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

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Abstract

The adoption of a range of resolutions by the United Nations Human Rights Council (UNHRC) signals the introduction of a human rights-based approach into the lexicon of climate change negotiation and resulting initiatives. This development has been subsequently reinforced by the Conference of Parties Decision 1/CP.16 which calls upon parties that are implementing programmes under the aegis of the United Nations Framework Convention on Climate Change (UNFCCC) to fully respect human rights in all climate related actions. Despite this recognition, the Clean Development Mechanism (CDM) developed under the climate change instruments to deliver sustainable projects in developing states has not adopted measures to implement these obligations. Its prospects remain questionable in terms of compatibility with key principles of a rights-based approach, namely, universality and inalienability, equity and non-discrimination, participation and access to grievance and redress mechanism.

This paper explores what a rights-based approach entails in the context of the current CDM approach and rules. Using a case study approach as an illustration, notably the Sasan coal power plant in India, the paper highlights the need for CDM to embrace a rights-based focus in its operation. This is followed with conclusion and recommendations.

1. Introduction
Over the past several years, human rights implications of climate change have become evident. The first official recognition of a 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 link of human rights to climate change. Generally, these resolutions recognize the adverse direct and indirect effects of climate change on the effective enjoyment of human rights and 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 negotiation 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 needs 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 is 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 direct 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 lacks the logistics to make a field investigation, hence “cannot verify human rights issues” and based on this cannot withdraw registration of the project. Since they could not find violations of local stakeholder consultation (LSC) under the CDM rule-based system, they do 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 trailing 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 into the basic human rights principles and then accordingly assesses rules and approaches of the CDM, with attention to sustainable development, LSC and 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 have been visited and interviews have been conducted with local residents, workers employed at the project site as well as local activists and doctors. Most of the interviewees preferred to be kept anonymous and are therefore not referenced publically. 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 PDD are the basis for this case study. The LSC process as well as impacts of the project activity on the local population, the health situation and the environment has been examined. The strengths and weaknesses of CDM rules are discussed to identify opportunities and best practices to enhance the human rights based approach in 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.

1.1 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 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 universality and inalienability of human rights demands that in the formulation and implementation of projects, it should ensure that 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, indeed, 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.
1.2 Interdependency and inter-relatedness

Human rights are interdependent, inter-related 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 due 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 as 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 such 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 implication for interrelated or interdependent human rights extending over a range of human rights, including economic, as well as civil and political rights of local populations.

1.3 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 which 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 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 will 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, will be when project participants fail to recognise customary nature of lands or institutions of consultation.
of local populations. In *Mayagna (Sumo) Awas Tingni Community v Nicaragua* (2001), the Inter-American Court of Human Rights held that 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 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)).


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.

1.4. 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
The principle of participation and inclusion is entrenched in human rights instruments, including the UNDRIP (2007) which in its article 18 provides:

[the] 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 basis for expecting the CDM to allow for effective consultation of populations in relation to the implementation of projects.

**1. 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 the 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 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, compensations (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.

2. A general assessment of rules and approaches of CDM from human rights lenses

The CDM has a dual objective to support commitments of developed countries to reduce emissions and to contribute to sustainable development in developing countries. Besides meeting emission reduction targets, CDM project activities are to contribute to complementary economic, social and environmental benefits in developing countries, such as improvement of livelihoods, employment, new investment, climate-friendly technologies, etc.

As shall be shown, the approach by CDM in relation to the Sustainable Development Tool, access to grievance mechanism and participation and consultation in relation to the implementation of its projects falls short of human rights standards.

2.1 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 SD tool (EB68, Annex 22) included provisions for an integrated approach to sustainability assessment including SD 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 SD tool should only include SD criteria for co-benefits. Left out was the reporting options on the LSC and negative impacts.

2.2 Absence of 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 the CDM project does not comply with national or international rules (Carbon Market Watch, 2012). Adequate safeguard policies, which in many other mitigation mechanisms include 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 scope and legal standing of the potential appeal stalled the negotiation process. Dissents 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 shall 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. Thereupon, 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, 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 projects 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 good space for the articulation and ventilation of grievances which may 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.

2.3 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 violation. Meaningful participation of local stakeholders in a project cycle is fundamental for precluding tensions that may lead to 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 appropriate is under the prerogative of the DOEs (CDM validation and verification standard, cha 7, sec 5, sec 14).

Current modalities and procedures leave room for much malpractice 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 which parties owed their citizens and portray CDM projects not as champions of rights but as a platform for its violation.

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 which point out lack of adequate public consultation. The project implementer – Honduras owned company GENISA - has 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 people rights violation is also eminent in Santa Rita case, a Hydroelectric Plant in the Alta Verapaz region in Guatemala. Since 2010, communities have raised numerous concerns against the project over violation 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 communitarian rights defender, alleged killings of 5 people including two children, violent attacks against community leaders and 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 the concerns in June 2014.

3. 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 impacts of the project activity on the local population, the health situation and the environment have been examined. During the field trip, the surroundings of the project site have been visited and interviews have been conducted with local residents, workers employed at the project site as well as local activists and doctors.

Interviews have partly been recorded via camera and always document with notes. Questions have mostly been agreed beforehand by the participants of the field trip in the preparation of an interview to ensure a specific focus of the interview. Interviews have been 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 invitation being sent out to stakeholders chosen by the project owner and considering the fact that 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.

3.1 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 as self-sufficiency. The Sasan power project site required large areas for construction. Project and coal mine together involve almost 10,000 acres of land, almost 7,000 acres are used for coal mines. In the course of its construction, 4 villages and one tribal area had to be relocated. Rehabilitation areas have been provided for the relocated locals.

3.3 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 had to be 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, the Kyoto Protocol as well as the project activity
and the CDM relevance. Moreover, a question and answer session was provided, closing remark given and minutes of the meeting prepared.

The comments received have been incorporated in the PDD. The summary of the comments demonstrates a positive perception of the stakeholders on the project. The comments received were submitted by employees, local community villagers, teachers of local schools, media and 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 have neither been aware about a public hearing nor about the Sasan power project itself before the construction has started. At the beginning of construction, locals have merely been informed that their residential and farming land is needed for a new coal power plant and have been 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 out to selected people by the project owner. This might possibly 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 with less opponent opinions and this may have resulted 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 violation caused by this project. In several reported cases, construction works started without any consultation of the affected population. Houses have been bulldozed and streets and community property 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 are not able to work on their fields anymore and most of them are 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 which makes it unsafe to consume food and causes 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 which 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 displacement of the local populations implicate a range of their socio-economic and cultural rights. It prevents their access to the forest and resources which they are dependent upon and compromise their rights to subsistence, food, water and the right to an adequate standard of living 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.
4. Emerging best practices on a rights-based approach

A 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) all are either in the process of developing or are already employing more advanced monitoring, reporting and verification (MRV) systems. Safeguards are a core part of the REDD+ mechanism. At the Cancun COP, the normative basis for implementing REDD+ was established in 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. SIS is to be implemented at national level and 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 SIS, countries must outline the safeguards in order to scrutinize them. (Carbon Market Watch, 2014c; Pesketta & 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 enhanced over years to provide a more inclusive approach that supports 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 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 project’s environmental or social harms. Based on 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 mechanism as part of accreditation process to assess the robustness of applicant’s environmental and social management system. The process also includes mandatory reporting on 1 co-benefit. Until the GCF develops its own environmental and social safeguards, it was agreed to follow Adaption Fund’s experience and base them on 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 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 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 complete absence of a grievance mechanism, the debate about human rights concerns within the CDM is also of political 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.

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 rule and approach a rights-based approach which embodies principles namely, universality and inalienability, equity and non-discrimination, participation, 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 its sustainable 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 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 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.

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