

30 November 2016



Stakeholder Communication Form

(Version 01.0)

This form shall be used for any CDM-related communication with the UNFCCC secretariat or the CDM Executive Board. All the questions are mandatory unless otherwise indicated.

The completed form and any supplemental documents shall be submitted electronically to cdm-info@unfccc.int, or via fax to +49-228-815-1999 or via post to: Sustainable Development Mechanism (SDM) Programme, UNFCCC secretariat, P.O. Box 260124, D-53153 Bonn, Germany.

SECTION 1: COMMUNICATION HEADER

Please provide your contact information.

Title: Mr. **First Name:** Julio **Last Name:** Lasso Vaccaro

Name of Organization: GENISA **E-mail Address:** j.lasso@genisa.com.pa

Postal Address: Costa del Este Ave & Roberto Motta Drive **Phone Number:** 50764307717
Country: Panama *Include country code (e.g. +49-228-815-1999)*

Stakeholder Type: CDM Project Participant (PP) If other:

Please indicate from whom you would like to get an answer.

This communication is addressed to¹: Chair of CDM Executive Board (normal track)

SECTION 2: PROJECT ACTIVITY OR PROGRAMME OF ACTIVITIES (PoA)

If this communication refers to a specific CDM project activity/PoA, please answer questions in this section (otherwise proceed to Section 3).

Project/PoA Ref. Number 3237 If applicable, CPA Ref. Number:
5-digit# format 01234 *8-digit# format 0123-4567*

Project Cycle Stage [Choose an item] If other:

If there is no specific CDM Reference Number, please answer the remaining questions in this section (otherwise proceed to Section 3).

Host Country(ies) Panama

Project/PoA Title Barro Blanco Hydroelectric Power Plant Project

Technology Type Renewable electricity If other:

SECTION 3: YOUR COMMUNICATION

Title/Subject
Maximum 250 characters Response to Communication CAR-GEN-163142 of October 21, 2016

Communication Text
Include background, details, and conclusion (unlimited length) Please see attached.

Supplemental Documents
If applicable, list the title(s) of any attached file(s) or link(s) N/A

This communication may be made public Yes

¹ In accordance with the "Procedure: Direct communication with stakeholders" (version 02.0), stakeholders may address communications either (a) to the secretariat, in order to seek a fast-track technical or operational explanation regarding the implementation of existing CDM rules, or (b) to the CDM Executive Board, in order to communicate to the Board their views on CDM rules and their implementation, or to seek official clarifications of CDM rules.

Document information

<i>Version</i>	<i>Date</i>	<i>Description</i>
01.0	02 March 2015	This form supersedes and replaces the following: <ul style="list-style-type: none">• F-CDM-RtB: <i>Form for submission of Letters to the Board</i> (version 01.2)• F-CDM-RtB-DOE: <i>Form for communication on policy issues initiated by AEs/DOEs</i> (version 01.1)• CDM-RtB-DNA: <i>Form for communication on policy issues initiated by DNAs</i> (version 01.1)

Decision Class: Regulatory

Document Type: Form

Business Function: Governance

Keywords: communications

English translation of the original submission:

Response to Communication CAR-GEN-163142 of October 21, 2016

Dear Executive Board of the Clean Development Mechanism (CDM).

Hereby, in relation to the request for withdrawal of support from the DNA of Panama to the Project Barro Blanco, we would like to inform you that we have again sent a letter to the Ministry of the Environment of Panama, where among other points we express the following:

The company Generadora del Istmo, SA (GENISA), is very concerned about what has been presented to the Executive Board of the Clean Development Mechanism (CDM), through the communication DM-2002-16 of October 18, 2016, requesting "the withdrawal Of Project 3237 - Barro Blanco Hydroelectric Plant Project of the CDM Registry, as of November 1, 2016. "

In the knowledge of this communication, we are sending you our opinion and request for withdrawal of that intention, through Note CAR-GEN-163142 of October 28, 2016, which as you know, has not been answered.

To take a decision like the one before, without previously existing, the rule that gives legal support (not to its powers as Designated National Authority - AND, but to the procedures) to the decision, as well as to do it without defending as it is legal duty of any entity that has some kind of power, to execute the right of the affected party to be heard and defend itself, delegitimizes any concession or consideration to the interested groups, since this consent would be achieved by violating human rights that correspond to all persons entitled Panamanian.

The change of capacity generation was legitimized at the proper time by an environmental management instrument approved by the same ANAM-DNA. The same complied with all legal formalities. Thus, the argument of the change capacity generation is not sufficient reason for such an extreme and detrimental measure against GENISA, especially if its minimum guarantees have not been respected.

In CAR-GEN-163142 dated October 21, 2016, a recount is made of how the activity gains the legitimacy to be placed in the CDM directory, after fully complying with its requirements, through a process where BOTH parties, the former ANAM-DNA and GENISA, collaborated to make this happen.

The request for withdrawal made through Note DM-2002-16 of October 18, 2016, does not correspond to the result of due process, we have not been given bilateral or contradictory, publicity, or any immediacy. The request is a unilateral decision that violates the basic principle of due process established in Article 32 of the Constitution and the Inter-American Convention on Human Rights, as well as prohibitions established in the Second Book of Law No. 38 of July 31, 2000 and own ethical management of Executive Decree No. 274, or Public Servant Code of Ethics. In particular, we would like to highlight the content of article 62 of Law 38 of 2000 (as amended by Law 62 of October 23, 2009):

Article 62 Public entities may only revoke or annul an ex officio resolution in which they recognize or declare rights in favor of third parties, in the following cases:

1. If it is issued without competence for it;
2. When the beneficiary has made statements or has provided false evidence to obtain it;
3. If the affected person agrees to the recall; and
4. Where required by a special rule.

Against the decision of revocation or annulment, the interested party may file, within the corresponding terms, the remedies that the law recognizes.

The power to revoke or annul ex officio an administrative act does not prevent any interested third party from requesting it, based on legal cause, when the agency or administrative official has not done so.

It is simply inconceivable from the point of view of Public International Law; That, notwithstanding the powers held by a National Authority, the latter decides to jump on the international route without first justifying its position internally with the natural cause of the legal situation in question, as in this case is the Company Generadora del Istmo, SA (GENISA).

Due to the above, and wishing as it has been our characteristic during our relationship with the institution that you lead, we respectfully express to you that we urge a meeting with your person to address this issue properly, as well as the withdrawal of this unilateral request towards the Executive Board of Climate Change.

GENISA is a company that has put its trust in Panama and that has made an important investment, relying on the legal stability of the country and its institutionality. We are aware of the pressures that have been received by its administration and previous administrations regarding aspects of political appreciation of the energy phenomenon, which make it possible to cancel one or more hydroelectric projects as a desirable solution to a complex problem. However, such pressures should not affect the rights legitimately acquired by a subject of law, as is our case.

Thank you for your attention, our high regard and respect.

Original submission in Spanish:

Respuesta a Comunicación CAR-GEN-163142 del 21 de octubre de 2016

Estimada Junta Ejecutiva del Mecanismo de Desarrollo Limpio (MDL).

Por este medio, en relación a la solicitud de retiro de apoyo de la AND de Panamá al Proyecto Barro Blanco, tenemos a bien comunicarles que nuevamente hemos enviado una carta al Ministerio de Ambiente de Panamá, donde entre otros puntos expresamos lo siguiente:

La empresa Generadora del Istmo, S. A. (GENISA), mantiene gran preocupación ante lo expuesto ante la Junta Ejecutiva del Mecanismo de Desarrollo Limpio (MDL), mediante la comunicación DM-2002-16 del 18 de octubre de 2016, donde solicita “el retiro del Proyecto 3237 – Proyecto Planta Hidroeléctrica Barro Blanco del Registro de MDL, a partir del 1 de noviembre de 2016”.

Ante el conocimiento de esta comunicación, le enviamos nuestra opinión y la solicitud de retiro de aquella intención, a través de la Nota CAR-GEN-163142 de 28 de octubre de 2016, la cual como es de su conocimiento, no ha sido respondida.

El tomar una decisión como la anterior, sin que existiera previamente, la norma que le dé sustento jurídico (no a sus facultades como Autoridad Nacional Designada - AND, sino a los procedimientos) a la decisión, así como hacerlo sin defender como es deber jurídico de todo ente que ostenta algún tipo de poder, de ejecutar el derecho de la contraparte afectada a ser oída y defenderse, deslegitima cualquier concesión o consideración a los grupos interesados, puesto que este aplauso se lograría conculcando derechos humanos que corresponden a todas personas bajo derecho panameño.

El cambio en la capacidad de generación fue legitimado en su momento por un instrumento de gestión ambiental aprobado por la misma ANAM-AND. El mismo cumplió con todas las formalidades legales. Así, el argumento de un cambio en la capacidad de generación no es razón suficiente para una medida tan extrema y perjudicial para GENISA, máxime si sus garantías mínimas no se han respetado.

En la Nota CAR-GEN-163142 del 21 de octubre de 2016, se efectúa un recuento de cómo la actividad gana la legitimidad para ser colocada en el directorio de MDL, luego de cumplir cabalmente con sus requisitos, mediante un proceso donde AMBAS partes, la antigua ANAM-AND y GENISA, colaboraron para que ello ocurriera.

La solicitud de retiro realizada mediante, Nota DM-2002-16 del 18 de octubre de 2016, no corresponde al resultado de un debido proceso, no se nos ha dado bilateralidad o contradictorio, ni publicidad, ni intermediación alguna. La solicitud es una decisión unilateral que incumple el principio básico del debido proceso establecido en el artículo 32 de la Carta Magna y la Convención Interamericana de Derechos Humanos, así como prohibiciones establecidas dentro del Libro Segundo de la Ley N° 38 de 31 de julio de 2000 y manejo ético propio del Decreto Ejecutivo N° 274, o Código de Ética del Servidor Público. En particular queremos destacar el

contenido del artículo 62 de la Ley 38 de 2000 (tal cómo fuese modificado por la Ley 62 de 23 de octubre de 2009):

Artículo 62 Las entidades públicas solamente podrán revocar o anular de oficio una resolución en firme en la que reconozcan o declaren derechos a favor de terceros, en los siguientes supuestos:

1. Si fuese emitida sin competencia para ello;
2. Cuando el beneficiario de ella haya incurrido en declaraciones o haya aportado pruebas falsas para obtenerla;
3. Si el afectado consiente en la revocatoria; y
4. Cuando así lo disponga una norma especial.

En contra de la decisión de revocatoria o anulación, el interesado puede interponer, dentro de los términos correspondientes, los recursos que le reconoce la ley.

La facultad de revocar o anular de oficio un acto administrativo no impide que cualquier tercero interesado puede solicitarla, fundado en causa legal, cuando el organismo o funcionario administrativo no lo haya hecho.

Simplemente es inconcebible desde el punto de vista del Derecho Internacional Público; que, no obstante los poderes ostentados por una Autoridad Nacional, ésta decida por su cuenta saltar a la vía internacional sin antes justificar su posición a nivel interno con el causante natural de la situación jurídica de la que se trate, como en este caso es la empresa Generadora del Istmo, S. A. (GENISA).

Debido a lo anterior, y deseando como ha sido nuestra característica durante nuestra relación con la institución que usted dirige, respetuosamente le expresamos que nos urge una reunión con su persona para dirigirnos a este asunto debidamente, así como el retiro de esta solicitud unilateral hacia la Junta Ejecutiva de Cambio Climático.

GENISA es una empresa que ha puesto su confianza en Panamá y que ha hecho una inversión importante, confiando en la estabilidad jurídica del país y su institucionalidad. Estamos conscientes de las presiones que ha recibido su administración y anteriores administraciones con respecto a los aspectos de apreciación política al fenómeno energético, los cuales hacen ver la cancelación de uno o varios proyectos hidroeléctricos como una solución deseable a un problema complejo. No obstante, dichas presiones no deben incidir sobre los derechos legítimamente adquiridos por un sujeto de derecho, como es el caso nuestro.

Agradeciendo su atención, nuestra alta consideración y respeto.

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CDM WEB ALERT