

**ANALYSIS OF MEMORANDUM OF UNDERSTANDING
AGREEMENTS BETWEEN GOVERNMENT ENTITIES AND
INTERNATIONAL NGOs WITHIN THE NATURAL RESOURCES
MANAGEMENT SECTOR IN CAMBODIA**

Cambodia Tree Seed Project/DANIDA

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EXECUTIVE SUMMARY

International NGOs working within the Natural Resources Management sector in Cambodia have historically engaged in a system where they enter into various forms of Memorandums of Understanding (MOUs) and agreements with their Government partners. The current system is confusing, misunderstood by many individual within the Government and the NGO community, and lacks a high level of standardization based on legal requirements.

There is an identifiable hierarchy to the MOUs and agreements that are currently in use. At the top of the hierarchy are MOUs between the Ministry of Foreign Affairs and International Cooperation (MoFA) and NGOs. These MOUs are “boilerplate” standardized documents that are used as a bureaucratic screening process prior to NGOs beginning operations in the country. Once entered into, these MOUs are rarely referred to by the NGOs that have entered into them.

Next are the Government partner MOUs between the NGO and an identified partner in Government that the NGO will be working with. Based on issues related to the time it takes to enter into the agreement, political choices, and who the NGO will actually be working with, the MOUs may be entered into at the ministerial or departmental level of government. These MOUs share common characteristics, but are not standardized. The format and content of the MOU is dependent on which ministry or department is signing the MOU (The Government entity usually provides the basic format of the MOU). The primary purpose of these MOUs is relationship building between the NGO and the government entity they will be working with. Once signed, the MOUs are rarely referred to by either party unless problems arise. These MOUs can be considered informal in nature, as there are no laws or regulations that prescribe their use.

Below the Government partner MOUs are individual project agreements between the NGOs and Government entity they are working with. These agreements can be quite detailed and include project descriptions, roles of various partners and budgets. Though they share some common characteristics, it appears that there can be a high level of variety in the format of these agreements depending on the Government partner involved, the NGO involved, and the level of complexity of the project. Like the Government Partner MOUs described above, the individual project agreements are informal with no laws or regulations prescribing their use.

In 2002 the CDC, through its Department of NGO Aid Coordination, introduced a new project agreement format that replaces both the Government partner MOUs and the individual project agreements mentioned above. This format is standardized, provides a sufficient level of detail, and sets up a mechanism whereby NGO projects are registered and required to provide quarterly reports on project activities which are fed into an NGO project database that is accessible to all the line ministries, thereby increasing levels of transparency. Unfortunately, the CDC Project Agreement format is not a legal requirement and many NGOs shy away from this mechanism because it is time consuming and requires additional reporting burdens that do not exist with the other mechanisms above. In addition, many NGOs and government entities, especially at the departmental level, are completely unaware of this new CDC Project Agreement format.

Because the current situation is so confusing and inconsistent, it is strongly recommended that steps be taken to legally require the use of the CDC Project Agreement format with modifications that make it more user friendly, and eliminate the confusing array of Government partner MOUs and individual project agreements that have been standard practice for years. Over time, improvements can be made to the CDC Project Agreement format to increase transparency and accountability, improve project linkage with Government policies, and increase operational flexibility without losing important control functions.

ACRONYMS

CBNRM LI	Community Based Natural Resources Management Learning Institute
CCC	Cooperative Committee for Cambodia
CDC	Council for the Development of Cambodia
CRDB	Cambodia Rehabilitation and Development Board
MAFF	Ministry of Agriculture, Forestry and Fisheries
MEF	Ministry of Economy and Finance
MOE	Ministry of Environment
MoFA	Ministry of Foreign Affairs and International Cooperation
MOU	Memorandum of Understanding
NGO	Non-Government Organization
RGC	Royal Government of Cambodia

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1. Introduction

The purpose of this report is to provide the reader with an overview of the current system of formalized agreements between entities within the Royal Government of Cambodia (RGC) and Non-Government Organizations (NGOs)¹ operating in the field of natural resources management in the country. Hierarchy of agreements utilized and their purpose, standard provisions where they can be identified, perceptions of the parties involved, strengths and weaknesses in the system, recent developments, and recommendations on how to improve the system in a meaningful way are addressed within the report.

It should be noted that this report is based largely on a representative sample of various Memorandums of Understanding (MOUs) provided for the study. In addition to these, additional agreements were utilized to augment the research and interviews were conducted with key individuals within the RGC and NGOs to get a better understanding of how the current system is operating and what the perceptions of the various parties are.

2. Hierarchy of Agreements, Purpose and Process

Based on the representative sample reviewed, there are essentially three different types of agreements between entities within the RGC and NGOs: MOUs between the Ministry of Foreign Affairs and International Cooperation (MoFA) and an NGO, MOUs between an identified RGC partner and an NGO, and individual Project Agreements between an identified RGC partner and an NGO. These various agreements vary in terms of purpose and level of detail.

2.1 Ministry of Foreign Affairs MOUs

Purpose and Process

Every International NGO must contact the MoFA to sign an MOU with a designated representative of the RGC. The purpose of these MOUs is to initially grant the NGO permission to carry out its intended operations within the country, bind the NGO and RGC to the various provisions contained in the MOU, and formally register the NGO in the country so that its activities can be properly tracked through existing government mechanisms/databases.

In order to get a MoFA MOU signed, an NGO must contact the Office of NGO Management in the Department of International Organizations of the General Department of Administration and International Cooperation and provide the following information in its application:²

- 1) Cover letter explaining purpose of the NGO and its proposed activities in Cambodia;
- 2) Proof of registration of the NGO in its home country;
- 3) Plan of program implementation in Cambodia for a period of at least three years, including budget, as approved by the organization's board of directors;
- 4) Letter from headquarters of the NGO authorizing its duly appointed representative to sign the MOU with the RGC;
- 5) List of both foreign and local staff employed by the NGO; and,
- 6) Documents confirming the local office address of the NGO, including a copy of the lease agreement.³

¹. As only one agreement between an RGC entity and local NGO was provided for this assignment, the focus of this paper is primarily on agreements involving International NGOs.

². It should be noted that local NGOs must go through a similar registration process through the Ministry of Interior's Office of Association Management in the Political Affairs Department of the General Department of Administration.

³. List adopted from the CDC Guideline for Non-Government Organizations and interviews.

Processing the application at the MoFA takes a couple of months, and can vary depending on how well connected or sophisticated the NGO making the application is. Upon completion of the processing process and drafting of the MOU, both parties to the agreement partake in a formal signing process at MoFA. Upon signing of the document, the MOU with MoFA is valid for a period of three years.

It should be understood that the MoFA MOU process is largely bureaucratic in nature, with little attention being paid to the document once it is signed. It appears, based on the interviews conducted, that most NGOs are unaware of the language contained in the document and simply file it away without referring to it again until the MOU needs to be renewed. In addition, provisions related to quarterly reporting within this document are largely ignored by the NGOs, and the MoFA does not seem to make any effort to enforce such provisions. This may be partially due to a confusion of roles between the MoFA and the Department of NGO Aid Coordination within the Council for the Development of Cambodia (CDC), with the CDC Department taking over responsibility for receiving quarterly reports on individual projects from the MoFA in recent years.⁴ In many ways, the MoFA MOU mechanism is an initial screening and approval process used by the RGC for NGOs wishing to operate in Cambodia.

Key Provisions

The MoFA MOU is a straightforward six page “boilerplate” agreement. Other than the name of the NGO and attachments that were required to be submitted during the application process, the main body of the document remains the same for all NGOs registered with MoFA. Without the various attachments, it is impossible to determine what activities the concerned NGO will be engaging in during the period of the agreement.⁵

The MOU is broken down into four main parts: a preamble, responsibilities of the RGC, responsibilities of the NGO, and final provisions. RGC responsibilities include: Recognizing that the NGO may open offices and carry out its approved projects; allows the NGO to carry out its humanitarian projects upon due approval of relevant government authorities based on government priorities; issue ID cards to expatriate staff; granting temporary residence status to expatriate staff; authorizing the NGO to collaborate directly with relevant ministries and other government institutions; informing the NGO of any new laws, regulations, administrative decisions related to NGOs; allowing the NGO to lease land, rent or construct offices and recruit local staff in compliance with applicable rules and regulations; allowing the NGO to import materials, equipment, machinery, etc. as defined in project proposals with import taxes being waived; and, issues visas free of charge.

NGO responsibilities include: complying with all applicable laws and regulations and not allowing staff to engage in activities that might disturb the peace, stability and public order or undermine national security; carries out its program within the limitations of its resources; engaging solely in the types of activities that have been authorized for the social welfare and public interest; refraining from any profit making activities or political activities inconsistent with its stated objectives; provide MoFA quarterly reports on its activities and annual financial reports to both MoFA and Ministry of Economy and Finance (MEF); Providing the MoFA with updated lists of its expatriate staff or change of address immediately; employing a greater number of Cambodian staff and minimizing the number of expatriate staff in compliance with the stated policy to maximize the transfer of skills and expertise to Cambodian staff; refraining from hiring tourists or illegal immigrants, with

⁴ See Section 3 below on recent developments of new mechanisms.

⁵ MOUs provided for this analysis did not contain any attachments, just the main body of the agreement. Any analysis based on information contained in relevant attachments was therefore impossible.

expatriate staff required to obtain a work permit; working in close cooperation with counterpart government institutions and local authorities to implement projects or programs; and, agreeing that local and expatriate staff are subject to income tax regulations.

The final provisions state that the NGO designated representative is recognized to act on its behalf, that the NGO must inform the RGC of plans to suspend activities sixty days in advance by registered letter and may restart its activities again after informing the RGC by registered letter, that the RGC may terminate the MOU in the event of gross violations and terminate temporary residency permit of expatriate staff if found guilty of violating the MOU. In addition, the MOU may be terminated by either party after sixty days written notice to either party by registered mail. For purposes of dispute resolution, the parties agree that disputes will be settled in good faith through direct negotiation between the two parties. There are no requirements for the parties to meet on a periodic basis to discuss operations or progress being made in implementing programs.

2.2 MOUs with Government Partners

Purpose and Process

The next level of MOU is between the NGO and an identified Government partner. Many individuals interviewed on this mechanism, from both Government entities and NGOs, agree that the primary purpose of these MOUs is to build relationships between the parties and reach general agreement on where the programs and projects that fall under the MOU are heading. These MOUs are not highly detailed and do not outline specific activities or budgets like the Project Agreements discussed in Section 2.3 below, but generally outline focus areas of the NGO's overall program in Cambodia as it relates to the Government partner and generally spells out the Government partner's roles and responsibilities in that program as well. Unlike the MoFA MOUs, MOUs with Government partners are not legally required, but became a form of standard practice among the Government and NGOs over time. As will be discussed in Section 3 on the development of new mechanisms, the days of these MOUs being used as a standard practice could be coming to an end.

In terms of process, the NGO largely decides, with input from the Government entities they are contacting, who to enter into the MOU with.⁶ Details relating to choosing a Government partner are discussed below. Once a Government partner is chosen, the Government partner provides the NGO with the general format for the MOU, usually based on an already existing MOU between the Government partner and another NGO. The NGO, working with government counterparts, then adds the relevant information necessary for their aspects of the program into the MOU. The MOU then goes through a process of review, suggested modification, negotiation and finalization. In terms of programmatic detail, it was reported that the level of detail insisted upon within the document directly relates to the amount of trust and the strength of the relationship between the parties; the more trust between the parties, the less detail in the MOU.

Upon agreement of the parties, the MOU can be signed. The signing ceremony includes interested parties from within the Government partner or closely related entities, members of the NGO staff, representatives that are funding the NGOs program if available in the country, and interested members of the media. This is essentially the only mechanism that exists for giving notice to other potentially interested parties of the MOU's existence.

⁶. A departmental or administrative office cannot expect to enter into an MOU with an NGO without those higher in command, specifically at the ministerial level, being informed about it. There is a strict respect for hierarchy within Cambodian governance systems, and this respect would extend to the system of MOUs between NGOs and Government partners.

Once the MOU with the Government partner is signed, it tends to be filed away and rarely referred to again unless there is a problem between the parties. In this sense, the MOUs with Government partners are not much different from the MoFA MOUs discussed in Section 2.1.

Choosing the MOU Partner

One of the big issues facing an NGO when entering into this type of MOU is who to actually enter into the MOU with. There are no rules or regulations guiding this decision. Some NGOs decide to engage at the ministerial level, while others decide to engage at the departmental or administration level. Some NGOs, due to the breadth and geographical scope of their activities, have separate MOUs that are signed within different ministries based on interactions the NGO will have with the specific government entities in its program. MOUs with Government partners are two-party in nature, and do not include multiple government entities.

Several factors go into deciding who the NGO should approach within the government. Government representatives and some NGO representatives state that the scope of the NGOs program is a key factor. If a program is only going to focus on one department (or administration) within a ministry, then the MOU should be between that department and the NGO, and signed by the department head. If the program is going to focus on multiple departments within a ministry, then it would make more sense to have the MOU at the ministerial level and signed by the Minister or Co-Minister/Secretary of State.

Time is also a factor that is involved in deciding who to enter into an MOU with. It is reported that MOUs done at the ministerial level take much more time than those done at the departmental level. The higher the level of approval, the more people involved in the review, and therefore the more time that is involved. The new Community Based Natural Resources Management Learning Institute (CBNRM LI) has decided that it will enter into separate MOUs with the Forestry Administration and the Department of Fisheries, rather than enter into one MOU with the Ministry of Agriculture, Forestry and Fisheries (MAFF), simply because entering into an MOU at the ministerial level will take too long.

Some NGOs make their decision for political reasons. It is believed by some that having the MOU at the ministerial level will provide the program with more political clout and will lead to having greater influence on Government decision making at a higher level in the overall hierarchy of Government. Again, this concept ties in closely with the primary purpose of these MOUs being for the purpose of building relationships.

Comments on Flexibility of the System

Many NGOs and Government representatives emphasized that the current system of MOUs with Government partners, with the primary purpose being that of building of relationships, should remain uncomplicated and relatively flexible. Putting in place a system that is too rigid or bureaucratic at this level would not necessarily provide any meaningful benefits, and could have the negative effect of slowing a process that already can take a significant amount of time. This is not to say that the MOUs with Government partners system cannot be improved through standardization and inclusion of meaningful new provisions, but it is questionable if putting such an effort into an apparatus that is not legally required makes sense.

Some individuals believe that this system of informal MOUs with Government partners, which are not legally required anyway, should be done away with altogether and replaced by the CDC Project Agreement format that will be discussed in Section 3 below.

Key Provisions and Variability

MOUs between NGOs and Government partners are programmatic in scope and tend to be very broad and vague in their language. Again, this is partially due to the fact that these types of MOUs are used as a tool to build a relationship between the parties, not to administer specific project based activities. The longest MOU reviewed was only six pages in length.

The overall format of the MOUs with Government partners is not that different from the MoFA MOUs discussed earlier. Preamble, obligations of the government entity, obligations of the NGO, and general closing clauses are standard in all of the documents reviewed with differences in formatting, content and clauses depending on the Government partner the MOU is with and when the agreement was drafted.⁷ Some of the language from the MoFA MOUs is utilized in the Government partner MOUs. For example, some of the MOUs, but certainly not all, reiterate language found in the MoFA MOUs related to restrictions on the NGO engaging in political activities.

The geographical extent or location of program activities is sometimes detailed within the Government partner MOU. This is most likely due to program design issues, where some NGOs may not know exactly where they will be engaging right away, while other programs working more with the Government have specific areas of geographic focus. In many ways this is an issue that links to operational flexibility of the program over time.

The reporting requirements contained within the Government partner MOUs tend to vary quite a bit. Some are vague, stating that the NGO will keep its Government partner informed from “time to time” on its ongoing activities, while others set up specific reporting requirements, usually using a time frame of six months. One agreement goes so far as to set up a technical coordination committee that meets every six months to review program outputs and develop work plans for the coming six months, though this is far from the norm.

Duration of the Government partner agreements vary from periods of three to five years. Some are specifically for the period stated and do not make provision for extension, some state that the agreements may be renewed for an additional term upon agreement of the parties, while others state that the agreements will be renewed automatically on an annual basis thereafter unless terminated or replaced with a new agreement.

With regards to staffing, there sometimes appears language that the Government partner will make national staff available to work with the NGO in carrying out their activities, while other agreements go so far as to actually name the staff that will be made available for certain activities. The issue of staffing will be discussed in more detail below in Section 6.

Most of the Government partner MOUs have provisions stating that the parties will share any data and reports that are available to one another. In addition, it is standard language that any reports that are generated during the program to which either party has contributed will acknowledge that contribution.

In terms of dispute resolution, it is a common provision that disputes will be solved amicably between the parties, without specifically spelling out a detailed conflict resolution mechanism.

⁷ The one notable exception to this format is a three page Government partner MOU between Conservation International and MAFF signed in 2001 that related to protection of the Central Cardamoms Protected Forest. The format for this MOU included objectives, initial activities, interim conservation and development strategy, long term strategy, termination and amendment and a statement at the end indicating the agreement is not legally binding on the parties. This document is so vague that the time frame cannot even be discerned from the language contained therein.

Standard language states that parties may terminate the agreement with prior written notice either 60 or 90 days before termination. Based on interviews conducted, it is generally perceived that the written notice of termination provision is a mechanism that can be used to initiate conflict resolution proceedings between the parties. It should be noted that some Government partner MOUs state they are legally binding on the parties, while others specifically state that the agreements are not legally binding.

2.3 Individual Project Agreements

Purpose and Process

They say the devil is in the details. It's the individual project agreements, which fall below the broad programmatic Government partner MOUs discussed above, where the real details are located. The projects tend to, but not always, be supply side driven, where an NGO designs the project based on programmatic budgets with varying degrees of input from Government partners. Similar to Government partner MOUs, the individual project agreements can be signed at either the ministerial or departmental (administration) level. In addition, project agreements may have multiple partners signing off on the agreement. For example, when the Forestry Law Extension Team project was initiated the individual project agreement was signed by representatives from the Forestry Administration, WWF, Concern, Oxfam GB and GTZ. It should also be noted that the proposal and draft budget for this project was initially drafted by Forestry Administration staff. Because of the level of detail and amount of information contained in the project agreements, they take longer to finalize than the MOUs with Government partners.

The titles of project agreements can be quite misleading, with "memorandum of understanding," "cooperative agreement" or "project agreement" language being used by different parties. There are even instances where it appears that there is hybridization between the Government partner MOU format and a pure project agreement format, which causes even more confusion in analyzing the hierarchy of agreements and illustrates how inconsistent this system can be.⁸

It should be noted that these individual project agreements are not legally required and do not fit within a formalized system of management within the government.

Key Provisions and Format

Unfortunately, only one individual project agreement (between the Forestry Administration and WildAid) and one hybrid project agreement (between the Ministry of Rural Development and Lutheran World Federation) were provided for this analysis. However, the basic format of these agreements can be discerned from these. Of course, the level of detail and complexity of the individual project agreement is most likely dependent on the overall complexity of the project itself. As with the Government partner MOUs, both Government and NGO officials stated that it is important to not have the language in the agreement too rigid in order to maximize project flexibility during implementation.

Essentially, the individual project agreement starts with a narrative background explaining history of the parties, current situation and why action should be taken. This is generally followed up by a section on objectives of the project by which success can be measured. Detailed information on staffing and equipment is included, down to the level of logos and uniform badges in some instances. Rather detailed provisions on the various parties' responsibilities can be included, such as the responsibilities of specific individuals within the different organizations. Provisions for the

⁸ This is the case with the "Cooperative Agreement" between the Ministry of Rural Development and the Lutheran World Federation, which has elements of both. For purposes of this report, the "Cooperative Agreement" is being placed in the individual project agreement category.

hiring and firing of Government staff by the NGO are included if relevant to the project. Provisions for monitoring results can also be included in the individual project agreement, along with general closing clauses related to termination and conflict resolution. Annexes to the agreement tend to include detailed budgets and equipment lists (if necessary).

Like the Government partner MOUs, this informal system of individual project agreements is in the process of being replaced by the new CDC Project Agreement format discussed below. As such, there is no real reason to focus efforts on fixing this system.

3. Recent Development of New CDC Project Agreement Format

Background

The CDC is the responsible agency for both private and public investment in Cambodia. Within the CDC, the Cambodia Rehabilitation and Development Board (CRDB) is in charge of all public investment, with International NGO assistance being under the purview of the NGO Aid Coordination Department.

As mentioned in Section 2.1, the MoFA MOUs require that NGOs submit quarterly reports on their activities in the country; this provision has not been and currently is not being properly implemented. In response to this situation, the CDC, through the Senior Minister and Minister of Economy and Finance as First Vice Chairman, decided that such data should be submitted to the CRDB and managed/monitored by the Department of NGO Aid Coordination.

It is not entirely clear what process was used for creating the format, but in 2002 there was an inter-ministerial agreement on the format for CDC Project Agreements.⁹ This inter-ministerial agreement is not a legally binding regulatory mechanism, such as a Sub-Decree, but an agreement in principal amongst concerned parties. Subsequently, the Senior Minister and Minister of Economy and Finance, as First Vice Chairman of the CDC, sent a letter to all Ministers advising them to use of the new CDC Project Agreement Format.

Procedure for NGOs

The following is the procedure for using the CDC Project Agreements, though it should be understood that not all NGOs or Government entities have adopted this mechanism.¹⁰ Upon signing of the MoFA MOU, the NGO shall find a ministry partner to enter into a project agreement using the CDC format. The project agreement is a technical agreement between the NGO and concerned ministry. Within the body of the agreement, the NGO shall clearly describe activities and objectives of the project, outline the reserve funds for implementation, and provide a timeframe for project implementation. Project agreements will be separately drafted for each individual project. If a project has multiple ministries involved, then separate project agreements need to be drafted and signed for each separate ministry, though registration of the project with the CDC and reporting can be combined.

After the necessary CDC Project Agreements have been signed between the NGO and ministerial partners, the NGO may register its project with the CDC's Department of NGO Aid Coordination. After registration of the project, the NGO shall provide reports detailing the use of their development funds to the Department of NGO Aid Coordination every three months according the

⁹ Based on the format of the CDC Project Agreement, it is most likely that they simply took the best examples/practices from the Government partner MOUs and individual project agreements.

¹⁰ Many NGOs and Government entities are not even aware of the existence of the new CDC Project Agreement format.

Cambodian fiscal year. The reports should be submitted for each individual project that the NGO is implementing. This satisfies the quarterly reporting requirement found in the MoFA MOU.

According to the Department of NGO Aid Coordination, the process of entering into a CDC Project Agreement and having the project registered takes from two to six months, depending on the ministry that is involved and “other factors.” According to one NGO that has switched from the Government partner MOU and individual project agreement format to the new CDC Project Agreement format, the time it takes to have the agreements approved and the project registered is dependent on how well connected and sophisticated the NGO is in Cambodia.

The Department of NGO Aid Coordination keeps an active database of all NGO projects that are registered with them which is accessible to the various ministries.¹¹ In addition, this office prepares an annual report on NGO activities based on the projects registered with their office. This data is admittedly incomplete since not all NGOs are using the CDC Project Agreement format and are therefore not registered with the CDC.

CDC Project Agreement Format

A copy of the CDC Project Agreement Format with standard language is included in Annex “E.” In many ways it is similar to the Government partner MOU format discussed in Section 2.2, though it includes additional detail related to specific project goals and objectives and expenditure/budgetary plans.

Strengths and Weaknesses of the CDC Project Agreement Format

Some of the apparent strengths of the CDC Project Agreement format include standardized language that can be developed in a controlled manner over time, language that maintains the project flexibility that both Government and NGO representatives seem to prefer (the agreements are not overly rigid), Clear reporting requirements, and heightened levels of transparency due to the fact that all agreements and data on implementation of the various projects are in one centralized location that is accessible to various Government entities. In addition, it appears that the CDC Project Agreement format removes the need for Government partner MOUs and therefore streamlines the process of relationship building between government entities and NGOs.

Weaknesses include the requirement that all project agreements are signed at the ministerial level, thus removing the option of having the agreement, or MOU, at the departmental or administration level within a ministry.¹² There are also concerns about how time consuming this process can be, but by combining two levels of hierarchy into one (Government partner MOUs and individual project agreements), it could be argued that time and effort is ultimately saved. Some Government entities and NGOs may be concerned about the involvement of a third party in the process that previously did not exist (the CDC), but this is largely due to concerns about rent seeking by the third party which should be overshadowed by the benefits of the system from a good governance standpoint over the long run. NGOs may complain about the burdensome quarterly reporting requirements, but the NGOs are already required to provide quarterly reports according to their MoFA MOUs. An additional and obvious weakness with the new format is that it is not legally required, though this weakness could be easily addressed through the issuance of a Sub-Decree.

It appears that the strengths of the CDC Project Agreement format far outweigh the weaknesses. As such, the CDC Project Agreement format, with some changes, should become a requirement for all international NGOs and replace the currently inconsistent and confusing system of using

¹¹ NGO projects that are not using the CDC Project Agreement format are not registered and do not show up in the database.

¹² Refer to the discussion on “choosing the MOU partner” discussed in Section 2.2 above.

Government partner MOUs, individual projects agreements and CDC Project Agreements (none of which are currently legally required).

4. Inconsistencies and Confusion with the Current System

There is currently a tremendous amount of confusion and inconsistency within the system of using the various MOUs and project agreements among the entities involved. Most NGOs are unaware of or ignore the quarterly reporting requirements in the MoFA MOUs. Government partner MOUs and individual project agreements vary in format depending on what Government ministry or department the agreement is with, and legal requirements are weak, misunderstood or non-existent.

With regards to the new CDC Project Agreement format, most individuals do not even know of their existence. WCS and WildAid are currently using them, replacing their old Government partner MOUs and individual project agreements, and Fauna & Flora International is in the process of replacing their MOUs and individual project agreements with the new format. Conservation International is unaware of the new format, and is in the process of entering into a new Government partner MOU with the Forestry Administration. When a copy of WCS's CDC format project agreement for activities in the Seima Biodiversity Conservation Area was shown to Forestry Administration officials, they seemed completely unaware of the new format or existence of the agreement, but commented that the Director of the FA should have been a signatory to the agreement, not just the MAFF Undersecretary of State.¹³ Likewise, the MOE representative from the National Park and Wildlife Sanctuary office was completely unaware of the CDC Project Agreement Format.

When speaking with the Executive Director from the Cooperation Committee for Cambodia (CCC), there was a good awareness of the new CDC format. Though recognizing that it is not legally required, it was reported by the CCC that the CDC Project Agreement format is used primarily by NGOs that will be importing cars or other equipment that will be requesting tax exemptions from the Government. Due to the quarterly reporting requirements and amount of time the process takes, the CCC reported that some NGOs will not use the CDC Project Agreement format. The CCC Executive Director did state that it is important for the Government to have NGO project data compiled using this mechanism, and that it is good that the information is in a central database which can be shared by all line ministries.

The Liaison officer from the Department of NGO Aid Coordination was under the impression that all NGOs should be using the new CDC format, though he could not clearly explain whether it was legally required or not. He did admit that some NGOs will decide that the process for entering into the CDC Project Agreements and having the projects registered, in addition to the reporting requirements, is too cumbersome and slow and they therefore will simply enter into Government partner MOUs and individual project agreements.

Though there currently is a great deal of confusion and inconsistency in the system, this does not need to be the case and simple steps can be taken to clarify and streamline the process for everyone involved.

5. Moving Forward (Recommendations)

Though the current system with the hierarchy of MoFA MOUs, Government partner MOUs, individual project agreements and the spotty use of the new CDC Project Agreements is working, it

¹³ The Seima Biodiversity Conservation Area is located in what was previously a forest concession.

would not be inaccurate to describe the system as dysfunctional and inefficient. Based on the observations above, there are several immediate steps that should be taken to clarify and streamline the MOU/Project Agreement process and abandon the use of Government partner MOUs and individual project agreements.

1) As mentioned in the recent Rectangular Strategy, the RGC is currently in the process of drafting a Law on NGOs. According to the Executive Director of the CCC, this Law is only focusing on local NGOs. There is an opportunity to add language in this Law formalizing the use of the CDC Project Agreements by both local and international NGOs. The Law should call for the drafting of a Sub-Decree giving clear authority to the CDC to create and mandate the use of the CDC Project Agreement Format, and a joint Prakas between the MoFA and the CDC on jointly managing the process through the use of MoFA MOUs, CDC Project Agreements and quarterly reporting mechanisms. In this manner, a system which is currently not legally required could become so, thereby binding all parties (NGOs, Government ministries and departments) to properly follow the system. If placing such language in the NGO Law is not an option, some other binding legal mechanism should be identified to make the CDC Project Agreement format, along with registration of NGO projects at the CDC, mandatory.

2) Modify the CDC Project Agreement format mechanism so there is more flexibility in terms of choosing who the agreement is with. In some instances there may be no reason to have the agreement at the ministerial level. NGOs that are engaging with Government at the departmental level would be much more inclined to use the CDC Project Agreement format if they could enter into the agreement at a lower level than the ministry in order to save time.¹⁴ In addition, the ministries should not have a problem delegating the right to enter into the agreement to a lower level as this is currently being done with the Government partner MOUs and individual project agreements.

3) For the MoFA MOUs, require that NGOs include a narrative section on how their overall proposed programmatic activities link with national or sectoral policies of the RGC (Millennium Development Goals, SEDP, NPRS, Decentralisation Policy, Policy on Forestry, Policy on Water Resources Management, Land Policy, etc.). There needs to be a better linking of program supply with Government need. At the very minimum, this will force the NGOs to become more cognizant of how RGC policies link with their sectoral focus and hopefully lead to better project design.

4) Related to item 3 above, modify the CDC Project Agreement Format so that it includes a separate section where the NGO has to describe how the project will link with national or sectoral policies of the RGC. The reasons for this are the same as in item 3 above.

5) The CDC Project Agreement format should be modified to include a section where the NGO must identify (list) relevant stakeholders within Government, the Donor community, and NGOs involved in the sector. This information could be used for notification related procedures.

6) Include within the CDC Project Agreement format a mechanism whereby the parties must meet at least annually to review progress to date and plans for implementation in the future.

7) While the CDC Project Agreement format and registration of projects with the Department of NGO Aid Coordination already increases transparency, there should be put in place a mechanism whereby draft CDC format agreements are circulated for review and comment by relevant stakeholders. It should be understood that this process must be simple, streamlined and not add unnecessary time or cost to the process of entering into an agreement. E-mailing of the draft to

¹⁴ Refer to the discussion on “choosing the MOU partner” discussed in Section 2.2 above.

relevant stakeholders, as already identified by the NGO according to the suggestion in item 5 above, and requesting written comments within 15 days should suffice. This would serve the dual purpose of providing an opportunity to improve the project agreement and also informing other interested parties of the project.

8) Educate the various stakeholders on the use of the CDC Project Agreement format. This can take place immediately, prior to the format becoming mandatory. The focus on education should be placed on NGOs working with Government and government departments below the ministerial level. The goal is to increase the use of this standardized format and increase the number of NGO projects registered in the CDC database.

9) Avoid making the CDC Project Agreement format too rigid or complicated. If too many requirements are placed on the system it will slow the process down, reduce operational flexibility, and place a chilling effect on use of the format. In addition, it is questionable if Government authorities or even the NGOs would be able to understand the agreement if it became too complicated, detail oriented or bureaucratic. The goal is not to create a lawyer employment program.

For now the CDC Project Agreement format will suffice. It is standardized and adopts the best practices of the multitude of models currently in use. Over time lessons can be learned and the format can be improved to match the needs of the system as it develops. One of the real priorities is to get more NGOs to utilize this format along with the project registration system so the NGO Project database within the Department of NGO Aid Coordination can be improved. As the various parties involved become more familiar with this process, the time it takes to enter into the agreements should naturally be reduced.

6. Conclusion

The current system of using Government Partner MOUs and individual project agreements, where there is inconsistency in format and content without any clear legal requirements regulating their use, is highly confusing and inadequate for the RGC's purpose of monitoring and controlling the activities of the NGO community within the natural resources sector. As such this system needs to be restructured, streamlined, standardized and placed within a binding regulatory framework that clearly spells out the requirements of all parties involved.

In order to do this it is strongly recommended that the new CDC Project Agreement format is used to replace both the Government Partner MOUs and individual project agreements. While NGOs can be educated to use the current CDC Project Agreement format immediately, legislative or regulatory mechanisms should be enacted making the use of CDC Project Agreements a clear requirement. In addition, the CDC Project Agreement format should be improved to maximize its effectiveness and ease of use as a tool for managing and monitoring humanitarian assistance in all sectors where NGOs are active.

ANNEX “A”
LIST OF AGREEMENTS UTILIZED

MINISTRY OF FOREIGN AFFAIRS (MoFA)

MOU between Birdlife International and the Royal Government of Cambodia (2004)
MOU between American Friends Service Committee and the Royal Government of Cambodia (2002)
MOU between Fauna and Flora International and the Royal Government of Cambodia (2002)
MOU between Wildlife Conservation Society and the Royal Government of Cambodia (2002)
MOU between WildAid and the Royal Government of Cambodia (2001)

GOVERNMENT PARTNER MOUs

MOU between World Wide Fund for Nature and MOE (1999)
MOU between Oxfam GB and Ministry of Rural Development (2000)
MOU between Conservation International and MAFF (2001)
MOU between Mlup Baitong and Department of Nature Conservation and Protection, MOE (2002)
MOU between Concern Worldwide and Department of Forestry and Wildlife (2003)
MOU between Fauna and Flora International and the MOE (2003)
MOU between International Crane Foundation and MAFF (2003)
MOU between Birdlife International and MAFF (2004)
MOU between Community Forestry International and the Forestry Administration (2004)

NON-CDC FORMAT PROJECT AGREEMENTS

MOU for Wilderness Protection Mobile Unit, WildAid and Department of Forestry and Wildlife (2001)
Cooperative Agreement between Lutheran World Federation and Ministry of Rural Development (2003)

NEW CDC FORMAT PROJECT AGREEMENTS

Project Agreement between Wildlife Conservation Society and MAFF (2004)
Project Agreement between WildAid and MAFF (2003)

**ANNEX “B”
LIST OF INDIVIDUALS MET**

- 1) David Ashwell, Country Director, Conservation International Cambodia Programme
- 2) Amanda Bradley, Program Coordinator, Community Forestry Alliance for Cambodia, CFI
- 3) Toby Carson, Advisor CBNRM, WWF Cambodia Conservation Program
- 4) Chea Sam Ang, Deputy Director General, Forestry Administration, MAFF
- 5) Kay On, Liason Officer, NGO Coordination Department, Council for the Development of Cambodia
- 6) Joe Heffernan, Coordinator, Indochina Elephant Programme, Fauna & Flora International
- 7) Oum Sony, Administrative and Finance Manager, FFI Cambodia Programme
- 8) Carol Strickler, Executive Director, Cooperation Committee for Cambodia
- 9) Sy Ramony, Acting Chief National Park and Wildlife Sanctuary Office, MOE
- 10) Ty Sokhun, Director General, Forestry Administration, MAFF
- 11) Joe Walston, Country Director, Wildlife Conservation Society Cambodia
- 12) Delphine Van Roe, Deputy Director, WildAid Cambodia
- 13) Yang Phirom, Country Coordinator, Community Forestry Alliance for Cambodia, CFI

**ANNEX “C”
ADDITIONAL REFERENCES**

- 1) Guideline for Non-Government Organization, Kingdom of Cambodia, JICA (March 2004)
- 2) Application Form for NGO Project Registration, CDC NGO Aid Coordination Dept.

ANNEX "D"
COPIES OF AGREEMENTS UTILIZED

ANNEX "E"
COPY OF BLANK CDC PROJECT AGREEMENT FORMAT

ANNEX "F"
MATRIX ANALYZING MOUs

<u>Requirements</u> ≥	Purpose	Govt. Entity Signing	Pages	Duration	Renewal Provision	Describes Program or Project	Reporting Requirement	Conflict Resolution Mechanism	Status Meetings With Govt?	General Provision Compliance w/ Laws	EIA Mentioned?	Provisions on hiring Government Staff?	Termination Mechanism	Notice Req't?	Geographic extent of program or project?	Mention of Intl. Standards or Laws?
MoFA MOUs (Boiler Plate)	Bureaucratic screening process Very general language	MoFA	6	3 years	Renewed upon mutual consent of parties	Not in body of agreement, only in attachments not made available	Quarterly reports on activities and financial data (not enforced)	Disputes settled in good faith through direct negotiation	No requirement to meet periodically and give updates	Yes, general statement that NGO comply with law	No	No	60 day notice by registered letter	No notice for other interested parties	No	No
Government Partner MOUs ↓	All Govt. Partner MOUs are for primary purpose of relationship building															
WWF (1999)	Conserving, protecting, and sustainably managing the country's protected area system	MOE	4	Valid until modified or terminate by either party	None	Only in very broad general terms	Inform MOE on an annual basis of progress of assistance activities (vague)	Solve conflict through spirit of cooperation	No specific requirement for periodic program review meetings	No specific mention other than not engaging in political activities	No	No General provision to consult on personnel decisions	Terminate by either party by giving 6 month written notice	No notice for other interested parties	No	No
Oxfam GB (2000)	Poverty reduction in rural and urban areas based on govt. policy	MRD	4	5 years	None	Only in very broad general terms	Annual reports and other reports as requested by MRD	None	No specific requirement for periodic program review meetings	Yes, general statement on respecting laws and regulations	No	No mention of hiring staff	Terminate by either party by giving 90 days written notice	No notice for other interested parties	No	No
Conservation International (2001)	Objective of providing long term protection biodiversity in Central Cardamom Protection Forest	MAFF	3	No stated duration	None	Very broad general terms	None	None	No requirement for periodic program review meetings	No	No	No mention of hiring staff	Terminate by either party by giving 30 days written notice	No notice for other interested parties	Yes Central Cardamom Protected Forest	No

MLUP Baitong (2002)	Conserve Protected areas through education and CBNRM	MOE	5	5 years	May be renewed upon review	Very broad general terms	Quarterly progress reports in Khmer and English, and detailed annual plan	Settled amicably by consultation or negotiation	No requirement for periodic program review meetings	No	No	No mention of hiring staff	Terminate by either party giving 90 days written notice	No notice for other interested parties	No	No
Concern (2003)	Poverty alleviation and sustainable natural resources management use through community forestry	Dept. Forestry and Wildlife	5	3 years	Renewed for additional term upon mutual consent	Very broad general terms	6 month progress reports	Settled amicably through consultation in Technical Coord. Committee (TCC), then MAFF, then court	TCC meets every six months to discuss progress and work plans	No	No	No mention of hiring staff, but there is mention of providing government counterpart staff	May request TCC to terminate with written notice of 90 days to other party	No notice for other interested parties	Kompong Chhnang, Pursat and Kompong Cham Provinces	No
FFI (2003)	Conserving, protecting and sustainably managing protected areas	MOE	4	3 years	None	Very broad and general terms	Submit copies of reports and publications, but nothing specific	Resolved amicably through consultation between FFI and MOE	FFI shall keep MOE informed on a regular basis of progress of project activities, but nothing specific	Follow laws and regulations on sending or importing biological material or specimens	No	FFI shall maximize use of national staff and select said staff in collaboration with MOE	Terminate by either party giving 90 days written notice	No notice for other interested parties	No	No
International Crane Foundation (2003)	Conserving cranes and native wetlands that serve as habitat	MAFF	4	5 years	Renew automatic on annual basis	Very broad and general	Detailed plan of operation drawn up annually and approved by MAFF	Settled amicably by consultation of the parties	None, other than annual plan of operation	General statement on following laws and regulations	No	No mention of hiring staff	Terminate by either party giving 90 days written notice	No notice for other interested parties	No	No
Birdlife International (2004)	Conserving birds and their habitat	MAFF	6	5 years	Renew automatic on annual basis	Very broad and general	Detailed plan of operation drawn up annually and	Settled amicably by consultation of the parties	None, other than annual plan of operation	General statement on following laws and regulations	No	No mention of hiring staff	Terminate by either party giving 90 days written	No notice for other interested parties	No	No

							approved by MAFF						notice			
Community Forestry International (2004)	Poverty alleviation and sustainable natural resource use through community forestry	Forestry Admin.	5	3 years	No renewal provision	Very broad and general	Provide copies of reports on field activities and extension materials	Resolve amicably through consultation	None, though there is mention of approved work-plan	No	No	Mention of providing national counterpart staff by name	None	No notice for other interested parties	No	No
Individual Project Agreements																
WildAid (2001)	Stop forest crimes through creation of Wilderness Protection Mobile Unit	Dept. Forestry and Wildlife	10	3 years	Unclear	Very detailed description of activities in agreement	Reporting requirements primarily placed on Wilderness Protection Unit	Work to solve problems in a just manner	Joint planning and debriefing meetings with Director of DFW and unit chiefs	No	No	Detailed information on staffing procedures for Wilderness Protection Unit	Terminate by either party giving 60 days written notice	No notice for other interested parties	No	No
Lutheran World Federation (2003)	Facilitate empowerment of poor and communities in rural areas to improve community organization, infrastructure, human rights, food security, management of environment, health and education in order to attain better quality of life	MRD	17	3 years	May be renewed for added term upon mutual consent	Relatively detailed description of activities in the agreement	Provide project status report every 3 months, including financial data	Solved through direct negotiation in good faith	Invite MRD to participate in evaluation and planning, but not specific	General statement on following laws and regulations	No	No mention of hiring staff	Terminate for just cause by either party after 60 days written notice	No notice for other interested parties	No	No

New CDC Format Project Agreement	Meant to replace government partner MOUs and individual project agreements	Signed at ministerial level	6	flexible	Review three months prior to end and decide to extend or not	Relatively detailed description of activities in agreement intro	Annual and quarterly reporting to the CDC	No dispute resolution clause	No clear mention, though NGO must attend meetings called by Ministry to coordinate ongoing project activities	General statement that project may be terminated if laws not followed	No	No mention of hiring staff	Termination procedure is too vague with no timelines provided	Notice is provided through CDC NGO project database	Could be provided in intro section	No