

Reflection Note on the necessity for stakeholder consultations, avenues for redress, and environmental and social safeguards under Article 6 of the Paris Agreement

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by the Center for International Environmental Law (CIEL) & Carbon Market Watch

Introduction

Article 6 of the Paris Agreement creates mechanisms that allow for Parties to engage in cooperative approaches to achieve emission reductions and contribute to the implementation and progressive revision of NDCs. As Parties gather at COP24 to finalize the implementation guidelines, they need to ensure that any mechanism created under Article 6 does not repeat the mistakes of its predecessors, the Clean Development Mechanism (CDM) and Joint Implementation, or other development finance institutions. In addition to other critical provisions in the implementation guidelines, including ensuring environmental integrity, Parties should embrace the need for social and environmental safeguards and governance structures to prevent harm. This includes the adoption of a set of detailed rules for robust stakeholder engagement, and the establishment of an accessible, independent avenue for people to raise grievances and seek redress for harms that do occur.

Development projects, including climate projects, which in principle should be designed to mitigate climate change and deliver on sustainable development objectives, can and do result in harm to people and the environment. Over its existence, the CDM has allowed the registration of several projects with such impacts, e.g. the Barro Blanco hydropower project in Panama, which led to the displacement of indigenous peoples, the flooding of land, and the destruction of biodiversity with no avenue for redress. CDM projects have been criticized for harming communities, violating human rights, and damaging the environment. To end this legacy, and put climate action back on the path it should have followed all along, respecting both people and the environment, Article 6 mechanisms should be established with significantly better environmental and social rights-based safeguards, including an improved governance structure from the outset. Further, projects registered under the CDM should not be approved for registration under the new mechanism(s) without being first re-assessed against robust quality criteria.

Robust Stakeholder Consultation

A key safeguard to be included in article 6 is the definition of clear rules for conducting local stakeholder consultations (LSCs) prior to the implementation of any project that aims to issue carbon credits. LSCs should be a mandatory part of the implementation of any project, and should take place throughout the lifecycle of a project, starting with the design phase. LSCs serve to inform the design of the project, and therefore will not only reduce the risk of conflict around the project, but also increase the likelihood of projects providing positive benefits to the communities. History has shown that lack of meaningful stakeholder consultations often leads to harm to communities and conflict surrounding a proposed activity, which is detrimental to all stakeholders involved in the implementation of a project. It is therefore critical that those who may be impacted positively or negatively by an activity have a role in its design and implementation throughout. (See Joint Reflection Note on article 6.4, paras. 48(m), 70(f)).

Grievance Redress

Additionally, communities must have an avenue for grievance redress if they are harmed, or could potentially be harmed, by an activity that qualifies under article 6. Over the last twenty-five years, there has been increasing recognition in both the development finance and corporate arenas that having systems for addressing grievances is imperative. Currently, the CDM has no adequate avenue for communities to seek redress and recourse if they are harmed by a project. Environmental and social safeguards, such as LSCs, are crucial but cannot always prevent all forms of harm. As such, the implementation guidelines for article 6 must correct this oversight and ensure that clear and predictable avenues for seeking redress exist. This process for grievance redress should be independent, rights-based, accessible, equitable, transparent, legitimate, and efficient (as currently reflected in Joint Reflection Note on article 6.4, Section VI(B), para. 38 (option C1), and should be reflected clearly in Section XIII(J), items 1 and 2, paras. 89-90).

Environmental and Social Safeguards

The Article 6 mechanisms should be guided by the Parties' respective human rights obligations and should not facilitate projects or activities that undermine existing human rights obligations in the name of climate action. Article 6 as a whole should promote sustainable development, and therefore should be guided by principles including the respect for human rights, indigenous peoples' rights, and gender equality. Environmental and social safeguards that reflect these rights must therefore be established under Article 6, and any proposed project or activity must comply with such rules before being approved for registration. The implementation guidelines for both Article 6.2 and 6.4 should include measures to ensure that any activities that involve the transfer of ITMOs or of credits issued under the Sustainable Development Mechanism (SDM) (aka A6.4ERs), should respect and not threaten or adversely impact human rights. It is essential, therefore, that the references in the current text to activities not harming the environment and human rights in Article 6.2 (paras. 35, 37, 44) and in the current text on article 6.4 ensuring that activities comply with human rights obligations (paras. 48, 56) remain. Further, the implementation guidelines should include that these safeguards will be agreed on prior to the operation of the SDM, or the engagement by Parties in any other form of cooperative approaches.

Conclusion

If and when cooperative approaches are used to achieve emission reductions and contribute to the further increase in ambition of successive NDCs, they must not repeat mistakes of the past and should ensure compliance with environmental and social safeguards, procedures for meaningful stakeholder consultation, and an accessible avenue for seeking redress.

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