

Terms of reference

The assessment of the implications of the possible inclusion of lands with forests in exhaustion as afforestation and reforestation clean development mechanism project activities, taking into account technical, methodological and legal issues.

I. MANDATE AND BACKGROUND:

At its fourth (4th) session the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) requested the Executive Board (CDM-EB) to assess the implications of the possible inclusion of lands with forests in exhaustion (FE) as afforestation and reforestation as clean development mechanism project activities (CDM), taking into account technical, methodological and legal issues, and report back to the CMP at its fifth (5th) session.¹

The following terms of reference (ToR)² outlines the formation of two consultative expert bodies (CEBs) and details the work items of the CEBs in assisting the CDM-EB to carrying out its work in response to the request by the CMP, and the timely provision of a report recommendation on the subject in inclusion in the report to the CMP at its 5th session in Copenhagen.

II. APPROACH:

Two CEBs will comprise of groups of expertise (a team of consultants and a second team possibly consisting of members of the A/R WG). The CEBs will initially work independently and provide two separate assessments of legal aspects arising out of the possible inclusion of FE in the A/R CDM. Thereafter, the assessments will be consolidated into a single comprehensive assessment/recommendation by drafter/s designated by both CEBs, for consideration by a peer review team, comprising of the CDM support structure/s (A/R Working Group and / or Secretariat) and independent reviewers, if necessary. Electronic means of communication/recommendation will be used if required. Methodological and technical issues will be identified on the basis of the assessment of legal issues by all CEBs working together.

Recognizing the strong interlinkages between all three tasks the secretariat may also request all or some of the legal, methodological and technical assessments to be peer reviewed by A/R Working Group/members of the A/R WG who were not included in any of the CEBs and/or independent consultants, if required.

The CEBs will make use of all relevant documents currently available at the UNFCCC website and literature related to CDM and FE.

The output will be a report, to be considered by the CDM-EB for comment and final recommendation to the CMP at its fifth session.

¹ Decision 2/CMP.4 “Further guidance relating to the clean development mechanism” paragraph 41.

² As agreed by the CDM-EB at its 46th meeting.

III. TERMS OF REFERENCE:

Under the guidance of relevant programme officers of the UNFCCC secretariat (SDM sub-programme) and making use of information already available, the both CEBs will support the work of the CDM-EB by providing assessments of the following tasks, according to instructions provided in paragraph B. Approach, above:

Task 1: Broad description of basic features of forests in exhaustion / lands with forests in exhaustion which might be useful in contrasting them against other types of forests / lands with other types of forests

Provide broad description of basic features of forests in exhaustion / lands with forests in exhaustion, considering human-induced activities. Cover forests in exhaustion / lands with forests in exhaustion located in various potentially affected non-Annex I Parties. Establish hierarchy among the identified features (if deemed appropriate) and identify those (if any) that are mutually exclusive.

Noting that the CMP decision did not define the term “lands with forest in exhaustion” the A/R WG proposes the following two options to be considered by the Board.

Option 1:

[The CEBs shall take into account that lands with forests in exhaustion possess *inter alia* the following features:

- Baseline scenario which shall exclude conversion to a non-forest land;
- The current state of them follows multiple cycles of harvesting;
- The carbon stocks in them are expected to be in decline unless planting, seeding and/or the human-induced promotion of natural seed sources is applied.]

Option 2:

[For the purpose of these terms of reference (TOR), “forests in exhaustion” are those forests which would require significant anthropogenic effort in order to reverse to the pre-exhaustion forested state, and the most plausible scenario will be the continuation of the current state.]

Task 2: An analysis of legal issues related to the possible inclusion of lands with forests in exhaustion as afforestation and reforestation clean development mechanism project activities.

A. Proposal of definition/definitions of what could be considered as a legal issue

Provide definition/s of legal issues that will be applied in conducting the consultancy. Provide examples of application of the definition/s beyond this consultancy.

B. Identification of potential legal issues using the proposed definition/definitions

Elaborate on how the provided definition/s are applied in identification of potential issues within this consultancy.

Analyse the A/R CDM M&Ps (and all other documents quoted therein) and relevant guidance provided by the Executive Board to identify potential legal issues.

Identify all relevant potential legal issues arising from the possible inclusion of lands with FE as A/R CDM project activities and describe these, including but not limited to;

- i. definition of eligibility criteria for lands with FE in the CDM;
- ii. definition of project boundary;
- iii. definition of baseline and baseline net greenhouse gas removals by sinks;
- iv. additionality of the proposed A/R project activity under the CDM;
- v. definition of the actual net greenhouse gas removals by sinks;
- vi. definition of leakage;

Establish hierarchy among the identified potential issues. Identify those (if any) that are mutually exclusive.

C. An analysis of the identified legal issues and their implications

Analyse the identified legal issues including implications for the validation, monitoring and verification of CDM project activities, in particular categorizing those issues that;

- i. may require further clarification, procedural or methodological guidance by the CDM-EB, and describe the means and time required to achieve this;
- ii. may require further clarification by the CMP (e.g. amendments to decisions or the Kyoto Protocol), and describe the means and timeline required to achieve this;

D. Identification of provisions contained in the A/R CDM M&Ps and A/R related decisions by the CDM-EB that requires no further guidance by CDM-EB, i.e. will not be affected by implications of the possible inclusion of lands with FE as afforestation and reforestation clean development mechanism project activities

Identify all provisions contained in the current A/R CDM M&Ps and A/R related decisions by the CDM-EB that requires no further guidance by CDM-EB, in light of the recommendations resulting from these terms of reference, i.e. may be considered directly applicable to FE in A/R CDM.

Task 3: An analysis of methodological issues related to the possible inclusion of lands with forests in exhaustion as afforestation and reforestation clean development mechanism project activities.

A. Identification of potential methodological issues

Identify all relevant potential methodological issues arising from the possible inclusion of lands with FE as A/R CDM project activities and describe these, including but not limited to;

- i. application of eligibility criteria for lands with FE in A/R CDM activities;
- ii. delineation of project boundary;
- iii. identification of baseline and estimation of baseline net greenhouse gas removals by sinks;
- iv. demonstration of additionality of the proposed A/R project activity under the CDM;
- v. estimation of the actual net greenhouse gas removals by sinks;
- vi. identification and estimation of leakage;

B. An analysis of the identified methodological issues and their implications

Analyse the identified methodological issues including implications for the validation, monitoring and verification of CDM project activities, in particular assess which of them may require further clarification, procedural or methodological guidance by the CDM-EB, and describe the means and time required to achieve this.

Task 4: An analysis of technical issues related to the possible inclusion of lands with forests in exhaustion as afforestation and reforestation clean development mechanism project activities.**A. Identification of potential technical issues**

Identify all relevant potential technical issues arising from the possible inclusion of lands with FE as A/R CDM project activities and describe these, including but not limited to:

- i. application of eligibility criteria for lands with FE in A/R CDM activities
- ii. delineation of project boundary;
- iii. identification of baseline and estimation of baseline net greenhouse gas removals by sinks;
- iv. demonstration of additionality of the proposed A/R project activity under the CDM;
- v. estimation of the actual net greenhouse gas removals by sinks;
- vi. identification and estimation of leakage;
- vii. potential for double accounting.

B. An analysis of the identified technical issues and their implications

Analyse the identified technical issues including implications for the validation, monitoring and verification of CDM project activities, in particular assess which of them may require further clarification, procedural or technical guidance by the CDM-EB, and describe the means and time required to achieve this.

Task 5: Consolidation, synthesis, peer review and final recommendations

Combine all the above defined tasks into a focused and synthesized document detailing the issues raised for each task, the resultant solutions and means to achievement, including a detailed account of the implication on the CDM regulatory and legal framework.

The document shall be peer reviewed, with the opportunity for feedback, by the CDM support structure (A/R WG) and/or external experts, as required³.

IV. COMPETENCIES AND QUALIFICATIONS:

Each CEB shall possess the following competencies and qualifications:

- Be familiar with legal aspects related to the CDM, in particular, A/R CDM project activities;
- Be familiar with the technical issues related to forestry, in particular, FE;
- Be familiar with the CDM modalities and procedures and relevant decisions of the CMP relevant to A/R under the CDM;
- Have demonstrated relevant working experience relating to A/R and or the CDM;

³ Should timelines slip, this may also be done electronically

- Have good technical/scientific expertise related to baseline and/or monitoring CDM methodologies;
- Have good analytical and English drafting skills;
- Have an advanced university degree in law, economics, energy, social, environmental studies, natural sciences, engineering, development studies, or any related discipline;
- Be free from any interest that might cause him/her to act in other than an impartial and non-discriminatory manner, while under contract.

V. DELIVERABLES AND SCHEDULE:

A written report on the analysis in electronic form.

Power Point presentation of main findings and recommendations in electronic form.

Conference calls with support structure members as required.

Contract commences: 20 April 2009

First order draft of the consolidated document: 30 June 2009

Consideration by CDM-EB 48 of FoD

Due date for inclusion of peer review comments: 1 August 2009

Final recommendation consideration by CDM-EB 49

Contract ends: 31 December 2009