

Submission by the Arab Republic of Egypt on behalf of the African Group of Negotiators (AGN) on Enhancing Non-Party Stakeholder Engagement

30 January 2018

The African Group of Negotiators (AGN) welcomes the opportunity “to take stock of progress in the implementation of the SBI conclusions on non-Party stakeholder engagement with a view to considering how such engagement can be further enhanced.”¹

Background

The AGN supports the efforts of all non-Party stakeholders to address and respond to climate change, including civil society, the private sector, financial institutions, cities and other subnational authorities. Enhancing the engagement of non-Party stakeholders in the UNFCCC is key to achieving its objectives – by bringing knowledge and expertise to the process and making other important contributions to deliberations at the UNFCCC. Efforts to enhance engagement with non-Party stakeholders must support the integrity of the UNFCCC and advance progress towards achieving the Convention’s objectives, and thus address risks relating to conflicts of interests.

Enhancing such engagement has to be in full conformity with the fact that the UNFCCC is a Party-led process, with Parties to the Convention and to other Agreements being the states themselves. In this regard, non-Party stakeholders’ engagement should remain within the context of providing further support for the implementation of the decisions and Agreements and not as part of the decision-taking process. The aim of the current process is to provide guidance to the engagement of non-Party stakeholders, recognizing their increasing role as support partners to the process and not, in any ways, as a replacement or to provide them with a Party status.

Potential for Conflicts of Interest

The concept of conflicts of interest is widely recognized in the domestic law of many UNFCCC Parties, as well as by numerous international institutions. The potential for conflicts of interest is understood to arise in a situation in which the concerns or aims of two different actors are incompatible.²

In the case of the UNFCCC, the risk for this potential may arise when a non-Party stakeholder with a concern or aim that directly or indirectly involves limiting or influencing specific climate-related scientific understanding, actions or policies, is actively participating in the UNFCCC – an institution designed to promote climate-related understanding, actions and policies.

It is worth noting that the goal of the UNFCCC process, as clearly identified in the Convention, provides for such guidance in assessing the relevance of the non-Party stakeholder engagement. Another main goal to be achieved through identifying rules of

¹ “Report of the Subsidiary Body for Implementation on its forty-sixth session, held in Bonn from 8 to 18 May 2017”, 30 June 2017, <http://unfccc.int/resource/docs/2017/sbi/eng/07.pdf>.

² Oxford English Dictionary, https://en.oxforddictionaries.com/definition/conflict_of_interest.

engagement with non-Party stakeholders is to clarify the responsibilities and liabilities of such Parties as an important partner in the process. Such responsibilities would arise from the fact that their role comes with clearer responsibilities.

Relevant International Experience

Lessons can be learned from other intergovernmental processes that have adopted policies to enhance public participation that include protections against potential risks of engagement:

- The **World Health Organization (WHO)** has adopted a Framework for Engagement with non-State actors, which recognizes that: “In order to be able to strengthen its engagement with non-State actors for the benefit and interest of global public health, WHO needs simultaneously to strengthen its management of the associated potential risks. This requires a robust framework that enables engagement and serves also as an instrument to identify the risks, balancing them against the expected benefits, while protecting and preserving WHO’s integrity, reputation and public health mandate.”³ The Framework identifies a number of risks of engagement, including conflicts of interest, and operates to strike a balance between the benefits and risks of engagement with non-Party stakeholders through a process involving due diligence, risk assessment, and the management and communication of identified risks of engagement.
- Lessons can also be learned from policies developed by the **Organization for Economic Co-operation and Development** and **various UN organizations** (e.g. the United Nations Children's Fund), as well as policies at the subnational and national levels in countries around the world. These and other frameworks recognize that conflicts of interest may arise, such risks are to be taken seriously, and can be addressed through appropriate measures.

Discussions at the UNFCCC

Numerous UNFCCC Parties recognize the importance of addressing the potential for conflicts of interest as part of a broader effort to enhance non-Party stakeholder engagement:

- In May 2016 during SB44 as part of the negotiations related to “Arrangements for Intergovernmental Meetings”, Parties representing the great majority of the global population requested the UNFCCC to review its procedures for addressing real or potential conflicts of interest, and for Parties to discuss a policy that identifies and protects UNFCCC processes from the influence of observer organizations or non-Party stakeholders with vested interests. This request was supported by the AGN.
- In May 2017 during SB46 at an in-session workshop on enhancing non-Party stakeholder engagement, developing country Parties as well as cross-constituency members of civil society “called for a legal framework to enable the better engagement of non-Party stakeholders. This would require the development of a set of rules and principles, as well as procedures for avoiding conflicts of interest. With regard to potential conflicts of interest, some participants called for a process for guaranteeing that all non-Party

³ “Framework of Engagement with non-State Actors”, 28 May 2016, http://www.who.int/about/collaborations/non-state-actors/A69_R10-FENSA-en.pdf?ua=1.

stakeholders participating in the process are committed to the objectives of the Convention and share a common view on their urgency.”⁴

- In November 2017 at COP23, during the Fiji Presidency’s Open Dialogue between Parties and non-Party stakeholders, calls were again made for “a policy that regulates participation of the different types of [non-Party stakeholders], differentiating between those that represent public interest and those that represent private interests”.⁵

Through these formal opportunities and others over successive years, Parties and observer organizations have requested that the UNFCCC recognize the potential for conflicts of interest to arise and employ a framework that manages these risks while enhancing engagement. Despite this request, the UNFCCC has not formally acknowledged the potential for conflicts of interest to arise and there remains little progress to put in place a framework that manages potential risks of engagement. This is of concern.

The Need to Establish a Framework

The goals of enhancing non-Party stakeholder participation and addressing potential conflicts of interest are complementary and mutually reinforcing. Indeed, managing the potential for conflicts of interest is a precondition to ensuring that enhanced participation advances, rather than hinders the UNFCCC’s objectives and goals.

In the absence of such a framework, engagement by certain non-Party stakeholders with vested interests threatens the integrity and legitimacy of the UNFCCC process, and risks decreasing the chances of achieving the collective goal to limit global temperature rise to well below 2 as close to 1.5 degrees Celsius as possible.

For example, if a non-State actor has an interest in continuing to expand and promote mass emission of greenhouse gases, this conflicts with the objective of the UNFCCC to achieve “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”

With a clear framework for addressing the potential for conflicts of interest in place, all UNFCCC Parties can be assured that enhanced participation by non-Party stakeholders will advance the objectives of the UNFCCC and its Paris Agreement, and the integrity and legitimacy of the UNFCCC process will be maintained and enhanced.

Recommendations

The AGN recommends that Parties to the UNFCCC should act to protect UNFCCC processes from potential conflicts of interests by:

1. Formally agreeing how to best define a “conflict of interest” in the UNFCCC context;
2. Identifying the various risks and opportunities associated with the engagement of non-Party stakeholders;

⁴ “In-session workshop on opportunities to further enhance the effective engagement of non-Party stakeholders with a view to strengthening the implementation of the provisions of decision 1/CP.21”, 12 May 2017, <http://unfccc.int/resource/docs/2017/sbi/eng/inf07.pdf>.

⁵ “Open Dialogue Between Parties and Non-Party Stakeholders- Fiji Presidency’s Report”, November 2017. http://unfccc.int/files/parties_and_observers/application/pdf/final_presidencys_open_dialogue_report_171117.pdf.

3. Identifying how to manage these risks and the level of engagement appropriate with non-Party stakeholders with vested interests; and
4. Formulating a code of conduct and rules of engagement with Parties and within the process while respecting the fact that the UNFCCC is a Party-driven process.