

CDM EXECUTIVE BOARD CALL FOR PUBLIC INPUTS ON SUSTAINABILITY BENEFITS

3 July 2011

CDM Watch welcomes the opportunity to respond to the CDM Executive Board's call for public inputs on sustainability benefits¹. Our response describes how co-benefits and negative impacts can be included in the documentation of CDM project activities to maximise a project's sustainability benefits while minimising its potential risks and harmful consequences. We also explain how stakeholder participation can be improved to achieve greater civic participation, transparency and fairness.

The CDM has a dual mandate to deliver climate mitigation and sustainability benefits. However, numerous studies² and anecdotal evidence have shown that most CDM projects not only fail to deliver sustainability benefits but in a large number of cases, projects have caused significant harm to the local population³.

The reasons for the current failure of the CDM to deliver on its dual mandate are numerous. One reason is that host countries define their own sustainability criteria. Developing countries rejected earlier attempts to establish an international sustainability assessment process. Their argument was that this would violate their national sovereignty. It is in the interests of the host country to secure as many CDM projects as possible because of the investment they bring. This means that host countries have little incentive to require strong sustainability criteria that could dampen investment. The sustainability criteria therefore usually lack specificity, transparency and stringency. Also, the assessment process that is performed by the host country DNAs is usually perfunctory.

Even in the few countries that have well developed sustainability requirements (such as Brazil), the requirements are undermined by the lack of follow up or verification of the sustainability criteria. Most significantly, sustainability benefits have no financial value in the current system, as only GHG benefits result in monetary compensation (through the generation of credits). This results in the majority of CERs coming from projects with arguably little or no sustainable benefits (such as industrial gases and large hydro).

It is unacceptable that a mechanism that was created by the international community to create sustainable development is creating negative consequences for local populations and the environment. In fact, the damages caused by CDM projects are often direct violations of the obligations countries have undertaken in other international treaties such as the UN's human rights treaties, such as the International Covenant on Economic, Social and Cultural Rights. The UN's human rights regime requires states to respect, protect and fulfill their inhabitants' human rights, such as the right to health, food, water and housing. States are not permitted to take

¹ http://cdm.unfccc.int/public_inputs/2011/sustainability_benefits/index.html

² Schneider, L. (2007), "Is the CDM fulfilling its environmental and sustainable development objectives? An evaluation of the CDM and options for improvement" <http://www.oeko.de/oekodoc/622/2007-162-en.pdf>; Sutter, C., Parreño, J. C. (2007).

"Does the current Clean Development Mechanism (CDM) deliver its sustainable development claim? An analysis of officially registered CDM projects." http://cleanairinitiative.org/portal/system/files/articles-72508_resource_1.pdf

³ Haya, B. (2007) "Failed Mechanisms: Hundreds of Hydros Expose Serious Flaws in the CDM" <http://www.internationalrivers.org/en/node/2326>.

(or be complicit in) any action that violates human rights, such as forced evictions or the degradation of local environments that people rely on for their livelihoods. States also have an obligation to prevent private actors (such as CDM project participants) from committing human rights violations. It is also stipulated that people affected by political decisions have to be adequately consulted in advance.

The international community therefore has a responsibility to ensure that the mechanisms it creates are consistent with achieving the protection of human rights. The Conference of the Parties recognised this obligation in Decision 1/CP.16, which stipulates that “Parties should, in all climate change related actions, fully respect human rights”. It is now the responsibility of the CDM Executive Board (EB) to put this into practice for the CDM.

CDM Watch makes the following recommendations to the Executive Board, which are outlined in more detail in the following pages:

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

1. Implement detailed mandatory safeguards and criteria on environmental and social impacts
2. Introduce sustainable development monitoring plans to assess sustainable development benefits
3. Suspend or exclude projects from the CDM if they fail to comply with do-no-harm safeguards
4. Exclude project types that do not uphold UNFCCC goals or that undermine other existing international treaties.

PROPOSALS TO STRENGTHEN AND IMPROVE THE ROLE OF STAKEHOLDERS IN THE PROCESS

1. Provide clear rules and guidelines on how to conduct local stakeholder consultations
2. Provide clear guidelines to DOEs on how to assess stakeholder consultation
3. Increasing access to information for the global stakeholder consultation process
4. Establish a process to enable DNAs to initiate a review of a project if national laws are violated
5. Establish a grievance mechanism for affected stakeholders

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

A study by the Wuppertal Institute⁴ shows that most host countries have only a general list of guidelines for CDM projects, rather than specific and binding sustainability criteria. It is unclear how sustainability criteria are weighted by DNAs in the approval process. Furthermore, DOEs do not have a mandate to validate compliance with host country criteria. As a result, in the PDD the sustainability benefits of CDM projects are discussed only in a very superficial and generic way. We recommend the following reforms:

1. IMPLEMENT DETAILED MANDATORY SAFEGUARDS AND CRITERIA ON ENVIRONMENTAL AND SOCIAL IMPACTS

The Executive Board should develop a matrix of project-type specific sustainability requirements. These requirements should be made part of each methodology and give clear guidance on how sustainability benefits and risks are to be assessed, validated, monitored and verified.

These project type specific sustainability matrixes should include an assessment of potentially negative effects and should require that project proponents explicitly state how these negative effects will be addressed. For example, projects that lead to a loss of livelihood (e.g. for waste pickers on landfills) should be required to clearly address how vulnerable or affected populations will be compensated or offered alternatives.

A number of recognised and well-respected sustainability guidelines and criteria exist that could be used. We do not endorse any of these sustainability standards in particular, but think that they provide enough of a starting point to develop strong and clear criteria for the CDM. These include *inter alia*:

- Gold Standard Sustainability Matrix⁵
- Climate Community and Biodiversity Standards⁶
- Social Carbon Guidelines⁷
- Wuppertal Institute Do-no-harm indicators and criteria for assessment of positive criteria⁸
- The World Commission on Dams (WCD)⁹ criteria to prevent negative impacts of large hydro projects on local communities, ecosystems and sustainable development. This set of criteria could be used to assess and monitor both large and small scale hydro projects
- Sustainability criteria for biofuels developed by several institutions (such as the EU renewable energy directive¹⁰).

2. INTRODUCE SUSTAINABLE DEVELOPMENT MONITORING PLANS TO ASSESS SUSTAINABLE DEVELOPMENT BENEFITS AND RISKS

There are no provisions in place to monitor or verify sustainability criteria. This absence of follow-up means projects are not held accountable, rendering the already weak sustainability criteria of host countries ineffective. It is imperative to introduce a detailed ex ante assessment of potential impacts and to continuously monitor whether the claims made in the PDDs are correct.

⁴ Sterk, W. et al. (2009), "Further development of the Project-Based Mechanisms in a Post 2012 regime", Federal Ministry for the Environment, Nature Conservation and Nuclear Safety p.235

http://www.wupperinst.org/uploads/tx_wiprojekt/CDM_Post_2012_Study.pdf

⁵ <http://www.cdmgoldstandard.org/Current-GS-Rules.102.0.html>

⁶ <http://www.climate-standards.org/standards/thestandards.html>

⁷ <http://www.socialcarbon.org/>

⁸ See footnote 4

⁹ <http://www.dams.org/>

¹⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0016:0062:en:PDF>

Project proponents should be required to submit a sustainable development monitoring plan which spells out how the project will comply with safeguard criteria and the project type-specific standards. These indicators should subsequently be monitored and regularly verified by the DOEs. Clear guidelines would also need to be developed for DOEs on how the verification of sustainability criteria should be carried out.

3. SUSPEND OR EXCLUDE PROJECTS FROM THE CDM IF THEY FAIL TO COMPLY WITH DO-NO-HARM SAFEGUARDS

If a project activity is found to violate fundamental do-no harm principles defined in the safeguard matrix, it must be suspended. If the negative impacts are irreversible or not addressed the project must be permanently excluded from the CDM and project participants must be held responsible for damages caused by the project activity.

4. EXCLUDE PROJECT TYPES THAT DO NOT UPHOLD UNFCCC GOALS OR THAT UNDERMINE OTHER EXISTING INTERNATIONAL TREATIES.

Some project types currently eligible under the CDM clearly harm climate protection goals, such as the construction of new super-critical coal power plants¹¹. Other activities pose a significant risk to the success of other environmental treaties, for example, issuing carbon credits for the destruction of HFC-23 undermines the goals of the Montreal Protocol.

Project types that pose a significant risk to climate and sustainability goals must be excluded from the CDM. A procedure should be put in place that enables the Meth Panel to recommend the rejection of methodologies on these grounds and enables the Executive Board to exclude project types that clearly fail to fulfill the UNFCCC mandate or create perverse incentives that undermine other international treaties.

PROPOSALS TO STRENGTHEN AND IMPROVE THE ROLE OF STAKEHOLDERS IN THE PROCESS

Sustainability criteria and safeguards can only be implemented successfully if they are supported by strong stakeholder participation rules and requirements. We recommend the following reforms:

1. PROVIDE CLEAR RULES AND GUIDELINES ON HOW TO CONDUCT LOCAL STAKEHOLDER CONSULTATIONS

Current CDM stakeholder consultation requirements are insufficient because they are ill-defined, poorly regulated and badly documented. Ensuring meaningful stakeholder involvement is inherently difficult, because local populations may not be sufficiently informed, may not be culturally used to giving critical feedback or may fear recrimination.

CDM projects can and have the potential to 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 it should be designed. Again, it is the responsibility of the international community to ensure that the mechanisms it creates ensure the safeguarding of the rights of those that are affected by them. The Executive Board should establish clear international requirements for how to conduct local stakeholder consultations.

¹¹ See for example: Hansen, J., Mki. Sato, P. Kharecha, D. Beerling, R. Berner, V. Masson-Delmotte, M. Pagani, M. Raymo, D.L. Royer, and J.C. Zachos (2008). "Target Atmospheric CO₂: Where Should Humanity Aim?". *Open Atmos. Sci. J.* **2** (1): 217–231. http://www.columbia.edu/~jeh1/2008/TargetCO2_20080407.pdf.

PREPARATION

The stakeholder consultation should be required to be conducted at a point in time when the proponents are still genuinely open to making changes to the project, ie. during the design phase of 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 to the following stakeholders, at the least:

- 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 include a non-technical summary of the project activity in the local language(s) as well as information on the safeguards and/or sustainable development indicators used to assess the project activity. The vast majority of stakeholders in CDM host countries do not speak English which makes it hard or impossible to research a CDM project sufficiently. **Therefore we think it is reasonable to ask project proponents to translate both the PDD and the EIA into languages spoken by stakeholders.** This would not add substantial cost to the project, however it would enable stakeholders to provide well prepared and researched responses.

Many project area residents do not have readily available internet access. Posting the PDD online is important, however is not sufficient to enable stakeholder participation in areas that do not have internet access. **Hard copies of translated versions of the PDD should also be made available in to communities in the project area (e.g. at community centers, 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 a requirement that copies of the invitation letters have to be attached to the PDD, as well as copies of other means used to invite participation, such as newspaper advertisements.

FIRST ROUND OR ROUNDS OF THE STAKEHOLDER CONSULTATION

The first round of stakeholder consultation should be conducted before the PDD is submitted for validation and 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 score the project against the safeguards and sustainable development indicators-
- How to monitor compliance with the safeguards and the achievement of benefits
- How to raise complaints during project implementation (see suggestion 4 below on establishing a grievance mechanism).

To maximise the impartiality of the process, the DOE selected to validate the project should be required to attend the first meeting(s).

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 of the meeting(s) taking place. 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 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(s) 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.

2. PROVIDE CLEAR GUIDELINES TO DOEs ON HOW TO ASSESS STAKEHOLDER CONSULTATION

The Executive Board should develop rules that clearly prescribe how local stakeholder consultation can be considered adequate, including:

- **Who the stakeholders are:** *inter alia*, establish rules on the number and types of stakeholders that need to be consulted
- **How stakeholders need to be contacted and involved:** *inter alia*, require at least two rounds of stakeholder consultations, including at least one physical meeting. Include specific requirements as to how and when the two consultation rounds should be announced and organised. If a significant part of the population is illiterate the information must be provided orally – for example at physical meetings and on the radio. DOEs should be required to be present at the physical meeting(s).
- **What information needs to be provided:** *inter alia*, the project needs to be described in non-technical terms in the local language(s) so that a lay audience can understand the ramifications of the project. Project proponents should also be required to translate the PDD and the EIA into the local language(s). All supporting validation documents should be made public.
- **How feedback is to be documented:** establish rules on how stakeholder meetings and feedback need to be recorded. Lists of participants that were invited and who actually participated, need to be made public.
- **How feedback is to be analyzed:** establish rules on how DOEs can assess the validity of the stakeholder consultations.

3. INCREASING ACCESS TO INFORMATION FOR THE GLOBAL STAKEHOLDER CONSULTATION PROCESS

SET UP EMAIL NOTIFICATION SYSTEMS FOR REGISTRATION, ISSUANCE AND METHODOLOGY PROCESSES AS WELL AS FOR ALL PUBLIC PARTICIPATION PROCEDURES THAT ARE TIME SENSITIVE

Citizens, even those keenly interested in a particular proposed CDM project, often have difficulties finding information about public participation opportunities on the UNFCCC website. We welcome initiatives such as the possibility to subscribe to RSS feeds. However, this improvement is not enough to strengthen stakeholder participation. We recommend that the secretariat establishes an email notification system which provides specific information about registration, issuance and methodology processes, and all public participation procedures that are time sensitive, including:

- Requests for registration
- Requests for renewal of crediting period
- Start of the public commenting period of projects
- Start of the public commenting period for new methodologies.

IMPROVE THE USER-FRIENDLINESS OF THE UNFCCC CDM WEBSITE INCLUDING THE TRANSLATION INTO ALL OFFICIAL UN WORKING LANGUAGES

CDM Watch welcomes the Secretariat's efforts to improve the user-friendliness of UNFCCC's webpage. Its recent update has enhanced accessibility and facilitated the inclusion of additional information. However there are still improvements to make to enhance the accessibility of information on the UNFCCC website. Many obstacles remain, for example some crucial information is not made public at all or is not readily accessible.

CDM Watch suggests that increasing the amount of information available in all of the official UN working languages would make a substantial improvement. We realise that it is unrealistic to translate the website into all CDM host country languages. However, we believe that the sections on the CDM site that deals directly with public participation process should be available in all official UN working languages.

CLEARLY COMMUNICATE THE END DATE AND TIME OF THE COMMENTING PERIOD

It is not clear to many stakeholders when the period ends for submitting comments during the global stakeholder consultation, resulting in comments by some stakeholders not being included. While there is a general understanding that the official closing time is 24.00 GMT there is no reference on the validation page where project applications are displayed. CDM Watch have also seen several projects close a few hours before the official closing time. We ask the secretariat to display the actual deadline and time zone on the validation page and to adhere strictly to the deadline time, ensuring that it does not close before the official time.

ENSURE THAT ALL SUPPORTING DOCUMENTS ARE UPLOADED PRIOR TO THE START OF THE PUBLIC COMMENTING PERIOD

Meaningful public comment on PDDs is hampered because much of the supporting documentation, such as the IRR analysis and the environmental impact assessments (EIA) are not made available to the public. The documents are available for the Board's review of validation, but not during the public commenting period. Without the detailed supporting documentation, public review on the crucial issues of additionality and public participation in environmental analysis is limited to the summary information provided in the PDD itself and thus rather superficial. The supporting documentation should be required to be available along with the PDD at the start of the public comment period.

ALLOW SUBMISSIONS OF COMMENTS IN THE LANGUAGE(S) OF THE HOST COUNTRY

The vast majority of stakeholders in CDM host countries do not speak English fluently. Our experience is that comments that were submitted in languages other than English were not accepted by the UNFCCC secretariat. Requiring that comments can only be made in English creates an undue and unfair obstacle to non-English speaking stakeholders. Stakeholder comments should be accepted in the language(s) spoken in the project area.

INCREASE THE DURATION OF THE PUBLIC COMMENTING PERIOD ON NEW PROJECTS

PDDs often describe very complex projects. Significant technical know-how is required to properly analyse a PDD. It is not reasonable to expect citizens and NGOs to be able to digest and understand PDDs and provide meaningful responses in a commenting period of 30/45 days. This is a particularly short time frame to comment on projects that are more controversial or present more significant potential environmental or community risks. We believe that the commenting period should be increased to 60 days.

INCREASE THE DURATION OF THE PUBLIC COMMENTING PERIOD ON NEW METHODOLOGIES

The current time provided for public comment on new methodologies is only 15 days. This is an inadequate time frame to allow for meaningful public participation. New methodologies are technically complex and as a result, often take several years to proceed from initiation to adoption. Fifteen days is simply not a reasonable period for public review because it is inadequate time for individuals or NGOs to get acquainted with the complexity of new methodologies.

Since new methodologies will largely influence the quality of respective projects, it is of utmost importance that civil society has the opportunity to adequately scrutinise the environmental integrity of CDM methodologies. We believe that 60 days should be the new minimum appropriate commenting period.

4. ESTABLISH A PROCESS TO ENABLE DNAs TO INITIATE A REVIEW OF A PROJECT IF NATIONAL LAWS ARE VIOLATED

At the 61th meeting, the CDM Executive Board discussed how to respond to a case in Colombia, where a registered landfill project is violating national environmental laws and the DNA has inquired what recourse it has to retract the approval of a projects that is no longer in compliance with national laws.

There is currently no process in place that would allow a DNA to retract its approval. This may lead to cases where projects can still generate CERs despite the fact that they are in non-compliance with national or international laws. This undermines the integrity of the CDM. Thus, in cases where projects are non-compliant with national laws, there must be process for the DNA to initiate a review of the project during project implementation.

5. ESTABLISH A GRIEVANCE MECHANISM FOR AFFECTED STAKEHOLDERS

To guard against the possibility of negative impacts developing during project implementation, that were not visible or identified in the design phase, it should be possible for stakeholders to raise complaints. We suggest that a stepped approach could be taken:

- As a first step, stakeholders should be able to alert the DOE responsible for verification of their grievances. If the DOE finds the grievance to be valid, the DOE should withhold verification of the project until the grievance has been resolved.
- If involving the DOE does not lead to a resolution, stakeholders should be able to appeal directly to the Executive Board. If the Executive Board finds the grievance to be valid, it should suspend all further issuance of CERs to the project until the grievance has been resolved.

Information on the possibilities to file complaints should also be a mandatory agenda item in the stakeholder consultation.