
Second Review of the Kyoto Protocol under Article 9

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Privileges and immunities for individuals serving on constituted bodies under the Kyoto Protocol

Ms. Nattley Williams
Legal Affairs Programme
UNFCCC secretariat



Privileges and Immunities

Parties considering since CMP 1

1. Which privileges and/or immunities to confer to individuals serving on constituted bodies to enable them to perform their official functions?
2. How to confer these privileges and/or immunities?
3. What procedures/mechanisms to establish to review and resolve disputes or claims by private entities against individuals serving on constituted bodies?



Privileges and Immunities

Two Key Principles

1. Jurisdictional immunity – individuals afforded protection from legal action in national courts of States that have accepted an international agreement on privileges and immunities
2. Procedures for dispute resolution – organization has in place procedures/mechanisms to address and resolve the substance of claims/disputes raised by private entities



Privileges and Immunities

Purpose of privileges and immunities

- To ensure the effective implementation of the Kyoto Protocol without interference from national courts
- To provide effective protection for all individuals elected/selected to carry out official functions under the Kyoto Protocol
- To ensure that provisions are in place for impartial settlement of claims/disputes by private entities concerning decisions/actions of constituted bodies or members of such bodies
- Executive Secretary has right and duty to waive the immunity, if immunity would impede course of justice

Privileges and Immunities

Which constituted bodies?

1. CDM Executive Board
2. Joint Implementation Supervisory Committee
3. Compliance Committee
4. Adaptation Fund Board
5. Expert Review Teams under Article 8

Privileges and Immunities

Currently members of constituted bodies

1. Have privileges and immunities:

- ✓ **In Germany** – through the secretariat’s Headquarters' Agreement
- ✓ **In host countries for UNFCCC conferences and meetings** – where a conference agreement has been concluded that provides privileges and immunities

2. Do not have privileges and immunities:

- **In other countries** - including Parties and non-Parties to the Protocol
- **Under the 1946 UN Convention on the Privileges and Immunities of the United Nations** - UN Office of Legal Affairs has stated that they are not “Experts on missions for the United Nations”



Privileges and Immunities

Parties to consider at CMP 5

1. Which privileges and immunities to confer
2. How to confer these privileges and immunities
3. Which individuals to obtain these privileges and immunities
4. Procedures/mechanisms to review and address claims/disputes
5. Possible liability insurance for settling claims/disputes



Privileges and Immunities

Which privileges and immunities?

For example:

Immunity from personal arrest or detention

Inviolability of papers/documents

Right to transmit and receive papers/documents

Immunity from seizure of personal baggage

Immunity from legal process

Exemptions from immigration/currency restrictions

Repatriation in time of international crisis



Privileges and Immunities

How to confer privileges and immunities?

. Amend Kyoto Protocol to include provisions on privileges and immunities

. Adopt new international agreement on privileges and immunities

. Adopt decision to apply UN Convention on the privileges and immunities of the United Nations

. Request secretariat to conclude bilateral agreement with each Kyoto Protocol Party for privileges and immunities

Note: Each option requires countries to enact the necessary national implementing legislation

Privileges and Immunities

To which individual?

For example:

Members/alternate members of constituted bodies:

- CDM EB, JISC, AFB and Compliance Committee

Members of bodies established by the constituted bodies

- Panels, Working Groups, Ad Hoc bodies, etc.

Experts engaged by the constituted bodies

Experts selected to the Article 8 Expert Review Teams

Note: Approximately 439 individuals



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Privileges and Immunities

Which claims or disputes could be raised?

For example:

- Actual or threatened material harm to rights or interests
- Possible conflict of interest
- Breach of confidentiality
- Violation of procedural or due process rights
- Decision/action was beyond mandate of body or member



Privileges and Immunities

Review and dispute settlement procedures

- To address the substance of the claims and disputes from private entities adversely affected by actions/decisions of constituted body and/or members
- Define the types of claims/disputes that would be addressed, and procedures for bringing the claim/dispute
- Constituted body given opportunity to review its decisions/actions
- Outcome of review/dispute settlement is final and binding



Privileges and Immunities

- Complex issues of international and national law and international relations
- Urgency to address issue – private entities involved in mechanisms have already raised concerns and issues about decisions/activities of constituted bodies
- Members of constituted bodies have volunteered their services towards implementation of the Kyoto Protocol
- CMP should provide effective legal protection for these individuals

