

CDM Executive Board Call for Inputs on the Validation Process

15 August 2011

International Rivers welcomes the opportunity to respond to the CDM Executive Board's important call for public inputs on the validation process.¹ Our response identifies the current issues and suggests how improvements to the implementation of the existing modalities could be made. We make concrete recommendations on how the validation process can be strengthened by providing guidelines and rules to improve stakeholder participation and the transparency and quality of CDM projects. Our response is based on the input of CDM Watch and includes examples and evidence from hydropower projects within the CDM pipeline.

Summary of recommendations:

1. Provide clear rules and guidelines on how to conduct local stakeholder consultations
2. Establish clear guidelines to DOEs on how to assess stakeholder consultations
3. Increase access to information for the global stakeholder consultation
4. Enhance transparency of the validation process after the end of public commenting period
5. Establish a grievance mechanism for affected stakeholders

Due to poorly defined and regulated stakeholder consultation guidelines in the CDM and generally weak or nonexistent public consultation guidelines in national laws, International Rivers has observed that hydropower project developers applying for CDM credits often fail to sufficiently inform and consult with local stakeholder communities. Project Design Documents are frequently poorly written. In certain cases, evidence of human rights abuses have even been presented and then ignored, as project developers and validators push their projects through the CDM pipeline.

Below are examples where local stakeholder consultations were poorly conducted or not at all. (Further examples can be found here: http://www.internationalrivers.org/cdm_comments/date.) All have been registered despite these concerns and the submission of stakeholder comments during the public comment period.

- **Jorethang Loop Dam, India, 96 MW**

Public consultation with individuals directly affected by proposed CDM projects is a requirement for CDM registration, but these consultations are often not taken seriously. An Indian NGO visited villages directly affected by the Jorethang Loop hydropower project right after its public hearing and found many villagers were unaware of the hearing and of basic aspects of the project. The community and NGOs requested the project's environmental impact assessment and other project documents, but were ignored by the developer. The developer claimed that hydropower is not common practice in India, although it accounts for a quarter of total power generation - higher than the world average. *Approved by the CDM, February 2008. Validator: Det Norske Veritas.*

¹ http://cdm.unfccc.int/public_inputs/2011/eb62_02/index.html

- **Barro Blanco Hydroelectric Project, Panama, 29 MW**
 In late 2010, groups from across Panama and Europe were successful in prompting an investigation by the European Investment Bank (EIB) into human rights abuses at the Barro Blanco Dam, which forced the dam developer, Generating of Istmo SA (GENISA), to pull out their EIB loan request and instead turn to the CDM. The validation report and site visit by the DOE AENOR only considered the opinion of the non-indigenous population. They also ignored letters from civil society detailing the human rights abuses by the company and the lack of adequate consultation with indigenous groups. In this regard, the validation process for Barro Blanco violates the international principle of free, prior and informed consent contained in ILO 169 and the UN Declaration on the Rights of Indigenous Peoples. While AENOR acknowledges the receipt of comments on this issue from the group Alianza para la Conservacion y el Desarrollo (ACD) during the public comment period, it failed to take into account a second submission of comments by ACD and the Asociacion Ambientalista de Chiriqui (or Environmentalist Association of Chiriqui; ASAMCHI). *Approved by the CDM January 2011. Validator: AENOR*
- **Xiaoxi Hydropower Project, China, 135 MW**
 Xiaoxi Hydropower Project is a 135 MW dam on the Zishui River in China's southeastern Hunan province. It began construction in 2004. German power utility RWE, one of the biggest CO2 emitters in Europe, is currently buying CDM credits from this project. RWE commissioned certification company TÜV SÜD to write both the Project Design Document and WCD compliance reports for the Xiaoxi. A field report commissioned by International Rivers documented problems including the forced eviction of 7,500 people, a failure to restore pre-eviction incomes, arbitrary and inadequate compensation for resettlers, a lack of legal recourse for those who suffered losses, and a non-independent EIA process marred by an obvious conflict of interest. As one displaced villager describes it, "Nobody asked if we wanted to move... The government just posted a notice that said, 'Your home will be demolished.'" *Approved by the CDM December 2008. Validator: TÜV SÜD*
- **Allain Duhangan Dam, India, 192 MW**
 Local people were not informed about the implications of this project and no documents regarding the project have been given to the local people. Even the social impact assessments had not been done when the project applied for carbon credits, and most of the resettlement measures proposed were in violation of the World Bank norms. The project is thus in violation of many of the basic policies of the World Bank and IFC. *Approved by the CDM May 2007. Validator: Det Norske Veritas.*

Stakeholder concerns can only be addressed if clear rules and guidelines empower stakeholders to comment on projects and guide project participants and DOEs on how such concerns have to be elicited and addressed.

We recommend the following reforms:

1. Provide clear rules and guidelines on how to conduct local stakeholder consultations

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. Even more so international guidelines are needed because 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. It is the responsibility of the international community to ensure that the mechanisms it creates safeguards the rights of those that are affected by them.

Paragraphs 40-42 and 128-130 of the VVM² do not specify how local stakeholder consultations are to be undertaken. The lack of such specificity creates a significant risk that CDM projects that undergo only cursory or superficial local stakeholder input are nevertheless validated by the DOEs. Indeed, in at least two documented instances, parts of the information related to local stakeholder consultations were copied and pasted from one PDD to another.³

In order to insure that public participation is not a mere formality, we suggest that the Executive Board should establish clear requirements for how to conduct local stakeholder consultations, including:

Guidance on how local stakeholders are to be informed regarding the stakeholder consultation

The project proponents should actively invite participation through appropriate and effective means such as radio, newspapers and informative flyers in the local language distributed and put up at local meeting points in the project area (e.g. at community centers, churches, libraries, schools, post offices). This would eliminate any significant logistical and communication barriers. In addition, invitation letters should be sent to the following stakeholders, at the very 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.

Prior to the consultation, a non-technical summary of the project activity in the local language(s) as well as a non-technical description of the project's EIA analysis including the project's projected scope, lifetime, adverse impacts and management plans, along with all other relevant information about the project, must be published by the PP via media that is accessible to all stakeholders.

First Round of the Local Stakeholder Consultation

The guidelines contained in the current VVM do not ensure that such consultation occurs early on in the process, when the proponents are still genuinely open to making changes to the project, i.e. during the design phase of the project. The first round of stakeholder consultation should be

² VVM ver.01.2

³ [Energy efficient power generation at Dahej in Gujarat, India.](#)
[Thoothukudi Thermal Power Project, India](#)

conducted before the PDD is submitted for validation, at a stage where the project developer is still open to adapting his project design 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
- How to raise complaints during project implementation (see suggestion 5 below on establishing a grievance mechanism).

To maximize 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

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 a proposed project receives negative assessments from 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 finalized. The PDD should be required to document how the second round was conducted, what comments were received and how they were taken into account. It should also state which concrete mitigation actions are planned and how they have been agreed upon with the local stakeholders.

2. Establish clear guidelines for DOEs on how to assess stakeholder consultations

Current rules do not establish criteria against which to assess the adequacy of local stakeholder consultation.⁴ By far the majority of validation reports only summarize how stakeholder comments have been collected, repeat information from the PDD or the content of the comments,

⁴ According to VVM para 129 c) the DOE shall, by means of document review and interviews with local stakeholders as appropriate, determine whether: (c) The project participants have taken due account of any comments received [during the local stakeholder consultation period] and have described this process in the PDD. VVM para 130.a) further states that the validation report shall describe the steps taken to assess the adequacy of the local stakeholder consultation.

but do not present how stakeholder comments were addressed by the project participants. Yet the DOE is required to present this information in the validation report.⁵

In order to avoid the validation of CDM projects that undergo only cursory or superficial local stakeholder input, the Executive Board should develop rules that clearly prescribe how local stakeholder consultation can be considered adequate, including:

- **Who the stakeholders⁶ are:** *inter alia*, establish rules on the minimum 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 organized. Local realities must be taken into account so as to effectively reach groups or communities affected or likely to be affected by the project activity. 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). Furthermore, the information must be provided in the language spoken and understood by the affected population.
- **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 clear guidelines 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 clear guidelines on how DOEs can assess the validity of the stakeholder consultations and if comments have been taken into account.

3. Increase access to information for the global stakeholder consultation process

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.

⁵ VVM vers. 01.2, para 41

⁶ Stakeholders mean the public, including individuals, groups or communities affected, or likely to be affected both upstream and downstream of a project, by the proposed clean development mechanism project activity (Decision 3/CMP.1 para 1e).

Set up email notification systems for registration, issuance and methodology processes as well as for all public participation procedures that are time sensitive

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 and PoAs
- 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

International Rivers 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 frequently crucial information, such as details about how the stakeholder consultation was conducted, is not made public at all or is not readily accessible.

Increasing the amount of information available in all of the official UN working languages would make a substantial improvement. We realize 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 deal 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. 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. Temporarily dysfunctional hyperlinks to project documentation has also been often observed. The secretariat must ensure that all documents are available during the entire public commenting period and that server capacity is sufficient to allow for a large number of visitors to access project documentation during the global stakeholder commenting period.

Allow submissions of comments through locally feasible means and 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 thus be accepted in the language(s) spoken in the project area.

Furthermore instructions for submitting comments are currently unclear and the upload tool lacks user-friendliness. Numerous national and international civil society organizations have reported troubles when trying to upload their comments to the UNFCCC Website. Conscious of the 30 day commenting period, organizations then often decide to submit their comments by email in order to assure their reception before the end of the deadline. In many cases these comments end up not being accepted as valid. We therefore suggest developing a clear step-by-step guide for submitting comments and explicitly accept the submission of comments by email. Ensuring the timely submission of comments from important stakeholders that have access to local information concerning the validation requirements of project activities would further increase the integrity of the validation process.

Increase the duration of the public commenting period on new projects to at least 60 days for all projects

PDDs often describe very complex projects. Given the highly technical nature of CDM projects and the low literacy rates in some project regions 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. The fact that major afforestation/reforestation (A/R) projects have a 45-day timeline is an implicit acknowledgment that complex and high-impact projects require longer time periods for sufficient review. Given that other major non-A/R projects can have equally complex impacts, we believe that the commenting period should be extended to 60 days for all project types.

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 determine the quality of many projects, it is of utmost importance that civil society has the opportunity to adequately scrutinize the environmental integrity of CDM methodologies. We believe that 60 days should be the new minimum appropriate commenting period.

4. Enhance transparency of the validation process after the end of the public comment period

Once the commenting period is over, no feedback or information is currently provided to stakeholders who have submitted their concerns. Further guidance to the DOEs and an automated feedback system would increase transparency and improve the integrity of the validation system.

Establish automated system for uploading comments in real time to the UNFCCC website

In compliance with decision 3/CMP.1- Para 40c⁷ the Secretariat needs to ensure that comments submitted during the global stakeholder consultation period be made public immediately upon their submission. The currently practiced 3-week delay is unacceptable and leaves room for omission of important comments. We suggest establishing an automated system for uploading comments in real time to the UNFCCC website.

Develop guidelines to specify how DOEs must respond to stakeholder concerns

According to Paragraph 42 VVM, if comments submitted during the public commenting period indicate that the project activity does not comply with CDM requirements, the DOE shall request further clarification from the entity that submitted the comment. However, currently the DOE is **not** required to enter into a dialogue with Parties, stakeholders or NGOs. As with the local stakeholder standards, absent such specificity, the DOE runs the risk of approving potentially harmful CDM projects. We recommend that guidelines be developed which specify how DOEs must respond to stakeholder concerns.

Establish automated notification system about the status of a project's validation to stakeholders who have submitted concerns

It is difficult for concerned stakeholders to monitor the status of a project. Years can pass before a project moves to the next phase in the project cycle. There is currently no RSS feed for projects which have had their validation terminated or rejected and finding these projects on the UNFCCC website is difficult and time-consuming. Notice on the status of a project's validation should be given to stakeholders who have submitted their concerns through an automated system. This would enable them to review whether their concerns have been taken into account and thus improve the accountability and integrity of the validation process.

⁷ [...] comments from stakeholders will be received by the DOE within 30 days upon publication of the PDD and that these will be made publicly available.

5. Establish a Grievance Mechanism for Affected Stakeholders

CDM projects should at no moment in time cause any concerns. However, under the current rules there are only limited opportunities for input during the validation of the project and no grievance and accountability mechanisms are in place. Because of the inherent risk that project implementers may not meet the requirements set forth above, a recourse mechanism needs to be established for stakeholders who feel they have not been adequately consulted or if agreed actions have not been carried out as promised by the PP. This would enhance the accountability and, ultimately, the integrity of the validation standards and processes.

Stakeholder concerns can only be addressed if clear rules and guidelines empower them to comment on projects and to guide project participants and DOEs on how such concerns have to be elicited and addressed. We believe that these recommends will go a long way in improving the transparency of the stakeholder consultation process and the quality of CDM projects.

Thank you for taking these recommendations into consideration.

Please do not hesitate to contact us for further information:

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