

CDM WATCH RESPONSE TO CALL FOR PUBLIC INPUTS ON ISSUES TO BE ADDRESSED IN THE CDM POLICY DIALOGUE

16 January 2012

CDM Watch¹ welcomes the opportunity to provide its views to call for public inputs² on issues to be addressed in the CDM policy dialogue. CDM Watch emphasises the importance of a balanced consultation process that includes all affected stakeholders, including local communities. We also highlight the importance of maintaining independence and transparency throughout the CDM policy dialogue.

CDM Watch urges Panel members to assess the broader context in which the CDM functions and to examine the role of the CDM in keeping temperature rises below 2°C. We therefore stress that it is more important than ever to reassess which CDM project types are fit to contribute to a low carbon economy. It is also important to provide incentives for developing countries to increase their own emission reductions. With new market mechanisms on the horizon, Panel members should also assess how the environmental integrity of co-existing market mechanisms can be ensured. With more than 5,000 CDM projects in the pipeline that will be operational for many years to come, CDM Watch also urges Panel members to reassess and improve stakeholder involvement in the CDM, including during the operational phase of CDM projects.

In this submission we provide our views on:

- The independence of panel members and transparency of their work
- The presentation of the final report
- Specific issues that should be addressed:
 - Additionality
 - Standardisation
 - E+/E- ruling
 - Eligibility of project types
 - Approach to HFC-23 abatement
 - Human rights
 - Co-benefits and sustainable development
 - Public participation in the CDM process
 - Grievance mechanism
 - Co-existence of market mechanisms.

¹ www.cdm-watch.org

² http://cdm.unfccc.int/public_inputs/2011/eb64_02/index.html

INDEPENDENCE OF PANEL MEMBERS AND TRANSPARENCY

The Panel has been asked to ensure it seeks and takes into account a wide and representative range of inputs and views. The Panel must produce a report by engaging representatives from governmental, intergovernmental, business, environmental, research and other communities. The Panel members are asked to engage with these representatives through submissions, workshops, hearings, visits and working groups.

CDM Watch is concerned that as yet, no local community representatives have been invited by the Panel to participate in this process. CDM Watch urges Panel members to ensure that they consult local communities. Local communities should be invited to participate at the CDM policy dialogue by way of workshops, hearings and working groups and they should be consulted when deciding on visits to CDM projects.

CDM Watch recommends that the Panel's work be conducted in a transparent manner so that the public can follow the process. CDM Watch urges all Panel members to be transparent by keeping full public records of representatives they engage with. This public record should specify representatives' names and the entity or entities they work for or represent; the interests, objectives or aims promoted and, where applicable, specify the clients or members they represent.

CDM Watch urges Panel members to declare on oath and in written form any conflicts of interest with regard to all items on the agenda of the policy dialogue. In case of a conflict of interest, panel members should refrain from participating in discussions related to the agenda item in question.

PRESENTATION OF FINAL REPORT

The Panel will make its final recommendations to the CDM Executive Board. The Board will consider them in the context of its annual report and recommendations to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP). To ensure the independence of the panel's final report, CDM Watch recommends that the original report be annexed to the annual report without modification.

ISSUES TO BE ADDRESSED

CDM Watch recommends the following issues be addressed in the CDM policy dialogue:

REVIEW OF ADDITIONALITY

Additionality is the proof that projects are only viable because they receive CDM support. The CDM's additionality rules have long been criticised as ineffective. The number of non-additional projects in the CDM has been estimated to be between 40-70%. Projects that are non-additional (would have been built anyway) undermine mitigation goals and the credibility of the CDM. It is vital that additionality rules successfully exclude free-riders. This will also make sure that prices are not artificially lowered due to the market being flooded by non-additional credits. Despite experts and policy makers acknowledging that current CDM additionality testing is insufficient, the [final CMP.7 decision text](#) from Durban does not include a specific mandate to the CDM Executive Board to prepare a new way to test additionality of very large scale projects. CDM Watch asks Panel members to investigate effective ways to revise current CDM rules on additionality to strengthen the environmental integrity of the CDM and to ensure that the proportion of non-additional credits generated by the CDM is substantially reduced.

REVIEW OF STANDARDISATION OF BASELINE AND ADDITIONALITY DETERMINATION

At the negotiations in Cancun, the CMP asked for increased standardisation of CDM methodologies that are used for CDM projects, in an effort to simplify and streamline the CDM.³ The CDM Executive Board was tasked to further develop and implement standardised baselines and additionality determination. This work will focus

³ [Decision 3/CMP.6 Further guidance relating to the clean development mechanism](#) (p.6)

on countries underrepresented in the CDM, yet the concept may have synergies with the work on NMBM in the AWG-LCA .

We are deeply concerned about how the CDM Executive Board is implementing the CMP mandate on standardised baselines. The chosen approaches are not conservative or comprehensive enough to ensure the protection of environmental integrity. CDM Watch calls for Panel members to investigate ways to strengthen the environmental integrity of the standardisation mandate.

REVIEW OF HOW GOVERNMENT POLICIES ARE TAKEN INTO ACCOUNT (E+/E- RULINGS)

For a CDM project to pass the additionality test, it has to show that it was not mandated by law. This may create a disincentive for countries to pass mitigation legislation in case it makes CDM projects ineligible. To avoid this the CDM Executive Board has passed the so called E+/E- rules⁴. These rules state that laws passed after a certain date need not be taken into account when developing a baseline scenario for a CDM project. However, the E+/E- rules are not sufficient to address this issue, especially in the face of increased sectoral standardisation. CDM Watch urges the Panel to carefully examine the issues and come up with a set of recommendations.

REVIEW OF ELIGIBILITY OF PROJECT TYPES

With the exception of excluding a few of project types (e.g. nuclear projects), the CDM has been designed to be a technology-neutral mechanism. This means that any type of technology is eligible under the CDM, including project types that use or promote the use of fossil fuels. Given the climate imperative and the mitigation gap we are facing, it makes little sense to support inherently 'climate dangerous' technologies and practices, even if those practices are deemed to be slightly more efficient than business-as-usual. We are no longer in a situation where we can afford to support small changes at the margin. One of the main challenges of the CDM is how it can contribute to a rapid shift to a low carbon economy while providing incentives for developing countries to reduce their emissions.

Therefore, CDM Watch urges Panel members to investigate amending the rules to exclude project types that lead to technological lock-in of very large amounts of emissions. For example, this is the case with new fossil fuel power plants, in particular coal power plants.

COMPREHENSIVE APPROACH TO HFC-23 ABATEMENT

Flaws in the crediting methodology for HFC-23 destruction projects allowed project participants to game the system and to artificially increase production to maximise profits. Credits from this project type have flooded carbon markets without delivering any sustainable development benefits.⁵ The CDM Executive Board suspended the methodology in 2010. At its 65th meeting in November 2011 the Board approved a revised methodology for HFC-23 destruction projects under the CDM (AM0001 version 6.0.0). Although the revised methodology is more stringent, it is still not rigorous enough. Countries hosting CDM HFC-23 projects still have an incentive to delay shutting down those plants to continue to profit from them over the course of the planned HCFC-22 phase out under the Montreal Protocol.

The new methodology also does not apply to projects until they apply for the renewal of their crediting period. An additional 187 million credits could be issued under the old flawed rules⁶. Furthermore, recent estimates

⁴ For a summary on E+/E- rules see: <http://cdmrulebook.org/85>

⁵ Of 19 HFC-23 destruction projects registered, 11 are in China, five in India, and one each in Argentina, Mexico and the Republic of Korea.

⁶ Calculated according to the information provided by IGES CDM Database, November 2011.

indicate that some 200 million tonnes of CO₂e of HFC-23 are being emitted annually, mostly from newer HCFC-22 production facilities that are not eligible for the CDM.

The HFC-23 issue is closely linked to HCFC-22. HFC-23 is an unwanted by-product of the production of HCFC-22, a refrigerant gas that is being phased-out under the Montreal Protocol due to its ozone depleting properties. The destruction of HFC-23 under UNFCCC must not provide perverse incentives to delay the phase out of HCFC-22 under Montreal. CDM Watch urges the Panel to carefully examine the HFC-23 issue. Sophisticated policy proposals are needed to find efficient, fast and politically feasible solutions to world-wide HFC-23 destruction.

HUMAN RIGHTS

In 2011 the CDM Executive Board registered two projects, despite evidence of human rights abuses in both cases. The CDM Executive Board says that it has no mandate to address the issue of human rights and that the responsibility for ensuring sustainable development lies with the host country. However, the United Nations Charter, which is applicable to the UN and includes all its bodies (and therefore also the CDM Executive Board), explicitly states that the purpose of the United Nations is *“To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms...”*. Article 55c states that *“the United Nations shall promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction”*. Also the Cancun Agreements (Decision 1/CP.16 paragraph 8) specifically state that *“Parties should in all climate change related actions fully respect human rights”*. CDM Watch urges Panel members to investigate and clarify that the UN Charter fundamentally requires the CDM Executive Board to ensure that CDM projects uphold human rights.

CO-BENEFITS AND SUSTAINABLE DEVELOPMENT

The CDM has two principal objectives – achieving cost-effective emission reductions and achieving sustainable development in the host countries. Nonetheless, some CDM projects have caused social and environmental harm. Unlike other provisions under the CDM, the assessment of whether a CDM project contributes to sustainable development is the prerogative of the host country government and is not supervised by the CDM Executive Board.

There is substantial concern over the benefits of CDM projects as laid out in Article 12 of the Kyoto Protocol (to assist Parties not included in Annex I in achieving sustainable development). Therefore guidance is needed on indicators for the assessment of sustainable development benefits. Measures should also be taken to streamline the visibility of co-benefits. CDM Watch urges Panel members to, inter alia:

- Conduct an in-depth review of sustainable development indicators of Designated National Authorities
- Assess the feasibility of international standards and guidance for Designated National Authorities that define sustainable development co-benefit indicators as well as social and environmental safeguards for CDM projects
- Assess the feasibility of a tool to assist project developers in describing sustainable development co-benefit indicators and social and environmental safeguards in the PDD
- Assess the feasibility of reporting and verification standards to monitor and verify claims made in the PDD or indicators to ensure realisation of the stated sustainability benefits of CDM projects.

PUBLIC PARTICIPATION IN THE CDM PROCESS

Although it is a key requirement in the CDM process cycle, the stakeholder consultation process is only a formality. It is hardly ever properly implemented by project developers and validated by Designated

Operational Entities (DOEs). It is common practice that civil society impacted by CDM projects is not informed about CDM projects or given an accurate account of expected impacts. Moreover, civil society is not informed about the short 30-day public commenting period that is only announced online and is not translated into the local language. Finally, there is no opportunity for civil society to raise concerns while a project is operational.

Good governance is essential in the CDM process. This also includes the participation of civil society at CDM stakeholder meetings, including at meetings of the DNA forum. As more than 5,000 projects are currently in the pipeline and will be operational for many years to come, CDM Watch urges Panel members to reassess and improve stakeholder involvement in the CDM inter alia:

- Modalities and procedures to establish means for stakeholder involvement during the implementation of a CDM project activity
- Modalities and procedures to improve stakeholder involvement at local and global levels incorporating, inter alia, provisions for:
 - Guidelines for project developers on how to announce and conduct local stakeholder consultations
 - Guidelines for Designated Operational Entities on how to validate local stakeholder consultations
 - Improved automated notification systems for all public participation procedures that are time sensitive
- Participation of civil society representatives at all stakeholder meetings including at meetings of the DNA Forum.

GRIEVANCE MECHANISM

At the international level, the CDM has been criticised for its inability to address the concerns of affected stakeholders when required procedures have not been properly followed or when applicable sustainable development criteria are not met. It is therefore essential that project-affected peoples and communities and civil society groups have the right to appeal decisions by the CDM Executive Board and more broadly the right to seek recourse when CDM project activities cause harm to communities and the environment at any point during the project cycle.

A robust grievance mechanism will ensure that those who may be negatively impacted by CDM project activities can raise their concerns and have them addressed in a timely manner. Such grievance mechanisms are proven tools in helping institutions minimize harm to communities and ecosystems by protecting existing rights, obligations and standards. By facilitating transparency and stakeholder participation, grievance mechanisms also help ensure that CDM policies and projects are legitimate and effective, and promote sustainable development. Further, any grievance mechanism, including the appeals procedure currently under negotiation, should address and remedy situations before disputes escalate or create conflict between stakeholders and project participants. CDM Watch urges panel members to organise a workshop including representatives from all relevant stakeholders to discuss how an effective grievance mechanism can be established.

CO-EXISTENCE OF MARKET MECHANISMS

In Durban, the AWG-LCA defined a new market-based mechanism (NMBM) and decided to establish a work program to develop modalities and procedures for this mechanism. The NMBM may assist developed countries to meet part of their mitigation targets or commitments under the Convention.

We urge the Panel to examine issues related to the harmonization of CDM and the NMBM in the future, including possible areas of overlap in order to avoid double counting and ensure robust MRV.

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About CDM Watch:

CDM Watch provides an independent perspective on the CDM and wider carbon market developments. CDM Watch advocates solutions that strengthen the environmental and social integrity of emission reduction projects. Working closely with civil society organisations from all over the world, CDM Watch is based in Brussels, Belgium and is legally hosted by the German NGO Forum Environment & Development.

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