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To the Supervisory Body:

Background

Namati works to advance social and environmental justice by building a movement of people who know, use, and shape the law. Namati supports grassroots legal advocates, also known as community paralegals, who help people to solve justice problems on the ground. Namati also convenes the Grassroots Justice Network, a global network of more than 15,000 legal empowerment practitioners in 175 countries that share knowledge and resources.

Across our network, communities have found themselves in the middle of carbon markets they didn't expect and they don't understand. Namati and our network partners are supporting communities to understand their rights, negotiate fair agreements, monitor project implementation, and seek remedies when violations occur. We are also gathering lessons from across these carbon market experiences to influence national laws and global policy.

As global carbon markets expand, the communities that we work with expect to see more projects with funding from the sustainable development mechanism. We hope that these projects will bring the benefits communities envision, including jobs, financial security, and business opportunities. At the same time, our experience shows that there is a high risk that some projects will harm people or the environment. That is why the Article 6.4 mechanism needs an effective sustainable development tool to monitor the compliance of the mechanism with human rights standards and principles that will ensure carbon justice for communities impacted by carbon projects.

Comments on the Article 6.4 sustainable development tool

Ensure minimum standards of fairness the mechanism

In order to consistently protect social and environmental rights, and create market stability, the sustainable development tool must provide minimum standards that have to be adhered to across all jurisdictions. The proposed sustainable development tool makes multiple references to the dependence on the national legislation of the host state in place of the minimum standards or principles. While national laws must be respected, we are gravely concerned that



this provision will result in dependence on national frameworks that may not be adequate to cover the minimum standards required for the protection of human rights.

Many countries are experiencing new waves of carbon projects that are outpacing their capacity to build appropriate legal frameworks. RRI's study of national legal frameworks found that 28 out of 31 jurisdictions have no legal definitions of carbon rights.¹ Our network members, who have tried to navigate these carbon projects in the midst of a minimal legal framework, find it difficult to advocate for and protect basic community rights. Without grounding itself in globally agreed to human rights standards, the article 6.4 mechanism risks repeating the failures of other carbon markets.

The following language in the text is of particular concern:

- *Paragraph 19(d)* limits identifying negative impacts to the scope of what is required by national regulations. This creates risk of under-identifying impacts in countries that have yet to fully develop their regulations to reflect their international human and environmental rights commitments. Impacts should be identified based on potential to infringe on international human and environmental rights;
- Further, the sustainable development tool provides that in case of a lack of legal/regulatory requirements of the host Party, the activity participant may look at industry best practices or voluntary corporate policies of the organization to assess if the aspects are harmful. (*table 2, page 81 of the sustainable development tool*) The use of the word 'may' makes it discretionary for the activity participant to look at the industry best practices or voluntary corporate principles in identifying impacts and this may result in not identifying harmful impacts. The sustainable development tool should provide minimum standards that align with industry best practices and voluntary corporate principles.
- The three elements for anti-corruption measures proposed by the 10th principle of the UN Global Compact should be required for all activities, instead of only being considered by activity participants(*page 64 of the sustainable development tool*), requiring not only to avoid bribery, extortion and other forms of corruption, but also to proactively develop policies and concrete programmes to address corruption internally and within their supply chains. It also requires businesses to be challenged to work collectively with civil society, the United Nations, and governments to create a more transparent global economy.

Fair compensation is necessary for sustainable, mutually beneficial markets

Fair compensation for communities that live on and use the land impacted by a carbon project is a fundamental criteria for any just programming. To create a framework that does not clearly

¹ Rights and resources initiative, (2021). Status of legal recognition of indigenous peoples', local communities and afro-descendant peoples' rights to carbon stored in tropical lands and forests, 5. [Status of Legal Recognition of Indigenous Peoples', Local Communities' and Afro-descendant Peoples' Rights to Carbon Stored in Tropical Lands and Forests - Rights + Resources - Supporting Forest Tenure, Policy, and Market Reforms \(rightsandresources.org\)](https://rightsandresources.org/)



state that those who live, use, and own the land where projects take place should benefit creates huge risk of endorsing exploitative, rent-seeking behavior.

To reflect this value, ‘**should**’ must replace “**may**” in paragraph 70 to read: “Furthermore, activity participant **should** take into account that Indigenous Peoples may play a role in sustainable development by often promoting, owning and managing activities and enterprises as partners in development.”

In addition to requiring participation of impacted communities, the SB has the opportunity to create minimum rules that will avoid many of the challenges of getting benefit sharing to impacted communities that have plagued other carbon markets. One of such challenges is the lack of standard definitions of benefit sharing agreements leads to poor implementation.² The absence of a universal understanding and oversight of “benefits” in this context may also result in project developers making their own rules without justification by unilaterally deciding what constitutes a “benefit”, even if it is of little value to local communities.³ All benefit sharing arrangements should follow a common set of guiding principles to ensure fair process and outcome for communities.⁴

Following on good practice from other industries and the experiences of impacted communities, we propose the following additional minimum standards:-

- (a) Require a majority of project profits to flow directly to communities that own and use the land being used for the project; People within an impacted community should have understanding of the options for different forms of compensation, including based on annual rent, profit sharing, and employment.
- (b) Beyond promoting education programmes for communities impacted by carbon projects to access labour opportunities created by the proposed activity (*par 49*), the activity participant should be required to demonstrate that there is a substantial percentage of communities affected by carbon projects who have gained employment from the project. This should be included in the guiding questions for the do no harm risk assessment on labour (*P 5.1*).
- (c) The Supervisory Body (SB) should include financial disclosure as part of market participation requirements: Activity participants must be responsible for ensuring that information about the timing, size, and use of these finances is clearly and transparently communicated in a timely manner that can be used by impacted communities.

² Carbon markets watch (2023). A fair share of the voluntary carbon market? How the absence of standard rules on benefit sharing arrangements hurts local communities and indigenous peoples. 13. A fair share of the voluntary carbon market? - Carbon Market Watch

³ Carbon markets watch (2023). A fair share of the voluntary carbon market? How the absence of standard rules on benefit sharing arrangements hurts local communities and indigenous peoples. 13. A fair share of the voluntary carbon market? - Carbon Market Watch

⁴ USAID. Carbon finance playbook. Demystifying the capital raising process for nature-based carbon projects in emerging markets. Carbon Finance Playbook (crossboundary.com)



- (d) The activity participants must anticipate harms in consultation with communities and create mechanisms for compensation of anticipated and unanticipated harms of the project. These funds and resources should be established, set aside, and contractually protected from the beginning of the project to be accessed by the community should harm occur and the project otherwise fails. Compensation for harms should not be confused with compensation for use of land or other profit sharing.
- (e) The finances flowing to impacted communities should be managed by the communities themselves. Communities will have the autonomy to make decisions on how to use the finances that flow from the carbon projects should be used since this will ensure that the use of finances are responsive to the communities' aspirations, priorities and expectations. Funds that flow directly to the state (i.e. funds allocated in state budgets or under national state administration) endow government agencies with extensive authority to use the funds for sector development.⁵ Under such systems, communities do not have the authority to use the funds, but may derive indirect benefits from the funds.⁶
- (f) The mechanism should require that compensation agreements are publicly available in a non-proprietary repository and provide simplified standards that communities and partners can model and understand. Simply requiring that there shall be a good-faith negotiated agreement is not sufficient (*P 9.6, page 62*), the agreements have to be publicly accessible and simplified.

Fair land tenure is critical for successful carbon projects and trust with impacted communities

Land tenure challenges are at the heart of many human and environmental concerns related to carbon projects. We support the provision in the sustainable development tool that the activity participant shall recognize and respect the communities' affected by carbon projects collective rights to own, use, and develop and control the lands, resources and territories that they have traditionally owned, occupied or otherwise used or acquired, including lands and territories for which they do not yet possess title. (*P9.4, par 74*)

We propose adding that project activities should not lead to involuntary removal or relocation of property rights holders from their lands or territories and do not force them to relocate activities important to their culture or livelihood. This is contrary to the Free Prior and Informed Consent (FPIC) principle where communities have the option of withholding consent and giving consent voluntarily free from coercion hence the communities should not be forced to relocate from their lands or activities important to their culture and livelihood. Additionally, Article 1 of the International Covenant on Economic, Social and Cultural Rights provides that everyone has the right to freely pursue their economic, social and cultural development and that no one should be deprived of their own means of subsistence.

⁵ Pham, T.T., Brockhaus, M., Wong, G., Dung, L.N., Tjajadi, J.S., Loft, L., Luttrell C. and Assembe Mvondo, S. 2013 Approaches to benefit sharing: A preliminary comparative analysis of 13 REDD+ countries. Working Paper 108. CIFOR, Bogor, Indonesia. WP108Pham.pdf (cifor-icraf.org)

⁶ Pham, T.T., Brockhaus, M., Wong, G., Dung, L.N., Tjajadi, J.S., Loft, L., Luttrell C. and Assembe Mvondo, S. 2013 Approaches to benefit sharing: A preliminary comparative analysis of 13 REDD+ countries. Working Paper 108. CIFOR, Bogor, Indonesia. WP108Pham.pdf (cifor-icraf.org)



For the credibility of the market, greenwashing should be strictly prohibited- all activities must result in no increases of greenhouse gases

Much of the media attention towards carbon markets over the last year centers on questions about the efficacy of the markets amid double counting and offsetting. To protect credibility of the markets, the proposed activities should result in no new increase in greenhouse gas emissions over the baseline scenarios (*par 21*). Further, payments must not be a substitute for eliminating avoidable emissions and the mechanism should require the activity participants to reduce avoidable emissions in addition to participating in the mechanism. Include free, prior and informed consent as a stand alone principle

For the carbon market projects to have a positive impact on the communities affected by carbon market projects, the projects have to ensure that the communities have access to information to give informed consent at the project conception and throughout the project life cycle. The current draft only mentions FPIC when there is the potential of resettlement of indigenous communities. We propose an additional principle to guide the Free Prior and Informed Consent (FPIC). Further, the communities should have the option to say no to projects that may result in infringement of their rights.

The additional principle will contain the following minimum standards:-

- (a) No carbon projects should exist without a robust and meaningful Free, Prior, Informed Consent of the communities. This includes a community's right to say no.
- (b) Activity participants should be responsible for ensuring robust FPIC processes.
- (c) Communities impacted by a project should be able to define what consultation and consent looks like in their community.
- (d) The information provided must include motivation and roles of different actors, options for risk mitigation, and full financial accounting throughout the lifecycle of the project.

In connection to the FPIC principle, the following language in the text is of particular concern:

- *Under Paragraph 81, instead of providing that adverse impacts to cultural heritage should be assessed by professionals and/or an entity on cultural heritage, recognized by the host government and/or academia, it should require that the assessment shall be done by the communities that are going to be impacted by the carbon projects since they are the custodians and users of the cultural heritage.*
- *Inclusion of the right of communities to say no to the activity if they are not willing to agree to the consequences of the activity. (P 11.3)*
- *Instead of requiring the activity participant to consider the opinions and recommendations of competent professionals recognized by the host country government, to the activity design, the text should require the activity participant to consider the opinions and recommendations to the activity design by the communities affected by the activity. (P 11.3 (page 68))*

Consequences of negative impacts to include halting of the project until the activity participant



takes measures to remediate the negative impacts

We propose that projects that result in significant negative impacts should not be allowed to continue until they take measures against the negative impacts. *Under paragraph 96 and 97*, we propose that the DOE (Designated Operational Entity) should be required to make a proposal to the Supervisory Body to halt the project until the activity participant takes measures to remediate the negative impacts, in addition to giving a negative validation or verification opinion. This will ensure that projects that result in significant negative impacts are not allowed to continue until they take measures against the negative impacts.

Conclusion

We strongly believe that a weak sustainable development tool will result in more harm than good and faces the risk of greenwashing and undermining human rights. We propose that the supervisory body take into consideration the above comments to ensure the respect of human rights and a robust environmental and social safeguards system in the Article 6.4 mechanism.