

Recommendations for appeals against decisions of the Executive Board of the Clean Development Mechanism

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Carbon Market Watch welcomes the opportunity to provide input to the discussions on the procedures, mechanisms and institutional arrangements for appeals against decisions of the Executive Board of the Clean Development Mechanism (CDM) – SBI agenda item 7b.

An appeals procedure in the CDM project approval process presents a crucial opportunity for the Executive Board to protect human rights and promote accountability and legitimacy in the CDM as a valid tool for reaching its goals—namely, mitigating global climate change while promoting sustainable development. This would also reflect on the preambular reference on human rights in the Paris Agreement that calls on Parties to respect, promote and consider human rights obligations when taking actions to address climate change. An appeals procedure will help to ensure policy coherence and quality control in the Board’s decision-making process and build confidence in the CDM. As it was underlined in the preamble of the Paris Agreement,

To be an effective tool, also with regards to improving the CDM’s potential future role as a results-based finance instrument, the **appeals procedure must have the capacity to consider and address stakeholder concerns regarding substantive impacts, such as harm to economic, social or environmental interests, and procedural ones. In this regard, the appeals procedures must be able to consider appeals against positive as well as negative decisions of the Board.**

Carbon Market Watch key recommendations for a CDM appeals procedure

- The scope of the appeals procedure needs to cover **positive and negative appeals** against CDM Board decision
- Appeals must be allowed on CDM Board decisions to approve a project following review, not just rejections, and **include both procedural and substantive violations**
- **Appeals procedures must be open for affected stakeholders**, and not be limited to project proponents
- Rules, procedures, and codes of conduct and ethics must be put in place to ensure that the **appeals body is independent, competent, impartial, and accountable**
- An accurate and complete record upon which the appeal is based must be compiled and made **publicly available**
- Stakeholders should be allowed to lodge an appeal from a registration or issuance decision at any time based on the discovery of **new, previously undisclosed facts**

Scope of the appeals procedure

When implementing an appeals procedure, it is important to make it applicable for negative and positive decisions of the CDM Board. It is crucial to open up the processes for potentially affected stakeholders to have appeals against decisions, not only for project proponents.

Allowing appeals from CDM Board decisions to register a project or issue CERs is key to ensuring the climate integrity of the CDM process, as well as the legitimacy and accountability of the CDM Board. It is important to give civil society an equal opportunity to voice concerns about evidence of violations of key requirements in CDM Board decision making. This will promote greater compliance by project developers.

Definition of stakeholders

The right of stakeholders to appeal must be implemented as broadly as possible. As such, limiting the right to appeal to concerned stakeholders living in the vicinity of the project or to stakeholders that submitted comments during the validation stage of a project activity is likely to prove ineffective.

A broader, more inclusive definition of concerned stakeholders is likely to enable a more robust public check on the CDM project approval process, and promote transparency, accountability and integrity in the decision-making process. Public review can act as an important tool for verifying that a proposed project activity will result in real, additional, permanent reductions in greenhouse gases without imposing adverse environmental or social impacts. Concerned stakeholder engagement involving civil society in the appeal procedure serves to enhance the overall legitimacy of the CDM, its direction and its operations.

Active role of concerned stakeholder to participate is needed in the CDM project approval process to ensure the climate integrity of the CDM. The existence of a public review process will help promote compliance and bring clearly added value. These principles are based on the recognition that the public plays an important role by drawing to the attention of decision-makers concerns, errors, inaccuracies or facts that were overlooked, thereby acting as an extra check on actions that potentially harm the environment or public health. At the same time, introducing transparency and allowing public input into the process serves to eliminate distrust in the decision-making process, and in the decision-makers themselves. Thus, one of the key requirements of meaningful public participation in environmental decision-making is public access to judicial or administrative proceedings.¹

¹1992 Rio Declaration on Environment and Development

Grounds for appeals

The appeals procedures adopted by the EB should allow appeals for violations of both substantive and procedural rules and requirements.

For example, failure to invite stakeholder participation and/or take due account of any comments received, failure to undertake an environmental impact assessment where project impacts are considered significant, or where the PDD has not been made publicly available, should provide grounds for an appeal. This is a crucial requirement to encourage developers to comply with procedural requirements.

Likewise, the appeals procedure must entertain substantive challenges to, inter alia, the project's additionality, baseline, contribution to sustainable development.

Status of the appeals procedure

While developments on the CDM appeals have been slow, it is important to note that the current scope of the appeals procedure would only assess compliance with the CDM modalities and procedures. However, even if adopted, this narrow scope does not address the social and environmental impacts of CDM project activities and PoAs that occur in compliance with CDM procedural rules but in violation of national or other international norms.

A grievance mechanism to ensure that adverse impacts that occur during project implementation are addressed is needed. A grievance mechanism is an essential opportunity to address community-based grievances before disputes escalate or create conflict between stakeholders and project participants.

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