

OPPORTUNITIES FOR PARTIES TO CONSIDER AND ADDRESS NON-PARTY COMMUNICATIONS IN THE UNFCCC FRAMEWORK

Full and effective participation of non-Parties is essential to the successful development and implementation of the international climate regime. According to Art. 4.1 of the UNFCCC, Parties are obligated to “encourage the widest participation” in the UNFCCC framework.¹ To fulfill this commitment, Parties must, among other things, promote and facilitate “public participation in addressing climate change and its effects and developing adequate responses” at all levels.² Public participation in and access to UNFCCC processes and mechanisms “promotes transparency in this increasingly complex universal problem” of climate change and of measures taken to mitigate or adapt to climate change.³

The Cancun Agreements also recognize the value of public participation in the UNFCCC framework. Paragraph 8 of the LCA decision provides that “Parties should, in all climate change-related actions, fully respect human rights,”⁴ which include the rights of affected individuals and peoples to participate in decision-making processes. To fulfill the Parties’ existing human rights obligations, rights considerations should guide the development, implementation and monitoring of UNFCCC processes and mechanisms.

This document identifies and analyzes opportunities for the Parties to consider and address communications from non-Parties within existing UNFCCC processes and/or mechanisms. It does not address opportunities for non-Parties to participate in national processes relating to the UNFCCC framework – such participation is essential to the success of the international climate regime but is beyond the scope of this paper.

LOSS AND DAMAGE MECHANISM (ADAPTATION FRAMEWORK)

Such a mechanism will provide compensation for effects that would not have happened in a world without climate change, which have not been mitigated, and which cannot be (or have not been) adapted to.

The Cancun Agreements request the SBI to establish a two-year work programme to consider “approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate change.”⁵ This work programme is envisaged to result in a set of recommendations on loss and damage for

¹ UNFCCC, art. 4.1(i).

² UNFCCC, art. 6(a); International Covenant on Civil and Political Rights, Art. 25(a); Human Rights Committee, General Comment No. 25 para. 5.

³ *Guidelines for the participation of representatives of NGOs at meetings of the bodies of the United Nations Framework Convention on Climate Change* (Mar. 2003).

⁴ Cancun LCA decision, para. 8.

⁵ Cancun LCA decision, paras. 26 and 27.

consideration at COP18.⁶ To inform SBI's development of the work programme, China, Turkey, Gambia, Sri Lanka, Venezuela and Saudi Arabia all made brief mentions of the work programme on loss and damage in their submissions on the Adaptation Committee. Norway discussed this issue in greater detail – it specifically proposed that “stakeholder participation and influence [should be] addressed through targeted activities and broad participatory and consultative processes,” including a workshop on stakeholder (e.g. women and children) participation in the design and implementation of risk management strategies.⁷

The Parties must ensure that the mechanism – in its design, implementation, and monitoring – is designed to further the implementation of States' obligations to respect and protect human rights, including the rights of access to information, public participation, and access to justice. The mechanism should provide opportunities by which non-Parties can submit relevant information, including firsthand accounts of the impacts of climate-related natural disasters and slow onset changes, and disaggregated economic damages.

MECHANISM ON RESPONSE MEASURES

A response measures mechanism will provide a means for Parties to report on and evaluate impacts and consequences of climate-related policies and measures, provide information on their specific needs and concerns relating to such consequences, and identify ways to minimize negative consequences of the policies and measures.

The Cancun Agreements describe the need to consider “information from those affected, and evidence of actual impacts” of response measures, and require Parties to consider existing channels, such as national communications and possible submissions of supplementary information, as a means for “those affected” to provide such information.⁸ The Parties will consider the impacts of the implementation of response measures at the upcoming forum to be held at the thirty-fourth and thirty-fifth sessions of SBSTA and SBI. In these negotiations, the Parties will work to develop modalities for operationalization of the work programme and a possible response measure mechanism to be adopted at COP17.⁹ Nine Parties, the FAO and the ILO provided submissions on their views on what issues should be addressed at the forum. In their respective submissions, China and the EU described the need for broad participation, including input from observer organizations, in the forum.¹⁰

⁶ Cancun LCA decision, paras. 28 and 29.

⁷ *Norwegian Submission on Climate Change Adaptation to the UNFCCC Secretariat* (Feb. 18, 2011) at para. 16, available at https://unfccc.int/files/meetings/ad_hoc_working_groups/lca/application/pdf/adaptationsubmissionfinal18febr2011.pdf.

⁸ Cancun LCA decision, para. 92.

⁹ Cancun LCA decision, para. 93.

¹⁰ *Views on the modalities for the operationalization of the work programme and on a possible forum on response measures: Submissions from Parties and relevant intergovernmental organizations*, UNFCCC SBSTA/SBI, 34th Sess., U.N. Doc. FCCC/SB/2011/MISC.2 (2011), available at http://maindb.unfccc.int/library/view_pdf.pl?url=http://unfccc.int/resource/docs/2011/sb/eng/misc02.pdf.

To promote the full and effective participation of affected peoples and communities, the Parties should establish a response measures mechanism with a mandate to consider and address communications from those affected by the implementation of response measures. This mechanism should assess the human rights impacts of the response measures in question, and make recommendations to avoid or minimize these impacts.

REPORTING ON IMPLEMENTATION OF REDD SAFEGUARDS

This system will provide information on how REDD safeguards are being implemented in REDD activities.

The Cancun Agreements request developing country Parties to develop a “system for providing information on how the safeguards referred to in annex I to this decision are being addressed and respected throughout the implementation” of REDD-related activities.¹¹ At its upcoming meeting (June 2011) and subsequent meetings leading up to COP17, SBSTA will address the issue of reporting on the implementation of REDD safeguards, with the objective of developing guidance for such reporting for consideration at COP17.¹²

In developing reporting systems at both the international and national levels, Parties should create opportunities for non-Parties to submit information on how the REDD+ safeguards are being addressed and respected. Such participation will ensure that individuals, communities or peoples whose rights may be impacted by REDD-related actions have a forum that will hear their concerns.

It is important to note that efforts to develop REDD standards and safeguards – elaborating on the “guidance and safeguards” set forth in Annex I of the Cancun Agreements – are also happening outside of the UNFCCC in the REDD institutions (e.g. Forest Carbon Partnership Facility (FCPF), United Nations Collaborative Programme on REDD, Forest Investment Program). Currently, the FCPF Task Force is working to develop minimum standards for environmental and social safeguards that would apply to multiple delivery partners when administering the FCPF’s readiness grants (the outcome of this process may be the model adopted by other REDD institutions). Any advocacy efforts to develop REDD-specific accountability mechanisms should also take place in these venues.

ACCOUNTABILITY MECHANISM IN CLIMATE FINANCE

The newly-established financial mechanism must ensure the application of social and environmental safeguards, i.e. clear policies and procedures that prevent social and environmental harm and maximize public participation, transparency, accountability and equity.

The Cancun Agreements established a new financial institution, the Green Climate Fund (GCF), to manage a portion of the financial commitments made by developed countries in Copenhagen and formally recognized in the Cancun Agreements. A Transitional Committee was created to design elements of the GCF, including its operational documents that address, *inter alia*,

¹¹ Cancun LCA decision, Annex II, para. (b).

¹² Cancun LCA decision, Annex II, para. (b).

“[m]echanisms to ensure financial accountability and to evaluate the performance of activities supported by the fund[, and] to ensure the application of environmental and social safeguards.”¹³ The Transitional Committee, which held its first meeting on April 28-29, has been tasked with presenting its recommendations for consideration at COP17.¹⁴

This provides an opportunity to develop a strong safeguards system, including means to provide redress when safeguards are not applied. In its design of the GCF and its policies, the Transitional Committee should establish a mechanism that will provide a means for individuals and communities to present their concerns regarding UNFCCC-funded projects. The lessons learned from existing mechanisms in other international financial institutions should guide the Transitional Committee in this process.

MEASUREMENT, REPORTING, AND VERIFICATION

Such a mechanism will facilitate increased transparency with respect to the commitments and actions countries are taking to respond to climate change.

In Cancun, the Parties agreed to develop modalities and guidelines for measurement, reporting, and verification (MRV) for all Parties. This includes improving existing processes for MRV, and developing new processes set out in the Cancun Agreements. Although the mandate envisions MRV processes for all Parties, different requirements and processes will apply to developed and developing country Parties. There is no specific timeline by which the guidelines are supposed to be presented for consideration by the COP.

It is essential to operationalize the participatory rights principles recognized by the UNFCCC in the reporting and monitoring of climate-related policies and mechanisms established under the Kyoto Protocol and Cancun Agreements. Non-Parties must be able to provide information to be considered as part of national communications and biennial reports, and fully and effectively participate in the existing monitoring and review processes under the Kyoto Protocol and any further processes to be established under the LCA track.

APPEALS MECHANISM IN CLEAN DEVELOPMENT MECHANISM (KYOTO PROTOCOL)

Such a mechanism will facilitate increased transparency with respect to the commitments and actions countries are taking to respond to climate change.

At CMP 5 (Copenhagen), the Parties requested the Clean Development Mechanism Executive Board (CDM EB) to “establish, following consultation with stakeholders, procedures for considering appeals that are brought by stakeholders directly involved, defined in a conservative manner, in the design, approval or implementation” of CDM projects.¹⁵ In its 2010 Annual

¹³ Cancun LCA decision, Annex III, para. 1(h).

¹⁴ Cancun LCA decision, Annex III, para. 1.

¹⁵ *Report of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol on its fifth session, Decision 2/CMP.5, at para. 42, UNFCCC CMP, 5th Sess., U.N. Doc. FCCC/KP/CMP/2009/21/Add.1 (2010), available at <http://unfccc.int/resource/docs/2009/cmp5/eng/21a01.pdf#page=4>.*

Report to the Parties, the CDM EB proposed its recommendations for an appeals process.¹⁶ The recommendations identify project participants and the designated national authorities of involved Parties as the only stakeholders that would have standing to appeal. The Parties reconsidered this issue at CMP6 (Cancun), and requested SBI to make recommendations to the Parties with a view to adopting a decision on procedures, mechanism and institutional arrangements to allow for appeals against CDM ED decisions at CMP7 (Durban).¹⁷

In its submission on this issue, the EU expressed interest in exploring an “expansion of the right of appeal.”¹⁸ CDM-Watch/Transparency International and UNDP called for broader legal standing, which includes civil society organizations. (At the recent meeting of the Aarhus Convention’s Task Force on Public Participation in International Forums, Italy included the CDM appeals process as one opportunity to enhance public participation in the UNFCCC.)

The procedures, mechanisms and institutional arrangements for appeals of decisions of the CDM EB are currently being negotiated. Standing to appeal must not be limited to project participants and national authorities of involved Parties, but must extend more broadly to project-affected peoples and communities.

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¹⁶ *Annual report of the Executive Board of the clean development mechanism to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol*, at Annex II, UNFCCC CMP, 6th Sess., U.N. Doc. FCCC/KP/CMP/2010/10 (2010).

¹⁷ *Further guidance relating to the clean development mechanism*, Decision 3/CMP.6, UNFCCC CMP, 6th Sess., U.N. Doc. FCCC/KP/CMP/2010/12/Add.2 (2011).

¹⁸ *Views on procedures, mechanisms and institutional arrangements for appeals against the decisions of the Executive Board of the clean development mechanism*, UNFCCC SBI, 34th Sess., U.N. Doc. FCCC/SBI/2011/MISC.2 (2011), available at <http://bit.ly/IXquoy>.