

2015

**Public Participation and  
Climate Governance  
Working Paper Series**

**The Need for a Rights-Based Approach to the Clean  
Development Mechanism**

**Eva Filzmoser**, Carbon Market Watch, Brussels, Belgium

**Juliane Voigt**, Carbon Market Watch, Brussels, Belgium

**Urska Trunk**, Carbon Market Watch, Brussels, Belgium

**Karen H. Olsen**, UNEP DTU Partnership, Department of Management  
Engineering, Technical University of Denmark

**Ademola Oluborode Jegede**, Centre for Human Rights, University of  
Pretoria, South Africa

Series Editors:

Katherine Lofts (CISDL),  
Sébastien Duyck (University of  
Lapland), and Sébastien Jodoin  
(GEM)



### **Centre for International Sustainable Development Law**

The Centre for International Sustainable Development Law (CISDL) aims to promote sustainable societies and the protection of ecosystems by advancing the understanding, development and implementation of international sustainable development law. The CISDL is an independent legal research centre that has a collaborative relationship with the McGill University Faculty of Law in engaging students and interested faculty members in sustainable development law research and scholarly initiatives. The CISDL has six legal research programmes led by jurists from developing and developed countries, and publishes books, articles, working papers and legal briefs in English, Spanish and French.

Centre for International Sustainable Development Law  
Chancellor Day Hall  
3644 Peel Street, Montreal (Quebec), H3A 1W9 Canada  
[www.cisdl.org](http://www.cisdl.org)

### **Governance, Environment & Markets Initiative at Yale University**

The Governance, Environment and Markets (GEM) Initiative at Yale University aims to reorient environmental governance research and practice from short term and single intervention approaches towards durable “results based” problem solving that embraces, rather than bypasses, multi-level complexity. GEM is based at the Yale School of Forestry and Environmental Studies, one of the world’s leading hubs of research and teaching in environmental policy and governance. Under the leadership of Prof. Benjamin Cashore, a team of scholars and graduate students carry out GEM’s research and programmatic activities. In addition, GEM benefits from the collaboration of a global network of practitioners and scholars focused on fostering effective, multi-level environmental governance solutions.

Governance, Environment & Markets Initiative at Yale  
195 Prospect Street  
New Haven, CT 06511  
[www.environment.yale.edu/gem](http://www.environment.yale.edu/gem)

### **Northern Institute for Environmental and Minority Law**

The Northern Institute for Environmental and Minority Law (NIEM) of the Arctic Centre (University of Lapland) is specialised in environmental and minority law. Since 1985, the Northern Institute for Environmental and Minority Law has contributed to scholarship through a special focus on studying the law relating to (Arctic) indigenous peoples and environmental law as it applies in the Arctic and northern region.

Northern Institute for Environmental and Minority Law  
Arctic Centre, University of Lapland  
P.O. Box 122  
FIN-96101 Rovaniemi, Finland  
[www.arcticcentre.org/EN/RESEARCH/NIEM](http://www.arcticcentre.org/EN/RESEARCH/NIEM)

\* **Disclaimer:** The views expressed in this working paper are solely those of the author, and do not represent the views of the Centre for International Sustainable Development Law; the Governance, Environment and Markets Initiative at Yale University; or the Northern Institute for Environmental and Minority Law at the University of Lapland.



## 1 Introduction

Over the past several years, the human rights implications of climate change have become evident. The first official recognition of the relationship between climate change and human rights at the United Nations Human Rights Council (UNHCR) emerged with the adoption of Resolution 10/4 in 2009 (UNHCR, 2009). Since then, two other UNHRC resolutions (Res 18/22; Res 26 L/33) have been passed on the linkages between human rights and climate change. Generally, these resolutions recognize the adverse direct and indirect effects of climate change on the effective enjoyment of human rights and acknowledge that the effects of climate change will be felt most severely by those that are already vulnerable due to geography, gender, age, indigenous or minority status, and disability (UNHRC, 2009; Knox, 2009; Limon, 2009).

The foregoing development has been recognized in the negotiations under the aegis of the United Nations Framework Convention on Climate Change (UNFCCC) through a decision reached by the Conference of Parties (COP) at its sixteenth meeting held in Cancun in 2010 (Decision 1/CP. 16, 2010). Paragraph 8 of the Cancun Agreements, which emerged from the event, urges Parties to fully respect human rights in all climate related actions. The urgency in this, with respect to the development and implementation of CDM policies, has been emphasized by the former Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, who stated that greater efforts are needed throughout the United Nations system to ensure that all actions within the system are in harmony with indigenous peoples' rights. However, the current rules and procedures of the Clean Development Mechanism (CDM) do not reference or otherwise take human rights into account (CIEL & Earth Justice, 2011). For instance, despite several years of discussion regarding the need for an appeals procedure, the CDM does not provide a means of recourse for individuals or communities that are adversely affected by CDM projects. Also, it has yet to strengthen the realization of stakeholders' rights in the implementation of projects (CIEL et al., 2013).

Several NGOs such as the Alliance for Conservation and Development (ACD), Environmental Association of Chiriqui (ASAMCHI), the April 10 Movement to Defend the Tabasara (M-10), International Rivers, Counter Balance Coalition and CDM Watch have called upon the CDM Board to address the severe human rights violations that have taken place in relation to several CDM projects, notably in relation to the Bajo Aguan biogas recovery project (CDM project 3197) (CDM Watch, 2011). The Board has argued that it has no mandate to address human rights concerns or investigate abuses (Carbon Market Watch, 2013). In its Annual Report 2011, CDM Board acknowledged the problematic of human rights issues, specifically the rights of people affected or potentially affected by a CDM project (Executive Board, 2011). Michael Hession, the then chair of the CDM Board, said that although the Board was well aware of the serious allegations of human rights abuses in Honduras, the CDM Board lacked the logistical ability to make a field investigation, and hence "cannot verify human rights issues" or withdraw registration of a project. Since they could not find violations of local stakeholder consultation (LSC) under the CDM rule-based system, they did not have the authority to get to the bottom of this concern (occupycop17's channel, 2011, Interview with Michael Hession, Resistencia Honduras, 2011).

The stark reality so far is that the CDM has not yet adopted a rights-based approach to respond to human rights challenges relating to its operation.

In order to understand how a human rights-based approach is employed within the current CDM framework, this paper analyses CDM rules and procedures based on the principles of human rights. The article looks into how international CDM rules address the need for participation, appeals and co-benefits of project activities and how they are translated into national policies in the case of India.

The article first looks at basic human rights principles, and then assesses the rules and approaches of the CDM, with attention to sustainable development, LSC and a grievance mechanism. A case study on the Sasan coal power project in Singrauli, India, then shows how rules on stakeholder participation are applied in reality. The case study is based on a field trip organized in April 2014 by several civil society organizations. During the field trip, the surroundings of the project site were visited and interviews were conducted with local residents, workers employed at the project site, as well as local activists and doctors. Most of the interviewees preferred to remain anonymous and are therefore not referenced publicly. This field trip was done four years after the Sasan project was registered under the CDM in 2010. The interviews, as well as the information given in the Project Design Document (PDD), are the basis for this case study. The LSC process and the impacts of the project activity on the local population, the health situation and the environment have been examined. Finally, the strengths and weaknesses of the CDM rules are discussed to identify opportunities and best practices to enhance the human rights-based approach to the CDM.

## 2 A Human Rights-Based Approach to the CDM

The principles of a human rights-based approach as constructed in literature are namely universality and inalienability, indivisibility, interdependence and inter-relatedness non-discrimination and equality, participation and accountability (UNDG, 2003). It is important to explain what these principles embody, particularly for vulnerable populations who have a justifiable basis to expect the development and implementation of policies as well as projects under the CDM to observe core principles of a human rights-based approach.

### 2.1. Universality and Inalienability

The principle of universality and inalienability connotes that human rights apply to everyone everywhere in the world, and that negotiations or 'trade-offs' should not result in human rights violations (Vienna Declaration, 1993, paras 1 & 5). In confirmation of the notion of universality and the inalienability of rights, it is noteworthy that there is rarely a state participating in the CDM which has not ratified at least one of the nine core international human rights treaties (OHCHR Web), including the International Covenant on Civil and Political Rights (ICCPR, 1966), the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), and the Convention on the Elimination of Racial Discrimination (CERD, 1965).

Hence, in relation to the CDM, the notion of the universality and inalienability of human rights demands that in the formulation and implementation of projects, the interests or rights of vulnerable populations should not be traded off or lost in the web of transactions. It also signifies that the CDM and its policies and approach cannot ignore or elect to act in a manner that is inconsistent with the reality that states participating in the CDM are creations of international law and duty bearers to human populations under human rights instruments which they have ratified or adopted.

## **2. 2. Interdependency and Interrelatedness**

Human rights are interdependent, interrelated and indivisible in the sense that the realisation of a given right depends on the realisation of other rights. By this is meant that civil, cultural, economic, political and social rights are equal in status and cannot be ranked or placed in a hierarchy of importance, even though the nature of obligations owed by duty-bearers may differ (Whelan, 2010, 4; Schein, 2009, 24). Interdependency and inter-relatedness of rights suggest that one cannot prefer one right above the other.

The notion of interdependency or interrelatedness of human rights is crucial for an effective CDM. For instance, although it seems like a mere component of project implementation, an element such as the LSC has implications for all the rights of local populations. If ineffectively conducted, there is a foreseeable set of overlapping and interconnected negative impacts that will touch areas including their welfare, livelihoods, social order, identity, and culture (Green Peace 2009, para 31). These interconnected impacts can have serious implications for interrelated or interdependent human rights, extending over a range of rights, including the economic, as well as civil and political rights of local populations.

## **2. 3. Equity and Non-Discrimination**

According to Swepston and Alfreðsson (2000, 74), the prohibition of discrimination is a crucial aspect of human rights law. The principle of non-discrimination and equality holds that human rights should be enjoyed by all human beings without discrimination of any kind, such as race, property, birth or any other status (World Bank, 2006, 27). There are other instruments in international human rights law that offer a strong basis for the principle of equity and non-discrimination. These include the Universal Declaration of Human Rights (UDHR, 1948), articles 2(1), 3, 4(1) and 26 of the ICCPR (1966), articles 2(2) and (3) of the ICESCR (1966) Declaration of Principles on Equality (2008), and article 2 of the Convention on the Elimination of all Forms of Racial Discrimination (CERD, 1965).

There is a range of issues, including land tenure, land use, benefit sharing and consultation, which communities may raise in the process of implementing projects under the CDM. The principles of equity and discrimination must be reflected in the development and implementation of CDM rules. Otherwise the rights of populations may be compromised. A major manifestation and catalyst of discrimination and inequality, for instance, is when project participants fail to recognise the customary nature of lands, or the institutions of consultation of local populations. In *Mayagna (Sumo) Awas Tingni Community v*

*Nicaragua* (2001), the Inter-American Court of Human Rights held that the lack of recognition of the property right of the indigenous peoples according to customary law ‘would create an inequality that is utterly antithetical to the principles and to the purposes that inspire the hemispheric system for the protection of human rights’ (paras 12-44, 13).

The principles of equity and non-discrimination are useful in the context of access to information on projects under the CDM. In relation to the foregoing there are relevant provisions regarding access to information without discrimination. Article 19 of the UDHR recognizes the right to freedom of opinion, which includes seeking, receiving and the impartation of information and ideas (UDHR, 1948, art 19). A similar provision is made under the ICCPR (1966, art 19(2)). Also, in 2011, the UNHRC issued a General Comment further detailing the rights under article 19 of the ICCPR. According to the General Comment, with regards to the right of access to information, ‘state parties should proactively put in the public domain Government information of public interest’ (General Comment 34). At the regional level, the right to information is safeguarded under the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950, art 10), the American Convention on Human Rights (1969, art 13), and the African Charter (1986, art 19(1)). According to the African Commission on Human and Peoples’ Rights Declaration of Principles on Freedom of Expression in Africa, freedom of expression entails access to information without discrimination’ (2002, sec 1.2).

The decision in *Claude Reyes v Chile* (2003) is relevant to accessing information on climate change and climate change response projects under the CDM. In that case petitioners alleged that Chile violated their right to freedom of expression and free access to state-held information when the Chilean Committee on Foreign Investment failed to release information about a deforestation project that the petitioners wanted to evaluate in terms of its environmental impact.

## **2. 4. Participation**

The principle of participation holds that every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights can be realized (VeneKlasen et al., 2004, 5). The principle of participation and inclusion is entrenched in human rights instruments, including the UNDRIP (2007), which in its article 18 provides:

[t]he Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 25 of ICCPR provides that citizens shall have the right, without unreasonable restrictions, ‘to take part in the conduct of public affairs, directly or through freely chosen representatives’ (ICCPR, 1966, art 25). It also provides for participation in terms of taking part in the conduct of public affairs and access to public service in a given country. There are provisions in the regional human rights instruments, namely the American Declaration (1948, art 20), Inter-American Convention (1969, art 23)

and the African Charter (1986, art 13), on the right to participate in decision-making. In its General Recommendation XXIII, the CERD (1965, para 4(d)) calls upon state parties to:

ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent.

Through the principle of participation there is a basis for expecting the CDM to allow for effective consultation of populations in relation to the implementation of projects.

## **2. 5. Accountability and Redress Mechanism**

The notion of accountability assumes generally that citizens as rights holders should have a right to a remedy in the case of a proved violation of rights (Peter, 2006, 40). A number of human rights contain provisions on the right to remedy. Article 8 of the UDHR provides for the right of everyone to effective remedy before national tribunals regarding every alleged violation of human rights. Article 2, paragraph 3(a), of the ICPPR, guarantees victims of human rights violations an effective remedy. This involves access to effective judicial or other appropriate remedies including compensation at both the national and international levels. According to article 7 of the African Charter, ‘every individual shall have the right to have his cause heard’. Article 40 of the UNDRIP guarantees indigenous peoples rights of access to ‘prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies’ with due regard to their customs, traditions, rules and legal systems. Article 10 provides that redress to which indigenous peoples are entitled may include restitution, just and fair compensation.’

A rights based approach connotes that the CDM should offer grievance mechanisms that respect customs and institutions of local populations who have little influence over negotiations, and provide remedy to victims of climate change and actions implemented to mitigate climate change. Such remedies may include restitution or compensation (UNDRIP, 2007, art 10). Having discussed what a rights-based approach should embody for the CDM, it is necessary to examine the approach of the CDM in terms of its compatibility with human rights.

## **3 A General Assessment of Rules and Approaches of CDM through a Human Rights Lens**

The CDM has a dual objective to support the commitments of developed countries to reduce emissions and to contribute to sustainable development in developing countries. Besides meeting emission reduction targets, CDM project activities must contribute to complementary economic, social and environmental benefits in developing countries, such as the improvement of livelihoods, employment, new investment, and climate-friendly technologies. As shall be shown, the approach by the CDM in relation to the Sustainable Development Tool, access to a grievance mechanism, and

participation and consultation in relation to the implementation of its projects all fall short of human rights standards.

### **3. 1. Sustainable Development Tool**

The CDM has made a step forward with developing a new Sustainable Development Tool (SDT) in order to improve the oversight of sustainable development and to report on co-benefits other than GHG reductions. Nevertheless, the tool is still vague in its procedural rules, voluntary in nature, is only based on reporting without monitoring provisions, and does not allow for the participation of stakeholders other than the implementing parties (Carbon Market Watch, 2014a).

According to UNFCCC provisions (UNFCCC, 2014), the tool can only be used by project participants. In allowing only project participants to utilise the SDT, the CDM denies other relevant stakeholders a voice to fully participate in the application of the SDT. This infringes on the rights of these stakeholders to engage meaningfully in initiatives likely to affect their lives. Another major weakness is that the tool does not require verification or monitoring of claimed benefits unless the project participants decide otherwise. Moreover, reporting on negative impacts in CDM projects is not an option, as the online questionnaire only asks project participants to report on benefits and not on potential adverse impacts. A draft version of the SDT (EB68, Annex 22) included provisions for an integrated approach to sustainability assessment including sustainable development co-benefits, strengthened LSC rules, and safeguards against negative impacts confirming compliance with human rights standards. However, the CDM Board decided in Doha 2012 that the SDT should only include sustainable development criteria for co-benefits. Left out was the reporting options on the LSC and negative impacts.

### **3. 2. Absence of a Grievance Mechanism**

Another major pitfall of the CDM's ability to comply with human rights standards is the absence of a grievance mechanism, which would enable affected communities to complain in case a CDM project does not comply with national or international rules (Carbon Market Watch, 2012). Adequate safeguard policies, which in many other mitigation mechanisms include a grievance mechanism as an essential element, would enhance the CDM with a vital framework to address community-based grievances before disputes escalates (Carbon Market Watch, 2014c).

Under the Subsidiary Body for Implementation (SBI), Parties have been considering an appeals procedure for decisions of the CDM Board since its 34th session in 2011. An appeals procedure in the CDM project approval would present a key opportunity for the CDM Board to secure human rights and to add to accountability and legitimacy of the CDM as a tool for implementing the goals of Kyoto Protocol. However, for the past three years, disagreements around the scope and legal standing of the potential appeal stalled the negotiation process. Dissent revolved around whether both positive as well as negative decisions of the CDM Board could be appealed, and whether only project proponents or also affected stakeholders would be eligible to launch an appeal (Nature Code, 2014).



Nonetheless, even if adopted, the narrow scope of the proposed appeals procedure modalities would disregard potential social and environmental impacts of CDM project activities that occur in compliance with CDM procedural rules but violate other national or other international norms. As a result, it would not be sufficient to safeguard human rights. The absence of an effective grievance mechanism has negative human rights implications in terms of accountability for the entire CDM process. First, to the local populations, the absence of grievance mechanism in the CDM process denies them a platform through which they can have their voices heard on matters affecting their interests. Second, even if correct in their approach and decisions on the implementation of projects, the defence of project implementers will not be heard with the involvement of local populations whose voices are critical of the approach to project implementation. Finally, the absence of an effective grievance mechanism offends the principle of accountability and presupposes rather wrongly that the CDM can never provoke agitations and its process is above board, which is not the case.

Conversely, the presence of a grievance mechanism in the CDM process has positive human rights implications. One implication is that it can help the CDM process in fulfilling its mandate and help realise the rights of local population to participation and access to remedies. This is because it offers space for the articulation and ventilation of grievances, which may otherwise limit the space for participation and frustrate implementation of projects. Another implication is that an effective grievance mechanism showcases the readiness of the participants in the CDM process to be perceived as bearers of obligations for respect of human rights, which is good for the integrity and overall image of the process.

### **3. 3. Participation and Consultation**

There is significant evidence that public participation is essential to reaching sustainable development objectives and minimizing possible adverse impacts of CDM project activities. Transparent integration of civil society's contribution in climate mitigation projects is prone to enhance co-benefits, raise awareness of stakeholder groups, strengthen their capacity to contribute to development of benefits, empower them to present their interests and concerns, and accept the final results (African Development Bank, 2001). Correspondingly, the LSC is a key tool to avert human rights violations. Meaningful participation of local stakeholders in a project cycle is fundamental for precluding tensions that may lead to the deterioration of local livelihoods.

The CDM modalities and procedures determine the consultation processes during the design and validation stage of the project. Within the process, stakeholders relevant for the proposed CDM project must be informed of the planned activity and be invited to make comments. The outcomes of the LSC must be documented in the project design document (PDD). Designated Operational Entities (DOEs), which are hired as independent third-party validators, need to confirm by means of document review and interviews with local stakeholders that the consultation was carried out through appropriate means and that comments from local stakeholders have been appropriately taken into account. Yet, what is considered appropriate remains under the prerogative of the DOEs (CDM validation and verification standard, cha 7, sec 5, sec 14).

Current modalities and procedures leave room for poor practices on the side of project developers. Poor definition, regulation and documentation of CDM rules allow them to find their own way on how to structure and hold LSC (Johl and Lador, 2012). Consequently, these are not always implemented in a proper manner. Many examples in the past years speak of projects registered despite insufficient stakeholder participation, strong local opposition and evidence that the projects cause harm to the local populations and/or ecosystem (Carbon Market Watch). These scenarios fly in the face of obligations that parties owed their citizens, and portray CDM projects not as champions of rights but as a platform for rights violations.

Therefore, it is not surprising that over the past years several CDM projects have come under criticism due to negligence in LSC and concerns over human rights violations. For example, the Barro Blanco hydroelectric dam is one of many examples that point out a lack of adequate public consultation. The project implementer – Honduras-owned company GENISA – failed to provide proper consultation with the Ngäbe peoples who are most adversely affected by this project. The project was registered by the CDM Board in June 2011, despite evidence of negative impacts on the environment and the local population, including forced relocation, concerns about the appropriateness of the LSC and concerns over human rights violations (ACD, ASAMCHI et al., 2011).

The issue of indigenous peoples' rights violations is also evident in the Santa Rita case, a hydroelectric plant in the Alta Verapaz region of Guatemala. Since 2010, communities have raised numerous concerns against the project over violations of environmental and social norms. According to them, many of the affected people were never consulted in accordance with the obligatory public participation process enshrined in the Guatemalan Agreement on Identity and Rights of Indigenous Peoples and the rules of the CDM registration process. Furthermore, reports of local communities speak of illegal retention of a spiritual leader and community rights defender, the alleged killings of five people including two children, violent attacks against community leaders, and the burning of houses. Santa Rita is the first project that came under formal revision by the CDM Board on the grounds of inadequate stakeholder consultations. However the Board approved the registration of the project (Carbon Market Watch, 2014b) despite these concerns in June 2014.

#### **4 Case Study of Human Rights Violations in the Sasan Power Plant in India**

Another example of misconduct in LSC is evident in the case of the CDM project “Greenhouse Gas Emission Reductions Through Super-Critical Technology – Sasan Power Ltd. (UNFCCC 2014)”. As part of a field trip organized in April 2014 to the Sasan power project by several civil society organizations, the LSC process, as well as the impacts of the project activity on the local population, the health situation and the environment were examined. During the field trip, the surroundings of the project site were visited and interviews were conducted with local residents, workers employed at the project site, and local activists and doctors.

Interviews were partly recorded via camera and were always documented with notes. Questions were mostly prepared and agreed beforehand by the participants of the field trip, to ensure the specific focus of the interview. Interviews were conducted in group sessions with a maximum number of five interviewees at a time, as well as in one-on-one sessions. Local NGOs as well as two international NGOs participated in the field trip and the interviews (Ghio, 2014).

The Sasan power project is one of six coal power projects registered under the CDM. Although the PDD reflects support by many stakeholders in the consultation procedure, this was mainly due to the invitation being sent out to stakeholders chosen by the project owner. Indeed, the majority of the community is illiterate and was not properly informed about the LSC. In addition to a questionable LSC, informal reports from local communities speak of substantial human rights violations, such as property destruction, forced displacement of local people, decreased standard of living, as well as health deterioration due to water pollution and poisoned harvest.

#### **4. 1. Facts**

The Sasan project is one of six coal power projects registered under the CDM. The power plant is one of nine Ultra Mega Power Projects (UMPP) being pursued by the Indian government with a capacity to produce 4000 MW. The Sasan power project is controlled by Sasan Power Limited, which is a subsidiary of Reliance Industries and located in Singrauli, a district emerging as India's energy capital. The total installed capital of all thermal power plants in this area is around 10% of the total installed capacity in India. Claiming to employ more efficient super critical coal technology, the project was registered under the CDM in 2010.

Local residents and tribal people live in small villages in the vicinity of the project site. Locals mainly make a living from agriculture and cattle, using their farming products for the most part for self-sufficiency. The Sasan power project site required large areas for construction. The project and coal mine together involve almost 10,000 acres of land, almost 7,000 acres of which are used for coalmines. In the course of its construction, four villages and one tribal area had to be relocated. Rehabilitation areas have been provided for the relocated locals.

#### **4. 2. Human Rights Deficit**

As first step in the project application process, the project owner drafted a formal project plan to get written approval by the Designated National Authority (DNA), confirming the voluntary participation of the project participants and the project's contribution to sustainable development. With the letter of approval, the project had to follow the necessary steps determined in the CDM project cycle. Therefore, the PDD was the first document to be compiled. As part of the PDD, stakeholder comments were invited and recorded in the document. This approach was complied with using a LSC.

According to the information given in the PDD, stakeholders were identified by the project proponent and invited to a LSC meeting that was announced in a local Hindi language daily newspaper. The LSC was scheduled for 28 April 2008 in a community hall in the Singrauli area. Separate requests and

invitations for participation were also sent out to selected stakeholders including contractors, environmental consultants, officials of the district magistrate and the media. As recorded in the PDD, the LSC meeting started with a circulation of the proposed agenda that was prepared by the project proponent and the selection of a chairman for the public hearing to ensure transparency and orderly conduct. The agenda included the presentation of the project activity, a detailed presentation on the CDM covering the CDM project cycle, GHG emissions, and the Kyoto Protocol, as well as the project activity and the CDM relevance. Moreover, a question and answer session was provided, closing remarks were given, and minutes of the meeting were prepared.

The comments received were incorporated into the PDD. The summary of the comments demonstrates a positive perception of the stakeholders regarding the project. The comments received were submitted by employees, local community villagers, teachers of local schools, media and the press, Engineering, Procurement and Construction (EPC) contractors and environmental consultants. In the PDD it is stated that the comments submitted were taken into account and answered in a detailed manner, as requested. The stakeholders show a keen interest in the construction of the Sasan power project and also request another such project conducted by Reliance Power due to the promised environmental benefits and opportunities to create several livelihoods.

However, taking into account that the LSC was the only means to involve and inform local residents, it is important to note that the majority of local people living in the Singrauli area are illiterate. A newspaper announcement without further orally submitted announcements thus limits the outreach to the local population affected by the project activity. Moreover, the local newspaper chosen to publicize the date and venue of the consultation has a small circulation. Therefore, areas directly affected by the project activity did not receive the information about a LSC. Many interviewed locals reported that they were neither aware of the public hearing nor of the Sasan power project itself before the construction began. At the beginning of construction, locals were merely informed that their residential and farming land was needed for a new coal power plant, and were asked to sell it to the project owner under the promise of secure employment opportunities, as well as high compensation rates (Srijan Lokhit Samiti, 2013).

Additional invitations to the stakeholder consultation were sent to selected people by the project owner. This may have led to the positive outcome of the public hearing, as people selected by the project owner might be those in favour of the project activity or those who were less opposed, resulting in more affirmative comments. This shows that the results of the LSC might be questionable. Even the sufficiency of a LSC in general, without further regulations which specify how to conduct such a consultation, may be open to discussion, especially considering the major impacts this project has on the local population.

The Sasan power project has had major impacts on the local population. Hence this case study does not only focus on the LSC but also on the human rights violations caused by the project. In several reported cases, construction work started without any consultation of the affected population. Houses

were bulldozed, and streets and community property was destroyed before clearance and acquisition was completed. Without permission of the locals, personal belongings were demolished and affected people forcibly displaced to rehabilitation areas. Being dependent on agriculture and the forest, this has far reaching consequences for their livelihoods (Srijan Lokhit Samiti, 2013). Their standard of living decreased as locals were no longer able to work in their fields and most of them were not employed in the project activity, in contrast to prior promises of the project owner.

Moreover, it has been reported (Bank Information Center, 2013) that fly ash generated by the project activity pollutes the water and poisons the harvest and the fish, making it unsafe to consume food and causing an increase of diseases in the affected area. Furthermore, the Sasan project has a further negative impact on the health situation in Singrauli – an area that is already shaped by numerous coal power plants (Sierra Club, 2013).

The above project is particularly significant as an example that a CDM project implemented without due regard for rights can be counterproductive and will not deliver its sustainable benefits. For instance, the poorly conducted LSC negatively affects a range of rights of the local populations including participation and non-discrimination. It further underscores the point that weakly conducted LSC goes beyond the rights of citizens, as it touches on the integrity of the mechanism and processes. Also, scenarios such as the displacement of the local populations implicate a range of socio-economic and cultural rights. It prevents populations' access to the forest and resources on which they are dependent, and compromises their rights to subsistence, food, water and the right to an adequate standard of living, which is enshrined in article 25 of the UDHR and Article 11 of the ICESCR. This shows that a rights-based approach is inevitable for an effective CDM. It remains to be seen whether there are best practices within comparable programmes that the CDM can follow in developing a rights-based approach for project implementation.

## 5 Emerging Best Practices for a Rights-Based Approach

Steady progress is being made in comparable mechanisms under climate mitigation measures on human rights. Unlike the CDM, there are a number of climate mitigation mechanisms with more stringent safeguard policies in place. While the CDM addresses sustainable development co-benefits merely through a voluntary tool, climate instruments such as Reducing Emissions from Deforestation and Forest Degradation (REDD+), the Adaptation Fund (AF), and the Green Climate Fund (GCF) are all either in the process of developing, or are already employing, more advanced monitoring, reporting and verification (MRV) systems. For example, safeguards are a core part of the REDD+ mechanism. At the Cancun COP, the normative basis for implementing REDD+ was established in the form of safeguards (UNFCCC COP 2010 Decision 1/CP.16). According to paragraph 2 of Appendix 1 of the Cancun Agreements:

When undertaking the activities referred to in paragraph 70 of this decision, the following safeguards should be promoted and supported:

- (a) That actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements;
- (b) Transparent and effective national forest governance structures, taking into account national legislation and sovereignty;
- (c) Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples;
- (d) The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities, in the actions referred to in paragraphs 70 and 72 of this decision;
- (e) That actions are consistent with the conservation of natural forests and biological diversity, ensuring that the actions referred to in paragraph 70 of this decision are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits;
- (f) Actions to address the risks of reversals;
- (g) Actions to reduce displacement of emissions.

The subsequent decisions of the COP further require that parties, through national communications and other channels, indicate their level of compliance with these safeguards (Decision 12/CP.17; Decision 12/CP.19). Particularly, countries are required to develop a Safeguards Information System (SIS). The aim for the SIS is to apply a scaled risk-based approach to provide information on how safeguards are addressed and respected. The SIS is to be implemented at the national level and must be sensitive to national circumstances, but can be built on existing processes. It should provide information on how all Cancun safeguards are addressed and respected. When developing its SIS, countries must outline the safeguards in order to scrutinize them (Carbon Market Watch, 2014c; Peskett & Todd, 2013).

The UN-REDD Programme and Forest Carbon Partnership Facility have also prepared joint guidelines on stakeholder engagement in REDD+ Readiness, which include mechanisms for grievance, conflict resolution and redress. The Guidelines outline the normative framework by which the UN-REDD Programme follows a human rights-based approach to programming and policy (Forest Carbon Partnership, 2012).

The AF's guidance on stakeholder participation has been enhanced over years to provide a more inclusive approach that supports the engagement of government and non-governmental stakeholders through formal and informal channels. The concept stage of the project includes only key stakeholders.

The documentation of the consultative process must encompass the list of stakeholders, consultation techniques applied and key consultation findings, including suggestions and concerns (Cannales Trujillo and Nakhooda, 2013). The environmental and social system of the AF includes screening of environmental and social risks through annual performance reports, which oversee the implementation of environmental and social measures and are to be publicly disclosed. Environmental and social policy determines that the implementing entities shall identify a grievance mechanism that provides people with an accessible, transparent, fair and effective process for receiving and addressing their complaints about a project's environmental or social harms. Based on the recommendation of the Ethics and Finance Committee, the AF provides the possibility of communicating directly with the secretariat (Adaptation Fund, 2013; Carbon Market Watch, 2014c).

The GCF also highlights the importance of safeguard policies in supported projects. It defines an environmental and social management system (ESMS) and foresees extensive stakeholder participation in the design, development and implementation stages. The GCF's accreditation process examines environmental and social indicators, applies rating and scoring systems, and examines grievance mechanisms as part of the accreditation process to assess the robustness of an applicant's environmental and social management system. The process also includes mandatory reporting on one co-benefit. Until the GCF develops its own environmental and social safeguards, it was agreed to follow Adaption Fund's experience and base its safeguards on the performance standards of the International Finance Corporation (IFC) (Green Climate Fund, 2014a, 2014b; Schalatek and Nakhooda, 2013). On 7 August 2014, the Board of the GCF adopted the Fund's initial investment framework, which designates Investment guidelines and Initial criteria for assessing programme/project proposals. These include the project's sustainable development potential (e.g. environmental, social and economic co-benefits, gender-sensitive development impact), and address vulnerable groups and gender aspects (Green Climate Fund, 2014c). Overall, the fund's environmental and social safeguards are to be consistent with international best practices and standards, and seek to draw from the experience and lessons learned from relevant institutions (Green Climate Fund, 2014a).

Assuring respect for human rights within CDM projects has shown to be inherently difficult. Apart from the limited public participation opportunities before registration, and the complete absence of a grievance mechanism, the debate about human rights concerns within the CDM is also political in nature. While international rules are to be applied for all matters in relation to the emissions reduction calculations of CDM projects, issues affecting the sustainable development of the project activities are only dealt with at national levels. Although there are both national and international rules on how to conduct and validate LSC, it is unclear how they relate to each other.

## 6 Conclusion

Following a range of resolutions passed under the aegis of the United Nations Human Rights Council and the subsequent recognition of the link between climate change and human rights through the decision of COP 16 at Cancun, human rights have found a voice in the climate change discussion and

resulting response actions. However, the CDM is yet to reflect in its rules a rights-based approach embodying the principles of universality and inalienability, equity and non-discrimination, participation, or access to grievance and redress mechanism. The consequence of this, as the paper shows through the Sasan case study, is that rights of local populations are violated in the process of implementing CDM projects.

In order for the CDM to ensure the protection of fundamental rights, it must establish an institutional safeguard system that effectively monitors and prevents negative social and environmental implications. For this reason, a grievance mechanism is of key importance to respond to potential concerns before conflicts escalate. The CDM should consider the best practices from programmes of comparable status such as REDD+, the GCF and the AF, which are making steady progress in mainstreaming human rights into their operation. In some of the programmes and initiatives, non-judicial grievance mechanisms are emerging and being used effectively to address disputes between individuals, companies, or groups in society, and to strengthen stakeholders' participation.

There are currently several political processes under way to implement a rights-based approach under the UNFCCC. These include implementing Warsaw decision 3/CMP.9, which mandates the CDM Executive Board to collect information on practices for LCS and provide technical assistance for the development of guidelines (UNFCCC, 2014b). There is also political pressure to reform mechanisms, such as the CDM and REDD+, which provides a good opportunity to build on existing best practice guidelines while clarifying and strengthening the requirements for stakeholder involvement and access to an effective grievance mechanism in the time leading up to COP 21.

## 7 References

- ACD, ASAMCHI, M-10, International Rivers, Counter Balance Coalition, CDM Watch. "Re: CDM Project Application #3237 Barro Blanc Hydroelectric Project." (2011), Letter to the CDM Executive Board, 24 March 2011.
- Adaptation fund. "Environmental and Social Policy (Approved in November 2013)." (2013). [https://www.adaptation-fund.org/sites/default/files/Environmental%20&%20Social%20Policy%20\(approved%20Nov2013\).pdf](https://www.adaptation-fund.org/sites/default/files/Environmental%20&%20Social%20Policy%20(approved%20Nov2013).pdf)
- African (Banjul) Charter on Human and Peoples' Rights (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986).
- African Development Bank. "Handbook on stakeholder consultation and participation in ADB operations." (2001), <<http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/Handbook%20on%20Stakeholder%20Consultaion.pdf>>
- American Convention on Human Rights, Nov. 22, 1969, 1144 U.N.T.S. 123.
- American Declaration of the Rights and Duties of Man (Adopted by the Ninth International Conference of American States, Bogotá, Colombia, 1948).



Bank Information Center “Sasan Ultra Mega Power Project Singrauli, Madhya Pradesh. A Brief Report” (2013).

Cannales Trujillo, N. and Nakhooda, S. “The effectiveness of climate finance: a review of the Adaptation Fund.” (2013), ODI Working paper 373, March 2013.

Carbon Market Watch. “CDM Project Cycle.”, <<http://carbonmarketwatch.org/learn-about-carbon-markets/cdm-project-cycle/>>

Carbon Market Watch. “The CDM sustainable development tool: why ‘highlighting’ will not deliver (Newsletter #20).” (2012).

Carbon Market Watch. “Human Rights: How lessons learnt from the CDM can inform the design of New Market Mechanisms.” (2013) Side event report, <[http://carbonmarketwatch.org/wp-content/uploads/2013/12/summary-report\\_HR\\_final.pdf](http://carbonmarketwatch.org/wp-content/uploads/2013/12/summary-report_HR_final.pdf)>

Carbon Market Watch. “New Sustainable Development Tool is a small step forward.” (2014a), <<http://carbonmarketwatch.org/cdm-board-launches-sustainable-development-tool/>>

Carbon Market Watch. “Campaigns: Santa Rita – Large hydro power project, Guatemala.” (2014b), <<http://carbonmarketwatch.org/category/santa-rita-large-hydro-power-project-guatemala/>>

Carbon Market Watch. “Improving the Stakeholder Consultation Processes.” (2014c), Presentation by Eva Filzmoser at Africa Regional Workshop, 30 June – 1 July, Windhoek, Namibia. Plenary 4: Enhancement of participation of local stakeholders, key to success of CDM projects.

CDM validation and verification standard. “Standard: Clean development mechanism validation and verification standard.” CDM-EB65-A04-STAN, Version 03.0.China-DNA, interview by Yan Dong. Chongqing, (Apr. 2010).

CDM Watch. “Re: Inadequacy of local stakeholder consultation of CDM project 3197 (Bajo Aguan).” (2011) Letter to the CDM Executive Board, 24 June 2011.

Centre for International Environmental Law (CIEL) & Earth Justice Joint Submission on the Sustainability Benefits of the Clean Development Mechanism, 3 July 2011.

Center for International Environmental Law, Asociación Interamericana para la Defensa del Ambiente, Earthjustice, and International Rivers Submission on views regarding the revision on views regarding the revision of the CDM Modalities and Procedures, 26 March 2013.

Declaration of Principles on Equality (2008) <http://www.equalrightstrust.org/ertdocumentbank/Pages%20from%20Declaration%20perfect%20principle.pdf> (accessed 10 November 2013)

Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples' Rights, 32nd Sess. (Oct. 23, 2002) <<http://www.achpr.org/sessions/32nd/resolutions/62/>> (accessed 24 August 2014).

European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221.

Executive Board. “Clean Development Mechanism.” (2011), Executive Board Annual Report 2011, <[http://unfccc.int/resource/docs/publications/cdm\\_annual\\_report\\_2011.pdf](http://unfccc.int/resource/docs/publications/cdm_annual_report_2011.pdf)>

Forest Carbon Partnership. “Guidelines on Stakeholder Engagement in REDD+ Readiness With a Focus on the Participation of Indigenous Peoples and Other Forest-Dependent Communities.” April 20, 2012 (revision of March 25th version).

General comment No. 34 Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011.

Ghio, N. “U.S. Export-Import Bank’s Dirty Dollars: U.S. tax dollars supporting human rights, environment, and labor violations at the Sasan Coal-Fired Power Plant and Mine, in India.”(2014), Sierra Club.

Green Climate Fund. “Guiding Framework and Procedures for Accrediting National, Regional and International Implementing Entities and Intermediaries, Including the Fund’s Fiduciary Principles and Standards and Environmental and Social Safeguards.” (2014a), Meeting of the Board, GCF/B.07/02, 7 May 2014.

Green Climate Fund “Initial Results Management Framework of the Fund.” (2014b), Meeting of the Board, GCF/B.07/04, 7 May 2014.

Green Climate Fund. “Decisions of the Board –Seventh Meeting of the Board, 18-21 May 2014” (2014c) GCF/B.07/11, 19 June 2014.

Green Peace. “Human rights and the climate crisis: Acting today to prevent tragedy tomorrow.” (2009), <[http://www.ohchr.org/Documents/Issues/ClimateChange/Submissions/Greenpeace\\_HR\\_ClimateCrisis.pdf](http://www.ohchr.org/Documents/Issues/ClimateChange/Submissions/Greenpeace_HR_ClimateCrisis.pdf)> (accessed 24 August 2014).

Human Rights Council. “Resolution 10/4 Human rights and climate change.” (2009) [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_10\\_4.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_10_4.pdf)

Human Rights Council. “Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights.” A/HRC/10/61 15 January 2009 (OHCHR Report).

Human Rights Council. “Human rights and climate change.” Res. 7/23, U.N. Doc. A/HRC/7/78 (Resolution 7/23).

Human Rights Council. “Resolution 18/22 ‘Human rights and climate change.’” (2011) (Resolution 18/22) A/HRC/RES/18/22.

Human Rights Council. “Resolution 26 L/33 ‘Human rights and climate change.’” (23 June 2014), A/HRC/26/L.33.

Johl, A. and Lador, Y “A Human Rights-based Approach to Climate Finance.” (2012), Friderich Ebert Stiftung <<http://library.fes.de/pdf-files/iez/global/08933.pdf>>

Knox, J.H. “Linking human rights and climate change at the United Nations.” *Harvard Environmental Law Review* 33 (2009).

Limon, M. “Human rights and climate change: Constructing a case for political action.” *Harvard Environmental Law Review* 33 (2009).

Nature Code. “Views on suggested changes to the Modalities and Procedures (M&Ps) for the Clean Development Mechanism (CDM).” (30 April 2014).

- Occupycop17's channel. "Martin Hession on CDM human rights abuses." (2011), Uploaded on 7 Dec 2011, retrieved from YouTube: <[https://www.youtube.com/watch?v=TR\\_T4f9W8yg](https://www.youtube.com/watch?v=TR_T4f9W8yg)>
- Pesketta, L. & Todd, K. "Putting REDD+ Safeguards and Safeguard Information Systems into Practice." UN-REDD Policy Brief 03, 2013. UNREDD Programme.
- Peter, N. "Taking accountability into account: The debate so far" in P. Newell & J. Wheeler (eds) Rights, resources and the politics of accountability (2006).
- Resistencia Honduras. "CDM Registers Facusse's Dinant Corp., Cannot Verify HR Issues." (2011), 7 August 2011, <[http://www.resistenciahonduras.net/index.php?option=com\\_content&view=article&id=3374:cdm-registers-facusses-dinant-corp-cannot-verify-hr-issues&catid=101:news&Itemid=349](http://www.resistenciahonduras.net/index.php?option=com_content&view=article&id=3374:cdm-registers-facusses-dinant-corp-cannot-verify-hr-issues&catid=101:news&Itemid=349)>
- Schalatek, L., and S. Nakhooda. "The Green Climate Fund." *Climate Finance Fundamentals* 11 (2013).
- Scheinin, M. 'Characteristics of human rights norms' in C. Krause & M. Scheinin (eds) International protection of human rights: A textbook (2009), 24.
- Sierra Club. "Coal Killed 100,000 in India in 2012." (11 March 2013) <<http://sierraclub.typepad.com/compass/2013/03/coal-killed-100000-in-india-in-2012.html>>
- Srijan Lokhit Samiti. "Torture in Police Custody." (26 September 2013) <<http://lokhitsamiti.wordpress.com/2013/09/26/torture-in-police-custody/>>
- Swepston, L. & Alfreðsson, G. "The rights of indigenous peoples and the contribution by Erica Daes." in G.S. Alfreðsson & M. Stavropoulou (eds) Justice pending: Indigenous peoples and other good causes: Essays in honour of Erica-Irene Daes (2000).
- UNDG. "The human rights based approach to development co-operation: Towards a common understanding among UN Agencies." United Nations Development Group, (2003) <<http://hrbaportal.org/the-human-rights-based-approach-to-development-co-operation-towards-a-common-understanding-among-un-agencies>> (accessed 24 August 2014).
- UNFCCC. "Project Design Document Project 3690: Greenhouse Gas Emission Reductions Through Super-Critical Technology-Sasan Power Ltd." (2014a) <<http://cdm.unfccc.int/filestorage/5/L/A/5LA6H4J80MWZPYK3USTN9OIFBRVG72/Sasan%20PDD.pdf?t=Qkl8bmEyMWFhFhDD2JFmOnOeKxi9t64XGK1C5>>
- UNFCCC. "Tools." (2014b) *Voluntary tool for describing sustainable development co-benefits (SDC) of CDM project activities or programmes of activities (SD Tool)* <<http://cdm.unfccc.int/Reference/tools/index.html>>
- UNFCCC. "Report of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol on its ninth session, held in Warsaw from 11 to 23 November 2013." (2014c), FCCC/KP/CMP/2013/9/Add.1.
- UN General Assembly. "International Convention on the Elimination of All Forms of Racial Discrimination (CERD)." (21 December 1965) *United Nations, Treaty Series* 660, p.195, <<http://www.refworld.org/docid/3ae6b3940.html>> (accessed 24 August 2014).

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as contained in the annex to the present resolution.107th plenary meeting 13 September 2007.

United Nations International Covenant on Civil and Political Rights (ICCPR), Dec. 16, 1966, 9 U.N.T.S. 171.

United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.

Universal Declaration of Human Rights (UDHR) by the United Nations General Assembly in Paris on 10 December (1948), General Assembly resolution 217 A (III).

VeneKlasen, L., Miller, V., Clark, C. & Reilly, M. "Rights-based approaches and beyond: Challenges of linking rights and participation." (2004), IDS Working Paper 235, Institute of development studies, England.

Vienna Declaration and Programme of Action, adopted at World Conference on Human Rights in Vienna (1993) UN doc.A/CONF.157/23.

Whelan, D.J. "Indivisible human rights: A history" (2010), University of Pennsylvania Press.

World Bank. "World Development Report 2006: Equity and development" (2006).

**Case law:**

Mayagna (Sumo) Awas Tingni Community v Nicaragua, Inter-American Court of Human Rights 31 Aug. 2001 (Awas Tingni case) paras 12-44, 13.

*Marcel Claude Reyes et al v Chile*, Case 12.108, Report No. 60/03, Inter-Am.Comm. H.R., OEA/Ser.L/V/II.118 Doc. 70 rev. 2 (2003).