

Submission from the Center for International Environmental Law (CIEL) in response to the Call for Inputs on the Article 6.4 Supervisory Body’s [Draft Procedure: Appeal and Grievance Process under the Article 6.4 mechanism \(ver. 02.0\)](#)

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Thank you for the opportunity to comment on the “Appeal and grievance processes under the Article 6.4 mechanism.” CIEL has decades of experience with grievance mechanisms and welcomes the opportunity to engage with the Supervisory Body (SB) on this issue. Throughout this memo we will be referring to the Draft Procedure: Appeal and grievance processes under the Article 6.4. mechanism (v. 02.0) document.¹

It is critical that all activities sanctioned by the Article 6.4 mechanism avoid negative environmental impacts and human rights harms. We appreciate 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.²

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

¹ Draft Procedure: Appeal and grievance processes under the Article 6.4. mechanism (v. 02.0), A6.4-SB008-A09.

² IPCC Sixth Assessment Report, Summary for Policymakers, para. C.5.2 (March 2023), https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf (stating “Adaptation and mitigation actions that prioritise equity, social justice, climate justice, rights-based approaches, and inclusivity, lead to more sustainable outcomes, reduce trade-offs, support transformative change and advance climate resilient development. Redistributive policies across sectors and regions that shield the poor and vulnerable, social safety nets, equity, inclusion and just transitions, at all scales can enable deeper societal ambitions and resolve tradeoffs with sustainable development goals. Attention to equity and broad and meaningful participation of all relevant actors in decision making at all scales can build social trust which builds on equitable sharing of benefits and burdens of mitigation that deepen and widen support for transformative changes. (high confidence)”).

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.

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.**³

The current proposal (and the previous iteration discussed by the Supervisory Body) does not reflect any of these principles. Failing to include the key pillars identified and lessons learned from decades of experience of independent accountability and grievance mechanisms would be a mistake. It would also fail to recognize not only the right to remedy and access to justice but also that grievance mechanisms are essential to solve problems and redress harms.

To that end, we have provided answers to some of the questions that the Supervisory Body has asked in its request for input, while also providing the Supervisory Body with best practices that are relevant for its consideration of what the grievance process should look like. Three such reports are:

- [Good Policy Paper: Guiding Practice from the Policies of Independent Accountability Mechanisms \(Dec 2021\)](#)
- [Rights, Carbon, Caution: Upholding Human Rights under Article 6 of the Paris Agreement \(Feb 2021\)](#)
- [Carbon Market Watch recommendations on establishing an independent grievance body under Article 6 of the Paris Agreement](#)

However, we have not provided line by line comments as we believe that a fundamental overhaul of the appeal and grievance processes is necessary. This overhaul should involve the

³ See UN Guiding Principles on Business and Human Rights (2011), https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf; see also CIEL, Rights, Carbon, Caution Upholding Human Rights Under Article 6 Of The Paris Agreement, <https://www.ciel.org/reports/rights-carbon-caution/>.

participation of stakeholders, including those who are potential users as well as expert practitioners in the establishment and operation of independent grievance mechanisms.

It is also critical that an effective independent grievance mechanism/process is established prior to any activities taking place under the Article 6.4 mechanism. To achieve this, the Supervisory Body should have supplemental consultations as the slightly less than 30 day consultation being carried out in the month leading up to COP28 is neither timely nor sufficient as many interested stakeholders may be unable to effectively participate. Further, it is crucial to have proper participation from rights-holders, including those who will be the primary users of the mechanism and those who already have experience in using similar mechanisms.

1. How can the risk of abuse of the processes be minimized while ensuring equitable access to the processes, in terms of:

This question and subsequent ones are fundamentally flawed; they contain assumptions that show a deep misunderstanding of grievance processes. Grievance mechanisms are used by people who have suffered or think they will suffer harm, and thus, assuming bad faith at the outset is a problematic framing in operationalizing this mechanism. Similarly, some of the questions are framed in a manner that implies that the main consideration is making things easier for project proponents (i.e. related to predictability). However, the fundamental question that should be asked is how can people and communities seek and achieve remedy/redress when harmed by Article 6.4 activities. The point of having a grievance mechanism is ensuring that people are able to have their harms remedied. Thus, questions should be framed in terms of ensuring there is an accessible avenue to seek remedy from a legitimate and effective mechanism.

This flawed framing is also evident in the “purpose” of the concept note and the “objectives” in the document. The purpose is defined as operationalizing the grievance and appeal process and the identified objective is to set out requirements for filing an appeal or submitting a grievance. 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.

(i) Standing for stakeholders who may file an appeal or submit a grievance?

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. 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.

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.⁴

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.

The Supervisory Body should be focused on ensuring 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.

⁴ Good Policy Paper: Guiding Practice from the Policies of Independent Accountability Mechanisms, <https://www.ciel.org/reports/good-policy-paper/>.

(ii) Fees for filing an appeal or submitting a grievance?

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. For project-affected people, the journey of filing a complaint with a grievance mechanism usually begins when they start experiencing actual or potential impacts to their livelihoods, health, and environment from a project. Potential complainants are often members of marginalized populations or communities whose particular vulnerabilities, such as poverty, are exacerbated by the project impacts. Deciding to engage in a potentially time and resource-intensive process, such as this, is not an easy one and it is critical that the process is one that can result in meaningful remedy. People filing grievances at independent accountability and grievance mechanisms are not doing so for nefarious reasons, but rather to seek remedy and/or accountability for harms that have occurred to them or their land.

Given this, it is critical that the complaint process is accessible, predictable, transparent, and rights compatible. To deliver real results for affected communities, the mechanism's jurisdiction and admissibility rules should be designed to minimize barriers to access to the mechanism's complaint process and allow complaints to proceed in a predictable, transparent, and effective manner. We would stress that this has been recognized, and put forward as best practice at grievance and accountability mechanisms for decades. Every stage of the process must be transparent and predictable. 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. 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.

The project itself is an imposition on communities and may have affected their livelihoods and access to resources. It would be an imposition as well as a barrier to accessibility to require complainants to shoulder the financial costs for their engagement to seek amelioration of the impacts. Furthermore, the mechanism should cover complainants' costs associated with participating in the complaint process. Complainants incur a range of costs when participating in

a complaint process. For example, complainants may need mobile phone credits so that they can communicate with the mechanism or bus fare to travel to meeting locations. Complainants may also incur opportunity costs if they must lose a day's wage or leave their fields in order to participate at a dialogue table or a compliance review site visit. This is in stark contrast to staff of the project proponents or financiers, whose job responsibilities include preventing harm and, if harm occurs and leads to a complaint, participating in the complaint process.

Paragraph 10(a)(ii) of the cover note of the draft procedure lists "Fees for filing an appeal or submitting a grievance?" as a key question for the mechanism. Given the above and drawing from best practices, we share many of the concerns voiced by representatives at the Supervisory Body meetings in regards to fees and strongly urge the Supervisory Body to remove any requirement for appeal or grievance fees. 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. USD 5000 or even 2,500 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.

(iii) Timeframe for filing an appeal, taking into account potential impacts on investments?

Here again we would stress that this question denotes a flawed understanding of the grievance process and its importance for appellants or complainants. The reason for the creation of the grievance mechanism should be addressing impacts and potential or existing harms to people and their environment, not on the investments. 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.⁵ Paragraph 10(a)(iii) of the cover note of the draft procedure lists “Timeframe for filing an appeal, taking into account potential impacts on investments?” as a key question for the mechanism. Paragraph 49 of the Concept Notes lists “timeframe within which the grievance must be submitted” as an element for submitting a grievance. Although timeline is no longer addressed in the draft procedure document as it was in the previous concept note, on this issue we agree with concerns raised by Supervisory Body members that the timeline for appeals and grievances should be looked at as separate processes and not as one triggering the other.

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. While we understand that this can create uncertainty around the project and its ability to continue in some instances, project developers wishing to conduct projects through the Article 6.4 mechanism should be aware of the standards they have to meet and the accountability system. Further, the primary consideration should be preventing or mitigating the risk to the communities and the environment as it is their lives and livelihoods that may be harmed and not just the risk to the project developer.

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.⁶

Moreover, we reiterate that these questions should be framed in terms of ensuring that there are accessible avenues for communities to seek remedy, and not in terms of financing projects. Framing this question in terms of potential investments is problematic since it shifts the focus and concern away from the individuals seeking redress.

⁵ See, e.g., Good Policy Paper: Guiding Practice from the Policies of Independent Accountability Mechanisms, <https://www.ciel.org/reports/good-policy-paper/>.

⁶ See Good Policy Paper: Guiding Practice from the Policies of Independent Accountability Mechanisms, <https://www.ciel.org/reports/good-policy-paper/>.

(iv) Scope of appeal (which Supervisory Body decisions should be appealable)?

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.

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.⁷

As evidenced during the feedback round of the 7th meeting of the Article 6.4 Supervisory Body, there must be a more simple distinction between the appeal and grievance process in order to make each process more accessible.

(v) 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?

It cannot be known whether a final decision will remediate or remedy the harm and so procedurally erecting barriers is unwise.

(vi) How should the appeals and grievances procedure relate to integrity safeguards under the Article 6.4 mechanism?

⁷ Good Policy Paper: Guiding Practice from the Policies of Independent Accountability Mechanisms, <https://www.ciel.org/reports/good-policy-paper/>.

2. How can the processes ensure competence and independence of appeal and grievance panels, and their independence from the Supervisory Body, activity participants or the host Party?

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).

Ensuring a mechanism's independence is critical and there are a variety of examples of how this is done at other independent accountability mechanisms. 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.

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

Conclusion

Thank you for the opportunity to comment! If you have any questions or would like to discuss this further, please contact Erika Lennon, elennon@ciel.org.