

**Submission from the Office of the United Nations High Commissioner for Human Rights (OHCHR) in response to the Call for Inputs on Draft Procedure: Appeal and grievance processes under the Article 6.4. mechanism (v. 02.0)**

13 February 2024

The Office of the United Nations High Commissioner for Human Rights (OHCHR) welcomes the opportunity to provide input in response to the United Nations Framework Convention on Climate Change (UNFCCC) Call for Inputs on the "Draft Procedure: Appeal and grievance processes under the Article 6.4 mechanism."<sup>1</sup>

The right to remedy is a core tenet of the international human rights system. This call for inputs provides an important opportunity to incorporate lessons learned from the operation of similar accountability mechanisms, ensure that documented obstacles to access to remedy under these mechanisms are adequately understood and addressed in the Appeal and Grievance Processes, and promote access to effective remedies for all those potentially impacted by the Article 6.4 mechanism.

Human rights norms and standards relevant to ensuring access to justice for rights-holders are set out in a series of international and regional human rights instruments<sup>2</sup>. To address human rights violations, duty-bearers are required to have in place appropriate procedures to guarantee rights-holders access to justice, adequate, effective and prompt reparation for harm suffered, and access to relevant information concerning violations and redress mechanisms. The Paris Agreement under the United Nations Framework Convention on Climate Change underscores that State actions to address climate change should respect, promote and consider their respective obligations on human rights.

Effective appeal and grievance processes are vital for ensuring that the environmental and social impacts of all actions under Article 6.4 of the Paris Agreement are adequately addressed and remedied. These mechanisms should provide a structured process for individuals and communities, particularly those most affected, to voice their concerns and seek redress for potential harms arising from Article 6.4 activities. This not only aligns with the human rights obligations of States but also enhances the integrity and effectiveness of climate action under the Paris Agreement.

As part of the third phase of its Accountability and Remedy Project, OHCHR analysed and made recommendations for enhancing the effectiveness of grievance redress mechanisms and independent accountability mechanisms, including with respect to meeting the Guiding Principles on Business and Human Rights' effectiveness criteria<sup>3</sup>. The UN Guiding Principles on Business and Human Rights, which were endorsed by the Human Rights Council in 2011, clarify the complementary, but distinct, human rights responsibilities of States and business enterprises. Any procedure for Appeal and Grievance Processes for actions taken in relation to Article 6.4 should comply with the effectiveness criteria set out in UN Guiding Principle 31. This principle sets out that non-judicial grievance mechanisms should be:

a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes; consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances, this includes:

- seeking rights holder views when designing the Appeal and Grievance Processes

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

<sup>2</sup> All core international human rights treaties are relevant in this context.

<sup>3</sup> OHCHR Accountability and Remedy Project III: Enhancing effectiveness of non-State-based grievance mechanisms in cases of business-related human rights abuse ([link](#))

- minimizing undue influence from any actors;
- maintaining independence from those whose activities are subject of grievances;
- minimizing conflicts of interest;
- proactively disseminate info about what mechanism can / can't do, how it works, relevant policies;
- hire suitably qualified people / invest in training.

b) Accessible: being known to all stakeholder and rightsholders groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access, this includes:

- user-friendly design;
- minimized eligibility criteria;
- avoiding complex pleading requirements;
- allowing participation in own language;
- having multiple entry points for complaints / communication;
- providing resources/services to assist stakeholders;
- allowing collective grievances;
- do not restrict other avenues to remedy;
- robust plans for preventing / addressing retaliation risks.

c) Predictable; providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means for monitoring of implementation and addressing claims without delay;

d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms; ensure a possibility for withdrawal from process, representation, and opportunity to obtain and comment on relevant info before material decisions are made.

e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake, including by regular disclosure of information;

f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights by involving rights holders in remedy decisions (type of remedy needed and how it should be delivered), assess / address potential harms of remedial outcomes as well to have policies and process in place to address non-implementation of remedial outcomes;

g) A source of continuous learning: ensuring there are systems in place to improve mechanism over time, drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harm

h) Operational-level grievance mechanisms should also be based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

These criteria are interrelated and should be taken as a whole. Disregard for one would weaken the ability of the mechanism to meet the other criteria and weaken effectiveness. Unfortunately, the appeal and grievance processes reflected in the Draft Procedure do not meet all of these criteria and are therefore inconsistent with human rights obligations and standards.

With reprisals against human rights and environmental human rights defenders increasing, including against complainants to the independent accountability mechanisms of development finance institutions, it is important that the Appeal and Grievance Processes have a protocol or policy on how to handle cases where aggrieved parties fear retaliation. In this respect, OHCHR would like to

highlight relevant guidance on the protection of human rights defenders developed by UN human rights mechanisms and other UN entities to address the issue of potential reprisals against those seeking to engage with them.<sup>4</sup> There is a need to reduce and address risks, for instance, ensuring that personnel involved in the Appeal and Grievance Processes assess risks of retaliation in specific cases and take actions to address them; rights holders are informed about what can be done and can't be done to ensure safety; and the confidentiality of rights holders (i) if requested, and (ii) if circumstances otherwise make it appropriate is protected; personal information is not shared without explicit, informed consent.

It is also important that lessons can be drawn from the experiences of multi-lateral development banks and those of climate financing mechanisms, such as the Green Climate Fund Independent Redress Mechanism, which can be considered as “best practice” in accountability mechanism design, as reflected in its pilot self-assessment against UNGP 31 criteria<sup>5</sup>.

Regarding the questions raised in the Call for Input, OHCHR would like to emphasize that the approach towards the Appeal and Grievance Processes should be guided, overall, by the integration of human rights principles and norms in the design and operation of the processes.

1. With respect to the first question “How can the risk of abuse of the processes be minimized while ensuring equitable access to the processes”, OHCHR is concerned by the Supervisory Body’s focus on risk of abuse of the processes. This, as the framing of the first question, risks promulgating false assumptions about those who have suffered harm and prejudicing more important considerations regarding the design of the processes. In OHCHR’s view, the primary focus in this context should be on envisioning how to operationalize access to justice for those who have suffered or may suffer harm.
  - (i) In terms of standing, the broadest possible interpretation of who has standing to file an appeal or submit a grievance is a critical component in ensuring fair and equitable access to grievance processes. This implies that the processes should be open to any individual or group of persons and their representatives that allege potential and actual harm from projects under article 6.4. It should be possible to submit an appeal or a grievance, including for rights-holders and stakeholders that may be affected in other countries. With regard to para 82 of section 7.3, which defines that an appeal may be filed or a grievance may be submitted in any of the six official UN languages, it is important to ensure accessibility for all stakeholders regardless of residency or domicile and their right to submit their appeal or grievance regardless of language used. In addition, any complainant who cannot read or write should be able to lodge a complaint verbally, with the receiving official is required to record it.
  - (ii) Regarding fees, with respect to para. 12 of section 4.4.1, which determines the standard and reduced appeal fee, OHCHR would like to highlight that to ensure equitable access, the appeal and grievance processes must waive any use fees. Additionally, they must actively reduce subsequent financial costs. The mechanism must provide materials, resources, and advisory services to enhance accessibility. These should be in formats that meet the requirements, and are consistent with the rights, of children, people facing challenges with respect to literacy, and persons with disabilities, including persons with

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<sup>4</sup> See, e.g.: Guidance Note for United Nations Resident Coordinators & Country Teams: Supporting Governments to Better Respect, Promote and Protect Environmental Human Rights Defenders (November 2023).

<sup>5</sup> Self-Assessment Report of the IRM | Independent Redress Mechanism | Green Climate Fund ([link](#))

hearing, sight or mobility impairments and in the languages of the people for whom they are intended.

- (iii) The timeframe for filing an appeal should be flexible, prioritizing the need for sufficient time for affected parties to become aware of and understand the impacts of a project and to prepare their case. It should also take into account the length of time that abuses may take to become apparent or for the rights-holders to find out about the processes.
- (iv) Simplifying admissibility requirements is crucial. Appellants or complainants should only need to report on allegations of harm from Article 6.4 activities. In determining the scope of appealable decisions, it is also crucial to consider procedural aspects to ensure the process is accessible, equitable, and does not impose undue burdens on the appellants. Appeals and complaints should be accepted throughout the entire project cycle, starting from the pre-approval stage. Requirements of the para. 34 of section 5.1, regarding ‘direct adverse effects and from the implementation or treatment of the activity in question within the activity cycle under the Article 6.4 mechanism by way of concrete, tangible and particularized claim of harm to the health, property, local environment or other interest’ are overly restrictive. The limitation of the scope of the complaint procedure to direct and actual impacts is problematic, as it can hinder the accessibility of the process and therefore weaken its role in harm prevention. Such a narrow focus excludes indirect impacts, which can be equally significant, and overlooks non-local stakeholders who may be profoundly affected. Additionally, an emphasis on property-related and local environmental consequences might neglect other crucial aspects such as cultural human rights impacts. Direct causality between an Article 6.4 activity and an adverse effect would be overtly challenging to establish in complex systems and might lead to the exclusion of legitimate grievances. Therefore, the criteria for grievance submissions should be expanded to include a broader range of impacts and affected parties, ensuring a more inclusive and effective grievance mechanism.
- (v) On measures to ensure the finality of Supervisory Body decisions to provide a reasonable level of certainty to activity participants, OHCHR would draw attention to the following considerations. According to UNGP 31, a grievance mechanism can only serve its purpose if the people it is intended to serve know about it, trust it and are able to use it. The interest of appellants and grievants has to be treated in a way, which ensures the level of certainty for them, not only for activity participants. This implies that appellants and grievants must be afforded the opportunity to present new grievances throughout the duration of the activity, ensuring their rights and interests are considered and safeguarded.
- (vi) OHCHR is concerned for the framing the question “How should the appeals and grievances procedure relate to integrity safeguards under the Article 6.4 mechanism”. The integrity safeguards defined in para. 56 of the section 6.8. of “Article 6.4 activity standard for projects”<sup>6</sup> lack grounding in international human rights standards and norms. Such integrity standards have to be consistent with international human rights standards and refer to the Universal Declaration of Human Rights (UDHR), core human rights treaties, and relevant resolutions of the Human Rights Council and General Assembly.

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?”

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<sup>6</sup> A6.4-SB008-A04

The processes should ensure an appropriate degree of independence of the independent panels established under para. 16 of section 4.4.3 vis-à-vis the Supervisory Body and other actors whose activities may be the subject of grievances. Poorly designed or implemented grievance mechanisms can risk compounding a sense of grievance amongst affected stakeholders by heightening their sense of disempowerment and disrespect. To ensure the independence and impartiality of appeal and grievance panels, arrangements should be made regarding the roster established for the appeal and grievance processes (section 6) to, as a minimum: (a) Minimize the risk of conflicts of interest for the mechanism (or any of its personnel) with respect to the discharge of its mandate and functions; (b) Minimize the risk of any undue influence of any actor(s); (c) Address power imbalances between relevant actors, including through adopting a gender perspective and paying special attention to people who may be at heightened risk of vulnerability or marginalization. The process has to ensure implementation of the policies, processes and practices needed to maintain that independence in day-to-day operations and at all stages of the processes. In particular, it is concerning that para. 27 of section 4.4.6 states that the Supervisory Body has the authority to uphold its initial decision by choosing to maintain its original stance, effectively overruling the appeal and grievance panel's recommendation. Such a setup could and will undermine the credibility of the appeal and grievance process and could lead to more human rights violations. The commentary to UNGP 31 (h) also notes that an entity cannot both be the subject of complaints and unilaterally determine their outcome, in which regard such "mechanisms should focus on reaching agreed solutions through dialogue" and, "where adjudication is needed, this should be provided by a legitimate, independent third-party mechanism". The latter type of approach could enhance impartiality and fairness in the resolution of disputes, including by delegating the authority to appoint panel members in a given process to an independent third party.

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

The power asymmetries between appellants and grievants and the entities they complain against are real and consequential, and the Appeal and Grievance Processes should aim at reducing these asymmetries at all stages. Relatedly, all costs involved in the operation of the Appeal and Grievance Process should be shared between business enterprises and governments involved in the mechanism established by Article 6.4 and should not be placed on affected parties and their representatives.