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To the Supervisory Body:

Namati works to advance social and environmental justice by building a movement of people who know, use, and shape the law. Many of our network members who live in communities directly impacted by carbon projects have come together to create the Carbon Justice Principles, a set of key ideas necessary for communities impacted by carbon projects to thrive.

During New York Climate Week 2024, Namati, RMI, and the Office of the High Commission on Human Rights co-hosted a small multi stakeholder roundtable to discuss how to ensure that the human rights of communities and Indigenous Peoples impacted by carbon projects are protected in the final version of the Article 6.4 Sustainable Development tool. Communities and Indigenous Peoples impacted by carbon projects joined industry leaders, civil society advocates, the UN Special Rapporteur on the human right to a clean, healthy and sustainable environment and the UN Special Rapporteur on the promotion and protection of human rights in the context of climate change. While the current draft shows improvement over previous iterations, the consensus in the room was that there is still significant room to ensure that rights are protected under the Sustainable Development Tool and Article 6.4.

To be clear, Indigenous People and frontline non-Indigenous communities impacted by carbon markets do not have the same legal standing or rights. Indigenous Peoples have claims to sovereign nations within host countries and are rightsholders and, therefore, shareholders in all their assets, which are not limited to natural, cultural, or intellectual about/from/by Indigenous Peoples.

This submission aims to summarize key points of discussion and provide specific places where language can be updated to incorporate this feedback. We did not seek consensus of those in the room explicitly and instead encouraged each participant to either submit directly or sign on to the below. This submission represents some key points of the discussion:

- **Treatment of different laws.** The draft remains inconsistent about whether it will always hold to international human rights law (e.g.¶ 52 §6.4.1) or be consistent with host country regulations (e.g. §2.2.1-1). We strongly suggest that any confusion be eliminated by using language of **applicable law** that requires the regulation with the greatest level of protection. Applicable law is a standard used across UN systems. Project developers interested in participating in a UN certified market, should have the capacity to

understand the international and national legal framework. Alternatives create a risk of ambiguity that we fear will create an undue burden for impacted communities to bear the costs of proving violations amid various systems. Applicable law can be integrated with the following:

- Add the language: “Projects will comply with applicable legal and institutional framework, including obligations under Applicable Law* and confirm that the project would not be supported if it contravenes international obligations.”
- *Applicable Law is defined as "national law and obligations under international law, whichever is the higher standard".
- International human rights law could be footnoted along these lines: “Since 1945 the international community has progressively developed and defined international human rights law. The founding documents in this regard are the Charter of the United Nations (1945) and the Universal Declaration of Human Rights (1948). Today, the key definitions of human rights are comprised in the Declaration, in nine core international human rights treaties, in nine optional protocols, and other instruments. United Nations human rights work is largely undertaken within this normative framework. The treaties are central to the work and activities of the Office of the United Nations High Commissioner for Human Rights (OHCHR) at national, regional and international levels. The treaties and their optional protocols are ratified or acceded to by States on a voluntary basis; once a State becomes a party to a treaty or a protocol, it takes on the legal obligation to implement its provisions and to report periodically to a United Nations “treaty body” composed of independent experts.” (Reference)

- **Land Rights**. The current draft continues to confuse recognition of land rights, land acquisition rules, and resettlement. This is a key concern for people impacted by carbon markets. Other standards, such as Verra, have learned that clear rules about land rights recognition and land acquisition are central to having credible markets and reducing risk of violations. Under all cases, FPIC of all communities must be respected throughout the lifecycle of a project. This means that there can be no cases of involuntary resettlement, because communities should always have the opportunity to say no. The challenges on this principle can be easily addressed with the following language changes:
  - Add a paragraph at ¶ 70 §6.4.5. “Project proponents must recognize and respect all formal and informal land rights, and where feasible take measures to secure rights. Project proponents must identify all potentially impacted stakeholders and all formal and Indigenous or customary land rights in the project region. If there is an ongoing property conflict, proponent shall undertake no activity to exacerbate the conflict” *Note this would bring the SD tool in line with the Verra standard* 3.18.1 and *3.18.8.*
  - Add a paragraph at ¶ 70 §6.4.5. “Project proponent must clearly and legally show that it has acquired the rights to use the land, including contractual agreement with local communities and/or the state based on national legal requirements. The contract should represent a just and fair compensation agreement for land use, with at least 50% of revenues going to communities.”

    - Remove ¶ 70 §6.4.5. Instead add: “The Free, Prior, and Informed consent of all impacted communities must be respected. This includes the right of communities to say no to a project. Under no circumstances should there be any physical or economic involuntary resettlement.” *This change would be in line with the Verra Standard* 3.18.8.
    - Add a paragraph at ¶ 70 §6.4.5. “Project proponents are responsible for ensuring that all rights holders have adequate information on an ongoing basis about their rights to participate in decision making about the project and the revenue resulting from the project. This must include information about the land impacted by the project, the agreements involved in the project, the gross and net revenue of the project, the sale price of carbon, and the timing of payments.
- **Risk assessment language.** Experience from other risk-assessment tools dictates that the results will be more useful if the language is amended to allow for a risk spectrum instead of ‘yes/no/potentially.’ A risk spectrum will allow both project developers and host countries to better priorities risks and to couple resources appropriately. The UNDP has resources on developing this language. In the text, it can be remedied with the following:
    - Adjust ¶ 23(d) §6.1 to read: “The activity participants shall identify the level of risks that their A6.4 activity impacts the environmental and social safeguards elements by indicating a risk category (Low, Moderate, Substantial, High).”
- **Protection for Defenders**. It is critical to ensure that environmental defenders are not put more at risk by the creation of new carbon projects. The protection of these defenders is a critical opportunity for the supervisory body and others to understand the real impacts of carbon projects and maintain the integrity of the markets. If project developers and host nations can not guarantee the protection of environmental rights defenders, then they should not be operating these projects. This can be easily remedied in this draft by either adding to ¶ 52 §6.4.1 or creating a new principle section. The following should be added:
    - “It is the responsibility of project developers and host governments to ensure that freedom of speech, including the freedom to oppose or question a project is respected. Under no circumstances should there be any cases of retaliation, formal or informal, against those who are exercising their rights of speech in relation to a project. If retaliation is found to occur, the project should be halted immediately until an appropriate remedy and protection can occur.”
- **Indigenous Peoples**. Respecting Indigenous Peoples’ sovereign claims on their territory is critical to preventing harm from carbon markets. Beyond the scope of the Sustainable Development tool, there continue to be concerns about how nation states may benefit from carbon absorbed on Indigenous Sovereign land. Within the Sustainable Development Tool, we appreciate the evolution of language respecting Indigenous People’s rights. We would add inclusion of respecting Indigenous People’s intellectual property and data rights into ¶ 76 §6.4.6, assuring that Indigenous Peoples have the right to own, control, and manage the data lifecycle across the supply chain's physical and digital spaces.
- **Stakeholder engagement**. We encourage strengthening language around stakeholder engagement in a way that encourages genuine engagement beyond Indigenous

Peoples' right to FPIC. We notice the SD tool references other Article 6.4 documents, which is beneficial to integration and connectivity across different tools and documents, but recommend embedding stronger language in the SD tool itself. We note that Indigenous People are not stakeholders but rightsholders and shareholders. Concrete suggestions on how to strengthen stakeholder engagement language include adding a guiding question for the do-no-harm risk assessment on human rights between P4.5 and P4.6 "Does the activity participant confirm that there is a plan in place to regularly engage with the identified stakeholders to make sure their input is integrated into project design and implementation?"

We appreciate the Supervisory Body's ongoing commitment to reflect the protection of human rights in the Sustainable Development Tool and remain available for further consultation.

Signatories

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