

Response by the Wuppertal Institute to the

CDM EXECUTIVE BOARD CALL FOR PUBLIC INPUTS ON THE VALIDATION PROCESS

Contact person:

Hanna Wang-Helmreich
Wuppertal Institute for Climate, Environment, Energy
Döppersberg 19
42103 Wuppertal
Germany
hanna.wang-helmreich@wupperinst.org

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Introduction

The Wuppertal Institute welcomes the opportunity to respond to the call of the CDM Executive Board (Board) for public inputs on the validation process and to provide our views on how stakeholders' inputs can be considered during the validation process.

According to the Kyoto Protocol, the CDM has two goals:

- to promote sustainable development in the host countries and
- to aid Annex I Parties in achieving their targets cost-effectively.

In practice, the two goals can be contradictory, especially if they are being pursued with differing stringency. This is currently the case: First, in the carbon market, only the emission reductions are given a monetary value. Second, while safeguarding the CDM's environmental integrity in terms of emission reductions is centralised under the Board, safeguarding the contribution to sustainable development is decentralised and left to each host country individually.

Information on registered CDM projects “Aguan biogas recovery from Palm Oil Mill Effluent (POME) ponds and biogas utilisation – Exportadora del Atlántico, Aguan/Honduras” in Honduras (Ref. 3197)^{1, 2} and “Guizhou Taijiang Yanzhai Hydropower Station” in China (Ref. 1953)^{3, 4}, for example, suggests that they have been linked to human rights violations. The risk of incidences like these could possibly have been prevented with an adequately conducted, meaningful stakeholder consultation as stakeholder consultations can significantly enhance a project's contribution to the sustainable development in the host country and reduce the risks of negative impacts of CDM projects on the local populations. However, a study by the Wuppertal Institute⁵

¹ APRODEV (Asociación de Agencias de Desarrollo ligadas al Concejo Mundial de Iglesias), CIFCA (Iniciativa de Copenhague para América Central y México), FIAN Internacional (Organización Internacional por el Derecho a la Alimentación), FIDH (Federación Internacional de Derechos Humanos), Rel-UITA (Regional Latinoamericana de la Unión Internacional de los Trabajadores de la Alimentación, Agrícolas, Hoteles, Restaurantes, Tabaco y Afines), Vía Campesina Internacional (2011): Honduras: Violaciones de Derechos Humanos en el Bajo Aguán. Informe Preliminar de la Misión de Verificación Internacional Realizada del 25 febrero a 4 marzo de 2011.

² FIAN (International Human Rights Organisation for the Right to Food), CDM Watch (2011): United Nations under Pressure to denounce Human Rights Abuses in Carbon Offsetting Scheme. URL: <http://www.fian.org/news/press-releases/united-nations-under-pressure-to-denounce-human-rights-abuses-in-carbon-offsetting-scheme> (accessed 12 August 2011).

³ Henk, Malte and Jürgen Schaefer (2010); Emissionshandel: Die Luftnummer. GEO Magazin 12/2010. Hamburg: Gruner + Jahr.

⁴ International Rivers (2010): Investigative Report Exposes Forced Evictions and Fraudulent Claims at Chinese CDM Hydropower Project. URL: <http://www.internationalrivers.org/en/2010-11-24/investigative-report-exposes-fraudulent-cdm-hydropower-project-china> (accessed 12 August 2010).

⁵ Sterk, Wolfgang, Frederic Rudolph, Christof Arens, Urda Eichhorst, Dagmar Kiyar, Hanna Wang-Helmreich, Magdalene Swiderski (2009), Further Development of the Project-Based Mechanisms in a Post-2012 Regime, http://www.wupperinst.org/uploads/tx_wiprosjekt/CDM_Post_2012_Study.pdf

has found that the stakeholder consultation is often only rudimentary, completely unregulated and badly documented.

This state of affairs is inconsistent with the commitments the Parties to the Kyoto Protocol have undertaken in other international treaties such as the UN's human rights treaties, e.g. the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Under the UN human rights regime, states have the clear obligation to respect, protect and fulfil their inhabitants' human rights, such as the human rights to health, food, water, housing and others. The obligation to respect entails that states may not take or be complicit in any action that violates human rights, such as forced evictions or the degradation of the local environment on which people rely for their livelihoods. The obligation to protect entails that states must prevent private actors – such as CDM project participants – from committing human rights violations. The international human rights regime also clearly stipulates the rights of individuals to information, participation in decision-making, and access to justice.⁶

The right to public participation is also laid down in Principle 10 of the 1992 Rio Declaration on Environment and Development, which stipulates that “... each individual shall have appropriate access to information concerning the environment that is held by public authorities, [...] and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

The international community therefore has the responsibility to ensure that the mechanisms it creates are consistent with all the commitments states have undertaken in the various international fora. The Conference of the Parties of the UNFCCC recognized this obligation in Decision 1/CP.16, which stipulates that “Parties should, in all climate change related actions, fully respect human rights”. The Board should therefore develop clear rules on how to implement adequate safeguards and stakeholder consultations in the CDM. These should include:

- Specific requirements for the preparation of the consultations, including who to involve, how to contact stakeholders, and how to present the project in a non-technical manner and appropriate local language.
- A requirement to have at least two rounds of stakeholder consultations including at least one physical meeting. This should include specific requirements on how to organise the two rounds.

⁶ See for example the authoritative interpretation of the right to food (Article 11 ICESCR) by the UN Committee on Economic, Social and Cultural Rights: Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment 12: The Right to Adequate Food (Art. 11), UN Doc E/C.12/1999/5.

- Establishment of a grievance mechanism to address problems that might arise during the implementation phase. If valid grievances are not addressed appropriately, the project should no longer receive CERs.

Stakeholder Involvement

CDM projects may significantly affect the livelihoods of local populations. It should therefore be a matter of course to involve them in the decision on whether to approve a project and how to design it. It is the responsibility of the international community to ensure that the mechanisms it creates safeguard the rights of those that are affected by them. The Board should therefore establish clear international requirements for how to conduct stakeholder consultations.

Preparation

The stakeholder consultation should be required to be conducted during the design phase of the project, at a point in time when the proponents are still genuinely open to making changes to the project. The project proponents should actively invite participation through appropriate media such as local bulletin boards, newspapers and other appropriate media.

In addition, invitation letters should be sent at least to the following stakeholders:

- Local people impacted by the project or their official representatives
- Local policy makers and representatives of local authorities
- An official representative of the DNA of the host country of the project
- Local NGOs working on topics relevant to the project

Invitation letters should already include a non-technical summary of the project activity in the local language(s), as well as information on the sustainable development indicators used to assess the project activity.

In addition, the vast majority of stakeholders in CDM host countries does not speak English and is therefore unable to research a CDM project sufficiently. The project proponents should therefore translate both the project design document (PDD) and, where applicable, the environmental impact assessment into the local language(s). This would not add substantial costs but would provide stakeholders with the opportunity to submit well-researched comments.

Furthermore, many project area residents do not have readily available internet access. Therefore, posting the PDD online is not sufficient to enable stakeholder participation

in areas that do not have internet access. In addition to publishing the PDDs online, hard copies of translated versions of the PDD should be made available to communities in the project area (e.g. at community centres, churches, libraries, schools, post offices).

The final PDD should contain a list of who was invited, by what means and on which date, as well as who actually participated. It should be required to attach copies of the invitation letters to the PDD, as well as copies of other means used to invite participation, such as newspaper advertisements etc.

First Round or Rounds of the Stakeholder Consultation

The first round of the stakeholder consultation should be conducted before the PDD is submitted for validation and should include at least one physical meeting. The meeting should be required to be conducted in an appropriate local language and include at least the following agenda items:

- Presentation of the project
- Stakeholders discuss potential positive or negative impacts of the project on sustainable development
- How to raise complaints during project implementation (see section below on establishing a grievance mechanism)

To maximise the impartiality of the process, the DOE that has been selected to validate the project should be required to attend the meeting.

Follow-Up to the First Round(s)

The project proponents should be required to publish a non-technical report on the meeting or meetings within one month. This report should include all comments made and indicate how they will be taken into account in the project design. If some safeguarding criteria or sustainable development indicators receive negative assessments from the stakeholders without them being sufficiently balanced by mitigation measures, the assessment should be revisited. This should be done in consultation with the validating DOE.

Second Round of Stakeholder Consultation

The purpose of the second round of the stakeholder consultation would be to discuss with the stakeholders whether their comments from the first round have been addressed appropriately. The second round should include all stakeholders that participated in the first round or rounds and cover all issues addressed during the first round. This should include another physical meeting.

The second round could be conducted in parallel to the validation but should be open for at least two months before the validation is finalised. The PDD should be required to document how the second round was conducted, what comments were received and how they were taken into account.

Grievance Mechanism

To guard against the possibility that negative impacts become manifest during project implementation that were not visible in the design phase, the Board should create the possibility for the local stakeholders to raise complaints.

A step-wise approach could be taken:

- As a first step, stakeholders should be able to alert the DOE responsible for verification of their grievances. To facilitate the raising of grievances, the monitoring report should have to be submitted specifically to the stakeholders that were involved in the ex ante stakeholder consultation in addition to the general public commenting period. If the DOE finds the grievance to be valid, the DOE should withhold verification until the grievance has been resolved.
- If involving the DOE does not lead to a resolution, stakeholders should be able to appeal to the host country DNA. If the DNA finds the grievance to be valid, it or other appropriate national authorities should take steps applicable under national law to resolve the grievance.
- If involving the DNA does not lead to a resolution, stakeholders should be able to appeal directly to the EB. If the EB finds the grievance to be valid, it should suspend all further issuance of CERs to the project until the grievance has been resolved.

No Undue Burden

The additional requirements suggested for stakeholder consultations are based on experiences from the CDM Gold Standard. The above-mentioned study by the Wuppertal Institute found that the additional requirements may significantly increase the sustainability of CDM projects while at the same time not placing undue burdens on project participants. The Wuppertal Institute interviewed various project developers who use the Gold Standard, all of whom indicated that they found the additional requirements to be well manageable.

This view is supported by experiences from Brazil. Brazil has established much stricter provisions for the stakeholder consultation process than most of the CDM host countries (but which are not as elaborated as the Gold Standard's). The country requires, inter

alia, the proof that the project proponent informed a defined group of stakeholders prior to validation, including the Brazilian Forum of NGOs and Social Movements for the Environment and Sustainable Development. The project documentation must be made available in Portuguese and an alternative access to all information for stakeholders without access to the internet must be provided. Even if these provisions do not always yield optimal results (see the above-mentioned study), they show that additional requirements for stakeholder consultations do not harm project economy: With 350 registered projects, Brazil is the third largest host country for CDM projects worldwide.