

Submission to annotated agenda of the 82th CDM Executive Board meeting 16-20 February 2015, Switzerland

13 February 2015

Carbon Market Watch welcomes the opportunity to provide input to the CDM Executive Board on issues included in the annotated agenda of the 82th meeting, particularly on the following agenda items:

1. Agenda item 4.2. Procedures
 - Action 36: Revised draft modalities and procedures for direct communication with stakeholders
 - Action 37: Concept note on voluntary monitoring of sustainable development co-benefits of CDM project activities and PoAs
2. Agenda item 4.3. Policy issues

1. Agenda item 4.2. Procedures

Action 36: Revised draft modalities and procedures for direct communication with stakeholders

The Board requested at its eighty-first meeting to launch a call for public input on the draft procedure for direct communication with stakeholders. The call was initially launched during COP20 with the deadline 4 January 2015, leaving little time for stakeholders to actually respond. Carbon Market Watch would like to thank the Board and the UNFCCC secretariat for acting swiftly in extending the deadline for the call after being alerted about this. We would also like to applaud the improvement of the format used for such public inputs as well as the new process to provide transparency about how the comments have been addressed. Finally, we would like to invite the Board to consider the comments made to further improve the procedure including the way comments to such calls are invited.

Action 37: Concept note on voluntary monitoring of sustainable development co-benefits of CDM project activities and PoAs

The Clean Development Mechanism (CDM) has a dual purpose of assisting non-Annex I Parties in achieving sustainable development and assisting Annex-I Parties in achieving compliance with their quantified emission limitation and reduction commitments under the Kyoto Protocol.

Since the establishment of the CDM, new mitigation instruments are being developed that also have sustainable development objectives. These include Nationally Appropriate Mitigation Actions (NAMAs) and the New Market Mechanism (NMM). Moreover, in November 2015, a set of new Sustainable Development Goals (SDGs) to replace the Millennium Development Goals (MDGs) will be adopted. Such a future sustainable development agenda will become a powerful tool to tackle climate change and will be an important framework to guide the achievement of sustainable development objectives under the UNFCCC.

Experience with the CDM so far has shown that missing incentives as well as the lack of reporting, monitoring 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. Reporting, monitoring, 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.

In that regard, we welcome the SD tool, which performs a reporting function, 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 SD 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.

Carbon Market Watch warmly welcomes the initiative by the Board to consider introducing provisions on voluntary monitoring of the contribution to sustainable development. However, in view of the upcoming decision to establish sustainable development goals, the work of the CDM Board should be done with a view to the post-2015 process and having in mind the important role the CDM will play for the establishment of operating frameworks for other mechanisms with similar objectives.

When discussing the options for each key issue presented in section 3.2 of CDM-EB82-AA-A14 (Concept note - Voluntary monitoring of sustainable development co-benefits), Carbon Market Watch invites the Board members to:

- **Revisit the SD tool to:**
 - o Increase access to all stakeholders
 - o Include no harm safeguards
 - o Increase stakeholder involvement
 - o Include a requirement for conformity with applicable laws and regulations
- **Launch a public call for input to receive comments on:**
 - o The usefulness of the SD tool for all stakeholders
 - o Suggestions to improve the SD tool
 - o Experience with SD monitoring
- **Initiate a process to discuss how the post-2015 agenda can inform the work of the CDM Board to enhance the CDM's sustainable development objective**

Below is additional information about areas in need of clarification:

- **ACCESS TO TOOL: SD tool should not be limited to use by project participants and CMEs; all stakeholders must be able to provide input.**

First and foremost, there is serious concern that the SD tool is intended for use by project participants and CMEs only, and therefore does not provide an opportunity for input from local stakeholders or civil society (those whom the CDM's safeguard policies are intended to protect). Often, 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 commenting section where stakeholders can provide comments on the input

provided by project participants or CMEs. Moreover, given the fact that the tool is voluntary, it would seem sensible not to limit the source of input to project participants and CMEs.

To provide space for all stakeholders to provide comments on the sustainable development impact of CDM projects, Carbon Market Watch has recently launched the “[CDM Benefit Tracker India](#)”. This is a publicly accessible interactive map and transparent tool to show the actual performance of Clean Development Mechanism (CDM) projects by comparing the sustainable development claims indicated in the Project Design Documents (PDD) with the situation on the ground. At its initial stage, the tracker includes information from 27 CDM projects located in 10 different states in India. The respective project developers have been asked to review the findings and provide comments as to how the sustainability objectives have been achieved.

- **NO HARM SAFEGUARDS: Declaration should state obligations in positive terms and reflect full scope of human rights obligations.**

The SD tool does not include an option to inform about “no harm” safeguards. Such an option that was previously discussed should be revisited and adopted, especially in light of the post-2015 process. No harm safeguard principles should reflect the future SDGs and the UN Global Compact, that explains, “[b]usiness has the potential to impact — positively and negatively — virtually all human rights. Accordingly, business should consider their potential impact on all rights.”

- **STAKEHOLDER INVOLVEMENT: stakeholder involvement declaration lack detail and requires very little in terms of 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 level of detail sought in the SD tool does not ensure evaluation of the effectiveness or extent of stakeholder consultation.

- **CONFORMITY with applicable laws and regulations:**

It would be useful to require the project participant to report about whether the project activity is in compliance with applicable laws and regulations combined with assurance that the project participant or CME is aware of what the applicable laws and regulations 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 project and then assess whether it is in compliance with those laws.

2. Agenda item 4.3. Policy issues

Carbon Market Watch would like to inform Board members about the decision by Panama’s National Environmental Authority (ANAM) to temporarily suspend the construction of the Barro Blanco hydroelectric dam over non-compliance with its Environmental Impact Assessment (EIA). The dam was approved by the UN Clean Development Mechanism (CDM) in June 2011 despite risks of flooding to the territory of the indigenous Ngäbe Bugle communities.

The experience with the Barro Blanco project provides valuable insight into challenges faced at the local level at the design stage and during the implementation of certain project types and should inform the policy developments related to stakeholder involvement and the achievement of sustainable development. We attach here below a press statement for your information.

UN registered Barro Blanco Hydroelectric Dam temporarily suspended over non-compliance with Environmental Impact Assessment

PANAMA CITY, Panama and GENEVA, Switzerland (February 10, 2015) In a landmark decision, Panama's National Environmental Authority (ANAM) temporarily suspended the construction of the Barro Blanco hydroelectric dam yesterday over non-compliance with its Environmental Impact Assessment (EIA). The dam was approved by the UN Clean Development Mechanism (CDM) despite risks of flooding to the territory of the indigenous Ngäbe Bugle communities.

With delegates currently meeting in Geneva to draft negotiating text for a new global climate agreement, ANAM's decision illustrates why the agreement must include human rights protections, including the rights of indigenous peoples. In Geneva, several nations have already insisted on the need for climate measures to respect, protect, promote, and fulfil human rights for all.

"Panama has taken a critical first step toward protecting the rights of the Ngäbe communities, which have not been adequately consulted on the Barro Blanco CDM project. But much more work is needed," said Alyssa Johl, Senior Attorney at the Center for International Environmental Law (CIEL). "As an urgent matter, Panama should recognize its obligations to protect human rights in climate actions, such as Barro Blanco, by supporting the call for human rights protections in the UN climate regime."

Current climate mechanisms, such as the UN's Clean Development Mechanism, neither provide incentives for the sustainable implementation of climate actions nor offer recourse in the case of adverse impacts.

"The CDM Board approved Barro Blanco when it was clear that the dam would flood the homes of numerous indigenous families. This decision is a warning signal that safeguards must be introduced to protect human rights, including robust stakeholder consultations and a grievance mechanism," said Eva Filzmoser, Director of Carbon Market Watch.

ANAM's decision was triggered by an administrative investigation that found non-compliance with the project's environmental impact assessment, including shortcomings in the agreements with affected indigenous communities, deficiencies in negotiation processes, the absence of an archaeological management plan for the protection of petroglyphs and other archaeological findings, repeated failures to manage sedimentation and erosion, poor management of solid and hazardous waste, and logging without permission.

The Environmental Advocacy Center of Panamá (CIAM) considers it appropriate for ANAM to have taken effective and immediate measures to suspend the project. "This suspension reflects inadequate environmental management on the part of the company that requires an investigation and an exemplary sanction".

"During 15 years of opposition to the Barro Blanco project, we have exposed violations of our human rights and irregularities in the environmental proceedings. Those claims were never heard," said Weni Bagama from the Movimiento 10 de Abril (M-10). "Today we are satisfied to see that the national authorities have recognized them and have suspended the project, as a first step towards dialogue. Nevertheless, we continue to uphold the communities' position that the cancelation of this project is the only way to protect our human rights and our territory. We hope that this sets an example for the international community and for other hydroelectric projects, not only in Panama but worldwide."

“Any dialogue between the affected communities, the Government and the company has to be transparent, in good faith, respectful of the communities’ rights, and include guarantees so that the communities can participate equally and the agreements are fully respected,” explained María José Veramendi Villa, Senior Attorney at the Interamerican Association for Environmental Defense (AIDA). “In this dialogue, the State must take into account all human rights violations that have been denounced by the communities since the project was approved.”

Environmental groups around the world are celebrating the suspension of the Barro Blanco Dam, following years of efforts in support of the indigenous populations in the Ngäbe Bugle *comarca*, which have been faced with oppression and numerous rights violations. Eyes are now watching for the reactions of the banks involved in financing the Barro Blanco project, including the German development bank, DEG, and the Dutch development bank, [FMO](#), against whom the M10 movement, which represents the indigenous communities, had filed a complaint.

“We urge the banks to halt disbursement of any remaining funds until all problems are solved and the affected indigenous communities agree to the project,” said Kathrin Petz of Urgewald.

**** * * *

Contact information:

Eva Filzmoser

Director, Carbon Market Watch

Eva.filzmoser@carbonmarketwatch.org

www.carbonmarketwatch.org