

**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 SD tool (A6.4-SBM014-AA-A07, Version 09.0)”**

**30.09.2024**

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 SD tool (A6.4-SBM014-AA-A07). OHCHR wants to reiterate its inputs to the draft tool, submitted on [19.04.2024](#), [13.05.2024](#) [08.07.2024](#) in response to the previous call for inputs.

OHCHR would like to underline the importance of ensuring that effective environmental and social safeguards are in place before Article 6.4 is operationalized. The sustainable development tool under Article 6.4 should ensure that all activities under Article 6.4 are compliant with human rights, including the right to a clean, healthy and sustainable environment, meaningfully and sustainably contribute to climate change mitigation and adhere to the letter and spirit of the principles of The Rio Declaration on Environment and Development. Thus, the sustainable development tool should establish provisions to avoid supporting any activities that do not comply with applicable environmental and human rights 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.

OHCHR urges that the Supervisory Body take effective measures to ensure accountability and the rule of law; adequate environmental and social safeguards; and continuous and inclusive monitoring and evaluation of all activities under Article 6.4.

OHCHR welcomes that para. 6 of the current draft extends the scope of the SDT to all clean development mechanism (CDM) activities seeking eligibility for transition to the Article 6.4 mechanism.

OHCHR takes note of the language in para. 52 of the section 6.4.1 stating: “*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 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 human rights principles. Additionally, Article 6.4 recognizes that human rights are central to SD, poverty alleviation, and ensuring fair distribution of development opportunities and benefits.*”.

While OHCHR welcomes the recognition of centrality of human rights for sustainable development, it would like to propose revisions to this paragraph for increased accuracy: “*...These rights, enshrined in national laws and/or international ~~treaties~~ **instruments** such as the Universal Declaration of Human Rights establish fundamental standards to ensure dignity, equality, and justice for all. Consequently, Article 6.4 supports the implementation of environmental and social safeguards **in order to ensure that** ~~within all project activities that must align with and uphold~~ **are compliant with** these human rights principles **obligations**”.*

OHCHR welcomes the para 54, which defines that “*Activity participants of the A6.4 activity are to carry out human rights due diligence to identify, evaluate, prevent, and mitigate actual or potential adverse human rights impacts caused by the A6.4 activity. They are to ensure that the A6.4 activity contributes positively to the well-being and dignity of all stakeholders, especially the most vulnerable and marginalized, including Indigenous Peoples, in line with, among others, the UN Guiding Principles on Business and Human Rights, the United Nations Global Compact and the SDGs.*” It is critically important that development actors exercise human rights due diligence, including its environmental dimensions, to ensure their actions do not harm the rights of affected Peoples and communities, including their right to a clean, healthy and sustainable environment.

We also suggest using the term 'groups in vulnerable situations' instead of 'vulnerable people/stakeholders.' Thus, we propose the following edits to the paragraph: “...*They are to ensure that the A6.4 activity contributes positively to the well-being and dignity ~~of all stakeholders; especially the most vulnerable~~ of all stakeholders, rights-holders, and groups, especially those in vulnerable situations and marginalized communities, including Indigenous Peoples, in line with...*”.

Integration of the UN Guiding Principles on Business and Human Rights into safeguard policies would strengthen the framework for: (a) risk assessment; (b) ongoing, risk-based due diligence; (c) addressing risks throughout the value chain; and (d) remedy.

Despite the content of the para. 52 of the section 6.4.1, which calls for human rights to constitute an overarching legally binding framework that informs and guides all environmental and social safeguards, in several cases the draft tool states that the activities have to be consistent only with host party regulations, for example Additional guiding questions for the risk assessment on land 2.2.1-1 and 2.2.2, and guiding questions for the risk assessment on land acquisition and involuntary resettlement 8.2-1 and 8.3.

OHCHR would like to emphasize that those process and activities also have to be consistent with international human rights law, as defined in para. 52, and if issues are regulated by both international human rights law and host party regulations, the regulation providing the greatest level of protection must be applied.

Additionally, for the same reason, while point (i) of the para. 98 of the section 8 calls for the need to consider host Party regulations and other relevant requirements when validating the risk assessment and risk mitigation plan, we propose the following edits: “*Validate the risk assessment and risk mitigation plan presented in A6.4FORM-AC-015, considering host Party regulations and ~~other relevant requirements~~ international human rights law*”. Similarly, proposed edits for the paragraph 53 are: “*The A6.4 activities are to be implemented with respect for participation and inclusion and do not undermine the host Party’s national measures for the realization of human rights **and international human rights law**, including those related to SD.*”

The Rio Declaration on Environment and Development and the Declaration on the Right to Development underline the importance of meaningful, informed and effective public participation. To ensure meaningful and informed stakeholder consultations, the International Covenant on Civil and Political Rights (ICCPR), the Aarhus Convention and the Escazu Agreement alongside various other human rights instruments and multilateral environmental agreements,

guarantee that all people have the right to meaningful<sup>1</sup> and informed participation in environmental decision-making. Paragraphs 15 and 16 on stakeholder consultations should refer not only to host Party rules and/or section 6.9 and 6.10 of Article 6.4 mechanism activity standards, but also be in line with the international instruments highlighted above<sup>2</sup>. Thus, the OHCHR proposes to amend the paragraph 16 by adding language to ensure that: *“the three completed A6.4 SD Tool forms ... shall be shared with stakeholders by the activity participants in the native language of those living in or near the vicinity of the activity areas and will be made available well in advance.”*

Additionally, the SDT should 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 challenges to effective participation, shrinking civic space, and threats and reprisals against activity-affected people.

Regarding para 19 (d), on the definitions of Indigenous Peoples, OHCHR would like to reiterate a call that it has to be in line with UNDRIP<sup>3</sup> to ensure self-identification as Indigenous is considered a fundamental criterion. Additionally, we welcome the reference to the UNDRIP in paragraph 78 and propose to also reference the UNDRIP in paragraph 75 as follows: *“The activity participant of the A6.4 activity recognizes the rights of Indigenous Peoples and Indigenous individuals as outlined in host Party laws and regulations, and obligations of the host Party directly applicable to the A 6.4 activity under relevant international ~~treaties and agreements~~ instruments, such as the United Nations Declaration on the Rights of Indigenous Peoples”*.

OHCHR would also like to propose revisions to the para 81: *“E9.5: Activity participants of the A6.4 activity are to respect, protect and conserve the cultural, intellectual, religious and/or spiritual property 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 **and resources**; (ii) cultural heritage; (iii) places containing sacred elements of special value to the community; or (iv) **storage or disposal of hazardous materials on Indigenous Peoples’ lands or territories**. 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.”* With that regard, we would also like to reference the Study of the Expert Mechanism on the Rights of Indigenous Peoples on a human rights-based approach to Free, prior and informed consent<sup>4</sup>.

Regarding the section 6.4.2. on “Element 5: Labour” OHCHR welcomes that the latest draft returned important provisions aimed toward protecting labor rights – paras 56-62. To ensure freedom of association, the right to collective bargaining, and to a living wage, It is important for para 60 to reference the ten [fundamental ILO Conventions](#) and principle of non-discrimination

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<sup>1</sup> "Meaningful" participation requires, inter alia, that all relevant information is accessible, stakeholders are given ample opportunity to contribute their views, and their input is genuinely considered in the decision-making process.

<sup>2</sup> Additionally, please see [OHCHR Guidelines on the effective implementation on the right to participate in public affairs](#)

<sup>3</sup> UN Declaration on the Rights of Indigenous Peoples

<sup>4</sup> A/HRC/39/62, available at: <https://documents.un.org/doc/undoc/gen/g18/245/94/pdf/g1824594.pdf>

and equality, including with respect to the rights of women and girls, LGBTI people, persons with disabilities , older persons and minorities.

With regard to section 6.4.4 on “Element 7: Gender equality”, it is crucial to recognize women as key drivers of positive climate policies. The principle should call for empowering women and ensuring their active participation in climate policy development and implementation to promote gender equality and enhance effectiveness and sustainability.

With regard to section 6.4.5 on “Element 8: Land acquisition and involuntary resettlement”, the sustainable development tool at a minimum should ensure rights relating to land and resource tenure, housing, property ownership and resettlement in line with “the Basic principles and guidelines on development based evictions and displacement”<sup>5</sup> and CESCR General comment 7<sup>6</sup>.

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<sup>5</sup> Basic principles and guidelines on development based evictions and displacement. Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living. A/HRC/4/18. Available at:

[https://www.ohchr.org/sites/default/files/Documents/Issues/Housing/Guidelines\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Housing/Guidelines_en.pdf)

<sup>6</sup> The right to adequate housing (Art. 11.1): forced evictions : 20/05/97. CESCR General comment 7.