



## **Carbon Market Watch inputs to the Article 6.4 Supervisory Body ahead of its 11th meeting: sustainable development tool**

Brussels, 22 April 2024

Dear Members and Alternate Members of the Article 6.4 Supervisory Body,

Carbon Market Watch welcomes the Call for Input for the annotated agenda and related annexes of the next meeting of the Article 6.4 Supervisory Body. We would hereby like to submit input on [A6.4-SB011-AA-A06 - Draft tool: Article 6.4 sustainable development tool](#).

We recognise that in this new iteration of the draft, a lot of work has been done to address the comments from the previous call for input and we welcome these improvements. Nevertheless, a tool for environmental and social safeguards cannot be accepted when it is merely going in the right direction: it must be a tool for truly robust safeguards, as is mandated by paragraph 24(a)(x) of the RMPs.

A week-long call for input on a 91-page document is not enough time to provide meaningful and detailed feedback, especially for those the tool is designed to safeguard. Due to the CMA's decision not to adopt the Supervisory Body's recommendations at COP28, Carbon Market Watch urges the Supervisory Body to use the time before operationalisation of the 6.4 mechanism to hold a structured consultation of at least one month before proceeding with the next iteration of the tool, actively seeking input from IPs and LCs and other rights-holders as well as actively involving the Indigenous Peoples constituency and encouraging their participation.

Our recommendations can be found below.

## General comments

The document gives priority to host party legal or regulatory requirements to assess impacts, at the expense of international law or international standards. This is insufficient. The rationale for this, as given in the analysis of stakeholder comments, is: 'based on the RMP which states: "acknowledging that the consideration of sustainable development is a national prerogative", the assessment of principles and criteria is against the host party requirement'. However, this wholly overlooks the paragraph that precedes the acknowledgment of the national prerogative: '24. The Supervisory Body shall, in accordance with relevant decisions of the CMA: (a) Establish the requirements and processes necessary to operate the mechanism, relating to, inter alia: (x) The application of robust, social and environmental safeguards;'. While sustainable development may be a national prerogative, this cannot come at the expense of robust social and environmental safeguards. Robust safeguards require having a minimum guarantee in place that safeguards will be applied; this is inconsistent with deferring to national requirements only.

Moreover, safeguards and sustainable development cannot be merged to a single objective. While safeguards are part of the sustainable development tool, a legacy from the CDM, they must be considered as they are mandated by the RMPs: a requirement in their own right that is not subject to national prerogative. We therefore urge the Supervisory Body to be mindful of the standalone requirement for robust social and environmental safeguards throughout the sustainable development tool.

Furthermore, throughout the document, it is emphasized that the monitoring of impacts of 6.4 activities will only occur during the crediting period of the activity. However, impacts of 6.4 activities do not have a clear boundary at the end of the crediting period; it is possible that activities cause harm after the end of the crediting period. Creating a time boundary to account for these impacts is artificial and not an accurate reflection of the effects these activities can have.

## 5. Environmental and social safeguards

PARA	DRAFT PROCEDURE TEXT	COMMENTS
19(b)	If an activity participant identifies that its activity has an impact on principles under the environmental and social safeguards, the activity participant shall conduct further assessment against principles according to the host country legal/regulatory requirements applicable to the proposed activity type. If host country does not have legal/regulatory requirements on one of eleven principles, the activity participant may apply the criteria and guiding questions of the principles that are identified by an activity in step (a) above using the A6.4 Environmental and Social Safeguards Risk Assessment Form:	This text states that activity participants 'may' apply the criteria and guiding questions, leaving room to not apply these. This must be a 'shall' requirement.
19(b)(i v)	All negative impacts shall be included in the A6.4 environmental and social management plan. In case of lack of legal/regulatory requirements of the host party, the activity participant may take industry best practices or voluntary corporate policies of the organization to assess if the aspects are harmful.	Deferring to 'industry best practices' or 'voluntary corporate policies of the organization' to assess impacts, instead of referring to international standards and robust scientific literature, is not sufficient.
48	P4.1: Activity participants shall commit to the Universal Declaration of Human Right. An activity <del>is not to discriminate with regard to</del> shall respect participation and inclusion and is also not to undermine the national or regional measures for the realization of the right to development.	The reference to the Universal Declaration of Human Rights is a welcome addition to the document and should be maintained.

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The activity participant shall respect for and taking into account the rights of Indigenous Peoples and individuals as contained in applicable legal obligations and commitments, which include pertinent national legislation, applicable international law, or in Indigenous legal systems. The activity participant shall recognize the Indigenous legal systems which are those that are recognized under national laws. In the absence of such laws, Indigenous legal systems based on the international law will be recognized if they are ~~not inconsistent~~ with applicable national legislation ~~and international laws~~. The activity can also create A6.4-SB011-AA-A06 Draft Tool: Article 6.4 sustainable development tool Version 04.0 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, 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.

Only recognizing indigenous legal systems when these are consistent with applicable national legislation will mean in practice, only the national legislation is recognized. In the situation where it is paramount that indigenous legal systems are recognized, namely situations where there is a conflict between indigenous legal systems and national legislation, the sustainable development tool will fall short in upholding the rights of Indigenous Peoples.

73	<p>P9.3: The activity shall not result in the forcible removal of Indigenous Peoples from their lands and territories. No relocation shall take place without the free, prior and informed consent (FPIC)<sup>46</sup> of the indigenous peoples concerned. FPIC must be documented as well as in the agreements reached in the good faith dialogues, consultations negotiation with the indigenous peoples.</p> <p><sup>46</sup> FPIC is a specific right granted to Indigenous Peoples recognized in the United Nations Declaration on the Rights of Indigenous Peoples, which aligns with their universal right to self-determination. FPIC allows Indigenous Peoples to provide or withhold/withdraw consent, at any point, regarding activity impacting their territories. FPIC allows Indigenous Peoples to engage in negotiations to shape the design, implementation, monitoring, and evaluation of the activity. See <a href="https://www.fao.org/indigenouspeoples/our-pillars/fpic/en/">https://www.fao.org/indigenouspeoples/our-pillars/fpic/en/</a></p>	<p>We welcome the requirement for Free, Prior, informed Consent (FPIC) being mentioned explicitly. We also welcome the reference to the United Nations Declaration on the Rights of Indigenous Peoples. This reference should be maintained.</p>
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## 6. Demonstrating impact to sustainable development

PAR A	DRAFT PROCEDURE TEXT	COMMENTS
86	<p>Activity participants shall identify SDGs relevant to the proposed activity type: (a) (b) Activity participants are required to assess the activity against each of the 17 SDGs to identify those SDGs that the proposed project activity has positive <del>and/or negative</del> impacts on and provide justification of any excluded SDGs;</p>	<p>We welcome the identification of impacts to the Sustainable Development Goals now relating to both positive as well as negative impacts. This will provide a more accurate and complete reflection of the impacts that 6.4 activities can have.</p>

## Appendix 1. Draft principles, criteria, and guiding questions for environmental and social safeguards for LULUCF activities

PAR	DRAFT PROCEDURE TEXT	COMMENTS
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3	The "A6.4 SD tool environmental and social safeguards principles" for LULUCF activities should be assessed using the Cancun Safeguards (see Error! Reference source not found.)	While expanding the appendix to cover LULUCF activities rather than REDD+ activities is an improvement, this still creates a confusing distinction where such activities have to follow different safeguards; the Cancun Safeguards are a good reference, and this appendix contains useful provisions on e.g. reversals, but these should complement rather than replace SD Tool safeguards.

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