conditions included four specific actions (Forest Certification Watch, 2004):

- The submission of a draft forestry law to the National Assembly
- The enactment of a Sub-decree of forest concessions management
- A review of forest concessions and follow up work resulting from this review

- The founding of a Forest Crimes Monitoring Unit¹

The recent Independent Forest Sector Review, which produced valuable information and insights into the Cambodian forestry context, is also the result of an initiative promoted by the Joint Coordinating Committee of Government and Donors.

6 Effectiveness of adopted measures

While illegal acts continue to represent a major problem for the forestry sector in Cambodia, the Government took several actions during the last five years to tackle illegal acts.

Some of the most important initiatives aimed at addressing illegal activities in the forestry sector during the last five years were:

- the development of new and updated legislation (e.g. forest law from 2001)
- the formation and operation of a Forest Crimes Monitoring Unit
- the collaboration with the International Monitor Global Witness between 1999 and 2003, and subsequently with SGS
- the moratorium on logging imposed in January 2002
- the restructuring of the concessions system during the last three years
- institutional reforms

The success in addressing illegal activities can be measured from different perspectives. At the time when the concession system was introduced (after 1994), it was presented by the RGC as a solution to the anarchic (illegal) forest exploitation that prevailed in Cambodia until that date. However, considering the high rate of illegal acts related to the operation of the forest concessions, resulting in a high rate of deforestation and widespread degradation of Cambodian forests during the 1990s, it is difficult to describe the concession system as a positive alternative in dealing with legality in the forestry sector. On the other side, it is also hard to blame the concession system alone for its failure to address issues relating to legality, because the legal framework during this period was not complete and also the ability of the Government to enforce legislation was limited. These are important factors to consider when assessing the impacts of the concession system on legal compliance.

The use of Independent Monitors (or Observers) is considered to be a viable alternative for improving law compliance in the forestry sector. However, the experience in Cambodia to date shows that this institutional arrangement, involving an external organization collaborating with Government agencies, needs an enabling environment in order to be successful. This includes activities such as: full commitment at the highest level in the Government for eliminating corruption, prompt follow-up on findings and reports of the Independent Monitor, and coordination between government agencies in the full implementation of regulations.

¹ The Forest Crimes Monitoring Unit was a collaborative effort between inspection teams from the DFW and MOE, and the international ENGO Global Witness. Its main objective was to monitor forest crimes, initially both in concession areas and in protected areas. Later on the mandate was restricted to cover only protected areas.

To date, this was obviously not the case in Cambodia, where corruption is still an important issue, not sufficiently recognized and addressed, and where the relationship between the first Independent Monitor, Global Witness and the Cambodian Government was difficult, mounting in the replacement of the IM with SGS in 2003, with a subsequent restriction of the mandate of the new IM.

While the Cambodian Government followed up on some of the findings and recommendations of the IM, resulting in a moratorium on logging activities since the beginning of 2002, and the revocation of the concession title for some companies, it failed to incriminate many other logging companies that were discovered to be committing illegal acts and properly follow-up on the reports of the IM.

The Cambodian Government could not fully enforce the moratorium on logging from January 2002. Evidence in the field suggests that even if the incidence of large-scale illegal logging operations was reduced significantly, some concessionaires continued to log using different strategies, involving corruption of public officers, in complete disregard to the logging moratorium. Additionally, while the internal market demand could not be suppressed, supply shifted from the concession areas to other forest areas or it continued on former concession areas, shifting the weight of illegal acts from the concessionaires as main actors to other groups, notably the military and local powerful business people.

The policy and legal framework and the institutional setting were improved significantly during the last few years, but concrete results of these changes, in terms of bringing illegal acts under control, are yet to come. Furthermore, the legal framework is still not complete, especially with regards to protected areas and the distribution of responsibilities between different levels of Government, which makes the full implementation of regulations and an improvement of performance in legal compliance in the forestry sector difficult.

On many occasions, the Cambodian Government seems to have reacted on an ad-hoc basis to initiatives pointing towards sustainable management of the forest resources, without taking into account the broad picture, involving also factors that do not depend only on the forestry sector. A reference could be made here to the development and introduction of the concessions system after 1994, without a proper knowledge base of the social and environmental impacts of this decision, or the more recent initiatives regarding institutional reform, carried out without having conducted a transparent and inclusive consultation process, and before the implementation of the Independent Forest Sector Review.

Considering the starting position of the Cambodian forestry sector at the beginning of the 1990s, it appears that the forestry sector was managed without a clearly defined strategy, based on an evaluation of the main management options and subsequent consensus among the main stakeholder groups, and that some interests prevailed and managed to dominate the political agenda to the detriment of other stakeholder groups and the forest resource.

Annex 1. The legal framework in the Cambodian forestry sector

DOCUMENT	DATE	ISSUING BODY
<i>GOVERNANCE STRUCTURES, MINISTERIAL AND PROVINCIAL ROLES AND FUNCTIONS</i>		
Constitution	As Amended 4/3/1999	Constitutional Council
Sub-Decree on the Organization and Functioning of the Ministry of Interior	20/12/1993	Council of Ministers
Sub-Decree on the Organization and Functioning of the Ministry of Environment	25/9/1997	Council of Ministers
Sub-Decree on Organization and Functioning of the Ministry of Land Management, Urbanization and Construction	20/7/1999	Council of Ministers
Sub-Decree on the Organization and Functioning of the Ministry of Agriculture, Forestry and Fisheries	7/4/2000	Council of Ministers
<i>FORESTRY RULES AND REGULATIONS</i>		
Forestry Law	30/7/2002	National Assembly
Royal Decree on Watershed Management	11/1/1999	King
Sub-Decree on Forest Concession Management	7/2/2000	Council of Ministers
Sub-Decree Withdrawal of Red Lands From Forest Concessions for Rubber Plantations	17/8/2001	Council of Ministers
Sub-Decree on Community Forestry Management	2/12/2003	Council of Ministers
Prakas on Management of Forests and Elimination of Illegal Forestry Activities	25/1/1999	Prime Minister
Prakas on Suspension of Forest Concession Logging Activities	13/12/2001	Ministry of Agriculture, Forestry and Fisheries
Prakas on Organization and Functioning of the Forestry Administration	17/9/2003	Ministry of Agriculture, Forestry and Fisheries
<i>LAND RULES AND REGULATIONS</i>		
Land Law (Repealed)	1992	National Assembly
Land Law	30/8/2001	National Assembly
Sub-Decree on the Organization and Functioning of the Cadastral Commission	31/5/2002	Council of Ministers
Sub-Decree on Social Land Concessions	19/3/2003	Council of Ministers
Prakas on Guidelines and Procedures of Cadastral Commission	21/8/2002	Ministry of Land Management, Urban Planning and Construction

<i>ENVIRONMENTAL PROTECTION AND PROTECTED AREAS RULES AND REGULATIONS</i>		
Law on Environmental Protection and Natural Resource Management	18/11/1996	National Assembly
Draft Protected Areas Law	NA	NA
Royal Decree on Protected Areas	1/11/1993	King
Sub-Decree on EIA Process	11/8/1999	Council of Ministers
Prakas on the Protection of Natural Areas	3/6/1994	Ministry of Environment
Prakas on EIA Process	9/3/2000	Ministry of Environment
<i>DECENTRALISATION RULES AND REGULATIONS</i>		
Commune Administration Law	19/3/2001	National Assembly
Sub-Decree on the Decentralization of Powers, Roles and Duties to Commune/Sangkat Councils	25/3/2002	Council of Ministers
Prakas on Commune/Sangkat Development Planning	1/2002	Ministry of Interior & Ministry of Planning
<i>INDUSTRY, MINES AND ENERGY</i>		
Sub-decree on the Organisation and Functioning of the Ministry of Industry, Mines and Energy	26/04/1999	Council of Ministers
	9	
<i>RELATED RULES AND REGULATIONS</i>		
Law on Investment	4/8/1994	National Assembly
Sub-Decree Implementing Law on Investment	29/12/1997	Council of Ministers

Source: Hoblely, 2004

Annex 2

Position of Global Witness with regards to the World Bank involvement in Cambodia and the position of the World Bank

1. Position of Global Witness as of July 2004

Press Releases

World Bank Desperate to Justify Industrial Logging in Cambodia

29/07/2004

Immediate release: 29th July 2004

PRESS RELEASE

World Bank Forestry Project Desperate to Justify Industrial Logging in Cambodia

Forest concession companies, have, over the course of a decade, been a driving force behind illegal logging in Cambodia. The concessionaires have seriously degraded one of the country's few natural resources, while abusing the rights of forest-dependent communities. Persistent timber theft and tax evasion by the companies, in collusion with corrupt officials, has seen the revenues siphoned off into private bank accounts, rather than funding Cambodia's development.

A recent independent Forest Sector Review, commissioned by the Cambodian Government and international donors to provide a road map for forest policy in Cambodia, has recommended that the concession system be scrapped. The Forest Sector Review proposes the development of management systems at the community level, thus giving forest-dependent Cambodians much greater control over their resource. Its findings present the country's new Government with an ideal opportunity finally to show the door to a system and operators which have conspicuously failed Cambodia.

Resistance to this necessary change in policy is being led by the World Bank's flagship forestry project in Cambodia. The Forest Concession Management and Control Pilot Project has set out to maintain and entrench the existing concession regime. It is perpetuating a system that is dedicated to rent capture by corrupt officials and their business associates, and which offers no accountability to forest users and inhabitants. As such, it is undermining the World Bank's stated objectives of governance reform and poverty reduction in Cambodia.

The World Bank project is currently recommending that the Cambodian Government allow renewed logging by six of the forest concessionaires for a further 25 years. All six companies have breached Cambodian law or the terms of their contracts and have demonstrated an absence of technical capacity. Most are little more than fronts for cronies and relatives of senior Government officials. Despite this, the World Bank project has used loan money to assist them in producing new forest management plans, which it now argues that the Government should approve.

The concessionaires produced their plans more than one year after an agreed deadline and only after the Government imposed a moratorium on their operations in January 2002. Rather than evaluating companies' initial submissions, however, World Bank project staff repeatedly told them what changes they should make in order to render the plans more presentable. Some of the concessionaires submitted drafts to the World Bank project team as many as three times.

In its eagerness to sustain the concession system, the World Bank project is now endorsing management plans in which companies openly outline their intention to exclude local people from areas of forest and to log trees over which communities have legally recognised user rights. The World Bank project and the Government Forest Administration have refused to publish their evaluation of the plans, thus adding to the secrecy which blights a sector steeped in corruption and lack of transparency.

"The World Bank claims that its over-riding priority for Cambodia is strengthening governance," said Simon Taylor, Global Witness Director. "With respect to the forest sector, this appears to mean using loan money to provide concessionaires with the necessary paperwork so that they can continue to operate illegally."

World Bank project staff's standard response to criticism of their approach is to say that indigenous people's rights and environmental and social impacts will be addressed in subsequent plans drawn up by the logging companies. This line of argument is disingenuous. As they are well aware, once the companies have secured control over concessions for another 25 years, there will be no incentive for them to respect the rights of forest-dependent communities.

In addition, The World Bank project is advocating logging of Cambodia's Prey Long forest, the last intact lowland evergreen forest in mainland Southeast Asia. This injunction to log flies in the face of the Independent Forest Sector Review's recommendation that Prey Long be taken out of production in recognition of its high conservation value.

Despite all the money the World Bank has spent on what amounts to a window-dressing exercise, the quality of the six companies' plans remains abysmal. Aside from stating the companies' intention to ignore the law, their plans are shot through with omissions, inaccuracies and whole passages copied from other concessionaires, lending the exercise an element of farce.

The World Bank project's endorsement of some of these companies defies explanation – not least the concessionaire whose forest was described by a previous study as 90% non-operable. It does fit, however, with the established pattern of nonsensical conclusions from a project that the World Bank itself deemed "unsatisfactory". Principal among these has been the assessment that Cambodia's forest cover increased over five years of industrial logging, land conversion and encroachment. This finding was released two months before the 2003 general elections in Cambodia and was promptly adopted as a political prop by the ruling party.

"The new Cambodian Government should follow the recommendations of the Independent Forest Sector Review and ignore the discredited prescriptions of the World Bank project," said Simon Taylor. "In its desperate efforts to justify the concession

system, the Bank is digging itself into an ever deeper hole. More importantly, it is advocating another quarter century of mismanagement which Cambodia's forests will not survive."

Notes to editors:

Global Witness is a London based non-governmental organisation that focuses on the role that natural resources play in funding conflict and facilitating corruption. It alerted the world to the issue of conflict diamonds in 1998 and has since campaigned for controls to counter the problem. Its other campaigns have included successfully disrupting funding to the Khmer Rouge in Cambodia by exposing their multi million dollar illegal trade in timber; working to increase fiscal transparency in the oil trade due its negative impact on regional development and campaigning for targeted timber sanctions against the Liberian logging industry for funding regional conflict and instability.

For further information, please contact gw.monitoring@online.com.kh; telephone 00 855 23 219 478; www.globalwitness.org

2. World Bank position as of August 2004

Cambodia Forestry Sector: Background Note and Update

As a follow-up to recent statements sent by the World Bank regarding Cambodia's forestry sector and in response to a number of press reports about our position on forest concessions, please find attached a background note for your use. It may be attributed to Peter Stephens, Communications Manager for the East Asia and Pacific Region, if you choose to quote from it.

The World Bank has been involved in Cambodia's forestry sector to help improve forest management, law enforcement, monitoring, and access to information about what's happening in the sector. Our engagement in forestry has been difficult and frustrating. There have been some improvements – the area under concessions has been significantly reduced and the forest concession plans were publicly disclosed for the first time – but many serious problems remain, including continuing illegal logging, corruption, and a lack of meaningful engagement of local people in forestry decisions affecting their lives.

Our goal has been to achieve three things:

1. **To improve the way forests are managed in Cambodia**, including effective monitoring and enforcement of laws; a credible system for managing the way that forest resources are used and preserved; ensuring that local community needs are adequately addressed, and making sure people are consulted. These fundamental improvements are essential for any system of forest management to work. Without improved governance we are not likely to overcome the obstacles posed by corruption and a lack of capacity.
2. Because we are dealing with serious, long-term challenges like corruption, there is no quick fix or easy solution to the problems in the forestry sector. **To change this requires everyone to work together.** (One of the objectives of the

Independent Forest Sector Review was to provide a platform for bringing the various groups and agencies together to work together from a common understanding of the problem.) But in the end, it is important to note that any progress will depend on the willingness of the Government to confront these issues and take further credible steps to improve the governance of forest resources.

3. Finally, **for our own part, we are working to be more transparent so that we can equip people with the information they need to contribute to the solution.** That is why we have been actively translating information into Khmer, making more information publicly available, briefing people on what we are doing, and talking to a wider range of people to hear their concerns and ideas.

The Bank, along with other donors including ADB, FAO, UNDP, IMF and others, has tried to help the Government improve the concession system because this was the dominant and expanding system for managing forest in Cambodia in the 1990s. We documented the rampant abuses identified through our joint work in the late 1990s - and were all insistent that this system be reformed and reduced to only those companies willing and able to work consistent with "new rules of the game" which prescribe criteria for transparency, technical assessments and community engagement as specified in the Subdecree on Forest Concession Management.

In coordination with these partners, we agreed to provide support to the Government to implement this process of rationalization of the concession system. Both the number and area of concessions has been reduced significantly. Requirements for concessionaires to prepare publicly available management plans, including consultation with local communities have been introduced for the first time in Cambodia. Technical standards for evaluating the plans have been established - again for the first time in Cambodia. An independent monitor with regular, public reports has been introduced for the first time in Cambodia. Taken together, these steps represent a major effort to change the way public resources are managed in Cambodia. Not surprisingly, given the issues at stake, these steps have not been implemented as well as we or anyone else would want. We do believe, more broadly, that the concession system will only work with strong government commitment to implement the process as stated in its own subdecree while addressing broader governance aspects including transparency, accountability, local consultation, etc.

Regarding recent press stories around the World Bank and six concession companies, we do need to clarify that the World Bank is not calling for the acceptance of those six plans - nor has the Government made a decision yet on whether the six companies, which have emerged from the original twenty-four, should be recommended to go forward. Nor are we actively supporting the companies. What the Bank did support was a process in which concession companies had to prepare and disclose their plans for operating the concessions. Whether these companies now seeking concessions receive approval is not up to us. The critical thing, as we see it, is for concessions or any other system of forest management to operate within the law, and in a way that benefits the people of Cambodia. While the companies' plans have gone through an internal review process with Forestry Administration officials and forestry consultants, another round of review is ongoing - as part of the Independent Forest Sector Review (IFSR) - and we are

still awaiting the results of that independent review.

We believe that the Independent Forest Sector Review provides an excellent basis for all parties to discuss and consider the future management of Cambodia's forests. We approach the Review and its recommendations with no preconceived view of the outcome - except that it should lead to the development of a consensus on how the Government, donors and civil society (and importantly, the people of Cambodia) can work together to ensure the forests are managed sustainably, for the benefit of all Cambodians. We are committed to supporting this process, just as we are committed to turning our new Country Assistance Strategy, with its emphasis on governance and partnership, into credible actions in support of better forest management.

August 23, 2004

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