

**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 Sustainable  
Development Tool ver. 3.](#)**

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*Date:* 20 February 2024

Thank you for the opportunity to comment on the Sustainable Development Tool. The IPCC has recognized that rights-based and participatory actions lead to more sustainable outcomes.<sup>1</sup> It is essential that all Article 6.4 activities approved by the Supervisory Body should respect, protect, and fulfill human rights and should avoid causing environmental and social harms. To that end it is critical that environmental and social safeguards are in place before Article 6.4 is fully operationalized and before any activities are approved or take place. The Supervisory Body must take effective measures to ensure adequate, human rights compatible social and environmental safeguards as well as continuous and inclusive monitoring and evaluation of all activities under Article 6.4, as well as an effective independent grievance mechanism, are in place prior to full operationalization of the Article 6.4 mechanism. The Sustainable Development Tool (SDT) is an important part of this as a means to avoid harm, but from a human rights’ perspective, the Article 6.4 Draft SDT as proposed is inadequate. These comments include general comments applicable throughout the document, and then provides comments on specific sections of the Draft Sustainable Development Tool. However, these comments do not address all of the concerns, and lack of comment does not necessarily indicate that a specific aspect is adequate. Additionally, throughout these comments, we use the term “activity participant” as it is used in the SDT to mean the one proposing the activity. However, we note that others may participate in the activity, including right-holders such as women, youth, and Indigenous Peoples, but they do not bear the responsibilities of the “activity participant” as so labeled in the SDT. All references in this comment to the SDT are to the [Draft Sustainable Development Tool ver. 3.0.](#) .

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<sup>1</sup> 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](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)”).

## **I. General Comments**

There are several areas of general concern wherein the SDT falls short. First and foremost, the SDT fails to take a human-rights compatible approach and fails to ensure that activity participants will exercise human rights due diligence. Past experience with internationally financed climate and development activities, including with the Clean Development Mechanism (CDM), has demonstrated that activities undertaken without strong environmental and social safeguards in place can and do lead to human rights violations and failed projects. To avoid these harms, the SDT should be guided by international law, human rights principles and norms, and science in its design and implementation. A tool that doesn't have a foundation in human rights is not sufficient to protect communities. This should be reflected throughout the document in the principles and annexes as well as in the normative references section, which should reference human rights documents. An example of human rights documents that could be listed includes: the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child, and the UN Declaration on the Rights of Indigenous Peoples, among others. This list is not all inclusive, and other documents could be added.

As an initial matter, any evaluation or assessment of an activity participant's proposed activity should be done by a disinterested third party or a third party verification body. An assessment done by the activity participant regarding their own activity or the DOE runs the risk that the assessment will be biased and thus would limit the usefulness and relevance of the SDT as a whole. The monitoring also cannot be limited to the crediting period. The monitoring of a project's effect on people, the environment, sustainable development, or a Sustainable Development Goal (SDG) requires extended monitoring. The activity should aim to have a long term positive effect on the realization of the SDGs, and the activity participant remains responsible for any potential negative effects after the crediting period ends. Project monitoring needs to occur throughout the full lifetime of the project and begin before the project is approved and continue past the decommissioning period. Potential negative impacts can arise or may not be fully known until after the decommissioning of a project, and activity participants must remain responsible and provide remedy to those who are negatively impacted, such as Indigenous Peoples, women, or local communities living in or around project areas.

The SDT should rely on and require compliance with international law and internationally agreed minimum standards rather than on individual country's laws. While, in some areas, the third version of the draft SDT addresses this, there are still statements where the host country's laws set the standard for the SDT. Statements where the host country's laws and regulations are relied on to create the baseline for reporting is inadequate. There is potential that a host country may not have an adequate framework in place to ensure compliance with a principle. There should be some internationally agreed minimum standards in place to protect

against abuses where the national standards fall short in every instance. As the Article 6.4 mechanism is a part of the Paris Agreement it must be in line with the Paris Agreement’s vision for ensuring that climate action respects, protects, and considers human rights, the rights of Indigenous Peoples, gender equality, and intergenerational equity.

Both positive and negative effects on sustainable development and the SDGs need to be taken into account. Focusing only on potential positive impacts misses seeing the full, transparent, and informed picture of a project. For example, if a project is projected to provide positive impacts on 3 SDGs, but will also negatively affect 7 SDGs or have other negative impacts on people and the environment, then it should not be considered as supporting sustainable development.

Additionally, in order for the SDT to have any real value, there also needs to be a meaningful process for appeals and grievances. In section 2.1, paragraph 9, the tool suggests that activity participants and stakeholders may only submit issues during certain points of the process and during consultation. This is not a meaningful way for stakeholders to bring complaints as complaints can arise at any point during the activity cycle and even after the cycle concludes. The SDT must ensure access to information, meaningful participation, and justice/remedy. It should also be part of a comprehensive governance package that includes adoption of an effective independent grievance mechanism.

## **II. Specific Comments**

### **A. Principle 1: Climate and Energy**

Regarding paragraph 5.2.1 (19), no activity should be approved that increases greenhouse gas (GHG) emissions above the baseline scenario. A proposed activity should not be eligible if it leads to an increase in the use of fossil fuels, which are the primary cause of climate change, or an increase in GHG emissions. The IPCC is clear that “projected CO<sub>2</sub> emissions from existing fossil fuel infrastructure without additional abatement would exceed the remaining carbon budget for 1.5C.”<sup>2</sup> To keep global temperature rise below 1.5°C, we need “deep, rapid, and sustained reductions in greenhouse gas emissions” this decade.<sup>3</sup> Moreover, Article 6.4 is supposed to allow countries to have higher ambition in their mitigation and adaptation actions and to achieve the goals of the Paris Agreement, including keeping global temperature rise below 1.5C. Thus, any frameworks developed to assess proposed Article 6.4 activities must include ensuring that such activities support decreasing GHG emissions and fossil fuel usage. This should also include assessment of the full life-cycle of the GHG emissions of the activity itself. There can be no potential credits generated from an activity until after it has already demonstrated that it has produced reductions in excess of its own emissions.

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<sup>2</sup> Intergovernmental Panel on Climate Change [IPCC], *AR6 Synthesis Report: Headline Statements*, at B.5, <https://www.ipcc.ch/report/ar6/syr/resources/spm-headline-statements>.

<sup>3</sup> Intergovernmental Panel on Climate Change [IPCC], *AR6 Synthesis Report: Headline Statements*, at B.1, <https://www.ipcc.ch/report/ar6/syr/resources/spm-headline-statements>. See also Int’l Energy Agency, *Climate Change: Growth in Clean Energy Technologies is Keeping the Door Open to 1.5C*, <https://www.iea.org/topics/climate-change#key-findings> (discussing that “bolder action is necessary this decade.”).

### **B. Principle 2: Air, land and water**

Section 2.2, paragraph 30 on land is problematic. While this paragraph may have good intentions, it misses the mark. Any resource management practice in a local community, by small-scale landholders, or by Indigenous Peoples must involve collaboration with those people to develop a joint resource management plan. While the reference to “culturally sensitive sustainable resource management practices” is welcome, as written it is too vague and runs the risk that Indigenous Peoples, small-scale landholders, or local communities will be left out of decisions affecting their own land. “Appropriate and culturally sensitive” approaches cannot and should not be developed by activity participants themselves, but must be done with meaningful consultation and participation of rights-holders who will be impacted by the activity.

### **C. Principle 4: Human Rights**

To start, human rights should not be relegated to one principle of many, but should instead be an overarching principle. Doing so would ensure that the SDT and all of its environmental and social safeguards are designed and implemented in a way that is compatible with human rights and accompanying obligations. Human rights overlap with all of the environmental and social safeguards in the SDT.

Additionally, Principle 4 as proposed is inadequate. First and foremost, it should not elevate one human right– the right to development– above others. All human rights should be respected, not just those human rights relating to sustainable development, poverty alleviation and ensuring fair distribution of development opportunities and benefits. This principle needs additional direct questions that get to the source of the issues. While some questions have been added in version 3 of the SDT that did not previously exist, this section is still lacking and the criteria for this section is insufficient. The only principle listed under this criteria states “An activity is not to discriminate with regard to participation and inclusion and is also not to undermine the national or regional measures for the realization of the right to development.” This implies that the focus is on protecting the right to develop more than protecting, respecting, and fulfilling all human rights.

In Table 8, one question addresses whether local communities and individuals have raised human rights concerns, however, this should also include Indigenous Peoples. Unfortunately, in version 3, this question has been eliminated, which raises concerns about whether the right to participate is being upheld. It also undermines the value of issues being brought up during stakeholder consultation if that is not required to be reported to those considering whether to approve an activity for participation in the Article 6.4 mechanism. Additionally, a question should be added about whether activity participants understand their human rights and whether information has been provided to participants in a timely and understandable form and language.

### **D. Principle 5: Labor**

As currently written, Principle 5 on labor risks being virtually meaningless, as all principles in this section are to be merely “considered” by the activity participant. This leaves

every principle ripe for abuse as activity participants can claim that they did consider the principles, but decided that they were not important. Neither this principle, nor any other can be treated as merely a check-box exercise.

Further, the principle does not mention the International Labor Organization's core labor standards. Those standards should not only be referenced here, but also should be the minimum standards that any Article 6.4 activity must comply with.<sup>4</sup> Additionally, project workers should be given access to meaningful avenues to raise workplace concerns. "Accessible" means are not the same as "meaningful" means, and the SDT should include the latter and it should be based on international best practice. Protections for whistleblowers should also be required.

#### **E. Principle 6: Health and Safety**

Statements in this section are not in line with the World Health Organization (WHO). Under the WHO constitution, "health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."<sup>5</sup> Not only is this not in line with the WHO, the WHO is not even referenced in this section.

As noted above, risks can occur after the crediting period. As such, health risks that may occur after the activity cycle, but as a result of the activity need to be considered as well, an activity participant's responsibility extends past the end of the crediting period as there may be impacts as a result of the activity that occur after the crediting period.

#### **F. Principle 7: Gender Equality**

To start, there should be an action plan produced by the activity participant that addresses gender violence, enhances women participation (particularly women in leadership roles), and generates socioeconomic benefits for women. And, as mentioned in previous sections, when national laws and regulations are inadequate, the Supervisory Body should set minimum guidelines related to gender protection. The activity participant should take care to avoid contributing to the unpaid workload of women and girls, and the SDT should recognize this specifically and address it as a part of the assessment. The exclusion of questions related to issues brought up during stakeholder consultation is also concerning here. As noted above, climate action that incorporates rights-based approaches and inclusivity leads to more sustainable outcomes. There is a right to public participation, access to information, and access to justice. Again, if the activity participant is not required to report on those issues, then it calls into question whether the stakeholder consultations and grievance processes have been sufficiently implemented.

#### **G. Principle 8: Land Acquisition and Involuntary Resettlement**

Involuntary settlement should be avoided. The language in this section is weaker in this version of the SDT than the prior one. Now, according to section 5.3.5, paragraph 62, "the activity participant *shall make efforts* to avoid involuntary resettlement." Stronger language should be used here and it should state that "the activity participant shall avoid involuntary

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<sup>4</sup> *Introduction to International Labour Standards*, ILO, <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/lang--en/index.htm>.

<sup>5</sup> *Constitution*, WHO, <https://www.who.int/about/accountability/governance/constitution>.

resettlement.” The “shall make efforts” qualifier weakens the activity participants' responsibility to avoid relocation. Particularly, Indigenous Peoples should *not* be subject to resettlement or land acquisition. Further, any resettlement plan must be prepared with the direct participation of the community, individuals or Indigenous Peoples concerned and in accordance with international standards. There is an inherent power imbalance between parties in developing a resettlement plan, the SDT needs to recognize this and emphasize the importance of good-faith negotiation. There should be an agreement on all parts of the resettlement plan, including benefits, costs, and responsibilities of all parties.

#### **H. Principle 9: Indigenous Peoples**

First and foremost, the SDT must ensure that it is in line with the UN Declaration on the Rights of Indigenous Peoples. All potential 6.4 activities must comply with the rights of Indigenous Peoples, including, critically, Indigenous Peoples' right to self-determination. In principle 9, paragraph 69, the tool states that “the assessment shall include the potential impacts on their rights, lands, territories, gender relations and resources.” The assessment should also include impacts on culture, cultural heritage, and other potentially intangible impacts on Indigenous Peoples. In every instance where Indigenous Peoples are involved, there should be explicit language regarding a requirement to ensure Indigenous Peoples' right to free, prior and informed consent (FPIC). FPIC is an iterative and ongoing process. It must be recognized that consent can be revoked at any point, and activity participants must respect any revocation of consent. There also must be recognition that Indigenous Peoples can say no, and a genuine process of information sharing in a culturally appropriate manner and language must be used.

#### **I. Principle 10: Corruption**

The section on corruption is extremely problematic as it lacks the guidance and principles necessary to actually prevent corruption. To start, there needs to be a clear definition for corruption and for corrupt practices, and activity participants and involved stakeholders should detect and respond to corruption in the design, commissioning, operating, and *decommissioning* of a proposed activity. Activity participants' responsibility extends beyond the operation of the project. Further, as suggested by the IATP during the last call for submissions, the Supervisory Body may need to consult with the Interpol Environmental Crimes Unit to create a sustainable protection plan against corruption.<sup>6</sup>

#### **J. Principle 11: Cultural Heritage**

When developing a cultural heritage plan, those whose culture may be affected by the activity must be meaningfully consulted. This essential piece is missing from the current language in the SDT on cultural heritage. Paragraph 79 states, “The activity participant will not proceed with the activity until an assessment by professionals and/or an entity on cultural heritage, recognized by the host government, is made to ensure that no adverse impact to cultural heritage will occur.” However, what happens if the national government does not have

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<sup>6</sup> Steve Suppan, Inst. for Agric. & Trade Pol'y, *Call for public input: Draft: Article 6.4 Sustainable Development Tool (ver. 02.0)*, at 3 (Dec. 1, 2023) <https://unfccc.int/sites/default/files/resource/SB008-SDToolTemplateIATPcomments2.pdf>.

regulations regarding what they consider a competent professional? The Supervisory Body needs to adopt a minimum standard in this regard. Additionally, the SDT should recognize the unique and specific needs associated with Indigenous cultural heritage.

#### **K. Demonstrating impact on sustainable development**

When a mitigation activity has a negative impact, foreseeable or unforeseeable, activity participants should be required to engage in measures to avoid, minimize, and address those impacts and they should be required to submit information in their monitoring reports about the progress of those measures as opposed to merely monitoring the effects.

#### **L. Validation**

Reports submitted on activities under the SDT must be reported publicly as this is critical for oversight and accountability.

#### **M. Annex 1: Cancun Safeguards**

If REDD+ activities are included as potential Article 6.4 activities then they must follow the rules and regulations applicable to any other Article 6.4 activity. If the activity is a REDD+ activity, then it must also comply with the specific obligations under REDD+, such as the Cancun Safeguards. However, compliance with the Cancun Safeguards does not absolve activity participants from following the necessary rules and regulations established for Article 6.4 activities.

#### **N. Annex 2: Removals**

As a starting point, removals should not be credited as Article 6.4 activities. As extensively explained in our previous submissions to the Supervisory Body, removals run the risk of delaying necessary action that is urgently needed to mitigate climate change, primarily the immediate phase out of all fossil fuels—coal, oil, and gas—, and present significant harm to human rights and the environment.<sup>7</sup>

The annex, in paragraph 8, acknowledges that this annex is presenting options for addressing specific risks associated with activities involving removals even though the CMA has yet to approve the Supervisory Body's recommendations on activities involving removals. It is imperative that any annex on environmental and social safeguards related to removals not prejudge the outcome of the Supervisory Body's deliberations on removals and that any subsequent decision and adoption by the CMA is accompanied by all necessary safeguards.

In the annex, table 1, the Supervisory Body recognizes a series of risks and benefits associated with different CDR activities. While it does not seem to even capture all of the risks, reading through this table, it appears that each activity presents a series of risks that run directly against the environmental and social rights that the SDT purports to protect. For example, it fails to include that there is a false equivalency between fossil carbon and terrestrial (ecosystem) carbon; these two are not fungible and one cannot offset the other with a carbon removal or sink

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<sup>7</sup> CIEL has previously responded to calls for submissions, including submitting comments on [Annex 15: Draft Recommendation: Activities involving removals under the Article 6.4 mechanism](#), [comments on the call for submission on the removals prior to SB003](#), in [response to the call for submission from Decision 7/CMA.4](#), and in [response to the Structured Public Consultation on Removal activities under the Article 6.4 mechanism Questionnaire on Removals Activities](#).

of the same amount.<sup>8</sup> The IPCC has addressed this false equivalency in its Sixth Assessment Report and noted that the climate effect of carbon dioxide removal at scale is not yet known and is not equivalent to the climate effect of initially avoiding the same quantity of carbon dioxide emissions.<sup>9</sup> As noted in the paragraphs following the table, the risks and impacts of CDR are uncertain, but include risks associated with the environment, biodiversity, ecosystems, local communities, Indigenous Peoples, non-permanence, and carbon reversal. If the Supervisory Body were to approve activities of this nature, being aware of the potential risks, it would directly affect the credibility of the mechanism. If a carbon credit is generated from an activity that exacerbates greenhouse gas emissions or is one that can be reversed or is not permanent, then that carbon credit cannot be considered to support action, much less ambitious action, towards reducing GHGs.

While we understand the reasons for providing insight into the discussions at the CDM related to governance of CCS activities and how the voluntary carbon markets have addressed activities involving removals, neither should be deemed appropriate for adoption by the Article 6.4 mechanism. Both the CDM and the VCMs have been riddled with scandal, abuse, and negative impacts on people and the environment, and the Article 6.4 mechanism, which is part of the Paris Agreement, should not repeat these mistakes.<sup>10</sup> Instead it should focus on ensuring that activities are in line with human rights and international law.

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<sup>8</sup> Kate Dooley et al., *The Land Gap Report: 2022*, 32 (2022), [https://landgap.org/downloads/2022/Land-Gap-Report\\_FINAL.pdf](https://landgap.org/downloads/2022/Land-Gap-Report_FINAL.pdf); see also Wim Carton, Jens Friis Lund, Kat Dooley, *Undoing Equivalence: Rethinking Carbon Accounting for Just Carbon Removal*, *Front. Clim.* 3 (2021); 41 Scientists, *10 myths about net zero targets and carbon offsetting, busted*, *Climate Home News* (Dec. 11, 2020), <https://www.climatechangenews.com/2020/12/11/10-myths-net-zero-targets-carbon-offsetting-busted/>.

<sup>9</sup> Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2021: The Physical Science Basis - Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2021) [IPCC AR6 WGI], Technical Summary, 3.3.2 at p. 99 (2021) (“Asymmetry in the carbon cycle response to simultaneous CO<sub>2</sub> emissions and removals implies that a larger amount of CO<sub>2</sub> would need to be removed to compensate for an emission of a given magnitude to attain the same change in atmospheric CO<sub>2</sub>”); see also *id.* (“The century-scale climate-carbon cycle response to a CO<sub>2</sub> removal from the atmosphere is not always equal and opposite to the response to a CO<sub>2</sub> emission.”).

<sup>10</sup> See, e.g., Heidi Blake, *The Great Cash-for-Carbon Hustle*, *The New Yorker* (Oct. 16, 2023), <https://www.newyorker.com/magazine/2023/10/23/the-great-cash-for-carbon-hustle>; Patrick Greenfield, *Revealed: More Than 90% of Rainforest Carbon Offsets by Biggest Certifier Are Worthless, Analysis Shows*, *The Guardian* (Jan. 18, 2023) (finding that a forest-based offset portfolio of the world’s largest crediting program—which is associated with three-quarters of all voluntary offsets—overstated baseline threats by 400 percent and that 21 of 29 projects reviewed offered “no climate benefit.”), <https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-biggest-provider-worthless-verra-aoe>; see also Nina Lakhani, *Revealed: top carbon offset projects may not cut planet-heating emissions*, *The Guardian* (Sept. 19, 2023), [https://www.theguardian.com/environment/2023/sep/19/do-carbon-credit-reduce-emissions-greenhouse-gases?CMP=Share\\_AndroidApp\\_Other](https://www.theguardian.com/environment/2023/sep/19/do-carbon-credit-reduce-emissions-greenhouse-gases?CMP=Share_AndroidApp_Other); Lisa Song, *An Even More Inconvenient Truth: Why Carbon Credits For Forest Preservation May Be Worse than Nothing*, *ProPublica* (May 22, 2019), <https://features.propublica.org/brazil-carbon-offsets/inconvenient-truth-carbon-credits-dont-work-deforestation-redd-acre-cambodia/>; Jutta Kill et al., FERN, *Trading carbon: How it works and why it is controversial*, 59 (Aug. 2010); M. Carnes et al., ‘How additional is the Clean Development Mechanism?: Analysis of the application of current tools and proposed alternatives’ (March 2016); M. Castagné et al., *Carbon Market Watch, Secours Catholique, CCFD-Terre Solidaire & IATP, Carbon Markets and Agriculture: Why offsetting is putting us on the wrong track*, 6 (2020); Winston ChoiSchagrin, *Wildfires are ravaging forests set aside to soak up greenhouse gas[s]es*, *N.Y. Times* (Aug. 23, 2021), <https://www.nytimes.com/2021/08/23/us/wildfires-carbon-offsets.html>.



Given the uncertainty of the recommendations on activities involving removals, it seems premature to determine how the SDT in its current form, which remains inadequate overall, could apply to these potential removal activities. Additional safeguards will likely be necessary to avoid negative environmental and social impacts and protect environmental and social rights against the potential risks associated with any activities involving removals. Potential CDR activities, if submitting as an Article 6.4 activities, must be required to complete the SDT assessments in addition to another set of assessments related to removal activities.

### **III. Conclusion**

In conclusion, the Article 6.4 Sustainable Development Tool needs substantial work if it is going to adequately ensure that human rights are upheld and negative environmental and social impacts are avoided. While it is critical that this and other governance tools are in place prior to the full operationalization of the 6.4 mechanism and any activity takes place, that does not mean that it should be rushed or that any tool will do. Rather than approving this tool as currently presented, the Supervisory Body should take the time necessary to ensure that the tools it puts in place are sufficient to ensure that all 6.4 activities avoid negative environmental and social impacts and violations of human rights, and ideally, that they lead to positive benefits. People and the environment bear the risk of Article 6.4 activities, which must be the priority when considering the recommendations and rules adopted to operationalize the mechanism.

We thank you for the opportunity to comment, if you have further questions or concerns about our submission, please contact Erika Lennon, [elennon@ciel.org](mailto:elennon@ciel.org).