



**JOINT SUBMISSION ON THE IMPLEMENTATION OF
LOCAL STAKEHOLDER CONSULTATION AND GLOBAL STAKEHOLDER
CONSULTATION DURING THE VALIDATION PROCESS OF THE CDM**

15 AUGUST 2011

The Center for International Environmental Law (CIEL) and Earthjustice respectfully make this submission in response to the CDM Executive Board's call for inputs on the implementation of local stakeholder consultation and global stakeholder consultation during the validation process.¹

CDM projects may significantly affect the lives and livelihoods of local populations and cause severe environmental harm – therefore, key actors and stakeholders must be engaged in all stages of the decision-making process. Full and effective participation of stakeholders – particularly affected peoples and communities, as well as individuals or organizations with information concerning potential social and environmental threats – is essential to the integrity of the CDM and to achieving its objectives.²

The Executive Board has recently acknowledged the critical role of public participation and transparency in CDM processes by identifying the following objective, among others, for direct communication with stakeholders: “Ensure transparency by providing relevant information to stakeholders and opportunities for them to provide supplementary information/explanation in a timely manner...”³ This objective needs to be operationalized by establishing robust procedures for local and global stakeholder consultations as well as the monitoring and evaluation of these consultation processes.

Broad public participation and stakeholder consultation in the validation process is consistent with international law generally and climate law in particular. The right to public participation in decision-making is specifically recognized in the context of environmental issues including climate change.⁴ The Framework Convention itself provides that Parties must promote and

¹ CDM Executive Board, *Call for public inputs on the validation process*, available at http://cdm.unfccc.int/public_inputs/2011/eb62_02/index.html.

² For more background on this issue, see: Marcos A. Orellana, *Climate Change and the Millennium Development Goals: The Right to Development, International Cooperation and the Clean Development Mechanism* (Aug. 2010), 145, available at http://www.ciel.org/Publications/SUR_Jun10.pdf; Marcos A. Orellana, *Climate Change and the Right to Development: International Cooperation, Financial Arrangements, and the Clean Development Mechanism (Report to the High Level Task Force on the implementation of the right to development)* (Feb. 2010), available at http://www.ciel.org/Publications/Climate_Development_Jan10.pdf; IUCN, *Conservation with Justice: A Rights-Based Approach*, IUCN Environmental Policy and Law Paper No. 71 (2009), ch. 3.

³ CDM EB, *Modalities and Procedures for Direct Communication with Stakeholders (Version 01)*, EB 62, Annex 15 (Jul. 15, 2011), available at http://cdm.unfccc.int/Reference/Procedures/eb_proc03.pdf, ¶ 7(d).

⁴ See, e.g., UN Conference on Environment and Development, *Rio Declaration on Environment and Development*, princ. 10; Agenda 21, section III (“Strengthening the Role of Major Groups”); UN Economic Commission for Europe, *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, arts. 6-8 (legally binding on 44 parties to the UNFCCC); *Report of the Office of the United*

facilitate “public participation in addressing climate change and its effects and developing adequate responses.”⁵ The right to consultation with affected indigenous and tribal peoples before adopting measures that may affect them is also recognized under international law.⁶

The Executive Board should enhance the stakeholder consultation processes to satisfy these obligations and fulfill its own mandate to ensure integrity and transparency in the validation process. Based on experience and lessons learned from previous consultations, the Executive Board should: (1) develop clear rules on how to conduct local stakeholder consultations; (2) establish clear guidelines to enable designated operational entities (DOEs) to effectively assess local stakeholder consultations; (3) enhance requirements for global stakeholder consultations; and (4) establish a grievance mechanism for affected stakeholders.

CIEL and Earthjustice respectfully make the following recommendations on how the Executive Board should enhance the implementation of local and global stakeholder consultations during the validation process:

I. The Executive Board should develop clear rules on how to conduct local stakeholder consultations.

CDM rules require that “comments by local stakeholders have been invited, a summary of the comments received has been provided, and a report to the designated operational entity on how due account was taken of any comments has been received.”⁷ The Executive Board has provided further guidance on how project participants should describe the process by which comments by local stakeholders have been invited and compiled (*i.e.*, notice and comment period):

[A]n invitation for comments by local stakeholders shall be made in an open and transparent manner, in a way that facilitates comments to be received from local stakeholders and allows for a reasonable time for comments to be submitted. In this regard, project participants shall describe a project activity in a manner, which allows the local stakeholders to understand the project activity, taking into account confidentiality provisions of the CDM modalities and procedures. The local stakeholder process shall be completed before submitting the proposed project activity to a DOE for validation.⁸

Nations High Commissioner for Human Rights on the relationship between climate change and human rights (Jan. 15, 2009), U.N. Doc. A/HRC/10/61, at ¶ 79, available at <http://www.ohchr.org/Documents/Press/AnalyticalStudy.pdf> (“[Public p]articipation in decision-making is of key importance in efforts to tackle climate change.”).

⁵ UN Framework Convention on Climate Change, art. 6(a)(iii).

⁶ See, e.g., UN Declaration on the Rights of Indigenous Peoples, art. 19; International Labor Organization, Convention No. 169, art. 6.

⁷ Decision 3/CMP.1, Annex, ¶ 37(b).

⁸ CDM EB, Guidelines for completing the Project Design Document (CDM-PDD) and the proposed new baseline and monitoring methodologies (CDM-NM) (Version 07), EB 41, Annex 12 (Aug. 2, 2008), at 20, available at http://cdm.unfccc.int/Reference/Guidclarif/pdd/PDD_guid04.pdf.

With respect to the summary of comments received and report on how due account was taken of any comments received, the Executive Board clarified that project participants should “identify stakeholders that have made comments and provide a summary of these comments” and should “explain how due account have been taken of comments received.”⁹

However, these requirements do not specify how local stakeholder consultations are to be undertaken (e.g., how stakeholders will learn about and raise concerns regarding a proposed CDM project and its potential social and environmental impacts). As a result, stakeholder consultations are often rudimentary, unregulated and poorly documented.¹⁰ For this reason, the Executive Board should develop clear rules to remedy the lack of information and access to the consultation process often reported by local populations. In addition, measures should be taken to address the lack of familiarity and concerns over safety (e.g., due to fear of retaliation) that local populations may have with formal opportunities to engage in the process and provide input.

For stakeholders to engage in a participatory local consultation process, project participants must give adequate, timely and effective notice to local stakeholders (i.e., all individuals, group or communities that are affected, or are likely to be affected, by a proposed CDM project), and provide meaningful opportunities for them to participate in the validation process.

A. Project participants must use effective and appropriate means of communication in the local stakeholder consultation process.

All communications with local stakeholders should be translated into the local language(s) and written in non-technical terms. Key project documents, including the project design document, environmental assessment and other supporting documentation, should not be kept out of the public domain under the guise of confidentiality.

All communications, including notice, should be clear, detailed and widely circulated, and distributed by appropriate and effective means (e.g., in community centers, churches, libraries, schools and media) to help avoid any significant logistical and communication barriers. Local stakeholders should be allowed to submit comments in the language(s) spoken in the proposed project area – these comments should be taken into account in the same way as comments written in English or other languages. If a significant part of the population is illiterate, then the information must be provided orally (e.g., through in-person meetings and radio).

Prior to the start of the comment period, all project documents and supporting documentation, including versions translated into the local language(s), should be made available as hard copies by appropriate and effective means (described above) as well as on the project website.

⁹ *Id.*

¹⁰ Wolfgang Sterk, et al., *Further Development of the Project-Based Mechanisms in a Post-2012 Regime*, (Wuppertal Institute for Climate, Environment and Energy, 2009), at 16, available at http://www.wupperinst.org/uploads/tx_wiprojekt/CDM_Post_2012_Study.pdf.

- B. *Project participants must give timely notice of opportunities for local stakeholders to participate in the consultation process.*

Project participants should provide local stakeholders with timely notice of opportunities to participate in the consultation process.¹¹ Such notice must be given early enough to enable stakeholders to engage and provide meaningful input into the decision-making process.

- C. *Project participants must provide meaningful opportunities for local stakeholders to raise their concerns throughout the validation process.*

The Executive Board should develop clear rules describing how the local stakeholder consultation process is to be undertaken, *i.e.*, location, scope, contents, frequency, and timeline of public consultation meetings. The rules should require a minimum of two rounds of stakeholder consultations, including at least one physical meeting. More specifically, the rules should address notice, organization, and timing of the two consultation rounds. In addition, the comment period should be increased to 60 days. Thirty days does not provide an adequate amount of time for local stakeholders to review the project documents and provide meaningful input.

- D. *Project participants must minimize barriers to local stakeholder participation in the consultation process.*

Local stakeholders may face barriers that may make it difficult for them to participate in the consultation process. For example, members of poor and marginalized communities may be illiterate, lack access to information and communication channels, or incur high costs of access.¹² Any potential costs or other barriers must be minimized to encourage, rather than hinder, local stakeholder involvement in the consultation process.¹³

II. *The Executive Board should establish clear guidelines to enable DOEs to effectively assess local stakeholder consultations.*

During the validation process, DOEs are required to, among other things, “make publicly available the project design document; [r]eceive, within 30 days, comments on the validation requirements from Parties, stakeholders and UNFCCC accredited non-governmental organizations and make them publicly available; ... make a determination as to whether, on the basis of the information provided and taking into account the comments received, the project

¹¹ See Decision 3/CMP.1, Annex, ¶ 40(c); *id.* ¶ 37(b); see also Aarhus Convention, art. 6(2) (“The public concerned shall be informed, either by public notice or individually as appropriate, *early in an environmental decision-making procedure*, and in an adequate, timely and effective manner [of a list of details relevant to public participation].”) (emphasis added).

¹² See generally Joseph Foti and Lalanath de Silva, *A Seat at the Table: Including the Poor in Decisions for Development and Environment* (May 2010), ch. 2, available at http://pdf.wri.org/a_seat_at_the_table.pdf.

¹³ *Id.* at 23 (“Ensure equal ability to use access by creating programs that reduce cost and improve means of communication.”).

activity should be validated; [and s]ubmit to the Executive Board ... a validation report including ... an explanation of how it has taken due account of comments received.”¹⁴

These rules are vague and do not provide any standards by which DOEs can assess the validity of a local stakeholder consultation. Although DOEs are required to review whether the project has met all requirements, the level of scrutiny as to whether local stakeholders had a meaningful opportunity to participate in the consultation process remains unclear. For example, the “comments” described in the *Energy Efficient Power Generation by Welspun Energy Madhya Pradesh Limited PDD* – documented as questions rather than statements or concerns – are almost identical to the same six to eight comments submitted in at least two other PDDs for supercritical coal plant projects in India.¹⁵ Either the documentation for these projects is seriously deficient (and thus should not be validated) or the local stakeholder consultation process itself is flawed.

The Executive Board should therefore develop clear rules (as discussed in Section I) by which the DOEs can assess local stakeholder consultations. These rules should also address the reporting and assessment of comments received during the stakeholder consultation process.

A. DOEs should assess the reporting of comments received and how those comments were addressed.

Project participants are required not only to invite and take into account comments received by stakeholders, but also to report on how they incorporated that feedback into their decision-making process.¹⁶ Detailed reporting of comments received from local stakeholders is essential for monitoring and accountability purposes, and will enable DOEs to assess the validity and outcomes of local stakeholder consultations. Consistent with the Executive Board’s Guidelines for completing the Project Design Document,¹⁷ project participants should be required to keep and make public records of stakeholder meetings, including lists of invitees and participants.

III. The Executive Board should enhance requirements for global stakeholder consultations.

Parties, stakeholders and UNFCCC accredited observers have the ability to participate in the validation process by submitting comments and other information to project participants and relevant decision-makers. However, the current global stakeholder process is inadequate to provide meaningful consultation and should be revised to allow for greater access to information and participation during the comment period.

¹⁴ Decision 3/CMP.1, Annex, ¶ 40.

¹⁵ See e.g., *Energy Efficient Power Generation by Welspun Energy Madhya Pradesh Limited*; *Energy Efficient Power Generation by Welspun Energy Madhya Pradesh Limited India*; *Energy Efficient Power Generation by Welspun Energy Anuppur Private Limited India*, available at <http://cdm.unfccc.int/Projects/Validation/DB/F99Y7Y47SBQ9MFVI8EDJJRKH9VBKDI/view.html>.

¹⁶ Decision 3/CMP.1, Annex, ¶ 40.

¹⁷ CDM EB, Guidelines Project Design Document (CDM-PDD) and the Proposed new baseline and monitoring methodologies (CDM-NM) (Version 07), at 20.

- A. *Opportunities for global stakeholders to participate during comment period should be enhanced.*

As noted above, the comment process is currently too short to allow meaningful opportunities for stakeholders to participate in the global consultation process. The comment periods for specific projects and for new methodologies each should each be increased to 60 days. Notice and other communications regarding comment periods should be posted online in clear and detailed terms, including comment period start/end dates and times, with applicable time zone.

- B. *Information provided during comment period should be enhanced.*

The CDM Secretariat should establish an email notification system for: requests for registration; requests for renewal of crediting period; start of the public comment period for projects; and start of the public comment period for new methodologies. The CDM Secretariat should continue to improve the accessibility of the CDM website, including translation of documents related to public participation into all official UN working languages.

IV. The Executive Board must establish a grievance mechanism for affected stakeholders.

At present, the CDM does not provide an appeals process for stakeholders who are not afforded adequate, timely and effective notice and/or meaningful opportunities to participate in the local stakeholder consultation process. As such, a grievance mechanism must be established to provide accountability and recourse in the event that the consultation requirements are not met.