

Submission from the Office of the United Nations High Commissioner for Human Rights (OHCHR) in response to the Call for Inputs on the draft tool “Article 6.4 SD tool (A6.4-SBM013-AA-A10)”

08.07.2024

The Office of the United Nations High Commissioner for Human Rights (OHCHR) welcomes the opportunity to provide input in response to the United Nations Framework Convention on Climate Change (UNFCCC) Call for Inputs on the draft tool “Article 6.4 SD tool (A6.4-SBM013-AA-A10)”. OHCHR wants to reiterate its inputs to the draft tool, submitted on 19.04.2024 and 13.05.2024 in response to the previous call for inputs.

It is especially important that the Supervisory Body of the Article 6.4 mechanism works to ensure environmental and social safeguards are in place before Article 6.4 is operationalized. Further, technologies with uncertain and/or demonstrated risks to human rights and the environment should not be admitted by the Article 6.4 mechanism. All activities under Article 6.4 should respect, protect and fulfil human rights and be guaranteed to meaningfully and sustainably contribute to climate change mitigation. Before operationalizing Article 6.4, OHCHR urges that the Supervisory Body take effective measures to ensure adequate environmental and social safeguards; and continuous and inclusive monitoring and evaluation of all activities under Article 6.4. The sustainable development tool will need to ensure that development actors exercise human rights due diligence to ensure their actions do not harm affected people and communities. Social and environmental safeguards play an important role in this regard.

OHCHR takes note of the language in para. 48 of the section 5.3.1 stating: *“Human rights constitute an overarching legally binding framework that informs and guides all environmental and social safeguards. These rights, enshrined in national laws and/or international treaties such as the Universal Declaration of Human Rights establish fundamental standards to ensure dignity, equality, and justice for all. Consequently, the implementation of environmental and social safeguards within project activities must align with and uphold these human rights principles”*.

First, OHCHR would like to propose revisions to this paragraph to reflect the different nature of human rights instruments by making the following edits: “...These rights, enshrined in national laws and/or international ~~treaties~~ **instruments** such as the Universal Declaration of Human Rights establish fundamental standards to ensure dignity, equality, and justice for all. Consequently, the implementation of environmental and social safeguards within project activities must align with and uphold these human rights ~~principles~~ **obligations**”.

Despite the content of the para. 48 of the section 5.3.1, which calls for human rights to constitute an overarching legally binding framework that informs and guides all environmental and social safeguards, in several cases the draft tool states that the activities have to be consistent only with host party regulations, for example, with respect to environmental and social management plans (4 (o)), further assessment in case activity participants identify that its activity has an impact on principles under the environmental and social safeguards (19 (b)) and measures and actions to address identified/potential negative impacts (19 (e)).

OHCHR would like to emphasize that those process and activities also have to be consistent with international human rights law, as defined in para. 46, and if issues are regulated by both

international human rights law and host party regulations, the regulation providing the greatest level of protection must be applied.

Regarding para 16 (j), on the definitions of Indigenous Peoples, it has to be in line with UNDRIP¹ to ensure self-identification as Indigenous is considered a fundamental criterion.

Regarding para 10, to ensure meaningful and informed consultation, stakeholder consultations The International Covenant on Civil and Political Rights (ICCPR), the [Aarhus Convention](#) and the [Escazu Agreement](#) alongside various other human rights instruments, including multilateral environmental agreements, guarantee that all people have the right to meaningful² and informed participation in environmental decision-making. Para 10 on stakeholder consultations should refer not only to host Party rules and/or Article 6.4 mechanism activity cycle procedures and section 6.9 and appendix 2 of Article 6.4 mechanism activity standards, but also be in line with the international instruments highlighted above³. Thus, the OHCHR proposes to amend the paragraph by adding language to ensure that: 'The presentation of the Environmental and Social Safeguards Risk Assessment Form and the Environmental and Social Management Plan Form to be conducted in the native language of those living in or near the vicinity of the activity areas and will be made available well in advance.'

With regard to section 5.3.4 on “Principle 7: Gender equality”, it is crucial to recognize women as key drivers of positive climate policies. The principle should call for empowering women and ensuring their active participation in climate policy development and implementation to promote gender equality and enhance the effectiveness and sustainability.

Additionally, the section 5.3.2. on “Principle 5: Labour” of the latest draft rolled back the important progress toward protecting labor rights by removing the language on: *“To promote safe and healthy labour and working conditions, the following has to be considered: (a) Promoting education programmes for local communities to access labour opportunities created by the proposed activity; (b) Promoting the fair treatment, non-discrimination and equal opportunity of project workers; (c) Protecting project workers, including vulnerable workers such as women, persons with disabilities and migrant workers, contracted workers, community workers, and primary supply workers, as appropriate; (d) Preventing the use of all forms of forced labour and child labour; 37 Universal Declaration of Human Rights. A6.4-SBM013-AA-A10 Draft Tool: Article 6.4 sustainable development tool Version 07.0 (e) Supporting the principles of freedom of association and collective bargaining of project workers in a manner consistent with national law; (f) Providing project workers with accessible means to raise workplace concerns. (g) Avoiding exposure to increased health risks (e.g. pollution, contaminated areas/resources) and disease and the proposed A6.4 activity shall not adversely affect the health of the workers.”*

It is important to ensure freedom of association, the right to collective bargaining, and to a living wage in accordance with ten [fundamental ILO Conventions](#) and principle of non-discrimination

¹ UN Declaration on the Rights of Indigenous Peoples

² "Meaningful" participation entails that all relevant information is accessible, stakeholders are given ample opportunity to contribute their views, and their input is genuinely considered in the decision-making process.

³ Additionally, please see [OHCHR Guidelines on the effective implementation on the right to participate in public affairs](#)

and equality, including with respect to the rights of women and girls, LGBTI people, persons with disabilities , older persons and minorities.

Several other recommendations by OHCHR and other stakeholders are not adequately reflected in the latest version of the Draft tool: Article 6.4 sustainable development tool. The current text is still inconsistent with some obligations and standards of legally binding international human rights instruments and fails to ensure that environmental and social safeguards in the sustainable development tool at a minimum:

1. Ensure accountability and the rule of law;
2. Recognise the centrality of human rights in all process related to Article 6.4 Activities;
3. Ensure rights relating to land and resource tenure, housing, property ownership and resettlement in line with “the Basic principles and guidelines on development based evictions and displacement”⁴ and CESCR General comment 7⁵;
4. Specifically recognize that the rights to information, participation and access to justice are an integral part of all processes related to Article 6.4 Activities;
5. Include a self-standing performance standard on engagement of stakeholders and rightsholders, including detailed requirements that participation be free of intimidation or coercion and on how to prevent and address reprisals risks. This recommendation is consistent with recent practice of several multi-lateral development banks and would address the challenges to effective participation, shrinking civic space, and threats and reprisals against activity-affected people;
6. Ensure that The UN Guiding Principles on Business and Human Rights are explicitly integrated within Safeguard policies in order to strengthen the framework for: (a) risk assessment; (b) ongoing, risk-based due diligence; (c) addressing risks throughout the value chain; and (d) remedy;
7. Ensure not only the monitoring of potential negative environmental and social impacts of the realization of Article 6.4 Activities but remediation of them;
8. Avoid supporting any activities that do not comply with applicable environmental and human rights laws, including national laws and/or obligations of the country as well as those directly applicable to the activities under relevant international treaties and agreements, whichever is the higher standard.

⁴ Basic principles and guidelines on development based evictions and displacement. Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living. A/HRC/4/18. Available at:

https://www.ohchr.org/sites/default/files/Documents/Issues/Housing/Guidelines_en.pdf

⁵ The right to adequate housing (Art. 11.1): forced evictions : 20/05/97. CESCR General comment 7.