

14 August 2012

RESPONSE TO CALL FOR PUBLIC INPUTS ON SUSTAINABLE DEVELOPMENT CO-BENEFITS

CDM Watch, Center for International Environmental Law (CIEL), and Earthjustice respectfully make this submission in response to the CDM Executive Board's (the Board) call for inputs on the design, substantive content and operational aspects of the draft development version of the sustainable development voluntary tool (SD tool), draft SD tool report and SD tool user manual.

In past submissions to the Board, we 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.¹ We welcome the proposed SD tool, which facilitates reporting, as a step in the right direction. However, the absence of monitoring and verification, the voluntary nature of the tool, and the fact that only project participants and coordinating/managing entities (CMEs) are able to use the tool jeopardize the legitimacy of the SD tool and limit its utility as a reporting tool. Furthermore, the SD tool does not request 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.

Highlighting the need to incorporate monitoring and verification requirements into this SD tool, CDM Watch, CIEL, and Earthjustice submit the following comments pointing out some key concerns about the proposed SD tool, manual, and report, along with areas in need of clarification:

¹ See Kyoto Protocol, art. 12.

I. ACCESS TO TOOL: All stakeholders must be able to participate in the application of the SD tool.

First and foremost, and as a threshold issue, we express our serious concern that only project participants and CMEs can participate in the application of the tool, and therefore do not provide an opportunity for input from local stakeholders or civil society (those whom the CDM's safeguard policies are intended to protect). Oftentimes, project participants and CMEs do not have full knowledge of the extent of a project's impacts (both positive and negative), and as a result, may not be able to provide a comprehensive report on those impacts. Stakeholders are often in a better position to know and describe a project's on-the-ground impacts. For the SD tool to be effective, it must allow stakeholders to engage directly in the reporting process or provide some other means of reporting for stakeholders. In addition, the tool should include a process that allows stakeholders to provide comments on the input provided by project participants or CMEs. Moreover, because the tool is voluntary, it should not limit participation to project participants and CMEs.

II. NO HARM SAFEGUARDS: The declaration should state obligations in positive terms and reflect the full scope of human rights obligations.

The SD tool asks the project participant or CME to confirm compliance with a number of "no harm" safeguards adapted from the UN Global Compact and Millennium Development Goals (MDGs). However, these safeguards do not capture the full scope of the relevant principles from the Global Compact and MDGs, and do not clearly indicate that they include potential threats. Moreover, the questions in the SD tool and the corresponding declaration in the report do not reflect all of the elements of each of the safeguards.

First, the no harm safeguard principles do not appear to reflect any of the MDGs, including Goal 7, to "ensure environmental sustainability." One of Goal 7's targets is to "[i]ntegrate the principles of sustainable development into country policies and programmes and reverse the loss of environmental resources." However, as described in the SD tool user manual, the SD tool's "environmental protection" principle only addresses risk of damage to the environment or natural habitat, and the precautionary principle. For example, neither the SD tool nor the SD tool user manual appears to incorporate MDG 7 into the no harm safeguard principles. The SD tool and manual should ask project participants and CMEs whether they have "[i]ntegrate[d] the principles of sustainable development" into their project activities and taken steps to "reverse the loss of environmental resources," where applicable.

Regarding the UN Global Compact, under Principle One ("Businesses should support and respect the protection of internationally proclaimed human rights"), the Compact website explains that "[b]usiness has the potential to impact — positively and negatively — virtually all human rights. Accordingly, business should consider their potential impact on all rights." Yet the description in the SD tool user manual for the first "do no harm" safeguard principle, human rights, focuses on indigenous and cultural rights. Indigenous and cultural rights are extremely important, but they do not implicate the full scope of international human rights

obligations. In fact, the UN Global Compact directs companies to the International Bill of Human Rights (comprised of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights) and core ILO Conventions for the content of the human rights contained within Principle One. Those treaties encompass numerous other human rights, ranging from civil and political rights (e.g., the right to life) to social and economic rights (e.g., the right to health). Thus, the human rights safeguards should reflect a broader scope, with particular attention to potential rights violations arising from impacts to the natural environment (including air, water, land, and plant and animal species); human health and safety; social impacts (such as involuntary resettlement, indigenous peoples, and cultural resources); and transboundary and global environmental impacts.

Second, many of the descriptions of the no harm safeguard principles in the SD tool and SD tool user manual do not include *threats* of violations, only violations themselves, even though human rights obligations encompass potential violations. For instance, whereas the UN Global Compact states that companies' human rights responsibilities include considering "the risk of potential negative impacts on human rights in connection with the conduct of their business," the SD tool asks only whether "[t]he activity exposes workers to unsafe or unhealthy work environments." Thus, the SD tool fails to ask whether the activity poses a potential threat of exposing workers to unsafe or unhealthy work environments. Furthermore, the descriptions of the no harm safeguards in the SD tool and manual are framed in negative terms (except for that of the precautionary approach). Stating these obligations in positive terms would more clearly articulate scope of the obligation and whether/how a project participant or CME might satisfy this obligation. For example, instead of saying, "The activity risks violating human rights including the rights of indigenous people and members of local communities," the safeguard should say, "The activity respects human rights, including the rights of indigenous peoples and members of local communities." Indeed, the SD tool frames each obligation in positive terms when it poses the initial question as to whether a project participant or CME has implemented that particular safeguard.

Finally, to the extent that the SD tool user manual describes the content of the no harm safeguard principle declaration, the tool does not address all of the elements set forth in the no harm safeguard principles. For example, the tool asks the project participant or CME whether, "the activity ensure[s] environmental protection." Directly below that question it states, "The activity employs the precautionary approach to avoid negative impacts to the environment and/or natural habitats, ecosystems, communities and vulnerable groups." It is important to note that application of the precautionary approach is one aspect of ensuring environmental protection, and that the tool does not ask the project participant or CME to confirm that it is ensuring environmental protection more broadly. If a project participant or CME notes that it has "concerns" regarding whether the activity ensures environmental protection, where the tool seeks additional input, it asks whether "[t]he activity incurs damages to the environment and or natural habitats including those which are legally protected, officially proposed for protection, identified by authoritative sources for their high conservation value or recognized as protected by traditional local communities." At minimum, this language should be

incorporated into the question asking whether the activity ensures environmental protection, rather than appearing on a separate page that a project participant or CME need not access when using the tool. Thus, the tool should summarize the full scope of the do no harm safeguards where it asks project participants or CMEs to confirm the activity's adherence to the safeguard principles.

III. STAKEHOLDER INVOLVEMENT: The stakeholder involvement declaration lacks detail and does not encourage adequate consultation.

Despite the Board's acknowledgement in the SD tool user manual that "[s]takeholder involvement at global and local level[s] is seen as an important means to enhance the credibility of reporting of SD co-benefits and ensure transparency" (citing Principle 10 of the 1992 Rio Declaration on Environment and Development), the SD tool does not ensure evaluation of the effectiveness or extent of stakeholder consultation. Additionally, the declaration on stakeholder consultation in the SD tool report is one vague sentence that does not indicate whether stakeholders were afforded opportunities for meaningful engagement.

As currently designed, the SD tool does not encourage effective evaluation of stakeholder involvement. The SD tool's "Stakeholder Engagement" section (step 4) contains six questions on this topic, all of which appear on one page. At the top of the page are six descriptions that reflect the necessary elements of effective participation. Below those descriptions are a set of questions that do not disclose whether those elements have been met. The questions should address each element of effective participation, incorporating the description of the relevant terms within the questions themselves. This approach would better ensure that the person answering the question has referred to the description of the question. For example, at the top of this page of the tool, the fourth description reads as follows: "Feedback meetings and/or communications conducted: During subsequent consultation events stakeholders provide feedback on how their comments have been taken into account. Local stakeholders are allowed to submit concerns in the language(s) spoken and have opportunities to participate meaningfully. Project participants may provide a means to stakeholders to voice concerns to decision-makers at any point." However, question 4 only asks whether "[f]eedback meeting(s) &/or communications were conducted." A project participant or CME could affirm this statement without referring to the description that explains how those meetings or communications were to be conducted.

As for the extent of stakeholder involvement in the consultation process, the SD tool does not request sufficient information to evaluate whether a project participant or CME has implemented the measures necessary to achieve effective stakeholder participation. For instance, the first question asks whether "[i]nitial meeting(s) were held & issues discussed," with check boxes next to categories of stakeholders and a small box where the project participant or CME can "describe." However, the general instruction to "describe" affords no assurance that the project or CME will provide sufficient detail to enable effective evaluation with consultation requirements. For instance, the project participant or CME is not specifically asked to describe the ways in which local communities were engaged in the consultation

process or to identify which communities, local policy makers, and representatives of local authorities participated in the process.

Indeed, the example in the sample SD tool report illustrates the above concerns, stating that “the programme of activities engaged local communities and local policy makers and representatives of local authorities through feedback meeting(s) and/or communication. Main issues have been discussed at stakeholder meetings in 5 villages.” The extent of the consultation is described merely as “feedback meeting(s) and/or communication.” Thus, a project participant or CME could affirm the declaration having sent out one communication or having held one meeting, regardless of the length of the communication or meeting or topics covered. Moreover, this response fails to provide a number of key details, for instance: (i) which issues were discussed; (ii) which stakeholders participated in the discussion; (iii) the stakeholders’ relation to the project that makes them “stakeholders”; and (iv) the relation of these 5 villages consulted to the project.

IV. CONFORMITY WITH APPLICABLE LAWS AND REGULATIONS: This information is not helpful without an assurance that the project participant or CME is aware of what the applicable laws and regulations are.

This section does not ask the project participant or CME to provide any detail indicating they know what the applicable laws and requirements are. One way to address this would be to ask the project participant or CME to list laws or requirements that are applicable to a particular CDM project and then assess whether it is in compliance with those laws.

We thank you for the opportunity to comment on the Board’s proposed voluntary SD tool, manual, and report. As described above, our primary concerns are that the tool is limited to project participants and CMEs, and that it does not request sufficient information to effectively evaluate whether a project participant or CME has complied with do no harm safeguards or whether it has created opportunities for meaningful engagement in the consultation process.

We appreciate your consideration of our inputs and support your continued efforts to develop safeguards to ensure that all CDM projects respect the rights and interests of affected peoples and communities.

Sincerely,

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