

**LMDC SUBMISSION FOR THE IN-SESSION WORKSHOP ON
OPPORTUNITIES TO FURTHER ENHANCE THE EFFECTIVE
ENGAGEMENT OF NON-PARTY STAKEHOLDERS AT UNFCCC SBI 46
(MAY 2017)**

Ecuador on behalf of the Like Minded Developing Countries Group (LMDC), is pleased to provide its views on how to “further enhance the effective engagement of Non-Party Stakeholders at the UNFCCC, for strengthening the implementation of the provisions of the decision 1/CP.21”, taking into account that such enhancement must necessarily be complemented with the specific measures to protect the objective, purpose and principles of the Convention and the Paris Agreement from conflicts of interests”.

Background

In May 2016, during SBI 44 under agenda 17, our Group recognized the importance of the role of observer organizations in climate action at international, regional, national and local level, as well as their valuable contribution to the UNFCCC processes, particularly since COP16 in Cancun and with a growing presence since then, which have always received the support of the LMDC, as a key mean to improve the transparency and inclusiveness of our processes.

However, the Group also stressed that the growing recognition and invitation for an enhanced participation of non-state Party stakeholder established in the Paris Agreement and reflected in several initiatives under the UNFCCC, must be complemented with specific measures that include, inter alia, the avoidance and management of the potential risks of conflicts of interest between the primary goals of certain non-stake Party stakeholders and the objective, purpose and principles of the Convention and the Paris Agreement.

In that regard, the LMDC Group requested information from the UNFCCC Secretariat about existing internal provisions, policies, procedures or practices to address the issue of conflicts of interest, and in the absence of such measures, proposed that Parties engaged in a discussion of a specific policy in that regard. This proposal of the LMDC was also supported by the African Group and several representatives from civil society organizations who participated in the meetings of the contact group, but was unfortunately excluded in the last versión of the SBI conclusions, with the offer-compromise to continue the discussion of this issue in the SBI in-session workshop on enhancing observer participation to be held at SB 46 in May 2017.

General comments

There are several examples in international law to address conflict of interests in the participation of Non-Party Stakeholders. The most recent one was the WHO Framework of Engagement with Non-State Actors (FENSA), which aimed to strengthen the engagement between WHO and non-State actors while protecting its work from potential risks such as conflict of interest, reputational risks and undue influence.

This Framework was adopted at the 69th World Health Assembly replaced existing policies in that regard¹, and includes a clear distinction between the following four types of non-State actors: -non-governmental organizations, -private sector entities, -philanthropic foundations, and -academic institutions. It also reaffirmed and introduced a number of important principles, the recognition of the benefits of the engagement and its risks, including inter alia the conflict of interest, provisions on due diligence and risk assessment, risk management, transparency. Among the principles, were included inter alia, the need for any engagement to protect the Organization from any undue influence, in particular on the processes in setting and applying policies, norms and standards; to not compromise the integrity, independence, credibility and reputation of the Organization; to be effectively managed, including by, where possible, avoiding conflict of interest and other forms of risks to the Organization; and the be conducted on the basis of transparency, openness, inclusiveness, accountability, integrity and mutual respect. The risks included, inter alia, clear references to several forms of conflict of interest, a possible whitewashing of a non-State actor's image through an engagement with WHO, or a competitive advantage for non-State actor.

Another important example on how an international convention and its Secretariat address the risks of the engagement of non-State actors, is the Framework Convention on Tobacco Control, particularly its article 5.3 which states that *“In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.”*² Its guidelines for implementation³ include recommendations to avoid tobacco industries interference on the application of the Convention.

Other examples applied in International Organizations included UNICEF, the OECD, as well as national policies from countries including the United States, the European Union, Australia, Brazil, etc.

In the case of the UNFCCC, there is a growing recognition of the importance of the participation of Non-Party Stakeholders, as stated in decision 1/CP.21, where those Stakeholders were invited by the Parties of the Convention *“to scale up their efforts and support action to reduce emissions and/or to build resilience and decrease vulnerability to the adverse effects of climate change, and to demonstrate such efforts via the Non-State Actors Zone for Climate Action platform”*. Likewise, in Decision 1/CP.21, Non-Party Stakeholders *“were also encouraged to increase their engagement in the TEPs on mitigation and on adaptation, the high-level Action Agenda, the work of the high-level champions”*.

Moreover, the SBI *also reaffirmed the value of contributions from observer organizations to deliberations on substantive issues and acknowledged the need to further enhance the effective engagement of observer organizations as the UNFCCC*

¹ “Principles governing relations between the World Health Organization and nongovernmental organizations” and “Guidelines on interaction with commercial enterprises to achieve health outcomes”

² World Health Organization Framework Convention on Tobacco Control, Article 5.3 (2003), http://www.who.int/tobacco/wntd/2012/article_5_3_fctc/en/

³ The guidelines for implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control (2008), http://www.who.int/fctc/guidelines/article_5_3.pdf

process moves forward into the implementation and operationalization of the Paris Agreement. (FCCC/SBI/2016/L.14)

However, in spite of these recognitions and invitations for an enhanced engagement of Non-Party Stakeholders, there is still a gap in the UNFCCC architecture, to address the potential conflict of interest and other risks associated to the participation of such actors, particularly when the main interests of their constituencies or represented may affect the achievement or the implementation of the objective, purpose and principles of the Convention and the Paris Agreement.

This is of special concern for the LMDC and other Parties to the UNFCCC, for several reasons, but mainly because several of the non-Party Stakeholders which participation are invited to be enhanced in the context of the UNFCCC, are directly or indirectly related to transnational corporations that have business, commercial or financial interests that may be in contradiction of the Convention and the Paris Agreement.

This risk is even more concerning in the context of the lack of sufficient funding for the budget of the UNFCCC and for climate finance in general, special when we take into account that the revenues of some of those transnational corporations dwarf the gross domestic products (GDPs) of many countries, making even more difficult to avoid or manage a conflict of interest or any other risks associated to their undue influence.

On the contrary, an open invitation for an enhanced participation without the complement of specific provisions to avoid or manage conflict of interest, could be wrongly perceived and used as an opportunity to gain legitimacy, access to advocate and succeed in advancing policies in direct contradiction to the Convention and the Paris Agreement, the achievement of sustainable development and the interests and rights of those that are more affected by climate change.

Proposal

In the context of all of the above, the LMDC proposes that the UNFCCC develops a legal framework for the participation of Non-Party Stakeholders in the UNFCCC processes related to the implementation of the Convention and the Paris Agreement, that based on existing precedents, at international, regional or national level, includes inter alia, the following:

- A definition of conflict of interest for the purposes of the implementation of such framework;
- A clear distinction between the different type of non-Party Stakeholders;
- A procedure to identify, avoid and manage conflict of interest between the interests of a non-Party Stakeholder (particularly business, commercial and financial interest) and the objective, purpose and principles of the Convention and the Paris Agreement;
- A procedure to identify, avoid and manage other risks associated to such participation of non-Party Stakeholders;
- A strengthening of the procedures for admission for the participation of observers;

- A set of provisions to ensure the implementation of due diligence, transparency and accountability of all the actors involved in such participation, with a view to safeguard the integrity and legitimacy of the UNFCCC;
- A mechanism for the monitoring and review of the implementation of the framework itself.

For such purpose, the LMDC considers that the workshop to be held during SB 46 could be complemented with the support of independent and reputable experts in the field, a study of existing practices inside and outside of the UNFCCC, among other UN entities, and within national and regional contexts, to establish best practices in the creation of policies, as well as an independent external expert evaluation of this research and the precedents collected should be conducted prior to action taken.

The LMDC considers that the legal framework for the enhancing the participation and role of Non-Parties Stakeholders in the implementation of the UNFCCC and the Paris Agreement will be of an utmost importance for the operationalization of the processes and mechanisms to be developed under the Paris Agreement, including for the interaction of the private sector in the application of the NDC, adaptation communications, transparency framework, compliance, 2018 facilitated dialogue, and global stock take.

Likewise, the LMDC considers that transparency of information is critical and therefore stresses that Parties should be able to know the source of origin of all Non-Party Stakeholders, their type of activity, industry affiliation if applies, where their funding come from, what is their ultimate objective and what have been their last performance in the UNFCCC negotiations, as key tool to better understand their actions and further decisions related to allow or not such participation.

The Workshop under SBI 46

Finally, with regard to the Workshop, the LMDC considers that the topics mentioned above, particularly the need for a legal framework to avoid and manage conflict of interest in the context of the participation of non-Party Stakeholders in the implementation of the relevant paragraphs of 1/CP.21, should be considered among the topics for discussion and for the consideration among the panelists, of experts in the negotiation or implementation of existing frameworks at the international, regional or national levels.