



INPUT OF INDIGENOUS PEOPLES ON ARTICLE 6.4 ACTIVITY STANDARD FOR PROGRAMMES OF ACTIVITIES VERSION 3.0

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The International Indigenous Peoples Forum on Climate Change (IIPFCC) (“Caucus”) respectfully submits the following comments in response to your recently published Draft Standard: Article 6.4 activity standard for programmes of activities, version 3.0 (“Draft Standard”). In particular, the Caucus focuses its comments on Appendix 2 of the Draft Standard: “Modalities of local stakeholder consultation.”

The Caucus notes with approval that the Draft Standard seeks to require activity participant consultation with all stakeholders that may be impacted by a proposed component project (“CP”). The Caucus is concerned, however, that certain language in the Draft Standard Appendix 2 falls short of ensuring meaningful consultation with Indigenous Peoples that may be affected by a CP. Further, the draft does not sufficiently consider and address the unique needs and inherent collective rights of Indigenous Peoples, including the need for interpretation services; consideration of and respect for Indigenous decision-making processes, laws and customs; as well as the inherent rights of Indigenous Peoples recognized in the UN Declaration on the Rights of Indigenous Peoples (Declaration).

More specifically, current draft paragraph 2 of Appendix 2 provides that “local stakeholder consultation of proposed CPs shall be conducted for each CP. If more than one CP is located in the same or close geographical location(s), one local stakeholder consultation may cover multiple CPs. In this case, the activity participants shall provide appropriate justification.”

First, the Caucus is concerned about the complexity inherent in attempting to consult on multiple CPs at one time. One stakeholder consultation simply cannot adequately or effectively “cover multiple CPs,” regardless of whether the CPs are in the “same or close geographical location(s).” Attempting to cover multiple CPs in one consultation would only invite confusion and inferior outcomes. This notion should be stricken from draft paragraph 2 as it is poorly conceived.

Even setting aside for the moment the very real problems of attempting to hold one consultation on multiple CPs, the Caucus further notes that certain concepts and language central to this provision are unclear and could lead to unintended and undesirable consequences. For example, “close geographical location(s)” is not clearly defined and should not be left to the discretion of the activity participant. Likewise, what would ever be an “appropriate justification” in this context? Without setting forth clear definitions and standards of conduct for developers and activity participants, their discretion and judgment on these points may not align with the intended goal of this draft Appendix 2 (as the Caucus understands it), which is to ensure that *all*



stakeholders have an opportunity to meaningfully consult, including Indigenous Peoples who are in fact rightsholders.

As a foundational issue, the Draft Standard Appendix 2 lacks clear standards for who or what the “relevant stakeholders” are in this context, especially with regard to Indigenous Peoples. At a minimum, the “relevant stakeholders” in this context should be equivalent to those stakeholders that would have standing to file a grievance and appeal under the Article 6.4 independent appeals and grievance procedure.

It is imperative that activity participants identify and consult with Indigenous Peoples that may be affected by any CPs, both those Indigenous Peoples located within the CP area of influence and those that may be affected by the CP even if located outside the area. Further, it is necessary that Indigenous Peoples self-identify as rightsholders in this context, and that they are allowed full and effective participation in the assessment of risks to their rights. Accordingly, the Caucus recommends that the following two paragraphs be inserted in your draft Appendix 2, after current-paragraph 2, as follows (and renumbering the draft paragraphs to follow accordingly):

“3. Activity participants shall identify all communities of Indigenous Peoples, both those located within the activity area of influence as well as those that may be affected by the proposed CP. Self-identification as Indigenous Peoples is a necessary criterion. This process shall be conducted with respect, sensitivity, and transparency, ensuring that Indigenous Peoples are fully informed and voluntarily participating in the identification process.

4. The activity participant, with the full and effective participation of Indigenous Peoples involved, shall carry out an environmental and social analysis of the CPs that may affect or involve Indigenous Peoples by completing the A6.4 Environmental and Social Safeguards Risk Assessment Form. The analysis shall verify whether Indigenous Peoples reside in the proposed CP areas and/or if the CP may affect Indigenous Peoples outside of those areas. The assessment shall include the potential impacts on these Indigenous Peoples’ rights, lands, territories, gender relations, and resources. The activity participant shall provide adequate resources to ensure the full and effective participation of Indigenous Peoples in this assessment.”

With regard to current draft paragraph 3, the Caucus insists that local communities and Indigenous Peoples not be conflated. Indigenous Peoples hold inherent collective rights under the Declaration. These rights include, but are not limited to, the right of self-determination (Article 3 of the Declaration), the rights to lands, territories and resources (Article 26 of the Declaration), and the right to free, prior and informed consent in connection with consultation and cooperation with Indigenous Peoples through their representative institutions prior to approval of any projects affecting their lands, territories and other resources (Articles 18, 19, 32 of the Declaration).

Local communities do not possess these collective rights under the Declaration, and for this reason, the Draft Standard should not conflate “local communities” with “Indigenous Peoples” or



imply in any way that the two have equivalent rights or status. To address the drafting issue in current paragraph 3, the Caucus offers the following edits (provided in **bold font**):

“35. The activity participants shall invite, at a minimum, representatives of local stakeholders directly impacted by the proposed CP, including local communities and representatives of local authorities relevant to the CP, and including Indigenous Peoples identified according to the preceding paragraphs herein.”

The language of current paragraph 4, as drafted, also fails to set an adequate standard for the activity participants, instead opening the door for the discretion or judgment of the activity participant. For example, whether or when a stakeholder is “relevant” is not clearly defined in the current text. Furthermore, there is no clear definition or standard for “appropriate justification” for not inviting a “relevant stakeholder to consult” and, in any case, how could *not* inviting a “relevant stakeholder” ever be acceptable or justifiable?

The right of Indigenous Peoples to free, prior and informed consent cannot be ensured if activity participants are allowed to simply make some “appropriate justification” to “not invite” certain stakeholders to consult. The Caucus objects strongly to an activity participant being allowed discretion to somehow “justify” not inviting consultation with “relevant stakeholders,” including Indigenous Peoples. The Supervisory Body should not, even by omission, allow grounds for activity participants to justify absence of stakeholders in consultations because “they were not willing/able to make it to the meeting.” The standard should ensure that Indigenous Peoples and other stakeholders are made aware of consultations and given every opportunity to consult and engage in a meaningful manner.

Accordingly, the Caucus respectfully asks that, *at a minimum*, the second sentence of current paragraph 4 be stricken in its entirety, with additional clarifying text to ensure that stakeholders, including Indigenous Peoples, receive the invitation to consult, as follows:

“46.. The activity participants shall provide convincing evidence that invitations to consult were sent to and received by the relevant stakeholders and that their comments were invited. ~~If any of the relevant stakeholders were not invited, the activity participants shall provide appropriate justification.~~”

With regard to current draft paragraph 6 (“For CPs that do not meet the requirement referred to in paragraph 5 above, the activity participants may submit a request for exemption from the requirement to the Supervisory Body for its consideration on a case-by-case basis.”), the Caucus is concerned with the allowance of exemptions for timely stakeholder consultation.

As the Caucus understands, current draft paragraph 6 would allow the Supervisory Body, on a case-by-case basis, to provide an exemption such that consultation could take place *after* the start date of a CP or after the date of validation of a CP by a designated operational entity (“DOE”). While it is not clear under what circumstances the Supervisory Body envisions allowing such an exemption, *no project should be allowed to begin without the free, prior and informed consent of Indigenous Peoples*. We therefore ask that current paragraph 6 be stricken in its entirety (and that the paragraphs be renumbered accordingly) or that the paragraph be qualified in its application to clarify that no CP may begin without the free, prior, and informed consent of Indigenous Peoples that may be affected by any CP.



With regard to current draft paragraph 7, the circumstances of Indigenous Peoples, including their varying languages, laws, customs must also be taken into account and respected. Indigenous Peoples have governing institutions and decision-making processes, and the standard for conducting consultations should include respect for these processes and institutions. The Caucus therefore proposes that current draft paragraph 7 be amended to add **“and taking into account and respecting the circumstances of Indigenous Peoples, including their governing institutions, decision-making processes, laws, and customs”** as a criterion which activity participants must take into account when conducting stakeholder consultations, as shown here:

“78. The activity participants shall invite local stakeholders to provide comments on the proposed CP in an open and transparent manner, in a way that facilitates comments to be received from local stakeholders and allows for a reasonable time for comments to be submitted. The activity participants shall describe the steps/actions taken to invite comments, taking into account local and national circumstances, **and taking into account and respecting the circumstances of Indigenous Peoples, including their governing institutions, decision-making processes, laws, and customs.”**

With regard to current draft paragraph 8 (which, per our various comments and proposed amendments, provided *supra*, to add two paragraphs after current paragraph 2 and to strike current paragraph 6, should then be renumbered as paragraph 9), the Caucus appreciates the spirit in which this paragraph is offered. However, because Indigenous Peoples have the right to *free, prior and informed* consent, it is necessary that the requirements of this paragraph be more robust and specific. This is likely true for consultations with all stakeholders but is certainly the case for those consultations conducted with Indigenous Peoples. Activity participants and project developers *must* be directed to provide interpretation services and all necessary tools to ensure that Indigenous Peoples are fully informed and able to fully and effectively participate in these consultations. Requiring only that the information “be provided orally” in “areas where a significant part of the population is illiterate” is not sufficient for ensuring the rights of Indigenous Peoples. Accordingly, the Caucus recommends the following amendments to current paragraph 8 (as shown in **bold font**):

“89. The activity participants shall convey information to stakeholders about the local stakeholder consultation and the proposed CP in ways that are appropriate for the community that is directly affected by the project. In areas where a significant part of the population is illiterate, **in addition to information provided to those who are literate,** the information shall be provided orally **with full interpretation in the language of the community.”**

The draft standard should in fact expressly address and provide measures to ensure interpretation services throughout the entirety of this consultation process, including in the activities after the consultation or in the complaints process. Activity participants should be required to provide necessary resources, financial and otherwise, to realize the full and effective participation of Indigenous Peoples at every step of this process. This is true for all stakeholders but is especially necessary to ensure the rights of Indigenous Peoples which, as discussed above, include the right to free, prior and informed consent.



As with current draft paragraph 7, current draft paragraph 10 should also include reference to the “circumstances of Indigenous Peoples,” which themselves have governing institutions and decision-making processes. “[C]onduct[ing] the local stakeholder consultation through means that are appropriate” necessarily includes respect for the varied institutions, processes, laws, and customs of Indigenous Peoples. Accordingly, the Caucus offers the following amendments to current draft paragraph 10 (again, in **bold font**), for your consideration:

“1011. The activity participants shall conduct the local stakeholder consultation through means that are appropriate for the local and national circumstances, and for the circumstances of Indigenous Peoples, including their governing institutions, decision-making processes, laws, and customs.”

With regard to current draft paragraphs 13-16, the Caucus understands that these paragraphs envision that a summary report of comments received by local stakeholders be written up by the activity participants, and that the activity participants consider these comments and report in the CP designated document (“CP-DD”) on how they have taken the comments into account. The Draft Standard also “requires” (or perhaps more correctly stated, “allows”) activity participants to “provide justification if any comments were not incorporated.” Then, if stakeholders “find that the outcome of the local stakeholder consultation is not appropriately taken into account,” they “may submit a complaint” to the designated national authorities (“DNA”) of the host party (which must then forward the complaints to the designated operational entity (“DOE”)). The activity participants are then required to take such complaints “into account” and to “modify the CP-DD as appropriate before the DOE concludes the validation” of the CP. The Caucus views this as constituting a type of complaint or grievance procedure for stakeholders.

First, the Caucus objects to inclusion of any language that would allow activity participants to somehow “justify” not including in the summary report all comments received from stakeholders. In what scenario could this possibly be justifiable and for what acceptable end? If the Supervisory Body has some scenario in mind under which such an omission could be justifiable, it should expressly outline in the Draft Standard its understanding of what “justification” would be acceptable in this context. The Caucus believes that such omission cannot be justified in this context.

Whether or not to include comments in any summary report (that will eventually be used as the basis of any kind of complaint or grievance process) cannot, as a matter of policy, be left to the discretion of activity participants. Considering the balance of interests in this context, activity participants simply cannot be empowered to determine whether and which comments are relevant or not relevant. For all of the above reasons, the Caucus strongly objects to the inclusion of the second sentence in current draft paragraph 14 and requests that it be stricken in its entirety, replacing it with language clarifying that *all* comments from *all* stakeholders *shall* be included in the summary report. Further, the Caucus requests that language be added to these paragraphs to provide local stakeholders, including Indigenous Peoples, with the option to review draft summary reports and to make any necessary amendments to the sections relaying their comments, in order to ensure that the summary reports accurately reflect their views. The Caucus believes that by adding such safeguards, the overall consultation and engagement process may function more smoothly, and fewer complaints will ultimately be filed by stakeholders.