



JOINT SUBMISSION ON THE SUSTAINABILITY BENEFITS OF THE CLEAN DEVELOPMENT MECHANISM

3 July 2011

The Center for International Environmental Law (CIEL) and Earthjustice make this submission in response to the CDM Executive Board's call for public inputs on sustainability benefits, requesting proposals on how to include co-benefits and negative impacts in the documentation of CDM project activities and the role of the different actors and stakeholders in this process.¹

One of the primary objectives of the CDM is to promote sustainable development in developing countries.² However, the sustainability benefits of a CDM project depend on the host country's definition of sustainable development criteria, which often lack transparency and clarity.³ As a result, many CDM projects not only fail to deliver sustainability benefits but also negatively affect local communities and the environment.⁴ Further, the sustainability benefits of projects are inconsistent due in large part to differing national standards. International standards would ensure uniform measurement of benefits and common goals. More specifically, international standards would provide the necessary guidance to assess and mitigate the environmental, social and economic impacts of CDM projects, and help to ensure that projects do not cause human harm, including rights violations.

To respect the rights of stakeholders, the CDM should require project participants to assess the project's compliance with sustainable development criteria developed at the national and international levels. In addition, project participants should provide relevant information to the public early in the decision-making process, and ensure the full and effective participation of local and global stakeholders in the consultation processes. The CDM should also develop a process to monitor and report on the actual impacts of CDM projects, and verify compliance with the CDM rules and procedures and sustainable development criteria.

¹ CDM Executive Board, *Call for public inputs on sustainability benefits*, available at http://cdm.unfccc.int/public_inputs/2011/sustainability_benefits/index.html.

² Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 11, 1997, U.N. Doc. FCC/CP/1997/L.7/Add.1, art. 12(2) [hereinafter Kyoto Protocol].

³ 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.

⁴ See, e.g., Lambert Schneider, *Is the CDM fulfilling its environmental and sustainable development objectives? An evaluation of the CDM and options for improvement* (Berlin: Institute for Applied Ecology, 2007), available at <http://www.oeko.de/oekodoc/622/2007-162-en.pdf>; Christoph Sutter & Juan Carlos Parreño, *Does the current Clean Development Mechanism (CDM) deliver its sustainable development claim? An analysis of officially registered CDM projects*, 84 CLIMATIC CHANGE 75 (2007), available at http://cleanairinitiative.org/portal/system/files/articles-72508_resource_1.pdf; Barbara Haya, *How the CDM is subsidizing hydro developers and harming the Kyoto Protocol* (International Rivers, 2007), available at http://www.internationalrivers.org/files/Failed_Mechanism_3.pdf.

Clearly defined international standards, a monitoring, reporting and verification system, and an appeals procedure will allow for inclusion of co-benefits and negative impacts in the documentation of CDM project activities. Further, stakeholders must play an enhanced role in the CDM process, as an inclusive, participatory process is essential to the integrity and purpose of the CDM.

For these reasons, CIEL and Earthjustice make the following recommendations:

PROPOSALS TO INCLUDE CO-BENEFITS AND NEGATIVE IMPACTS IN THE DOCUMENTATION OF CDM PROJECT ACTIVITIES:

To include sustainability benefits and negative impacts in the documentation of CDM project activities, the CDM Executive Board must first develop international sustainable development criteria that are consistent with existing international legal obligations, and that would apply in addition to the national criteria, so as to be able to measure the sustainability of projects against a uniform set of standards. These criteria will then provide an effective means to assess whether CDM projects are contributing to, or detracting from, sustainable development. As discussed below, an effective monitoring and reporting system and appeals procedure will provide opportunities to document sustainability benefits and negative impacts throughout the CDM project cycle.

- 1. The Executive Board should develop sustainable development criteria to be applied throughout the CDM project cycle.*

International sustainable development criteria are essential to ensure the success of CDM projects by: reducing risks for the project participants⁵; promoting consistency across projects; preventing harm to communities and ecosystems; and ensuring participation, transparency, accountability, equity, and other rights protections. Sustainable development criteria must be consistent with existing international agreements, standards and other relevant obligations, and must help further the UNFCCC and CDM objectives of achieving sustainable development. In addition, such criteria must take into account environmental, social and economic considerations, as discussed in further detail in Appendix A.

In developing the sustainable development criteria, the CDM Executive Board should also develop an exclusion list of project types that are so contrary to sustainable development that they should not be eligible for inclusion in the CDM.

- 2. The Executive Board should develop a system for monitoring and reporting on the sustainable development criteria at relevant stages of the CDM project cycle.*

At present, there is no system in place to monitor and report on the sustainable development criteria, which makes it very difficult for host countries to hold project participants accountable once a project has been certified and the credits have been issued. The CDM Executive Board

⁵ International criteria will impose uniform requirements on all CDM projects, and therefore will provide certainty as to how projects should be designed and implemented and how they will be regulated.

should develop a system to assess compliance with the sustainable development criteria. At relevant stages, all stakeholders (including project-affected peoples and communities) must be able to review information related to the status of the project and its impact on sustainable development, provide information, and fully and effectively participate in the monitoring and review processes.

The application of the sustainable development criteria should be monitored and reported, including to all stakeholders, at the following stages of the CDM project cycle:

- *Design Stage.* Potential impacts must be identified during the design phase, prior to project approval. For example, the sustainable development criteria should be addressed in the environmental and social assessment and in the stakeholder consultation processes, which would then be included in the project design document (PDD).
 - *Validation Stage.* In determining whether the project is eligible to be registered under the CDM, the DOE should consider the information provided in the PDD to ensure that the project will comply with the relevant criteria.
 - *Monitoring Stage.* Project participants should provide information regarding the application of the criteria in their monitoring reports.
 - *Verification Stage.* The DOE should consider the project participant's monitoring report and other information provided by stakeholders to assess whether the project complies with the relevant criteria.
 - *Project Renewal.* There must be full consideration of the sustainability benefits and negative impacts of a CDM project as part of the renewal process.
3. ***The Executive Board should recommend to the SBI that any appeals procedure must consider and address communications from indigenous peoples and local communities that are negatively impacted by CDM projects, as well as from individuals or organizations with information relating to a project's potential harm to the environment.***

At present, the CDM does not provide a grievance process for stakeholders that are negatively impacted by CDM projects. As such, the appeals procedure that is currently under negotiation in the SBI must: allow appeals of all Executive Board decisions (not just rejections); and give the right to appeal to indigenous peoples and local communities directly affected by CDM projects and their civil society representatives, as well as individuals or organizations with information concerning potential threats to the environment.

The scope of appeal must allow review of all Executive Board decisions, including both project approvals and project rejections. If the scope is limited to rejected decisions as proposed by some Parties, then project-affected peoples and communities, or those with information concerning potential threats to the environment, would have no means to raise concerns regarding project approvals.

Further, the definition of "stakeholders directly involved" must include those who are directly affected by CDM projects, as well as those with information concerning potential threats to the

environment. The Marrakesh Accords define “stakeholders” as the “public, or any individuals, groups or communities affected, or likely to be affected, by the proposed CDM project activities.”⁶ At a minimum, project-affected peoples and local communities (*e.g.*, those involved in the local stakeholder consultation process) and their civil society representatives, as well as those with information concerning potential threats to the environment, must have the right to appeal Executive Board decisions, which will also serve to document the negative impacts of a CDM project.

The appeals body must have the authority to provide recourse by suspending or canceling a project and/or withholding issuance of CERs in the event it determines that a CDM project activity has failed to comply with the sustainable development criteria and/or other relevant obligations.

Alternatively, if the appeals procedure under negotiation is limited to the review of Executive Board decisions and does not allow consideration of projects in the implementation phase, then the Executive Board must develop another grievance process that would consider and address concerns of project-affected peoples and communities at all stages of the CDM project cycle.

PROPOSALS TO IMPROVE THE ROLE OF THE DIFFERENT ACTORS AND STAKEHOLDERS IN THIS PROCESS:

Considering that CDM projects may significantly affect the lives and livelihoods of local populations and cause severe environmental harm, it is essential to engage key actors and stakeholders in decision-making processes. Full and effective participation of these stakeholders – particularly affected peoples and communities, as well as individuals or organizations with information concerning potential environmental threats – is essential to the successful development and implementation of the CDM and to achieving sustainable development.

1. The Executive Board should enhance stakeholder consultation processes.

Current stakeholder consultation requirements are not sufficiently defined, regulated, or documented to give effect to the CDM’s purpose of contributing to sustainable development.⁷ These requirements must be further developed to address the lack of information and access local populations often have to the CDM process, along with the lack of familiarity and comfort – *e.g.*, due to fear of retaliation – that local populations may have with formal opportunities to provide feedback. The Executive Board should thus enhance stakeholder consultation processes, both at the local and global levels.

⁶ Report of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol on its first session, Decision 3/CMP.1, Annex, ¶ A(1)(e), FCCC/KP/CMP/2005/8/Add.1 (March 30, 2006), *available at* <http://unfccc.int/resource/docs/2005/cmp1/eng/08a01.pdf#page=6> [hereinafter Decision 3/CMP.1].

⁷ Sterk at 18.

A. Local stakeholder consultation processes

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

CDM rules require that the project participant invite local stakeholders to submit comments, summarize comments received, and then submit a report to the DOE on how the comments were taken into account.⁸ These rules generally lack specificity and are deficient particularly with respect to access to documents, the commenting process, and availability of a grievance mechanism. As such, the rules should be amended as follows:

i. Consultation with local stakeholders and access to documents

All communications with local stakeholders should be in the local language(s) and distributed by appropriate and effective means to eliminate any significant logistical and communication barriers. The level of consultation should be proportional to the level of project impact that is likely to result from a particular CDM project.

Project documents, such as the PDD, EIA and other supporting documentation, including the project's projected scope, lifetime, adverse impacts, and management plans, should be translated into the local language(s) and made available online. Hard copies of these documents, including translated versions, should be made available to local stakeholders in affected communities by the most appropriate and accessible means, *e.g.*, in community centers, churches, libraries, and schools. Notification to the public should be prompt and accessible such that it reaches all stakeholders.

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

ii. Comment process

The comment process is currently too short to allow meaningful opportunities for stakeholders to participate in the local consultation process. The comment period for projects and for new methodologies should be increased to 60 days.

Notice and other communication regarding comment periods should be clear, detailed, and widely circulated, and provided to affected peoples and communities by appropriate and effective means (*e.g.*, radio, TV, posters near the project area). Comment period start/end dates and times, with the applicable time zone, should be posted online. Local stakeholders should be allowed to submit comments in the language(s) spoken in the proposed project area – these

⁸ Decision 3/CMP.1, ¶ 37(b).

comments should be taken into account in the same way as comments written in English or other languages.

Local stakeholders should also have opportunities to participate in a meaningful way, *e.g.*, the ability to voice concerns to decision-makers, at any point time during the CDM project cycle, not only during a formal comment period.

B. Global stakeholder consultation processes

Global stakeholders, including Parties, stakeholders and UNFCCC accredited observers, have the ability to participate in the CDM process, by submitting comments and other information to project participants and relevant decision-makers. The global stakeholder process, which centers on access to documentation and the ability to provide comments on PDDs and other supporting documents, should be revised as follows:

i. Comment process

As discussed above, the comment process is currently too short to allow meaningful opportunities for stakeholders to participate in the global consultation process. The comment period for specific projects and for new methodologies should 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.

ii. Access to information about project status

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.

2. *The Executive Board should develop guidelines for stakeholder consultation processes.*

The Executive Board should develop rules that provide clear guidance on how project participants should undertake local and global stakeholder consultation processes. These rules should address who qualifies as stakeholders, the level and means of stakeholder involvement, provision of information, and documentation and analysis of feedback.

With respect to who qualifies as a stakeholder, the CDM rules and procedures provide a clear definition. (As mentioned above, stakeholders are defined as the “public, including individuals, groups or communities affected, or likely to be affected, by the proposed clean development mechanism project activity.”⁹) The proposed stakeholder consultation rules should use this definition, and should also address the number and types of stakeholders that need to be consulted.

⁹ Decision 3/CMP.1, Annex, ¶ A(1)(e).

Regarding involvement of stakeholders, the rules should provide guidance as to 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. If a significant part of the population is illiterate, then the information must be provided orally, *e.g.*, through in-person meetings and radio.

With respect to access and provision of information, the rules should require the project participant to prepare a project description and related information using non-technical terms and in the local language(s), so that the local populations can understand the project impacts. Project participants should also translate the PDD, EIA and other supporting documentation into the local language(s). All supporting validation documents should be made public and available via media that is accessible to all stakeholders prior to the consultation.

With respect to documentation and analysis of feedback, rules should require recordkeeping of stakeholder meetings and documentation of feedback, and should provide guidance on how DOEs can assess the validity of stakeholder consultations. The list of invitees and participants at key stages in the process should also be made public.

3. The Executive Board should enable DNAs to initiate a review of the project if national laws or sustainable development criteria are violated during project implementation.

Because there is no process for a DNA to retract approval once a project is registered, CDM projects that subsequently violate national laws or sustainable development criteria could continue to generate CERs. This significantly undermines the integrity of CDM and its objective to promote sustainable development. Thus, in cases where projects are non-compliant with national laws or sustainable development criteria, there must be process for the DNA to initiate a review of the project during project implementation.

4. The Executive Board should recommend to the SBI that any appeals procedure should guarantee the right to appeal for all stakeholders.

As discussed above, the appeals procedure currently under negotiation and any other grievance process under the CDM must consider and address communications from all stakeholders who are negatively impacted by CDM projects, and provide recourse in the event that the criteria and other relevant obligations are not being met.

APPENDIX A: SUSTAINABLE DEVELOPMENT CRITERIA

International sustainable development criteria should address, but not be limited to, the following:

- *Environmental and social impacts.* Project participants should assess and minimize the potential environmental and social impacts of a proposed project taking into account the natural environment (air, water, land and plant and animal species); human health and safety; social impacts (involuntary resettlement, indigenous peoples, and cultural resources); and transboundary and global environmental impacts.
- *Natural habitats.* Projects should not result in significant conversion or degradation of critical natural habitats, including those that are legally protected, officially proposed for protection, identified by authoritative sources for their high conservation value, or recognized as protected by traditional local communities.
- *Cultural resources.* Projects should not result in the alteration, damage, or removal of any critical cultural resources.
- *Involuntary resettlement.* Projects should not result in direct or indirect removal or displacement of indigenous peoples and local communities from their lands or territories.
- *Indigenous peoples and local communities.* Projects should respect the rights of indigenous peoples and members of local communities by taking into account relevant international obligations, including the UN Declaration on the Rights of Indigenous Peoples.
- *Environmental health and safety.* Development of general and industry-specific terms guidelines on environmental health and safety is necessary and should apply to all CDM projects. These guidelines should contain the performance levels and measures that are considered to be achievable in new facilities using existing technology at reasonable costs.
- *Participatory decision-making.* Projects should ensure access to information, full and effective participation, and effective measures to provide affected stakeholders with recourse when CDM rules and standards and other relevant obligations have not been properly met.
- *International obligations.* Projects should comply with existing international obligations, including human rights, labor, and environmental standards.