Submission from the Office of the United Nations High Commissioner for Human Rights (OHCHR) in response to the Call for Inputs on annotated agenda and related annexes for the 11th meeting of the Article 6.4 Supervisory Body (SB 011), in particular with regard to Draft Procedure: Appeal and grievance processes under the Article 6.4. mechanism (A6.4-SB011-AA-A05) and Draft tool: Article 6.4 sustainable development tool (A6.4-SB011-AA-A07)

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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 annotated agenda and related annexes for the 11th meeting of the Article 6.4 Supervisory Body (SB 011), in particular with regard to Draft Procedure: Appeal and grievance processes under the Article 6.4 mechanism (A6.4-SB011-AA-A05) and Draft tool: Article 6.4 sustainable development tool (A6.4-SB011-AA-A07).

1) **Draft Procedure: Appeal and grievance processes under the Article 6.4. mechanism (A6.4-SB011-AA-A05)**

Human rights norms and standards relevant to ensuring access to justice for rights-holders are set out in a series of international and regional human rights instruments[1]. To address human rights violations, duty-bearers are required to have in place appropriate procedures to guarantee rights-holders access to justice, adequate, effective and prompt reparation for harm suffered, and access to relevant information concerning violations and redress mechanisms. The Paris Agreement under the United Nations Framework Convention on Climate Change underscores that State actions to address climate change should respect, promote and consider their respective obligations on human rights.

The right to remedy is a core tenet of the international human rights system. Appeal and grievance processes under the Article 6.4 should incorporate lessons learned from the operation of similar accountability mechanisms, ensure that documented obstacles to access to remedy under these mechanisms are adequately understood and addressed, and promote access to effective remedies for all those potentially impacted by the Article 6.4 mechanism.

OHCHR is concerned that its previously submitted recommendations[2] as well as similar recommendations by other stakeholders have not been adequately reflected in the latest version of the Draft Procedure for appeal and grievance processes[3]. The current text is inconsistent with the obligations and standards of legally binding international human rights instruments and fails to fully satisfy the criteria set out in UN Guiding Principle 31[4], namely that grievance processes should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning and based on engagement and dialogue. These criteria are interrelated and should be taken together as a whole. Disregard for one would weaken the ability of the mechanism to meet the other criteria and weaken effectiveness.

[1] All core international human rights treaties are relevant in this context.
[2] Available at: https://unfccc.int/sites/default/files/resource/SB010_Call_for_input_annotations_OHCHR_Appeal%20and%20Grievance.pdf
[3] A6.4-SB011-AA-A05
[4] UN Guiding Principles on Business and Human Rights

OHCHR would like to re-emphasize that the approach towards the Appeal and Grievance Processes should be guided, overall, by the integration of human rights principles and norms in the design and operation of the processes.

Regarding fees, with respect to para. 12 of section 4.4.1, which determines the standard and reduced appeal fee, OHCHR welcomes the proposal to have no appeal fee for some groups of appellants or regarding activities in specific areas. However, OHCHR would like to highlight that to ensure equitable access and non-discrimination, the appeal and grievance processes should waive any use of fees for potential applicants. In fact, to ensure access to justice and effective remedy, the mechanism should provide materials, resources, and advisory services. These should be in formats that meet the requirements, and are consistent with the rights, of children, people facing challenges with respect to literacy, and persons with disabilities, including persons with hearing, sight or mobility impairments and in the languages of the people for whom they are intended.

The power asymmetries between appellants and grievants and the entities they complain against are real and consequential, and the Appeal and Grievance Processes should aim at reducing these asymmetries at all stages. Relatedly, all costs involved in the operation of the Appeal and Grievance Process should be shared between business enterprises and governments involved in the mechanism established by Article 6.4 and should not be placed on affected parties and their representatives.

OHCHR welcomes the provision of para. 15 of the section 4.4.2 on temporary suspension of processing cases, according to which “Upon receipt of an appeal, the processing of the case within the respective procedure shall be suspended immediately until the conclusion of the appeal proceedings made”.

Nevertheless, the processes should ensure an appropriate degree of independence of the panels established under para. 17 of section 4.4.3 in accordance with principles listed in section 6.2 vis-à-vis the Supervisory Body and other actors whose activities may be the subject of grievances. Poorly designed or implemented grievance mechanisms can risk compounding a sense of grievance amongst affected stakeholders by heightening their sense of disempowerment and disrespect. To ensure the independence and impartiality of appeal and grievance panels, the section 6.2 “Organization of panels” arrangements” should, as a minimum: (a) Minimize the risk of conflicts of interest for the mechanism (or any of its personnel) with respect to the discharge of its mandate and functions; (b) Minimize the risk of any undue influence of any actor(s); (c) Address power imbalances between relevant actors, including through adopting a gender perspective and paying special attention to people who may be at heightened risk of marginalization. The grievance mechanism has to ensure implementation of the policies and practices needed to maintain that independence in day-to-day operations and at all stages of the processes.

It also remains concerning that para. 28 of section 4.4.6 states that the Supervisory Body has the authority to uphold its initial decision by choosing to maintain its original stance, effectively overruling the appeal and grievance panel's recommendation. Such a setup could and will undermine the credibility of the appeal and grievance process and could lead to more human rights violations. The commentary to UNGP 31 (h) also notes that an entity cannot both be the subject of complaints and unilaterally determine their outcome, in which regard such

“mechanisms should focus on reaching agreed solutions through dialogue” and, “where adjudication is needed, this should be provided by a legitimate, independent third-party mechanism”. The latter type of approach could enhance impartiality and fairness in the resolution of disputes, including by delegating the authority to appoint panel members in a given process to an independent third party.

Appellants or complainants should only need to report to the Supervisory Body on allegations of harm from Article 6.4 activities to initiate appeal or grievance process. In determining the scope of appealable decisions, it is also crucial to consider procedural aspects to ensure the process is accessible, equitable, and does not impose undue burdens on appellants and complainants. Appeals and complaints should be accepted throughout the entire project cycle, starting from the pre-approval stage. Requirements of the para. 36 of section 5.1, regarding ‘direct adverse effects and from the implementation or treatment of the activity in question within the activity cycle under the Article 6.4 mechanism by way of concrete, tangible and particularized claim of harm to the health, property, local environment or other interest’ are overly restrictive. The limitation of the scope of the complaint procedure to direct and actual impacts is problematic, as it can hinder the accessibility of the process and therefore weaken its role in harm prevention. Such a narrow focus excludes indirect impacts, which can be equally significant, and overlooks non-local stakeholders who may be profoundly affected. Additionally, an emphasis on property-related and local environmental consequences might neglect other crucial aspects such as cultural human rights impacts. Direct causality between an Article 6.4 activity and an adverse effect may be excessively challenging to establish in complex systems leading to the exclusion of legitimate grievances. Therefore, the criteria for grievance submissions should be expanded to include a broader range of impacts and affected parties, ensuring a more inclusive and effective grievance mechanism.

In terms of standing, the broadest possible interpretation of who has standing to file an appeal or submit a grievance is a critical component in ensuring fair and equitable access to grievance processes. This implies that the processes should be open to any individual or group of persons and their representatives that allege potential and actual harm from projects under article 6.4.

With regard to para 83 of section 7.3, OHCHR takes note of the attempts “to explore approaches to facilitating the access to translation, including through funding for local translators” as well as on the removal of the provision that the” appeal may be filed or a grievance may be submitted in any of the other five United Nations official languages”. The arrangements should be ensured to provide the possibility to submit an appeal or a grievance, including for rights-holders and stakeholders that may be affected in other countries. It is important to ensure accessibility for all stakeholders regardless of residency or domicile and their right to submit their appeal or grievance regardless of language used. In addition, any complainant who cannot read or write should be able to lodge a complaint verbally, with the receiving official required to record it.

2) Draft tool: Article 6.4 sustainable development tool (A6.4-SB011-AA-A07)

It is especially important that the Supervisory Body of the Article 6.4 mechanism works to ensure environmental and social safeguards are in place before Article 6.4 is operationalized. Further, technologies with uncertain and/or demonstrated risks to human rights and the environment should not be admitted by the Article 6.4 mechanism. All activities under Article 6.4 should respect, protect and fulfil human rights and be guaranteed to meaningfully and sustainably

contribute to climate change mitigation. Before operationalizing Article 6.4, OHCHR urges that the Supervisory Body take effective measures to ensure adequate environmental and social safeguards; and continuous and inclusive monitoring and evaluation of all activities under Article 6.4. The sustainable development tool will need to ensure that development actors exercise human rights due diligence to ensure their actions do not harm affected people and communities. Social and environmental safeguards play an important role in this regard.

Para.20 of the draft tool refers to human rights as one of the Environmental and social safeguards principles along with Climate and energy; Air, land and water; Ecology and natural resources; Labour; Health and safety; Gender equality; Land acquisition and involuntary resettlement; Indigenous People; Corruption; and Cultural heritage. OHCHR would like to reiterate that categorization of human rights as one among many environmental and social safeguards principles should be changed towards defining human rights as the overarching legally binding framework informing the safeguards. This approach would ensure that all environmental and social safeguards are designed, interpreted, and implemented in a manner that is fundamentally aligned with and guided by established human rights standards and obligations. Human rights are universally applicable and the subject of detailed legally binding commitments at the global, regional and national level, overlapping extensively with all Environmental and social safeguards and principles described in section 5 of the draft tool.

OHCHR welcome that the latest version of the draft **has** drawn on lessons from both the experiences of multi-lateral development banks and those of other climate financing mechanisms, which is in line with our previous recommendations[5].

OHCHR takes note of the language in para. 47 of the section 5.3.1 stating: "an activity is to be implemented with due respect for human rights 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" as well as references to civil, political, economic, social or cultural rights, the SDGs and the right to development.

Additionally, the draft has made important progress toward protecting labor rights including freedom of association, collective bargaining, and the right to a living wage and principle of non-discrimination and equality, including with respect to the rights of women and girls, LGBTI people, , persons with disabilities , older persons, minorities and Indigenous Peoples.Nevertheless, several other recommendations by OHCHR and other stakeholders are not adequately reflected in the latest version of the Draft tool: Article 6.4 sustainable development tool.[6] The current text is still inconsistent with some obligations and standards of legally binding international human rights instruments and fails to ensure that environmental and social safeguards in the sustainable development tool at a minimum:

1. Ensure accountability and the rule of law;
2. Recognise the centrality of human rights in all process related to Article 6.4 Activities;

[5] Available at: https://unfccc.int/sites/default/files/resource/SB010_Call_for_input_annotations_OHCHR_SD%20Tool.pdf

[6] A6.4-SB011-AA-A07

3. 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"[7] and CESCR General comment 7[8];
4. Specifically recognize that that the rights to information, participation and access to justice are an integral part of all processes related to Article 6.4 Activities;
5. 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;
6. Ensure that The UN Guiding Principles on Business and Human Rights are explicitly integrated within Safeguard policies in order to strengthen the framework for: (a) risk assessment; (b) ongoing, risk-based due diligence; (c) addressing risks throughout the value chain; and (d) remedy;
7. Ensure not only the monitoring of potential negative environmental and social impacts of the realization of Article 6.4 Activities but remediation of them;
8. 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.

[7] 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

[8] The right to adequate housing (Art.11.1): forced evictions : 20/05/97. CESCR General comment 7.