

Response by the Wuppertal Institute to the

CDM EXECUTIVE BOARD CALL FOR PUBLIC INPUTS ON SUSTAINABILITY BENEFITS

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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 sustainability benefits and provide our views on how co-benefits and negative impacts can be included in the documentation of CDM project activities and how the role of the different actors and stakeholders in this process could be improved.

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.

A study by the Wuppertal Institute¹ has found that the sustainable development criteria of many host countries lack transparency and clarity. The criteria are usually qualitative guidelines that are rather vague and leave much leeway for interpretation. Project participants can easily avoid giving concrete and verifiable details and stay at the level of very general statements. Without clear guidance how to evaluate sustainable development aspects, the process gets highly subjective and leaves too much room for interpretation – for both applicants and evaluators.

A further problem is that although Designated Operational Entities (DOEs) review the environmental assessment and the documentation of stakeholder consultations, they have no mandate to validate compliance with a host country's Designated National Authority (DNA) criteria. This leads to claims of sustainable development benefits that are never evaluated.

Finally, 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

¹ 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_wiprojekt/CDM_Post_2012_Study.pdf

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.²

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.

We therefore recommend to develop additional rules to enhance the CDM's sustainable development benefits and safeguard the human rights of the affected populations. These rules should include

- Criteria and indicators for assessing the environmental, social and economic impacts of a project
- Detailed requirements for stakeholder involvement
- Monitoring of the newly introduced elements
- An independent assessment process

² 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.

Environmental, Social and Economic Criteria

The above-mentioned study by the Wuppertal Institute found that the voluntary CDM Gold Standard is a robust instrument that allows a solid evaluation of a project's impacts 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 Gold Standard requirements to be well manageable.

On this basis the Wuppertal Institute recommends a combination of "do no harm" safeguards and a matrix approach with indicators that are measurable, reportable and verifiable, as is used by the Gold Standard. For illustrative purposes, the Annex lists the main safeguards and criteria used by the Gold Standard with some slight modifications based on the results of the study conducted by the Wuppertal Institute.

Further safeguards should be developed for specific project types. For example, relighting project activities that imply the substitution of incandescent light bulbs by compact fluorescent lamps (CFLs) should provide a detailed description of how the CFLs will be collected and disposed of or recycled at the end of their product life-cycle, with a particular attention to the mercury contained in the CFLs. Similar provisions should be foreseen for all projects with life-cycle impacts that go beyond the project boundaries.

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. Again, 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 safeguards and 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 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 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. 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.

Monitoring

Improving the CDM's contribution to sustainable development should include establishing mechanisms to make sure that compliance with safeguards and claimed sustainable development benefits are actually achieved. These aspects should therefore be monitored in addition to the emission reductions.

The project participants should be required to submit a sustainable development monitoring plan as part of the PDD. The monitoring plan should cover compliance with the safeguard criteria and sustainable development indicators. This should include project type-specific standards where applicable, such as the life-cycle standards discussed above. The plan should include the following elements:

- A description of how the criteria and indicators would likely change in the baseline scenario
- A description of how the criteria and indicators are likely to change with implementation of the project
- A description of how the criteria and indicators will be monitored
- Where the project foresees to take mitigation measures to address negative impacts that were identified during the sustainability assessment, the monitoring plan would also need to describe how the implementation of the mitigation measures will be monitored.

In addition to the general public commenting period that applies to monitoring reports under the CDM, the sustainable development monitoring report should also be

specifically submitted to the stakeholders that were involved in the ex ante stakeholder consultation.

Independent Assessment

Compliance with the above requirements should be validated and verified by the DOEs. Such an approach would not necessarily mean to replace the role of the DNAs. Rather, it could serve to improve the process, while the final determination whether a project contributes to sustainable development could still be left to the DNA. This would mirror the approach usually taken with regard to the climate benefits of a project, where many DNAs also require submission of a validation report as a pre-condition for issuing a letter of approval.

Annex: Suggested Environmental, Social and Economic Criteria

For illustrative purposes, the following tables list the main safeguards and criteria used by the CDM Gold Standard with some slight modifications based on the results of the study conducted by the Wuppertal Institute.

The project participants should be required to submit a description in how far each criterion is relevant to the CDM activity, an assessment of the gravity of the risks, and appropriate mitigation measures in case of grave negative impacts. The relevant parameters may vary from project to project. Project proponents should transparently justify their choice of which parameters they think are relevant for their specific project.

In particular with regard to the do no harm safeguards, these would for the most part not even be new requirements. Most countries have ratified the human rights treaties which the suggested safeguards are derived from. As noted above, through these treaties, countries are legally bound to respect, protect and fulfil human rights. The issue is therefore not one of establishing additional criteria but rather one of achieving coherence between different policy fields and ensuring their implementation.

Table 1: Suggested Do No Harm Safeguards

The project respects internationally agreed human rights including dignity, cultural property and uniqueness of indigenous people. The project is not complicit in any human rights abuses.
The project respects property rights and other national legislation.
The project does not involve and is not complicit in involuntary resettlement.
The project does not involve and is not complicit in the alteration, damage or removal of any critical cultural heritage.
The project respects the employees' freedom of association and their right to collective bargaining and is not complicit in restrictions of these freedoms and rights.
The project does not involve and is not complicit in any form of forced or compulsory labour.
The project does not employ and is not complicit in any form of child labour.
The project does not involve and is not complicit in any form of discrimination based on gender, race, religion, sexual orientation or any other basis.
The project provides workers with a safe and healthy work environment and is not complicit in exposing workers to unsafe or unhealthy work environments.
The project does not involve and is not complicit in corruption.
The project does not lead to a net loss of employment.

Source: Slightly adapted from Gold Standard Toolkit 2.1

Table 2: Suggested Criteria and Indicators to Assess Environmental Impacts

Criteria	Possible Indicators
Environment	
Air quality	Concentrations/emissions of NO _x , SO _x , lead, CO, ozone, POPs, mercury, CFCs, halons, NH ₃ etc.
Water quality and quantity	Levels of biological oxygen demand, biochemical oxygen demand, thermal pollution, mercury, NO _x , SO _x , POPs, lead, coliforms, etc.
Soil condition	Levels of lead, NO _x , SO _x mercury, cadmium, etc.
Other pollutants	Level and frequency of noise etc.
Biodiversity	Number of affected or threatened plants, animals and natural habitats, occurrence of non-native species etc.

Source: Slightly adapted from Gold Standard Toolkit 2.1

Table 3: Suggested Criteria and Indicators to Assess Social Impacts

Criteria	Possible Indicators
Social	
Quality of employment	Wage level, required skill level of jobs created or lost etc.
Livelihood of the poor	Quantified access of people to health services, sanitation, waste management, etc.
Access to affordable clean energy services	Change in traditional fuel consumption, electricity consumption per person, etc.
Human and institutional capacity	Quantified access to education and skills, changes in income and asset distributions by region, ethnicity, religion and socio-economic groups
Gender equality	Changes in female enrolment in schools, female literacy rate, female earned income, number of jobs and positions for women, women in government or other decision-making bodies
Social well-being of communities	Costs and benefits are equally shared among community groups and members

Source: Slightly adapted from Gold Standard Toolkit 2.1

Table 4: Suggested Criteria and Indicators to Assess Economic Impacts

Criteria	Possible Indicators
Economy and Technology	
Quantitative employment and income generation	Number of jobs created, level of income from the project, etc.
Balance of payments and investment	Amount of domestic and foreign direct investment
Technology transfer and self-reliance	Use of previously not available technology, number and nature of training activities and number of participants
Adaptation to climate change	Use of new harvesting techniques, new business approaches, protection of facilities and/or infrastructure against heavy weather events

Source: Slightly adapted from Gold Standard Toolkit 2.1