

INPUT OF INDIGENOUS PEOPLES ON THE ARTICLE 6.4 SUSTAINABLE DEVELOPMENT TOOL VERSION 9.0

September, 2024 | SBM014

The International Indigenous Peoples Forum on Climate Change (hereinafter “Indigenous Peoples’ Caucus” or “Caucus”) notes that certain of the recommendations contained in our submissions of February, 2024, and July, 2024, have yet to be incorporated in your most recent draft (version 9.0) for the Article 6.4 Sustainable Development Tool (SDT). We therefore re-attach herewith as Annex 1 our previous submissions of February 2024 (Annex 1a) and July 2024 (Annex 1b). The “General Observations” contained in our February submission continue to be relevant to your latest draft, and we therefore incorporate those observations herein, as well as our other recommendations and comments from our February and July submissions.

The Indigenous Peoples’ Caucus urges you to review and consider carefully the following text changes to the version 9 SDT, but also to review again, where appropriate, the more detailed comments contained in the attached submissions of February and July 2024. With our previous comments in mind, the Caucus makes the following specific text recommendations to this most recent draft SDT, version 9.

We ask that you revisit Element 4, Human Rights, paragraph 52, and incorporate our recommended language, as follows (changes shown in **highlighted bold font** and ~~strikethrough~~):

6.4.1. Element 4: Human rights

52. Human rights constitute an overarching, legally binding framework that informs and guides the A6.4 activity’s implementation and consistency with all environmental and social safeguards. These rights, enshrined in national laws and international treaties, such as the Universal Declaration of Human Rights,⁴² **and the United Nations Declaration on the Rights of Indigenous Peoples** establish fundamental standards to ensure dignity, equality and justice for all. Consequently, Article 6.4 supports the implementation of environmental and social safeguards within project activities that must align with and uphold these **international** human rights **commitments, standards and** principles. Additionally, Article 6.4 recognizes that human rights are central to SD, poverty alleviation, and ensuring fair distribution of development opportunities and benefits, **and its activities are to be implemented with the highest respect for human rights, ensuring that it does not violate human rights or the rights of Indigenous Peoples under any circumstances. Activity participants shall avoid infringing on human rights and shall promptly address any adverse human rights impacts that the activity may cause or contribute to. Special attention must be given to the rights of Indigenous Peoples, ensuring that activities do not proceed without their free, prior, and informed consent, and that measures adopted with the full and effective participation of Indigenous Peoples are in place to mitigate any potential negative impacts on their communities, traditional territories, or cultural heritage.**

We also ask that you revisit Element 9, Indigenous Peoples, paragraphs 75-82, and incorporate our recommended language, as follows (changes shown in **highlighted bold font** and ~~strikethrough~~):

6.4.6. Element 9: Indigenous Peoples

75. The activity participant of the A6.4 activity shall recognize and respect the rights of Indigenous Peoples and **Indigenous** individuals as outlined in ~~host Party~~ **all relevant** laws, regulations, obligations, **commitments, and international standards** of the ~~host Party~~ **directly applicable to the A6.4 activity under relevant international treaties and agreements, as well as respect and take into account Indigenous customs, traditions, rules, and legal systems. Activity participants shall recognize and respect Indigenous Peoples' laws and legal systems or customs that are in accordance with international standards subject only to Article 46.2 of the UN Declaration on the Rights of Indigenous Peoples and regardless of any specific recognition or lack thereof under national laws.**

76. The activity participant of the A6.4 activity supports the creation of opportunities for Indigenous Peoples to participate in and benefit from A6.4 activity-related initiatives that may help them achieve their aspirations for economic and social development **and honors the contributions and rights of Indigenous Peoples, ensuring their participation in decision-making processes and the realization of these benefits in a manner that they deem beneficial, just, and fair.** Furthermore, the Article 6.4 activity **shall** take into account that Indigenous Peoples may play a role in SD by promoting, owning and managing A6.4 activities and enterprises as partners.

77. E9.1: Activity participants of the A6.4 activity are to identify all communities of Indigenous Peoples ~~within the A6.4 activity boundary~~ that may be affected by the A6.4 activity, **while allowing any communities of Indigenous Peoples not identified by the activity participants to self-identify as being affected by the A6.4 activity.** They are to approach these communities with respect, sensitivity, and transparency ensuring that Indigenous Peoples are fully informed and voluntarily participating in the identification process.

78. E9.2: Activity participants of the A6.4 activity, with the full and effective participation of Indigenous Peoples involved, are to carry out an environmental and social analysis of the activities that may affect or involve Indigenous Peoples by completing A6.4-FORM-AC-015 (see figure 1). Adequate resources for the full and effective participation of Indigenous Peoples shall be provided, **including but not limited to provision of financial resources necessary to ensure the full and effective participation of Indigenous Peoples in all stakeholder consultations; provision of information translated into relevant languages and in accessible formats; and the allowance of adequate time necessary for Indigenous Peoples' decision-making related to A6.4 activities, in accordance with their traditional structure customs, laws, and other procedures. The activity participant shall also verify whether Indigenous Peoples reside in the proposed activity areas and/or if the activities may affect Indigenous Peoples outside of activity areas.** The analysis should include the potential impacts on their rights, lands, territories, gender relations, resources, culture, cultural heritage⁵¹ and other potentially intangible impacts on Indigenous Peoples.

79. E9.3: A6.4 activities do not result in the forcible removal of Indigenous Peoples from their lands and territories **as defined by them.** No relocation is to take place without the FPIC of the Indigenous Peoples concerned. FPIC must be documented, as well as the agreements reached in the good faith dialogues, consultations, and negotiations with the Indigenous Peoples.

80. E9.4: Activity participants of the A6.4 activity are to recognize and respect the Indigenous Peoples' collective rights to own, use, develop and control the lands, resources, and territories that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired, **including lands and territories for which they do not yet possess title. No A6.4 activities can take place on these lands and territories of Indigenous Peoples without their free, prior and informed consent.**

81. E9.5: Activity participants of the A6.4 activity are to respect, protect and conserve the cultural, intellectual, religious and/or spiritual property **and rights therein** of Indigenous Peoples. The activity participants are not to access or utilize it without FPIC. FPIC must be obtained when there are impacts on (i) territory or land;⁵² (ii) cultural heritage,⁵³ **which shall include both tangible and intangible cultural, intellectual, religious and/or spiritual property of Indigenous Peoples, including their knowledge, innovations, or practices**; or (iii) places containing sacred elements of special value to the community. FPIC must be documented both within the process and in the agreements reached through dialogues, consultations and ultimately good faith negotiations with the Indigenous Peoples.

82. E9.6: Activity participants of the A6.4 activity are to ensure that Indigenous Peoples ~~are provided with the equitable sharing of benefits~~ **have equal and equitable access to participation in the negotiation of all agreements concerning sharing of benefits, and are provided with the equitable sharing of benefits, at a minimum, therein**, derived from the utilization and/or commercial development of natural resources on their lands and territories or the use of their traditional knowledge and practices by the A6.4 activity. This is to be undertaken through good-faith negotiations **in accordance with the principle of free, prior and informed consent, and carried out in** a manner that is culturally appropriate and inclusive, **that respects the right of Indigenous Peoples to self-determination**, and ~~that~~ does not impede land rights or equal access to basic services, including health services, clean water, energy, education, safe and decent working conditions, and housing, **but instead promotes and supports these rights and access.**

We also ask that you revisit Element 10, Corruption, paragraph 83, and incorporate our recommended language, as follows (changes shown in **highlighted bold font** and ~~strikethrough~~):

6.4.7. Element 10: Corruption

83. The A6.4 activity ensures the avoidance, prevention, and detection of corruption, **including coercion**, and responds to corruption or corruption attempts during activity design, development, implementation and operation. To ensure this, activity participants of the A6.4 activity recognize that corruption negatively impacts every aspect of society by diverting essential resources needed to alleviate poverty, enhance health outcomes, and provide children with quality education.

Finally, we ask that you revisit current Element 11, Cultural Heritage, paragraphs 84, 85 and 87, and incorporate our recommended language, as follows (changes shown in **highlighted bold font** and ~~strikethrough~~):

6.4.8. Element 11: Cultural heritage

84. The A6.4 activity avoids **negative** impacts on cultural heritage. When avoidance of impacts is not possible, activity participants of the A6.4 activity are to identify and implement measures to address impacts on cultural heritage by completing A6.4-FORM-AC-015 and the A6.4 Environmental and social management plan (see figure 1).

85. E11.1: The A6.4 activity does not cause or contribute to the alteration, damage, **destruction**, or removal of any sites, objects, structures **or other forms** of critical cultural heritage, **which includes both tangible and intangible cultural, intellectual, religious and/or spiritual property, including knowledge, innovations, and practices of significance to Indigenous Peoples, as determined by them.**

87. E11.3: Where an activity proposes to utilize cultural heritage, including the knowledge, innovations, or practices of **Indigenous Peoples or those of** local communities, ~~affected communities~~ **they** shall be informed of **and ensured, both in agreement and practice**, their **respective** rights under ~~applicable law~~ **the highest international standards**, the scope and

nature of the proposed commercial development, and the potential consequences of such development. **Utilization of the cultural heritage, including the knowledge, innovations, or practices of Indigenous Peoples requires their free, prior and informed consent.**

ANNEX 1a

INPUT OF INDIGENOUS PEOPLES ON THE ARTICLE 6.4 SUSTAINABLE DEVELOPMENT TOOL VERSION 7.0

July, 2024 | SBM013

The International Indigenous Peoples Forum on Climate Change (hereinafter “Indigenous Peoples’ Caucus” or “Caucus”) notes that certain of the recommendations from our submission of February, 2024, were not incorporated in your most recent draft (version 7.0) for the Article 6.4 Sustainable Development Tool (SDT). We therefore re-attach herewith in Annex 1 our previous submission of February 2024. The “General Observations” contained in our February submission continue to be relevant to your latest draft, and we therefore incorporate those observations herein, as well as our other recommendations and comments from our February submission. We urge you to review and consider carefully the comments below, with updated text proposals based on your most recent draft SDT (version 7), but to also review the more detailed comments contained in the attached submission of February 2024.

In addition to (but not in lieu of) the input included in our February submission, the Indigenous Peoples’ Caucus notes the following regarding the most recent draft SDT (version 7):

With regard to current draft paragraph 27, the Caucus in its submission of February 2024 recommended specific language to protect Indigenous Peoples, their lands, territories and lifeways, including language expressly providing that Indigenous Peoples shall have full and effective participation in assessing the adequacy of measures adopted by activity participants to minimize and/or control the release of pollutants to air. In its most recent draft SDT, the Supervisory Body has failed to include our recommended language in this paragraph. This language is critical for ensuring the protection of Indigenous Peoples, their lands, territories, resources, and lifeways. We ask that you again revisit current draft paragraph 27 and incorporate our recommended language, as follows (changes shown in **bold font** and ~~striketrough~~):

“27. P2.1.1: The activity participants shall avoid the release of pollutants to air. ~~When complete avoidance is not technically and financially feasible~~**In the exceptional circumstance where avoidance is not possible**, the activity participants shall **implement comprehensive measures to** minimize and/or control the intensity and mass flow of their release **at or above the standards set in** ~~in accordance with~~ host party regulations. **These measures shall include adopting the best available techniques and practices that prioritize environmental and public health, especially in Indigenous territories.** This applies to the release of pollutants due to routine, non-routine, and accidental circumstances with the potential for local, regional and transboundary impacts. **For A6.4 activities involving carbon dioxide removal methods that entail the release or discharge of materials into the environment, activity participants shall take appropriate measures to** ~~avoid~~**minimize** air pollution risks. **Indigenous Peoples shall be allowed full and effective participation in assessing the adequacy of the measures described in this paragraph when any related activity may affect them, their lands or territories, as determined by them.**

P2.1.2: Where historical pollution such as air contamination exists, the activity participants shall **conduct a thorough investigation to** determine whether it is responsible for mitigation measures. Activity participants should use historical records, ongoing monitoring, and reporting through data logging of physical measurements, online sources and government data. If it is determined that the activity participants are legally responsible, ~~then~~ **resolution of these liabilities must respect the rights of Indigenous Peoples. The highest standard among national, international and Indigenous standards will shall govern, and the process shall be conducted with the full and effective participation of Indigenous Peoples.** ~~resolved in accordance with host party regulations (national law, or where this is silent, in accordance with subnational or local regulations).~~ Mitigation measures shall be defined **according to this process** and implemented in coordination with national and local government agencies, stakeholders, **Indigenous Peoples**, and the contributors to the contamination.”

For consistency, the Caucus also asks you to mirror its recommended languages contained above for Paragraph 27 (P2.1.1 and P2.1.2) under “P2.1 AIR” to Paragraphs 28 and 29 (P2.2.1 and P2.2.2) under “P2.2 LAND”, as follows:

P2.2 Land

28. P2.2.1: The proposed activity participants shall avoid the release of pollutants to land. ~~When avoidance is not technically and financially feasible,~~ **In the exceptional circumstances where avoidance is not possible,** the activity participants shall **implement comprehensive measures to** minimize and/or control the intensity and mass flow of their release **at or above the standards set in** ~~in accordance with host party regulations.~~ **These measures shall include adopting the best available techniques and practices that prioritize environmental and public health, especially in Indigenous territories.** This applies to the release of pollutants due to routine, nonroutine and accidental circumstances with the potential for local, regional and transboundary impacts. **For A6.4 activities involving carbon dioxide removal methods that entail the release or discharge of materials onto or into land, activity participants shall take appropriate measures to avoid control soil contamination risks. Indigenous Peoples shall be allowed full and effective participation in assessing the adequacy of the measures described in this paragraph when any related activity may affect them, their lands or territories, as determined by them.**

P2.2.2: Where historical pollution such as land contamination exists, the activity participants shall seek **conduct a thorough investigation to** determine whether it is responsible for mitigation measures. **Activity participants should use historical records, ongoing monitoring, and reporting through data logging of physical measurements, online sources and government data.** If it is determined that the activity participants are legally responsible, ~~then~~ **resolution of these liabilities must respect the rights of Indigenous Peoples. The highest standard among national, international and Indigenous standards will shall govern, and the process shall be conducted with the full and effective participation of Indigenous Peoples** ~~resolved in accordance with national law, or where this is silent, in accordance with subnational or local regulations.~~ Mitigation measures shall be defined **according to this process** and implemented in coordination with national and local government agencies, ~~stakeholders communities,~~ **Indigenous Peoples** and the contributors to the contamination.

As for “WATER” under P2.3, the Caucus is concerned that the paragraph referencing historical pollution is missing from the current draft. Therefore, the Caucus also asks you to mirror its recommended language for Paragraph 27 (P2.1.1) under “AIR” to Paragraph 34, and add a new paragraph which contains provision for historical pollution. These should read:

28. P2.3.1: The activity participants shall avoid the release of pollutant to water. ~~When complete avoidance is not technically and financially feasible,~~ **In the exceptional circumstances where avoidance is not possible,** the activity participants shall **implement comprehensive measures to** minimize and/or control the intensity and mass flow of their release **at or above the standards set in** ~~in accordance with~~ host party regulations. **These measures shall include adopting the best available techniques and practices that prioritize environmental and public health, especially in Indigenous territories.** This applies to the release of pollutants due to routine, nonroutine and accidental circumstances with the potential for local, regional and transboundary impacts. **For A6.4 activities that include carbon storage in proximity to groundwater resources, or carbon dioxide removal methods that entail the release or discharge of materials into the environment, activity participants shall take measures to avoid control** water pollution risks. **Indigenous Peoples shall be allowed full and effective participation in assessing the adequacy of the measures described in this paragraph when any related activity may affect them, their lands or territories, as determined by them.**

New Paragraph

P2.3.2: Where historical pollution such as water contamination exists, the activity participants shall seek conduct a thorough investigation to determine whether it is responsible for mitigation measures. Activity participants should use historical records, ongoing monitoring, and reporting through data logging of physical measurements, online sources and government data. If it is determined that the activity participants are legally responsible, then resolution of these liabilities must respect the rights of Indigenous Peoples. The highest standard among national, international and Indigenous standards will shall govern, and the process shall be conducted with the full and effective participation of Indigenous Peoples. Mitigation measures shall be defined according to this process and implemented in coordination with national and local government agencies, stakeholders, Indigenous Peoples and the contributors to the contamination.

Under Principle 4, Human Rights, section 5.3.1, paragraphs 48 and 49 of your latest draft, the Caucus notes with disapproval that you have once again failed to include express reference to the collective rights of Indigenous Peoples and have opted instead to reference only the Universal Declaration on Human Rights as the standard to which activity participants “shall commit.” While the Caucus applauds your inclusion of the Universal Declaration on Human Rights, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which recognizes and sets forth the inherent collective rights of Indigenous Peoples, should be expressly included as well under Principle 4 of the draft SDT.

With regard to paragraph 48 of your current draft SDT version 7, the Caucus requests that you incorporate the language we propose below. Inclusion of this language in paragraph 48 is critical to ensure that the collective rights of Indigenous Peoples are appropriately recognized and respected, and that activity participants are on notice that they *must* avoid infringing on or otherwise adversely affecting these rights. We urge you to adopt the following language in current paragraph 48, as follows (changes denoted in **bold font** and ~~strikethrough~~):

“5.3.1. Principle 4: Human rights

48. Human rights constitute an overarching legally binding framework that informs and guides all environmental and social safeguards. These rights, enshrined in national laws and/or international treaties such as the Universal Declaration of Human Rights **and the United Nations Declaration on the Rights of Indigenous Peoples**, establish fundamental standards to ensure dignity, equality, and justice for all. Consequently, the implementation of environmental and social safeguards within project activities must align with and uphold these human rights principles. ~~Additionally, Human rights are central for~~ **Activity participants shall act in**

accordance with international human rights commitments, standards, and principles, including the rights to sustainable development, poverty alleviation and ensuring equitable and fair distribution of development opportunities and benefits. Also, aAny activity is to shall be implemented with due respect for the highest respect for human rights, ensuring that it does not violate human rights or the rights of Indigenous Peoples under any circumstances. Activity participants shall avoid infringing on human rights and shall promptly address any adverse human rights impacts that the activity may cause or contribute to. Special attention must be given to the rights of Indigenous Peoples, ensuring that activities do not proceed without their free, prior, and informed consent, and that measures adopted with the full and effective participation of Indigenous Peoples are in place to mitigate any potential negative impacts on their communities, traditional territories, or cultural heritage.~~by avoiding infringement on the human rights of others and addressing adverse human rights impacts that the activity may cause or to which it may contribute."~~

With regard to Principle 8 of your most recent draft, "Land acquisition and involuntary resettlement," the Caucus notes with approval your inclusion of specific reference to Indigenous Peoples and their right to free prior and informed consent in current draft paragraph 70. Likewise, the Caucus appreciates and supports your efforts to more fully describe the rights of Indigenous Peoples in draft Principle 9, "Indigenous Peoples." In particular, we approve the inclusion of footnotes 42 and 43 expressly referencing the United Nations Declarations on the Rights of Indigenous Peoples.

The Caucus does not, however, support your deletion of key provisions in paragraph 75, P9.2. The deleted language from this paragraph is critically necessary to safeguard and ensure Indigenous Peoples' rights in the context of Article 6.4 activities. The Caucus reiterates, with emphasis, its request that the following language, which was shown in strikethrough in P9.2 version 6, be reinstated in current draft version 7 at paragraph 75, P9.2, as follows (language recommended for reinstatement denoted in **bold font**):

"75. P9.2: The activity participants, with the full and effective participation of Indigenous Peoples involved, shall carry out an environmental and social analysis of the activities that may affect or involve Indigenous Peoples by completing the A6.4 Environmental and Social Safeguards Risk Assessment Form. Adequate resources for full and effective participation of Indigenous Peoples should be provided. **The activity participant shall verify whether Indigenous Peoples reside in the proposed activity areas and/or if the activities may affect Indigenous Peoples outside of activity areas.** The analysis shall include the potential impacts on their rights, lands, territories, gender relations, resources, culture, cultural heritage, and other potentially intangible impacts on Indigenous Peoples."

In addition, the Caucus strongly advises that "international standards" be included throughout the draft tool wherever you have included reference to international law, including in, but not limited to, the provisions under Principle 9, "Indigenous Peoples," current paragraph 73. This is because the UNDRIP is not a treaty document but is instead a declaration of internationally recognized rights approved by the General Assembly and the 2014 consensus Outcome Document of the High Level Plenary Session of the General Assembly known as the World Conference on Indigenous Peoples, Res. 69/2 and, adherence to these recognized rights is expected. The term "International standards" should be included to ensure the proper implementation of these rights, including under Principle 9 of the draft SDT.

Further, particularly under Principle 9, "Indigenous Peoples," many of our proposed amendments included in our April and February 2024 submissions were not incorporated in the most recent draft SDT (version 7). The language proposed by the Caucus for Principle 9 is critically necessary for the protection of Indigenous Peoples' land, resources and lifeways.

For example, in paragraph 73 of the current draft, you have failed to include the precise language recommended by the Caucus in our submissions of February and April 2024. This language is essential for the protection of Indigenous Peoples rights and must be included in the SDT, just as proposed by

the Caucus. We also note with emphasis that the language in draft paragraph 73 that Indigenous legal systems will only be recognized by activity participants if such are “consistent with applicable national legislation” is directly violative of the UNDRIP in Articles 3 on self-determination and 5 on strengthening Indigenous Peoples distinct legal institutions, among others. Accordingly, the second and third sentences of current draft paragraph 73 should be stricken in their entirety. In line with these comments, the Caucus respectfully requests that you adopt the following changes to current draft paragraph 73 as shown here (changes denoted in **bold font** and ~~strikethrough~~):

“5.3.6. Principle 9: Indigenous Peoples

73. The activity participants shall respect and take into account the rights of Indigenous Peoples and individuals as ~~contained~~**outlined** in applicable legal obligations and, commitments, ~~which include pertinent national legislation, applicable international law and international standards, or in Indigenous legal systems.~~ **as well as respect and take into account Indigenous customs, traditions, rules, and legal systems. Activity participants must recognize Indigenous Peoples’ laws and legal systems or customs that are in accordance with international standards subject only to Article 46.2 of the UN Declaration on the Rights of Indigenous Peoples and regardless of any specific recognition or lack thereof under national laws.** ~~The activity participants shall recognize the Indigenous legal systems which are those that are recognized under host party regulations. In the absence of host party regulations, Indigenous legal systems based on the international law will be recognized if they are consistent with applicable national legislation.~~ The activity participants should also create opportunities for Indigenous Peoples to participate in and benefit from activity-related activities that may help them achieve their aspirations for economic and social development. Furthermore, the activity participants 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.”

With regard to paragraph 76 of the current draft, at P9.3, the Caucus reiterates its request for inclusion of the qualifying phrase “as defined by Indigenous Peoples” at the end of the first sentence of that paragraph, as follows (changes denoted in **bold font**):

“The activity shall not result in the forcible removal of Indigenous Peoples from their lands and territories **as defined by Indigenous Peoples.**”

Inclusion of this language is necessary because, without it, activity participants may simply say that the land or resources are not Indigenous Peoples’ lands and territories and therefore the FPIC requirement does not apply, thereby rendering the requirement inapplicable. Indigenous Peoples must be the ones to identify and determine the extent of their lands or territories and whether any activity affects them or their lands or territories.

There are similar nuanced issues remaining in other draft paragraphs under Principle 9, “Indigenous Peoples.” For example, with regard to current paragraph 74, P9.1, the Caucus notes with approval that you have carefully included much of our proposed language from our February 2024 submission. However, we believe that it is also important to include our other proposed language not incorporated in the current text, which would make expressly clear that “self-identification of Indigenous Peoples is a fundamental criterion.” The Caucus requests that you adopt the following proposed language (changes noted in **bold font**):

- “74. P9.1: Activity participants shall identify all communities of Indigenous Peoples within the activity boundary **or that may be affected by the activity. Self-identification as Indigenous Peoples is a fundamental criterion. This process shall be conducted** with respect, sensitivity, and transparency and ensure that Indigenous Peoples are fully informed and voluntarily participating in the identification process.”

With regard to current draft paragraph 77, P9.4, the Caucus, in its submission of February 2024, proposed this express provision be added to the end of the relevant paragraph: “No activities can take

place on these lands and territories without the free, prior and informed consent of Indigenous Peoples involved.” We again urge you to incorporate this critical language in the current draft, as shown below (changes noted in **bold font**):

“77. P9.4: The activity participants shall recognize and respect the Indigenous Peoples’ 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. **No activities can take place on these lands and territories without the free, prior and informed consent of Indigenous Peoples involved.**”

Likewise, with regard to paragraph 79, P9.6, the Caucus recommended important language in its submission of February, 2024, that you have not incorporated, including specific reference to free, prior and informed consent of Indigenous Peoples. We ask that you revisit and incorporate the proposed language into this draft paragraph. Specifically, we again request the following language be adopted (changes noted in **bold font**):

“79. P9.6: The activity participants shall ensure that Indigenous Peoples are provided with the equitable sharing of benefits to be derived from utilization and/or commercial development of natural resources on lands and territories or the use of their traditional knowledge and practices by the activity. This shall be done through good faith negotiation **and dialogue conducted in accordance with the principle of free, prior, and informed consent (FPIC). and carried out in a manner that is culturally appropriate, inclusive, and respects the rights of Indigenous Peoples to self-determination. These negotiations should aim not only to avoid impeding land rights or equal access to basic services, including health services, clean water, energy, education, safe and decent working conditions, and housing, but also to proactively support these rights. Negotiation requires transparency, respect for Indigenous Peoples’ timeframes, their legal and decision-making structures, cultural values, and customs, and the provision of all necessary information in relevant languages and accessible formats. Furthermore, it necessitates a genuine intent to reach an agreement that honors the contributions and rights of Indigenous Peoples, ensuring their participation in decision-making processes and the realization of development benefits in a manner that they deem beneficial, just, and fair.**”

With regard to current paragraph 78, P9.5, the Caucus notes with approval that you have incorporated our proposed language regarding FPIC, almost verbatim, into your footnote 43 of paragraph 78 of the draft tool.

With regard to Principle 11, Cultural heritage, paragraph 83, P11.1, the Caucus previously recommended in its February 2024 submission that qualifying language be added to this paragraph, expressly clarifying that Indigenous Peoples shall determine when any cultural heritage site, object, structure, or any other form or manner of cultural heritage has significance to them. You failed to incorporate this language in your latest draft SDT (version 7), and we now again respectfully ask that you revisit and incorporate this language, as shown here (changes denoted in **bold font** and ~~striketrough~~):

“83. P11.1: The activity shall not cause, nor contribute to the alteration, damage or removal of any sites, objects, **structures, or any other form or manner of** ~~critical~~ **cultural heritage, tangible or intangible, including those of significance to Indigenous Peoples as determined by them.**”

With regard to current paragraph 83, P11.2, the Caucus notes with approval your incorporation of the revised requirements of Principle 9, “Indigenous Peoples” into Principle 11, “Cultural heritage,” as well as your express reference to the right of Indigenous Peoples to free, prior and informed consent in this section.

With regard to current draft paragraph 85, P11.3, the Caucus again requests that express reference to Indigenous Peoples be made, and that “local communities” not be used in lieu of or in conflation with

Indigenous Peoples. In accordance with the recommendation we provided in our submission of February, 2024, the changes we request are as follows (changes denoted in **bold font** and ~~strikethrough~~):

- “85. P11.3: Where an activity proposes to utilize cultural heritage, including the knowledge, innovations, or practices of **Indigenous Peoples or those of** local communities, ~~affected communities~~**they** shall be informed of their **respective** rights under applicable law~~international standards~~, the scope and nature of the proposed commercial development, and the potential consequences of such development. **Utilization of the cultural heritage, including the knowledge, innovations, or practices of Indigenous Peoples requires their free, prior and informed consent.**

The Caucus thanks you for your attention to these provisions highlighted above. We request that you review carefully our input provided herein and in our accompanying attached submission of February 2024, and that you consider and include these Caucus recommendations not yet incorporated in your draft SDT.

Annex 1b

INPUT OF INDIGENOUS PEOPLES ON THE SUSTAINABLE DEVELOPMENT DRAFT TOOL

February, 2024 | SB010

General observations

- **Deficiencies in Human Rights language:** The human rights section remains deficient, the rights of Indigenous Peoples must be specifically mentioned.
- **References to International Standards:** References to international standards have been removed, which could undermine the protection and enforcement of human rights, rights of Indigenous Peoples and environmental standards.
- **Lack of a Human Rights-Based Approach:** The draft does not adopt an overall human rights-based approach¹, raising concerns about the prioritization of the right to development over other human rights.
- **Failure to Provide Full and Effective Participation of Indigenous Peoples in the Design and Implementation of the Sustainable Development Tool:** It is imperative that Indigenous Peoples are able to self-identify as rights holders and have the full and effective participation in the assessment of risks to their rights. Additionally, in the sections addressing risks to Indigenous land rights, for example, there is a lack of clarification regarding the methodology for arriving at answers and the implications of responding with "yes" or "potentially" on the final decision-making process.

¹ <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>

Recommendations

Principle 2: Air, Land and Water

Paragraph 22

*Proposed activity shall avoid **the release of** pollutants to air, land and water, this includes both hazardous and non-hazardous pollutants across solid, liquid, and gaseous phases. **This principle covers all forms of environmental degradation**, including but not limited to thermal discharges to water bodies, emissions of both short-lived and long-lived climate pollutants, plastics, biomedical waste, nuisance odours, noise, vibration, radiation, electromagnetic energy, excessive water consumption, water discharge, and the creation of potential visual impacts, such as light pollution.*

Paragraph 23

*P2.1.1: The activity participant **is required to rigorously avoid the release of pollutants. In the exceptional circumstance where avoidance is not possible, comprehensive measures must be implemented to minimize and control** the intensity and mass flow of their release, **going beyond the minimum standards set by host country regulations. This includes adopting the best available techniques and practices that prioritize environmental and public health, especially in Indigenous territories.** This applies to the release of pollutants due to routine, non-routine, and accidental circumstances with the potential for local, regional, and transboundary impacts. **Indigenous Peoples must have full and effective participation in assessing the adequacy of these measures.***

Paragraph 24

*P2.1.2: In cases of historical pollution, such as air contamination, the activity participant **must conduct a thorough investigation to ascertain responsibility for mitigation measures. Should the activity participant be found legally responsible, resolution of these liabilities must respect the rights of Indigenous Peoples. The process should be governed by the highest standard among national, international and Indigenous standards and conducted with the full and effective participation of Indigenous Peoples.***

Principle 4: Human Rights

Paragraph 46

*The activity participant developer shall uphold international human rights commitments, emphasizing the rights to sustainable development, poverty alleviation, and the equitable distribution of development opportunities and benefits. Furthermore, it is imperative that the implementation of any activity is conducted with the highest respect for human rights, ensuring **that it does not violate the human rights or the rights of Indigenous Peoples under any circumstances. This includes actively preventing any infringement on these rights and promptly addressing any adverse human rights impacts that the activity may cause or contribute to. Special attention must be given to the rights of Indigenous Peoples, ensuring that activities do not proceed without their free, prior, and informed consent, and that measures adopted with the full and effective participation of Indigenous Peoples are in place to mitigate any potential negative impacts on their communities, traditional territories, or cultural heritage.***

Principle 8: Land acquisition and involuntary resettlement

NEW PARAGRAPH

No activity shall result in the removal of Indigenous Peoples from their lands and territories, see

paragraph 70. No restriction shall be placed on Indigenous Peoples' rights to their lands, territories and resources without their free, prior and informed consent.

Principle 9: Indigenous Peoples

Paragraph 67:

*The activity participant shall respect and take into account the rights of Indigenous Peoples and individuals as outlined in applicable legal obligations, commitments and international standards as well as Indigenous **customs, traditions, rules and** legal systems. Activity participants must recognize Indigenous juridical systems or customs that are in accordance with international standards, **regardless of their specific recognition or lack thereof under national laws**. Furthermore, activity participants should **also acknowledge that Indigenous Peoples often play a pivotal role in** promoting, owning and managing activities and enterprises as partners in development.*

Note:

This approach underscores the importance of integrating Indigenous perspectives, rights, legal systems, cultural values and customs into development activities, towards fully recognizing their contributions and rights.

Paragraph 68

*P9.1: Activity participants shall identify all communities of Indigenous Peoples within the activity area of influence **or who may be affected by the activity**. **Self-identification as Indigenous Peoples is a fundamental criterion. This process must be conducted with respect, sensitivity, and transparency, ensuring that Indigenous Peoples are fully informed and voluntarily participating in the identification process.***

Paragraph 69

*P9.2: The activity participant, **with the full and effective participation of Indigenous Peoples involved**, shall carry out an environmental and social analysis of the activities that may affect or involve Indigenous Peoples by completing the A6.4 Environmental and Social Safeguards Risk Assessment Form, and **adequate resources for Indigenous Peoples full and effective participation shall be provided**. The analysis shall verify whether Indigenous Peoples reside in the proposed activity areas and/or if the activities may affect Indigenous Peoples outside of activity areas. The assessment shall include the potential impacts on their rights, lands, territories, gender relations and resources.*

Paragraph 70

*P9.3: The activity shall not result in the forcible removal of Indigenous Peoples from their lands **or territories as defined by Indigenous Peoples**.*

Paragraph 71

*P9.4: The activity participant shall recognize and respect the Indigenous Peoples' collective rights to own, use, develop, and control the lands, resources, and territories that they have traditionally owned, occupied, or otherwise rightfully used or acquired, including lands and territories for which they do not yet possess title. **No activities can take place on these lands and territories without the free, prior and informed consent of Indigenous Peoples involved.***

Paragraph 72

P9.5: The activity participant shall respect the cultural, intellectual, religious, and/or spiritual property of Indigenous Peoples and shall not access or utilize it without their free, prior, and informed consent

(FPIC). FPIC must be obtained when there are impacts on (i) the territory; (iii) cultural heritage; or (iv) places containing sacred elements of special value for the community. **FPIC is an ongoing process that involves regular and open dialogue, ensuring that Indigenous Peoples have all necessary information and the capacity to participate fully and effectively. This process, along with any agreements reached, must be clearly documented, reflecting a commitment to good faith negotiation and the acknowledgment of Indigenous Peoples' rights and autonomy.**

Paragraph 73

The activity participant shall ensure that Indigenous Peoples are provided with the equitable sharing of benefits derived from the utilization and/or commercial development of natural resources on their lands and territories, or the use of their traditional knowledge and practices by the activity. This shall be achieved **by engaging in dialogue and negotiations that are conducted in accordance with the principle of free, prior, and informed consent (FPIC), and carried out in a manner that is culturally appropriate, inclusive, and respects the rights of Indigenous Peoples to self-determination. These negotiations should aim not only to avoid impeding land rights or equal access to basic services, including health services, clean water, energy, education, safe and decent working conditions, and housing, but also to proactively support these rights. Negotiation requires transparency, respect for Indigenous Peoples' timeframes, their legal and decision-making structures, cultural values, and customs, and the provision of all necessary information in relevant languages and accessible formats. Furthermore, it necessitates a genuine intent to reach an agreement that honors the contributions and rights of Indigenous Peoples, ensuring their participation in decision-making processes and the realization of development benefits in a manner that they deem beneficial, just, and fair.**

Principle 11: Cultural heritage

Paragraph 77

P11.1: The activity shall not involve or be complicit in the alteration, damage, or removal of any sites, objects, structures, or other cultural heritage tangible or intangible **including those of significance to Indigenous Peoples as determined by them.**

Paragraph 80

P11.3 4: Where an activity proposes to utilize cultural heritage, including the knowledge, innovations, or practices of **Indigenous Peoples or local communities, they** shall be informed of their respective rights, the scope and nature of the proposed commercial development, and the potential consequences of such development. Utilization of the cultural heritage, including the knowledge, innovations, or practices of Indigenous Peoples requires their free, prior and informed consent.