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Country Case Study 4

The Experience of Independent Forest Monitoring In Cambodia

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1. Introduction

This case study compares the experience and impact of two contrasting examples of independent monitoring in the forest sector in Cambodia: that provided by an international advocacy NGO and that provided by an international private sector company. Exploring the processes and the impacts of these examples allows us to draw out lessons for verification system design.

The Cambodia context has the following features:

- The absence of a market for verified timber. A logging and transportation ban has been in place since 2002. Prior to this Cambodia was not a major exporter to the EU and the market for timber currently imposed little, or no, demand for the verification of legality.
- An underdeveloped local civil society, with local NGO agendas in the forest sector strongly driven or influenced by INGOs.
- Absence of political will for the development of accountability mechanisms in the sector.
- A lack of clear and undisputed standards against which to verify legality.

Features of the independent monitoring systems which will be discussed include:

- A system imposed by donor conditionalities and driven by a sense of donor distrust of a country perceived as a 'failed state'.
- International NGOs which were highly influential in the design.
- A perceived lack of local providers and capacity.
- Low national ownership of the system.

The case study is structured as follows: an overview of the Cambodian forestry context is presented first, and some of the wider aspects of the independent monitoring system are then described; the lessons that can be learnt from the two types of independent monitoring, in terms of both impact and wider lessons for verification systems, are then reviewed. The paper concludes with a discussion of the forest sector experience in the context of other accountability issues and mechanisms in Cambodia.

Research was based on a series of individual and small group interviews which took place in Phnom Penh in November 2003¹ and June 2005. Interviews were carried out with the forest authorities, bilateral and multilateral donors, the forest industry, national and international NGOs, and civil society². Relevant documentation was examined (donor, project and monitor reports and published literature on Cambodia).

¹ The 2003 interviews were carried out as part of an earlier piece of work for DFID on independent monitoring (Brown, 2004).

² Not all of these individuals were willing to be attributed which accounts for the uncorroborated nature of some of the evidence.



1.1 Cambodia background

Cambodia covers an area of 181,035 km² and is divided into 24 provinces and municipalities. The country is bordered by Thailand, Laos and Viet Nam and has a central plain drained by the Tonle Sap Lake and the Mekong and Bassac rivers. The forest areas are predominantly located in the mountains in the southwest (Cardamom Mountains) and north (Dangrek Mountains).

The present population is 12.8 million, with a relatively high growth rate of 2.5 % per annum (FAO, 2002). Infant mortality is one of the highest in Asia, at 95 per 1000 live births (World Bank, 2001) and Cambodia has the most severe HIV incidence in Asia at 2.6%. Cambodia is one of poorest countries in the region and it was ranked 130th out of the 177 countries in the Human Development Index. Cambodia is also one of the most unequal countries in the region. The gap between poor and non-poor is increasing, and the poorest 20% of those below the food poverty line have experienced significantly slower growth than those above it (World Bank, 2006).

Much of Cambodia's poverty is rooted in a recent history of conflict which has led to the destruction of infrastructure, human and social capital, and the loss of economic and political institutions. Since 1993 there have been significant moves in the restoration of peace and the promotion of economic growth through the reintroduction of money and private markets, the withdrawal of subsidies and the opening up of the domestic economy. By 1996 growth had exceeded 7% per year. The number of Cambodians living below the poverty line in 2004 was 35%, having fallen from 47% in 1993/4 (*ibid*). In 2000, 84% of the population was rural with 82.5% directly employed in agriculture, forestry and fishery (World Bank, 2002). However, economic growth has been concentrated in urban areas and the rural areas are characterised by low agricultural productivity and weak urban rural links. There is some evidence that those households which have escaped poverty have done so through access to local natural resources (World Bank, 2006).

The Cambodian state has been in a process of rebuilding after the massive destruction of the Vietnam War, the subsequent Khmer Rouge regime, civil war, famine and international sanctions. International intervention throughout the 1980s involved occupation by the Vietnamese Army, economic and diplomatic support provided by the Soviet Bloc, and sanctions and insurgency supported by China and the West.

Today Cambodia is a multiparty parliamentary democracy under a constitutional monarchy. The Royal Government of Cambodia (RGC) is a coalition made up of the Cambodian People's Party (CPP) and the National United Front for an Independent, Neutral, Peaceful Cambodia (FUNCINPEC), with the opposition led by the Sam Rainsy Party. Hun Sen has been Prime Minister since 1985.

Cambodia retains many of the features of a society emerging from conflict. With both a weak state and weak civil society, the Cambodian multi-party political system relies upon networks of personal allegiance, and it is these which maintain the cohesion of the state apparatus. Retaining the allegiance of the military is essential for those in power. The weakly institutionalised political system has low transparency and accountability over state resources; critics argue that it also leads to the neglect of any state functions that do not offer opportunities for rent-seeking, and to a distortion of those public functions that do (Hughes and Conway, 2004).

2. The forest sector context

Forestry has been an important sector in the recent development of Cambodia, both economically and politically. Forest cover appears to have fallen sharply from the 1960s, although the extent of the decline varies according to the definition of 'forest' employed. The Department of Forestry and Wildlife (DFW) estimated that forest cover was reduced from 75% in the 1960s to 60% by 1995 (Gilmour *et al.*, 2000), whereas some NGOs claim it has fallen to as low as 30% (Global Witness, 1999b) or 20% (Rose, 2004). According to McKenny (2002), only 6% of forest (625,000 ha.) is in the 'commercially valuable' category.

From the signing of the UN peace agreement in 1991 to the end of the first mandate of the newly elected government in 1998, Cambodia exported an estimated US\$2.5 billion worth of timber through official and unofficial channels. By the mid 1990s forestry represented 43% of Cambodia's export

earnings (FAO, 1997), but very little of this is thought to have entered the formal system³. The public revenue collected between 1991 and 1997 was only 12% of what should have been received as tax revenues (Ministry of Economic and Finance, 1997; World Bank et al., 1996). In 1994, timber was estimated to have contributed 4% to national revenue and by 2004 this figure stood at 0.5% (IFSR: 2004:4). At its height, the sector is said to have employed nearly 37,000 people (IFSR: 2004).

There is no national-level data on forest product utilisation by local communities, but there is recognition that forest products provide crucial livelihood sources for the majority of Cambodia's rural population. These include fuel wood, timber, resins and other non-timber forest products (NTFPs) (McKenny and Tola, 2002; Barney, 2005:1).

Since the mid-1980s, timber has been a source of revenue and reward for political interests and the military (le Billon, 2002:581). In the late 1980s timber was an important part of the resource base of the various competing armies, acting in association with external (mainly Thai) logging companies (Stier, 1993). This led to a complicated web of relations involving politicians and the Thai military. The logging ban imposed in Thailand in 1989 further increased the illicit flow of logs across the border from Cambodia.

The 1993 election was the first democratic election in Cambodia's history. Timber figured strongly as a resource in the manoeuvrings leading up to the election (le Billon, 2000:790). South-east Asian transnational companies subsequently moved into the country between 1995 and 1997, with seven million hectares of forest being allocated to thirty, mainly foreign, concessionaires (Barney, 2005:2). By 1997, most of the available productive forests were covered by concession agreements. Concessions were allocated by the military, provincial officials and various government ministries, as well as by the country's two Prime Ministers, providing means for the Phnom Penh elite to assert its authority in the provinces (Hughes and Conway, 2004; le Billon, 2000:800). Many of the deals with the concession companies were arguably 'illegal', being granted with questionable tax exemptions, absence of public bidding and in defiance of log export bans (le Billon, 2000:792).

Timber resources came to play an important role in the post-conflict reconciliation process, albeit in unconventional ways, with instances of cooperation between combating forces. For example, the coalition government approved what was effectively the financing of the Khmer Rouge by Thai logging companies (*ibid*). The vacuum left by the collapse of the Khmer Rouge intensified the anarchy in the sector, involving a network of concession holders with close ties to upper levels of the state (Barney, 2005:1; de Lopez, 2004:36). Le Billon (2000:787) suggests that logging allowed a transition to peace without military defeat or political integration of the Khmer Rouge, largely through the operation of parallel budgets⁴ outside of the formal purview of the state. He notes that this outcome can also be traced to the policies of international organisations, albeit unintentionally, in the way that they allowed parallel budgets to be created in relation to forests and other resources (*ibid*). Whilst foreign sponsors continued to provide financial and military backing to various factions, timber had remained of minor importance. The Peace Agreement of 1991 did not abolish the need for armed factions to finance themselves and, once external support weakened, timber became one of the few resources accessible to the factions along the border.

From 1995 onwards, the international community began to focus on the implementation of forestry legislation and reform as a means of addressing state failures in the sector. This period is discussed more fully in Section 2.4.

As of mid-2006, a moratorium which was placed on logging in January 2002 is still in place, and is unlikely to be lifted until concession management plans are approved. According to the Cambodia Timber Industry Association ('CTIA' - interview of June 2005) nearly all of the international concession companies are either close to bankruptcy or have lost interest in Cambodia. Many have massive debts to Cambodian sub-contractors and as a result some concessionaires have found it hard to control their subcontractors. The Independent Forest Sector Review (IFSR, 2004) suggests that many concessions

³ However the statistics vary: according to Barney (2005: 17), le Billon's 1998 data is 300% higher than ITTO's and DFW's data.

⁴ Reno (1995:3) uses the term 'the shadow state' in his study of corruption and warlordism in Sierra Leone to a system where leaders draw authority from their abilities to control markets and revenues. As le Billon (2000) points out however, the 'formal' and 'shadow' sides of the state are never neatly divided.

are depleted of commercial resources. The military remains heavily involved in the sector and is said to be the main collector of ‘facilitation fees’ at the check points (Hobley, 2004a:49).

It appears likely that, when timber production resumes, this will take place under a system of annual bidding coupes. If this happens then the following issues may arise:

- The problem of ensuring that forest operations will conform to government regulations;
- The possibility that permitted operations might provide a ‘smokescreen’ for illegal logging and land clearance;
- Low credibility with domestic and foreign stakeholders (Telfer, 2005).

Since the 1990s, donors have viewed the forest sector as a symbol of the governance problems facing Cambodia. There has been some evidence of attempts by the RGC to address problems in the sector. These include a series of legislative reforms, the establishment of a restructured Forest Administration and an independent sector review involving the collaboration of six ministries and six donor agencies (IFSR, 2004). However the reforms which have taken place have been marked by a divergence of opinions over the concession system, and evidence of over-logging and corruption.

2.1 Forest sector institutions

Several agencies of the RGC are involved in forest management. The main ones with management jurisdiction over ‘forest lands’ are:

- The Forestry Administration (FA)⁵ within the Ministry of Agriculture, Forestry and Fisheries (MAFF);
- The Department of Nature Conservation and Protection within the Ministry of Environment;
- The Department of Fisheries in MAFF;
- The General Department of Rubber Plantations, also in MAFF;
- The Ministry of Land Management, Urban Planning and Construction (MLMUPC) (this does not have implementation powers but it does play an important role in deciding what constitutes state public and state private property).

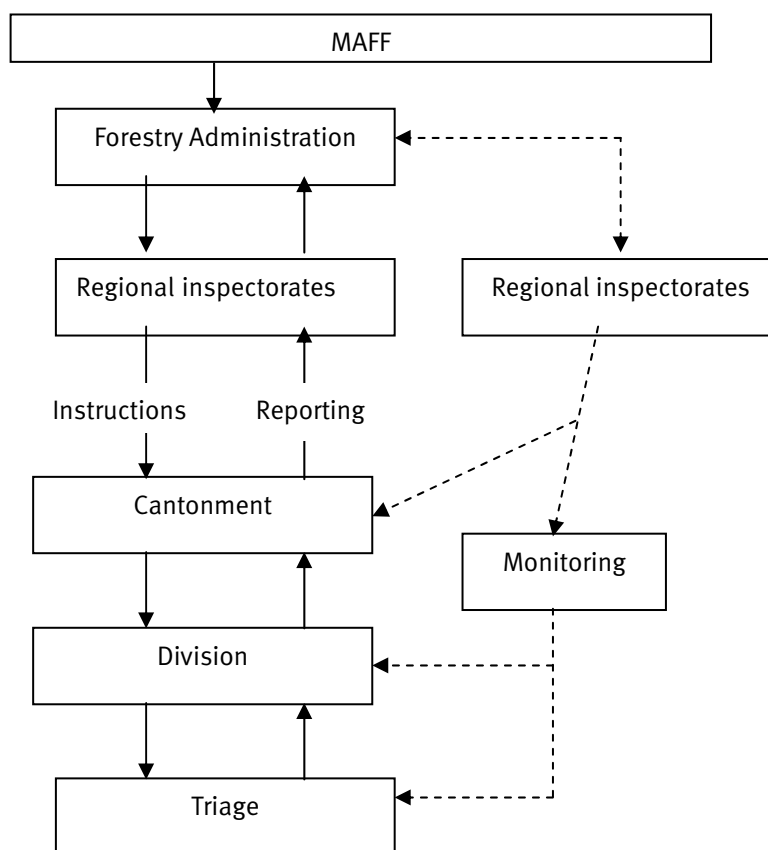
The MAFF is widely perceived to be one of the most powerful ministries because of its ability to attract resources from donors, as well as to draw revenues from its own population. MAFF has shown itself to be highly resistant to reform (Hughes and Conway, 2004).

The FA is the agency within MAFF responsible for oversight of production forest areas. Previously, when it was known as the DFW, it was organised into a central headquarters and 23 provincial field offices, each under the Provincial or District Department of Agriculture. This is said to have resulted in provincial authorities having stronger control over the field offices than the DFW. Sub-decree No. 64 of 13th September 2003 replaced the DFW with the Department of Forest Administration (FA). Now monitoring takes place through four Regional Inspectorates whose role is to *‘control, advise, coordinate and conduct inspection on the implementation of all the activities of the cantonments, divisions and triages of the FA’* (see Figure 1). It is notable that, as a result of the restructuring, many of the forms of public accountability which existed in the previous system have been removed. In the words of one observer, ‘the restructuring has brought a single line of command and control resulting in the loss of many checks and balances’ (Hobley, 2004b:7). There is now no independent process through which people can seek redress against the decisions of the forestry administration (Hobley and Boscolo, 2004). Linkages to provincial administrations have also been reduced. Regulatory and planning functions are carried out in the same unit; responsibility and accountability have been brought together and there is no separation of powers between the planning and the approval process. Accountability lines are internal to the organisation (this is at variance with the government policy on decentralisation) and there are no horizontal or downwards accountability mechanisms. There is however potential for the regional

⁵ Prior to a restructuring process in 2003 the FA was known as the Department of Forestry and Wildlife (DFW).

inspectories to become more independent of FA, and this would increase their capacity to monitor the performance of the Department (Hobley, 2004b).

Figure 1: The structure of the new Forestry Administration (showing the internalisation of decision making and control within the organisation) since September, 2003.



(from Hobley, 2004b:49)⁶.

2.2 A changing market context

Due to the poor quality of statistical records as well as the high levels of illegality in the system, the destination and volumes of the majority of timber leaving Cambodia are not known (Barney, 2005:5). However, logging bans in Thailand, Vietnam and China suggest that these countries have been relying largely on Cambodian timber to meet their needs (McKenny, 2001). Between 1995 and 1997, Thailand was the main international market for Cambodian timber, followed by Vietnam, Malaysia and Singapore (Nophea, 2000). Today the main markets are China, Taiwan, Japan, Thailand, and Vietnam (Miller and Boscolo, 2004:15). Other export destinations include India (for construction plywood), Korea, Hong Kong and Singapore. Regional demand is likely to stay strong, with China's needs likely to increase exponentially. However timber exports from Cambodia have decreased following the 2002 logging moratorium.

Previous data provided by the DFW on exports are difficult to match with the import statistics from key market destinations such as China (Barney, 2005:23). For example, the DFW (2002) states that Cambodia exported 6,571 m³ of veneer to China in 2002 whereas Chinese customs statistics show imports from Cambodia as more than 386,000 m³ (Sun et al, 2004). The same data sets show 121 m³ of S2S and S4S plywood exported from Cambodia to China, while Chinese customs reported 9,700 m³ imported.

⁶ There is some debate as to whether inspectorates should be shown as placed outside the direct line of command and control

The limited extent of green or discerning Asian markets served by Cambodia has restricted the role of the market as a force for change. It should be noted however that Chinese customs authorities and the Chinese Administration of Quality Supervision Inspection and Quarantine require timber imports to be accompanied by a valid certificate of origin⁷.

2.3 The role of donors, NGOs and civil society in the forest sector

As a nation, Cambodia is heavily dependent on foreign aid, with more than half the national budget coming from this source. Such financial dependence increases the power of the international community over the state. However, aid efforts are often dispersed and uncoordinated. Since 1998, donors have attempted to promote a far-reaching programme of public sector reform, including the promotion of good governance, judicial and legal reform, anti-corruption, improved natural resource management and demobilisation within the military. The RGC has engaged with these reform processes, but progress has been slow (Hughes and Conway, 2004).

Local civil society in Cambodia is weak, and not only in respect of the forest sector. This can only partly be attributed to a recent history of conflict, as weak organisational capacity of Cambodian society has been observed by many anthropologists even before Pol Pot's era (Ebihara, 1968:181; Delvert, 1961:218). However, the Khmer Rouge regime in the 1970s is said to have deliberately undermined trust and family/community identities and this led to a further weakening of social ties (these issues are discussed in Hughes and Conway, 2004).

In the early 1990s, the international community supported the growth of a Cambodian civil society and a number of large, professional NGOs emerged. These have proven effective in areas such as promoting public awareness and participation, and to some extent they have been given a place in the policy process (Hughes and Conway, 2004). However, local NGOs have been less successful in taking on issues which involve greater political risks, such as corruption. NGOs are reported as being reluctant and afraid to campaign on political issues, often leaving these concerns to their better protected international counterparts (Hughes and Conway, 2004). There is little capacity amongst local environmental NGOs to act as watchdogs or to negotiate with the state (Hobley, 2004b:5). However, communities are showing evidence of increased willingness to organise themselves to fight against resource appropriation (Mansfield and Macleod, 2002:3).

There are few opportunities for the general public to input directly into policy making. For example, despite a formal commitment in Forestry Law (Article 4) to '*ensure public participation in any RGC decision that had the potential for heavy impact on concerned general citizens livelihoods of the local community and forest resources*' there is little evidence of the government seeking out or responding to civil society demands. At times, this has led to confrontation (Hobley, 2004b:5). For its part, the FA has attempted to restrain the potential of NGOs to engage in political issues. It makes a clear differentiation between NGOs offering technical support and NGOs attempting to mobilise political input into the policy process (see Conway and Hughes, 2004:62). The FA seems content to receive technical advice from some NGOs, such as those working in community forestry, but this has not extended to an acceptance of NGOs taking on a role as mobilisers of public opinion, or champions of human rights (Hobley, 2004:18).

Freedom of the press has improved markedly since the adoption of the 1993 constitution but controls do exist. Much of the written press is connected to individual political parties or factions and thus does not provide 'objective' reporting or analysis. Print, TV and radio are controlled by the government, and access for opposition parties is extremely limited (Hughes and Conway, 2004).

The low capacity of local NGOs means that INGOs often have a stronger voice. Observers have suggested that this skews the NGO sector towards the larger, well-established NGOs and excludes smaller, perhaps more representative organisations or movements from having influence (Rudengren and Ojendal, 2002:16; Hughes and Conway, 2004). For example, the emphasis of some international organisations working in Cambodia is on the protection of the forest rather than its utilisation. Le Billon (2002) argues that this has led to a neglect of thinking about ensuring access rights and the

⁷ The ways in which timber from Cambodia is able to receive certification through laundering in Vietnam is well documented (Hokenson, 2005:44).

distribution of benefits within the sector. The welfare and expectations of a population emerging from two decades of conflict have arguably been largely ignored in this debate.

There are concerns about the lack of transparency in donor/INGOs relations and the way in which a few INGOs have benefited from this. There are concerns that donors tend to respond to externally-driven agendas rather than those informed through the internal policy-making process (Hobley, 2004b). INGOs have been able to put pressure on donors and influence conditionalities in a way which may be non-transparent and inaccessible to either the government or other national actors. There are particular concerns about the roles of international conservation NGOs which have intervened without a democratic mandate in areas normally regarded as the preserve of the state (*ibid*:5). For example, the deployment of private wildlife rangers with quasi-policing powers, and resettlement schemes to move populations out of gazetted areas.

Contestations between INGOs, donors and the RGC have been particularly strong over the logging concession system, with a clear polarisation between industrial interests and the INGOs over the question of whether the concession system is an appropriate system for Cambodia's forests in their present depleted state. This matter has become a focus for INGO campaigns. Many INGOs perceive there to have been a fundamental injustice in the original allocation of concessions, and the ways in which this ignored the rights of local people. There are also doubts as to government capacity and intentions, and the ability of government to manage forest sector revenues on behalf of the population at large.

2.4 Origins of forest crime policy

In the 1990s, the forest sector was marked by widespread disorder and violence, and this affected both access to the resource and channels of the timber trade (le Billon, 2002). The power politics of the Cambodian elite and the international community's growing environmental agenda led to a heightened profile being given to the illegal logging issue in the policy arena. From 1995 onwards, implementation of forestry legislation and the issue of state performance became important foci of donor interest⁸. In 1995, a joint World Bank, UNDP and FAO mission suggested that improved control of the forest areas could increase government revenue by over US\$100 million a year (McKenny, 2001:2)⁹. Their main recommendations to achieve this were to improve the technical and policy oversight of the sector and increase timber royalties.

In the same year, the UK-based environmental rights organisation Global Witness began to publish hard-hitting reports on illegal exports and activities in the forest sector. Over time, Global Witness broadened its campaign to take on an agenda of 'good governance' and in so doing joined a wider diversity of voices led by the government's main political opponent Sam Rainey (le Billon, 2000:798). According to Global Witness (1995; 1996; 1999c) a large amount of illegal timber was flowing into northeast Thailand, often with the collusion of high level Thai and Cambodian politicians. Global Witness (1997) estimated that 1 million m³ of logs and sawn timber was exported into Thailand in 1996 with many of the benefits flowing to the Khmer Rouge.

A government ban on log exports was imposed in 1996. However, the development of milling facilities (which had been a requirement of forest concession contracts) resulted in installed capacity developing well in excess of the potential of the resource. In the same year, the IMF suspended its support to Cambodia, in protest at the government's failure to respect the harvesting moratorium and the agreement that new permits should only be given to companies that respected forest management plans. In 1997 the IMF concluded that:

'[T]he depletion of the country's most valuable resource [forests]....with the direct involvement of the highest level of governmentremains the single most critical issue in Cambodia' (Neiss, 1997).

⁸ However, this focus on legislation would appear to contradict le Billon's view (2002) that the problems were less the result of weak regulatory capacity of the bureaucracy and more connected to the parallel 'shadow state' system which allowed actors to acquire power.

⁹ These estimates were later revised to between US\$40 to 80 million (World Bank, 1999)

Concerned that much-needed revenues were being lost through unregulated logging, the World Bank (under the Forestry Policy Reform Project) commissioned assessments from the Washington-based Development Alternatives Inc (DAI)¹⁰. As one informant put it, DAI's (1998) estimate of 94% (3.2 to 4.3 million m³) of harvesting being illegal was '*etched on the collective minds of the donors*' from this point on. Table 1 illustrates the small proportion of the timber exports revenue captured by the formal state (in le Billon, 2000 from RGC, Thai Forestry Department and Global Witness reports)¹¹.

The DAI report also reviewed the relevant laws and regulations, surveillance, response and prevention efforts for law enforcement, and the main gaps and weaknesses associated with these strategies (see Table 2).

Table 1: Value of timber exports and RGC revenue from forestry (1990 to 1998)

	1990	1991	1992	1993	1994	1995	1996	1997	1998
Volume of timber exports (thousand m³)	515	848	1393	1360	1495	1691	992	1045	1090
Estimated value (US\$ million)	77	170	348	340	374	423	248	188	218
Forestry government revenue (US \$ million)	n.a.	n.a.	1.5	3.3	39	27	11	12	5

Table 2: The surveillance and monitoring systems in the Cambodian forest sector and their weaknesses, as identified by the DAI studies (1998)

Surveillance and monitoring systems	Weaknesses of the system
Log tracking on concessions (only applied to 12 concessions)	<ul style="list-style-type: none"> • Armed groups prevent concessionaires from entering forest • No central record of authorisations • Too few check-points • The system encourages bribes
Tracking of 'collection' logs from outside concession areas (to prevent illegal harvesting and selling of permits)	<ul style="list-style-type: none"> • Permits are unmonitored • Unclear if permits can be used for felling as well • 'Collection' logs are more attractive than those from concessions
Post harvest inspections	<ul style="list-style-type: none"> • Timber export controls at the factory level, borders and ports but borders are too remote and controlled by the military • False export papers are common • The multi-agency task force charges elicited fees.
Ground surveillance: check points; provincial checks; media and NGO reports	<ul style="list-style-type: none"> • Foresters threatened • Surveillance does not produce enough data for assessing volume or prioritising areas

Response and suppression measures at this time involved the Legislation and Litigation Office which had a mandate to investigate violations of law. However, the penalties were often low (arguably much too low to act as a deterrent), there was wide discretion by officials, and defaulters were often allowed to keep the timber once their fines had been paid. As for the revenue assessment and tracking systems

¹⁰ Much of the information used in these studies was drawn from the work of Global Witness.

¹¹ le Billon (2000:791) notes that the figures for the volume of timber exported is only an estimate as much of it was smuggled.

such as royalties and audit procedures, the royalty rate was discretionary and often waived, and there was a lack of a public finance system for collection and distribution (DAI, 1998).

The DAI studies recommended that an independent private inspection company should be hired to track products and manage revenues. In 1998, in line with the DAI recommendations, the World Bank proposed immediate action to control illegal logging by means of a forest law enforcement programme. This was to have three major elements: forest crime *prevention*, *detection* and *suppression*. This became the Forest Crimes Monitoring and Reporting Project (FCMRP).

2.4.1 The Forest Crimes Monitoring and Reporting Project

The FCMRP commenced in November 1999, within the overall programme of donor assistance to the RGC, with the aim of improving the institutional capabilities of both the Ministry of Agriculture, Forestry and Fisheries (MAFF) and the Ministry of Environment (MOE). Its brief was to:

- record and track action against forest crimes;
- strengthen forestry law enforcement;
- undertake the independent monitoring of RGC's progress in addressing forest crimes.

The FCMRP established a Forest Crimes and Monitoring Unit (FCMU), with three components:

1. The Forest Crime Monitoring Office (FCMO) based in the Department of Forestry and Wildlife (DFW) of MAFF, which was to monitor forest crimes in production forests;
2. The Department of Inspection (DoI) in the Ministry of Environment (MoE), which was to monitor forest crimes in protected areas;
3. An independent monitor on the performance of both the FCMO and the DoI.

A number of options were considered for the independent monitor, including private sector certifiers and NGOs, though initial attempts to interest private sector providers in such work met with little interest. The reputational risks were thought unlikely to be compensated for by the expected remuneration. Global Witness was offered to the RGC as the donors' sole choice for the official monitor and was contracted as the independent monitor in December 1999. The arrangement was endorsed by the RGC but paid for by the donors. Global Witness' contract was with FAO (as the executing agency), with the expressed aim of supporting the RGC. The funds, which amounted to \$140,000, were provided for in the first year by grants from DFID and AusAid (reported in Global Witness, 1999a), channelled through FAO and administered under a UNDP Trust Fund. Despite the intention that this should be a multi-donor initiative, no other funders came forward from within the resident donor community.

The appointment of Global Witness was at the insistence of the interested donors, and almost certainly would not have been acceptable to the RGC were it not for the strength of the World Bank conditionalities. The World Bank's US\$30 million Structural Adjustment Credit required the RGC to endorse the appointment of a independent monitor on forest sector enforcement operations. From the commencement of its operations in Cambodia in 1998, Global Witness had been a critic of the government, particularly the Prime Minister Hun Sen and those close to him, and had exposed the political economy of forest enterprise, corruption and bad governance in the country. The appointment must have been a bitter pill for the RGC to swallow.

However, in addition to donor conditionalities there were also internal factors which encouraged the senior levels of the government to accept the risks involved. The incoming coalition CPP and FUNCINPEC government was showing growing confidence at this time, and was looking to improve its image internationally. Hun Sen no longer had to rely on a parallel budget to shore up his power base, and his government was keen to repair the reputational damage incurred at the time of the coup in 1997 (le Billon, 2000:793). A number of government-supported forestry programmes were initiated in the year following the 1998 election, by which time the Prime Minister was more confident of donor and party support. Legislation passed that year included a 'Law on Environmental Protection and National Resource Management' which was followed by a 'Sub-decree on Environmental Impact Assessment' in 1999. In January 1999, at the Consultative Group of donors meeting held in Tokyo, Hun Sen issued a

17 point declaration to govern concession forestry entitled ‘Measures to management of forest and the elimination of forest illegal activities’. He announced the first round of 12 concession cancellations, and within five months 700 small-scale sawmills were closed down and 14,000 m³ of illegal timber seized (Global Witness, n.d.). The donors made a number of commitments to support this drive, of which the Forest Crimes Monitoring and Reporting Project was the most prominent.

2.4.2 The FCRMP record

The Forest Crimes and Monitoring Office (located in the DFW) and the Department of Inspection (located in MoE) were expected to operate parallel information ‘case tracking systems’ (CTS), to monitor logging concessions and protected areas respectively, with a computer system to link their data to provide national reports. Provincial and district offices were to feed information into the monitoring units, on a monthly basis. For the most part, the focus was to be on detection.

In the first year, the project concentrated on training for the reporting and computer systems. A number of positive achievements were identified (see, for example, DoI, 2000; Focal Point Coordinator, 2001; Lyng, 2002). These included:

- increased capacity by RGC to detect, document, report and track reports of illegal activity;
- increased flow of information from the provinces and protected areas to the national offices;
- additional revenues from the fines imposed.

The technical experts, the independent monitor and the government are reported to have worked closely together in the first year. However, after this point relations started to decline. The technical advisors claimed that not all cases recorded were being entered into the CTS and that they were being deliberately hampered in their work (Miller, 2004:6). Most significantly, it became clear that the FCMO was either unable or unwilling to report crimes by ‘powerful’ people (*ibid*, 2004:3). On their part the DFW claimed that the technical advisors did not have the right skills. The two expatriate technical advisors left at the end of 2001. Following a project evaluation, the FCMRP was suspended early in October 2002, (Malayang et al., 2002).

The results of that evaluation were positive to the extent that the project was viewed as adding to the crime data handling capabilities of the RGC as well as increasing public, civil society and donor interest in forestry reform. Overall, however, the evaluation concluded that the FCMRP had failed to meet its goals. One inhibiting factor was the level of support from the UN agencies, which is judged to have been low. Actual funding did not match donors’ initial intentions and the project was forced to cut corners as a result. In addition, the design was felt to have attempted a ‘techno-fix’ approach which was not explicit enough in addressing the issues of low political commitment and poor governance which underpinned the poor performance of the sector. For example, it did not address the administrative inflexibilities faced by national counterparts which prevented them from carrying out their expected roles. The narrowness of the design was said to restrict donor opportunities for wider, and more positive, engagement in the sector (*ibid*).

3. Independent Monitoring in Cambodia

3.1 Global Witness

Following a series of problems and delays with fund management involving FAO and UNDP, Global Witness sought bilateral funding from DANIDA’s regional programme. It did this independently and without the agreement of the core Cambodia-based donors. From December 2000, DANIDA began to fund Global Witness directly under an agreement co-signed by both organisations and the RGC¹². This

¹² US\$319,000 from December 2000 to October 2002, and US\$152,000 from December 2002 to August 2003.

led to further delays with the FCMRP as the RGC required re-drafting of the original contract to acknowledge the funding change. It also had the effect of diminishing the level of support of other donors for the Global Witness operation.

The management arrangements for Global Witness as the Independent Monitor involved two host ministries and a 'Focal Point' which was a representative body from the Council of Ministers, the RGC's highest deliberative body (see Figure 2). The role of Global Witness was to audit RGC records and determine whether two institutions - the Department of Forestry and Wildlife (DFW) and the Ministry of Environment's Department of Inspection (DoI) - were carrying out their respective mandates effectively. The specific objectives were to:

1. Provide independent oversight to ensure that the Ministry of Environment and Ministry of Agriculture, Forestry and Fisheries were in compliance with all provisions of the 25 January 1999 Declaration on Management of Forest and the Elimination of Forest Illegal Activity;
2. Provide audit and monitoring mechanisms to ensure compliance with established guidelines eliminating forest illegal activity;
3. Provide objective and factual activity reviews of achievements by MOE and MAFF to the Prime Minister;
4. Provide the international community with documentation of achievements, weaknesses, constraints and/or instances of non-compliance.

Global Witness was to undertake regular monitoring and audits to verify that any crimes were properly reported and that any claimed official actions had actually been accomplished. This involved:

- Carrying out field inspections;
- Reviewing MoE and MAFF reports;
- Reviewing timber processing and export records.

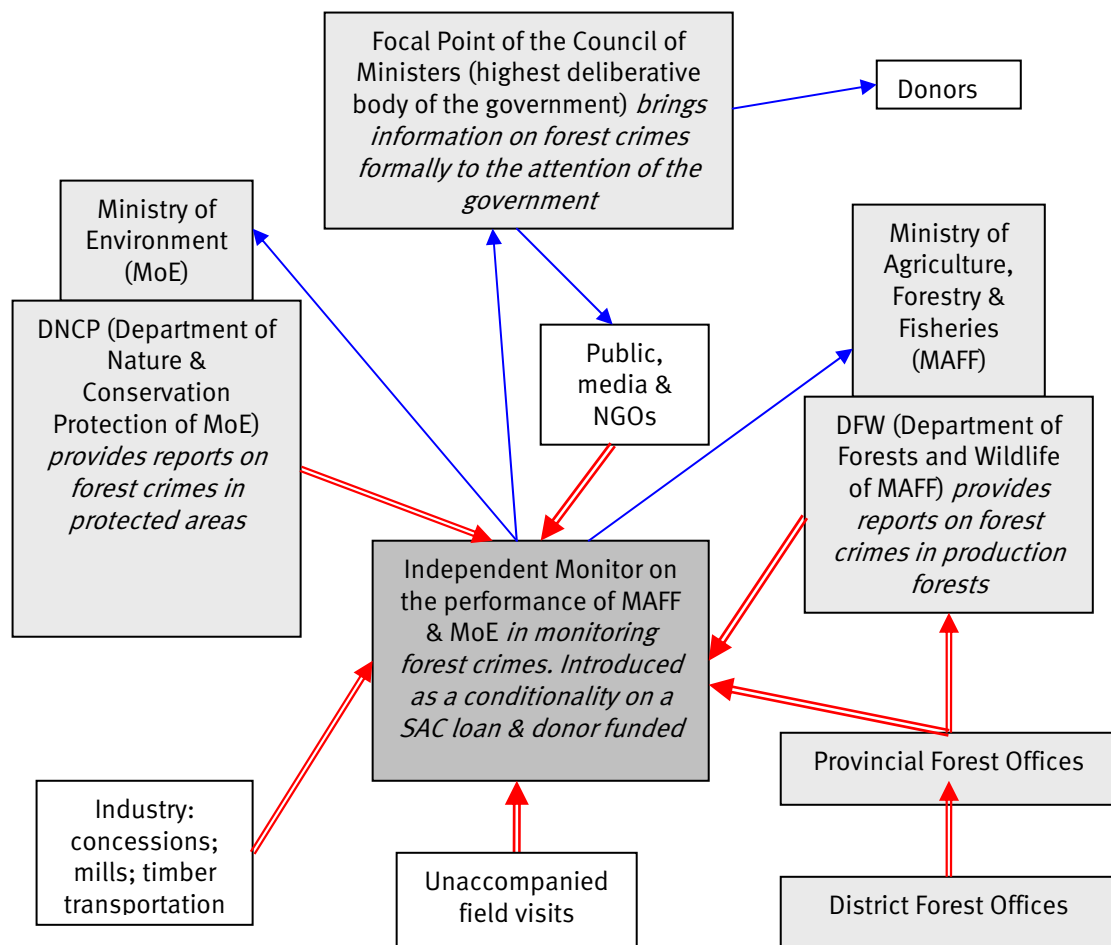
The ToRs were exceedingly broad and general, however, and it must be doubted whether it was ever feasible for one small entity to handle all the specified tasks (see Box 1). The effect of all this may have been to create a perception in RGC's mind that Global Witness was to be given free rein to investigate whatever it thought fit.

3.1.1 The breakdown of relations

Prior to its role as monitor, Global Witness had a track record in Cambodia having begun advocacy-oriented work there in 1995. Between 1995 and 1999 it had published eleven major hard-hitting and influential reports on the political economy of the country, with particular reference to the forest sector. It used very public lobbying methods and extensive media exposure of the findings of the reports (Global Witness, 2005a). These activities had established Global Witness' reputation in the country so that from the start of the independent monitoring contract it was clear that the RGC and Global Witness were unlikely to find much common ground. The RGC's view was that Global Witness had a agenda of its own, and that this fundamentally compromised its ability to act as an independent monitor.

Figure 2. Cambodia: Structure of the independent monitoring system (1999 to 2003)

[Blue thin arrows denote reporting relationships and red thick arrows show sources of information for the independent monitor; light shaded boxes show state bodies]



After the first year of Global Witness' work as independent monitor there were increasing concerns about the overlaps between its monitoring and advocacy work, and accusations that information gathered by GW during its independent monitoring role was being used for advocacy. For example, three major reports¹³ were produced by the Global Witness Cambodia campaign during their time as independent monitor laying out evidence of institutionalised corruption in the forest sector. From early 2001, there was an almost total breakdown of relations and cooperation between the monitor and the forest authorities. According to one of the Technical Advisors on the FCMRP (*pers. comm.*, December, 2003) the main sources of tension related to the investigation of the illegal activities of the 'Everbright' timber company (see Box 2), the main sub-contractor of which had family connections at a senior level in the DFW and in MAFF. Satellite imagery suggested that a number of forest concessions had been illegally logged by this company. Global Witness was able to document this case extensively. It then released reports to the public on this case without seeking the approval of the DFW. While its contract

¹³ 'Chainsaws speak louder than words', May 2000; 'The credibility gap and the need to bridge it', June 2001; and 'Deforestation without limits', July 2002.

did not, at the time, specifically demand such approval, there was a view that this was in breach of the spirit, if not the letter of the agreement¹⁴.

Box 1: The scope of the independent monitor's responsibilities as listed in the ToRs (FAO-Global Witness, 1999).

- Field inspection of concession operations
- Review concession volume production records
- Review timber processing factories volume records
- Review export records for sawn-wood volumes, species and grade being exported
- Interview community leaders and villagers
- Check border crossing routes where illegal exports have occurred
- Check ports for compliance with export ban
- Review MoE and MAFF monitoring reports to validate reported achievements
- Review Provincial Forestry Department activities and reported accomplishments
- Review District Forestry Department activities and reported accomplishments
- Review Legislation and Litigation activities and reported accomplishments
- Review Department of Inspection activities and reported accomplishments
- Prepare comprehensive report of findings for all reviews and audits performed
- Review media publications on forest irregularities
- Interview NGOs to obtain information about forest irregularities
- Contact environmental 'watchdog' groups for intelligence information
- Submit reports of findings directly to the Council of Ministers with copies to appropriate Ministers

Box 2: The Everbright and GAT Cases (from Global Witness, 2001b; 2005a)

During inspections in 2001, and from satellite images available from the FCMRP, Global Witness gathered evidence against a concession logged by the Chinese state-owned Everbright company. This company was found to be logging illegally in its own concession, as well as out of boundary in a neighbouring Pheapimex concession. When Global Witness brought this to the attention of the company, its staff were threatened and forced to withdraw. A report presenting this evidence was presented to DFW, who in turn sent in an investigation team, inviting a representative from Global Witness to join them. Further evidence of illegal logging outside Everbright's concession was gathered, but the company was granted an injunction preventing any further inspection of their plywood factory. Five days later DFW had the injunction lifted, by which time no evidence was to be found. When Global Witness made a follow-up visit to the concession, it was once again barred from entry.

A similar case concerned the Malaysian Company GAT International. In mid 2002 Global Witness reported that GAT was carrying out logging operations in defiance of the logging moratorium (Global Witness, 2002a). The matter was investigated by the DFW, but there were said to be many flaws in their approach. Following complaints by Global Witness to the Focal Point and intense diplomatic pressure from the donor community, GAT's timber-harvesting licence was eventually revoked.

¹⁴ Global Witness' position was that, as prior to June 2001 there were no reporting protocols, it did not officially require DFW's approval to release information (more discussion on this issue is found in Section 5.5)

Problems also arose over the issue of personnel. The original Global Witness contract manager left in February 2001. His replacement had strong family connections in the Cambodian political opposition and a background in governance and human rights rather than technical forestry. These two factors reinforced doubts among the RGC and its supporters as to the monitor's intentions.

The Deterioration of relations between Global Witness and the RGC came to a head in December 2002. An NGO-organised demonstration was held outside the DFW headquarters in protest at the reluctance of DFW officials to engage in discussions over the Environmental and Social Impact Assessments submitted by forest concessionaires. The demonstration led to police violence which was prominently reported by Global Witness (Sipress, 2003; Agence France Press, 2003; Associated Press, 2002). In March 2003 the RGC filed a criminal complaint against Global Witness's Cambodia Co-ordinator relating to this incident (Global Witness, 2003). Global Witness strongly refuted the charges and the complaint was withdrawn after pressure from bilateral donors. In April 2003, Global Witness' contract as independent monitor was withdrawn by the RGC.

3.2 SGS replaces Global Witness as independent monitor

The ending of Global Witness' contract as the independent monitor risked breaching the donor conditionality on the SAC loan - which required continuous independent monitoring. Protests were lodged regarding the withdrawal of the monitor, among others, by the US State Department (Paperloop, 2003). Along with the Ministry of Finance and the Office of the Prime Minister, the donors pressed for a replacement to be found quickly. There was notably little will amongst donors to seek to have Global Witness reinstated. The DFW was reluctant to pay for a new independent monitor imposed as a conditionality on the SAC loan as it did not perceive itself to be benefiting from it. It regarded this as a donor imposition the costs of which ought to be covered by the donors. However, in December 2003 the private sector company SGS was appointed as the new independent monitor as the result of a public tendering process. Funding to the tune of US\$ 425,000 per year was provided from the World Bank's US\$ 5 million 'Learning and Innovation Loan' (LIL) as part of the Forest Concession Management and Control Pilot Project (FCMPP). SGS was already operational in the country, mainly working on customs controls¹⁵. Unlike its predecessor, it had no history of advocacy in the forest sector.

SGS' ToRs were in many ways very similar to those of Global Witness, though there were some limited, but arguably significant, differences (see figure 3):

1. The main difference was the clear statement that the monitor should not be '*responsible for undertaking any monitoring or inspection activities for the primary purpose of detecting and investigating such incidents*'¹⁶. Rather the monitor's purpose was to '*validate*' that all crimes are being reported. The term '*independent oversight*' was absent from the new ToRs.
2. There was to be no third party body for SGS to report to or to act as an oversight mechanism.
3. The 1999 TOR did not allow for the public release of progress reports, but they were permitted in the form of briefing papers sourced from progress and crime reports. The SGS ToRs required all reports to be '*verified completely*' by the RGC before release (RGC, 2004).

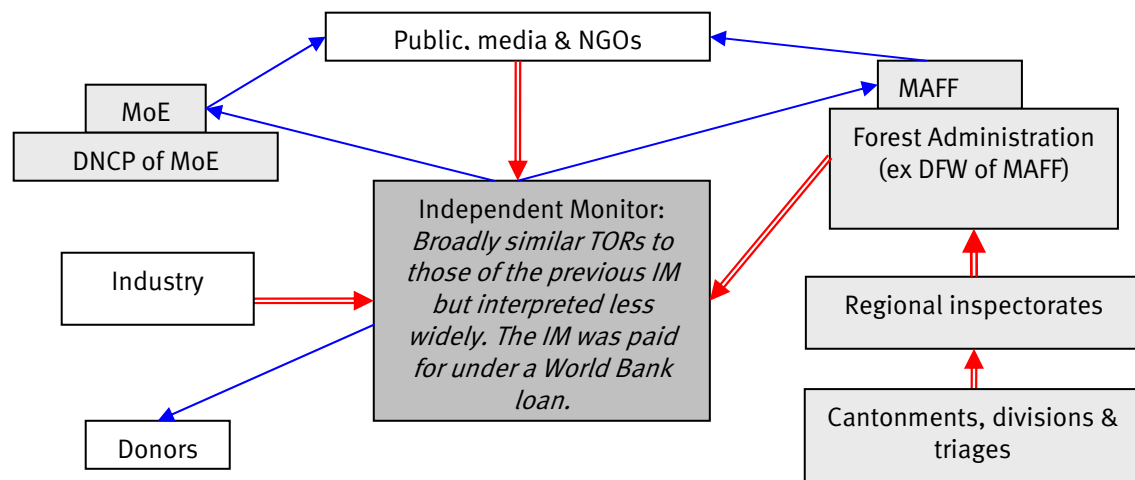
Global Witness and other NGOs and observers were highly critical of these changes, suggesting that they signified increasing government power to influence the monitor (Global Witness, 2005b).

¹⁵ SGS was awarded a contract for pre-shipment inspection of imports for Cambodia in 2004 and has been the pre-shipment inspector since 1995 (Inspection Panel, 2006).

¹⁶ Many of these phrases are included in the Annex to the contract negotiated between the RGC and SGS to clarify the ToRs (also discussed in Global Witness, 2005b:12). This annex was negotiated at the request of the monitor after the ToR had been drawn up. It sets out the activities of the monitor in more detail with parameters for field visits, aerial reconnaissance and use of satellite imagery as well as a work-plan. This suggests that SGS shared the concerns of others as to the vagueness and lack of specificity of its original ToRs.

Figure 3. Structure of the independent monitoring system (2003 to 2005).

The diagram also reflects the restructuring of the DFW to the Forestry Administration which took place in 2003.



Some narrowing of the ambitions of the monitor was no doubt helpful, both in operational terms and for the perceptions of the RGC. Still, there was a very clear shift in intentions with the change of monitor, and SGS was open in declaring its willing acceptance of this more limited approach. Its role was to be closely circumscribed, and largely reactive. It would put information before the relevant authorities, in line with its ToRs, and would investigate cases brought to its attention within the limits of its brief.

On paper the SGS brief was ostensibly very broad:

'To validate that all forest crimes are being reported and that reported actions have been accomplished by the competent agencies of the RGC' (SGS' ToRs: RGC, 2004:1).

However, SGS' interpretation of it was rather less ambitious:

'Our brief is not to go out and find illegal logging but to monitor the situation and then make appropriate recommendations to the local authorities' (SGS quoted in Phnom Penh Post 26th August to 8th September, 2005).

The donors accepted this rather restricted function. According to one World Bank respondent (interview, June 2005) SGS was intended more to act as an auditor of the existing CTS (a role not prioritised by Global Witness) than as an investigator of forest crimes. While the changes might appear minor, the political implications were more deep-seated. In practice (and as judged by its quarterly reports), SGS limited its role almost exclusively to monitoring the use of the CTS.

Other activities listed in the ToRs were to include:

- Review and verification of FCMO and MOE monitoring reports;
- Review of FCMU database records and the Case Tracking System classification of forest crimes;
- Review of Department of Nature Conservation and Protection (DNCP) database records;
- Review of media, NGO, and anonymous reports;
- Liaison with environmental groups;
- Field visits to forest concession operations to inspect old logs being prepared for transport, and to verify log transport operations.

The ToRs also required the review of timber processing factories' volume records and export records of sawn timber. However, no such checks were carried out as SGS claimed the ongoing transport and export bans had removed the need, and that the ban on concession operations meant there was no legal timber to saw. The SGS contract was renewed in June 2005 and funds for this were released by the FA from the under-spend from the World Bank LIL loan. In February 2006 SGS' operations were suspended due to lack of funding.

4. The impact of independent monitoring on the forest sector

The Cambodian experience provides a unique opportunity to compare the two contrasting examples of independent monitoring: that provided by an international advocacy NGO, Global Witness, and that provided by an international private sector company, SGS. Exploring the impacts of these different approaches provides valuable lessons for the future design of verification mechanisms.

a) The Global Witness Approach

Assessing the impact of any form of independent monitoring as one element of a forest reform process poses some difficulties, given the other potentially influential forces which were also at work. These include the wider FCMRP, the logging moratoria and the suspension of concessions. However, there is a widespread perception amongst observers in Cambodia that Global Witness exerted some disincentive effect on illegal operators, and increased the discipline of both the official enforcement agency and the industry. The most notable and public effect, however, was on the information and understandings available to the national and international community, on issues such as the following:

- the structure of forest exploitation;
- levels of illegal practice;
- the forest industry;
- financial and other benefits derived by the forest industry;
- benefits and negative impacts for forest communities;
- patterns of international trade, legal and illegal;
- those in breach of the law.

Analysis of the figures from the FCMU's performance statistics between the start of 1999 and May 2002 (Miller, 2004:10) shows that:

1. The number of cases monitored fell.
2. There appears to have been less forest crime, due partly to the moratorium. However domestic demand increased, which may suggest a contrary trend.
3. The volumes of timber impounded fell significantly, but those of NTFPs (particularly resin) increased.
4. There was a steady rise in the number of chainsaws impounded, suggesting either an increasing number of small-scale operators or an increased focus on such operators.

Between 2000 and 2001, the independent monitor filed over 50 crime reports to the RGC detailing illegal activities (22 crime reports were produced in 2000, and 23 reports during the second half of 2001). In addition to the crime reports, it submitted a number of case reports to the RGC relating to instances where it suspected that forest crimes had occurred, with specific requests for follow up and investigations.

Global Witness claimed to have had an impact on two significant policy-relevant events in the forest sector: the logging moratorium introduced in 2002 and the cancellation of concessions (Global Witness, 2003). Global Witness may certainly have had a role in these events but other factors such as the conditionalities¹⁷ for the release of World Bank loans and the fear that these would be delayed due to the quality of the management plans may also have contributed.

¹⁷ Global Witness also lobbied extensively for forest sector reform conditionality to be applied to donor loans to Cambodia.

There is wide agreement that Global Witness significantly raised the profile of the illegal logging issue in Cambodia. However there are some questions as to the longer term impact. Despite Global Witness' success in exposing the political economy of the forest sector, it was less successful in achieving long-term change. Global Witness accepts that, in its official role, it did not have much impact on the workings of the government agencies and that there has been no serious increase of political will in the Forestry Administration to deal with issues of illegality (Interview with Global Witness, December 2003). It could be argued that the means which Global Witness employed – while effective at exposing problems in the sector – did little to encourage buy-in from the Cambodian side. Local officials may have seen involvement with the monitor as unhelpful to their own career prospects and an area to avoid, given both the underlying political dimensions and the sometimes uncompromising manner in which Global Witness chose to work.

The role of Global Witness as an independent monitor needs to be considered together with its role as an advocacy organisation. Global Witness argues that its impact would not have been so great without the high profile that the independent monitoring role gave it. On the other hand, many of the outcomes claimed by Global Witness could be said to be the result of the way in which it exploited its connections with the press and the donors. This suggests that real impacts of the independent monitor were not achieved by the design of the independent monitoring so much as the way in which Global Witness used this opportunity for purposes of advocacy. The NGO's ability to grab the international headlines was clearly very influential here. However, it was an approach which was not necessarily in line with external perceptions as to what was appropriate for an organisation contracted as an official auditor to the host government.

b) The SGS Approach

Given the impasse resulting from the dismissal of Global Witness, the DFW and the donors hoped that the work of the new monitor would follow a more regular and restrained approach – more in line with a typical auditing function. At this stage, the donors were keen to see the replacement monitor given a much narrower remit than had been the case with Global Witness. Those interviewed in December 2003 favoured an impartial auditor operating in a way that would depoliticise the issues. However, by 2005 some of the same donors had become critical of SGS' narrow interpretation of the ToRs.

One of the main successes of this period was said to be the way in which SGS drew attention to protected areas and the need to reconstruct the associated case-tracking system (CTS). But as SGS merely verified the cases that the FA entered into the CTS, it was felt that the more contentious and unresolved issues and cases were avoided.

There was also concern at the lack of external consultation. The independent monitor was required to act as a facilitator for reports of forest crime which an individual or organisation might prefer not to report directly. According to the ToR, reports could be submitted anonymously and SGS was to safeguard the identity of those alleging forest crimes. SGS accordingly put advertisements in the newspaper asking for people to report crimes. SGS did report on media and NGO claims but has been accused of over-selectivity as to which NGO reports it took up.

Prior to SGS' appointment as the independent monitor, donors had been of the view that the design of any system involving SGS would require pressure from agencies such as Global Witness to '*monitor the monitor*', and feed data to it which would not otherwise be available. It was recognised that for credibility and acceptance of the system (both nationally and internationally), there needed to be public and civil society involvement in the verification process. This point was reiterated at a later stage by the head of the international donor's 'Working Group for Natural Resources':

'SGS has performed a really good job within their mandate but it also transpires that not all aspects of forest crime can be captured by SGS and in that context an NGO such as Global Witness plays an important role' (Christensen, reported in Phnom Penh Post, August 26 to September 8, 2005).

A respondent from SGS itself admitted that Global Witness played an important role as an external watchdog and that their presence did help to diminish the level of illegal logging (Interview with SGS, June 2005).

Donor involvement was low, particularly when compared with the level of their engagement with Global Witness. The responsibility for management of the monitor was increasingly seen as lying with the FA and, except for the World Bank, few donors showed an interest in SGS' activities. Because of this lack of interest the RGC were unlikely to respond directly to public pressures and concerns, thus the concerns raised by these 'external monitors' were seldom responded to in any way¹⁸.

This loss of donor interest has to be taken into account when comparing the performances of Global Witness and SGS. SGS was widely viewed as having been much less courageous and penetrating in carrying out its duties than was Global Witness. This could well argue in favour of an NGO environmental rights monitor over a private sector operator in a context such as this. However, SGS operated in a context where donor interest – and potentially, donor support – was much less forthcoming than in the Global Witness period. It would be misleading, therefore, to see the Cambodian experience in simplistic terms as demonstrating the superiority of an NGO operator over a private sector one, for the context had changed in fundamental ways.

4.1 Impact on donor behaviour

Among the unintended impacts of the first phase of monitoring was a significant change in the attitudes of many donors to forest sector work. It could be argued that the conflicts generated during Global Witness' tenure had negative effects on levels of donor interest –as regards both support for independent monitoring and broader interest in the forestry sector in Cambodia. The will for political engagement in the sector has significantly decreased and donors are reluctant to react to NGO concerns or to jeopardise their relationships with the RGC over these issues. Those donors that are still engaged in the forest sector are limiting their attention to lower risk issues such as protected areas or community forestry. The attention of yet other donors has shifted to the land sector.

4.2 Changes in the industry and markets

The profile of industrial investment in the forest sector in Cambodia has changed significantly over the last decade. Under the concession system the processing industry was dominated by large-scale investors. Since December 2001, with the logging ban and the suspension of concessions, smaller provincial and district entrepreneurs have emerged. There has been a shift from a simple production system with major players supporting export markets, to a more complex system including greater numbers of small-scale opportunistic operators as well as highly organised businesses mainly supplying the domestic markets (Hobley, 2004b:9).

The SGS monitoring reports confirm a continuation of this trend. They suggest that there were no major problems in concession areas but a steady rise in the number of chainsaw and small-scale illegal operators, as well as increased illegal logging in protected areas (see for example SGS, 2004a). This may be in part a reflection of the sampling technique used, which may have picked up on the smaller operators but not registered the more powerful and larger scale illegal operators. The logging moratorium has clearly affected exports, but how this has curbed overall illegal activities is unclear.

Logging pressure has also been shifted elsewhere. According to Global Witness;

"The pressure has been transferred to post- and non- concession areas, which were previously considered to be of limited commercial value and which should be "protected" during the period in which a new cohort of commercial sized trees grow' (quoted in IFSR, 2004).

There is a view that the logging moratorium has been instrumental in transforming the problem of illegal logging into one of land concessions, in the sense that logging controls are now subverted by the

¹⁸ For example, neither the RGC nor the donors responded to the NGOs, when concerns about the first and second SGS reports were made. Global Witness (2004) made allegations of serious shortcomings with the first SGS FCMU quarterly report was released in May, 2004; Forest Certification Watch (2004) was likewise highly critical.

granting of tracts of forest to companies ostensibly for agricultural projects but which are then logged over (Reynolds, 2005). Prior to the new Land Law in 2001, more than 40 land concessions were awarded by the MAFF, mostly on designated 'degraded forest' (Global Witness, 2002a). Many of these were over the 10,000 hectare limit stipulated in the law. None could be considered legal. Barney (2005:12) reports one informant as suggesting that the primary rationale for allocating many of these concessions was indeed for access to the timber.

Domestic demand is growing and installed milling capacity is high, but the legal means to meet it are lacking in the present impasse. There is thus a force for illegality within the system. The annual demand is estimated to be 1.5 to 2 million m³ per year with only 1 to 1.2 million m³ round-wood produced by registered mills (Miller and Boscolo, 2004:10)¹⁹. The annual allowable cut has been set at 500,000 m³, although this figure is said to have been administratively set and not to be scientifically defensible (discussed in Barney, 2005:7). Unofficial sources report that unmet domestic supply resulted in a 20% price rise during the first few months of 2004 (Hobley, 2004b:30). Some mills have turned to alternative species, such as rubber wood, but returns on these are low. Many operators are reputed to be trying to sell their machinery with the intention of moving elsewhere.

5. Wider lessons for verification

This discussion raises a number of questions about the effectiveness of independent monitoring and its long-term impacts, as well as the relative merits of NGO advocacy organisations and private sector certifiers operating as monitors. A number of conclusions can be drawn regarding the planning of such initiatives in other situations. The following issues emerge as paramount:

5.1 The need for clarity in standards

One of the main problems for the operation of a verification system in Cambodia is the lack of precision in the legality standards to be verified. To take the issue of legality of the *source* of timber, there is little agreement over what constitutes forest land: formal boundaries of the permanent forest estate and registration of state lands are not in place, and there is little clarity over indigenous title to land. This results in a lack of precise information about the extent and type of forests that exist in Cambodia. The Forestry Law distinguishes between state and private land, and production, community, protection, flooded and conversion forests but although jurisdictions are defined in law, they tend to lack practical points of reference on the ground. This, combined with the present state of confusion and parallel systems of land registration and titling, means it is possible (for instance) to register private ownership of land with one Ministry although it might previously have been classified as 'permanent' forest reserve by another. Responsibility for state land management is assigned to sectoral ministries at the national level. There are no mechanisms to coordinate amongst ministries and no detailed land use plans to guide decisions (Hobley, 2004c:3). The Forestry Law places MAFF and the FA in charge of forest management but this overlaps with the Environmental Protection and Natural Resources Management Law, which gives authority over protected areas to the Ministry of the Environment. MAFF has jurisdiction over state forests. The Ministry of Land Management and Urban Planning, however, has jurisdiction over the registration of land as private property. It is hoped that recent regulatory enactments related to State Land Management and Delineation/Demarcation of the Permanent Forest Estate will help to rectify the present situation, but it is not clear how these legal documents will be implemented.

5.2 The need for clarity as to the role, objectives and outcomes of the independent monitor

One of the weaknesses of both the Global Witness and the SGS arrangements was the lack of clarity on the exact objective of the independent monitoring mechanism, what was to be monitored and what

¹⁹ In 2003, less than 90 processing facilities were licensed to operate in the country (FA, 2002 in Miller and Boscolo, 2004:8) and most primary processing was carried out by mobile sawmills, many of them illegal.

outcomes were expected. Different parties had different expectations of the monitor, and not all of these proved compatible. Conflicting expectations, motives and objectives resulted in a further erosion of trust (Malayang et al., 2002)

Global Witness' ToRs were far-reaching, and went far beyond a mere audit or verification of official monitoring operations. Despite this, roles and responsibilities of partner agencies were often unclear and/or unendorsed. Many of the agencies listed in the Global Witness ToRs as responsible for reporting to them were not aware of the requirements and no MOUs were agreed with any of the agencies. SGS' experience was not dissimilar. It had initial problems in persuading the MOE to submit reports to it, despite a clear statement of this requirement in the ToRs. The Office of Legislation and Litigation referred to in the SGS' ToRs had disappeared in the DFW restructuring prior to the SGS appointment. It was not clear to SGS what body was to take over its role.

In both cases, the role of the independent monitor could have been strengthened through a binding agreement with each agency over its precise roles and responsibilities, on which the independent monitor relied for reports and other forms of collaboration.

5.3 The importance of management and oversight of the independent monitoring

The involvement of the Focal Point, a representative body from the Council of Ministers, was in theory an important part of the design of the Global Witness ToRs. The role of the Focal Point was to receive periodic reports from the FCMRP and pass them on to Ministries, the Prime Minister, donors and the press. As a third party reporting body, it was intended to bring information on forest crimes formally to the attention of the RGC. Other responsibilities and duties of the Focal Point included:

- Facilitation of management and oversight of the independent monitor;
- Ensuring that MAFF and MOE implemented a verifiable forest monitoring and reporting project;
- Reviewing reports from MAFF and MOE and publishing a concise quarterly report on the status of forest crimes in the country including the recommended measures;
- Dissemination of quarterly reports to the donors and to the press;
- Assisting MAFF and MOE in resolving conflicts, overcoming constraints related to institutional, legislative and financial resources;
- Seeking of donor assistance.

However, the Focal Point considered itself to be under-resourced, no funds were provided by the project to investigate the independent monitor's reports, and there were no technical staff assigned to them. Above all, there was no incentive for the individuals in the Focal Point to be drawn into what were often highly contentious issues with deep political ramifications. It was widely felt that the Focal Point existed more to limit the damage to the RGC than to pursue the cause of improving forest governance. As the evaluation of the FCMRP diplomatically put it:

'...the design failed to sufficiently provide for fire walling unintended disharmonies of the role of the partners' (Malayang et al., 2002).

The inability of the Focal Point to play its part as specified by the Global Witness ToRs may have led to the decision to remove this buffer function from the SGS ToRs. This means that there was no capacity for arbitration in the event of disagreement between the monitor and the ministries. Nor was there any body to ensure that the monitor complied with its ToRs (for example, as regards the diligent recording of reported crimes).

5.4 The importance of access to information

Guaranteed access to information is a necessity for effective independent monitoring. The Global Witness ToRs included the freedom to undertake unaccompanied field visits and a clause granting the independent monitor *'direct access to RGC records and files relating to concessions, parks and protected areas and other State forest-lands'* as well as to customs records on information *'pertaining to detecting, reporting,*

monitoring and suppressing of illegal or unauthorized forest activities'. However, no mechanisms were put in place to effect such access, and the issue soon became a recurrent problem for the monitor (Global Witness, 2002c: 3).

'The agencies consistently refused to cooperate in providing access and Global Witness met frequent problems when trying to access concessions' (Global Witness, 2005a).

Global Witness was provided with a letter from the Focal Point, renewed on a quarterly basis, granting them access to concessions in the field, but in some cases this proved insufficient to open the necessary doors (Global Witness, 2005a).

In the case of the SGS ToRs, all of the SGS inspections were to be 'facilitated' by the FA and they were precluded from carrying out '*random checking of reported illegal actions that have not already been passed on to the relevant agency for action*'. A further instruction was later issued to FA chiefs to facilitate SGS' access to information (SGS, 2004b). The Inspection Panel report (Inspection Panel, 2006²⁰) however showed concern that the provisions of the SGS TORs prevented the monitor from independently initiating field investigations.

5.5 Clarity over reporting protocols

The lack of clarity over reporting was a clear design fault. In 2001, Global Witness launched a controversial report, 'The Return to Large Scale Illegal Logging' (Global Witness, 2001a) which was timed to coincide with a Consultative Group meeting of Cambodia's major donors and the RGC. This release was considered by the DFW as untimely. It led to the formalisation of reporting protocols with a view to bringing the monitor under tighter government control. The new protocols agreed in June 2001 required that crime reports should be forwarded to the Director of DFW and Department of Inspection with copies to the Ministers of MAFF, MOE and the Focal Point Coordinators. Response times were agreed. Each party had a maximum of 5 working days to respond in writing to the independent monitor. Within 30 days, the government was to provide a status report detailing investigative findings and a plan of action. From then on, the government was required to prepare status reports every 30 days until the investigation in question was completed, and either the dossier was forwarded to the courts or the file closed. The independent monitor could then release information to the public, though only after consultation with the concerned authority.

Even after the reporting protocols were set up, there was still disagreement over whether, if the government did not respond within the agreed time, Global Witness was then free to release the information into the public domain. The ToRs state that the independent monitor had the right to publish:

'The independent monitor may release the information with consultation with the concerned authority to the greater public after the above described time periods....' (RGC et al., 2001).

However, there was no provision in the reporting protocols as to who should arbitrate in the event of such non-compliance. The independent monitor was ultimately required to make the judgement itself:

'The independent monitor may disseminate findings at any given time there is non-compliance with the above mentioned protocols or when the independent monitor has adequate justification that information sharing is failing or the investigation is seriously flawed' (RGC et al., 2001).

Under the terms of SGS' appointment, quarterly reports were not to be released to the public until they had been verified by the RGC. The RGC and its agencies had 30 working days from receiving a quarterly report to verify its contents. After this, the monitor was free to release its findings even if they had not been verified. However, in comparison with the Global Witness ToRs there was less clarity over what information could be published:

²⁰ In January, 2005 the Inspection Panel (which is authorised by the World Bank) received a request for inspection related to the World Bank funded Forest Concession Management and Control Pilot Project (FCMPP) claiming that the design and implementation of the project had promoted the interests of the logging concession companies rather than those of the people.

‘the procedure and format for presenting these [forest crime] reports will be agreed with the RGC in the contract inception phase. Procedures for potential ‘whistle blowers’ to report to the project will also be finalised at the project inception phase’ (From Appendix A to the SGS ToRs).

The Inspection Panel report (Inspection Panel, 2006) showed concern that the release of the SGS reports was subject to RGC verification and that this may have been detrimental to its independence²¹. As a result new reporting arrangements to ensure increased transparency and avoid conflict of interest were recommended (IBRD and IDA, 2006).

There was also some question about the manner in which reports were made accessible to the public. SGS Cambodia had no website for its monitoring reports.

5.6 A reliance on conditionalities

The verification initiatives discussed in this case study were largely donor-driven, and linked to World Bank SAC conditionalities. We have elsewhere argued that the SAC conditionalities were important in carrying the monitoring system through crises but rather compromised the chance of good relations with the RGC (Brown, 2004). There were strong pressures to put an independent monitoring system in place without too much regard for long-term effects. Subsequent reviews have queried this approach (Hobley, 2004b; Malayang et al., 2002). It has been argued that in the case of independent monitoring, the conditionality mechanism failed because there was no strong domestic coalition and no RGC commitment to the reform. Now that a reliance on conditionalities by donors is increasingly less common, any future monitoring arrangements are likely to require much higher levels of local ownership and buy-in (Brown and Luttrell, 2004).

5.6.1 The nature of independence

To draw a comparison, in the field of financial audit the requirements for independence of the auditor are defined by professional bodies and have a high degree of public acceptance and legitimacy. They exist independently of the choice of the auditors themselves and are binding on them. Independent monitoring of forestry operations is a new field of activity, and as yet unconstrained by professional rules or regulations. In such a context, what would ‘independence’ of the Cambodia independent monitor imply? This issue resolves into two sets of questions: the first concerns the relationships between the monitor and the various parties with whom they have to interact in the course of their duties. The second relates to the other interests and agendas which the monitor may have, which might affect its performance or how it is perceived by others.

In the case of Global Witness, although its independent monitoring operation and advocacy campaign were handled by separate teams in the organisation, the two were inevitably linked and there was no attempt to suspend the advocacy work on Cambodia while the independent monitoring was underway. The perception of Global Witness as an advocacy organisation with close allies in the NGO community impinged on its work as the independent monitor, and undermined its credibility with government and industry. Some of its reports were restrained, acknowledging the complexity of the issue (see, for example, Global Witness, 2000). But in other cases published statements appeared to confirm the sceptics’ doubts. The press release issued by Global Witness when the independent monitor contract was signed is indicative of its stance:

“This is a great day for us”, said Patrick Alley of Global Witness. “This role gives us a direct formal feed into the enforcement process, and full access to timber related RGC and concession records.” [The funds will allow Global Witness to open an office in Phnom Penh.] “We will simply do more of what we already do“, said Alley.’ Global Witness (1999a)

²¹ The report claims that this point, in combination with the prevention of the monitor from making independent field investigations, conflict with the objective stated in the Project Appraisal Document to have ‘an independent monitor to provide a check on the accuracy of the government reporting’.

The release continued:

‘Forestry reform has a long way to go, but the fact that the RGC have accepted us, a thorn in their side for years, as the monitor, is an indication of the new mood in the RGC. Impunity has always been a problem in the forest sector, so this deal will test the RGC’s resolve, because they have to investigate and take action on reported crimes’, said Alley, ‘And a lot of the perpetrators have friends in high places.’ (Ibid)

There was however a widespread view – among donors, external NGOs and other outside observers – that if ‘recalcitrant’ governments are to be forced into action, in low governance situations, then advocacy organisations may be better placed to leverage change than more neutral actors, and less likely to be ‘captured’ by the state. It has been suggested, moreover, that Global Witness’ successes were in large measure due to their freedom to be confrontational, and that without this they would have suffered the same limitations as were experienced by SGS. For example, one donor voiced the view that confrontation was inevitable, in this case and in tackling corruption in general. ‘*There will always be conflict if one wants real change*’ (Interview with donor, Pnomh Penh, December, 2003). There is also a view that an organisation is unlikely to be able to carry out this high-risk work effectively unless they are motivated by both the passions and the international mobilisation networks associated with advocacy. Such ‘passions’ are deemed much less likely to be found in commercial organisations, which tend to be motivated more by profit margins and ongoing business/customer relationships.

Others argue that in many ways it was the confrontational attitude of Global Witness that undermined its effectiveness. The need to be non-confrontational was also stressed by local NGOs interviewed for the study. To get real change in Cambodian society, they argued, requires that gentler pressures be applied. Some local advocacy organisations are able to operate effectively in Cambodia. Court Watch²², for example, has a Code of Conduct which stresses the need to be impartial and independent, and to limit their role to technical issues to minimise the political fallout. All the monitors are law graduates and are trained to professional standards. Court Watch staff accept that it is not enough to put information before policy makers and that there is a need to actively promote reform. While Court Watch does use advocacy, it does so in a constructive and unthreatening manner. Staff recognise that much depends on the manner in which they present their findings, even if this requires recourse to legalistic language. They do not aim to embarrass and they refrain from naming names.

The respect of ‘independence’ raises a rather different set of issues in relation to SGS. SGS has a strong position on the issue of independence, which they interpret to imply (Telfer, 2005):

- Freedom from financial, commercial and political interests;
- Being accountable and liable;
- Being member of a recognised federation²³;
- Possessing a reputation to maintain.

However SGS has also had a problem of public perception in relation to its independent monitoring work, but more as regards the external and NGO publics rather than the state or industry. This relates to its commercial interests²⁴. Its independent monitoring contract represents only a small part of SGS’ Cambodia portfolio (reputedly 7 to 8% of the total). This has led some observers to question whether

²² Court Watch, implemented by the Centre for Social Development in Cambodia, was designed to monitor and report court procedures to the public and to highlight the lack of transparency within the court system.

²³ This is a complex area, with no simple solutions. For example, a track record of experience in the sector and associated technical capacity can help strengthen the reputation of a provider. The professional ISO accreditations of SGS impressed the FA who claimed that this gave them confidence that SGS would be able to make constructive recommendations. However, a requirement for professional accreditation may be problematic, and may result in a tendency to choose foreign monitors where there is no national accreditation system and local organisations are unable to conform easily to international standards.

²⁴ The World Bank Inspection Panel report (Inspection Panel, 2006) points out that the Panel could find no evidence in the project documents as to whether an evaluation or discussion of SGS’ independence criteria was carried out. The Panel found this inconsistent with OP 13.05 on Project Supervision which require that Management ‘ascertain whether the borrower is carrying out the project with due diligence to achieve its development objectives in conformity with the legal agreements’.

SGS would have allowed its independent monitoring work to compromise its relationships with the RGC over what was only a minor contract, albeit one which could be highly sensitive.

5.7 The value of a constructive approach

It can be argued that the more cooperative attitude which characterised Global Witness' approach in the first year as an independent monitor was more constructive than the manner in which it worked in the subsequent years. One Cambodian interviewee was of the opinion that without the support of *someone* in the government the monitor would have had little impact. This resonates with Court Watch's experience, which suggests that real change could best be brought about through personal channels and constructive interaction. Court Watch has long been involved in campaigning for judicial reform, and is respected and appreciated for its constructive work with magistrates.

The case of the Cambodian Mine Action Centre (CMAC), an organisation which needed to build a climate of confidence at the same time as tackling entrenched governance problems, is also illuminating²⁵. Accusations of corruption, nepotism and poor financial management in CMAC received much publicity in the national and international media in 1999. Ultimately, CMAC donors suspended funding. In response the 'CMAC White Paper 2000' was produced outlining major changes including a new monitoring system. Its emphasis was on addressing problems constructively, and on not shaming individuals. The system was put in place progressively, albeit slowly. Rules of prioritisation were introduced so that the big issues were tackled first. Although Global Witness used the concept of a 'priority matrix' which was based on prioritisation criteria and the probability of success (Global Witness, 2005a: 143), they were accused by some of using *'too fine a sieve'*.

There is a question as to whether the independent monitor should concentrate solely on monitoring activities, and suspend all capacity building work which is not directly linked to this work. Capacity building for forest crime monitoring was a major focus of the FCMRP but was not part of the ToRs of the independent monitor and it was handled by agencies other than the independent monitor. The monitor was thus free to concentrate on its core objective of independent monitoring. However, the design of the FCMRP failed to address the fact that the agencies would need increased capacity to respond adequately to forest crime reports. SGS also claim that their activities were heavily constrained by the lack of capacity and resources to maintain the CTS. Hobley and Boscolo (2004:26) reiterate this point when they suggest that there is limited internal capacity within the FA to respond to the high levels of monitoring and enforcement that are required..

Interviews with other Cambodian organisations involved in monitoring (such as election and court monitoring) suggest that capacity building is critical in increasing government support for the process. For example, Court Watch works with the judiciary and feeds back their results in to the reform process. It is this set of activities which helps to give them access to monitor the process. On the other hand, it can be argued that capacity building may compromise independence if it is combined with independent monitoring activities as it may produce a conflict of interest.

5.8 International profile

Linked to the issue of independence is the question of whether foreign involvement is essential for effective independent monitoring work. There are various advantages in having an independent monitor with an international profile: firstly, it may increase international legitimacy and trust in the process; secondly, it can help to bypass national allegiances and politics; and thirdly, it may provide security and protection for the independent monitor. In the Cambodia case the protection generated by international association was regarded by many as valuable, particularly in a sector which is so heavily subject to the influence of the military. Many of the Cambodian respondents felt that Global Witness' international connections allowed it to act with a freedom denied to Cambodians and that this was an important asset. On the other hand, it was felt that national ownership of the process was weakened and that it raised sensitive sovereignty concerns. Some respondents suggested that the independent

²⁵. See <http://www.thinkcentre.org/article.cfm?ArticleID=875> and <http://maic.jmu.edu/JOURNAL/8.1/focus/maxwell/maxwell.htm>

monitor should consist of two bodies: a national level organisation for investigations and an international body, such as the Cambodian Human Rights Office, to back up their actions. A very clear principle is that the national level body must not be involved in party politics.

Few local Cambodian NGOs are regarded as truly independent in terms of being autonomous from the influence of other parties in decision making. Many of the interviewees (including Cambodians) expressed scepticism that Cambodians could ever be free of party political associations. Some respondents were also sceptical about the ability of Cambodians to be transparent, which partly stems from a widely held belief that trust is lacking in Cambodian society. To the extent that this view is justified, it can be partly attributed to the impact of decades of political upheaval.

5.9 The location and design of the verification system

The Cambodian experience raises questions about the design of the various elements of the verification system. These concern the:

- i) Location of the internal monitoring system to be verified;
- ii) Form and location of a third-party reporting body.

i) One of the areas of contention was the location of the internal monitoring system. The main alternatives were to place it either within the main government structure with responsibility for forest management, or alternatively, to create a function of government outside the sector. There was an argument that monitoring and reporting functions should be relocated outside the FA, as it is the FA that is responsible for allocating permits.

There was also much scepticism about the ability and capacity of the FA to monitor itself effectively (Hobley and Boscolo, 2004:26). The alternative might therefore be to place the monitoring functions completely outside both the MAFF and MOE (Miller, 2004:10) which would increase independence and transparency and create a separation from other government functions. One possible site would be the national audit office. Those interviewed in MAFF on this subject were resistant to this idea, quoting the lack of relevant technical understanding in other ministries.

The present FCMO is not an enforcement agency and does not have the capacity to decide, sanction and enforce the law. Rather it relies on the military and provincial administration for enforcement (Miller, 2004:3) and this dependence has only increased the potential for conflict with the international monitor. Hobley (2004) therefore called for the FA to acquire legal authority to take actions against crimes and, at the same time, to make it accountable to a higher authority. Miller (2004:10) went further to suggest the setting up of an enforcement agency which is independent of both MAFF and the MoE.

ii) During the time that Global Witness held the contract, the location of the Focal Point (the third party reporting body), in the Council of Ministers was problematic as the individuals involved had no incentive to be drawn into controversial issues, and every incentive to avoid them. In the original design of the ToRs, FAO and UNDP were to play a strong facilitation and 'filter' role. In practice, these organisations did not take on this role.

Various other locations for third party reporting bodies have been suggested such as the Ministry of Interior, a Desk linked to the Prime Minister's Office, the police, or an inter-ministerial steering committee responsible to the National Assembly. However, it should be noted that this creates a potential for the generation of institutional rivalry.

5.9 Financing models

An effective verification system requires significant resources and capacity. The Cambodia experience illustrates the fragility that results from funding the independent monitor through periodic donor support (particularly where this is driven mainly by funding conditionalities). However, some form of

donor funding is likely to be required, at least in the establishment phase. Donor participation also provides the opportunity for external review of the process. One of the limitations of the SGS model is that the monitor was paid for by the institution which it was required to verify. The example of log transportation during 2005 suggests that there is a need to isolate the independent monitor from any situation where their results may be biased by concerns to ensure an extension of their contract (see Box 3).

An alternative funding model suggested by Telfer (2005) is the ‘user pays’ system, whereby the concessionaires themselves pay for the independent monitor. This could take the form of an industry levy with the possibility of an extra tax rebate against fees paid. This funding option would probably be feasible where there is the potential for significant government revenues, but it could be a problem where the forest industry base is small, as in the Cambodian case. The Cambodia Timber Industry Association was understandably unsympathetic to this approach (Interview, June, 2005).

Box 3. SGS’ role in monitoring log transportation

The transportation of logs (confiscated after the logging and transportation moratorium in 2001) was resumed in January 2005. At the government’s request SGS took on the role of monitoring the log transportation and the validation of log volumes. The 2004 Consultative Group meeting of donors and government had agreed to permit the transport of those logs for which royalties have been paid. Some donors and NGOs criticised SGS for not checking the legal origin of the logs (Phnom Penh Post, February, 2005). SGS however were clear on their position:

‘I liken it to confiscated state property and what they do to it is up to the state’ (Tennent quoted in Phnomh Penh Post, February, 2005).

6. Way forward: learning from accountability systems outside the forest sector

The timber sector is currently subject to a logging moratorium. It appears that once this is lifted timber production may switch to a regime of annual coupes. The experience of independent monitoring to date in Cambodia suggests the need to approach monitoring and verification in the new production system in a more context-relevant way. This would help to recognise and internalise the real barriers to legality rather than seeking to solve them directly. The new architecture of international aid also needs to be taken into account. Forceful pressure from donors is increasingly seen as a poor instrument to build national ownership, and the potential for financial leverage by donors has noticeably reduced under these new financing arrangements. Future monitoring arrangements will require a much higher degree of local ownership and buy-in, both qualities which have been singularly lacking to date in Cambodia.

Some clues as to what might and might not work in this context can be elicited by looking at other existing accountability structures and mechanisms in the country. The National Assembly has been largely unsuccessful to date in exercising vigorous oversight of the executive. Political parties are quite insular and top-down and there is little vertical accountability or feedback to the membership. Any independent monitoring system requires a judicial process able to respond to the claims it receives. The Cambodian judiciary is said to be subject to widespread interference and corruption, resulting in a lack of public confidence (Hobley, 2004d:13)²⁶, however there are other systems for access to justice such as the Arbitration Council which has brought together unions, businesses and government to settle disputes. Its success suggests that structures which are outside the main justice system, and have other checks and balances on them (via, for example, the unions or the private sector), may have the best chance of success.

²⁶ Very low numbers of cases reach the courts and as few as 5 to 20% of cases reported to the FCMU result in a fine being charged (Miller, 2004). There is no judicial case tracking system.

Long-term engagement in strengthening accountability mechanisms over locally distributed resources needs to be more comprehensive and able to acknowledge the process of decentralisation, in particular the oversight mechanisms which the increasing capacity of the Commune Councils may provide²⁷. Commune Councils have not yet been incorporated into many aspects of policy-making. To date, accountability upwards and downwards from the commune level is very weak, or often mediated by NGOs (Burke and Vanna, 2005). There are also allegations that the Commune Councils are becoming subservient to central government interests (Hughes and Conway, 2004).

There are other examples of efforts to involve citizens in local planning and public sector management. The Village Health Committees, for example, are local participatory fora set up to provide inputs into local resource and service management. Local people have used the new structures to make claims against the state. In addition, there are various local NGO watchdogs that keep track of parliament, the judiciary and elections.

A recent report by Burke and Vanna (2005) has looked beyond these examples to examine a variety of mechanisms providing checks and balances *within* the national and provincial government institutions. These include:

- Internal audit systems in the ministries;
- The Ministry of the National Assembly, Senate and Inspection which deals with complaints from within and outside the system and is developing provincial level complaint systems such as ‘one stop shops’. However, the lack of public access to information has limited its role of increasing accountability to date;
- The Anti-corruption Council of the Council of Ministers;
- The National Audit Authority, which is a parliamentary body with auditing responsibilities;
- The National Assembly’s Human Rights Commission.

Though some of the national accountability structures may be problematic and weak, there are benefits in exploring the opportunity which existing initiatives can provide in order to increase local ownership, which was severely lacking in both cases considered in this case study. Developing mechanisms through which the independent monitor can engage with civil society, and thus strengthen constituencies trying to press for reform, would be one practical starting point.

7. Concluding remarks

An emphasis on strengthening verification systems was, in the case of Cambodia, associated with the focus on the enforcement of forestry legislation as a means of addressing governance failures. As discussed in Section 3.4, the donor’s emphasis on the need for legalisation of forest use was weak in its assumptions on how access rights to timber were actually obtained, and the ways in which politics influences the effectiveness of their approach (le Billon, 2000:795). Indeed, le Billon argues that the donors actually strengthened shadow state politics by ‘validating an exclusionary system of resource access’ (*ibid*:797). His thesis (*ibid*:802) is that, with donor support, the government was able to adopt the international rhetoric of green democracy and accountability while at the same time using forest resources to strengthen its own power base. This suggests the need to re-consider the value of a legalistic approach (which the focus on verification can encourage), when such an approach is divorced from an understanding of the political complexities of the host society.

In this review, some fundamental issues are raised about the design of verification systems in contexts of low political will for the development of accountability mechanisms and underdeveloped local civil society around the issue. These factors (in addition to the lack of a market to act as a lever and the unclear legality standards) may themselves need significant attention before effective independent monitoring or verification systems can be put in place.

²⁷ Cambodia’s first commune elections were held in February 2002. These elections, to select chiefs and members of commune councils, were marred by political violence. Despite falling short of international standards the results were largely acceptable to the major parties (Hughes and Conway, 2004).

One of the remaining questions is the degree to which a narrow audit function is appropriate for the complexity of the Cambodian context? The two types of monitoring discussed in this case study are very different: Global Witness took an investigative approach, often in conflict with the agencies being monitored, in their attempt to address deeper governance issues, whereas SGS performed an auditing role with the support of the FA. Clearly, a distinction has to be made between the two in terms not only of activities but also of objectives. Global Witness has been criticised for interpreting its ToRs too broadly and not being able to move beyond a pre-existing advocacy role, while SGS has been accused of interpreting its ToRs too narrowly and not seeing beyond their remit. SGS' performance should, however, be understood in the context of a marked retreat of donor interest in Cambodian forestry.

There is widespread scepticism that an auditor with a narrow remit, such as is implied by SGS' role, is appropriate in the Cambodian context given the governance problems in the sector and the compromising position in which this puts an 'independent' auditor. By contrast, it can be argued that the real impacts achieved by Global Witness were not due to the design of the independent monitoring mechanism but rather the way in which Global Witness chose to interpret that design.

A conclusion to be drawn may be that different mechanisms and approaches are appropriate in different situations and periods in the evolution of a sector, but that it is the constellation of players, rather than the individual competences of each, which ultimately determine their effectiveness. In terms of impact, the most productive approach may be to appoint a non-advocacy organisation as the independent monitor but to ensure that NGO watchdogs are available and able to maintain pressure and oversight of the independent monitor. To do this in a sustainable way is likely to require that attention is paid to the development of a strong domestic coalition, with an adequate degree of government commitment to the reform. One means of bringing this about is through linked capacity building which gradually builds the local ability and will to engage with the monitor.

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List of Acronyms

IFSR - Cambodia Donor Working Group on Natural Resource Management
 CMAC - Cambodian Mine Action Centre
 CPP - Cambodian People's Party
 CTIA - Cambodia Timber Industry Association
 CTS - Case Tracking System
 DAI - Development Alternatives Inc
 DFID - Department for International Development (UK)
 DFW - Department of Forestry and Wildlife
 DNCP - Department of Nature & Conservation Protection
 FA - Forestry Administration
 FAO – Food and Agricultural Organisation
 FCMO - Forest Crime Monitoring Office
 FCMRP - Forest Crimes Monitoring and Reporting Project
 FCMU - Forest Crimes and Monitoring Unit
 FUNCINPEC - National United Front for an Independent, Neutral, Peaceful Cambodia
 INGO – International NGO
 ITTO – International Timber Trade Organisation
 LIL - Learning and Innovation Loan
 MAFF - Ministry of Agriculture, Forestry and Fisheries
 MOE- Ministry of Environment
 NGO – Non-Government Organisation
 NTFP – Non-timber Forest Product
 ODI - Overseas Development Institute (London)
 RGC - Royal Government of Cambodia
 SAC – Structural Adjustment Credit
 SGS - Societe Generale de Surveillance
 ToR - Terms of Reference
 UNDP – United Nations Development Programme

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