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February 28, 2023

Article 6.4 Supervisory Body

Email: Supervisory-Body@unfccc.int

Re: Human Rights Watch submission in response to the “Call for input 2023 – Issues included in the annotated agenda and related annexes of the fourth meeting of the Article 6.4 Supervisory Body”

Dear members of the Supervisory Body,

We are writing to you on behalf of [Human Rights Watch](https://www.hrw.org) to present our recommendations ahead of your fourth meeting taking place March 7-10, 2023, regarding the rules, modalities, and procedures for the Article 6.4 mechanism. Human Rights Watch is an international nongovernmental organization that conducts research and advocacy on human rights violations in more than 100 countries around the world, including abuses in the context of [nature conservation](#), [carbon offsetting](#), [deforestation](#), and [fossil fuel operations](#).

The rules for implementation of Article 6.4 should provide detailed guidance that will ensure that registered projects uphold human rights consistently with state parties’ obligations under international law. Of the 197 states that are parties to the Paris Agreement, a total of 176 are also parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and 182 are parties to the International Covenant on Civil and Political Rights (ICCPR). Many provisions of both treaties, together with the Universal Declaration of Human Rights, are regarded as reflective of customary international law.

The Paris Agreement’s preamble states that “Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.” The preamble should be considered when interpreting any other provision of the Paris Agreement, including the interpretation of Article 6.4.



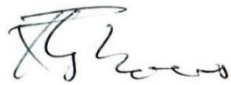
HRW.org

In this regard, Human Rights Watch considers that establishing human rights safeguards for the approval and implementation of projects does not create additional obligations for states parties, but rather provides guidance to operationalize the existing obligations under the Paris Agreement, the international human rights treaties to which they are party, and customary international law.

Furthermore, it is vital that the design and implementation of the Article 6.4 mechanism are informed by the experience of the Clean Development Mechanism (CDM). The governance of the CDM has been criticized for [failing](#) to ensure the environmental integrity of the credits traded under its supervision, undermining its effectiveness in meeting emissions reduction targets. Additionally, several of the projects approved by the CDM were linked to human rights abuses, including [forced relocations](#) and [killings of environmental defenders](#). The Article 6.4 Supervisory Body has a vital role in ensuring that the governance and standards pertaining to the implementation of Article 6.4 deliver rights-respecting outcomes.

Please find below a brief set of recommendations in the Annex. Do not hesitate to contact us at tellezl@hrw.org for queries, comments, or to request a meeting.

Respectfully,



Richard Pearshouse
Director, Environment and Human Rights
Human Rights Watch



Luciana Téllez Chávez
Researcher, Environment and Human Rights
Human Rights Watch

Annex: Recommendations regarding Agenda item 3, “Matters relating to rules, modalities, and procedures for the Article 6.4 mechanism”

The following recommendations specifically address the content of “[A6.4-SB004-AA-A05](#) - Concept note: Development of activity standard, validation and verification standard and activity cycle procedure,” as one of the documents in Agenda item 3.

a. Registration

Concerning the documents to be included in the registration request, these should include an environmental and social impact assessment of the proposed activity, with the social impact assessment specifically evaluating human rights risks among overall social risks.

Impact assessments should be accompanied by a detailed plan to prevent potential negative environmental and social impacts that could be associated with the proposed activity’s design and implementation. These plans should include an assessment of the proposed activity’s compliance with domestic law and the host party’s international human rights obligations. If the proposed activity requires the participation of private entities, the proposed activity’s compliance with the United Nations Guiding Principles on Business and Human Rights should also be assessed. Compliance with human rights standards should be a core component of the Supervisory Body’s assessment of the proposed activity prior to making a determination about its registration.

b. Negative environmental and social impacts

Human Rights Watch welcomes the proposal to require that environmental and social impact assessments be conducted for proposed activities seeking registration regardless of whether the domestic law of the host party requires it. However, Human Rights Watch also notes with concern that at present proposed activities are only required to avoid negative environmental and social impacts “where possible.” This falls short of being a safeguard. It is also contrary to the Paris Agreement’s preamble for states to “promote and consider their respective obligations on human rights,” as well as the responsibility of private entities to “avoid causing or contributing to adverse human rights impacts through their own activities (both actions and omissions).”¹ In line with the above, an effective safeguard should require that proposed activities do not carry negative environmental and social impacts.

¹ United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (2011), principle 13 and commentary. https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (accessed February 1, 2023).

c. Stakeholder consultation

Human Rights Watch welcomes the proposal to require that projects undergo “local and, where appropriate, subnational stakeholder consultation consistent with applicable domestic arrangements in relation to public participation and local communities and indigenous peoples, as applicable.” Further, we recognize that this requirement would be applicable regardless of whether the host party’s domestic law requires it for the activity in question. In this second instance, standard modalities for the consultation would be defined as part of the activity standard.

In order to create a uniform baseline for compliance, we urge the Supervisory Body to adopt standard modalities for consultation of Indigenous peoples that are supplementary to the host Party’s domestic law and that are applicable to all proposed activities seeking registration. The Supervisory Body should also adopt standard modalities for consultation of all rights holders that align with international standards on access to information and participation, and access to environmental information. “Stakeholders” should be understood broadly as those groups whose rights and livelihoods would be impacted by the proposed activity.

Standard modalities for consulting Indigenous peoples should be designed following best practices, including the 2018 assessment on the right to free, prior, and informed consent (FPIC) by the United Nations Expert Mechanism on the Rights of Indigenous Peoples. The mechanism’s study is based on an assessment of how FPIC had been interpreted by domestic courts, regional human rights courts and UN human rights bodies. This assessment identified the concrete, constitutive elements needed to uphold FPIC, including the following interpretative guidance:

- “Consultation and participation should be undertaken at the conceptualization and design phases and not launched at a late stage in a project’s development, when crucial details have already been decided.”²
- “The context or climate of the process should be free from intimidation, coercion, manipulation [...] and harassment, ensuring that the consultation process does not limit or restrict indigenous peoples’ [...] rights.”³
- “Indigenous peoples should determine how and which of their own institutions and leaders represent them.”⁴
- “The substantive content of the information should include the nature, size, pace, reversibility and scope of any proposed project or activity [...]; the reasons for the project; the areas to be affected; social, environmental and cultural impact assessments; the kind of compensation or benefit-sharing

² UN Expert Mechanism on the Rights of Indigenous Peoples, “Free, prior and informed consent: a human rights-based approach,” August 10, 2018, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/245/94/PDF/G1824594.pdf?OpenElement> (accessed October 20, 2022) pp. 6-7.

³ *Ibid.*, p. 6.

⁴ *Ibid.*, p. 6.

schemes involved; and all the potential harm and impacts that could result from the proposed activity.”⁵

- “Indigenous peoples must have the opportunity, moreover, to consent to each relevant aspect of a proposal or project. A generalized or limited statement of consent that, for example, does not expressly acknowledge different phases of development or the entire scope or impact of the project will not be considered to meet the standard for consent. Consent must be ‘ongoing’ with express opportunities and requirements for review and renewal set by the parties.”⁶

Standard modalities for consulting rights holders should also follow international human rights law and best practices. The UN Human Rights Committee, which authoritatively interprets the ICCPR,⁷ stated in its General Comment No. 34 on freedoms of opinion and expression that ICCPR article 19 provides for everyone’s right of access to information held by public bodies.⁸ The Human Rights Committee stated that in order to “give effect to the right of access to information, States parties should pro-actively put in the public domain government information of public interest,” ensuring access is easy, prompt, effective, and practical.⁹

With respect to environmental information, principle 10 of the Rio Declaration on Environment and Development, adopted by states at the UN Conference on Environment and Development in 1992, asserts that “each individual should have appropriate access to information concerning the environment that is held by public authorities... and activities in their communities and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available.”¹⁰

a. Validation and verification standard; implementation and monitoring requirements; and post-registration change and renewal requirements

Human Rights Watch welcomes the proposal to require that, as part of the procedures for registration, activity participants produce an environmental and social impact assessment; an appraisal of sustainable development contributions;

⁵ Ibid., p. 7.

⁶ Ibid., p. 12.

⁷ International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.

⁸ UN Human Rights Committee, General Comment No. 34, Freedoms of Opinion and Expression, U.N. Doc. CCPR/C/GC/34 (2011), paras. 18-19. The Human Rights Committee also noted that the right to information is addressed in other articles of the ICCPR, including arts. 2, 10, 14 and 17.

⁹ Ibid.

¹⁰ Rio Declaration on Environment and Development, adopted June 14, 1992, U.N. Doc. A/CONF.151/26 (vol. I), 31 I.L.M. 874 (1992), https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf (accessed September 1, 2022).

and conduct stakeholder consultations. We also welcome that all these submissions shall be evaluated by the Supervisory Body against its standard modalities. We note with concern, however, that there is no provision for continued monitoring of compliance during an activity's life cycle as part of the verification process. Similarly, at present, "updating the baseline, the additionality and the quantification of emission reduction" are the only areas of focus for validation for renewal of an activity.

We urge the Supervisory Body to ensure that environmental and social impact assessments are dynamic and responsive to changing circumstances, and that consultation is ongoing throughout the life cycle of the activity and responsive to concerns from rights holders. This could be accomplished by requiring that a proposed activity's environmental and social impact assessment as well as mitigation measures are reviewed during every monitoring period to reflect changing circumstances. The renewal of an activity should also be subject to an updated environmental and social impact assessment, as well as a rigorous evaluation as to whether the project effectively implemented measures that avoided negative and social impacts that were foreseen as part of its initial registration.

b. Appeals and grievance procedure

Human Rights Watch welcomes the proposal that "[s]takeholders, activity participants and participating Parties may appeal decisions of the Supervisory Body or request that a grievance be addressed by an independent grievance process." In this regard, we support recommendations previously addressed to the Supervisory Body and the Subsidiary Body for Scientific and Technological Advice (SBSTA) by civil society organizations [Carbon Market Watch \(CMW\)](#) and the [Center for International Environmental Law \(CIEL\)](#). We reiterate many of their recommendations and provide additional ones below.

- **An independent grievance process should be in place and operational before any activity can be approved by the Article 6.4 mechanism.**
- **Regarding which decisions of the Supervisory Body could be appealed against, these should include:**
 - decisions to register proposed activities;
 - decisions to deem proposed activities are compliant with applicable international human rights law and the UN Guiding Principles on business and human rights;
 - decisions to deem proposed activities have conducted stakeholder consultation in line with standard modalities and/or international human rights standards;
 - decisions to deem proposed activities are additional;
 - decisions to deem social and environmental impact assessments appropriately mitigates risks; and

- decisions to renew registered activities.
- **Regarding the scope of grievances that may be requested to address**, these should include any grievances regarding whether the activity caused social and human rights harms and/or failed to represent a reduction in greenhouse gas emissions.
- **Regarding appealing decisions of the Supervisory Body or requesting a grievance to be addressed**, these should lie with an autonomous body with a pertinent mix of technical environmental experts and human rights practitioners. This autonomous body should also:
 - be able to issue recommendations at any time;
 - have the authority to impose temporary measures – such as suspending implementation of an activity and issuance of credits – until a thorough review is completed if significant or repeated grievances are made against an activity or an activity participant;
 - be able to issue grievance redress measures that are binding for activity participants;
 - have standardized procedures and timelines for dealing with grievances;
 - regularly update the petitioners about the consideration of their appeal or grievance redress request;
 - make public the temporary measures it adopts; and,
 - make public the decisions it reaches in relation to appeals.
- **Regarding the scope of stakeholders and possible grounds for appeal**, the scope should include rights holders whose rights or livelihoods could be harmed by a proposed activity. As part of the “stakeholder consultation” required for registration, activity participants should inform groups whose rights or livelihoods are impacted by the proposed activity of the existence of the grievance and appeals mechanism and the modalities to access it. Rights holders whose rights or livelihoods are negatively impacted by the activity should be able to submit grievances in any official language, and they should not be required to pay a fee to access the grievance and appeals procedure. Rights holders should also have the option to file grievances and appeals confidentially.

The Supervisory Body members may also refer to guidance from the Office of the High Commissioner from Human Rights (OHCHR) regarding effectiveness criteria for non-judicial grievance mechanisms.¹¹

¹¹ OHCHR (2011), United Nations Guiding Principles on Business and Human Rights, Principle 31, https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf (accessed February 28, 2023).