



**COMMENT BY GAIA – GLOBAL ALLIANCE FOR INCINERATOR
ALTERNATIVES**

**CDM EXECUTIVE BOARD CALL FOR PUBLIC INPUTS ON
SUSTAINABILITY BENEFITS**



INTRODUCTION

GAIA welcomes the opportunity to respond to the CDM Executive Board's call for public inputs on sustainability benefits. Our comment addresses how co-benefits and negative impacts can be assessed and included in the documentation of CDM project activities to assure compliance with sustainability criteria and a 'do no harm principle' to avoid potential risks and harmful consequences. Likewise, this comment also addresses how the role of stakeholder can be improved throughout the process to assure rigorous accountability and fairness.

The Clean Development Mechanism (CDM) was established not only to reduce emissions as cost-effectively as possible, but also to promote sustainable development and technology transfer to developing countries. Unfortunately, considerable evidence indicates that a large number of projects approved by the CDM are not achieving either goal; indeed, in many cases they are directly undermining both. In the case of the waste sector, GAIA has commented and submitted technical input to the CDM about some of the main conflicts involved.¹

There are several reasons why the CDM has failed to deliver on its mandate regarding the imperative to reduce GHG emissions and promote sustainable development. One of them lies on the fact that host countries have the burden to establish their own criteria of sustainability criteria. In the case of many developing countries, investment interests may contradict sustainability criteria, especially in cases where national environmental legislation has not had a chance to develop. This is notorious in the case of solid municipal waste management, a sector that is still underdeveloped in numerous developing countries. In those cases, national criteria for sustainability tends to lack specificity, transparency and rigor. Furthermore, a general institutional weakness of DNAs shows a tendency to ritualise assessment processes and approve CDM projects by default. For example, in the case of the Timarpur-Okhla waste-to-energy plant,² the DNA assessment got away with one sentence: "the project contributes to sustainable development in India", which is obviously insufficient.³

Even in the few countries that have developed sustainability requirements, including municipal solid waste management legislation (such as Brazil), there are no strong requirements to follow-up or verify the sustainability criteria. In fact, only GHG reductions are compulsorily verified through specific consultants, and other sustainability criteria are completely disregarded.

The right to public participation is laid down in Principle 10 of the 1992 Rio Declaration on Environment and Development, which stipulates, "... 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." However, the local stakeholder consultation is normally a very poor process; it does not have quality standards or requirements, it is not regulated and therefore it cannot be considered valid in most of the CDM projects. In its turn, it is not clear how the Global

¹ For further information: www-no-burn.org/cdm

² The TIMARPUR-OKHLA Waste Management Company Pvt Ltd's (TOWMCL) intergrated waste to energy project in Delhi. <http://cdm.unfccc.int/Projects/DB/SGS-UKL1185291186.52/view>

³ Ministry of Environment and Forests Approval documentation: <http://tinyurl.com/6egy38y>



Stakeholder Consultation process is followed up after a comment is submitted through the CDM web interface, which shows also lack of transparency and accountability.

Given the political imperative to tackle climate change, both stabilising GHG levels in the atmosphere and supporting communities' resilience to climate catastrophes, it is crucial that the CDM stops being an obstacle to those aims. The CDM was created by the international community to serve as a support tool for those aims, but in practice it has become an instrument to expand an unacceptable number of polluting industries projects which directly violate other policy obligations that 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 fulfil their inhabitants' human rights, such as the right to health, food, water and housing. States are not permitted to take (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.

GAIA therefore recommends developing additional rules to prevent CDM projects to further damage the sustainability of the environment and communities.

These rules should include:

1. The implementation of detailed mandatory **safeguards and criteria on environmental and social impacts** that comply with other existing UN Treaties, including monitoring plans and put-on-hold and exclusion mechanisms for projects failing to meet those standards.
2. The implementation of detailed requirements for **stakeholder involvement and access to decision-making processes** in order to strengthen both the local and global stakeholder consultation process and the introduction of a **complaint procedure for affected stakeholders** that could address negative impacts after implementation of the project.

1. ENVIRONMENTAL AND SOCIAL SAFEGUARDS

Most host countries have only a general list of guidelines for CDM projects, rather than specific and binding sustainability criteria. This has been reported by a recent study by the Wuppertal Institute,⁴ which shows that it is unclear how sustainability criteria are considered by DNAs in the approval process. Furthermore, DOEs do not have a mandate to validate compliance with host country criteria. As a result, the sustainability benefits of CDM projects

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



are discussed only in a very superficial and generic way in the PDDs. There are a number of ways in which this problematic situation could be addressed.

1.1 The CDM Executive Board should develop specific sustainability requirements.

In the first place, it is necessary to develop and implement environmental and social safeguards that are explicit, transparent and accountable. In practical terms, the CDM EB should develop a project-based matrix that would reflect the main requirements to comply with sustainability criteria. These should be included in each of the CDM methodologies and its compliance should be made conditional to the approval of the project as any other project requirement.

These project type specific sustainability matrixes set of safeguards would also include monitoring mechanisms to assess, verify and monitor its application. Project proponents should be required to present an assessment of potential risks and damages and explicitly state how these will be addressed.

Special attention should be given to assess how the project will impact vulnerable communities, local communities or those in risk to be displaced. For example, in the case of municipal solid waste projects, it should be made mandatory to assess the presence of wastepickers making its living out of recycling. This assessment should include the account of their recycling rates and thus their actual GHG emissions reduction. The case of Delhi is worth mentioning, as the sheer emissions savings that the informal sector brings to the city is estimated to be of 962'133 T CO₂-eq, which is over 3 times more than other waste projects slated to receive carbon credits for in the city.⁵ Precisely the Timapur-Okhla waste-to-energy plant in Delhi has not considered wastepickers' contribution to the city and its implementation will displace thousands of them. The systematic ignorance of the informal recycling sector in the baseline scenario of the PDDs is impacting this community severely, as GAIA has expressed to the CDM EB in several occasions.

There is a number of respected set of guidelines and indicators that serve as an example of the kind of matrix that would be desirable, as for example the Wuppertal Institute Do-no-harm indicators and criteria for assessment of positive criteria.⁶

1.2 CDM projects must not undermine other existing international Treaties and its compliance must be mandatory as part of the sustainability criteria.

At the moment, there is no assurance that CDM projects comply with other existing UN Treaties that are already in place and contribute significantly to crucial aspects of global environmental protection. In the waste sector, it is crucial that CDM projects comply with the Stockholm Convention on Persistent Organic Pollutants and do not undermine its goals. Since CDM - backed incinerator projects are continuously violating this convention, it is estimated that global pollution levels are dramatically increasing.⁷

⁵ Cooling agents. An analysis of Greenhouse Gas Mitigation by the Informal Recycling Sector in India. Chintan, 2009

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⁷ World Bank (2005). Waste Management in China: Issues and Recommendations. East Asia Infrastructure Department, Urban Development Working Paper No. 9. May 2005.



CDM projects that do not comply with sustainability criteria approved by the UNFCCC and other UN Treaties should not be approved. In practical terms, a procedure should be put in place to enable the CDM Meth Panel and the CDM Executive Board to recommend the rejection of methodologies on these grounds and enables the Executive Board to exclude project types that clearly fail to fulfil the UNFCCC mandate or create perverse incentives that undermine other international treaties.

1.3 The CDM Executive Board should introduce sustainability monitoring risks and benefits.

The application of any sustainability criteria must be ensured through the implementation of appropriate monitoring mechanisms that will follow-up and verify the sustainability criteria. In the absence of proper mechanisms to follow-up, the compliance with environmental and social safeguards will not be rendered accountable, neither it can be considered valid. The monitoring mechanisms have to be considered in the PDDs, where it has to be made clear how they will be developed and maintained throughout the lifetime of the project.

In the implementation of these monitoring mechanisms, it is necessary to develop guidelines for the DOE performance, which would play an important role in the verification of claims made in the PDD.

1.4 The CDM Executive Board should ensure the exclusion or cancellation of projects that fail to meet the sustainability safeguards.

CDM projects that cannot ensure its compliance with the environmental and social safeguards, or that fail at the monitoring process to present with adequate reports of compliance, must be excluded. The CDM EB must assure that any violation of the ‘do no harm’ principle will be considered and result in the cancellation of the project. 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.

2. REINFORCE THE ACTIVE ROLE OF STAKEHOLDERS AND ENSURE ACCESS TO THE DECISION-MAKING PROCESS.

All provisions to ensure compliance with sustainability goals above mentioned will need to be ensured through mechanisms that enhance the active participation of stakeholders and ensure their access to decision-making processes. At the moment, the local stakeholder consultation does not follow any guidelines and most of them cannot be considered valid. As GAIA has commented it in several occasions through the Global Stakeholder consultation process,⁸ local consultations with stakeholders are poorly announced, are only accessible by a very limited and non-representative number of local inhabitants and its analysis and conclusions do not follow any rigorous consultation methodology. To address this fundamental flaw, several amendments can be introduced.

2.1 Reinforce the local stakeholder consultation process

Current CDM stakeholder consultation requirements are insufficient because they are ill-defined, poorly regulated and badly documented. Ensuring meaningful stakeholder

⁸ See comments submitted to the CDM at www-no-burn-org/cdm



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.

The Executive Board should establish clear international requirements on how to conduct local stakeholder consultations at different stages:

- **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, and 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, so it is reasonable to ask project proponents to translate both the PDD and the EIA into languages spoken by stakeholders.

Many project area residents do not have readily available Internet access. Posting the PDD online is important, but it 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 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 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.

- **Rounds of the Stakeholder Consultation:** rounds of consultation should be conducted before the PDD is submitted for validation and include at least one physical meeting. This round should be follow-up with further consultations to make sure the comments have been considered. 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.

- **Define clear parameters for stakeholder consultation.** Important items would include: who are the stakeholders, how are they to be contacted, what information needs to be provided, how feedback is going to be documented, how feedback is to be analysed.

2.2 Reinforce the global stakeholder consultation process

GAIA has submitted comments to a number of projects under validation during the global stakeholder process and we have experienced a number of difficulties that surely are affecting negatively the participation of other stakeholders and interested parties. Our experience is the basis to recommend the following improvements:



- Set up email notification systems for registration, issuance and methodology processes as well as for all public participation procedures that are time sensitive. The e-mail notification would provide specific information about registration, issuance and methodology processes, and all public participation procedures that are time sensitive.
- Improve the user-friendliness of the UNFCCC CDM website including the translation into all official UN working languages.
- Clearly communicate the end date and time of the commenting period.
- Ensure that all supporting documents are uploaded prior to the start of the public commenting period.
- Allow submissions of comments in the language(s) of the host country
- Increase the duration of the public commenting period to 60 days.
- Increase the duration of the public commenting period on new methodologies to 60 days.

2.3. Establish a complaint procedure for negatively impacted stakeholders

It is possible that negative impacts arise from the implementation and development of the project, so it must be possible for stakeholders to notify their negative experiences and complaints. A number of mechanisms should be introduced in this regard:

- First, stakeholders should be able to alert the DOE responsible for verification of their complaints. 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 to the host country DNA. If the DNA finds the grievance to be valid, it (or other appropriate national authorities) should take steps 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 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.