

HOW WILL THE CLEAN DEVELOPMENT MECHANISM ENSURE TRANSPARENCY, PUBLIC ENGAGEMENT, AND ACCOUNTABILITY?

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I. INTRODUCTION

The Clean Development Mechanism (CDM), established in the 1997 Kyoto Protocol to the Climate Change Convention, promotes investment in projects that both reduce greenhouse gas emissions and foster sustainable development in developing countries. Governments and other interested parties are now making significant efforts to shape the institutional design of the CDM and to address the methodological challenges of project implementation. However, these groups are paying little attention to the public interest community's role in CDM projects and policymaking. This *Climate Note* attempts to fill this void, suggesting measures the Protocol Parties should take to promote public participation within the CDM.

The CDM represents the most globalized element of the Kyoto Protocol in that it embraces a wide range of stakeholders and interests to collectively solve a universal problem. First, it is the main element of the treaty that bridges the developing and industrialized worlds. Second, a successful CDM will require public-private partnerships.¹ Although private sector investment is expected to drive this mar-

ket mechanism, the CDM will simultaneously require active participation by and cooperation with governments. Third, the mechanism is also project-based, making local communities important stakeholders in the planning and implementation of project activities. Finally, the CDM's multifaceted global climate change and sustainable development objectives are the highest priorities for a broad range of local, national, and international non-governmental organizations (NGOs).

Given its character, the mechanism will also need to embrace emerging global norms, such as transparency, public engagement, and accountability in order to thrive. Along with other considerations,² these factors will be instrumental in determining whether the CDM fulfills stakeholders' high

expectations and diverse interests. Overall, public participation will improve the likelihood of project success, hold decisionmakers accountable, provide safeguards against corruption, and further the mechanism's emission reduction and sustainable development aims. As the 1992 Rio Declaration on Environment and Development states, a strong link exists between public participation and achieving sustainable development—one of the CDM's explicitly stated objectives. (See *Box 1*.)

II. WHAT IS PUBLIC PARTICIPATION?

The "public" refers here to a broad group of stakeholders, including individuals and families living near the project, indigenous groups, religious groups, public sector officials, private

Box 1

Rio Declaration on Environment and Development

Principle 10. Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities

in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.



sector companies, and NGOs at the local, national, and international level.³ These individuals or groups may be directly or indirectly affected by, or otherwise have an interest in, project activities.

The “participation” of these stakeholder groups refers to access to information, engagement in decision-making, and access to judicial redress. The 1992 Rio Declaration and, more recently, the Aarhus Convention⁴ elaborated the following three rights of the public.

- 1. Access to information.** The public has the right to access (and governments have an obligation to disclose) information, including environmental data, planned or operational policies and measures, and other relevant documentation.
- 2. Participation in decision-making.** Decisions regarding specific development activities, environmental policies, and environmental legislation should undergo public review and consultation.
- 3. Access to judicial remedy.** Individuals and NGOs should be able to seek recourse in cases of nonperformance or noncompliance with the above.

The term “public participation” refers collectively to this set of core principles that, broadly speaking, promote transparency, public engagement, and accountability.

Increased Public Participation at the International Level

The world’s governments, international financial institutions, and even the private sector recognize the importance of public participation in environmental decisionmaking. In 1992, the world’s governments agreed to the basic principles of public participation in the Rio Decla-

ration and Agenda 21.⁵ In 1998, 40 governments agreed to the Aarhus Convention to ensure that the public participation principles contained in the Rio Declaration are operationalized.⁶ Unlike the Kyoto Protocol or other multilateral environmental agreements that have specific environmental goals, the Aarhus Convention follows a number of recent initiatives⁷ that focus on the *process* by which environmental decisions are made, rather than a specific outcome.

International financial institutions, including the members of the World Bank Group, also identify public participation as vital to the success of development projects.⁸ For more than a decade, these organizations have struggled to find effective public participation approaches.

Although they have had mixed success with implementation, these institutions have a variety of policies and procedures that deal with stakeholder consultation, environmental and social impact assessments, information disclosure, and other important aspects of public participation.

In addition to such policies and procedures, international financial institutions have created special bodies to address complaints and ensure compliance with policies. Such bodies include the Inspection Panels of the World Bank and some regional development banks, as well as the Compliance Advisor/Ombudsman, which serves both the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).⁹ These bodies provide a for-

mal channel for private citizens who believe that their rights or interests have been or could be harmed due to the Bank’s failure to follow its established policies and procedures.

Given their involvement in projects in developing countries, some export credit agencies—such as the U.S. Overseas Private Investment Corporation (OPIC)—also have a set of public participation requirements, such as environmental impact assessment (EIA) policies.¹⁰ OPIC’s Environmental Handbook lists projects for which an EIA or audit will be required. OPIC provides the public with a full opportunity to comment before making a final financial commitment. Finally, insurance and financing institutions

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also identify stakeholder involvement as a key factor in developing financially successful projects.¹¹

The experiences of international financial institutions, including both successes and failures, may be particularly helpful in formulating public participation provisions for the CDM. Clearly, the CDM is a unique institution and, therefore, requires unique policies and guidelines. Nevertheless, important commonalities exist between different institutions, and decisions on the CDM should be informed by lessons already learned elsewhere. Appendix I includes a listing of further suggested resources.



The Need for Public Participation in the CDM

Bringing public participation principles—transparency, public engagement, and accountability—into practice within the CDM will enhance the mechanism in several ways.

First, as international financial institutions have recognized, public participation improves the likelihood of successful project implementation. Involving the public reduces project financing risks and improves the long-term financial viability of the project by avoiding costly delays, legal disputes, and negative publicity. Projects that are not supported by local populations are far more likely to face

implementation problems and far less likely to achieve their intended outcomes.¹² Public engagement tools, such as those outlined in Box 2, allow project developers to guard against such risks by incorporating the concerns of stakeholders into a project's initial design and ongoing operation. From the standpoint of local communities hosting CDM projects, public participation measures will help projects address their social and economic needs, as well as make use of the skills, experience, and knowledge of NGOs and local groups.

From the standpoint of all CDM stakeholders—local communities, investors, and public officials within national gov-

ernments and international CDM bodies—public participation promotes accountability and good governance. Timely disclosure of information, for example, will reduce the likelihood of corruption or collusion and improve the overall performance of the mechanism. Openness and transparency will also promote a dynamic learning process, which is particularly important because the CDM is a new and untested vehicle for international investment.

Second, public participation will help the CDM deliver its stated objectives. CDM projects aim to promote climate benefits by generating “additional” greenhouse gas emission reductions from project ac-

Box 2

Public Participation Tools

There are a variety of tools, summarized below, that are commonly used in various stages of project design and development. Whether one or another tool is used in a particular instance will depend mainly on the type of project, project location, local and national regulations, and other characteristics of the project.

Informational meetings. Project implementers can hold meetings at the local, state, or national levels to provide basic information about a proposed project. Such meetings can help build public support, identify local concerns, and develop collaborations with local groups.

Availability of project documents and reports. By providing information that is accessible to local stakeholders, public understanding of the project is increased. Available documents and reports also increase accountability, the perceived legitimacy of projects, and the ability of stakeholders to assess projects and their interests.

Environmental impact assessments (EIAs). While the extent of public involvement in EIAs varies according to national laws, this tool can in many instances provide an opportunity for the public to evaluate and comment on proposed projects. Some EIA laws include procedures for government agencies to review and consider comments. Such comments may contribute to whether the project receives the necessary licensing and government approval.

Hearings and other opportunities for comment. Once a project is identified, project proponents may provide opportunities for the public to comment on the project. Comments may be solicited through official notifications via radio, newspapers, or other media. Hearings open to the public may be held to obtain public comments, providing an important forum for stakeholders who may not be able to express their views clearly in writing. Such hearings can also provide the project proponents with a realistic sense of community opinion. While some hearings may be essentially informative,

others may be evaluative, whereby competing project ideas or proposals are vetted publicly.

Advisory committee. Some project proponents establish an advisory committee, composed of diverse stakeholder groups, to achieve continual input on project design and implementation.

Public role in implementation and monitoring. Depending on the nature of the project, there may be scope for NGOs or other local groups to participate in the actual implementation of a project, including maintenance, monitoring, or oversight. Project monitoring may also involve ongoing public hearings or reviews to ensure that the project is producing the benefits originally anticipated.

Source: This box is adapted from Environmental Law Institute, *Transparency and Responsiveness: Building a Participatory Process for Activities Implemented Jointly Under the Climate Convention* (Washington, DC: ELI, 1997): pp. 10-13.



tivities. Calculating climate benefits may not be easy, considering the well-known technical challenges associated with assessing additional emission reductions and the unique circumstances of individual projects. An open, transparent

controversial facility siting, resettlement of populations, the purchase of private or public lands, and even some adverse local environmental consequences. To have credibility and public acceptance, policy decisions on such trade-offs under the CDM will require informed stakeholder participation.

Public participation will help the CDM deliver its stated objectives.

Finally, international CDM discussions since 1997 have largely ignored the role of local

process will improve environmental integrity by allowing NGOs and local groups to provide any vital information that may have been omitted by, or unknown to, project proponents, as well as contribute to the ongoing formulation of CDM standards and policies. For example, such a process would reduce uncertainty and increase the credibility of project baselines, against which emission reductions will be measured.

An equally important objective of the CDM is enhancing sustainable development. Agenda 21, agreed to at the 1992 Earth Summit, states that “one of the fundamental prerequisites for the achievement of sustainable development is broad public participation in decision-making.”¹³ Many projects are likely to deliver both climate and sustainable development benefits simultaneously.¹⁴ However, in some cases, there may be clear trade-offs between these two goals. In the absence of clear project eligibility rules at the international level, CDM projects might include a number of project types that, while reducing emissions, negatively affect local communities. Electric power or forestry projects, for example, could involve a

communities and indigenous peoples—significant stakeholders in the sustainable development process. This has fueled distrust and concern on the part of many groups, as exemplified in several statements released by coalitions representing local or indigenous communities.¹⁵ Negotiators must now address these concerns and be mindful of potential political backlash, considering that the CDM, and the Kyoto Protocol more broadly, requires continuous political support from the world’s governments. Furthermore, as a practical matter, CDM projects will be scrutinized by many civil society groups. Secrecy and stakeholder marginalization will only foment further resentment among certain groups of civil society, placing the mechanism in possible political jeopardy.

As the experiences of the World Trade Organization and the abandoned Multilateral Agreement on Investment show, institutions that govern international markets are vulnerable creations. The CDM would do well to avoid the broader backlash against globalization by embracing its numerous constituents early on. In short, *process* matters.

III. INTRODUCTION TO THE CDM PROJECT CYCLE

Understanding the basic operation of the CDM, and its institutions, can help us assess where the appropriate entry points lie for public participation, discussed in the following section. All CDM projects will pass through a set of common stages, beginning with the initial project idea, then proceeding through implementation, and ending with periodic certification of emission reductions. The general steps within this project cycle are shown in Figure 1.¹⁶

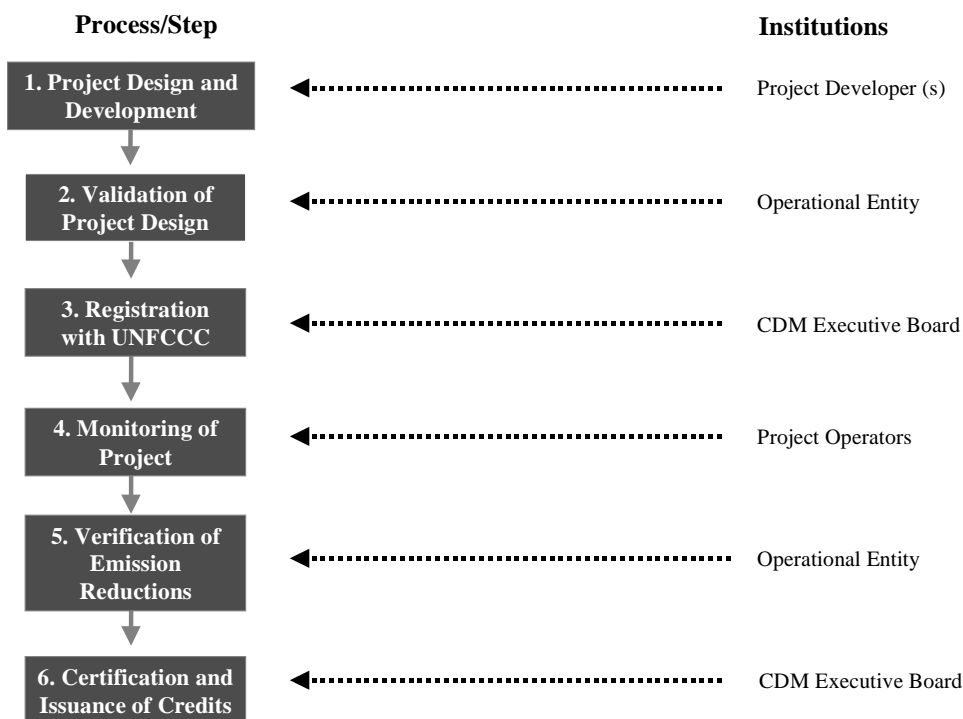
The first stage of the CDM cycle, *project design and development*, will take place within a developing country. Here, project developers will undertake the necessary feasibility studies and seek approval for the project from the host government. For the purposes of CDM approval, project proponents will also need to develop a project design document, according to a standardized structure agreed to by the Protocol Parties.¹⁷ The project design document should contain technical and methodological details of the project (e.g., on the baseline and monitoring plan) as well as other basic information on the project.

Project *validation* is an assessment, undertaken prior to project implementation, of whether the project meets the requirements of the CDM. An independent third party, referred to as an operational entity in CDM parlance, will conduct this assessment based on the information the project developers provide in the project design document.¹⁸ This process is shown as Step 2 of Figure 1. Many Parties believe that key elements of



Figure 1

The CDM Project Cycle



Source: World Resources Institute

the project validation should include the following: an assessment of the project's baseline and monitoring plan; assurance of government approval; and assurance that the project contributes to sustainable development, according to the host country requirements.¹⁹ Project *registration*, shown as Step 3 of Figure 1, marks the CDM Executive Board—a new institution created by the Kyoto Protocol to supervise the mechanism—granting formal approval of a CDM project.

Project implementation and *monitoring*—shown as Step 4 of Figure 1—is the responsibility of project operators. Operators will need to monitor the relevant aspects of the project, in accordance with the monitoring plan approved during project registration. Data to be measured

and managed include emissions and absorptions of all greenhouse gases resulting from project activities. More general project performance indicators may also require monitoring. Data will be gathered according to a standardized format and procedure approved by the Parties.

Once a project has been implemented and is operating for a period of time, a *verification* process—Step 5—will then assess the quantity of emissions actually reduced by the project activity. As with validation, an operational entity should conduct the verification exercise. This step is expected to include periodic reviews and full audits of monitoring data, project documentation, and project operations. This could include on-site inspections, interviews, and statistical sampling.²⁰

Certification entails the written assurance by an operational entity, in the form of a verification report submitted to the Executive Board, that a given amount of emission reductions has indeed been achieved. Finally, on the basis of the verification report, the Executive Board will *issue certified emission reduction credits* to the project participants, the final step of Figure 1.

IV. ENSURING TRANSPARENCY, PUBLIC ENGAGEMENT, AND ACCOUNTABILITY IN THE CDM

The Protocol Parties have yet to address how public participation will be integrated within the CDM project cycle and institutions introduced above. Although some modest propos-



als are included in the CDM negotiating texts,²¹ given its objectives—climate protection and sustainable development—greater efforts are required. The Parties will eventually need to elaborate public participation policies as well as develop the necessary procedures and institutions to ensure that the principles discussed in Section II are operationalized.

This section illustrates how such public participation procedures can be built into CDM rules, some of which may also apply to the Protocol's joint implementation mechanism. (See Box 3.) In shaping public participation policies and procedures for the CDM, Parties should be guided by the following principles.

Early Engagement. The Protocol Parties should create positive incentives for project developers to involve local stakeholders and provide ample pub-

lic information early in the project's life. Doing this will decrease the risks of subsequent project disputes and increase the likelihood that a project will deliver local benefits.

Rather than being reactive and oriented toward problem-solving, policies and procedures should focus on preventing disputes by providing incentives and requirements for information disclosure and engagement.

Nonduplication. With some issues, such as environmental impact assessments, appropriate national laws may be already in place. CDM public participation policies should ensure that project developers are not required to duplicate identical procedures at the national and CDM levels. The more environmentally stringent requirement should take precedent.

Proportionality. Some projects, such as installing new boilers or high efficiency light bulbs, may have little impact on, or involvement with, local

The Protocol Parties should create positive incentives for project developers to involve local stakeholders, and provide ample public information early in the project's life.

populations. Other projects—such as wind farms, large hydroelectric plants, or reforestation projects—may entail negative collateral environmental impacts or require resettlement of local populations. The level of required public engagement should be tailored to the characteristics of a project. More generally, a “fast track” procedure should be considered to ensure that small, low-impact projects are competitive in the CDM. (See Box 4.)

Box 3 Public Participation and Joint Implementation

As with the CDM, joint implementation (JI) is a project-based mechanism under the Kyoto Protocol that involves a transfer of emission reduction credits among countries. Although the CDM allows for transfers of credits between developing and industrialized country Parties, JI will be characterized by transfers of emission reduction units only among Parties included in *Annex I of the Climate Convention*, such as between countries with economies in transition and other industrialized countries.

All countries participating in joint implementation have national emission reduction obligations under the Protocol. These national emission caps, and

the Protocol's associated national measurement and reporting obligations, ensure the environmental integrity of JI. This, according to most Parties, necessitates less stringent international controls at the project level.¹ Instead, host countries will need to implement their own procedures to validate, monitor, and verify projects. Such procedures may be subject to some broad international criteria, but in general, verification responsibilities should fall within the purview of *national* institutions, rather than the CDM's operational entities or Executive Board.

Although the public participation issues addressed elsewhere in this *Note* are equally relevant to JI, they may need to be applied differently, depending on the decisions made

by the Protocol Parties on the institutional design of JI. In any case, most countries with economies in transition are also signatories to the Aarhus Convention, necessitating additional domestic procedures for public participation within national JI programs. The key stages in which public participation policies and procedures will be essential in national JI programs are prior to project approval and during the transfer of emission reduction units.²

1. See Chairman's Text, Part I.
2. See E. Petkova and K. Baumert, *National Joint Implementation Programs in Central and Eastern Europe* (Washington, DC: World Resources Institute, November 2000).



Learn from Existing Experience. As noted, other institutions that finance, insure, or are otherwise involved in implementing development projects have public participation policies and procedures, in many cases developed over years of practical experience. Although the CDM will require unique approaches, the successes and failures among other institutions with public participation will be instructive for the CDM. Several examples are identified below and further resources are listed in Appendix I.

Mindful of these guiding principles, five basic elements needed to promote transparency, public engagement, and accountability in the CDM are outlined below. The Protocol Parties can make decisions on some issues, such as the basic composition and mandates of CDM institutions, relatively soon. The CDM Executive Board will need more time to develop other policies, such as those on public consultation and information disclosure, for the Protocol Parties' eventual approval.

1. Structure of the Project Design Document

As noted, project proponents will need to develop a project design document, according to a standardized structure, to be approved under the CDM. In addition to other important information about a project, this document should be required to include information on the involvement of local communities. The exact requirements for the project design document should reflect policies and guidelines for public participation agreed to by the Protocol Parties, including the following:

Box 4

A CDM Fast Track for Small Projects

A potential concern is that the CDM project cycle, outlined in Section III, may be expensive and render small-scale projects noncompetitive. According to Environmental Financial Products, the credit revenues for a 50kw solar electric project could range from \$200 to \$1000 per year, depending upon the price of CDM credits and the choice of baseline.¹ The costs associated with the CDM project cycle could easily exceed these modest revenues, thereby, eroding any environmentally friendly investment incentives created by the CDM. In other words, the CDM could inadvertently encourage the development of only large, capital-intensive projects. In addition to other measures to promote certain small-scale projects, the Parties should consider adopting a "fast track" approach to guard against this possibility.²

The critical ingredient to CDM fast track is the development of standardized baselines,³ against which one can determine the amount of credits generated by the project. Standardized baselines would require *ex ante* political decisions on both eligible project

types and the applicable baseline data. Such project types might include renewable energy sources (including wind power, solar power, biogas, small hydropower, and solar cookers among others) and end-use energy efficiency measures (including industrial cogeneration). Many of these project types are conducive to standardized baselines, which could be included in a CDM reference manual, as proposed by some Parties.⁴

For example, off-grid renewable energy projects might adopt a baseline that reflects the carbon intensity of either kerosene, diesel fuel, or charcoal. On-grid applications might use a baseline that reflects natural gas combined-cycle carbon intensity. In such cases, calculating emission credits would require only an estimation of the number of kilowatt hours generated, which must be monitored (or estimated) and reported by the project operators, and subsequently assessed by an operational entity during the verification stage.

Procedurally, fast track would not *eliminate* any of the steps of the project cycle, but would substantially streamline them. For example, eligible projects would not need to hire a third party for validation.

This could instead be done by the host government during project approval. Thus, once the government has approved the project, the developer or government would be able to submit the project design document directly to the Executive Board for registration. Similarly, a more simplified project design document could be available for small-scale, fast track CDM projects. This would lower project development costs. The rest of the procedures, such as independent verification or emission reductions, should apply equally to all projects under the CDM. Overall, such an approach would not sacrifice environmental integrity and public participation in the mechanism.

1. M. Walsh, *Simplified CDM* (Chicago: Environmental Financial Products, 2000); p. 22-23.
2. For more information, see WRI et al, "Making Small Projects Competitive in the Clean Development Mechanism" available online http://www.wri.org/cdm/fast_track.html.
3. Standardized baselines are also often referred to as "benchmarks" or "multi-project baselines."
4. Chairman's Text, Part II, Annex II, Appendix B.



- a description of the involvement of local communities in the project;
- descriptions of positive or negative environmental and social impacts that the project may have on local communities;
- annexes that include environmental or social impact statements undertaken;
- a description of measures taken by project developers to disclose project information, including possible impacts to local communities (e.g., informational meetings, public hearings, and documents made available);
- any measures taken by project developers to include local communities in the implementation and monitoring of the project; and
- comments by local community members or organizations (any actual written comments should be annexed to the project design document).

Such inclusions in the project design document will ensure the principle of proportionality mentioned above. If a project has little or no impact on local communities, then this section of the project design document will require little effort. For those projects that do have potentially adverse local impacts, such requirements will provide positive incentives for project developers to involve local stakeholders and provide ample public information early in the project's life. As noted, this will decrease the risks of a project's subsequent failure and enhance the likelihood that the project delivers genuine sustainable development benefits.

2. Availability of Official Documents

Climate negotiators have already suggested that several official documents

will be generated throughout a project's lifecycle. In addition to the project design document, the services conducted by operational entities will result in a *validation report* and periodic *verification reports*. Operational entities will submit these documents to the CDM Executive Board, which should be available on the Climate Convention website for the duration of a project. This can be done in such a way as to address legitimate confidentiality concerns of the project developer.

Disclosure of official documentation is already common practice within the Framework Convention on Climate Change. It is also standard procedure for international institutions, such as the members of the World Bank Group. Project-related documents—including the Summary of Project Information document, Environmental Review Summaries, and EIA reports—are available through the World Bank's InfoShop.²²

The timing of information availability is particularly important. Documents should be made available *before* key decisions have been made regarding project registration or emission reduction certification. This is consistent with IFC requirements that require a Summary of Project Information to be made "available to interested parties while a project is still under consideration."²³ Finally, information about proposed project activities must also be made available in a medium and location accessible to local stakeholders.

3. Public Engagement, Environmental Assessment, and Disclosure Policies

Because the CDM is not yet in operation, a well developed corpus of public participation, information disclosure,

and other policies does not exist. The experience of other international financial institutions that operate at the project level suggests that such policies are needed to guide project developers and enable more effective dispute resolution. For example, how should requirements between radically different project types be distinguished? What information should remain confidential? What specific information should be provided at the local level?

The World Bank, some export-credit agencies, and other international institutions have created policies to help address such questions and guide operations. In addition to information disclosure, mentioned above, these policies address a range of issues, including the following:²⁴

- *public notice and consultation*
- *business confidentiality*
- *resettlement*
- *environmental impact assessment, and*
- *indigenous peoples.*

Such existing policies, as well as positive or negative implementation experiences, may provide guidance for the CDM Executive Board. For example, the World Bank (including the IFC) and the U.S. OPIC categorize projects according to their environmental impact and require all "category A" projects to undergo an EIA.²⁵ Categorizing projects is consistent with the need to treat projects in proportion to their possible social, economic, and environmental impacts.



All projects, including those not in category A, undergo consultations with project affected groups and NGOs and are subject to information disclosure requirements.²⁶

Annex I of the Aarhus Convention also contains a detailed classification of project types that are likely to require an EIA and other measures to ensure public participation. Many of these listed projects are in sectors where CDM activities are envisioned. (See Box 5.)

The Protocol Parties purposefully created an Executive Board of the CDM to deal with such important policy issues. Upon its establishment, the Board should initiate a participatory process that includes environmental and business organizations, aimed at addressing these questions and formulating policies. (See discussion below on Executive Board panels.) This will be particularly important for such issues as information disclosure and business confidentiality.

4. A Review Procedure for Disputed Projects

Local stakeholders, investors, and governments should have access to a public comment or appeals procedure. Such a process is necessary to actualize the third public participation pillar contained in the Rio Declaration: access to redress and remedy. A review procedure will enhance the overall governance of the CDM by adding more accountability and predictability.

One promising approach is for the Executive Board to create an independent review panel. Several analogous bodies exist in international financial institutions, including the Inspection Panels of the World Bank and some regional

Box 5	Annex I of the Aarhus Convention
<p>Annex I of the Aarhus Convention lists the activities requiring procedures for public participation, including the following:</p> <ul style="list-style-type: none"> A. Energy sector (e.g., mineral oil and gas refiners, nuclear and thermal power stations); B. Production and processing of metals (e.g., installations for the processing of metal ore and steel); C. Mineral industry (e.g., cement and asbestos installations); D. Chemical industry (e.g., a wide variety of installations for organic and inorganic chemicals, fertilizers, health products, and so on); 	<ul style="list-style-type: none"> E. Waste management (e.g., incinerators, landfills); F. Waste-water treatment plants with a capacity exceeding 150,000 population equivalent; G. Infrastructure (e.g., railways, roads, inland waterways, ports, and overhead electrical power lines, among others); H. Extraction of minerals and water (e.g., groundwater extraction, water transfer, oil and natural gas extraction and transfer). <p><small>Source: UNECE Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters. Available online at http://www.unece.org/env/download/cep43e.pdf.</small></p>

development banks, as well as the Compliance Advisor/Ombudsman that serves both the IFC and the MIGA (members of the World Bank Group).²⁷ A

CDM Review Panel, similar to these bodies, would provide a formal channel through which Protocol Parties and the public can raise concerns about a project and ensure that the policies and guidelines are adhered to during the implementation of projects. Features of the panel would include the following:

- *institutional independence from the Executive Board, to ensure impartiality;*
- *civil society representation, including business, environmental, and local or indigenous groups;*
- *authority to investigate disputes raised, including the authority to dispatch third parties to conduct site visits and consult with stakeholders.*

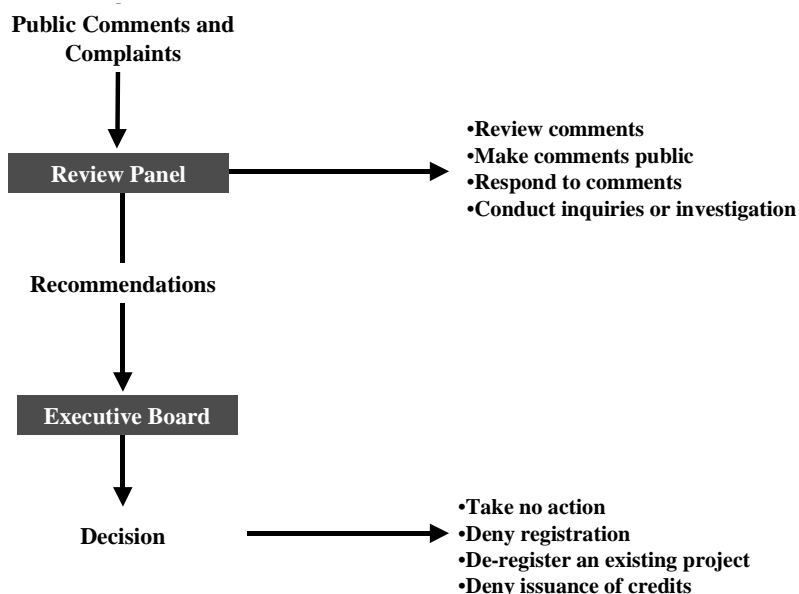
The Executive Board should initiate a participatory process that includes environmental and business organizations, aimed at formulating CDM policies.

The most important feature of the panel would be its advisory nature. As with the Compliance Advisor/Ombudsman and Inspection Panels, a CDM Review Panel would provide advice or recommendations to a decisionmaking body, in this case the CDM Executive Board. The Panel could recommend that projects be denied registration, de-registered, or denied issuance of credits. Finally, the panel will need to exercise judgement, and prioritize complaints according to various considerations, such as the number of people or communities affected and the seriousness of potentially adverse impacts. This would help guard against the possibility of bottlenecks. Figure 2 outlines a basic appeals process.



Figure 2

A Basic Review Process



Source: World Resources Institute

The issue of *standing* is central for any review procedure. As a rule, international financial institutions grant standing primarily to populations directly or indirectly affected by project activities. IFC and MIGA policies, for example, allow “any community, group of two or more persons, or another party affected or likely to be affected by an IFC or MIGA project” to bring a complaint to the Compliance Advisor/Ombudsman. The Aarhus Convention, on the other hand, promotes broader, all inclusive standing criteria, including persons, associations, organizations, and other groups that are “affected or likely to be affected by, or *having an interest in*, the environmental decision-making.” Protocol Parties should adopt an open definition along these lines, applicable to the CDM Review Panel and public comment processes for other CDM policies being formulated by the Executive Board. Most importantly, the Protocol Parties should not limit the right to submit comments and use the review procedure to only governments.

Equally important, the grounds for appeal or comment should not be restricted to certain subject areas, as some Protocol Parties suggest.²⁸ Because the CDM is a new and untested mechanism, making it accountable on any subject—including baselines, monitoring, and public participation policies—will enhance the learning process and improve credibility.

A review process underscores the importance of developing basic policies and procedures on public participation, including for such issues as public consultation, document availability, and resettlement. The main task of review processes among international financial institutions is to determine whether projects have failed to follow established operational policies and procedures.²⁹ Without firm policies, review procedures will not have an objective basis for decisionmaking, increasing the likelihood of protracted disputes and misunderstandings.

5. Mandates for CDM Institutions

Finally, the mandates for new CDM institutions created by the Kyoto Protocol must be shaped in a way that promotes transparency, public engagement, and accountability. New institutions that deserve attention in this regard are the CDM Executive Board, operational entities, and an accreditation body.

The CDM Executive Board. An Executive Board will supervise the CDM and operate under the ultimate authority of the Protocol Parties.³⁰ As noted above, this body will need to oversee the creation of CDM credits and ensure that information is made publicly available.

The Board will also play an important role in formulating and updating CDM policies. Its mandate should stipulate that it develop policies, on any subject, in an open and participatory manner. All stakeholders, including business and environmental groups, should be invited to engage in this process and be allowed to submit written comments on all Executive Board proposals. One way to improve efficiency, transparency, and accountability in the policymaking process, is to allow the Board to form ad hoc or standing panels composed of experts from diverse groups. As noted by the Chairman of the Contact Group on Mechanisms, panels might be useful for considering issues such as accreditation requirements, baseline methodologies, and monitoring policies.³¹ The same would be true for public participation policies. Such panels could make policy recommendations to the Board, which would be circulated for public comment, revised as appropriate, and



eventually submitted to the Protocol Parties for full approval.

As noted, the Executive Board should also create a Review Panel for handling disputes and public comments. To ensure impartiality and credibility, it is essential that this panel be composed of independent experts. For example, the three members of the World Bank Inspection Panel are appointed “on the basis of their ability to deal thoroughly and fairly with the requests brought to them, their integrity and their independence from the Bank’s management, and their exposure to developmental issues and to living conditions in developing countries.”³²

Regarding the composition of the Executive Board itself, the issues addressed above strongly suggest that civil society participation would be extremely beneficial in terms of promoting a transparent and objective CDM. In fact, civil society members may be more likely to be free of national bias and conflicts of interest, may be highly qualified, and may be trained in legal, policy, and technical issues relevant to the CDM. Civil society representation may also promote more continuity in the Executive Board membership, as sudden changes in government could affect the composition of the Board at any time. One option for civil society representation would include representation from the environmental NGO, business, and indigenous peoples groups. Like all Executive Board members, those from civil society should be approved by Parties to ensure broad acceptance and should serve in their personal capacities. In fact, Protocol Parties have the opportunity to shape a diverse Executive Board consistent with emerging global public-policy networks as articulated by the U.N. Secretary-General Kofi Annan.³³ (See Box 6).

Operational Entities.

As noted in Section III, the participation of third parties, referred to as operational entities, will be critical for several steps of the CDM project cycle. Operational entities are expected to include private companies, such as Société Générale de Surveillance, Det Norske Veritas, and PriceWaterhouseCoopers among others, many of whom have already been involved in pilot verification exercises and may already be accredited to operate in other fields of environmental assessment.

The Parties, or the Executive Board, should develop terms of reference for operational entities that will guide their assessments of CDM projects. The terms should reflect the set of policies and guidelines on public participation and information disclosure agreed to by the Parties. This underscores the importance of including public participation requirements within the structure of the project design document, as operational entities will likely factor in all aspects of this document in their project assessments.

The most important attribute of operational entities should be their impartiality. An operational entity should act in the interest of all stakeholders, not just the project proponents. This is consistent with standard auditing practice in other professions.³⁴ Along with other important issues, the operational entity should be able to identify and investigate concerns associated with public participation and adverse local impacts, including concerns with any

Civil society participation on the Executive Board would be extremely beneficial in terms of promoting a transparent and objective CDM.

environmental and social impact assessments conducted.

CDM Accreditation Body. To perform CDM services, operational entities will need to be accredited either by the CDM Executive Board or one or more bodies appointed by the Board. Governments have already recognized the importance of a CDM accreditation process to ensure that the institutions undertaking validation and verification functions are appropriately qualified and independent.³⁵ Accreditation processes are already common in existing environmental management systems and other professional fields, such as accounting and banking.³⁶

Public involvement in this process will be essential to its credibility. The development and refinement of accreditation standards should involve dialogue with all important stakeholders, including the environmental community, prospective operational entities, and project developers. When accrediting (or reaccrediting) operational entities, the Executive Board should allow for public comment, where Parties, investors, NGOs, and others are able to submit comments to the accreditation body. Civil society and governments may have pertinent information from specific projects, or about specific operational entities, that should be considered when making accreditation decisions. Information provided by civil society might help the accreditation body decide when and where to undertake periodic spot checks.



A global public-policy network (GPP) comprises diverse stakeholders committed to finding a common solution set to address a pressing international policy issue. Such “trisectional” networks bring together the three broadest groups of stakeholders—governments, industry, and NGOs—into a decisionmaking process. The range of activities of GPPs is consistent with the circumstances of the CDM Executive Board. GPPs address governance challenges by performing a variety of functions relevant to the Executive Board, including the following:

- *Setting global standards* in contentious policy areas, such as financial regulations and environmental management;
- *Implementing mechanisms* for traditional intergovernmental treaties;
- *Gathering and disseminating knowledge* at low costs across borders to stakeholders in all sectors; and
- *Making new markets* where they are lacking.

A prototype example of a trisectional network is the World Commission on Dams. The

Commission brings development planners, contractors, and environmental groups together to shape future decisionmaking on the planning, design, monitoring, and operation of large dams. GPPs, such as the World Commission on Dams, should be explored by Protocol Parties as governance models for the CDM Executive Board.

Source. W. Reinicke, and F. Deng with J.M. Witte, T. Benner, B. Whitaker, and J. Gershman, *Critical Choices: The United Nations, Networks, and the Future of Global Governance*. (Ottawa, IDRC, 2000). Available online at: <http://www.globalpublicpolicy.net/>.

V. CONCLUSION AND RECOMMENDATIONS

The Kyoto Protocol offers a global response strategy to climate change by creating a market for greenhouse gas pollution abatement. This market includes the treaty’s Clean Development Mechanism—a new, potentially promising, international regulatory approach that can internalize the cost of greenhouse gas emissions. As markets, pollution, and policy solutions increasingly globalize, emerging governance norms such as transparency, accountability, and public participation in decisions that will affect livelihoods must have an equally global reach. If they do not, legitimacy of international processes weakens, misperception and distrust grows, and civil society backlash threatens the international institutions that governments have created.

These emerging norms are highly relevant to the CDM—an institution that will cut across the lines of a broad range of interests, including local,

national, and regional governments from diverse countries; corporations and their associations; environmental NGOs; and local communities. Thus, the Protocol Parties will need to integrate public participation provisions into the CDM project cycle and its institutions. The Parties should tackle this governance challenge by creating a CDM that is state-of-the-art with respect to the three pillars of public participation—transparency, public engagement, and accountability. Such action will benefit all stakeholders and are necessary for the CDM’s longer term viability.

The three core recommendations below aim to integrate the three pillars of public participation—transparency, public engagement, and accountability—within the CDM.

Ensure that CDM policy development is open and inclusive. To ensure credibility and broad acceptance of policies and guidelines, CDM policies and procedures should

be developed in cooperation with interested stakeholders. This is particularly important for the CDM Executive Board, which is likely to have ongoing policymaking responsibilities. Experiences from international financial institutions will be instructive in shaping CDM policies on all issues, including those related to public participation, such as public consultation, information disclosure, indigenous peoples, and environmental impact assessment.

Create a review panel to handle public comments and ensure policies are adhered to. In instances where CDM policies have not been adhered to, the public should have access to appeal and redress. A formal review procedure will enhance the overall performance of the CDM by adding more accountability and predictability. Upon assessing comments or complaints, the review panel should make recommendations to the Executive Board regarding CDM projects.

Shape institutional mandates that promote inclusiveness and transparency.

The CDM creates several new institutions that will require guidance from the Protocol Parties. Mandates of these institutions, especially the Executive Board, should reflect state-of-the-art thinking and best practice with regard to transparency and public engagement. The Executive Board, and any panels the Board creates, should be composed of a representative cross section of qualified CDM stakeholders.

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NOTES

1. R. Stewart et al., *The Clean Development Mechanism: Building International Public-Private Partner-*

ships, UNCTAD document number UNCTAD/GDS/GFSB/Misc.7 (New York: United Nations, 1999).

2. Other important considerations include decisions on the institutional aspects of the CDM and methodological issues, such as additionality, baselines, and project monitoring. See K. Baumert and N. Kete, *Designing the Clean Development Mechanism: Operational And Institutional Issues*. Report prepared for the OECD and IEA Forum on Climate Change, May 15, 2000. Online at http://www.wri.org/climate/pdf/oecd_cdm.pdf.
3. For definitions, see Aarhus Convention, Article 2 paragraph 4. The Aarhus Convention is available online at <http://www.unece.org/env/download/cep43e.pdf>. See also International Finance Corporation, *Doing Better Business Through Effective Public Consultation and Disclosure* (Washington, DC: IFC, 1998): section A, p. 3.
4. The UNECE Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters (generally known as the Aarhus Convention) has been signed by 41 countries and the European Union. See Elena Petkova with Peter Veit, *Environmental Accountability Beyond The Nation-State: The Implications of The Aarhus Convention* (Washington, DC: World Resources Institute, 2000).
5. *Agenda 21: The United Nations Programme of Action From Rio* (New York: United Nations, 1992): Chapter 23 and Declaration of the UN Conference on Environment and Development, Rio de Janeiro, June 3-14 1992, Principle 10.
6. See the Aarhus Convention and Petkova and Veit, 2000 (Note 4).
7. Examples of recent process-oriented environmental regimes include the International Organization for Standardization's ISO 14000 Series promulgated in 1996, which establishes voluntary standards for sound environmental management practices within private industry (see <http://www.iso.ch/9000e/9k14ke.htm>); or the Helsinki Convention on the Transboundary Effects of Industrial Accidents signed by 26 UNECE countries and the European Community in 1992, which establishes rules for international cooperation and information sharing. (See <http://www.unece.org/environment/teia/english/text.htm>.)
8. See international financial institution references in Appendix I. For example, the International Finance Corporation and the U.S. Overseas Private Investment Corporation state that "calling attention to environmental and related social issues early in the process and by involving stakeholders in meaningful consultations, helps avoid costs and delays in project implementation." *OPIC and the Environment*, Public Consultation and Disclosure. Available online at <http://www.opic.gov/>.
9. *World Bank Inspection Panel*. Information available online at <http://www.worldbank.org/inspectionpanel/>; and International Finance Corporation's Compliance Advisor/Ombudsman. *Terms of Reference, Draft Operational Guidelines* and other information. Available online at <http://www.ifc.org/cao>.
10. *Overseas Private Investment Corporation Environmental Handbook* (Washington, DC: OPIC, 1999). Available online at <http://www.opic.gov/subdocs/public/publications/envbook.htm>.
11. See International Finance Corporation, 1998; and *Risk Mitigation In Forestry Under Kyoto*, report to Forest Trends, Arm and Eyre Mundy (London: ARM Carbon Team, DRAFT 1999): p. 6, 8. According to the latter, "Insurers are very concerned with any issues which may herald conflict between project operators and indigenous people. Risk assessors make a particular point of trying to find out about the nature of the project rela-



- relationship with locals. . . insurance companies are increasingly aware of their responsibility not to support any carbon project activity which falls foul of international agreement on management of local resources and benefits to local people.”
12. See International Finance Corporation, 1998 (Note 3).
 13. *Agenda 21: The United Nations Programme of Action From Rio* (New York: United Nations, 1992): Chapter 23.
 14. D. Austin and P. Faeth. *How Much Sustainable Development Can We Expect from the Clean Development Mechanism?* (Washington, DC: World Resources Institute, 1999).
 15. *The Quito Declaration: Recommendations of Indigenous Peoples and Organizations Regarding the Process of the Framework Convention on Climate Change; Mount Tamalpais Declaration*, World Rainforest Movement (San Francisco: World Rainforest Movement, 2000), available online at <http://www.wrm.org.uy/english/declarations/Tamalpais.htm>; and *Declaration Of The First International Forum Of Indigenous Peoples On Climate Change*, Lyon, France, September 4-6, 2000.
 16. For a more complete explanation of the project cycle and CDM regulatory framework, see UNFCCC, *Mechanisms Pursuant to Articles 6, 12, and 17 of the Kyoto Protocol*, consolidated text on principles, modalities, rules and guidelines, note by the Chairman, document FCCC/SBSTA/2000/10/Add.1, October 2, 2000 (Hereafter, “Chairman’s Text”), UNFCCC documents available online at <http://www.unfccc.de>; Presentation by the Chairman of the Contact Group on Mechanisms, Informal Meeting on Mechanisms, September 4, 2000, Lyon, France; and K. Baumert and N. Kete, 2000 (Note 2).
 17. Chairman’s Text, Part II, Annex II, appendix B Annex: “Project design document.”
 18. Chairman’s Text, Part II, Annex II, section G: “Validation.”
 19. Chairman’s Text, Part II, Annex II, section G: “Validation.”
 20. Chairman’s Text, Part II, Annex II, section J: “Verification.”
 21. Chairman’s Text, Part II, Annex II.
 22. *IFC’s Policy On Disclosure Of Information* (Washington, DC: IFC, 1998). Available online at http://www.ifc.org/enviro/Disclosure_Policy/disclosure_policy.html (August 2000).
 23. See Note 22.
 24. The World Bank safeguard policies are contained in the *World Bank Operational Manual*, available online: <http://wbln0018.worldbank.org/institutional/manuals/opmanual.nsf> (August 2000).
 25. *The World Bank Operational Manual*, Operational Directive 4.01 Environmental Assessment, January 1999. “Category A: A proposed project is classified as Category A if it is likely to have significant adverse environmental impacts that are sensitive, diverse, or unprecedented. These impacts may affect an area broader than the sites or facilities subject to physical works.” See also *OPIC and the Environment*, Public Consultation and Disclosure. Available online at <http://www.opic.gov/> (August 2000).
 26. IFC projects, for example, require a “Summary of Project Information” document to be made available to interested parties while a project is still under consideration. The SPI provides a brief factual summary of the main elements of the evolving project: its sponsors, the project company’s shareholders, total project cost, the location of the project, a description of the project and its purpose, the environmental category, and a brief summary of any environmental and social issues. Since its origination, the SPI has been expanded to include project and methods for accessing information in country. The SPI is updated as necessary to reflect material changes regarding the project that transpire following its initial filing with the InfoShop. See <http://www.ifc.org/cao/>.
 27. IFC, *Draft Operational Guidelines for the Office of the Compliance Advisor Ombudsman* (Washington, DC: IFC, 1999). Draft available online at <http://www.ifc.org/cao> and *World Bank Inspection Panel*, Information available online at <http://www.worldbank.org/inspectionpanel/>.
 28. According to the Chairman’s Text, entities eligible to submit comments are in brackets, and the subject of comments is restricted to “elements relating to environmental additionality.” See Part II, Section G: “Validation,” paragraph 72.
 29. Alvaro Umaña, *The World Bank Inspection Panel: The First Four Years (1994-1998)* (Washington, DC: International Bank for Reconstruction and Development and International Development Association, 1998). See also, IFC, *Draft Operational Guidelines for the Office of the Compliance Advisor Ombudsman* (Washington, DC: IFC, 1999). Available online at <http://www.ifc.org/cao>.
 30. For more information on the Executive Board and its proposed mandate, see the Chairman’s Text, Part II, Section B: “Executive Board”; and F. Yamin and E. Haites, *The Clean Development Mechanism: Proposals for its Operation and Governance*, Presented at the UNFCCC Mechanisms Workshop, April 1999.
 31. FCCC/Informal/69/LYS.00-00053. Presentation by the Chairman of the Contact Group on Mechanism, Informal Meeting on Mechanisms, Tuesday, September 5, 2000, Lyon, France.
 32. Umaña, 1998: 4 (Note 29).
 33. “The United Nations once dealt only with governments. By now we know that peace and prosperity cannot be achieved without partnerships involving governments, international organisations, the business community, and civil society.” U.N. Secretary-General Kofi Annan, September 2000. Press release from the World Commission on Dams, *World Commission on Dams: Model for UN Policy Networks?*



WCD Cited By UN Authors as 'Coalition for Change,' Available online at http://www.dams.org/press/pressrelease_60.htm.

34. Environomics Incorporated, *Options for Process and Institutional Arrangements for Conformity Assessment for the Clean*

Development Mechanism. (Bethesda, MD: Environomics Incorporated, 1999).

35. Chairman's Text, Part II, section C: "Accreditation Body" and section D: "Designated Operational Entities."
36. Environomics, 1999 (Note 34); and Jed

Jones, "Certification and Verification of Emissions Trading Activities." Unpublished paper, Lloyd's Register Industry Division, 1998.

APPENDIX I. RECOMMENDED PUBLIC PARTICIPATION RESOURCES

I. INTERNATIONAL FINANCIAL INSTITUTIONS

Bank Information Center, *Toolkits for Activists* (A series of fact sheets that describe the structure, functions, policies, and procedures of the World Bank Group.) Available online at <http://www.bicusa.org/toolkits.htm>.

Clark, D.L., Center for International Environmental Law. *Citizen's Guide to the World Bank Inspection Panel* (Washington, DC: CIEL, 1999). Available online at <http://www.ciel.org/citizensguide.pdf>.

Doing Better Business Through Effective Public Consultation and Disclosure (Washington, DC: IFC, 1998). Available online at <http://www.ifc.org/enviro/Publications/Practice/practice.htm>.

International Finance Corporation Policy On Disclosure Of Information. Available online at http://www.ifc.org/enviro/Disclosure_Policy/disclosure_policy.html.

International Finance Corporation's Compliance Advisor/Ombudsman. *Terms of Reference, Draft Operational Guidelines* and other information. Available online at <http://www.ifc.org/cao>.

Overseas Private Investment Corporation Environmental Handbook (Washington, DC: US OPIC, 1999). Available online at <http://www.opic.gov/subdocs/public/publications/envbook.htm> (Includes OPIC environment and public disclosure policies.)

Umaña, A., *The World Bank Inspection Panel: The First Four Years (1994-1998)* (Washington, DC: International Bank for Reconstruction and Development and International Development Association, 1998).

World Bank InfoShop. Available online at <http://www.worldbank.org/html/pic/PIC.html>.

World Bank Inspection Panel. Information available online at <http://www.worldbank.org/inspectionpanel/>.

World Bank Operational Manual (contains World Bank policies and procedures). Available online at <http://wbln0018.worldbank.org/institutional/manuals/opmanual.nsf>.

World Bank Policy on Information Disclosure. Available online at <http://www.worldbank.org/html/pic/disclosure/>.

II. AARHUS CONVENTION

The Aarhus Convention: An Implementation Guide, UN/ECE document ECE/CEP/72. (New York and Geneva: United Nations, 2000), available online in English and Russian at <http://www.unece.org/env/pp/>.

The UNECE Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters (Aarhus Convention). Available online at <http://www.unece.org/env/download/cep43e.pdf>.

Petkova, E. with P. Veit, *Environmental Accountability Beyond The Nation-State: The Implications of The Aarhus Convention* (Washington, DC: World Resources Institute, 2000).

III. THE CLEAN DEVELOPMENT MECHANISM

Baumert, K. and N. Kete, *Designing the Clean Development Mechanism: Operational And Institutional Issues*. Report prepared for the OECD and IEA Forum on Climate Change, May 15, 2000. Available online at http://www.wri.org/climate/pdf/oecd_cdm.pdf.

Stewart, R. et al., *The Clean Development Mechanism: Building International Public-Private Partnerships*, UNCTAD document number UNCTAD/GDS/GFSB/Misc.7 (New York: United Nations, 1999).

U.N. Framework Convention on Climate Change, *Mechanisms Pursuant to Articles 6,12, and 17 of the Kyoto Protocol*, consolidated text for further negotiation on principles, modalities, rules and guidelines, note by the Chairmen, document FCCC/SBSTA/2000/10/Add.1, October 2, 2000. All UNFCCC documents available online at <http://www.unfccc.de>.

Yamin, F. and E. Haites, *The Clean Development Mechanism: Proposals for its Operation and Governance*, Presented at the UNFCCC Mechanisms Workshop, April 1999.



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