

**Submission from the Office of the United Nations High Commissioner for Human Rights (OHCHR) in response to the Call for Inputs on the Draft Tool: Article 6.4 sustainable development tool (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 Tool: Article 6.4 sustainable development tool (v.02.0).

It is especially important that the Supervisory Body of the Article 6.4 mechanism works to ensure environmental and social safeguards are in place before Article 6.4 is operationalized. Further, technologies with uncertain and/or demonstrated risks to human rights and the environment should not be admitted by the Article 6.4 mechanism. All activities under Article 6.4 should respect, protect and fulfil human rights and be guaranteed to meaningfully and sustainably contribute to climate change mitigation. Before operationalizing Article 6.4, OHCHR urges that the Supervisory Body take effective measures to ensure adequate environmental and social safeguards; and continuous and inclusive monitoring and evaluation of all activities under Article 6.4. The sustainable development tool will need to ensure that development actors exercise human rights due diligence to ensure their actions do not harm affected communities. Social and environmental safeguards play an important role in this regard.

The Addis Ababa Action Agenda of the Third International Conference on Financing for Development, for example, encourages development banks “to establish or maintain social and environmental safeguards systems, including on human rights, gender equality and women’s empowerment.” Although not a development bank per se, the role of the sustainable development tool in facilitating large development projects is in many ways analogous to that of a development bank. Important lessons can be drawn from both the experiences of multi-lateral development banks and those of other climate financing mechanisms, such as Guidance produced by Legacy Landscapes Fund (LLF) for Environmental and Social Action Plans in the conservation sector which set out clear requirements for risk-based Environmental and Social Due Diligence (ESDD)<sup>1</sup> and the Safeguards of the International Climate Initiative (IKI) of the government of Germany<sup>2</sup>.

Past experience has demonstrated that without strong human rights safeguards in place internationally financed development activities can contribute to human rights violations and failed projects. Indeed, even in the presence of safeguards, human rights violations may still occur where the safeguards or their implementation is inadequate. To avoid these problems, the sustainable development tool should be guided, overall, by the integration of human rights principles and norms in its design and operation.

Para. 14 of the draft tool currently refers to human rights as one of the Environmental and social safeguards principles along with Climate and energy; Air, land and water; Ecology and natural resources; Labour; Health and safety; Gender equality; Land acquisition and involuntary resettlement; Indigenous People; Corruption; and Cultural heritage. Categorization of human rights as one among many environmental and social safeguards principles should be changed towards defining human rights as the overarching principle. This approach would ensure that all environmental and social safeguards are designed, interpreted, and implemented in a manner that is fundamentally aligned with and driven by established human rights standards and obligations. Human rights are universally applicable and the subject of detailed regulation at global level, and to varying degrees at regional and

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<sup>1</sup> Guidance Note: Environmental and Social Action Plan Development (incl. UNGP Implementation) ([link](#))

<sup>2</sup> Safeguards Policy of the International Climate Initiative ([link](#))

national levels, overlapping extensively with all Environmental and social safeguards and principles described in paras 10-73 of section 5 of the draft tool.

Para. 42 states that the “...activity developer shall respect international human rights to sustainable development, poverty alleviation and ensuring fair distribution of development opportunities and benefits.” However, adequate Environmental and social safeguards require respect for all human rights not just those contributing to sustainable development. In the context of sustainable development tool projects, which are business activities, the language should align with the UN Guiding Principles on Business and Human Rights (UNGPs), the recognized set of guidelines for States and companies to prevent and address human rights abuses committed in business operations.

The provisions of para. 4 on sharing the results of the assessment of the environmental and social safeguards and the evaluation of sustainable development impact during the local stakeholder consultation should be supplemented by provisions that guarantee the rights to access to information and participation.

Section 5.3.1, which defines Human rights as one of the Social safeguards principles/criteria, refers only to “Gold Standard principles and requirements”. Instead, it should refer to the Universal Declaration of Human Rights (UDHR), core human rights treaties, and relevant resolutions of the Human Rights Council and General Assembly.

Drawing upon past work<sup>3</sup>, human rights norms, and previous OHCHR’ submissions<sup>4</sup>, OHCHR calls for the Supervisory Body to develop adequate environmental and social safeguards in the sustainable development tool consistent with international human rights standards. At a minimum, such safeguards should:

1. Require all activity participants to respect human rights, avoid infringement on the human rights of others, and address adverse human rights risks and impacts caused or contributed to by, or directly linked to, the activities of participants.
2. Ensure accountability and the rule of law;  
Recognise the centrality of human rights in all process related to Article 6.4 Activities;
3. Ensure labor rights including freedom of association, collective bargaining, and the right to a living wage;
4. Guarantee principle of non-discrimination and equality, including with respect to women and girls, LGBTI peoples' rights, and rights of persons with disabilities and older persons;
5. Secure rights of minority populations and Indigenous Peoples;
6. Ensure rights relating to land and resource tenure, housing, property ownership and resettlement.
7. Specifically recognize that that the rights to information, participation and access to justice are an integral part of the process;
8. Include a self-standing performance standard on engagement of stakeholders and rightsholders, including detailed requirements that participation be free of intimidation or coercion and on how to prevent and address reprisals risks. This recommendation is consistent with recent practice of several multi-lateral development banks and would address the

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<sup>3</sup> OHCHR. Benchmarking Study of Development Finance Institutions’ Safeguard Policies, February 2023 ([link](#))

<sup>4</sup> OHCHR Response to the request for views on activities involving removals, including appropriate monitoring, reporting, accounting for removals and crediting periods, addressing reversals, avoidance of leakage, and avoidance of other negative environmental and social impacts, in addition to the activities referred to in chapter V of the rules, modalities and procedure FCCC/PA/CMA/2022/L.14, para. 19 ([link](#)) and Comments and recommendations of OHCHR regarding the future UNFCC Sustainable Development Mechanism, 4 November 2016 ([link](#))

challenges to effective participation, shrinking civic space, and threats and reprisals against activity-affected people;

9. Ensure that The UN Guiding Principles on Business and Human Rights are explicitly integrated within Safeguard policies in order to strengthen the framework for: (a) risk assessment; (b) ongoing, risk-based due diligence; (c) addressing risks throughout the value chain; and (d) remedy;
10. Ensure not only the monitoring of potential negative environmental and social impacts of the realization of Article 6.4 Activities but remediation of them;
11. Avoid supporting any activities that do not comply with applicable laws, including national laws and/or obligations of the country as well as those directly applicable to the activities under relevant international treaties and agreements, whichever is the higher standard.