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Concept note

Improving stakeholder consultation processes

Version 01.0



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1. Procedural background

1. The Executive Board of the clean development mechanism (CDM) (hereinafter referred to as the Board), at its sixty-ninth and seventieth meetings (EB 69, EB 70), considered the “Concept note on improving the stakeholder consultation process” (hereinafter referred to as the initial concept note)¹ in which recommendations for improvement of the local stakeholder consultation (LSC) and global stakeholder consultation (GSC) processes were proposed. The recommendations took into account various mandates of the Board and inputs received from stakeholders through the call for public inputs launched by the Board in 2011, as well as the consultation during the 5th CDM Round Table held on 10 August 2012 in Bonn, Germany, on draft proposals to address the identified issues relating to stakeholder consultation processes.
2. The Board, at EB 70, agreed on some of the recommendations and also requested the secretariat to further refine the other recommendations on LSC and GSC as detailed in sections 3.1, 3.2 and 3.3 below respectively.
3. The secretariat, given the sensitivity of issues surrounding the LSC and GSC process and because of the case raised in 2014 about a CDM project activity, has taken the necessary time to carefully consider these issues in a sensitive and objective manner. Therefore, for some proposals, the secretariat had provided options for the Board to deliberate on.

2. Purpose and scope

2.1. Purpose

4. The purpose of the changes to the CDM rules and regulations proposed in this concept note is to increase the participation of stakeholders in, and the transparency, clarity and effectiveness of, the LSC and GSC. The proposed changes are also aimed at providing clear requirements to project participants (PPs)/coordinating/managing entities (CMEs) and designated operational entities (DOEs), both on how to conduct the stakeholder consultations and how to validate their adequacy.

2.2. Scope

5. The work requested by the Board referred to in paragraph 2 above is considered in this document. This document builds upon the initial concept note, and further refines the proposals therein based on the guidance provided by the Board at EB 70.
6. This document considers all stakeholder inputs as mentioned in the initial concept note and additionally considers the stakeholder inputs received from the call for inputs on the revision of the “Clean development mechanism project standard” (PS), the “Clean development mechanism validation and verification standard” (VVS), and the “Clean development mechanism project cycle procedure” (PCP) (open from 2 to 22 April 2014).

¹ Annex 22 to the annotated agenda of EB 69.

7. The agreement by the Board referred to in paragraph 2 above has already been reflected in the revision of the PS, VVS and PCP.

3. Key issues and proposed solutions

3.1. Local stakeholder consultation process

8. The Board, at EB 70, agreed:
- (a) That if significant changes have occurred in the project design after the initial LSC, the DOE, as part of its validation process, shall assess whether the LSC is still adequate (EB 70 report, para. 91);
 - (b) To establish a grievance mechanism for stakeholders to channel their complaints to the designated national authority (DNA) of the host country in case they are not satisfied with how their comments have been addressed by the PPs.
9. The Board, at EB 70, requested the secretariat to further refine the proposals and to work further on improving the process by:
- (a) Defining the scope of the LSC as recommended in the initial concept note (EB 70 report, para. 92);
 - (b) Refining the minimum groups of stakeholders to be invited for consultations (EB 70 report, para. 92(a));
 - (c) Providing options that would provide flexibility to PPs in defining adequate means of consultation (EB 70 report, para. 92(b)).
10. The solutions for improvement of LSC in each area are proposed based on the issues identified with the current requirements, stakeholder inputs, guidance provided by the Board and the secretariat's experience with the assessment of LSCs for proposed CDM project activities.
11. The proposed improvements are provided below.

3.1.1. Define the scope of LSC

12. The scope of LSC is defined as follows:
- (a) The scope shall comprise, as a minimum, the potential impact that the project may have, both positive and negative, on the environment and the local communities;
 - (b) Where local stakeholder consultations are already conducted under host country rules (e.g. environmental impacts assessment (EIA), national environmental permissions/licences to set up and operate, etc.) and comply with all CDM requirements, it shall not be mandatory to conduct LSC again. The project design document (PDD) or programme of activities design document (PoA-DD)/component project activity (CPA-DD) shall provide a summary of the consultation carried out under host country rules and management plans to address the adverse impacts and describe how the LSCs carried out under host country rules are adequate and comply with the requirements under the CDM.

3.1.2. Define the minimum group of stakeholders who shall be involved in the consultations

13. The minimum group of stakeholders that shall be invited is proposed as follows:
- (a) At least the following local stakeholders, notwithstanding those required by the host country rules, shall be invited: local people impacted by the project or their official representatives, local policymakers and representatives of local authorities, an official representative of the DNA of the host country of the project and local non-governmental organizations (NGOs) working on topics relevant to the project;
 - (b) If any of these stakeholder groups are not invited, the PPs/CMEs shall provide appropriate justification on why these groups are not relevant to the project activity;
 - (c) The PPs/CME shall substantiate their choice of potentially affected members of the public. The PPs or CME shall also substantiate how they identified the local people affected;
 - (d) Attendance of all groups of stakeholders may not be possible. However, the PPs or CME shall provide evidence that invitations were sent to those groups of stakeholders and their comments were invited.

3.1.3. Initial round of local stakeholder consultation

3.1.3.1. Define means for inviting stakeholders' participation

14. The PPs or the CME shall invite local stakeholders to provide comments on the proposed CDM project activity or programme of activities (PoA) using the best practices available, and shall describe the steps/actions taken to appropriately engage stakeholders and solicit comments taking into account best practices and national and cultural circumstances and facilitate comments to be received from local stakeholders.
15. Effective means/media shall be used to inform stakeholders about the consultations and the project. This should include information disseminated in ways that are appropriate for the particular community that is affected. For example: community centres, cultural centres, places of worship (churches, shrines, temples, mosques, etc.), schools, etc. In areas where a significant part of the population is illiterate the information shall be provided orally, for example by local radio or public announcer. The PPs/CME shall provide evidence that consultation information was distributed in appropriate locations.

3.1.3.2. Define what information has to be made available to stakeholders and in what format

16. The invitation to the LSC shall include:
- (a) A non-technical summary of the project activity, explaining the project in simple, non-technical terms in the appropriate local language(s) of the host country, containing a description of impacts on the environment and local communities and management plans to contain these, including the project's projected scope, lifetime, adverse impacts, along with all other relevant information about the

project, taking into account confidentiality provisions of the applicable CDM modalities and procedures;

- (b) Information on the process of conducting the LSC. All relevant information may also be made public on the website of the respective PP or DNA or another public website or means. The information provided should enable the stakeholders to understand the project and its impact, whether positive or negative.

In addition, copies of the original project documentation and PDD should be made available for perusal at the local office of the PP/CME.

3.1.3.3. Define how the consultation shall be conducted

17. LSC may be conducted through an in-person meeting or other means that are appropriate for the local circumstances. If the PPs/CME choose to not conduct an in-person meeting, justification on how the other means were considered more appropriate shall be provided. More specifically:
 - (a) Sufficient time should be given to stakeholders to enable their participation in the meeting. To allow for a reasonable time for comments to be submitted, the stakeholder consultation shall be announced at least 30 days prior to the consultation meeting;
 - (b) The meeting shall be conducted in the appropriate local language(s);
 - (c) The PPs/CME shall address any questions and clarification sought from the stakeholders;
 - (d) The PPs/CME shall gather stakeholders' comments and concerns about the project and its impact;
 - (e) The PPs/CME shall inform stakeholders of the means to raise concerns about the project;
 - (f) The in-person meeting referred to above, if conducted, shall not be the only means for providing comments on the project activity; stakeholders shall be provided the opportunity to comment in writing or via other means.

3.1.3.4. Summary of comments received

18. The PPs/CME shall prepare a summary report of the comments received from local stakeholders. This report shall contain as a minimum:
 - (a) A description of the process employed for conducting LSC, including the process of inviting local stakeholders and shall describe the steps/actions taken to appropriately engage stakeholders and solicit comments;
 - (b) Evidence of the means used to invite and engage stakeholders (e.g. invitation letters, list of invitees and participants at the in-person meeting, if applicable);
 - (c) A copy of the documentation or presentations made available to stakeholders. If an in-person meeting is conducted, evidence of such meeting shall be provided and may include audio or video recording or photographs, etc.;

- (d) A summary of the discussion that took place including, if appropriate, the use of an audio or video recording that may be made for transparency purposes;
- (e) Input, comments and concerns raised by stakeholders.

3.1.3.5. Report on consideration of comments received

- 19. The PPs/CME shall consider the inputs, comments and concerns raised by local stakeholders and report on how they have taken them into account and how they will be documented when preparing or revising the PDD. The PPs/CME shall provide justification if any comments, including negative comments, were not incorporated.
- 20. Documented feedback shall be provided, using appropriate means, to stakeholders who provided comments in the initial LSC round including those who attended the in-person meeting (if conducted) and to the DNA of the host Party. When communicating the feedback, the PPs/CME shall inform stakeholders that if they are not satisfied with the handling of their comments, they may contact the PPs/CME and the DNA in writing within 14 days.

3.1.4. Feedback round of local stakeholder consultation (if applicable)

3.1.4.1. Define means for inviting stakeholders' participation

- 21. The feedback round shall be conducted if local stakeholder residual concerns are communicated in writing to the DNA and PPs/CME within 14 days after the documented feedback is provided to the local stakeholders. The PPs/CME shall invite, as a minimum, the same stakeholders that were invited to the initial round of local stakeholder consultations through appropriate means, taking into account any issues with communication that arose in the first round. Individual invitations to stakeholders who attended the first round shall be made.

3.1.4.2. Define what information has to be made available to stakeholders and in what format

- 22. The PPs/CME shall provide the following documents to local stakeholders, along with the invitation to the feedback round: a revised non-technical summary of the project activity, if revised due to changes, containing a description of impacts on the environment and local communities and management plans to contain these, in the appropriate local language(s) of the host country or region:
 - (a) A summary of comments received in the first initial round and how they have addressed them including those that were considered immaterial or irrelevant and any other residual comments by stakeholders;
 - (b) A description of any changes in the project design including those identified as a result of the stakeholders' comments (if any);
 - (c) Information on the process of conducting the feedback round of local stakeholder consultation and provision of report to the local stakeholders.

3.1.4.3. Define how the feedback round shall be conducted including reporting on the consideration of the comments received

23. The feedback round shall be conducted through appropriate means, considered and reported as specified for the initial round of LSC.

3.2. Global stakeholder consultation process

24. The Board, at EB 70, agreed to improve the GSC process by expanding the types of documents required to be published, by defining the scope of comments to be submitted, by analysing the feasibility of accepting comments in the official language of the host country, and by providing guidance to DOEs on the treatment of the comments received (EB 70 report, para. 90(a), (b), (c) and (e)).
25. The Board, also at EB 70, requested the secretariat to analyse the feasibility of accepting comments in the official language of the host country (EB 70 report, para. 90(d)).
26. The proposal to the Board is to allow Parties, stakeholders and UNFCCC-accredited observers to submit comments in English or in the national/official language of the host country of the proposed CDM project activity or PoA. The DOE shall provide an English summary of the comments received. The DOE uploading the PDD for GSC shall specify and confirm the official/national language of the host country where the project or programme is located, so that the comments submitted in the official/national language of the host country could be considered and validated by the DOE.
27. The proposal is not expected to result in a noticeable increase of the transaction costs for PPs and DOEs, as validation teams of DOEs are in any case required to collectively have knowledge of regional aspects as per the CDM accreditation standard.

3.3. Stakeholder concerns raised post-registration of CDM project activity or PoA

28. From the beginning of the operation of the CDM, a significant proportion of the submissions from stakeholders to the Board (unsolicited submissions or letters to the Board) has related to project-specific matters whereby stakeholders, in many instances, raise concerns about CDM project activities after the GSC or registration.
29. The Board, at EB 70, requested the secretariat to further refine the proposal (paras. 40 and 41 of the initial concept note) to deal with this issue by:
- (a) Delinking the time period where stakeholders could raise concerns from the monitoring of the project activity or PoA (EB 70 report, para. 94(a));
 - (b) Providing options that would constitute a formal process for dealing with those concerns (EB 70 report, para. 94(b)).
30. Based on this guidance by the Board, three options have been elaborated as below. These options relate to the existence or not of a commenting period at verification and its length.

3.3.1. Option 1: short commenting period at the time of publication of the monitoring report

31. The Board may wish to consider:

- (a) Opening a short commenting period at the stage of publication of the monitoring report prior to each issuance request. Such an approach could allow for comments from stakeholders on any negative impacts that may have been triggered by the implementation of the CDM project activity and that may not have been apparent before the implementation of the project activity or the PoA;
- (b) The commenting period could be open only for a short period of time after the publication of each monitoring report, for example 10 days, so as not to delay the verification process;
- (c) The DOE could be required to consider the input received from stakeholders and assess whether such comments are within the scope for comments (for example, the scope could be set as related exclusively to negative impacts with a requirement that the comments be backed with evidence);
- (d) The DOE could be required, if more information is needed, to contact the submitters of the comments via telephone or e-mail to request the missing information;
- (e) The DOE could also be required to inform the PPs of the comments received and request their feedback within a specified time frame.

32. If the above initial process were to be adopted, the Board may wish to consider the following two options with regard to the role of the DOE:

- (a) **Sub-option 1:** Based on the comments and the feedback received from the PPs, the DOE could be required to assess whether the stakeholder comment is related to the CDM requirements or outside the CDM requirements (for example, related to issues under national laws):
 - (i) Where the DOE concludes that the comments are related to CDM requirements, the DOE may raise a corrective action request (CAR) and submit a positive verification opinion only when the CAR is resolved by the PPs;
 - (ii) Where the DOE concludes that comments are related to issues outside the CDM requirements (for example, under national laws), the DOE could be required to annex the comments received from the stakeholders and the information gathered and the feedback from the PPs (if any) to its verification report (the “comments annex”) for the Board’s consideration. The Board would then forward the comments annex to the DNA(s) of the Party/Parties involved and request the relevant DNA(s) to investigate the issues raised in the comments annex. The Board may also wish to consider whether to introduce a procedure where it informs the relevant DNA(s) that it will withhold the issuance of certified emission reductions (CERs) for a limited period of time (X days) pending the response(s) of the DNA(s). If no response(s) is/are received from the DNA(s) within that time frame, the Board would proceed with the issuance of CERs;

- (b) **Sub-option 2:** Based on the comments and the feedback received from the PPs, the DOE could be required simply to annex the comments received from stakeholders and the information gathered and the feedback from the PPs, if any, to its verification report (comments annex) for the Board's consideration. This is different to Sub-option 1 as the DOE undertakes no analysis, and merely collates information for the Board's attention:
 - (i) Where the Board concludes that the comments are related to the CDM requirements, the Board could reject the request for issuance of CERs;
 - (ii) Where the Board concludes that the comments are related to issues outside the CDM requirements (for example, related to national laws), the Board could forward the comments annex to the DNA(s) of the Party/Parties involved and request the relevant DNA to investigate the issues raised in the comments annex. The Board may also wish to consider whether to introduce a procedure where it informs the relevant DNA(s) that it will withhold the issuance of CERs for a limited period of time (X days) pending the response(s) of the DNA(s). If no response(s) is/are received from the DNA(s) within that time frame, the Board would proceed with the issuance of the CERs.

3.3.2. Option 2: long-term running period for commenting

33. The Board may wish to consider:

- (a) Opening a long-term running and continuous commenting period starting after the registration of a project activity or PoA until the publication of the last monitoring report for the last crediting period. Stakeholders may submit comments at any time during this period. The comments that are submitted between the publication of successive monitoring reports would be considered during the verification of the corresponding monitoring period prior to the corresponding issuance of CERs.² Such an approach could allow for comments from all stakeholders on any negative impacts that may have been triggered by the implementation of the CDM project activity and that may not have been apparent before the implementation of the project activity or the PoA;
- (b) The DOE could be required to consider the input received from stakeholders and assess whether such comments are within the scope for comments (for example, the scope could be set as related exclusively to negative impacts with a requirement that the comments be backed with evidence);
- (c) The DOE could be required, if more information is needed, to contact the submitter via telephone or e-mail to request the missing information.

34. The DOE could also be required to inform the PPs of the comments received and request their feedback within a specified time frame. The DOEs shall document in their

² For example, the stakeholder comments submitted after registration and publication of first monitoring report shall be considered at the time of verification of the first monitoring period, prior to first issuance. Similarly, the stakeholder comments submitted between publication of first and second monitoring report shall be considered at the time of verification of the second monitoring period, prior to second issuance. Note that comments cannot be submitted after the publication of the last monitoring report for the last monitoring period.

verification report all the comments made during the commenting period and describe how the stakeholder comments have been considered and taken into account.

35. If the Board decides to adopt option 2 above, it may wish to consider the same two sub-options referred to in paragraph 32(a) and (b) above with regard to the role of the DOE.

3.3.3. Option 3: no commenting period at verification stage

36. For this option, the Board may wish to keep the current provisions where no commenting period is available for stakeholders once a project activity or PoA is registered.
37. Adopting one of the two first options would provide the Board with a route to try to resolve negative impacts of a project activity or PoA that become apparent based on the comments from stakeholders during its implementation that were not visible at the design phase. Both options under both proposals recognize the role of DNAs (in particular host Party DNAs) in addressing issues relating to project activities that are outside the CDM requirements, by strengthening and facilitating information-gathering in relation to such issues.
38. Adopting sub-option 1 would provide the DOE with more responsibility in relation to these issues and allow it to make a professional judgement. Where the issue is related to the CDM requirements, it would also provide an opportunity to the PPs to take corrective actions and restore the compliance with the CDM requirements.
39. Adopting sub-option 2 shifts the responsibility from the DOE to the Board to determine whether the issues are related to the CDM requirements or outside the CDM requirements.
40. It should be noted that adopting either of the two options in each proposal may increase the risks for project participants and reduce the predictability with regard to investment in CDM project activities and PoAs.

4. Impacts

41. This document recommends amendments to and elaboration of the current rules and the provision of new requirements for improving the stakeholder consultation process and would benefit all stakeholders, as well as the Board and the secretariat. This work is expected to enhance the transparency, objectivity, efficiency and image of the CDM, by improving the participation, clarity, effectiveness and integrity of the CDM regulatory framework. It may, however, increase transaction costs for CDM project activities and PoAs and introduce multiple new steps in the project cycle.

5. Proposed work and timelines

42. Based on the guidance provided by the Board on this document, the secretariat will integrate this work with the existing and ongoing work on the revision of the PS, VVS and PCP for consideration by the Board at a future meeting.

6. Recommendations to the Board

43. The Board may wish to consider the recommendations on the improvement of the LSC and GSC processes outlined in this concept note and request the secretariat to amend

the relevant regulatory documents (PS, VVS and PCP) to operationalize the proposed improvements.

44. The Board may wish to focus particularly on the recommendations:

- (a) In relation to the LSC process:
 - (i) The proposal to clarify the scope of the LSC process, while requiring that host country rules, if they exist, shall take precedence over the CDM rules, while providing flexibility to PPs and CMEs and shall not result in duplication but rather complement the host country rules;
 - (ii) The proposal to define the minimum group of stakeholders that need to be invited, while providing flexibility to PPs and CMEs so as to accommodate the host party rules on who should be invited to stakeholder meetings;
 - (iii) The proposal to define means of invitation, providing necessary information and documentation to stakeholders, timing and the process of conducting stakeholder consultation interactions, and guidance on how to summarize comments and reporting on how the comments are considered for both the initial and feedback round;
 - (iv) The proposal for a second feedback round of LSC;
- (b) In relation to the GSC process:
 - (i) The proposal to accept comments in the official/national language of the host country;
- (c) The proposals to allow comments from stakeholders after the registration of a CDM project activity or PoA.

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