

A RIGHTS-BASED APPROACH TO CLIMATE CHANGE MITIGATION: THE CLEAN DEVELOPMENT MECHANISM OF THE KYOTO PROTOCOL

WORLD CONSERVATION CONGRESS
OCTOBER 8, 2008

Marcos Orellana
Center for International Environmental Law



Introduction

- ◎ Human Rights & Climate Change
- ◎ A Rights-Based Approach (RBA) to Climate Change Mitigation
 - › The Clean Development Mechanism
- ◎ The Operationalization of a RBA in the particular context of climate change mitigation

THE RBA IN THE CLIMATE CHANGE MITIGATION CONTEXT: CDM PROJECTS

- The CDM relies on international, national, and private-sector institutions to facilitate foreign investment and achieve climate change mitigation and sustainable development.
- CDM projects may include a broad range of activities that produce a net decrease in greenhouse gas levels compared to the existing baseline:
 - fuel-switching projects;
 - installation of solar panels in villages without access to electric grids;
 - planting and growing trees in areas that have previously been deforested.

The Clean Development Mechanism: Basic Project Cycle

- The Project Sponsor prepares a Project Design Document (PDD)
- A Designated operational entity (DOE) validates the project
- The CDM Executive Board (EB) registers the project
- The CDM Project calculates and monitors its emissions reductions
- A 2nd DOE verifies and certifies the emissions reductions
- On the basis of the DOE certification report, the EB will issue Certified Emissions Reductions

OPERATIONALIZING THE RBA IN CLIMATE CHANGE MITIGATION

- The RBA provides a tool to prevention violations of the rights of stakeholders that may result from climate change mitigation initiatives
- Competitiveness concerns in relation to the RBA in the CC mitigation context?
- The RBA involves a series of steps oriented toward adequate consideration of the rights of individuals and communities that may be affected by mitigation projects

OPERATIONALIZING THE RBA IN CLIMATE CHANGE MITIGATION: STEP 1 – A SITUATION ANALYSIS

- Undertake a Situation Analysis
 - Potential impacts of the proposed project and applicable legal and other rights
 - E.g., World Commission on Dams
 - Baseline Determination is Essential
 - Potential conflict resolution mechanisms
 - Currently lacking in the CDM

Example:

Durban Landfill Gas to Energy Project

Durban Landfill Gas to Energy



OPERATIONALIZING THE RBA IN CLIMATE CHANGE MITIGATION: STEP 2 PROVIDE INFORMATION

- **Provide Information**

- Social & Environmental Impacts
- Options regarding location of project
- Expected benefits deriving from the project

- **CDM Modalities**

- Project Sponsors provide information & invite comments during PDD preparation
- DOE reviews engagement process, makes PDD available and invites stakeholders' comments

OPERATIONALIZING THE RBA IN CLIMATE CHANGE MITIGATION: THE PDD

- The PDD is central to operationalizing the information requirements of the CDM
 - Description of the Project
 - Environmental Impacts
 - Stakeholder Comments
- Questions
 - What type of information and what level of detail?
 - Documentation only if an EIA is necessary?

OPERATIONALIZING THE RBA IN CLIMATE CHANGE MITIGATION: STEP 3 – PUBLIC PARTICIPATION

- Undertake consultations
- Seek and promote free, prior informed consent
 - For example: The Changuinola I Project in Panama*
 - For example: The Jepirachi Wind Power Project in Colombia*
- Provide or utilize mediation, administrative procedures or other mechanisms to secure rights
- Questions:
 - Of all projects rejected to date, none on lack of consultations; Role of the EB?
 - Role of DOE with respect to level of scrutiny over project sponsor's engagement

Jepirachi CDM Project



OPERATIONALIZING THE RBA IN CLIMATE CHANGE MITIGATION:

STEP 4 TAKE REASONED DECISIONS

- **CDM Objective:**

- ✓ Sustainable Development + Climate Change Mitigation

- **Questions:**

- ✓ Could the EB make eligibility determinations based on the human rights record of a project?
- ✓ Would such determination frustrate the CDM's design granting the host State the prerogative to determine whether the project contributes to its sustainable development?

OPERATIONALIZING THE RBA IN CLIMATE CHANGE MITIGATION: STEP 5 – MONITORING & EVALUATING

- Monitoring the Project & its Environmental and Social Impact
- Implementation of Monitoring Plan a condition for the verification, certification and issuance of CERs
- CDM modalities do not establish threshold of negative impacts that could invalidate CERs
- Role for the EB?

Conclusions: CDM

- Most of the concerns raised with respect to CDM projects to date relate to its environmental and procedural integrity.
- Current CDM modalities and procedures already contain certain tools necessary to apply the RBA.
- As the CDM experiences expansion and reform, the RBA can avail to ensure that its future operations ensure a positive contribution to sustainable development, including respect for human rights.

Conclusions: RBA

- The rights-based approach can provide a tool to prevent infringements of rights in the climate-mitigation context.
- The normative content of human rights provides the basis for a RBA to climate change.
- The RBA also can provide much needed inspiration and impetus to increasing international cooperation for sustainable development and climate change mitigation.