

**A6.4-SB010-AA-A03**

## Information note

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Compilation of the public inputs on appeal and grievance and additional analysis of issues mandated by SB 008

Version 01.0



## COVER NOTE

### 1. Procedural background

1. The rules, modalities and procedures (RMPs)<sup>1</sup> for the mechanism established by Article 6, paragraph 4, of the Paris Agreement (the Article 6.4 mechanism), as contained in the annex to decision 3/CMA.3 provide, in paragraph 62 thereof, that "Stakeholders, activity participants and participating Parties may appeal decisions of the Supervisory Body or request that a grievance be addressed by an independent grievance process".
2. The Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA), through decision 3/CMA.3, paragraph 5(a), requested the Supervisory Body to develop provisions for the process of development and approval of methodologies, the activity cycle, and other processes pursuant to chapters V.B–L and VIII of the RMPs.
3. The Supervisory Body, at its eighth meeting revised the draft "Procedure: Appeal and grievance processes under the Article 6.4 mechanism" and requested secretariat to launch a call for public inputs on the revised draft procedure.
4. The Supervisory Body also requested the secretariat to prepare a revised draft procedure, taking into account comments received from the call for inputs, and present it at the tenth meeting. The Supervisory Body further requested the secretariat to provide an analysis of the following issues and present it in conjunction with the revised draft procedure:
  - (a) Issues related to fees, including implications on the accessibility to the appeal and grievance processes and different options for funding the appeal and grievance processes;
  - (b) Relations of the appeal and grievance processes with the existing measures for safeguarding the integrity of Article 6.4 mechanism activities contained in the activity standard and the activity cycle procedure;
  - (c) How members and alternate members of the Supervisory Body can raise issues or concerns through processes other than the appeal and grievance processes;
  - (d) Options for limiting vexatious appeals and grievances;
  - (e) How to manage multiple appeals or grievances filed or submitted regarding the same activity or on the same ground across multiple Article 6.4 activities using the same methodology.

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<sup>1</sup> See decision 3/CMA.3, paragraph 62, for the request, and the annex to 3/CMA.3, for the Rules, modalities and procedures for the mechanism established by Article 6, paragraph 4, of the Paris Agreement, contained in document FCCC/PA/CMA/2021/10/Add.1 available at: <https://unfccc.int/documents/460950>.

## 2. Purpose

5. The purpose of this information note is to provide a compilation of public inputs received in response to the call for public inputs on draft “Procedure: Appeal and grievance processes under the Article 6.4 mechanism”. The compilation was prepared to facilitate the work of the Supervisory Body in considering the revised draft “Procedure: Appeal and grievance processes under the Article 6.4 mechanism” in response to the CMA mandate as contained in the annex to decision 3/CMA.3, in paragraph 62 of the RMPs and to respond to the questions contained in annex 9 to the SB 008 meeting report.
6. The secretariat synthesized, paraphrased and grouped the information in the submissions for easy readability and flow of information. In that process, despite the best efforts, some relevant information may have been unintentionally omitted or not correctly represented. Also, it was difficult to fit some information under the prevailing elements and categories. Readers are encouraged to consult the full submissions available at the link included under footnote 2 to fully understand the background and context in which proposals are made in the submissions. These are also listed under the appendix of this document.
7. The purpose of this document is also to provide an analysis of issues pertaining to fees, including implications on the accessibility to the appeal and grievance processes and different options for funding the appeal and grievance processes; relations of the appeal and grievance processes with the existing measures for safeguarding integrity of the Article 6.4 mechanism; approaches for Supervisory Body members to raise issues or concerns through processes other than the appeal and grievance processes; options for limiting vexatious appeals and grievance and management of multiple appeals or grievances filed or submitted regarding the same activity or on the same ground across multiple Article 6.4 activities using the same methodologies, contained in paragraph 18 (a)-(e) and annex 9 of the SB 008 meeting report.

## 3. Current work

8. The call for inputs from stakeholders was open from 3 November to 1 December 2023. A total of nine inputs were received as shown in table 1<sup>2</sup> below.

**Table 1. List of stakeholders who responded to the call for public input<sup>(a)</sup>**

No.	Submission date	Stakeholder
1	1-Dec	Center for International Environmental Law (CIEL)
2	1-Dec	Permanent Court of Arbitration (PCA)
3	1-Dec	Perspectives Climate Group (PCG)
4	1-Dec	NAMATI on behalf of different organizations (NAMATI)
5	1-Dec	Conservation International (CI)
6	1-Dec	Indigenous Environmental Network (IEN)

<sup>2</sup> Details of the call for public input and the full submissions are available at: <https://unfccc.int/process-and-meetings/the-paris-agreement/article-64-mechanism/calls-for-input/call-for-input-2023-stakeholder-interactions-appeal-and-grievance-processes-under-the-article-64>

No.	Submission date	Stakeholder
7	1-Dec	International Indigenous Peoples Forum on Climate Change (IIPFCC)
8	1-Dec	Women and Gender Constituency (WGC)
9	1-Dec	Transparency International (TI)

(a) In-text citations in this document (e.g. AA) reference stakeholder comments/inputs made to the call for public inputs.

9. Further analysis of issues contained in paragraph 18 (a)-(e) and annex 9 of the SB 008 meeting report is presented.

**4. Subsequent work and timelines**

10. Further work will be carried out based on the guidance that will be received from the Supervisory Body.

**5. Recommendations to the Supervisory Body**

11. The Supervisory Body may wish to consider this document and provide guidance for any further work.

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## 2. Key issues and proposed solutions

### 2.1. General

5. It is critical that all activities sanctioned by the Article 6.4 mechanism avoid negative environmental impacts and human rights harms. Appreciated the commitments made in the adoption of the rules, modalities, and procedures at COP26 and the work the Supervisory Body is doing to avoid past mistakes and eliminate negative impacts. Climate action, including activities taking place in the Article 6.4 mechanism, should not exacerbate or contribute to human rights harms. On the contrary, rights compatible climate action should be promoted as it is more effective climate action (CIEL).
6. An effective grievance mechanism is a core component to ensuring respect for human rights, including the right to remedy. While a grievance mechanism goes hand in hand with rights-based social and environmental safeguards and meaningful public participation and engagement with rightsholders, it should not be wholly equated with meaningful participation and consultation. All three components: strong human rights based social and environmental safeguards, rules for ensuring meaningful rightsholder consultation and participation, and an independent and effective grievance mechanism must all be in place to best ensure not only that negative environmental and social impacts are avoided, but also that when they occur, they are remedied (CIEL).
7. The UN Guiding Principles on Business and Human Rights (UNGPs) set forth effectiveness criteria for grievance mechanisms that should inform the architecture of both project- and UNFCCC-level mechanisms. Under these principles, a grievance mechanism should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, based on engagement and dialogue, and a source of continuous learning (CEIL).
8. While operationalizing the independent appeal and grievance mechanism and having clear processes and steps for filing appeals and grievances is an essential component of that operationalization, the purpose and objective is to provide an avenue for people to raise concerns and seek redress/remedy for actual or potential harms. This should be more clearly stated up front as it should inform all aspects of the procedures (CEIL).
9. The Supervisory Body should initiate an expert-led redesign of the process that includes consultation with impacted communities. The required expertise for this task includes: (a) knowledge of the UNFCCC framework, (b) expertise in the design of UNGP aligned non-judicial grievance mechanisms, (c) understanding of the harms or risk of harms for communities impacted by carbon markets, and (d) experience working with communities navigating grievance mechanisms. This should lead to a design document which describes the proposed grievance process, its objectives, key features, and alignment with the UNGPs effectiveness criteria, which in turn can guide the drafting of procedures (NAMATI).
10. Should the Supervisory Body need an interim grievance process, it is suggested to explore a memorandum of understanding with an established independent accountability mechanism. For example, the Independent Redress Mechanism of the Green Climate Fund could be asked to handle Article 6.4 complaints pending the establishment of a standalone process (NAMATI).

11. The grievance process is not grounded in any defined framework, legal or normative requirements. As a result, the basis on which the grievance panel should make findings and recommendations is not clear. The process does not require panels to prepare reasoned decisions. This creates a high risk of arbitrary decision making. Instead, at a minimum, the process should be grounded in the UN Guiding Principles on Business and Human Rights (“the UNGPs”) and the UN Declaration on Human Rights, as well as good practice environmental and social standards such as IFC’s Performance Standards (NAMATI).
12. Appeal and grievance mechanisms are important accountability systems to facilitate resolutions that may arise from an activity, enabling different stakeholders or group of stakeholders to raise concerns and file complaints. They are complementary to other stakeholders engagement activities and should be scaled to risks and adverse impacts of the project, address concerns promptly, use an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected communities, and do so at no cost to communities and without retribution. Grievance mechanisms, especially when involving local communities, should be proportional, fair, efficient, transparent, accessible, independent, inclusive, and accountable. As such, it is recommended that the mechanisms clearly refer and commit to good practice principles consistent with the UN Guiding Principles on Business and Human Rights (CI).

## **2.2. Standing for stakeholders who may file an appeal or submit a grievance**

### **2.2.1. Summary of public inputs**

13. Admissibility requirements should be simple. Appellants or complainants should be required simply to outline how the alleged harm they are experiencing or anticipate is tied to Article 6.4 activities. Critically, admissibility requirements should not require complainants to show or do anything else (i.e., citing policy violations or exhausting other avenues for redress). Admissibility requirements also should not qualify acceptable complaints with terms such as “credible,” “reasonable likelihood of harm,” “substantial adverse impacts,” or require complainants to demonstrate the harm. For a variety of reasons, including, for example, language barriers, complainants often lack the resources and information necessary to file detailed claims of their grievances and policy non-compliance (CIEL).
14. Sections 4.1 and 5.1 of the Draft Procedure distinguish which “stakeholders” have standing in the appeal and grievance processes. The right to an effective remedy, justice, and redress is laid down in numerous international instruments widely accepted under international human rights and environmental law. Ensuring these basic rights requires making sure that the grievance mechanisms are accessible and that standing isn’t limited unnecessarily (CIEL).
15. For the Appeal Process, Paragraph 7 of the draft procedure states that to file an appeal, stakeholders must be eligible to participate in the activity’s local stakeholder consultation (LSC) conducted in accordance with the activity standard. This is too restrictive. Additionally, Paragraph 18 of the concept note recommended that the Supervisory Body consider whether standing would be established only in cases where the comments made by the appealing stakeholder during the LSC were on the same subject matter as the appeal being filed, or whether participation in the LSC would automatically grant the stakeholder standing to appeal on any subject matter relating to Supervisory Body

- decisions on the activity in question. Participation in LSC should not be a prerequisite for filing an appeal (CIEL).
16. It should be ensured that the grievance mechanism is inclusive and accessible to anyone, especially those who are likely to be impacted by the activity and so should look at how it can expand access for stakeholders, not how to create unnecessary barriers (CEIL).
  17. Any stakeholder shall be entitled to lodge a grievance at any desired time. Limitations on who could file a grievance should not exist, especially when the outcome of the grievance process - as indicated in the Draft Procedure - is mainly designed at providing recommendations to activity participants, national authorities, and the Supervisory Body. In this regard, paragraph 34 should be rewritten to allow any stakeholder to file a grievance. This is particularly important as, in many cases, vulnerable people may not have the means and options to speak by themselves. For example, it could be the case a local indigenous community doesn't have the proper means to file a grievance at the UN level, but a regional Indigenous People federation might (PCG).
  18. The requirement that several criteria are jointly met are not sufficiently inclusive. For instance, in case of appeals, requiring that only stakeholders who were invited/eligible to participate in the activity's local stakeholder consultation may file an appeal would exclude those who have erroneously been excluded from the local consultations. This may occur for example when social assessments are not properly performed and therefore some stakeholders are left out of the process. In case of grievances, it might be difficult to prove domicile/residency when land tenure is not clear or formalized. Moreover, when it comes to potential E&S impacts, there might be situations where impacts are felt far from the project area, such as for matters related to access to natural resources by communities. Under the actual proposed terms, these would not be eligible to file a grievance (CI).
  19. The impacts of carbon offset projects stretch far beyond the stakeholders and participants who sign the contract. Indigenous Peoples must be considered stakeholders and be allowed to file an appeal or grievance for projects and offset activity that negatively impact their livelihoods, resources, and/or rights. While communities and entities that sign contracts should automatically be considered stakeholders, a broad definition of stakeholders is needed to ensure that those impacted by offset projects under Article 6 has standing to file an appeal or grievance. (IEN).
  20. Indigenous Peoples have the right under the United Nations Declaration on the Rights of Indigenous Peoples to consultation and cooperation in good faith in order to obtain their free, prior, and informed consent for measures that may affect them (Articles 19 and 32). They are the arbiters of what may affect their lands, territories or other resources, or other rights. Therefore, if Indigenous Peoples determine that their interests may be affected, they have a standing. Option 2 allows for a wider range of stakeholders and entities to be involved in the appeal process, reflecting a more inclusive approach to decision - making and grievance redressal under the Article 6.4 mechanism (IIPFCC).
  21. All stakeholders regardless of their residency or domicile should have the right to submit their appeal or grievance regardless of language used for submission, including additional information and supporting documents (WGC).
  22. To ensure equal access to the mechanisms it is recommended to widen the scope of those entitled to lodge an appeal or grievance to include local and international civil society organisations (CSOs) (even if they are not directly affected by the mechanism). This would

enable CSOs to bring cases of corruption, environmental damage, human rights violations, or other issues to the attention of the Secretariat and strengthen the position of affected stakeholders, especially women and other marginalised groups, who are less likely to have the necessary means to appeal and lodge grievances (TI).

23. First, the three cumulative eligibility criteria are, taken together very restrictive. Ultimately, very few will be eligible to submit a grievance, which threatens the effectiveness of the process and its capacity to fulfil its objective. Moreover, if too many grievances are rejected on the ground of lack of standing, affected communities and individuals will lose trust in the process. Second, several conditions set in the second criteria (b) are subjective (“geographical area”, “substantial presence”), which will create uncertainty for potential grievant – who might decide not to use the mechanism – and challenges for the panel evaluating the standing of the grievant. Finally, the third criteria should not limit standing to the suffering of “direct” adverse effects (which again can be subject to interpretation) but extend it to “indirect” adverse effects as well (TI).

### **2.2.2. Proposals to address the issues raised by public comments**

24. Considering the standing on grievance provisions and potentially limiting provision on demonstration of residency and domicile, it is proposed that flexibility be provided and that standing for grievance be expanded. Thus, provisions on the standing of grievance are revised to provide flexibility to the grievant to demonstrate residency or domicile by means other than documentary evidence (paragraph 34 (a) of the third version of the draft Procedure).

### **2.3. Issues related to fees, including implications on the accessibility to the appeal and grievance processes and different options for funding the appeal and grievance processes**

#### **2.3.1. Summary of public inputs**

25. Filing an appeal or submitting a grievance or complaint should be free for those filing and there should be no costs or fees that are incurred by the person(s) or community(ies) filing the grievance/complaint/appeal. Which is a common practice among well-established grievance mechanisms at numerous institutions. Potential complainants are often members of marginalized populations or communities whose particular vulnerabilities, such as poverty, are exacerbated by the project impacts (CEIL).
26. Rather than erecting barriers to access, like charging a fee, it is also essential for the process instead to enable appellants’ or complainants’ participation by covering their costs (i.e., travel to mediations, translation of key documents, etc.). We would note that this is also a common and established practice at other mechanisms (CEIL).
27. Paragraph 12 and paragraph 38 state how appeal and grievance fees shall be determined, including provisions for reduced or no appeal/grievance fees if the complaint is submitted by Indigenous groups or a group in a least developed country, among other situations. 5,000 USD or even 2,500 USD are exorbitant in any situation. While there is recognition that some groups should pay no fees, this is not enough. There should be no requirements for appellants or complainants to pay any fees related to an appeal or grievance. The appeal and grievance processes under the Article 6.4 mechanism should therefore follow best practice in this regard by eliminating any requirement for fees or costs (CEIL).

28. No procedural costs or other fees must be charged to the complainant for lodging grievances. This is a practice that should not be pursued at all, as it deters potentially aggravated people from seeking a remedy (PCG).
29. Finally, to be fully independent, the mechanism must be adequately financed. The financing of the grievance mechanism requires further consideration, but by no means should the complainant bear the burden of it (PCG).
30. The process includes fees, which will discourage grievances even if they can be waived. In contrast, we suggest that you make a pool of resources available for communities to access independent legal and technical support as they navigate the grievance mechanism. If communities have legal and technical support to navigate the system, they will be able to engage on a more level playing field with the various powerful actors involved in a project (NAMATI).
31. Fees should not be cost-prohibitive. Requiring fees for Indigenous Peoples and Local Communities (IP&LC), as proposed in the draft procedure, would prevent those communities to have their right secured and therefore, should be excluded (CI).
32. There shall be no fee process for filing appeals or grievances related to activities under the 6.4 mechanism. As right-holders, Indigenous Peoples, and other local communities, whether directly or indirectly impacted, should not face barriers to accessing these critical processes. Indigenous Peoples have inherent rights to their territories and must have a right to file an appeal or grievance without an imposed fee to protect their territories. The imposing of fees could have a chilling effect on those with a valid cause of action to file an appeal or grievance. The inherent and collective rights of Indigenous Peoples and the human rights of local communities should also have an unimpeded right to address the dangers and impacts they may face due to offsetting projects without fear of intimidation or persecution. "Ensuring equitable access" must be a commitment from the UNFCCC to not burdening the inherent rights of Indigenous Peoples and the human rights of local communities and other impacted groups with filing fees. (IEN).
33. The current criteria for reduced fees are insufficient in protecting the rights of Indigenous Peoples, particularly in regions where Indigenous Peoples lack formal recognition by national governments. Furthermore, the reduced fee amount of \$2500 USD still poses a substantial obstacle for Indigenous Peoples and local communities facing economic challenges, greatly hindering their meaningful participation in the processes. The reliance on the designation of host Party government based on "available data" to be eligible for a reduced fee oversimplifies the diverse socio-economic realities within countries. Using broad indicators such as gross national income per capita disregards variations in the cost of living within different regions of a country and will likely lead to a homogeneous treatment of communities with varying levels of wealth and resources. In addition, this ignores the rights of Indigenous Peoples and conflates the inherent and collective rights of Indigenous Peoples with other groups (IEN).
34. If the aim is to fund the operational costs of the appeal and grievance processes through filing fees, thus it is proposed that the standard fee structure be specifically applicable to carbon project managers, brokers, regional governments, states, offset purchasers, and/or third-party verifiers and managers. This approach ensures that those entities more likely to bear responsibility contribute to the mechanism's sustainability without further burdening Indigenous Peoples that stand to be impacted by activities under the 6.4 mechanism (IEN).

35. Against a fee for filing an appeal or grievance and finds the assessing of fees for Indigenous Peoples to file an appeal or submit a grievance is totally inappropriate. Explicitly waive fees for Indigenous Peoples, recognizing their unique circumstances and potential resource limitations. This approach upholds equity and ensures their voices are not marginalized due to financial constraints. Equitable access goes far beyond the question of appellate fees. A fund under the 6.4 mechanism needs to be established to provide funding for Indigenous Peoples to fully prepare their appeals or grievances and to cross - examine parties on the other side) (IIPFCC).
36. An appeal fee will prevent women in all their diversity, indigenous peoples, vulnerable groups, and local communities—who do not always have the financial means and are being marginalised—from any countries to submit an appeal or grievance. No appeal fee should be required for women’s groups (local, regional, or international), indigenous peoples, vulnerable groups, and local communities. To demand a fee is equivalent to silencing the voice of the most vulnerable populations to climate change and will exacerbate their pre-existing conditions (WGC).
37. Fees for filing an appeal or a grievance can be a strong deterrent to submitting a grievance, without guaranteeing that it will reduce abuses of the process significantly. And given the proposed fees, they would disproportionately affect those with low income. Thus, representatives of indigenous peoples and least developed countries should be able to file appeals and grievances free of charge. The standard – and even reduced fee seems to be also too high for local stakeholders in developing countries in general. It is crucial that the appeal and grievance mechanisms are available free of charge for all local stakeholders (including CSOs), which is one way to improve access to the mechanisms for the low-income sectors of society (TI).

### **2.3.2. Analysis of issues to be considered when imposing fees**

38. The imposition of fees for consideration and processing of an appeal and a grievance at the time of filing an appeal and submitting a grievance is a long-standing common practice that customarily exists in appeal and grievance processes.
39. The primary reasons for charging fees for consideration and processing of an appeal and a grievance are:
  - (a) A need to support and fund the overall operation of the appeal and grievance panels’ considerations;
  - (b) A means of deterring frivolous appeals and grievances;
  - (c) An approach for encouraging settlement of the appeals and grievances prior to filing or submitting to an appeal panel or grievance panel for consideration.
40. The consideration and processing of appeals and grievances involve the allocation of a significant amount of resources to cover the costs associated with the time and effort of the staff of the secretariat supporting the administrative and procedural steps of the process, of the members of the appeal and grievance panels, and of the members of the Supervisory Body. Charging fees is necessary to cover costs associated with operationalization of the appeal and grievance processes. Allocating these resources efficiently contributes to the overall operation of appeal and grievance panels and support structures and the associated appeal and grievance processes.

41. The processes of handling and processing appeals, and grievances involve various administrative and procedural steps. Charging fees specifically to the appeals and grievance processes is an option for covering the costs associated with these processes, such as: completeness check and eligibility verification of filed appeals and submitted grievances; consideration by and ruling of the appeal panel and consideration and recommendation by the grievance panel; reconsideration by the Supervisory Body upon remand; and monitoring of outcome of recommendations by grievance process. The financial resources associated with the payments of fees are required to maintain the appeal and grievance processes infrastructure, provide remuneration for members of the appeal and grievance panels and staff who support them, and cover other administrative costs.
42. The imposition of fees for filing an appeal or submitting a grievance can also act as a deterrent against frivolous or meritless appeals. Charging a fee discourages individuals and entities from pursuing appeals and grievances without valid grounds, reducing the burden on the appeal and grievance system. The financial barrier can discourage the filing of meritless claims and deter a frivolous appeals or grievances at its early stages can prevent the abuse of the appeal and grievance system.
43. Applying a uniform fee structure for filing and consideration of appeals and submission and consideration of grievances also ensures that all appellants and grievants are treated equally. If fees were waived entirely, it might lead to an excessive number of appeals and grievances, potentially overwhelming the system and delaying considerations for those with legitimate claims.
44. The prospect of incurring fees may also encourage parties to settle their disputes before reaching the appeal and grievance stages. This can save both time and resources for the parties involved and the appeal and grievance system.

### **2.3.3. Analysis of implications on the accessibility to the appeal and grievance processes**

45. While the imposition of fees for appeal and grievance processes may serve legitimate purposes, such as deterring frivolous claims and funding the appeal and grievance system, they can also have a number of implications, including the following:
  - (a) The imposition of high fees can create a financial barrier, preventing individuals and entities that cannot afford the cost from accessing the appeal and grievance processes. This may disproportionately affect marginalized or economically disadvantaged individuals and entities, limiting their ability to seek redress through the appeal and grievance system;
  - (b) The imposition of high fees at high level can contribute to inequality in access to fair and just decision-making. Individuals or entities with financial resources may find it easier to navigate the appeal and grievance system and pursue appeals or grievances, while those without means may be deterred or excluded from participating;
  - (c) Even individuals and entities with valid claims may be hesitant to pursue appeals or grievances due to the associated costs. This chilling effect may lead to the underrepresentation of legitimate cases in the appeal and grievance system, impacting the overall effectiveness of the system;

- (d) Access to appeal and grievance and just decision-making is a fundamental principle, and imposing fees at high levels may be perceived as a denial of equal consideration and treatment. It may disproportionately affect certain groups, potentially leading to a system that is perceived as unjust.
- 46. To address these implications and ensure a more equitable appeals and grievance system, the Supervisory Body could consider implementing fee waivers, sliding-scale fee structures, or other measures to mitigate the impact of fees on accessibility, especially for individuals and entities facing financial challenges. Balancing the need for financial sustainability with the principles of fairness and equal access to justice is crucial for a well-functioning appeal and grievance system.
- 47. Additionally, in the event that the appeal panel rules to remand the Supervisory Body to reconsider the original decision, which resulted in issuing a revised decision, the appeal fee could be reimbursed to the appellant. Likewise, in the event that the grievance panel issues recommendations as an outcome of the consideration of the grievance, the grievance fee could be reimbursed to the grievant.

#### **2.3.4. Analysis of different options for funding the appeal and grievance processes**

- 48. Funding the appeal and grievance processes within the appeal and grievance system is essential for maintaining an effective and accessible system. There are several approaches that can be employed to fund these processes, which are described in the subsections that follow.

##### **2.3.4.1. Filing and submission fees**

- 49. Maintain or establish reasonable fees for filing and considering appeals and submitting and considering grievances. These fees can help generate revenue to cover the administrative costs associated with processing appeals and grievances. However, it is crucial to ensure that fees do not create an undue barrier to accessing the appeal and grievances processes, and considerations such as fee waivers may be implemented for specific marginalized or economically disadvantaged individuals and entities.

##### **2.3.4.2. Fee structures**

- 50. Implement tiered or sliding-scale fee structures based on the financial capacity of the entities and individuals involved. This approach allows for a more nuanced application of fees, ensuring that those who can afford to pay contribute more while minimizing the impact on individuals with limited financial resources.

##### **2.3.4.3. Dedicated funding**

- 51. Allocate dedicated funds to support the appeal and grievance processes. Article 6.4 mechanism budget can include provisions for funding for the operation of the appeal and grievance processes to ensure the availability of resources for those who cannot afford to pay fees.
- 52. An approximate estimation of the expenses associated with the administration of currently proposed appeal and grievance processes involving remuneration of permanent dedicated staff and remuneration for efforts of members of appeal and grievance processes show that 30,751.00 USD are required for processing an appeal and 31,296.00

USD are required for processing of a grievance. This estimation demonstrates the necessity to charge fees for administering these processes and the need for the processes to be self-sustained.

### **2.3.5. Proposals to address the issues raised by public comments**

53. Considering the issues pertaining to accessibility of the appeal and grievance mechanism, it is proposed that the option for providing waiver of the fees due for filing an appeal and submitting a grievance be expanded by including all Indigenous Peoples, local communities and non-profit organizations (paragraphs 12(b) and 38(b) of the third version of the draft Procedure). This will provide marginalized groups with better access to the appeal and grievance processes.

## **2.4. Timeframe for filing an appeal, taking into account potential impacts on investments**

### **2.4.1. Summary of public inputs**

54. Harms may occur several years into a potential activity, thus complaints should be admissible for at least 2 years after “completion” of a project. The full implementation of applicable environmental and social standards – and the realization of their objectives – are sometimes only achieved several years into a project and/or after the “main” project activities (e.g., infrastructure construction) have been completed. Thus, the mechanism should accept appeals or complaints throughout the project lifecycle and for a period of time after the project is closed (CIEL).
55. In terms of the grounds in which the appeal is made, we agree with concerns that we are overlooking the most important one: the SB have not received correct information that reverses the grounds in which previous decisions have been made. This can come to light after 48 days. It is unclear when information about harm will come to light, and it is often significantly later in a project activity (CIEL).
56. Appeals or complaints should be admissible prior to project approval. In order to prevent or mitigate potential adverse impacts, complainants should be able to bring complaints to the mechanism before the project is approved by the institution’s Board or management. Complaints can often be most easily addressed at this early stage, which is critical for preventing harm, including by ensuring the proper application of environmental and social standards to projects that proceed (CIEL).
57. The recommended timeframe should be up to two (2) years after the project conclusion for grievances, as some issues may not show up until after the activity cycle ends. However, for appeals, the timeframe should be limited to a specific period within the beginning of the activity cycle, as up to thirty (30) days after the Supervisory Body publishes its decision on a registration request (CI).
58. In terms of timeframes for appeals, the first responsibility of the SB is to ensure that appeals are meaningfully investigated. In this vein, particularly from the perspective of Indigenous Peoples. It is recommended that all appeals and grievances receive a response from the SB or other appropriate parties within 30 days. This timeframe is appropriate given the historical and specific harms to Indigenous Peoples. Any amount of time exceeding 30 days risks exposing appellants to significant economic, health, cultural, and social harms beyond what may already be present (IEN).

59. Once filed, additional timeframes for the opportunity to develop evidence and prepare for adversarial responses need to be made while keeping with the due process elements in a timely manner (IEN).
60. The timeframe for filing an appeal is totally inadequate. Hidden in the phrase “filing an appeal” is the requirement that one’s entire case be presented at the time of filing. The provisions of the draft procedure stipulate that one’s entire case must be prepared within the limited time (28 or 56 days). This is a denial of due process of law. The procedure must allow ample time and an expansive procedure for what can be very complex and contentious issues. There should be an ample period for supplementing the record after the grievance or appeal is filed to allow for the preparation and presentation of the grievance or appeal. The extent of the period of supplementation must be adequate to the complexity of the case. The process must be adequate to allow full opportunity to combat opposing claims. Decision of the appeal solely written submissions is inadequate and violative of due process. (IIPFCC).
61. It is questionable whether local stakeholders, including indigenous people, would become aware of such decision and lodge an appeal within 28 or 14 days. The longer timeframes of 56 and 28 days should be selected. In parallel, measures to ensure that appealable decisions are disseminated to local stakeholders (TI).

#### **2.4.2. Proposals to address the issues raised by public comments**

62. Streamline the deadlines for filing an appeal (paragraph 11 of third version of the draft Procedure), completeness check by secretariat of an appeal (paragraph 13 of third version of the draft Procedure) and a grievance (paragraph 39 of third version of the draft Procedure), and review and ruling of an appeal (paragraph 21 of third version of the draft Procedure).
63. Keep the deadline for submitting open to encompass the entire activity cycle under the Article 6.4 mechanism (paragraph 35 of third version of the draft Procedure).
64. Provide an additional extension of deadline for submission of a revised form if the information contained in the original appeal is found to be incomplete, supplemented with additional evidence and facts form for filing an appeal (paragraph 13 of third version of the draft Procedure) and submitting a grievance (paragraph 39 of third version of the draft Procedure) in order to ensure effectiveness of the appeal and grievance processes.

### **2.5. Scope of appeal (which Supervisory Body decisions should be appealable)**

#### **2.5.1. Summary of public inputs**

65. Any decisions that impact Indigenous Peoples need to be under the scope and subject matter jurisdiction of the Appeal and Grievance process. A broad scope of appeals and grievances, including decisions on activities and methodologies is supported. As outlined in section “4.2 Scope,” paragraph 9 of the draft procedure, all six points in which additions or changes in projects, methodologies, or standards are allowable, a fair process must allow a broad scope of stakeholders to file an appeal or submit a grievance on all Supervisory Body decisions related to Article 6 (IEN).
66. It should be clear that the approval of a project or its amendment etc. without the free, prior, and informed consent of the Indigenous People or Peoples involved is within the

scope of the appeals process. In addition, any claim by Indigenous Peoples that any of their rights have been violated must be within the scope of any appeal or grievance. Any action within the scope of appeals which jeopardises the lands, territories, other resources, or other rights of Indigenous Peoples should be struck down and all offset credits denied (IIPFCC).

67. Both decisions on project activities and methodologies should be included in the scope, as these are key aspects of the article 6.4 mechanism that will impact future decisions. In addition, at present, the scope of the procedure is very precisely defined, e.g., what can be appealed. It would be useful to point out that there are (where appropriate) appeal options for issues that do not fall under the cases listed. During the procedure, appellants should be informed, if necessary, that their concern does not fall within the scope of application and be given the reasons for this decision and possible alternative channels for pursuing their complaint. Furthermore, it is not entirely clear whether the appellant can appeal against more than one decision. The appellant should have the possibility to appeal against several decisions (albeit maybe through separate submissions) (TI).
68. Scope of the grievance procedure: The scope should include broader adverse effects suffered by the local individuals, communities, or businesses, not only effects of social, economic or environmental nature – or at the very least include human rights violations – as well as any breach of law. It is in the interest of the credibility and sustainability of the Article 6.4 mechanism to detect and address such adverse effects and violations (TI).

### **2.5.2. Proposals to address the issues raised by public comments**

69. Considering that the scope of an appeal is limited to the Supervisory Body decisions and taking into account the need for providing broader scope, it is proposed that Option 2 be maintained, including not only decisions by the Supervisory Body pertaining to the project cycle, but also decisions by the Supervisory Body on methodologies and standardized baselines.
70. It is proposed that the scope of the appeal be expanded to allow the appeal to be filed against any of the appealable Supervisory Body decisions, including an option for multiple decisions to be appealed instead of only one of the Supervisory Body decisions to be appealable (paragraph 9 of the third version of the draft Procedure).
71. Regarding the scope of grievance, it is considered that having a broad scope, such as any adverse effect of a social, economic or environmental nature suffered by local individuals, communities or business as a direct consequence of the implementation or treatment of a registered A6.4 project activity may create an initiative for avoidance of domestic civil litigation and may be a pre-condition for receiving submissions that shall be considered under national judiciary systems in accordance with national law. Thus, it is recommended that the scope of grievance be reconsidered and that limits be established around issues upon which the Supervisory Body can act and has authority or control.

## **2.6. Measures to ensure the finality of Supervisory Body decisions related to appeals or specific subject matters of grievances, to provide a reasonable level of certainty to activity participants regarding their A6.4 activities**

### **2.6.1. Summary of public inputs**

72. It cannot be known whether a final decision will remediate or remedy the harm and so procedurally erecting barriers is unwise (CIEL).
73. In the appeal process, as currently outlined, there are only two possible outcomes, both of which fail to adequately address the possible concerns of Indigenous Peoples. Either the Supervisory Body reaffirms its original decision, which Indigenous Peoples are appealing, or the matter is remanded for reconsideration, with the Supervisory Body having the option to maintain its position. This limited scope offers no assurance of a meaningful outcome that upholds FPIC for Indigenous Peoples appellants. Therefore, FPIC considerations need to be part of the decision-making and if not properly undertaken, be included in remand instructions (IEN).
74. In the grievance process, the vague criteria for rejecting a filing, such as insufficient information or questions about the legitimacy of the grievant organization, can disproportionately impact Indigenous Peoples communities and organizations that lack resources, potentially hindering the ability to voice legitimate concerns. Even if the grievance panel does not reject a filing, the current language regarding recommendations is inadequate to address the concerns of Indigenous Peoples. The suggested corrective actions, while stated as possibilities, do not guarantee effective responses. For example, under item 48(a): "Recommendations to the activity participants on corrective actions which [may] address the grievance." Furthermore, if the grievance panel issued recommendations referred to in paragraph 48(c) to the Supervisory Body, it is unclear if the Supervisory Body can disregard a recommendation outright and use its power to cancel out any hope for the rights of Indigenous Peoples to be upheld by this UN body (IEN).
75. To provide a reasonable level of certainty and uphold the rights of Indigenous Peoples, the finality of the Supervisory Body decision must ensure outcomes that address concerns and withdrawals of consent by every Indigenous Peoples impacted by activities under Article 6. Without this fundamental principle, the appeal and grievance processes will end up perpetuating injustices, silencing, and disregarding the rights of Indigenous Peoples (IEN).
76. As much as the interest of the activity participants is considered, the interest of the grievant should also be considered to avoid double standard and discrimination. Therefore, a grievant should have the chance to appeal based on a case-by-case basis, especially if there is discovery of new information. Also, the same grievant should not be disqualified from submitting any new grievance at any time before the end of the activity cycle (WGC).

### **2.6.2. Proposals to address the issues raised by public comments**

77. New provisions are added to explicitly stipulate that, should the grievant consider the outcome of the consideration of the grievance to be unsatisfactory, the grievant may submit the case for consideration to the host Party national court system, ombudsman, or

any other relevant judiciary system (paragraph 54 of the third version of the draft Procedure).

## **2.7. How the appeal and grievance procedure should relate to integrity safeguards under the Article 6.4 mechanism**

### **2.7.1. Summary of public inputs**

78. Stakeholders must be aware of safeguards through diverse communication and training methods to be able to effectively use the appeal and grievance mechanism. The activity participant should communicate in the PDD how this should be performed as part of its social and environmental assessment and monitoring obligations (CI).
79. In order for safeguards to be meaningful, they must carry legal repercussions. Moreover, robust, and meaningful safeguards must be incorporated and upheld in the grievance and appeals process both substantively and procedurally; If legal repercussions cannot be met and implemented into the process, it is better to highlight the lack of legally binding safeguards so that Indigenous Peoples and local communities are informed prior to project implementation (IEN).
80. The appeals and grievances procedure is not a component of stakeholder engagement but a tool for justice for an individual or communities affected to seek remedy in a fair, effective and transparent manner. The secretariat and appeal and/or grievance panels must work with stakeholders in a flexible and participatory way to address appeals and grievances. We think that the appeal and grievance procedures need to be further strengthened to incorporate principles that are centring on justice and human rights (WGC).

### **2.7.2. Proposals to address the issues raised by public comments**

81. New provisions are provided for establishing a clarificatory process for grievants upon submitting a request to the Secretariat for organizing a call with the grievants and for offering clarification on the outcome of the consideration of the grievance by the grievance panel members (paragraph 50 of the third version of the draft Procedure).

## **2.8. How the process can ensure competence and independence of appeal and grievance panels, and their independence from the Supervisory Body, activity participants or host Party**

### **2.8.1. Summary of public inputs**

82. For the mechanism to function effectively, it must be trusted by all stakeholders, including local communities, the financial institution's management, the institution's clients, and interested civil society organizations (CSOs). In order to foster such trust, the mechanism must be structured in a manner that maximizes its impartiality, credibility, legitimacy, and independence from the financial institution's management, if not the institution as a whole (CIEL).
83. To ensure legitimacy and trust, it is critical that grievance mechanisms, both at the institutional/UNFCCC level and at the project-level, be independent. The grievance mechanism should be independent from the institutional decision-making structure (i.e.,

- so that the same people doing the analysis of, and approving projects are not in charge of the grievance process). The mechanism should be headed and comprised of people who are functionally independent from the institution and whose sole responsibility is addressing complaints or appeals. Independence is also improved by a number of factors including having a term-limited head and a team of permanent staff. Additionally, it is critical that potential conflicts of interest, or an appearance of a conflict of interest, be addressed through a policy that includes disclosure and recusal (CIEL).
84. The perception of the independence and impartiality of appeal and grievance panels could be enhanced by delegating the authority to appoint panel members in a given dispute to an independent third party. The UNFCCC Secretariat, given its role in supporting the Article 6.4 Supervisory Body (including the decision-making being appealed and/or in registering Article 6.4 activities the subject of a grievance), together with its role in the selection of the roster itself, may not be perceived as an independent authority (notwithstanding the appointments are to be handled by different Secretariat staff members to those involved in the underlying Supervisory Body decisions). Delegation of the appointing authority function to an independent third party is standard in many international dispute settlement procedures (PCA).
  85. A mechanism for those involved in a dispute to challenge a panel member who is alleged to lack independence or impartiality, and have that challenge resolved by an independent third party, would enhance the legitimacy of the panel's decisions. This function is typically performed by an appointing authority (for example, under the UN Commission on International Trade Law Arbitration Rules (2021)). To that end, the PCA Secretary-General regularly resolves such challenges in his capacity as appointing authority. Safeguards would nevertheless need to be introduced to ensure the mechanism is not subject to abuse (PCA).
  86. The perceived legitimacy of appeal and grievance processes may be enhanced by delegating administration (and in particular, assistance provided to appeal and grievance panels in a given case) to an independent third party. The importance of the independence of case administration is already recognised in the Draft Procedure. However, as outlined above, the UNFCCC Secretariat may not be perceived to be sufficiently independent from the Supervisory Body. Engaging a third-party secretariat with highly developed procedural expertise could also ease some of the procedural burden on panels and give greater flexibility in the expertise required of experts on the roster / panel members. It could also enhance the cost-effectiveness of administration, given existing case administration structures would already be in place, and resources could be allocated flexibly as necessary given the appeal and grievance process caseload (PCA).
  87. The process is dependent on staff and budget from the UNFCCC secretariat with insufficient clarity as to governance structures that would support operational independence of the grievance process (NAMATI).
  88. Experience among IAMs shows that grievance processes that are led by pools of part time experts who work from a roster, as proposed in this draft, find it impossible to develop consistent jurisprudence or approaches to complaint handling. Further, the draft does not specify clear selection criteria or a selection process. To generate consistent rulings from the grievance mechanism that are viewed as independent, there must be paid full time staff who are hired based on clear selection criteria with a consistent, established process (NAMATI).

89. In order for appeals and grievances to maintain independence from the Supervisory Body, all appeal and grievance panels must not include representatives from the Supervisory Body, fossil fuel company representatives or affiliates, representatives of credit sellers or buyers including conservation NGOs, carbon managers, brokers and other affiliated organizations. Proceedings that involve an appeal and grievance panel must be transparent and documented. Any independent panel must be free of all conflicts of interest in order to ensure a fair process. Representatives should not be connected to financial gains from Article 6 (IEN).
90. Competence must extend to knowledge of the rights of Indigenous Peoples. When there are claims made by Indigenous Peoples, it must be ensured that at least one Indigenous representative is on the panel that is appointed by Indigenous Peoples themselves (IIPFCC).
91. The roster of experts should include gender experts and indigenous peoples. Gender experts are needed as they can provide the gender analysis and perspective of the case. Similarly, indigenous peoples can provide the indigenous peoples' perspective. For example, if the appeal or grievance submitted is related to or impacting women and girls in all their diversity there is a need to consider the case from a gender perspective utilising gender analysis (WGC).
92. The fact that the Supervisory Body can overrule the remand decision of the panel by simply deciding that its original decision stands as a serious flaw in the process (section 4.4.6, paragraph 27(b)), with the Supervisory Body being ultimately judge and party to the appeal. Consider establishing a due process that addresses these issues, including to ensure that those deciding on the reconsideration do so independently and are not in a conflict of interest (possibly by involving independent experts, civil society, etc.) (TI).

## **2.8.2. Proposals to address the issues raised by public comments**

93. The provisions on criteria and requirements for establishing an appeal panel and grievance panel are revised to include the requirement that for each case-specific issue, the panel members will be selected in such a way as to ensure that the expertise of the members corresponds to the specifics of the case in question (paragraphs 15 and 41 of the third version of the draft Procedure).

## **2.9. How the cost for the operation of the processes (e.g., remuneration for panel members, administrative costs for secretariat support) should be funded**

### **2.9.1. Summary of public inputs**

94. The financial responsibility for the operation of the processes should primarily fall on carbon managers, brokers, companies, sellers, states, credit buyers, and/or third-party managers directly connected and who operationalize Article 6.4 projects. These entities have a direct interest in the outcomes and impact of the activities, making them logical contributors to the funding mechanism. Part of this funding can come from the standard appeal or grievance filing fee that is specifically applied to carbon managers, brokers, states, buyers, and/or third-party managers when they participate in the processes. Indigenous Peoples, local communities and other negatively impacted communities should not be charged a fee (IEN).

95. The operation of the processes should be funded by funding for the operation of the Article 6.4 mechanism and must not be reliant on the appeal or grievance fees charged. The appeal and grievance procedures must not be used as a source of income generation to support any part of the operation of the Article 6.4 mechanism (WGC).
96. The current scheme for funding of a grievance or appeal mechanism, which is only envisaged through fees, can risk interference in the outcome of complaints and/or compromise inclusive access to the process from the outset. If a revenue stream is needed to keep the system running, you could set up a service that invites potential complainants to submit “applications” to determine their eligibility for free or reduced fees. This process should be as simple and straightforward as possible so as not to discourage anyone from making a complaint (TI).

## **2.9.2. Proposals to address the issues raised by public comments**

97. Please refer to the proposals for fees under section 2.3.5.

## **2.10. Realistic fact finding and timelines**

### **2.10.1. Summary of public inputs:**

98. Depending on the grievance, those conducting the review should be empowered to: (a) require the production of documentation from the Supervisory Body or an “activity participant,” (b) conduct interviews with staff of the Supervisory Body, an “activity participant” and other relevant stakeholders, (c) conduct fieldwork including consultations with grievants and inspections of the activity that is the subject of the grievance, and (d) engage subject matter experts to advise on technical aspects of the grievance. As mentioned above the grievance review process should also lead to the preparation of a reasoned decision supporting the recommendations made. The 14-day time period for preparing recommendations provided for in the draft process (para. 46) will be unrealistic in most cases. Based on the experience from similar grievance handling processes, at least six months should be allowed for the review of a complex grievance resulting in a reasoned decision (NAMATI).

### **2.10.2. Proposals to address the issues raised by public comments**

99. Please refer to the proposals for timelines under section 2.4.2.

## **2.11. Consequences of appeal or grievance**

### **2.11.1. Summary of public inputs**

100. Given the potential gravity of harms, the grievance mechanism additionally should have the authority to recommend the suspension of the project in the event of imminent harm. Complaint processes can be lengthy (taking a year or more to complete), thus the grievance mechanism should do what it can to ensure that, if needed, measures up to and including suspension of the project will be taken to protect affected communities from harm throughout the process (CIEL).
101. Overall, the roles of the different entities involved (UNFCCC Secretariat, SB, and the Grievance Panel) should be better clarified in the Draft Procedure. The ideal scenario should be to have a Grievance Mechanism that is independent, has “teeth”, and is able to

challenge the decision of the A6.4SB. However, the current structure suggests that the mechanism is not independent as it can only provide recommendations to the SB (e.g., recommendation on suspension of activities). Therefore, the overall recommendation is to establish a grievance mechanism that can make fully independent decisions instead of just providing recommendations. Notwithstanding the above - mentioned, if the current structure is maintained, the Panel's recommendation to the SB should also encompass suggesting the SB to overturn a prior decision of the A6.4SB, including the possibility of deregistering an activity in case significant adverse effects of social, economic or environmental nature are proved (PCG).

102. The process lacks any mediation or problem-solving function that could support parties in addressing community grievances by mutual agreement. This forces harmed parties into an adversarial process when their needs may be able to be addressed with more nuance. This reduces incentives for parties to engage in the mechanism until problems escalate (NAMATI).
103. The process lacks structures that allow communities to be consulted on panel findings or recommendations. There is no requirement to explore the scope of the violation or consult about remedies with the grievant. This creates a risk of decisions with arbitrary remedies that do not meet the needs of the grievant and could perpetuate problems. Further, it misses an opportunity to build trust with impacted communities, manage expectations, and point them to alternative sources of remedy (NAMATI).
104. The process lacks structures or incentives that would support implementation of panel recommendations. In cases of recommendations to national authorities (DNAs), this is limited to publishing the panel recommendations and reporting on the DNA's response after three months. In the case of recommendations to the Supervisory Body, there is no clear reporting requirement, and in either case, there is no verification of implementation of the recommendations. This creates no incentive for powerful actors to implement the panel recommendations and address the underlying harms (NAMATI).
105. Based on experience with other non-judicial grievance mechanisms and from communities currently living on land used for carbon markets, we expect the following outcomes from the proposed grievance mechanism: a) Few communities will know that they are living near an SDM project and even fewer will know that there is an Art. 6.4 grievance process; b) Few grievances will be filed because the obstacles to access are high and trust in the process low; c) Of those grievances that are filed, significant numbers will be closed on the basis of technical requirements under the process; and d) Even when grievances result in recommendations, communities will see little tangible benefit and problems will persist (NAMATI).
106. The project activity must be paused during the time that the grievance or appeal proceeds, and the outcome cannot prejudice the right of Indigenous Peoples to resort to alternative methods of dispute resolution such as courts of competent jurisdiction (IIPFCC).
107. The grievance panel's decision should be binding. If it is not binding and the Supervisory Body decides to not take action, a justification must be provided and published on the UNFCCC website for transparency and accountability. Also, a mediation process should be put in place for this type of case where the Supervisory Body decides not to take action based on the recommendation of the grievance panel (WGC).

## **2.11.2. Proposals to address the issues raised by public comments**

108. The list of different sources of information to be taken into account by the appeal panel when reviewing an appeal is revised to add any appeal or response that was previously filed by different appellant/s on the same scope and the previous appeal is deemed materially relevant, in addition to any appeal and response filed by the same appellant (paragraph 22(e) of the third version of the draft Procedure).
109. With a view to increasing transparency of the appeal process, provisions are added to ensure that, along with the publishing of the reconsideration decision of the Supervisory Body, all provided rationale for the reconsideration decision is publicly disclosed (paragraph 29 of the third version of the draft Procedure).
110. The timeline and the sequence for suspending a project and informing the Supervisory Body of an appeal are adjusted after an appeal has been qualified as complete and eligible (paragraph 19 of the third version of the draft Procedure).
111. The deadline for a grievance panel to consider the grievance and prepare recommendations is revised to clarify that the 14 days are applicable from the time of receiving the grievance form and any supporting information submitted by the grievant (paragraph 46 of the third version of the draft Procedure).

## **2.12. Other aspects of accessibility of the appeal and grievance processes**

### **2.12.1. Summary of public inputs**

112. Outreach: The proposed process includes no proactive outreach. We are extremely concerned that this will result in communities being unaware that they could access the grievance mechanism for SDM supported projects. Currently, many communities we work with struggle to understand the actors involved in the carbon credit projects tied to their land. It is even more difficult to envision them knowing how the projects operating on their land are funded. For them to know that this type of grievance mechanism would be relevant to address concerns with the operations on their land, there must be proactive, locally appropriate outreach (NAMATI).
113. Language: The process is highly complex, using technical language and terms that are not widely understood. This will be a barrier to access for most communities unless they have strong legal or advocacy support. This type of legal support is costly for communities and usually only available when problems have escalated. Simplify language whenever possible. The process has complex eligibility requirements and requires use of a specific electronic 'grievance form' in an official language of the UN. Even the decisions are only required to be published on the UN website. An accessible process would be available in the local languages of the impacted communities and all decisions would be reported out to the communities where a grievance was submitted (NAMATI).
114. Restricting the submissions to English or any of the other five United Nations official languages as this will prevent women in all their diversity from the community, local/regional/international non-profit women's groups or organisations from submitting their appeal or grievance (WGC).
115. It is crucial that the eligibility criteria and reporting options are clearly communicated and publicised to ensure accessibility, particularly for affected stakeholders. One way to

achieve this is by localising the outreach channels. Currently, there does not seem to be a real strategy in place that makes it clear how local communities, community-based organisations (CBOs) and CSOs should be informed about the appeals and grievance procedures and be encouraged to come forward. For example, there are no communication options in local languages. Concrete steps should also be taken to build trust in the grievance mechanism. This can be done either through direct contact with those affected or through cooperation with intermediaries (e.g., CSOs) that already enjoy the trust of those affected on the ground (TI).

## **2.12.2. Proposals to address the issues raised by public comments**

116. Please refer to proposals in sections 2.3.5 and 2.5.2.

## **2.13. Addressing retaliation**

### **2.13.1. Summary of public inputs**

117. Additionally, grievance mechanisms must allow those who are negatively impacted by projects to raise concerns safely and without fear of retaliation. Grievance mechanisms should further be empowered to order redress for injuries and/or operational changes when needed to prevent further harm. It is also critical that throughout the process, from filing a complaint to compliance review or dispute resolution to monitoring, that complainants are safe and free from retaliation. (CIEL).

118. The process does not include safeguards for grievants who may be at risk of threats and reprisals. The absence of such safeguards is a barrier to accessibility for many vulnerable communities. Instead, the Supervisory Body should have a zero-tolerance policy for any project that has reprisals against individuals or communities making use of the grievance mechanism (NAMATI).

### **2.13.2. Proposals to address the issues raised by public comments**

119. New provisions are added in order to ensure confidentiality and protect the appellants and grievants from retaliation and reprisal (paragraphs 11(a) and (c), 17, 37(a) and (c), 43 and 50 of the third version of the draft Procedure).

## **2.14. Relations of the appeal and grievance processes with the existing measures for safeguarding the integrity of Article 6.4 mechanism activities contained in the activity standard and the activity cycle procedure**

120. The Article 6.4 mechanism consists of three pivotal components: rights-based social, environmental and integrity safeguards, meaningful public participation, consultation and engagement with stakeholders and independent and effective appeal and grievance mechanisms. These components ensure not only that negative environmental and social impacts are avoided, but also that when they occur, they are remedied.

121. The relevant provisions of the Article 6.4 mechanism RMPs and approved regulatory documents, such as Article 6.4 activity cycle procedure for projects (hereinafter referred as activity cycle procedure for projects) and Article 6.4 activity standard for projects (hereinafter referred as activity standard for projects), establish robust environmental, social and integrity requirements for Article 6.4 projects which serve as safeguards for the

- integrity of the Article 6.4 mechanism. Additionally, there are many avenues for individuals and entities affected by Article 6.4 projects to raise issues and concerns, such as local stakeholder consultation, global stakeholder consultation, continuous engagement of stakeholders at both global and local levels, assessment of environmental and social and other sustainable development impacts of proposed A6.4 projects and monitoring of such impacts after their registration followed by verification using the sustainable development tool.
122. As per paragraph 31 (iv) of the RMPs, the A6.4 project must minimize and, where possible, avoid negative environmental and social impacts. Under the approved Article 6.4 activity standard for projects, the activity participants shall carry out an analysis of the environmental and social impacts and sustainable development benefits of the proposed A6.4 project. Activity participants must provide a summary of the analysis, conclusions of their assessments (and references to related documentation), and a monitoring plan of such impacts and planned remedial measures of negative impacts, if any, during and after the implementation of the project in accordance with the “Article 6.4 sustainable development tool” (hereinafter referred to as the A6.4 SD tool).
  123. In addition, if an environmental impact assessment and/or social impact assessment was carried out for the proposed A6.4 project as required by, and in accordance with, the relevant procedures of the host Party, the activity participants shall provide all conclusions of such assessments and references to all related documentation.
  124. Furthermore, as an additional integrity safeguards, the Article 6.4 activity standard for projects stipulates that the proposed A6.4 project shall not involve any illegal activities, including money laundering, tax evasion, fraud, bribery and criminal activities in its development, implementation, and operation. To ensure compliance with this requirement, the activity participants shall prepare a declaration and submit it to the designated operational entity (DOE) as part of the request for registration of the proposed A6.4 project in accordance with the activity cycle procedure. As per paragraph 57 of the Article 6.4 validation and verification standard for projects (hereinafter referred as validation and verification standard for projects), the DOE shall determine whether the activity participants have prepared a declaration on the development, implementation, or operation of the proposed A6.4 project demonstrating that the A6.4 project does not involve any illegal activities, including money laundering, tax evasion, fraud, bribery and criminal activities.
  125. The first avenue for local stakeholders to provide comments and raise issues on a proposed Article 6.4 project is at very early stage of the project cycle, i.e., at the local stakeholder consultation. As per section 6.9, paragraph 66 of the Article 6.4 activity standard for projects, the activity participants shall conduct a local, and where appropriate, subnational stakeholder consultation on the proposed A6.4 project in accordance with applicable host Party rules, but also in line with the modalities contained in Appendix 2 to the Article 6.4 activity standard for projects, and any additional elements for consultation required by the A6.4 SD tool, at minimum.
  126. At this stage, local communities directly affected by the activity must be consulted extensively and any potential issues and concerns that may be raised shall be addressed through the local stakeholder consultation. The activity participants are required to convey information to stakeholders about this consultation process and the proposed A6.4 project in ways that are appropriate for the community that is directly affected by the project, and

to provide a description of the proposed A6.4 project in a manner that enables local stakeholders to understand the project. The process shall ensure that local stakeholders are invited to provide comments on the proposed A6.4 project in an open and transparent manner, and in a way that facilitates the submission of comments.

127. In line with the modalities contained in Appendix 2 to the Article 6.4 activity standard for projects, A 6.4 project activity participants are required to conduct the local stakeholder consultation through means that are appropriate for the local and national circumstances. The activity participants shall provide local stakeholders with the opportunity to comment in writing or via other means and gather their comments about the proposed A6.4 project and its direct impacts, and shall request the DNA of the host Party to forward any comments from local stakeholders submitted to the host Party to them.
128. The activity participants shall prepare a summary report of the comments received from local stakeholders and must consider the comments provided by local stakeholders and report in the PDD on how they have taken them into account providing justification if any comments were not incorporated.
129. After the completion of the local stakeholder consultation, local stakeholders may submit a complaint to the DNA of the host Party if they find that the outcome of the local stakeholder consultation has not been appropriately taken into account.
130. As per section 6.2.7, paragraph 55 of the Article 6.4 validation and verification standard for projects, the DOE is required to request the designated national authority (DNA) of the host Party of the proposed A6.4 project to forward to the DOE complaints received by the DNA from stakeholders on the handling of the outcome of the local or subnational stakeholder, if any. In this case, the DOE shall promptly forward such complaints to the activity participants and subsequently determine whether the activity participants have taken due account of the complaints and modify the PDD as appropriate.
131. Another avenue for stakeholders to submit issues and raise claims in the Article 6.4 activity cycle for projects is the global stakeholder consultation on the proposed A6.4 activity. After making the submitted PDD to the secretariat publicly available on the UNFCCC website, Parties, stakeholders, and UNFCCC-admitted observer organizations may submit comments in English on the proposed A6.4 project activity within 28 days of the publication of the PDD. The comments submitted shall be specific to the proposed A6.4 project activity and be related to the compliance with applicable Article 6.4 mechanism rules and regulations. The eligible comments are made publicly available, and the activity participant and the DNA of the host Party are informed of the publication of the comments.
132. As per paragraph 68 of the Article 6.4 activity standard for projects, the activity participants are required to provide in the PDD a summary of comments received during the global stakeholder consultation and describe how they were taken into account. Furthermore, as per the provisions of the Article 6.4 validation and verification standard for projects, the DOE shall determine whether the eligible comments submitted in the global stakeholder consultation have been taken into due account in the PDD of the proposed A6.4 project.
133. The third avenue for local stakeholders to raise issues and provide comments on the A6.4 project activity is under the process for continuous engagement of stakeholders as part of the post-registration activities.

134. Paragraphs 70-72 of the Article 6.4 activity standard for projects require activity participants, after the registration of the project under the Article 6.4 mechanism, to create and maintain until the end of the valid crediting period of the project a window for local stakeholders to comment on the implementation or the operation of the project, taking into account any additional elements for consultation required by the A6.4 SD tool.
135. In addition, as per paragraphs 87 and 88 of the Article 6.4 activity cycle procedure for projects, Parties, stakeholders, and UNFCCC-admitted observer organizations may submit comments in English on the registered A6.4 project to the secretariat through a dedicated interface on the UNFCCC website any time after the registration of a project under the Article 6.4 mechanism. The eligible stakeholders comments, which shall be specific to the registered A6.4 project and related to the compliance with applicable Article 6.4 mechanism rules and regulations, are made publicly available on the UNFCCC website where the project information is displayed, and the activity participants are notified of the publication of the comments.
136. The activity participants are required to review the comments on the registered A6.4 project submitted from Parties, stakeholders and UNFCCC-admitted observer organizations and published on the UNFCCC website, if any. Furthermore, the activity participants are required to address the issues raised in the comments from the local stakeholders and the global stakeholders above as appropriate and summarize how they have addressed the comments in the next monitoring report.
137. In line with paragraph 142 of the Article 6.4 validation and verification standard for projects, the DOE shall determine whether the activity participants have received comments on the implementation or operation of the A6.4 project from local stakeholders after its registration through the process of continuous engagement of stakeholders in accordance with the activity standard, and if so, determine whether the activity participants have addressed the issues raised in the comments in the implementation or operation of the project, as appropriate. As per paragraph 143 of the same standard the DOE shall also determine whether comments on the compliance of the registered A6.4 project with applicable Article 6.4 mechanism rules and regulations have been submitted from Parties, stakeholders and UNFCCC-admitted observer organizations and published on the UNFCCC website, and if so, determine whether the activity participants have addressed the issues raised in the comments.
138. With respect to the environmental and social impacts and sustainable development co-benefits, the DOE, in addition to the monitoring documentation, must review the monitoring results of environmental impacts, social impacts and sustainable development co-benefits of the registered A6.4 project.
139. As per paragraph 141 of the of Article 6.4 validation and verification standard for projects, the DOE shall determine whether the monitoring of environmental impacts, social impacts and sustainable development co-benefits has been carried out in accordance with the monitoring plan of these impacts and co-benefits of the A6.4 project prepared in accordance with the A6.4 SD tool and whether the reported monitoring results correspond to these impacts and co-benefits of the project as observed by the DOE.
140. Furthermore, in accordance with paragraph 73 of the Article 6.4 activity standard the activity participants shall continue to ensure that the development, implementation, and operation of the registered A6.4 activity do not involve any illegal activities, including money laundering, tax evasion, fraud, bribery and criminal activities.

## **2.15. How members and alternate members of the Supervisory Body can raise issues or concerns through processes other than the appeal and grievance processes**

141. Under the Article 6.4 activity cycle procedure, a member or alternate member of the Supervisory Body can request a review of certain requests made by the DOE throughout the activity cycle of a project:
- (a) A review of request for registration (5.1.3);
  - (b) A review of request for approval of post-registration change (6.2.5);
  - (c) A review of request for issuance (8.1.3);
  - (d) A review of request for renewal of the crediting period (9.2.5).
142. The procedure in each of the above cases is similar and elaborated in respective sections of the Article 6.4 activity cycle procedure. In short, in case of such request by a member of the Supervisory Body, the secretariat shall establish an expert review team, which will conduct an assessment and reach a proposed decision to either allow or reject the request of the DOE, whereas the final decision is made by the Supervisory Body itself.

## **2.16. Options for limiting vexatious appeals and grievances**

### **2.16.1. Summary of public inputs**

143. The two key main strategies to reduce the number of grievances are to have robust safeguards in place and promote meaningful stakeholder participation processes. The Draft Procedure indicates local and global participation will be required prior to the authorization of A6.4 activities, and social and environmental impacts of A6.4 activities need to be assessed using the sustainable development tool (the robustness of these procedures has not been analysed and consequently cannot comment on the effectiveness of them). Actions to preclude access to the grievance mechanism should not be put in place (PCG).
144. Still, to reduce a potential risk of abuse, it may be helpful to clarify how the A6.4 grievance mechanism is connected to other grievance mechanisms - that could be also accessible by the complainant - , such as those offered by project developers, financing institutions, or even the country's Ombudsman (if available). This does not mean that grievances that have already been filed with other local or national mechanisms should not be accepted, but rather that their use should be encouraged. By doing so, the national or project developer mechanism may be able to respond more quickly to some grievances, which is one of the key functions of a grievance mechanism - providing swift and cost - effective remedies (PCG).
145. On fees, there must be mechanisms in place that allow handling frivolous claims without incurring fees, ensuring that everyone can participate regardless of financial constraints as any fee that is substantial enough to offset costs might inadvertently exclude most Indigenous Peoples due to financial barriers. Therefore, the design of this system should prioritise inclusivity from the outset. This means initially providing services without a fee, and only considering the implementation of a fee structure if and when actual issues of abuse arise, rather than pre-emptively assuming such abuse will occur. In cases where

Subsidiary Body agree on imposing fees for appeal and grievances, ensure that fees are returned to the applicants when their claims are deemed not frivolous (IIPFCC).

146. To avoid frivolous claims the 6.4 Supervisory Body may consider establishing: Clear and Specific Guidelines: Establish detailed criteria for filing appeals to prevent frivolous or unfounded claims. These guidelines should be transparent and easily accessible, especially for Indigenous Peoples who might face language or technological barriers. Robust Screening Process: Implement a thorough initial screening process to assess the validity and seriousness of appeals. This can filter out abusive or non-serious claims early on without burdening the appeal system (IIPFCC).

### **2.16.2. Analysis of options for limiting vexatious appeals and grievance**

147. There are different approaches adopted by different mechanisms for limiting vexatious appeal and grievance. Within the analysis, a review was undertaken of:
- (a) The grievances and complaints mechanism of the Independent Redress Mechanism (hereinafter: IRM) by the Green Climate Fund (hereinafter: GCF);
  - (b) The Gold Standard Grievance Procedure (hereinafter: GS GP);
  - (c) The Statute of the United Nations Appeals Tribunal (hereinafter: UNAT);
  - (d) The guidelines for designing grievance mechanisms by the International Finance Corporation (hereinafter: ICF);
  - (e) The rules of the International Court of Arbitration (hereinafter: ICA).
148. *Reimbursing costs associated with a successful request* - The Procedures and Guidelines of the Independent Redress Mechanism (GCF, 2019) (hereinafter: the IRM Guidelines) does not mention any direct fees required in order to submit a grievance or a complaint. However, it does consider the indirect costs to the complainant, which are associated with the submission. According to paragraph 90 of the IRM Guidelines, a developing country may be reimbursed the reasonable costs of filing a request with the IRM, including out-of-pocket expenses and reasonable professional costs if the request is successful. Such reimbursement, if applicable, will take place at the end of the proceedings after the claimed costs are verified. This type of reimbursement mechanism can be applied to direct submission fees as well.
149. *Defining eligibility exclusions safeguarding against vexatious grievances* - Paragraph 24 of the IRM Guidelines lists exclusions for eligibility of a grievance or a complaint received by the IRM, including "a malicious, frivolous, or fraudulent grievance or complaint" (paragraph 24(c)) and "a grievance or complaint to gain competitive advantage" (paragraph 24(d)), which can both be classified as vexatious grievances or complaints. As described in paragraphs 31-35, these exclusions are considered as part of an eligibility determination made by the IRM, a determination which is published, ensuring transparency but also potentially deterring similar grievances and complaints in the future.
150. *Requiring a declaration of good faith* - section 4.1.1 of the GS Grievance Procedure (GS, 2020) lists the information that a submitter of a grievance must include in their submission, including a "declaration that information being provided is true, accurate and made in good faith". However, the procedure does not include information about the enforceability of such a declaration.

151. *Penalizing a vexatious appellant* - According to Article 9(2) of the Statute of UNAT (UNAT, 2016), UNAT has the authority to award costs against a party that has abused the appeals process. In other words, instead of issuing fees upfront and for every appeal, a penalty can be applied in case of a vexatious appeal, serving as a deterrent and a sanction, without burdening non-vexatious appellants.
152. *Good Practice Note by the IFC, "Addressing Grievances from Project Affected Communities – Guidance for Projects and Companies on Designing Grievance Mechanisms"* (IFC, 2009). This document does not outline a specific mechanism, but rather provides a "how to" guide for organizations when constructing such mechanisms. According to page 12, access to the mechanism should be free of cost to communities. However, it does not suggest any alternative safeguards to limit vexatious grievances.
153. *Arbitration costs and fees* – Appendix III of the Arbitration Rules of the International Court of Arbitration (ICA, 2021) discusses arbitration costs and fees. It does not include any exemptions to paying fees.
154. *Appeal fees* – As per paragraph 12 of the current draft Procedure: Appeal and grievance processes under the Article 6.4 mechanism (hereinafter referred as draft Procedure) the appellant is required to pay an appeal fee, with an option for a reduced fee for appeals submitted by indigenous people or in relation to activities located in least developed countries, small island developing States, or specially underdeveloped zones in developing countries (paragraph 12(b)). Paragraph 38 includes a similar requirement and a similar option for a reduced fee, applicable to the submission of a grievance.
155. *Requirement to reference supporting documents* - One type of information required for both a completed "Appeal form" and a completed "Grievance form" references supporting documents and other sources of information, including an explanation of how these sources support the argument of the appellant or the grievant (paragraphs 11(g) and 37(g) of the draft Procedure). This does not just improve efficiency but requires the appellant or grievant to demonstrate that their argument has merit, which can therefore limit vexatious appeals and grievances.
156. *Requirement to reference evidence of attempts to resolve the issue directly* - According to paragraph 37(h) of the draft Procedure, a grievant must provide as part of a completed "Grievance form" evidence of previous or ongoing attempts to resolve the issue directly. As the requirement is to reference supporting documents, this improves efficiency, but also ensures that the grievant has made a genuine attempt at resolution and is submitting the grievance only after exhausting other resolution methods.

### **2.16.3. Proposals to address the issues raised by public comments**

157. Please refer to proposals under section 2.3.5.

### **2.17. How to manage multiple appeals or grievances filed or submitted regarding the same activity or on the same ground across multiple A6.4 activities using the same methodology**

158. There are different approaches adopted by different mechanisms for managing multiple appeals or grievances filed or submitted regarding the same activity or on the same ground across multiple A6.4 activities using the same methodology. The following sources have been reviewed as possible references:

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- (a) The Independent Redress Mechanism (hereinafter: IRM) by the Green Climate Fund (hereinafter: GCF);
  - (b) The guidelines for designing grievance mechanisms by the International Finance Corporation (hereinafter: ICF);
  - (c) The rules of the International Court of Arbitration (hereinafter: ICA).
159. *Ineligibility based on previously concluded matters* - Paragraph 24 of the Procedures and Guidelines of the IRM by the GCF lists exclusions for eligibility of a grievance or a complaint received by the IRM, including "a grievance or complaint regarding matters already concluded by the IRM, unless the complainant has submitted new material information or evidence that was unavailable at the time the matter was previously considered by the IRM" (paragraph 24(b)). As described in paragraphs 31-35, this is considered as part of an eligibility determination made by the IRM. In other words, the IRM as part of its eligibility determination, must consider previously concluded grievances and complaints and deem a grievance ineligible if it includes no new material information or evidence that was unavailable at the time. This process is relevant only for situations in which one grievance is submitted after another was already concluded.
160. *Considering previous records of similar incidents* - In Figure 2 ("Receipt, Registration and Tracking of Grievances") on page 18 of the Good Practice Note by the ICF ("Addressing Grievances from Project Affected Communities – Guidance for Projects and Companies on Designing Grievance Mechanisms"), one of the steps of receipt is "previous records of similar incidents". No explanation for this step is provided, and it is unclear whether it refers to the consideration of already decided grievances or to pending grievances. On page 21, an example of failure to provide a thorough and fair assessment is "using responses to previous complaints to decide the legitimacy and outcome of a current complaint without looking into its particular circumstances". In other words, consideration of previous responses is legitimate, but must not be relied upon without addressing the particulars of the case at hand.
161. *Simultaneously pending arbitrations* - According to Article 10 of the Arbitration Rules of the ICA, two or more arbitrations can be consolidated by the Court in certain cases, including if all claims are made under the same arbitration agreement or the disputes in the arbitration arise in connection with the same legal relationship. This process of consolidation is only available while the consolidated arbitrations are pending, and the focus is on the identity of the parties to the arbitration rather than the matter itself.
162. *Appeal and grievance processes under the Article 6.4 mechanism consideration of previous decisions by an appeal panel* - As per the provisions of the current draft Procedure, section 4.4.5. includes a closed list of information to be considered by the appeal panel, including previous decisions of the Supervisory Body within the activity cycle (paragraph 22(c)). In addition, previous appeals or responses relating to the activity, methodology, methodological tool, or standardized baseline in question shall be considered if deemed materially relevant, but only those filed by the same appellant (paragraph 22(e)).
163. *Consolidating grievances on the same activity* - According to section 6.2. of the current draft Procedure, if a different grievance on the same A6.4 activity is submitted after a grievance panel initiated and before concluding its work, the secretariat may request the grievance panel to also cover the new grievance in the same proceeding (paragraph 69).

164. *Ensuring consistency in rulings* - section 6.3 of the draft Procedure includes best practices to ensure consistency in rulings and recommendations regarding both appeals and grievances, including notifying the experts on the roster of the publication of rulings, recommendations and rejections concerning all appeals and grievances, including eligibility checks (paragraph 76), and conducting workshops for the experts on the roster to discuss relevant matters (paragraph 77).

### 3. References

#### 3.1. Stakeholder inputs

**Table 2. List of stakeholders who responded to the call for public input<sup>(a)</sup>**

No.	Submission date	Stakeholder
1	1-Dec	Center for International Environmental Law (CIEL)
2	1-Dec	Permanent Court of Arbitration (PCA)
3	1-Dec	Perspectives Climate Group (PCG)
4	1-Dec	NAMATI on behalf of different organizations (NAMATI)
5	1-Dec	Conservation International (CI)
6	1-Dec	Indigenous Environmental Network (IEN)
7	1-Dec	International Indigenous Peoples Forum on Climate Change (IIPFCC)
8	1-Dec	Women and Gender Constituency (WGC)
9	1-Dec	Transparency International (TI)

<sup>(a)</sup> In-text citations in this document (e.g. AA) reference stakeholder comments/inputs made to the call for public inputs

#### 3.2. Sources verified

165. Green Climate Fund (GCF). 2019. *Procedures and Guidelines of the Independent Redress Mechanism*. Available at <<https://www.greenclimate.fund/document/procedures-and-guidelines-independent-redress-mechanism>>, accessed on 25 January 2024.
166. United Nations Appeals Tribunal (UNAT). 2016. *Statute of the United Nations Appeals Tribunal*. Available at <<https://www.un.org/en/internaljustice/pdfs/UNAT-Statute-05072018.pdf>>, accessed on 25 January 2024.
167. International Finance Corporation (IFC). 2009. *Good Practice Note: Addressing Grievances from Project-Affected Communities*. Available at <<https://www.ifc.org/content/dam/ifc/doc/mgrt/ifc-grievance-mechanisms.pdf>>, accessed on 25 January 2024.
168. International Chamber of Commerce. International Court of Arbitration (ICA). 2021. *ICC Rules of Arbitration*. Available at <<https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2021-arbitration-rules/#anchor-appendix>>, accessed on 24 January 2024.

### 3.3. Detailed comments and proposals submitted by stakeholders

**Table 3. Detailed comments and proposals submitted by stakeholders**

Comment	Submitter	Para	Proposed Revision
<p>Applying any fee to IP and LC would prevent these communities to access this grievance mechanism and therefore for it to be effective and inclusive.</p> <p>Fees should be waived upon demonstration of need to ensure equal access if requested by any grievant.</p> <p>SOP or other taxes could flow to a fund to offset fees for low-income grievant.</p> <p>There could be an entire paragraph outlining how to access this fund.</p> <p>Alternative language to be proposed in case a transition fund is established or if the requirement is added to the budget of the activity participant.</p>	CI	12; 38	<p>[No appeal fee] if the appellant is submitted by indigenous peoples or is located in least developed countries, small island developing states or specifically underdeveloped zones in developing countries as designated by the host Party governments in an official notification for development assistance, including for planning, management or investment, satisfying any one of the following conditions using most recent available data;</p> <p>(a) Standard grievance fee of <b>USD [2,500]</b>;</p> <p>(b) <b>[No grievance fee]</b> <del>Reduced grievance fee of USD [2,500]</del> if the grievance is in relation to the activities located in least developed countries, small island developing States or specially underdeveloped zones in developing countries as defined in paragraph 12 b) above.</p> <p>38. The secretariat shall issue a statement of the grievance fee due and the bank transfer instruction and shall communicate this to the grievant. The grievant shall pay the grievance fee within 30 days of receipt of such statement. The grievance fee shall be determined as follows:</p>
<p>An appeal fee will prevent women in all their diversity, indigenous peoples, and local communities, who do not always have the financial means and are being marginalised, from any countries to submit an appeal. We strongly believe that no appeal fee should be required for the indigenous peoples, vulnerable</p>	WGC		<p>Proposed text for the first entity:</p> <p>No appeal fee if the appeal is submitted by indigenous peoples, local communities, non-profit women's groups and organisations, and non-profit groups and organisations from any countries.</p>

Comment	Submitter	Para	Proposed Revision
<p>groups, women’s groups and local communities.</p> <p>Also suggest that this paragraph be further broken down as there are 3 entities mentioned. Editorial required.</p>			
<p>On paragraph 79: We are very concerned with the justification that the fees for appeal and grievance submissions are required to prevent “submission by a wrong/dishonest entity” and to fund the operationalization of the appeal and grievance processes. The appeal and grievance procedure must be regarded as a safeguard and a rights-based structure within A6.4M for the environmental integrity and social well-being of the indigenous peoples and local communities, including women and girls.</p>	WGC	79	<p>Proposed text:</p> <p>Expenses for the establishment and operation of the appeal and grievance processes shall be funded with the funding for the operation of the Article 6.4 mechanism. If necessary, it can be supplemented by the appeal and grievance fees charged accordance with paragraphs 12 and 38 above.</p>
<p>Greater details are needed for both the original submission and appeal sections. Grievance can also be submitted by third Party and requests for confidentiality will be respected.</p> <p>The mechanism should avoid lengthy deadlines and bureaucracy to be effective.</p> <p>To ensure inclusion it must be available in different channels of communication and languages.</p>	CI	11	<p>11. An appellant may file an appeal by submitting, through a dedicated interface on the UNFCCC website, a duly completed “Appeal form” (A6.4M-APP-FORM) covering the following information within <b>[28]</b> days of the publication on the UNFCCC website <b>[and other channels of communication]</b> of an appealable decision of the Supervisory Body, <b>[made available in different languages]</b> except for an appeal against the decision referred to in paragraph 9 above, in which case within <b>[14]</b> days of the publication of the decision:</p> <p>The name and category (stakeholder, activity participant or participating Party <b>or third party</b>) of the appellant.</p>

Comment	Submitter	Para	Proposed Revision
Reasonable deadlines are important to ensure the process is effective and not too lengthy.	CI	24	The ruling of the appeal panel shall conclude in one of the following ways and provide the rationale for its conclusion <b>[in no more than 14 days.]</b>
In case the appellant needs to gather more information, there should be the option to extend the deadline.	CI	14	14. <b>[Upon receipt of the appeal fee,(unless if not applied as per 12 b)]</b> the secretariat shall undertake the completeness check to determine whether the submitted appeal form contains all required information referred to in paragraph 11. If the secretariat finds the information contained in the appeal form is incomplete, it shall request the appellant, by providing the reason for incompleteness, to submit a revised form to fill the gap within 14 days. In this case, if the appellant does not submit a revised form within this timeframe, or the submitted revised form is still found to be incomplete, the appeal shall be deemed withdrawn and the secretariat shall notify the appellant accordingly, reimbursing the appeal fee after deducting USD [500]. [if the appeal fee has been paid in accordance with paragraph 12 above]. <b>[unless reasonable extenuating circumstances cause delay of the submission.]</b>
Same comment as above. Indirect consequences also be included, as many impacts to local communities might also occur, such as preventing access to natural resources (e.g. water) and/or farm from much of economic displacement.	CI	35	A grievance may be submitted only on adverse effects of a social, economic or environmental nature suffered by the local communities or businesses as a direct or <b>[indirect]</b> consequence of the implementation or treatment of a registered A6.4 activity within the activity cycle under the Article 6.4 mechanism [or suffered by communities or businesses in the countries where an approved Article 6.4 mechanism methodology, methodological tool or standardized baseline is applicable as a consequence of approval of such methodology, methodological tool or standardized baseline].
The deadline can be waived under extenuating circumstances	CI	39	Upon receipt of the grievance fee <b>[unless if not applied as per 38 b)]</b> , the secretariat shall undertake the completeness check to determine whether the submitted grievance form contains all required information referred to in paragraph 37 above. If the secretariat finds that the information contained in the grievance form is incomplete, it shall request

Comment	Submitter	Para	Proposed Revision
			the grievant, by providing the reason for incompleteness, to submit a revised form to fill the gap within 14 days. In this case, if the grievant does not submit a revised form within this timeframe, or the submitted revised form is still found to be incomplete, the grievance shall be deemed withdrawn and the secretariat shall notify the grievant accordingly, reimbursing the grievance fee after deducting USD [500] <b>[if the grievance fee has been paid in accordance with paragraph 38 above] unless reasonable extenuating circumstances cause delay of the submission.</b>
With regard to [28] [56] days and [14][28] days, please clarify is it working days or days?	WGC		Suggest to change to weeks e.g. [4] [8] weeks and [2] [4] weeks. This is easier to keep track compared to 28 and 56 days.
With regard to [14] [28] days please clarify is it working days or days?	WGC		Suggest to change to weeks e.g. [2] [4] weeks. This is easier to keep track compared to 14 and 28 days.
It might be useful to clarify and acknowledge that appellants if unsatisfied with the result can still have recourse to other avenues, such as the relevant national court systems.	CI	33	Conclusions by the appeal panel, including ruling on, or rejection of, the appeal shall be final and shall not be further considered or subject to a new appeal. <b>[to the Supervisory Body. This does not exclude resources to other avenues by the appellant, such as national court systems, if applicable.]</b>
A stronger assessment and recommendations provided by the Supervisory Body is essential to prevent abuses in activities and proper remediation by activity proponents.	CI	Add 48 f)	<b>[48 (f) will define the risk level of the grievance to determine the appropriate actions, based on indicative categories (provide Table of examples). The results of the risk assessment of the grievance should be documented and recorded by the appeal panel/SB per site-specific procedures. Where human rights abuses are alleged to have occurred, the SB shall escalate to (a select appeal panel). All relevant information (allegation, correspondence, etc.) Including the proposed management actions will be sent to the SB.</b>

Comment	Submitter	Para	Proposed Revision
			<p><b>High Risk Grievances with, or with the potential to have, a significant adverse impact on, and interaction with, stakeholders. These may include:</b></p> <ul style="list-style-type: none"> <li>• <b>Repeated, cumulative (not the same) grievances.</b></li> <li>• <b>Clear/strong evidence of (or threat of) violence, loss of life or liberty, attacks on persons; or</b></li> </ul> <p><b>Clear/ strong evidence of illegal activity, victimization, discrimination, degrading treatment of corruption, etc.]</b></p>
<p>The appeal panel recommendations will be communicated to the grievant for consideration.</p>	<p>CI</p>	<p>49</p>	<p>The secretariat shall promptly publish the outcome of the consideration of the grievance panel – that is, either to issue recommendations or reject the grievance – on the UNFCCC website, and communicate the outcome to the grievant, and if there are recommendations, also to the relevant individual(s) and/or organization(s). <b>[Upon agreement to proceed with the recommendations, the secretariat shall promptly publish the decision to carry out recommended actions.]</b></p>
<p>We support that “the secretariat shall promptly ...publish the reconsideration decision on the UNFCCC website...”This shows transparency and accessibility of information to the public /stakeholders</p>	<p>WGC</p>	<p>29</p>	
<p>We support that any appeal or response that was previously filed by the same appellant should be taken into account. We also think that any previous appeal or response by other appellants on the same scope should also be taken into consideration.</p>	<p>WGC</p>		<p>Suggest adding (g) and proposed text: Any appeal or response that was previously filed by different appellant/s on the same scope and the previous appeal is deemed materially relevant.</p>

<b>Comment</b>	<b>Submitter</b>	<b>Para</b>	<b>Proposed Revision</b>
<p>On 5.2 Scope paragraph 35 What is proposed in this paragraph is not user-friendly for the indigenous peoples, local communities, women’s groups and vulnerable groups to submit their appeal on any matters regarding A6.4M. For these groups A6.4M should provide a user-friendly, simplified and one-stop “centre/platform” for them to submit their grievance/complaint. What is proposed in this paragraph will further marginalise and discriminate against these groups and prevent them from speaking out on injustices faced.</p>	WGC	35	
<p>On 5.2 Scope paragraph 36 How will unsolicited letters to the Supervisory Body be processed? What will be the SOPs? Will the information be published on the UNFCCC website similar to the appeal and grievance procedures? We are concerned about the transparency and accountability as well as public access to the information.</p>	WGC	36	
<p>On paragraph 48 a) We welcome this paragraph with is linked with paragraph 54. We welcome paragraph 54 as it detailed the follow-up action, monitoring and accountability aspect for paragraph 48(a).</p>	WGC		

Comment	Submitter	Para	Proposed Revision
<p>On paragraph 48 b) We noted that there is an absence of follow-up action, monitoring and accountability aspect with regard to this recommendation. See our comment for 48 (a) which is regarded as a best practice.</p>	WGC		
<p>On paragraph 53: We think that perhaps a case-by-case consideration could be made to allow for the appeal of the conclusion made by the grievance panel.</p> <p>Also, the same grievant should be allowed to submit any new grievance at any time before the end of the activity cycle.</p>	WGC	53	<p>Option 1: Delete 53</p> <p>Option 2: The conclusion by the grievance panel, including recommendations on, or rejection of, the grievance is final. Appeal will be based on a case-by- case consideration provided that there is new information from the grievant.</p> <p>The grievant is allowed to submit a new grievance at any time before the end of the activity cycle.</p>
<p>For 55(a), what is the follow-up action, monitoring and accountability aspect?</p> <p>Similarly for 55(b), what monitoring and accountability aspect if the SB decides not to take actions based on the recommendation of the grievance panel? Will the SB face reputational risk for not adhering to the grievance panel's recommendation?</p>	WGC	55 (a) and (b)	<p>Proposal for 55(b):</p> <p>Option 1: Delete 55(b)</p> <p>Option 2: Decide not to take actions regarding the activity in question within the activity cycle. This must be accompanied by a written justification which will be published on the UNFCCC website and initiating a mediation process shall be considered.</p>
<p>On paragraph 21: If the Supervisory body provided an initial response, this response should be shared with the appellant, who should have the right to comment on it, within a reasonable timeframe.</p>	TI		<p>(...) This initial response should be promptly communicated to the appellant, who will have 7 days to provide comments to the appeal panel.</p>

Comment	Submitter	Para	Proposed Revision
<p>Previous appeal by the same appellant should not be taken into account in the review and ruling of the appeal, which should be made solely the present appeal owns merit. Such possibility would go against fundamental rule of law principles.</p>	<p>TI</p>		<p>Delete paragraph 22 (e)</p> <p><del>[Any appeal or response that was previously filed by the same appellant as part of a previous appeal in relation to the activity], methodology, methodological tool or standardized baseline] in question and the previous appeal is deemed materially relevant;]</del></p>
<p>On paragraph 29: Ideally, the decision communicated to appellants should include information that their appeal has helped to uncover a problem and that actions can be taken to achieve a lasting change in relevant policies and practices.</p>	<p>TI</p>		<p>The secretariat shall promptly resume the suspended process and publish the reconsideration decision on the UNFCCC website, and notify the appellant of the decision and the planned measures and, (...).</p>
<p>Admissibility requirements to be simplified</p> <p>To require only alleged harms to be demonstrated.</p> <p>Qualifiers such as “Credible”; “Reasonable likelihood of harm” and “Substantial adverse impacts” to be deleted.</p>	<p>CIEL</p>		
<p>It might be difficult to prove domicile/residency when land tenure is not clear or formalized and therefore, residency or domicile should not be a criterion.</p> <p>It would be worth it to also define “substantial presence” and how this would be assessed, providing</p>	<p>CI</p>	<p>34</p>	<p>A grievance may be submitted by individuals, communities and organizations (hereinafter referred to as grievants) that meet all the following eligibility requirements:</p> <p>(c) They are connected to the jurisdiction, by means of <del>residency or domicile, where the activity in question is implemented;</del> <b>[of potentially affected by the project, regardless of physical residence location.]</b></p>

Comment	Submitter	Para	Proposed Revision
<p>appropriate means for affected people with insecure tenure or migrants.</p> <p>Indirect effects should also be included, as many impacts to local communities might also occur, such as preventing access to natural resources (e.g. water).</p>			<p>(d) [They have substantial presence in the geographic area, by means of their business activity or community-related activity, which is directly affected by the activity in question;]</p> <p>They suffer direct or <b>[indirect]</b> adverse effects from the implementation or treatment of the activity in question within the activity cycle under the Article 6.4 mechanism by way of concrete, tangible and particularized claim of harm to the health, property, local environment <b>[cultural heritage]</b> or other interest.</p>
<p>The definition of “stakeholders” is rather narrow. It should encompass anyone who is negatively impacted by an Article 6.4 mechanism activity.</p>	WGC	7(a)(i) and 9(c) (i) 34	<p>Proposed definition (taken from Green Climate Fund Independent Redress Mechanism):</p> <p>Stakeholders comprising any person or a group of persons, or a community that has been or may be affected negatively by an Article 6.4 mechanism activity may file a submission. The affected persons) can authorize their government or representative to submit and pursue the complaint on their behalf.</p>
<p>The text “was either incorrect or unreasonable, such that if applied correctly would have resulted in a materially difference outcome”;</p> <p>Not clear about what this part of the sentence means.</p> <p>What does unreasonable “here entail. Appreciate clarity.</p>	WGC	10 (b)	To clarify “unreasonable”.
<p>Paragraph 48 c)</p> <p>We are very concerned about this paragraph. What will be the criteria used to assess the legitimacy of the grievant organizations’ to represent [potentially]</p>	WGC		

Comment	Submitter	Para	Proposed Revision
<p>affected individuals, entities or communities?</p> <p>Also, the grievant who did the submission to represent affected individuals, entities or communities could be either an individual or an organisation. It should not be restricted to an organisation only.</p>			
<p>The requirement to indicate the title and UNFCCC reference number of the A6.4 activity in question in the grievance form will hinder access the process by those who might have difficulties accessing this information.</p>	TI		Delete paragraph 37(d).
<p>To ensure inclusion it must be available in different channels of communication and languages.</p>	CI	9 (add10)	<b>[The appealable decision will be made available in different channels of communication through different formats and languages.]</b>
<p>To ensure inclusion it must be available in different channels of communication and in other languages than English.</p>	CI	37 c)	<p>A grievant may submit a grievance, through a dedicated interface on the UNFCCC website, <b>[or other channels of communication to be determined by the SB in UN languages]</b> a duly completed “Grievance form” (A6.4M-GRI-FORM)<sup>4</sup> covering the following information within the valid crediting period of the Article 6.4 activity in question:</p> <ul style="list-style-type: none"> <li>(e) The name and category (e.g. individual, community, organization) of the grievant;</li> <li>(f) The relationship of each individual, community and organization listed as the grievant to the activity in question to demonstrate</li> </ul>

<sup>4</sup> The secretariat may convert the form into an electronic interface.

Comment	Submitter	Para	Proposed Revision
			<p>the eligibility requirements of the grievant as per the requirements of paragraph 34 above;</p> <p>The name and contact information (email address, phone number, physical address) of the focal point of the grievant; <b>[and preference regarding the confidentiality of the grievant.]</b></p>
<p>We are very concerned that by restricting the submissions to English or any of the other five United Nations official languages will prevent the indigenous peoples, women in the community and local women’s group or organisations from submitting their appeal or grievance. All stakeholders should have the right to submit their appeal or grievance regardless of language used for submission, including additional information and supporting documents.</p>	WGC	82	
<p>Currently, there is only one channel for reporting grievances and appeals, which can lead to bias and could create additional barriers, particularly for local stakeholders. To ensure greater inclusivity, it is important to provide a variety of channels for reporting, not only an online reporting channel.</p>	TI		<p>Include multiple and diverse channels that enable reporting in writing and orally (for example hotlines, post, dedicated staff (such as ombudsmen or helpdesks) and others.</p>
<p>The possibility to submit a new grievance should be left open in cases where new information or circumstances have emerged. The current languages in</p>	TI		<p>[The conclusion by the grievance panel, including recommendations on, or rejection of, the grievance shall be final, unappealable and shall not be further considered or, <b><u>unless new facts have emerged, subject to a new grievance.</u></b>]</p>

Comment	Submitter	Para	Proposed Revision
paragraph 53 might be interpreted as not allowing a new submission in that case.			
Confidentiality should always be ensured if requested and no form of retaliation should be tolerated. Those are essential aspects to ensure the efficacy of the mechanism and respect the rights from appellants.	CI		<p>19. Over the entire course of the processing of the appeal, the appellant’s personal details (name and contact information) shall be made available only to limited members of the secretariat, unless otherwise expressly agreed by the appellant. <b>[Confidentiality requests should always be ensured if requested.]</b></p> <p><b>[Any form of retaliation will not be tolerated against those who report concerns in good faith. The SB will take all feasible actions to protect appellants against retaliation. Anyone who has made a report of suspicious conduct of an activity participants’ employee and who subsequently believes he or she has been subject to retaliation of any kind should immediately report it by the same channel as noted herein.]</b></p>
<p>A complaints procedure is an integral part of the work of an organisation/institute. Therefore, appeal and grievance procedures should also be considered an integral part of the Article 6.4 mechanism. These procedures must be effective in receiving and handling reports and in protecting and supporting those who raise complaints.</p> <p>The current draft appears to be particularly lacking on the latter point, as it does not contain provisions clarifying how reporting individuals/communities/organisations, especially affected and vulnerable groups, are to be protected and</p>	TI		<p>Include provisions specifying how appellants and grievant will be protected in case they suffer retaliation, beyond the confidentiality their identity.<sup>1</sup> Consider gender-sensitive reporting mechanisms (For example, anonymity is often more important for women than for men when it comes to reporting).</p>

Comment	Submitter	Para	Proposed Revision
encouraged to lodge appeal or grievances.			
<p>The system should offer the possibility of submitting complaints on an anonymous basis. This is crucial for the protection of the complainant, if necessary. It seems like this is not possible under the current draft. Without this option, vulnerable stakeholders, e.g., women, may be discouraged from reporting a complaint or grievance.</p> <p>In addition, the system should fulfil data protection requirements when collecting, using, disclosing, and storing information.</p> <p>Ideally, at least one channel of the mechanism should allow communication with a complainant, even if the complaint has been submitted anonymously. For example, Transparency International’s Advocacy and Legal Advice Centres (ALACs), which receive corruption complaints from citizens, are using the GlobalLeaks3 online reporting platform for this. It allows for two-way communication between an anonymous complainant and the ALAC lawyer/complaint recipient.</p>	TI		<p>Include option for anonymous reporting, for example: The name and category (stakeholder, activity participant or participating Party) of the appellant / anonymous.</p>

Comment	Submitter	Para	Proposed Revision
Confidentiality is essential to safeguard the integrity of the process and protect the appellant or grievant against possible pressure and threats. It should apply not only to the name of the appellant, but also to any “identifying information”, that is, information from which the identity of the appellant may be directly or indirectly deduced.	TI		<p>19. Over the entire course of the processing of the appeal, the appellant’s personal details (name and contact information) and any identifying information shall be made available only to limited members of the secretariat as strictly necessary, unless otherwise expressly agreed by the appellant.</p> <p>45. Over the entire course of the processing of a grievance, the grievant’s personal details (name and contact information) and any identifying information shall be made available only to limited members of the secretariat as strictly necessary, unless otherwise expressly agreed by the grievant.</p>
Grievant has the right to be made aware of any potential conflict of interest for panel members and oppose panel member recommendation with just cause.	CI	41	<p>Upon successful conclusion of the completeness check, the secretariat shall establish a grievance panel to review this specific grievance by appointing three experts on the roster referred to in paragraph 16 above, taking into account the specificity of the case and the expertise of each expert, and designating one of them as the chair of the panel. <b>[A conflict of interests’ assessment will be developed and made public.]</b> The secretariat shall forward the grievance form and any supporting documentation submitted by the grievant to the members of the grievance panel. <b>[Grievant will have the right to oppose panel members appointments within 14 days.]</b></p>
Gender-based violence and harassment – GBVH would only be properly assessed and addressed if there are panelists with this specific experience and an appointed female person to lead the case.	CI	62	<p>Experts on the roster shall ensure confidentiality in line with relevant best practice and decisions of the CMA and the Supervisory Body. <b>[The experts on the roster shall include persons who have demonstrated experience in addressing highly sensitive complaints related to Gender- based violence and Harassment (GBVH), ensuring that a female person would be appointed to lead the case.]</b></p>
Paragraph 59 f) Gender experts are also needed as they can provide the gender analysis and perspective of the case.	WGC	59 (f)	<p>Proposed text:</p> <p>They shall possess relevant experience either in international and administrative law, knowledge of carbon markets, environmental,</p>

Comment	Submitter	Para	Proposed Revision
Similarly, indigenous peoples can provide the indigenous peoples' perspective.			socioeconomic, gender, and indigenous people fields, and scientific fields relevant to climate change.
On paragraph 81: We welcome this paragraph, however, the summary of the operations should also provide information on the ruling/outcome recommendation of each submission and action taken based on the ruling/outcome recommendation.	WGC	81	Proposed text: The secretariat shall report annually to the CMA on the summary of the operation of the appeal and grievance processes, including the numbers of appeals filed and grievances submitted, the ruling for each appeal filed and the follow-up action taken based on the ruling, the outcome recommendation for each grievance submitted and the follow-up action taken based on the outcome recommendation.
On paragraph 81: In addition to the annual reporting on the summary of complaints and redress procedures, it is recommended to publish statistics on complaints submitted and their resolution: Number of complaints received, handled or rejected cases; potentially the most frequently contested issues. This can increase trust and transparency in the complaints and redress procedure.	TI	81	<b><u>The secretariat publishes annual statistics on the appeals and grievances submitted and their resolution.</u></b>
Currently, appeals and grievances shall be submitted in English or one of the other five official UN languages, which can create additional barriers to access and discriminate against people, especially affected stakeholders with limited knowledge of these languages. It is important that all complaints are processed, regardless of whether the complainant submits them in English or	TI	82	The working language of the appeal and grievance mechanism shall be English. <b><u>[However, An appeal may also be filed or a grievance may also be submitted in any of the other five United Nations official languages.] as well as local languages of affected communities.</u></b>

<b>Comment</b>	<b>Submitter</b>	<b>Para</b>	<b>Proposed Revision</b>
in another national language, and additional administrative costs for the translation of materials are calculated and included in the budget.			

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2 November 2023	<a href="#">A6.4-SB008-A09</a> - Draft Procedure: Appeal and grievance processes under the A6.4 mechanism. (v02.0) This version takes into account the guidance provided by the Supervisory Body at SB 008 (SB 008 meeting report, para 17) and published for call for public inputs (open from 3 November to 1 December 2023).