



Climate Action Network International

## Views on suggested changes to the Modalities and Procedures (M&Ps) for the Clean Development Mechanism (CDM)

April 30, 2014

*Climate Action Network International (CAN-I) is the world's largest network of civil society organizations working together to promote government action to address the climate crisis, with more than 900 members in over 100 countries.*

[www.climatenetwork.org](http://www.climatenetwork.org)

Climate Action Network welcomes the opportunity to submit our views on suggested changes to the modalities and procedures (M&Ps) for the Clean Development Mechanism (CDM). Where applicable, our recommendations refer directly to the proposed possible changes in the technical paper FCCC/TP/2014/1 published on 19 March 2014 as per the Decision 4/CMP.9 on the review of the M&Ps for the CDM.

Civil Society Participation in the CDM process (TP Section F2) .....	1
Effective Grievance Mechanism (TP Section F2) .....	4
Role of DNAs to improve the CDM's contribution to sustainable development (TP Section F) .....	6
Requirements for the demonstration of additionality (TP Section E) .....	9
Length of the crediting period (TP Section D); .....	10

### Civil Society Participation in the CDM process (TP Section F2)

Although stakeholder consultation is a key requirement in the CDM registration process, project developers and Designated Operational Entities (DOEs) lack clear criteria or guidance on how to conduct and validate stakeholder consultations. In many cases, peoples and communities that are directly affected are not adequately informed about CDM project activities or programme of activities (PoA) and their potential on-the-ground impacts.

Current CDM stakeholder consultation requirements are insufficient as they are poorly defined, regulated and documented. There are dozens of instances where projects were registered despite insufficient stakeholder participation, strong local opposition and clear evidence that the projects cause harm to the local populations and/or ecosystem.

As a step to address this shortcoming, Parties to the Kyoto Protocol adopted in Warsaw decision 3/CMP.9 para 20 which requests *“the CDM Executive Board, with the support of the secretariat, to collaborate with the Designated National Authorities Forum on collecting and making available, on the UNFCCC clean development mechanism website, information on practices conducted for local stakeholder consultations, and to provide technical assistance to designated national authorities, upon their request, for the development of guidelines for local stakeholder consultation in their countries.”*

Despite this decision by the CMP, and earlier decisions to *“develop and implement modalities and procedures with a view to enhancing direct communication with stakeholders and project proponents”* (Decision 2/CMP.5), the CDM Board has not taken sufficient action to address the shortcomings of the current stakeholder consultation rules. For example, at the 77<sup>th</sup> CDM Executive Board meeting, the Board decided that the Secretariat shall “inform” DNAs about decision 3/CMP.9 but did not take action to collaborate with DNAs as required per the CMP decision.

This lack of action risks that DNAs may not act upon this important CMP decision. The revised CDM M&Ps should therefore recognize the need for improved guidance and incorporate best practice guidelines for local stakeholder consultation developed by the CDM Board as part of this process in the revised M&Ps.

In addition to shortcomings in the notice and comment processes, there is no means for stakeholders to raise concerns once a project is registered even if adverse impacts occur during project implementation. The current rules do not provide a formal opportunity to provide comments after the global stakeholder consultation. This means that it is currently impossible to submit comments about a specific project, e.g. if comments submitted during the local or global stakeholder consultation process have not been validated adequately or if concerns appear after the global stakeholder consultation. This is not only relevant for projects during the validation stage but also for projects during their implementation. A formal communications channel for project specific matters would allow reviewing and addressing concerns efficiently and by doing so avoiding escalation of issues. Allowing comments at an early stage in the process, when they can still be taken into account for decisions related to registration or issuance of credits could help avoid potential future appeals. We welcome the proposed change of the technical report section F 2(d) (i), that the CDM modalities and procedures shall introduce a provision allowing the Board and the secretariat to receive information on complaints regarding issues that are not related to the emission reductions or removal enhancements of a registered CDM project activity or PoA. Such a communications channel for project specific comments should be modeled after the already successfully implemented communications channel for policy matters. In addition, a global stakeholder consultation process at the verification stage after the registration period as proposed in the technical paper section F 2(d) (ii) would be a positive additional improvement as it would allow comments from stakeholder to follow up on earlier comments made through the local and global stakeholder consultations, it would also provide a crucial opportunity for DNAs to receive additional information about the implementation of CDM project or PoA. However, both improvements are necessary because a global stakeholder consultation during the verification period is only a punctual opportunity which does not replace a more flexible communications channel for case specific matters.

It is also worth mentioning that under the current public participation rules for the CDM, no formal channels between local stakeholders and the Designated National Authorities (DNAs) exist. Prior to registration, comments from the local stakeholder consultation are received by the project proponent, and comments through the global stakeholder consultation are received by the Designated Operational Entity (DOE). Given that it is up to the DNA to maintain the approval of CDM projects and PoAs, and the confirmation that they contribute

to sustainable development, comments received through the project specific communications channel should be forwarded to the relevant DNA.

The SD Tool enables changes to be made to the sustainable development co-benefit (SDC) report throughout project implementation including after registration. Stakeholder comments are a key source of information to know about potential negative impacts of CDM projects as reflected in the draft voluntary tool for highlighting the co-benefits of CDM projects at EB68, Annex 22. To strengthen civil society participation in the CDM process local stakeholders should have a formal communication channel to DNAs. DNAs may request project proponents to update the SDC report at any time during project implementation, should the SD benefits or negative impacts have changed since registration of the project.

#### **RECOMMENDATIONS:**

**To strengthen civil society participation in the CDM process the revised CDM M&P should:**

- **Strengthen and clarify the requirements for stakeholder involvement including the incorporation of a best practiced guideline for local stakeholder consultation;**
- **Establish a local stakeholder communications channel for case specific matters, both before and after the registration of CDM project activities and PoAs; (as per TP section F 2(d) (i))**
- **Introduce a global stakeholder consultation at the verification stage of the CDM project activities and PoAs, (as per TP section F 2(d) (ii))**

***The operationalization of the revised CDM M&P on stakeholder participation should include the following:***

#### **Local Stakeholder participation:**

- ***Provide guidance on how local stakeholders are to be informed regarding the stakeholder consultation, including a requirement that invitation letters be sent at least to 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.***
- ***Require that prior to the consultation a non-technical summary of the project activity be published 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;***
- ***Require several rounds of local stakeholder consultation to ensure consultation early in the process and that comments provided were received and how they were taken into account;***
- ***Establish clear guidelines for DOEs on how to validate local stakeholder consultations, including who the stakeholders are, how stakeholders need to be contacted and involved, what information needs to be provided, how feedback is to be documented and analysed.***

#### **Global Stakeholder participation:**

- ***Set up email notification systems for registration, issuance and methodology processes as well as for 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 and ensure that all supporting documents are uploaded prior to the start of the public commenting period;***
- ***Allow submissions of comments through locally feasible means and in the language(s) of the host country;***
- ***Increase the duration of the public commenting period on new projects to at least 60 days for all projects;***
- ***Increase the duration of the public commenting period on new methodologies;***
- ***Establish automated system for uploading comments in real time to the UNFCCC website;***
- ***Develop guidelines that 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 comments.***

## **Effective Grievance Mechanism (TP Section F2)**

There is currently no means for civil society to raise concerns once a project is registered. As more than 7.000 CDM project activities and PoAs are currently registered and will be operational for many years to come it is necessary to introduce a robust public participation process including additional case specific commenting opportunities after the project registration. In addition a grievance mechanism to ensure that adverse impacts that occur during project implementation are addressed is needed. A grievance mechanism is an essential opportunity to address community-based grievances before disputes escalate or create conflict between stakeholders and project participants.

Under the Subsidiary Body for Implementation (SBI) Parties have been considering an appeals procedure for decisions of the CDM Executive Board since its 34th session in June 2011. An appeals procedure in the CDM project approval process presents a crucial opportunity for the Executive Board (EB) to secure human rights and to promote enhanced accountability, legitimacy and public trust in and acceptance of the CDM as a valid tool for reaching its goals under the Kyoto Protocol – namely, mitigating global climate change while promoting sustainable development. However, for the past three years, this development has been stalled by disagreement over the scope of the potential appeal and the legal standing, e.g. whether an appeal could be launched against both positive as well as negative decisions of the CDM Executive Board, and whether only project proponents or also affected stakeholders shall be eligible to launch an appeal.

While developments on the CDM appeals have been slow, it is important to note that the current scope of the appeals procedure would only assess compliance with the CDM modalities and procedures. However, even if adopted, this narrow scope does not address the social and environmental impacts of CDM project activities and PoAs that occur in compliance with CDM procedural rules but in violation of national or other international norms.

However, the CDM should consider the best practices of existing non-judicial grievance mechanisms, which have been used to effectively address disputes between individuals, companies, or groups in society. Examples include mechanisms at the company or project level to which impacted individuals and groups (e.g., workers, communities etc.) can bring complaints; mechanisms linked to industry and multi-stakeholder initiatives (e.g.,

the Fair Labor Association, Ethical Trading Initiative, Social Accountability International, International Council of Toy Industries, Voluntary Principles on Security and Human Rights, Global Framework Agreements); national mechanisms based in government (e.g., National Contact Points of OECD Member States, consumer complaints bodies); national mechanisms that are state-supported but independent of government (e.g., ombudsman offices, labor dispute resolution offices, national human rights institutions); and regional and international mechanisms (e.g., ILO-based mechanisms, accountability mechanisms of financial institutions like the Compliance Advisor/Ombudsman of the International Finance Cooperation[CAO] of the World Bank Group).

Considering that complaints are often best addressed at the level where the harm occurs, a national level grievance mechanism may be the most efficient and effective use of existing resources, with appropriate oversight by an international mechanism. The technical paper TP section F 2(d) (i) *“Complaints channelled through the Board”* provides good ground for building the foundations for a grievance mechanism.

It is essential that complaints about specific CDM project activities and PoAs after the registration of project activities that are submitted via an official direct communications channel to the CDM Executive Board be forwarded to the DNA. However, in the absence of an established grievance mechanism, it is challenging for the DNA to assess what kind of investigation and assessment is adequate.

The REDD+ framework in the UNFCCC provides a useful set of established international safeguards to be applied when financing and undertaking REDD+ activities, including the requirement for REDD+ activities to be consistent with existing international conventions and agreements, including effective means to access justice as a necessary component of implementing safeguards.

Together, the UN-REDD Programme and the Forest Carbon Partnership Facility (FCPF) have prepared guidance on Grievance Resolution Mechanisms for Countries participating in REDD+ readiness projects. The guidance identifies key characteristics of effective grievance mechanisms, based on the international principles for non-judicial grievance mechanisms that were developed by John Ruggie, UN Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises:

- Effectiveness, in providing timely and meaningful recourse;
- Legitimacy, which requires independence from political influence;
- Accessibility, particularly for complainants;
- Predictability, by way of clear and known procedures and time-lines and monitoring of implementation;
- Equitability, by ensuring aggrieved parties can engage in a process on fair and equitable terms;
- Rights compatibility, by ensuring that outcomes and remedies accord with internationally recognized human rights.
- Transparency of process and outcome;
- Participatory, at all relevant stages of the decision-making process; and
- Continuous learning, by enabling continuous learning by drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.

However, there are several questions with regards to the interaction between national and international level grievance mechanisms. This is especially relevant in the context of the CDM because different international grievance mechanisms will be implicated depending on which Parties are involved in the project activities.

It is also important to consider that some complaints may not be able to be resolved at the national level due to power imbalances, ineffective judicial systems, and political instability – for this reason, an international grievance mechanism is critical to provide a means of recourse to those who are affected by CDM projects. Further, international law provides that a number of human rights are non-derogable. Therefore, any outcome of a national grievance process that waives a person's human rights is inconsistent with a nation's obligations under international law, and should not preclude a person from seeking further redress, whether it be a parallel complaint at the national level or through an appropriate international mechanism or tribunal.

In addition, to ensure the efficacy of national level grievance processes, the national grievance mechanisms should be required to report a certain minimum set of information to international bodies. For example, performance measures could include information about the type of grievances assessed, the number of grievances received and processed, the length of the process, all the channels that the grievance process involved, details about the process outcome, records of enforcement monitoring, and the number of complaints received regarding the grievance process itself.

The established UNFCCC safeguards for REDD+, the UN-REDD/FCPF joint guidance and the UN-REDD's Social and Environmental Principles and Criteria can provide useful experience and resources to establish an effective national grievance mechanism for CDM project activities and PoAs.

## **RECOMMENDATIONS:**

**Learning from these established frameworks and programmes, the revised M&Ps should therefore:**

- **Introduce international safeguards similar as provided by the REDD+ framework to be applied when financing and undertaking CDM project activities and PoAs;**
- **Introduce a procedure for the CDM Executive Board to forward concerns about social and environmental impacts of specific CDM project activities to the relevant DNAs for investigation and assessment;**
- **Introduce best practice guidance for national effective grievance mechanisms;**
- **Introduce reporting requirements for national level grievance processes to international bodies;**
- **Ensure that the appeals procedure under SBI is swiftly implemented and provides for broad legal standing;**

## **Role of DNAs to improve the CDM's contribution to sustainable development (TP Section F)**

The CDM has two main objectives – achieving cost-effective emission reductions and achieving sustainable development in the host countries. It is up to the Designated National Authority (DNA) in each host country to define the sustainable development criteria and to approve that a given CDM project activity or PoA contributes to sustainable development. This stipulates an important role for the DNAs in the sustainable development contribution of CDM projects and provides a crucial opportunity to build on this role to improve the current contribution to sustainable development. We therefore provide our views on the possible changes as outlined in the technical paper here below:

- **Clarifying the roles of designated national authorities (TP Section F 2(a))**

We agree that a lack of clarity on the role of the DNA has posed challenges to CDM process. A new section in the CDM M&Ps should set out the key roles of DNAs participating in the CDM and the principles that apply.

- **Increasing transparency at the designated national authority level (TP Section F 2(b))**

Particularly, with regards to the criteria for sustainable development, there is a lack of transparency and lack of consistency as to the national requirements in this context. For example, some countries apply processes that involve members of civil society for the approval decision of CDM project activities, other countries already require CDM project proponents to implement sustainable development action plans. Also as regards the national requirements for environmental impact assessments are very different, e.g. some countries do not require environmental impact assessments for renewable energy technologies even if the large scale naturally will have environmental impacts. This lack of transparency causes difficulties to understand applicable requirements for CDM projects. The M&Ps should therefore include a requirements for DNAs to make publicly available at national and international level and maintain up-to-date information relating to the following issues:

- Process and criteria for approval/authorization of project activities and PoAs and for participation of civil society in this process;
- Criteria used by the DNA to assess the contribution of a project activity or PoA to sustainable development;
- The relevant laws, regulations and guidelines that apply to the national approval processes, including elements such as the applicable rules relating to environmental impact assessment and local stakeholder consultation;
- Reports about the sustainable development action plans of CDM projects as required by national legislation;
- The national Grievance Resolution Mechanisms available for people affected by CDM projects;
- The communication channels available between local stakeholders and the DNA;

- **Allowing DNAs to validate CDM projects (TP Section F 2(c))**

Allowing DNAs to validate would raise numerous issues that would likely compromise the environmental integrity of the CDM. The Technical Paper already lists a few of the concerns, such as increasing conflicts of interests since DNAs have the right to request a review of a CDM project activity or PoA. Validating DNAs would also have to comply with the accreditation standard, which requires DOEs to ensure impartiality and sufficient technical competence to assess project activities and PoAs.

In addition, the experience with JI Track 1 has shown that if host country representatives have a lot of discretion in terms of project registration and credit issuance they tend to aim toward credit maximisation and not environmental integrity.

- **Elaborating the key principles for designated national authorities withdrawing letters of approval (TP Section F 2(f))**

To provide transparency and clarity about the procedure to withdraw letters of approval, the revised M&Ps should include key principles for the withdrawal or suspension of letters of approvals of CDM project activities and PoAs, including a high level of transparency about those principles. These principles should include the event that CDM projects do not meet sustainable development indicators at any stage during the project cycle, or violate applicable environmental, health, labor and human rights standards, laws and policies;

- **Monitoring the contribution of sustainable development benefits**

Carbon Market Watch and other NGOs have highlighted the need for monitoring, reporting, and verification of compliance with CDM rules and procedures, in particular, as they relate to the contribution of CDM projects to sustainable development. Experience has shown that the lack of monitoring, reporting, and verification of claimed sustainability benefits has led to the registration of CDM projects that have no contribution to sustainable development and sometimes even negative impacts. Monitoring, reporting, and verification of the environmental, social, and economic impacts of CDM activities at the international level is essential to protect the rights and interests of project-affected peoples and communities, as well as to uphold the CDM's stated purpose of achieving sustainable development.

Moreover, certain project types in the CDM, such as coal power plants, do not support the goal of the CDM of contributing to sustainable development because they inflict a heavy toxic burden on local populations and ecosystems.

In 2012, the CDM Executive Board has adopted a voluntary reporting tool to highlight the sustainable development benefits of CDM projects. We welcome this tool as a step in the right direction. However, the absence of monitoring and verification, as well as its voluntary nature and access to only project participants and coordinating/managing entities (CMEs), limit its ability to fully serve this essential function. Furthermore, the tool does not require a sufficient level of detail to enable effective evaluation of whether a project participant or CME complied with "do no harm" safeguard principles or whether stakeholders had opportunities for meaningful engagement in the consultation process.

## **RECOMMENDATIONS:**

**To improve the CDM's contribution to sustainable development the revised CDM M&P should:**

- **Require that Designated National Authorities make their sustainable development benefit indicators publicly available at national and international levels;**
- **Define minimum global standards on sustainability and "no harm" requirements that each CDM project has to meet;**
- **Include mandatory requirements for monitoring, reporting, and verification of sustainability benefits and negative impacts during the entire project cycle;**
- **Exclude project types that support technologies or practices with high GHG emissions and that are associated with other high environmental and social costs (e.g. projects that support the extraction and use of coal)**



## Requirements for the demonstration of additionality (TP Section E)

The current rules for the demonstration of additionality, the proof that projects are only viable because they receive CDM support, have long been criticised as ineffective. A large number of current CDM projects are likely not additional – they would be implemented even without the incentives from the CDM. Carbon credits from such free-rider projects do not represent real emissions reductions and lead to an increase in global greenhouse gas emissions.

- **Technology type (TP Section E 2(b) (vii))**

The technology types eligible under the CDM should be limited. Research<sup>1</sup> recently released under the CDM Policy Dialogue confirms that large-scale power supply and methane projects are unlikely to be additional. If such projects remain eligible in the CDM, they could increase cumulative global GHG emissions by up to 3.6 Giga tonnes CO<sub>2</sub>e through 2020. Non-additional credits also undermine the economic effectiveness of the CDM by artificially increasing the supply of credits that do not represent actual emission reductions. This is especially relevant, since the CDM is projected to be significantly oversupplied until 2020. Reducing the large number of non-additional projects therefore not only strengthens the CDM's environmental integrity, it is also a vital step in ensuring the continuation of the mechanism. A transition away from large-scale power supply CDM projects and other project types with low probability of additionality would address the over-supply CDM credits, enable projects that truly depend on the CDM, and improve the overall integrity and mitigation impact of the CDM.

- **Including additionality assessment at the renewal of crediting period (TP Section E 2(b) (viii))**

Currently, only the baseline is revalidated at the time of a request for renewal of a crediting period. Additionality is not reassessed. Only reassessing the baseline is not sufficient to ensure the continued environmental integrity of a project. After 7 or 14 years, economic, political and/or technological circumstances will likely have changes considerably and may therefore render some projects no longer additional.

### RECOMMENDATIONS:

- **Eligible technology types in the CDM should be limited. Project types with low likelihood of additionality or high risks of perverse incentives should be excluded. Furthermore, project types where baselines and additionality are intrinsically difficult to determine (e.g. because of signal-to noise ratio issues) should also be excluded. Project types that should be excluded are, inter alia:**
  - **Industrial gas projects (hydrofluorocarbon-23 (HFC-23);**
  - **Nitrous oxide reduction from adipic acid production; and**
  - **Large power projects, including coal and hydro.**
- **Additionality should also be reassessed at the renewal of the crediting period (TP Section E 2(b) (viii))**

---

<sup>1</sup> Assessing the Impact of the CDM. Report Commissioned By The High-Level Panel On The CDM Policy Dialogue. July 2012. [http://www.cdmpolicydialogue.org/research/1030\\_impact.pdf](http://www.cdmpolicydialogue.org/research/1030_impact.pdf)

## Length of the crediting period (TP Section D);

The current crediting periods (10 years or three times 7 years) are in many cases not appropriate because:

- Lifetimes of many technologies are shorter than these crediting periods
- In many cases the CDM only advances an investment which would be carried out at a later stage anyhow. Such CDM projects should only receive credits for the number of years the projects implementation has been advanced.

The Technical Paper makes the argument that shortening the crediting period may reduce the overall mitigation delivered as it may lead to the termination of projects that rely on continued CER revenue. However, because offsetting is at best a zero-sum game, the discontinuation of truly additional projects would be unfortunate but it would not lead to an increase in global emissions. Furthermore, because of changes in technology, economy and policy, it is likely that circumstance will change and originally additional projects no longer are additional.

### RECOMMENDATIONS:

**The length of the crediting period should be shortened as to avoid issuance of credits from projects that can no longer be considered additional. Therefore, the length of the crediting period should be defined individually per project type in the respective methodology and take into account, inter alia, the rate of innovation and change in the relevant sectors as well as relevant market and socio-economic developments.**