

Submission to the call for public comments on the review of the registration and issuance process

- 5 March 2010 -

DM Watch welcomes the opportunity to provide views to the CDM Executive Board on revised procedures for registration, issuance and review, as requested by the CMP in its decision -/CMP.5, paragraph 37.

Summary

The recommendations below focus on the voice of civil society within the CDM process. While there are opportunities for public participation throughout the CDM validation process (i.e. local stakeholder consultation when designing the project and global stakeholder consultation period), opportunities seize to exist once the validation report is submitted to the UNFCCC. If a designated operational entity decides to validate a project activity despite serious concerns by civil society, there are no further opportunities for public input. Hence, there is no official way to challenge a designated operational entity against wrong claims in a validation report or to raise concerns about the project that only appear after the last official opportunity for public input has taken place. Another concern of civil society relates to the fact that only Parties involved and three Executive Board members can trigger a review. But CDM Watch is concerned that it is not enough to rely on Parties (that hardly ever use this opportunity) and Executive Board members - although with the support of the secretariat - to ensure that for all registration and issuance requests that do not fulfill the CDM requirements, a review be requested. Yet, there is no official opportunity for civil society to raise concerns about a project activity at the stage of requesting registration. Civil society is not even notified about these final steps in the CDM registration process.

Against this background, the following recommendations are made:

1. **Notification about the publication of project activities that request registration** must be extended to the public. Notification must be done **via mailing lists** to which interested civil society actors can subscribe.
2. **10 UNFCCC accredited observer organisations or 100 individuals should be able to trigger a request for review.**

The establishment of a mailing list would be a step towards the request by decision -/CMP.5 para8 to the Executive Board to enhance its communications with project participants and stakeholder¹. Although this request does not directly address access to information, it however implies it. Communication can only be enhanced if a minimum access to information as a basis for the communication is provided. Moreover, the notification of registration and issuance requests to the public is essential to facilitate consideration of information from stakeholders and UNFCCC accredited observers within the review process.

In anticipation of the establishment of procedures for considering appeals as requested by decision -/CMP.5 para42, the inclusion of civil society views at the stage of registration requests would also have positive effects on the efficient and timely consideration of registrations in the overall CDM process. Allowing UNFCCC accredited observers to raise concerns about situations where a designated operational entity may not have performed its duties in accordance with the CDM requirements prior to registration of a project activity, a lengthy and costly potential appeal processes could be avoided.

For more detailed information about the recommendations, see below. At the end of the document you will also find some recommendations to the terms of reference for the Clean Development Mechanism Project Assessment Committee (CDM-PAC).

¹ *Stakeholders mean the public, including individuals, groups or communities affected, or likely to be affected, by the proposed CDM project activity or actions leading to the implementation of such an activity, UNFCCC glossary of CDM terms*

Draft procedures for requests for registration of a proposed CDM project activity (Version 01)

The draft procedures suggests that with the publication of the proposed project activity on the UNFCCC website, the request for registration will be deemed received by the Executive Board for consideration of registration (para11). The secretariat will then notify the project participant(s) (as identified in the Modalities of Communication form), the designated national authority(ies) of the Party(ies) involved, and the DOE that the proposed project activity has been published, received by the Executive Board for consideration of registration, and the last date by which members of the Executive Board or a Party involved may request a review of the proposed project activity (para12).

- Notification about the publication of project activities to request registration must be extended to the public. Notification must be done via mailing lists to which interested civil society actors can subscribe.

In order to meet the requirements of international governance and public participation, information about CDM project activities must be communicated to every civil society actor interested. Often, local communities have proven interests to know about the procedural development of CDM project activities. But in the vast majority of the cases they do not have the possibility to check the UNFCCC/CDM website on a daily basis. Often, affected local communities are lacking the expertise to be able to locate where on the website this information is made public. Therefore, a mailing list should be established where interested civil society actors will be informed about any project that is requesting registration. The mailing list should also have an advance subscribe option so that subscribers can choose about which registration requests they would like to be informed, i.e. host country, methodology etc.

The notification of registration requests to the public is in particular essential to facilitate consideration of information from stakeholders and UNFCCC accredited observers within the review process (see below).

This modality of communication with civil society is also supported by the UNFCCC²: Parties commit to “[p]romote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations.” In carrying out this commitment, parties must “promote and facilitate ... [p]ublic access to information on climate change and its effects [and] [p]ublic participation in addressing climate change and its effects and developing adequate responses.”³

Moreover, the establishment of a mailing list would be a step toward the request by decision 2/CMP.5 to the Executive Board to enhance its communications with project participants and stakeholder⁴. Although this request does not directly address access to information it however implies it. Communication can only be enhanced if a minimum access of information as a basis for the communication is provided.

Draft procedures for review for requests for registration (Version 01)

Annexes III and IV to decision 4/CMP.1 containing the existing procedures for review were revoked at CMP/5 followed by a request to the Executive Board to recommend revised procedures for review. These revised procedures should ensure that the following four items will be addressed:

² UNFCCC art. 4(1)(i) (emphasis added).

³ *Id.* art. 6(a) (emphasis added).

⁴ *Stakeholders mean the public, including individuals, groups or communities affected, or likely to be affected, by the proposed CDM project activity or actions leading to the implementation of such an activity*, UNFCCC glossary of CDM terms

- a) Provide designated operational entities and project participants with adequate opportunity to address issues raised in reviews;
- b) Include an independent technical assessment of the analysis conducted by the secretariat;
- c) Include a process for the Executive Board to consider objections raised by members of the Executive Board to outcomes of assessments;
- d) Ensure efficient and timely consideration of registration and issuance requests.

- The revised procedures must also address procedures to facilitate consideration of information from stakeholders and UNFCCC accredited observers.

There are opportunities for public participation throughout the CDM validation process (i.e. local stakeholder consultation when designing the project and global stakeholder consultation period). However, once the DOE decides to validate a project activity (often despite serious concerns by civil society) and submits a validation report to the UNFCCC secretariat there are no further opportunities for input. Hence, there is no official way to challenge a DOE against wrong claims in a validation report or additional concerns about the project that only appeared after the last official opportunity for public input has taken place, i.e. during construction / implementation of the project activity.

The inclusion of consideration of information from stakeholders and UNFCCC accredited observers was also mentioned in the procedures for conducting the reviews referred to in paragraphs 41 and 65 of the CDM which were adopted at the eight session of the Conference of the Parties⁵.

The draft procedures foresee that a request for review can be triggered by a Party involved in the proposed project activity or by three members of the Executive Board. CDM Watch has screened dozens of requests for review in the past but has never come across the case that a Party involved in the project activity requests a review of the project activity. While this opportunity shall continue to exist, CDM Watch doubts that CDM Executive Board members alone - although with the support of the secretariat – are able to ensure that for all project activities, that request registration and that do not fulfill the validation requirements, a review be requested. Yet, there is no official opportunity for civil society to raise concerns about a project activity at the stage of registration request. Therefore, CDM Watch suggests extending the possibility to trigger reviews to a certain number to UNFCCC accredited observer organizations or individuals.

- 10 UNFCCC accredited observer organisations or 100 individuals should be able to trigger a request for review.

In anticipation of the establishment of procedures for considering appeals as requested by decision - /CMP.5 para42, the inclusion of civil society views at this stage would have positive effects on the efficient and timely consideration of registration and issuance requests in the overall CDM process.

By allowing UNFCCC accredited observers to raise concerns about situations where a designated operational entity may not have performed its duties in accordance with the CDM requirements prior to registration of a project activity, a lengthy and costly potential appeal processes could be avoided.

Draft procedures for review for requests for registration (Version 01)

The same as suggested for the draft procedures for review for requests for registration should apply for the review procedure of requests for issuance.

⁵ Draft procedures for review for requests for registration, para1

Terms of reference for the Clean Development Mechanism Project Assessment Committee (CDM-PAC)

Any future members of a potential Project Assessment Committee must adhere to the code of conduct of the CDM Executive Board. Also PAC members must make their curriculum vitae (CVs) public including all prior professional affiliations.

In addition, PAC members shall, at the start of each meeting, declare on oath and in written any conflicts of interests with regard to all items on the agenda of the meeting. Members shall, in the case of a conflict of interest, refrain from participating and attending the meeting during the discussion of the case and shall not vote on the case. A conflict of interest exists, inter alia, if a member,

- i. is employed or was employed during the past three years by a governmental institution of a Party that is involved in a case under discussion by the Board;
- ii. is employed or was employed during the past three years for a private or public entity that is involved in a case under discussion by the Board;
- iii. a member has any pecuniary or financial interest in a case under discussion by the Board;
- iv. a member has any other professional or non-professional affiliations or interests in a case under discussion by the Board;

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CDM Watch is an initiative of international NGOs and was re-established in April 2009 to provide a critical perspective on CDM projects, methodologies and the work of the CDM Executive Board. The ultimate goal is to help ensure that the current CDM as well as a reformed mechanism post-2012 are effectively verified, and contribute to sustainable development in CDM host countries. CDM Watch is hosted by the German NGO Forum Environment & Development. For more information, see www.cdm-watch.org or contact eva.filzmoser@cdm-watch.org.

CDM Watch Network⁶:

Action Solidarité Tiers Monde – ASTM, Luxembourg / Both ENDS, The Netherlands / Agricultural Development and Training Society – ADATS, India / Angikar Bangladesh Foundation, Bangladesh / Biofuels Watch, UK / Client Earth / Climate Action Network – CAN, Europe / Centre for Education and Documentation – CED, India / Centre for Science and Environment – CSE, India / Earthjustice, USA / Church Development Service - EED, Germany / Corporate European Observatory – CEO, The Netherlands / Earthjustice, USA / Federação de Órgão para a Assistência Social e Educacional- FASE, Brazil / FERN, UK / Forum of Collective Forms of Cooperation - FCFC, India / Forum Environment & Development, Germany / Germanwatch, Germany / Global Alliance for Incinerator Alternatives – GAIA , Philippines / Greenpeace International / Indian Network of Ethics and Climate Change – INECC, India / International Rivers, USA / Khazer Ecological and Cultural NGO, Armenia / Noé 21, Schweiz / Laya Resource Center, Indien / Matu Peoples' Organisation, India / Mines, minerals and PEOPLE – mmP, India / Orissa Development Action Forum – ODAF, India / Paryavaran Mitra, India / Sandbag, UK / Sinkswatch, UK / South Asian Network on Dams Rivers And People – SANDRP, India / Stanford University / The fair climate network – FCN, India / Transport & Environment – T&E, Brussels / Wetlands International / WWF European Policy Office, WWF Germany, UK and WWF Japan

⁶ The opinions expressed here do not necessarily reflect the views and opinions of the entire CDM Watch Network.