



# Watch This!

Progress and gossip about carbon markets at COP 17

## Why the CDM Executive's Board is obliged to consider human rights

In 2011 the CDM Executive Board registered two projects, despite evidence of human rights abuses in both cases. It argued that the responsibility for ensuring sustainable development lies with the host country. Yet, the actual question whether the CDM Executive Board (CDM EB) is bound by international human rights provisions has not been answered. Let's do the maths:

- ✓ The UN is bound by human rights under Articles 1(3) and 55(c) of the Charter of the United Nations.
- ✓ The political and judicial organs of the UN have interpreted the provisions of the UN Charter to constitute legal obligations.
- ✓ The UN therefore has a constitutional obligation to place limitations on the authority and lawful purposes and functions of the UN and its entities.
- ✓ In addition, the UN is an organisation with legal personality and therefore is subject to customary international law.
- ✓ The fundamental principles of human rights form part of customary or general international law and the UN.
- ✓ As an organisation with legal personality, the UN is bound by these principles and customary or general international laws.
- ✓ Human rights and international human rights laws are therefore applicable to the UN and its entities (including the CDM EB) as a result of: (i) the UN Charter; and (ii) international human rights standards reaching both the UN and its entities.
- ✓ The CDM EB, as part of the UN, is bound by international customary law which encompasses fundamental human rights.
- ✓ The UN Charter explicitly requires Parties to have regard for human rights and Decision 1/CP.16 specifies that Parties should respect human rights in all climate change related actions.



*It follows that the CDM EB must consider human rights when overseeing the selection and review of projects.*

*Currently, the CDM rules do not refer to human rights directly, and methodologies only set out technical requirements in relation to emission limits.*

*→ The mandate of the CDM EB must therefore be re-assessed and redefined to give force to the provisions of the UN Charter and other rules governing UN bodies.*

## Quick thumbs down for more HFCs! For now anyway.

Yesterday, delegates met for the first and last time during this session to discuss whether new HCFC-22 facilities should be eligible under the CDM to destroy their HFC-23. As most buyers (e.g. the EU and Australia) pointed out that these credits will not be eligible in their carbon trading schemes, it was suggested to remove this item from discussions all together. Not surprisingly the big HCFC producers China and India, supported by their well known HFC-23 friend PNG didn't quite want to say adieu before this will be discussed again at COP-18. Guys, forget about Qatar... go for Montreal! There are ways to quickly and effectively reduce HFC emissions, say through non-market-based mechanisms, such as the Montreal Protocol!

## Gossip of the day!

**Rumour has it that Australia has decided that carbon credits from large hydro projects are ineligible in its carbon trading scheme. Thanks Australia for helping close the gigatonne gap!**

Get your gossip published tomorrow!  
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## The fuss about loopholes

Everyone in Durban seems to be talking about loopholes. But what exactly are they and why are they so important? Loopholes substantially weaken already insufficient pledges. The total size of loopholes is astronomic. It could easily completely negate the pledges that developed countries have made so far and render future commitment period completely meaningless. Here are the four most important ones:

- **'Hot air' – are surplus allowances (AAUs)** from the first commitment period. The economic collapse after the fall of the communist regimes led to a significant decrease in GHG emissions in Eastern European countries. This is why Russia and Ukraine having a very large surplus of AAU. Emissions reductions due to economic downturns are not enabling a sustainable low-emission pathway because they are presumably temporary and after the economies recover we can expect to see an corresponding increase in emissions. We need to address this hot air here in Durban!
- **LULUCF loopholes:** Current accounting choices inflate countries' emissions baseline numbers. Important Land-Use, Land-Use-Change and Forestry rules are currently negotiated. If they are made more stringent, we could reduce this loophole considerably!
- **Double counting:** occurs when emissions reductions are counted multiple times under several carbon market schemes. Robust, internationally coordinated offset accounting rules are vital to avoid double counting. A pledge-and-review approach will make it much more difficult to ensure the integrity of offsetting schemes and to avoid double counting. Legally binding reduction pledges and internationally agreed MRV rules are necessary.
- **CDM loopholes:** CDM credits that do not represent real emissions reductions. See below!

***Loopholes need to be closed if we want to get real about climate change!***

## CDM loopholes could increase global emissions by 1 – 6 Gt CO<sub>2</sub>e by 2020!!

CDM projects have to create real and measurable emissions reductions. If they do not and nevertheless sell carbon CDM projects have to create real and measurable emissions reductions. If they do not and nevertheless sell carbon credits then those credits lead to an increase in global emission because they are used by the buyer instead of reducing his own emissions. Here are three reasons why CDM projects can cause artificial carbon credits:

- **Additionality**, the proof that projects are only viable because they receive CDM support, has long been criticised as ineffective. Carbon credits from such free-riders do not represent real emissions reductions and lead to an increase in global greenhouse gas emissions.
- **Over-crediting** occurs when the rules on how to calculate the achieved emission reductions for CDM projects are too loose. The resulting carbon credits also lead to an increase in global emissions.
- **Carbon leakage** is the shift in production to CDM plants away from non-CDM plants. Such leakage causes an increase in global emissions if the shift occurs from a plant that is covered under a countries emission cap to a country with no such cap (e.g. from a European plant to a plant in a NA1 country)

Such artificial emission reduction could cause an estimated cumulative loophole between 1 – 6 Gt CO<sub>2</sub>e by 2020. This enormous gap must be closed:

- ***To eliminate loopholes for CDM projects not yet registered the current rules on additionality and baseline setting have to be revised.***
- ***To stop already registered projects from continuing to create artificial credits, it is easiest to ban projects that have a very high likelihood of delivering credits that do not represent real emissions reductions. Coal power projects under the CDM, with proven problems about additionality and baseline setting are a clear example. Dear delegates, let's start cleaning the bucket: and ban coal power projects!***



**CDM Watch** provides an independent perspective on the CDM and wider carbon market developments and advocates solutions that strengthen the environmental and social integrity of emission reduction projects.

[www.cdm-watch.org](http://www.cdm-watch.org)



**The CDM Watch Network** is a free platform set up to strengthen the voice of civil society in the CDM. Already a thriving international community, the Network connects over 300 NGOs, activists and grassroots movements and offers capacity building, assistance with project campaigns, advocacy, and information about CDM project decisions.

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