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Human Rights: How lessons learnt from the CDM can inform the design of New Market Mechanisms

On 15 November 2013, as part of the COP19 in Warsaw, Carbon Market Watch organised a side event jointly with Gujarat Forum on CDM, Centro de Incidencia Ambiental (CIAM), Centro Mexicano de Derecho Ambiental (CEMDA), the Center for International Environmental Law (CIEL), the Global Gender and Climate Alliance (GCCA), the Interamerican Association for Environmental Defense (AIDA) and the Women's Environment and Development Organization (WEDO).

The opening remarks for the side event were given by Carbon Market Watch Director Eva Filzmoser, who chaired the hour and half discussion.

The presentation by Falguni Joshi, a representative of local communities in India, which focused on the negative impacts of coal power projects under the CDM. Comparing the promises made in the project design documents (PDD) with the reality of their implementation; she pointed out the



harmful effects on local communities and called for a ban of coal under the CDM. Joana Abrego, speaking on behalf of local communities in Panama, presented the Barro Blanco CDM project. She emphasised the insufficiencies of stakeholder consultation requirements under the CDM and underlined, among others, the lack of enforcement and language barrier as its shortcomings.

Juan Carlos Carrillo from the Centro Mexicano de Derecho Ambiental (CEMDA) explained how the negotiations on REDD+ is already providing for human rights safeguards and raised the question of inconsistencies of governments' positions at the UNFCCC. Concluding the presentations and speaking of behalf of the Center for International Environmental Law (CIEL), Alyssa Johl underlined the importance of international safeguards. Pointing out current weaknesses of the CDM, she emphasised the importance of improving the stakeholder consultation process and the need to introduce international standards to ensure human rights protection.

The civil society panel was then joined by the current chair and two former chairs of the CDM Executive Board as well as a private sector representative:

John Kilani, director of Sustainable Development Mechanisms and former Chair of the CDM Executive Board, pointed out that human rights abuses have a zero tolerance level in the UNFCCC. Peer Stiansen acknowledged that the CDM has weaknesses in the stakeholder consultation process as well as accountability, he welcomed the current possibility for changes of its modalities and procedures. Focusing on the importance of stakeholder consultation and pointing out a lack of global standards in this regard, Clifford Mahlung, head of the Meteorological Forum in Jamaica recommended including a representative of civil society in the Executive Board to ensure better safeguard of local community interests. Finally, representing the Project Developers Forum, Gareth Philips highlighted the weak definitions under the Marrakesh Accords and expressed the need for capacity building. Below is a more detailed summary of the presentations:



Falguni Joshi, Gujarat Forum on CDM

Falguni Joshi focussed her presentation on the negative impacts of coal power projects implemented under the Clean Development Mechanism (CDM) in India. She compared the promises that have been made in the project design documents (PDD) of two CDM coal power projects with the actual realities on the ground.

Demonstrating that the indicated benefits for the local communities, like improvement of education, health care and livelihood creation as well as sustainable development were not achieved, she emphasised that coal should be immediately banned from the CDM. For more information on this issue, please see the recently published report [“Glimpse from Ground... Analysis of selected CDM projects from India”](#).

Joana Abrego, Centro de Incidencia Ambiental (CIAM)

Joana Abrego presented the CDM Barro Blanco project in Panama. She highlighted the volatility between the Panamanian governments' will to exploit the hydroelectric power of the Barro Blanco River and the interests and rights of the indigenous community affected by the project. In this context she underlined



the insufficient stakeholder consultation requirements under the CDM, stating that these do not go far enough to protect affected communities in cases like Barro Blanco. While calling for the stakeholder consultation process to be strengthened and its implementation improved, she also emphasised that English is one of the most challenging barriers while preparing submissions and comments on planned projects for local communities.



Juan Carlos Castillo, Centro Mexicano de Derecho Ambiental (CEMDA)

Juan Carlos Castillo highlighted that REDD+ is an issue of social and environmental justice and presented experiences made under this mechanism with participatory rights. REDD+ contains core safeguards requiring that projects do not harm the environment and the local population while promoting full and effective participation of local communities as well as full respect of their rights, and protection of biodiversity and the permanency of the emission reductions. He underlined that there are some good aspects of REDD+ under the scope of the human rights safeguards and that REDD+ clearly has a human rights approach in line with the Cancun Agreement, which explicitly recognizes that UNFCCC parties are obliged to fully respect human rights. He pointed out that mechanisms, like REDD+, do more for the protection of human rights than the CDM.

Alyssa Johl, Center for International Environmental Law (CIEL)

Alyssa Johl gave an overview of the role of international safeguards in international legal processes. She stressed that there was a decision on the need to protect human rights in all climate change related matters and positive developments to establish safeguards for REDD+ activities. Yet, she raised the question why the CDM – an instrument that has been in place much longer – has not yet started to establish safeguards. She pointed out that any establishment of national sustainable development criteria, without international standards, poses major problems. Furthermore, she underlined the need for a grievance mechanism, as no system is currently available for individuals and affected communities when human rights are violated. Moreover, she mentioned the importance of stakeholder consultations and public participation and criticised the current weak and minimal requirements which do not protect stakeholders in a sufficient way. She finally called for a robust mechanism that addresses social and environmental harms and the responsibility of states to implement agreed safeguards.



John Kilani, Director of Sustainable Development Mechanisms, UNFCCC Secretariat

Considering the question why under REDD+ human rights safeguards are implemented but not under the CDM, John Kilani emphasised that the UN has zero tolerance for human rights abuses and that the regulatory framework of the CDM provides a great foundation for further mechanisms, as it did for the development of REDD+. He pointed out that the CDM is a good instrument that has set a lot of unique standards in the governance process as well as on the level of transparency. He addressed particularly three weaknesses of the CDM: the stakeholder consultation process, the lack of strong

and direct communication between stakeholders and the Executive Board as well as accountability. Emphasising the advantage of the possibility to improve the modalities and procedures of the CDM at this stage and especially strengthening the institutional and human capacity at the national level, he warned that a reform should not be rushed, but better done well.

Peer Stiansen, Chair of the Executive Board and negotiator for Annex I country Norway

Confessing his concerns with effectively tackling human rights cases when joining the Executive Board, Peer Stiansen said he realised with surprise that these cases are very rare, outlining as one of the reasons the fact that project participants do not want to be connected with bad press. On the question of what is the actual stand of the reform of the CDM's modalities and procedures, he underlined that from the Board's perspective it is vital to be transparent and to build this into the CDM. He stressed out that the stakeholder consultation process is underutilized, partly because of the lack of clarity of rules. Further development is pushed by the Board on this issue as well as the improvement of rules on the letters of approval.



Clifford Mahlung, Head of the Meteorological Forum, Jamaica

Clifford emphasised the need for safeguard certainties in the area of human rights. He highlighted the special importance of the stakeholder consultation, which needs to play an important part in the process of the impact assessment. Given the fact that no global standard is given for the stakeholder consultation and the impact assessment as well as the weak national frameworks in developing countries, he concluded that the Executive Board should be expanded to include a representative from civil society. He further stated that the Marrakesh Accords brought little clarification on the responsibilities and role of the Designated National Authority (DNA). However, it should not be forgotten that CDM projects do bring a lot of benefits to host countries and are still coming forward.

Gareth Philips, Project Developer Forum

Considering the role of the Designated Operational Entity (DOE) in safeguarding human rights under the CDM, Gareth Philips pointed out that the DOEs would wander into sensitive areas and are not qualified for this task. He underlined the weak definitions of the role of DNAs in the Marrakesh Accords, which needs to be changed in order to guarantee that human rights are protected. He pointed out that non-host DNAs should be more rigorous as well as acting with more due diligences when granting letters of approval and criticised the fact that blank checks are regularly given to CDM projects.



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