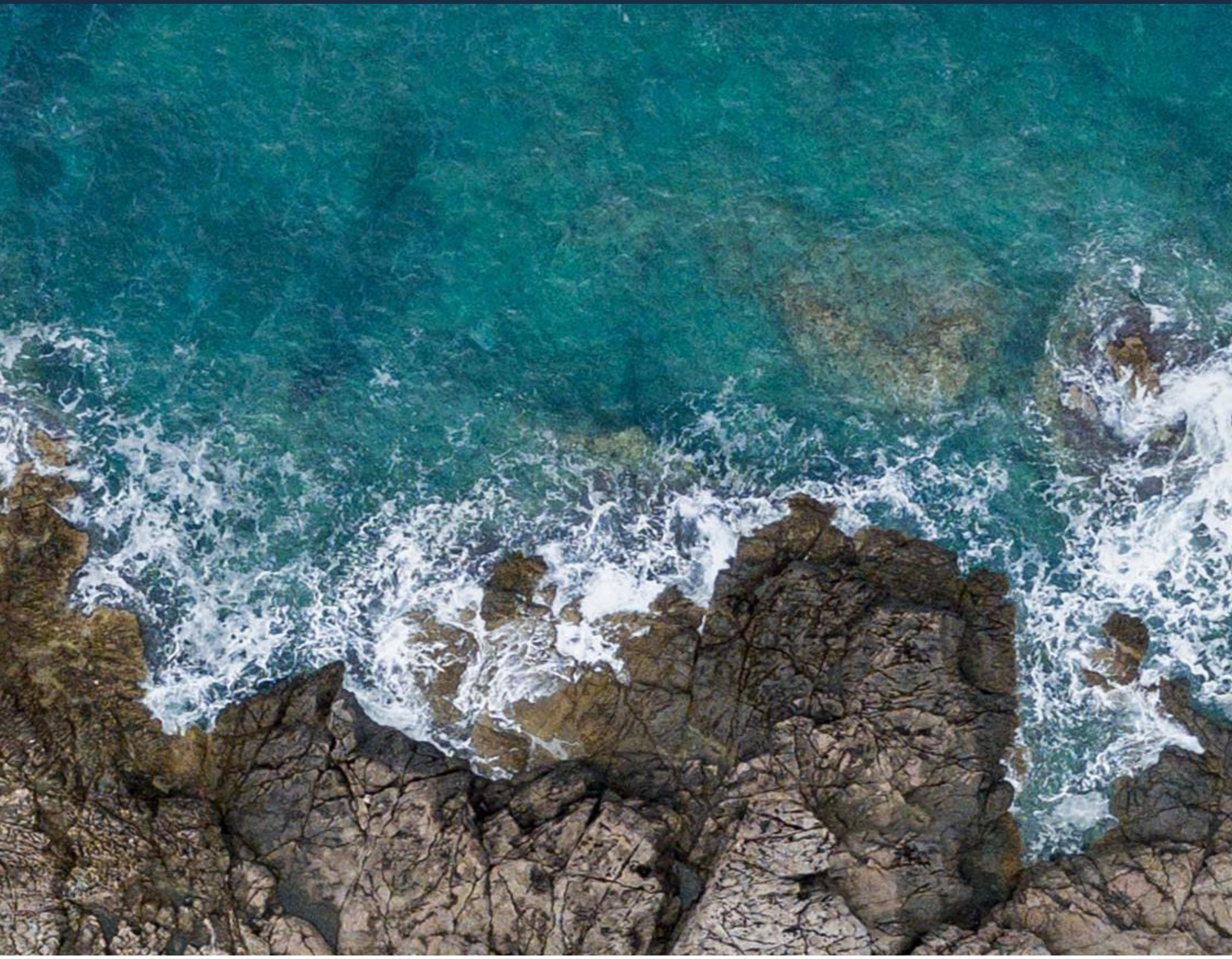
WATSON FARLEY & WILLIAMS

GA!L Global Alliance of Impact Lawyers

WHITE PAPER

EFFECTIVE IMPLEMENTATION OF THE CONFLICT MANAGEMENT COMMITTEE RULES

Produced in collaboration with Watson Farley & Williams LLP
and the Global Alliance of Impact Lawyers



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FOREWORD

The OHADAC Regional Arbitration Centre ("**CARO Centre**"), supported by Watson Farley & Williams LLP, in partnership with the Global Alliance of Impact Lawyers, hosted a series of roundtable events in 2025 and 2026, bringing together a range of stakeholders such as finance parties, legal practitioners, ESG professionals, civil society groups and mediators, to share insights on opportunities and practical considerations for the successful implementation of the Conflict Management Committee Rules ("**CMC Rules**"). This White Paper sets out the proposals emerging from those discussions.

The CARO Centre

The CARO Centre is a French Caribbean-based organisation that focusses on strengthening dispute resolution across the region through mediation and arbitration. Supported by the European Union and developed in collaboration with partners such as the French Development Agency and the Organization of Eastern Caribbean States, the CARO Centre contributes to the wider OHADAC (Organisation for the Harmonisation of Commercial Law in the Caribbean) initiative aimed at aligning and harmonising commercial law in the wider Caribbean, at the level of 33 countries and territories. As part of its work, the CARO Centre has introduced tailored alternative dispute resolution tools, including the Conflict Management Committee ("**CMC**"), mediation, arbitration and appointment of experts, to respond to the needs of businesses, public bodies and governments in the region, but also applicable internationally.

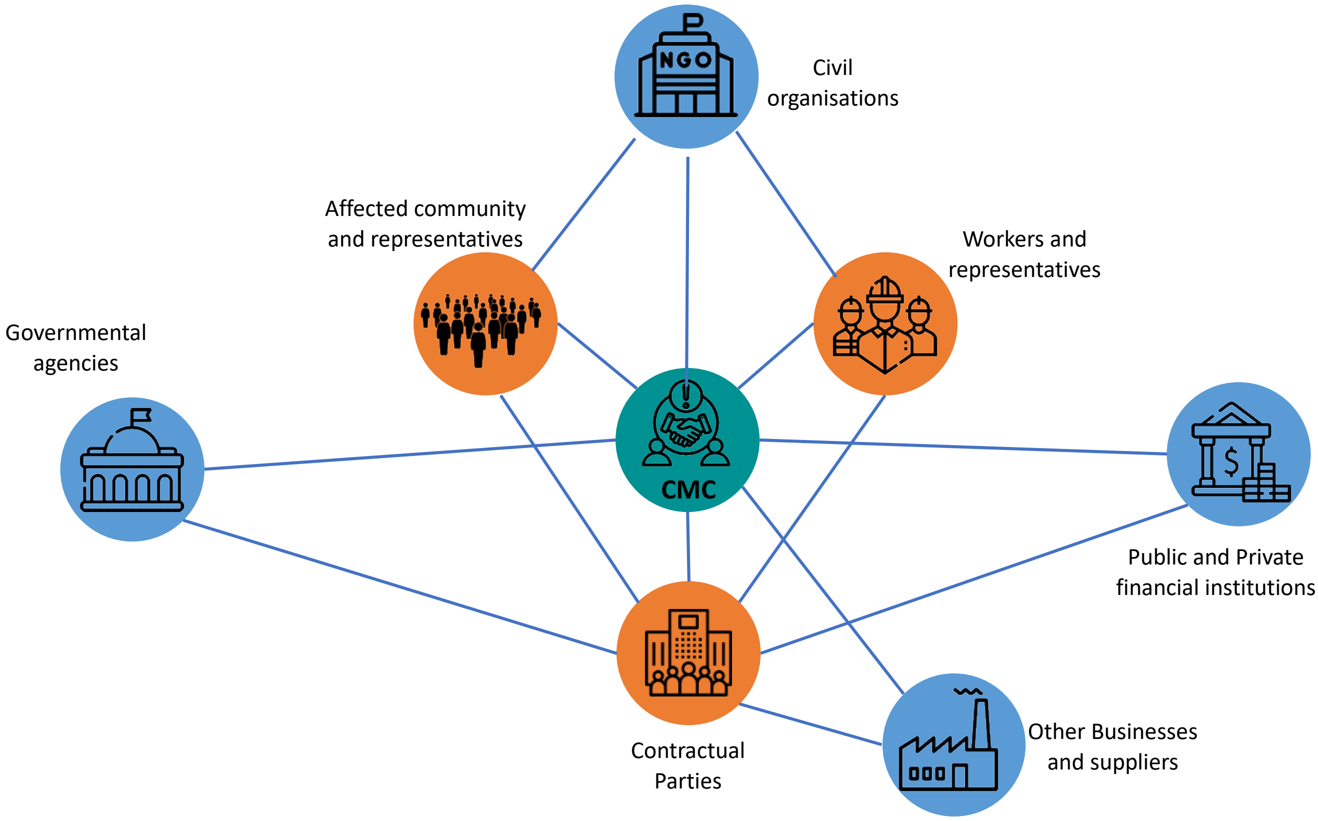
The CMC Rules

The CMC Rules set out a new framework for identifying, exploring, anticipating, preventing and resolving potential disputes in large infrastructure projects, ensuring, in particular, alignment with ESG standards and principles. They seek to resolve contractual issues between the parties as they emerge but also place specific emphasis on vulnerable stakeholder engagement, and continuous monitoring and review of issues, risks, impacts and opportunities as they arise, all within a single project-level framework. Further details of the CMC Rules are set out in the Annex.

Please email mcpitton@carohadac.org if you would like to receive a copy of the CMC Rules.

Diagram 1

Diagram 1 depicts the multi-stakeholder approach embedded in the CMC Rules:



Recognition of the CMC Rules

The CMC Rules have gained recognition in the global ESG and dispute avoidance markets, being referred to by prominent industry bodies including the American Bar Association whose House of Delegates adopted a formal resolution in its support on 5 February 2025. The American and European Chapters of the Responsible Contracting Project also refer to them as do the International Bar Association, including at its 2025 annual conference in Toronto, and in the International Bar Association Business and Human Rights Committee's submission to the United Nations on free, prior and informed consent of indigenous peoples in business-related contexts. Finally, UNCITRAL has referenced the CMC Rules in its Toolkit on Prevention and Mitigation of International Investment Disputes, developed in the context of the work of Working Group III on Investor-State Dispute Settlement reform.

OUTCOMES FROM THE ROUNDTABLE DISCUSSIONS

The place of the CMC Rules in the wider stakeholder consultation landscape

The CMC Rules are being introduced into a landscape already populated by a wide range of grievance and dispute avoidance mechanisms, including corporate-level grievance processes, lender-mandated frameworks, international accountability mechanisms and sector-specific standards. Many businesses have already invested significant time and resources into developing in-house mechanisms or aligning with existing frameworks, which will inevitably shape how the CMC Rules are received and implemented.

The CMC Rules are to be viewed as complementary to, rather than displacing, existing dispute resolution mechanisms, particularly given that CMC recommendations can be referred to mediation or arbitration and later in court proceedings.[1] This is seen as a key strength of the framework, allowing it to operate alongside, and feed into, established dispute resolution pathways rather than replace them.

Key considerations - summary

Building on the CMC Rules framework, industry participants identified a number of key considerations for ESG/sustainability professionals, businesses and governments (as well as the CMC members themselves) to enable successful implementation:

1. early adoption;
2. introduction of neutral actors;
3. ensuring understanding by key audiences;
4. cost predictability;
5. principles;
6. guidance;
7. knowledge bank; and
8. government support

Key benefits of the CMC Rules

- An innovative and credible framework integrating continuous stakeholder engagement, ESG risk management and dispute avoidance into large infrastructure project delivery
- Solid objectives and ambition
- Aligned with international ESG standards

KEY CONSIDERATIONS FOR SUCCESSFUL IMPLEMENTATION OF THE CMC RULES

Early adoption

Putting the CMC Rules in place from as early as the procurement stage is likely to improve the effectiveness of the framework. Early adoption may support the development and maintenance of a project's social licence to operate by creating trusted channels of communication and engagement before tensions escalate.

Introduction of neutral actors

Establishing a team of neutrals from the get-go enables conflict resolution and reenforces the focus on anticipating, preventing and solving conflict before the situation degenerates.

Ensuring understanding by key audiences

Key audiences can understand the principle objectives of the CMC Rules through:

- clear communication of the conflict avoidance function and purpose of the CMC Rules, not just the dispute resolution function;
- ensuring terminology is accessible and inclusive for a broad range of stakeholders; and
- transparency on how the CMC Rules are funded, i.e. by governments and businesses, but with a clear mandate for impartiality.

Cost predictability

Cost predictability is a key consideration for contracting parties, civil society and CMC members.[2] Mechanisms are embedded in the CMC Rules, including flexible payment options and the ability to form a CMC with a single member for smaller projects. The CMC Schedule of Costs therefore provides flexibility to adapt the mechanism to projects of different sizes, sectors and risk profiles.

Further cost predictability may be achieved by:

- careful consideration of the definition of the term 'stakeholders' used by the CMC,[3] determining the scope and extent of stakeholder engagement;
- an agreement regarding the extent and frequency of stakeholder mapping carried out by the CMC, including how 'early' engagement may occur;[4]
- transparency at an early stage around the likely costs of more cost-intensive aspects such as stakeholder engagement and ongoing mapping; and
- early agreement on which parties are responsible for the costs of stakeholder representatives such as lawyers, advisors and community representatives.

Principles

A set of principles, alongside the formal CMC Rules (and developed in collaboration with typical stakeholders, to enhance legitimacy and acceptance), may assist with enabling flexibility, proportionality and evolution of the CMC Rules over time. This may be particularly important:

- when using the CMC Rules in multi-party and multi-tier projects, recognising the need to ensure all relevant parties, including third party beneficiaries, are effectively included;[5] and
- where projects and associated risks, impacts and opportunities change over time.

Guidance

Additional guidance could help build trust and confidence in the CMC. Such guidance may cover key groups and concepts, including:

- the definition of the term 'mediation';[6]
- the definition of the term 'stakeholders';[7]
- confidentiality;[8]
- independence;[9]
- transparent appointment processes;[10] and
- engagement with stakeholders through trusted community intermediaries.[11]

Training

CMC members must possess a hybrid skill set, including the ability to handle complex negotiations with governments and exits from investments by financial institutions.

The development of training by the CARO Centre will be key to ensure availability of quality CMC members, who have the required breadth of expertise,[12] including:

- environmental and social issues, including business and human rights, employment and health and safety issues;
- infrastructure and project delivery, including an understanding of project lifecycle risks;
- dispute resolution skills, including mediation, facilitation and consensus building; and
- community engagement and safeguarding, including culturally appropriate stakeholder interaction.

The training framework outlined above will also enable CMC members to identify where they may need to bring in the services of experts.[13]

Knowledge bank

Establishing an open-source knowledge bank collecting experience of CMC members with stakeholder engagement may serve as a valuable tool when providing training to CMC members and be used to demonstrate the value of the CARO Centre as a governing body.

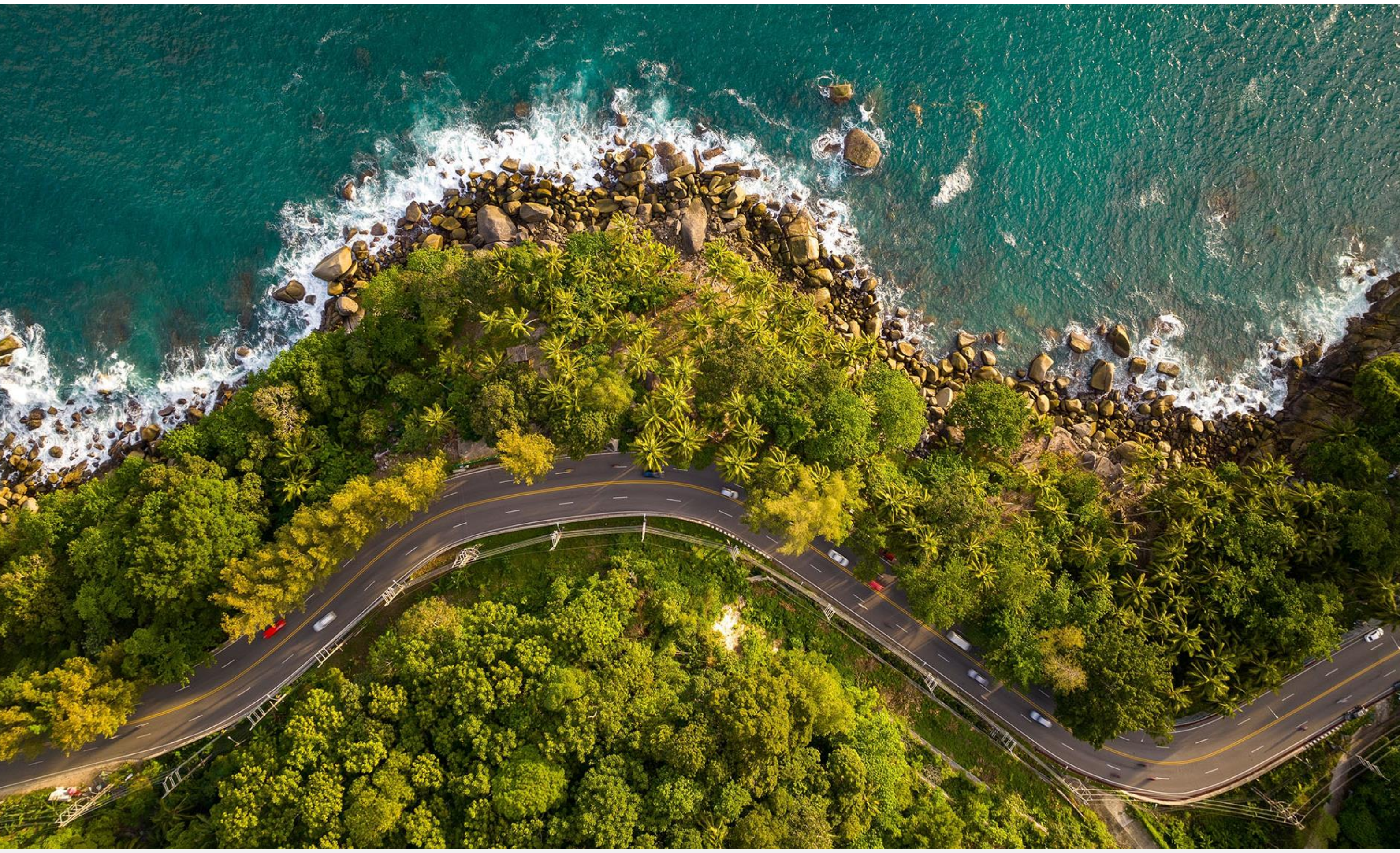
Government support

The CMC Rules are well positioned to be adopted by governments in national legislation. Government support could take the form of references to the CMC Rules in public procurement policies, PPP frameworks, investment promotion strategies, mining and energy projects, and other infrastructure development programmes.

CONTINUED ENGAGEMENT

The CARO Centre, Watson Farley & Williams LLP and the Global Alliance of Impact Lawyers would like to thank all the participants who attended the series of roundtable events and whose valuable insights shaped this White Paper.

Participants expressed interest in continued engagement with the CARO Centre as the CMC Rules evolve and are tested in practice and the CARO Centre looks forward to ongoing participation across all relevant stakeholder groups.



ANNEX:
FURTHER INFORMATION ON THE CMC RULES

1. Overview and purpose of the CMC Rules

The CMC Rules establish a project-level mechanism designed to prevent, manage and resolve conflicts arising in complex infrastructure and energy transition projects.[14] The CMC Rules emphasise:

- early identification of issues;[15]
- the institutionalisation of multistakeholder engagement;
- continuous monitoring of project performance, including stakeholder undertakings;[16] and
- facilitated dialogue aimed at consensual outcomes, with non-binding recommendations where necessary.[17]

This reflects a deliberate alignment with international standards on non-judicial grievance mechanisms, particularly under the UN Guiding Principles on Business and Human Rights, by prioritising accessibility and iterative oversight. The CMC Rules represent an innovative convergence of dispute board practice and ESG grievance mechanisms, integrating contractual dispute resolution with ESG grievance processes. The CMC Rules offer a practical model for implementing project-level access to appropriate remedies consistent with emerging international ESG regimes.

2. Role of the CARO Centre

The CARO Centre plays a central governance role, including:

- appointing and confirming CMC members;[18]
- administering costs and procedure; and
- ensuring integrity and continuity of the CMC process.

The CMC itself is composed of either 1 or 3 independent members with balanced technical, contractual and ESG expertise.[19] Further detail of the expertise required by CMC members is set out on page 9 of this White Paper.

3. Multistakeholder approach and governance structure

A defining feature of the CMC Rules is the multistakeholder approach, extending beyond traditional bilateral dispute resolution between contracting parties. Diagram 1 on page 4 depicts this multistakeholder approach.

The CMC Rules define 'stakeholders' as individuals or communities affected by the project who may participate in proceedings.[20] Stakeholders can:

- engage in dialogue processes with the CMC;[21]
- raise 'grievances' alleging breaches of stakeholder undertakings;[22] and
- participate in the development and implementation of the Stakeholder Engagement Plan ("SEP").[23]

The SEP is central to the multistakeholder approach embedded in the CMC Rules. It records undertakings and commitments agreed between contractual parties and stakeholders.[24] The CMC monitors compliance with the SEP,[25] and breaches of SEP commitments trigger the Grievance Procedure.[26]

4. Ongoing and lifecycle-based nature of the CMC

The CMC acts as a continuous presence throughout the project lifecycle. The CMC is established for a period spanning the term of the contract, typically commencing at or before project start and continuing until completion.[27]

The CMC performs an ongoing oversight function through:

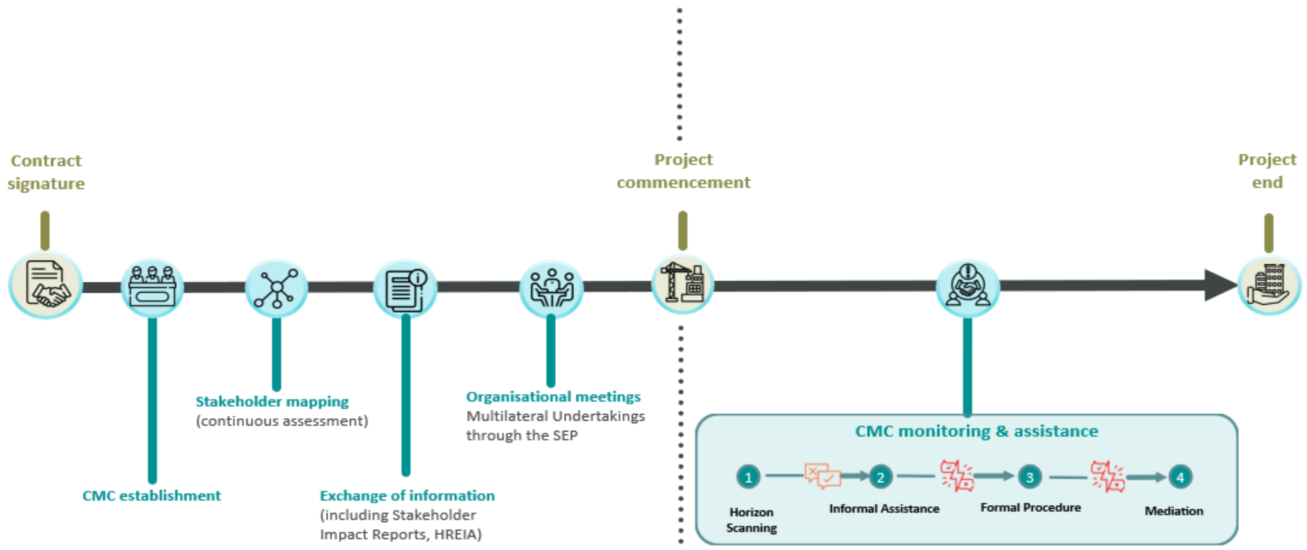
- organisational and project meetings;[28]
- information exchange and reporting, including stakeholder impact reports;[29]
- site visits and engagement with stakeholders;[30] and
- continuous tracking of project implementation and SEP compliance.[31]

A distinctive feature of the CMC Rules is 'Horizon Scanning', defined as the continuous monitoring of emerging risks, impacts and issues.[32]

- this enables early identification of potential conflicts; and
- supports proactive intervention before disputes crystallise.

Diagram 2

Diagram 2 depicts the CMC as an ongoing presence throughout the project lifecycle:



5. Conflict resolution architecture

The CMC Rules establish a multi-stage conflict resolution process that prioritises dispute prevention and progresses from informal engagement to structured intervention.[33] The CMC Rules preserve formal dispute resolution rights by enabling the parties to retain access to arbitration or litigation.

Stage 1: early monitoring

Continuous monitoring to identify emerging 'differences', focus on indentifying risks and promoting early diaglogue.

Stage 2: informal assistance

The CMC may assist parties and stakeholders informally and flexibly, including joint disucssions and provision of informal views, emphasis on issue resolution.

Stage 3: formal referral

Where informal processes fail, parties can make written submissions to the CMC and the CMC may issue a non-binding, time-bound written recommendation.

Stage 4: grievance procedure

Parallel to formal referrals, stakeholders may initiatie a grivenace procedure for SEP breaches, with the CMC conducting investigations and issuing recommendations.

Stage 5: mediation

Where recommendations are rejected, process escalates to mediation.

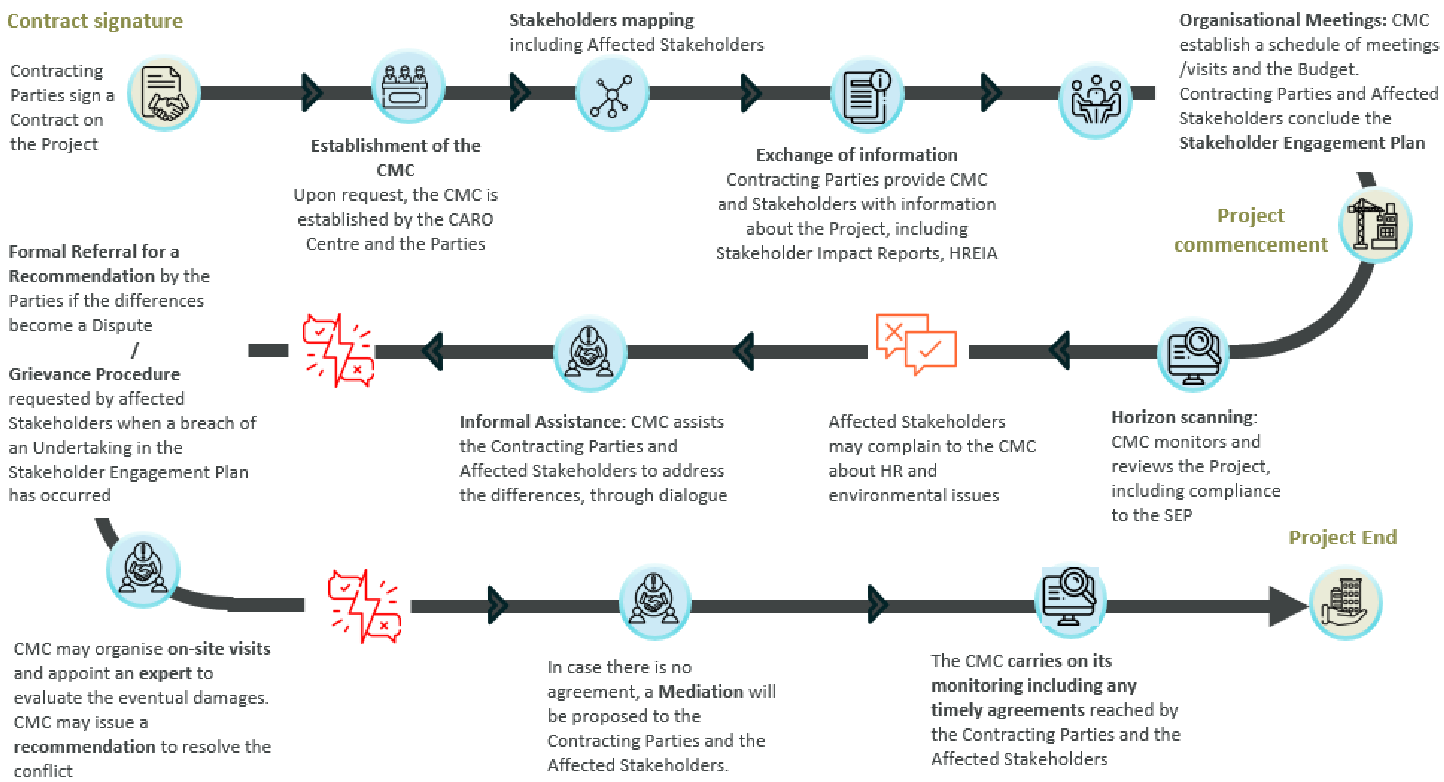
6. Integrated CMC process

The CMC Rules operate as an integrated, end-to-end conflict management system with five distinct phases:

1. Establishment phase: formation of the CMC[34] and initial organisational meeting and SEP development.[35]
2. Operational phase: continuous monitoring, engagement, information exchange[36] and ongoing stakeholder dialogue and impact assessment.
3. Intervention phase: informal assistance,[37] formal dispute referral[38] and grievance procedure for stakeholder concerns.[39]
4. Escalation phase: mediation where necessary[40] and potential recourse to litigation and arbitration.
5. Post-resolution monitoring: the CMC may continue monitoring implementation of agreements or action plans.[41]

Diagram 3

Diagram 3 depicts an overview of the CMC process:



Endnotes

[1] CMC Rules, Articles 17(16) and 18(12).
[2] The CMC Rules envisage that the contracting parties will bear the costs of the CMC, see CMC Rules, Article 20 (Fees and Expenses).
[3] CMC Rules, Article 1 (Definitions), xxii defines the term 'stakeholder' as "those individuals, groups or communities, including their representatives, that are rights-holders or have legitimate interests that are affected or could be affected by an adverse impact stemming from the Project, and have been recognised and invited to participate in proceedings under these Rules by the CMC".
[4] CMC Rules, Articles 14 and 15.
[5] Multi-party, multi-tier projects are particularly common in the extractives and infrastructure sectors.
[6] CMC Rules, Article 19.
[7] CMC Rules, Article 1(xxii).
[8] CMC Rules, Article 9.
[9] CMC Rules, Articles 6 and 5(7).
[10] CMC Rules, Article 5.
[11] Such approaches were seen as particularly important for creating safe spaces for affected and vulnerable groups, including women and marginalised communities.
[12] CMC Rules, Article 5(5).
[13] CMC Rules, Article 12(1)(g).
[14] See further, Village de la Justice, "The «CMC»: an innovative framework towards an inclusive approach to conflict management in infrastructure projects" dated 24 June 2024.
[15] CMC Rules, Articles 15 and 16.
[16] CMC Rules, Articles 2(2) and 13.
[17] CMC Rules, Article 17(13).
[18] CMC Rules, Articles 3(3) and 5.
[19] CMC Rules, Articles 4 and 5.
[20] CMC Rules, Article 1(xxii).
[21] CMC Rules, Articles 16 and 18.
[22] CMC Rules, Articles 1(xi) and 18.
[23] CMC Rules, Articles 13 and 14.
[24] CMC Rules, Article 1(xxiii).
[25] CMC Rules, Article 2(2).
[26] CMC Rules, Article 18.
[27] CMC Rules, Article 4.
[28] CMC Rules, Article 14.
[29] CMC Rules, Article 13.
[30] CMC Rules, Articles 12 and 14.
[31] CMC Rules, Articles 2(2), 13 and 15.
[32] CMC Rules, Article 15.
[33] The conflict resolution architecture of the CMC Rules is set out in Articles 15, 16, 17, 18 and 19.
[34] CMC Rules, Articles 4 and 5.
[35] CMC Rules, Article 14.
[36] CMC Rules, Articles 13, 14 and 15.
[37] CMC Rules, Article 16.
[38] CMC Rules, Article 17.
[39] CMC Rules, Article 18.
[40] CMC Rules, Article 19.
[41] CMC Rules, Article 18(13).

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