RE: Call for input 2023 - Meaningful engagement of Indigenous Peoples and local communities in Article 6.4 mechanism

Members of the Supervisory Body to Article 6, paragraph 4 of the UNFCCC Paris Agreement,

Climate Justice Alliance (CJA), is a non-profit member-based alliance of 88 urban and rural frontline communities, organizations and supporting networks in the United States, including Guam and Puerto Rico, and reaching Indigenous territories in Turtle Island. Our translocal organizing strategy and mobilizing capacity is building a Just Transition towards resilient, regenerative, and equitable economies. Members of our alliance have participated in The United Nations Framework Convention on Climate Change (UNFCCC)'s processes for nearly 30 years. Under the banner of the It Takes Roots Alliance (ITR), a multiracial, multicultural, intergenerational alliance of alliances representing over 200 organizations and affiliates in over 50 states, provinces, territories and Native lands on Turtle Island, we have participated in the Conference of the Parities (COP) since the COP 21 in Paris. Every year since, we have called for the inclusion of the frontlines in the negotiations and to elevate the real solutions that will bring us out of the climate crisis.

The comments below represent the wisdom, experience and vision of frontline-led environmental justice organizations and our allies, who work to address the systemic, root causes of the climate crisis and redress historical and ongoing environmental injustices affecting their frontline communities across the United States. We see the mechanisms in Article 6.4 for carbon offsets as lack of ambition and transparency by governments and as opportunistic endeavors by the fossil fuel industry to delay an imminent transition to renewable energy.

If we want to address climate change we need to move toward zero emissions, not net zero, and reduce emissions at source. We cannot continue to give a lifeline to a decaying industry whose stranded assets will do nothing but plunge us into further ecological collapse while bailing out the culprits. Real solutions must put an end to the extractive economy while fostering a Just Transition to locally-based, regenerative economies.

1. **What are the current or anticipated challenges Indigenous Peoples and local communities face in engaging with the Article 6.4 mechanism?**

We have witnessed Indigenous Peoples experiences related to violence, land evictions, increased polluting, silencing tactics and grief both in the Global North and South. It is of the utmost concern that the Article 6.4 mechanism follow through on its commitment to ensuring free, prior and informed consent (FPIC), Indigenous inherent relationships, the Rights of Mother Earth and cultural, spiritual and social

territorial relationships at *both* the credit-generating project sites and credit-purchasing pollution sites as more than a checkbox along the way for offset approval.

Challenges are anticipated where consent has not been sought, under so called consultation processes. Importantly, consultation does not mean consent. Instead, engaging with Indigenous Peoples means that Indigenous Peoples identify the problems and the solutions under circumstances where Indigenous Peoples inherent relationships, the Rights of Mother Earth, and the diversity of cultural, spiritual and social territorial relationships are upheld. Consent and engagement must be led by Indigenous Peoples based on traditional Indigenous Knowledge with the right to say no without violence or repercussions, and a justice-based appeal and grievance mechanism built into Article 6.4. Further, comprehensive appeal and grievance structures must be developed that enable Indigenous Peoples to disengage from an offset project without repercussions, having to pay a fee or travel great distances. Indigenous self determination must be honored and upheld, and consent must be achieved at every stage.

Building in carbon dioxide removals (CRD) to Article 6.4 will expand carbon markets and allow dubious and potentially dangerous projects to be developed at the expense of Indigenous Peoples' inherent rights, lands, livelihood, and human rights. These are not concerns only brought forth by those on the front lines of the climate crisis, but by the Intergovernmental Panel on Climate Change (IPCC) as well. In fact, their Climate Change 2023 Synthesis Report (AR6) in relation to biological removals warns against "adverse socio-economic and environmental impacts, including on biodiversity, food and water security, local livelihoods and the rights of Indigenous Peoples, especially if implemented at large scales and where land tenure is insecure" (page 21).

Anticipated perpetuation of increased violence from Article 6.4

Indigenous Peoples face violence due to militarization and securitization practices around both the credit-generating project sites and credit-purchasing pollution sites. Indigenous Peoples face hostility from national governments, conservation NGOs and international agencies, all of whom are amenable to respecting Indigenous rights on paper. In practice, as Costa Rican Indigenous leader Levi Sucre Romero says, "the danger…lies in investment decisions being made against the interests of people who do not have the economic resources to defend themselves" (Yale Environment 360 2022).

The latest land defender report shows that Indigenous Peoples are disproportionately targeted by deadly attacks, often related to fossil fuels, logging and fishing encroaching on Indigenous territories. Around thirty four percent of the murdered land defenders in 2022 were Indigenous Peoples, despite making up around only five percent of the world's population (Global Witness 2023). While Indigenous Peoples are disproportionately persecuted, displaced and killed partially because of expanding fossil fuels, logging and fishing projects, there is a heightened risk Indigenous Peoples will be persecuted when the new carbon offsets markets through Article 6.4 are underway. The risk of added pressure from the lucrative carbon markets places an additional lethal weight on Indigenous Peoples.

Indigenous Peoples are the best land defenders and protectors of the natural world on the planet. In fact, the majority of the world's biodiversity is in Indigenous Peoples' traditional territories. The future of the planet depends on the work of Indigenous Peoples. The risk of increased violence linked to Article 6.4

"mechanism database" is very high and should be addressed with urgency and the utmost critical importance given to Indigenous Peoples' rights, self determination, and inherent relationships. Indigenous Peoples have been victims of land dispossession, rights violations, unwanted coercion and violence by colonial powers for centuries. Implementing lucrative carbon offsets projects and programs without full FPIC furthers these already unequal structures and solidifies the ongoing violence of colonial extractivism.

Anticipated increased pollution at extraction sites without consent or engagement due to Article 6.4

One of the lesser examined but crucially concerning aspects of carbon offsets is of the communities that will continue to be negatively impacted by enterprises that purchase offsets. For Indigenous Peoples, territories near mining sites, oil extraction and refineries, cement factories, hydroelectric dams and other renewable energy sites will feel the continued impacts of pollution, land degradation, poverty entrenchment, and worker dependency, regardless of the alleged carbon status of the site. Whether the project is selling credits for a techno-fix or buying credits to pollute more, Indigenous Peoples will be impacted on both ends of the carbon market chain. Carbon offsets in the Article 6.4 mechanism guarantees that fossil fuels will continue to be extracted and slow down any real transition away from fossil fuels.

Lands that are included in carbon offsets are locked up for decades in the carbon markets. The Article 6.4 mechanism will not only invite potential violence on to Indigenous territories in the global North and South, but risks territorial loss as well as continuing to enable harm and injustice at current sites of both the credit-generating project sites and credit-purchasing pollution sites. In this way both biological removals and engineered removals must both be scrutinized and removed from Article 6.4.

Anticipated violations of FPIC and human rights from Article 6.4

Through carbon offset projects, Indigenous Peoples experience blatant disregard for free prior and informed consent (FPIC), including a lack of safeguarding land rights, and respecting self determination and self government, land tenure and management. For example, scholars have charted how Indigenous Peoples in Cambodia have experienced, what they call "bureaucratic violence," processes by which carbon offset proponents "[implement] mundane technical rules that hide local contestation, sideline criticism, and deny justice" (Mline and Mahanty 2019). Many are concerned over the continued quest to acquire more Indigenous lands through carbon markets. In the Democratic Republic of Congo, a series of documents that advance the World Bank's safeguards for Indigenous Peoples and the Environment contain different definitions of FPIC, including structural gaps that may jeopardize the rights of Indigenous Peoples in the region (Rainforest Foundation UK 2017). What is more, the future implementation of Article 6.4 will lead to an increasing number of projects, with rising implications for Indigenous Peoples and FPIC.

Anticipated lack of benefits for Indigenous communities

Historically, money promised to Indigenous communities for land tenure and forest management rarely makes it to Indigenous Peoples. A recent report from InfoAmazonia (2023) found that six Indigenous communities in Brazil were promised universities through REDD+ projects sanctioned by private sector companies and the government-backed, compliance nested-REDD+ program in Colombia. These

universities never came to be. The FUNAI, the Brazilian Federal National Indigenous Organization, did not authorize the projects. Further, the contracts include gag orders whereby the Indigenous communities are not allowed to disclose the content of the contract (a common practice in these types of carbon offset projects), and the "agreement provides as a forum for resolving conflicts an arbitration court in Bogotá, in the capital of Colombia, to be appointed by the parties" (InfoAmazonia 2023).

Payments are not proffered to communities in carbon offset projects, but often depend on various verifications in order to receive payment if they are received at all (Ferraro 2008). In regards to climate finance, a 2021 report by the Forest People's Forum found that of an estimated $2.7 billion in climate finance directed to Indigenous Peoples over the past 10 years, only $459 million, or 17% of the promised funds made it to communities, due to a complex mix of procedures and requirements (Gjefsen 2021). Researchers find that when payments do arrive, they exacerbate wealth inequalities and may further undermine land tenure, conservation, and local benefits by driving up prices (Andersson et. al. 2018).

Some Indigenous leaders have claimed that nearly every Amazonian community is in contact with carbon brokers, who come armed with lengthy contracts replete with jargon and contractual language that are not in a language understood to most members of the community. Disguising intentions behind contractual language is a strategy employed by carbon brokers to falsely achieve FPIC to access Indigenous territories and claim community engagement. While the brokers promise rewards for turning over Indigenous lands for credits, Castro shares that in most cases, people don't see the money (as documented above) and instead, they are prevented from accessing their traditional lands. (Greenfield 2023)

Anticipated entrenchment of a flawed system within Article 6.4 linked to Article 6.2 and 6.8

Carbon offsetting mechanisms are fundamentally flawed, and fail to advance meaningful climate action. In a 2016 assessment of 5,655 CDM projects, researchers found over 4,800 to be of "low environmental quality" for failing to deliver additional emissions reductions (Acmes, et. al. 2016). This comprehensive picture of the CDM concludes that there are "fundamental flaws" with the overarching practices, and that instead of pursuing offset credits, parties should instead focus primarily on non-marketized mitigation. Additionally, over 90% of rainforest offset credits have been classified as "worthless" (Greenfield 2023); and over 215,000 renewable energy offset projects have been exposed as "likely junk" and may actually increase emissions (Rathi 2022).

In addition to poor accounting and crediting, scientific uncertainty in the durability of carbon offsets further entrenches this flawed system. Due to the differences between the fast and slow carbon cycles, biological systems are limited in the amount of CO_2 they can absorb, meaning there are limits to carbon sequestration (Carton et.al. 2021). Further, absorption depends on various and increasingly constrained natural conditions (Lewis 2019), all while limited by available land (Dooley, et. al. 2022). When carbon is sequestered, it then faces significant risks of reversibility (Murray et. al. 2006) due to issues of permanence and climate risk (Brando, et. al. 2020).

Regarding engineered removals, we simply do not have the time or resources to continue waiting on technological promises that routinely fail to deliver (Rathi 2023). Offsets generated from engineered CDR continue to receive scrutiny as big oil companies such as Occidental Petroleum begin to cancel projects

(White, Rathi, Crowley 2023). Further, research has shown that engineered CDR involve too many health and safety risks (Onyebuchi 2018), too many extraneous impacts on ecosystems (Terlouw, et. al. 2021), and too much faith in industries to lead the way to decarbonization (FOEI 2022). Most significantly, Information Note A-09 from SB005 acknowledges these market shortcomings and questions the technological and economic feasibility of removals under the 6.4 mechanism. It further warns that *engineered removals are not suitable in developing countries and will not lead to sustainable development goals* (Information Note A-09, SB005). In this note, the UNFCCC further acknowledges that equitable, community-led solutions to climate change are proven, effective and less expensive. The vast scale of such projects should be addressed and the unknown risks posed to the global ecosystems, currents, phytoplankton, and so on are not addressed in these projects.

Ultimately, engineered removal projects act as a subsidy to the oil industry and send a signal to the biggest polluters and violators on the planet to continue extraction. We do not have time for biological or engineered removals, for carbon markets, for private sector voluntary offsets to be considered in Article 6.4 or for carbon offsets to continue to allow polluting and extractive industries to pollute. These markets and industries, as we have shown above, violate, harass, divide and risk the lives and livelihoods of Indigenous Peoples. These "fixes" carry large-scale risks, besides being based on outdated and debunked economic theories, and could trigger further unplanned cascading environmental chaos.

Anticipated problems with REDD+ and the private sector in Article 6.4

At this point, it is uncertain if REDD+ programs will be included in the final A6.4 mechanism as biological CDR, or how REDD+ may be linked through Article 6.2 via emissions trading systems (ETSs) that include REDD+ as offsets, or in Article 6.8 as a so-called nature-based-solution. However, IEN holds many concerns with the potential linkage of REDD+ projects with Article 6 at large. For years, the design, implementation, and result of REDD+ programs have been shown to be widely abusive to both human rights and land rights of Indigenous Peoples (Godden and Tahen, 2016; Pablo et. al. 2017), preventing Indigenous Peoples from performing traditional practices on their lands (FFP 2023), and exacerbating inequalities that may further undermine land tenure, conservation, and local benefits (Andersson et. al. 2018).

From a carbon accounting standpoint, REDD+ has been found to be fraudulent. REDD+'s 50 largest offset projects, which account for nearly 1/3 of its historically issued credits–were all found to be either problematic or potentially problematic (Laknahi 2023). In fact, 78% of the projects examined included one or more significant failings foundational to the projects' integrity, while 16% likely included significant problems. Additional research of the leniency of REDD+, such as a 2023 Carbon Market Watch concludes that it has been extremely over-credited to the point of being almost worthless. The Subsidiary Body, the Secretariat and delegates must recognize the abusive, opaque practices surrounding REDD+ and prevent it from entering Article 6.

Anticipated driver of conflict and division within Indigenous communities from Article 6.4

Due to the deceptive role of offset markets and the push to include biological carbon dioxide removals (CDR) within Article 6.4, division in Indigenous communities is unfortunately common. In Peru, some Indigenous supporters of REDD+ have been offered political support for acquiring land titles, and for

opportunities to advance legal recognition (FPP 2022). But in the Alto Mayo region, REDD+ has divided a community: half of the farmers support the project, while roughly 600 families have refused to sign the agreement. However, regardless of whether Indigenous communities have agreed to demands of REDD+ or not, many carbon offset projects still operate on Indigenous territories, and the results have led to violent clashes between local resistors and security forces charged with protecting the offset project (Begert 2021).

2. What mode of communication could facilitate better dialogue between the Supervisory Body and Indigenous communities?

The framing of this question fails to acknowledge the profound historical and systemic factors that create the so-called communication "challenges" on a mechanism that Indigenous Peoples have been fighting against for years. The question seeks a "mode of communication" between the Supervisory Body (SB) and Indigenous communities, yet it does so without addressing the deeply ingrained power differentials in decision-making and historical injustices that have marginalized Indigenous voices in the development of climate policies. Therefore, no "mode of communication" is a substitute for the legacy of exploitation of Indigenous Peoples from governmental and intergovernmental bodies.

Indigenous epistemologies, ontologies, and cosmovisions are fundamentally in conflict with the market-driven mechanisms enshrined in Article 6.4. Indigenous Peoples are connected to their lands and waters not merely as resources to be exploited as "sinks" for polluting industries and multinationals in the global North. The reduction of complex relationships between Indigenous Peoples' lands, and territories into financial transactions of "credits" undermines the intrinsic values embedded in Traditional Indigenous Knowledge (TIK). This fundamental dissonance makes any mere proposition of a communication mode within the context of this mechanism futile, as it fails to reconcile the deeply entrenched conflicts between these diverging worldviews. Moreover, the legacy of colonialism and its contemporary manifestation within the carbon market further exacerbates this imbalance of power (Bachram, 2004; Eberle et al. 2019).

In light of such inherent contradictions, it is essential that any attempt to facilitate dialogue with Indigenous communities acknowledges and addresses these deep-rooted issues. IEN reaffirms the mandatory requirement of free, prior, and informed consent (FPIC) to ensure that Indigenous Peoples have the right to give or withhold consent to any activities that may affect their land, resources, territories, jurisdictional authority, self-determination, culture, traditional knowledge, inherent rights and relationships, customary rights, treaty reserved rights, and comosvisions. In order to begin facilitating meaningful communication, the SB must first build trust by acting as a voice to strengthen FPIC compliance across all activities related to the United Nations, including communication and engagement processes with Indigenous Peoples.

Indigenous Voice over mode of communication

Every Indigenous community has the right to determine every aspect of a process around FPIC, including the form and type of engagement, where and how the engagement process shall proceed, what mode of

communication shall be used, how decisions will be made, and whether to give or withhold consent to any aspect of the mechanism, including consent to prior consultation.

Throughout time, Indigenous Peoples have had protocols governing engagement with outsiders. These protocols are not only diverse but are also nuanced and complex, often embedded in oral traditions and non-written knowledge systems. Communities across the world are actively working on establishing their own protocols regarding how external entities should communicate in accordance with Indigenous Peoples customary laws and practices (RCA, 2018). For example, initiatives such as the Munduruku Consultation Protocol and the Krenak Consultation Protocol (Ferreira et al. 2021) in Brazil serve as examples of communities advocating for their rights and articulating guidelines for engagement processes. Seeing the 'C' in FPIC increasingly redefined by extractive industries as "consultation," not "consent," the Unist'ot'en Clan in British Columbia created a protocol for every person to enter their camp in advance (Temper, 2018). In other countries like Argentina and Colombia, state recognition of these protocols has prompted government entities to acknowledge and adhere to the Indigenous consultation frameworks (Doyle et al. 2019; Marchegiani, 2016)). The inherent complexity and diversity of Indigenous traditions, knowledge systems, and FPIC protocols render it clear that no singular mode of communication can suffice. The attempt by the SB to homogenize the communication and facilitation processes with Indigenous Peoples not only undermines Indigenous Peoples' distinct cultural identities but perpetuates a cycle of epistemological violence and cultural erasure. It is the SB's responsibility to account for the diverse communication protocols of Indigenous communities around the world and ensure the mandatory compliance of such protocols for any activities related to the mechanism.

Consultation does not mean consent

More importantly, the SB must acknowledge the pervasive challenges that Indigenous communities face in shaping engagement processes. Despite certain instances where Indigenous communities have made strides in asserting self-determination through FPIC protocols, such practices are still unrecognized by some states and often violated. Even when meaningful engagement happens, there is a systemic favoring of corporate and national governmental interests over the fundamental rights of Indigenous Peoples. When the 'C' in FPIC is defined as consultation and not consent, Indigenous Peoples are denied the power to veto and the right to say 'no', making any dialogue or communication regarding the 6.4 mechanism a practice of group silencing (Townsend et al. 2020). Faced with such systemic challenges, some communities have decided to withhold participation in any form of dialogue or communication as a means of asserting agency and protecting land and traditional knowledge. As a result, Consent in FPIC includes giving or withholding permission for prior consultation and any mode of communication.

For example, the U'wa people of northeastern Colombia have a long history of mobilizing against oil extraction in their territory as they view the practice as a direct threat to Mother Earth's lifeblood (Tegria, 2019). Considering extractive projects as antithetical to their interests, values, and knowledge systems, and viewing the form of consultation processes implemented by the state as a design to undermine Indigenous rights and sovereignty, the U'wa rejected the concept of prior consultation altogether (Submission of EarthRights to the United Nations Special Rapporteur on Human Rights and the Environment). When the investment arms of governments and extractive companies seeking carbon credits from the 6.4 mechanism have overwhelming influence over the implementation of consultation

processes, reform becomes a challenge. It is within the right of Indigenous Peoples to withdraw from prior consultation processes given the systemic limitations that prevent their meaningful participation. This fundamental aspect of Indigenous agency must be respected, upheld, and protected by the SB.

These two fundamental arguments regarding the diversity of Indigenous Peoples' communication systems and the right to say no, must be discussed in depth and are fundamental to how the SB proceeds.

3. How would you envision meaningful long-term engagement and active participation from Indigenous Peoples and local communities on the work of the Supervisory Body and the mechanism?

Any meaningful long-term engagement and active participation from Indigenous Peoples on the work of the SB must first not conflate Indigenous Peoples with Local Communities. Indigenous Peoples have rights internationally external to the State and within many State internal laws a legal/political relationship exists whereas local communities come exclusively within a State context. Many of the issues raised in the previous sections arose because distinct Indigenous legal/political entities are being treated as local communities, with inherent rights and responsibilities.

Once that obstacle is dealt with, any meaningful engagement must be on the basis of Free, Prior and Informed Consent (FPIC) as also outlined previously. In addition, it is essential that Traditional Indigenous Knowledge (TIK) is the foundation of any engagement. This does not mean something akin to the way Traditional Ecological Knowledge (TEK) has been promoted where it is harnessed by non-Indigenous frameworks. A meaningful engagement would be based upon a principle of Equitability, where both parties acknowledge their differences but have the same status. In this process that would mean that TIK would be put forth by the Indigenous entity in its entirety, not in a way that cherry picks aspects that fit with the non-Indigenous framework. Harnessing Indigenous Knowledge is, to be blunt, a form of colonialism. To make this work it will also be necessary for the SB to respect and take on board an Ethical Protocol for the Protection and Use of TIK.

Engagement must also include recognition of the jurisdictional authority of Indigenous Peoples in their respective territories where they have customary rights and sacred sites. These inherent relationships are not just a source of sustenance but identity as well, and severing them is tantamount to cultural genocide. The jurisdictional authority referred to need not be a legally recognized one by the State. It only applies where customary rights and/or treaty reserved rights are already recognized.

All communication and meetings should be in the local language with translation for non-speakers instead of translation for the community. This is to ensure that the community can understand and communicate freely throughout discussions. Indigenous knowledge systems are deeply interconnected with the land and are in stark contrast to the reductionist and commodifying nature of 6.4 market-based mechanisms.

The Appeal and Grievance mechanism must allow communities a way to leave carbon offset contracts without any repercussions due to the reasons outlined in this document. Indigenous and local communities

should not have to pay a fee to file a grievance, and local support systems should be put in place to protect the communities.

Going forward, it is important to ensure that any engagement is with the Indigenous entity as a whole and not just representatives, or someone claiming to represent the entity. In the case of US Indian tribes, for example, Tribal sovereignty is legally recognized as inherent since before the United States. That sovereignty rests with the Tribe as a whole and not with the Tribal Government. FPIC means that the issue being considered is available for comment and consideration by all Tribal citizens.

Sincerely,
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