

RIGHTS, CARBON, CAUTION

Upholding Human Rights under Article 6 of
the Paris Agreement



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ENVIRONMENTAL LAW

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UPHOLDING HUMAN RIGHTS UNDER ARTICLE 6 OF
THE PARIS AGREEMENT

FEBRUARY 2021



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Executive Summary

Rights, Carbon, Caution: Upholding Human Rights under Article 6 of the Paris Agreement examines outstanding debates over the implementation of international emissions trading mechanisms proposed under the Paris Agreement, and identifies minimum requirements to ensure that any such mechanisms uphold human rights. The report’s main message is that any framework for emissions trading created under Article 6 of the Paris Agreement must be consistent with States parties’ duty to protect human rights both *through* ambitious climate action and *from* adverse impacts of that action. Negotiations deadlocked at previous meetings over the parameters for action under Article 6, which are the last element of the rulebook on implementing the Paris Agreement set to be finalized at the 26th Conference of the Parties (COP-26) to the United Nations Framework Convention on Climate Change (UNFCCC). As the United States rejoins the Paris Agreement and countries set their negotiating agendas for COP-26, CIEL’s analysis urges States parties to avoid establishing market mechanisms that undermine ambitious global mitigation efforts and to enact the policies and procedures necessary to guarantee respect for human rights in all climate action, including measures pursued under Article 6.

The world is in the midst of a climate emergency. Preserving our collective future demands urgent and ambitious action. Achieving the Paris Agreement’s goal of limiting warming to 1.5°C — a

target that will still pose severe risks to human rights and the environment¹ — requires a dramatic acceleration of efforts to reduce greenhouse gas emissions from all sectors.² Success turns on how quickly high-emitting countries ratchet up the ambition and effective implementation of their domestic mitigation measures, including chiefly how quickly they phase out fossil fuels and halt deforestation.

Yet States have failed to act accordingly. Even if fully implemented, the emissions reductions pledged through States parties’ Nationally Determined Contributions (NDCs) under the Paris Agreement leave the world on course for a temperature rise in excess of 3°C this century.³ Such levels of warming would push human and ecological systems past their breaking points, causing untold suffering and devastation.⁴ About half of countries that have submitted an NDC as of 2019 said they planned to take part in carbon markets or other international “cooperative approaches.”⁵ These markets and approaches, which are envisioned in Article 6 of the Paris Agreement, carry significant risk of encouraging the trade in illusory greenhouse gas emissions reductions, visible in account books but not in the atmosphere.

Article 6 provides for the creation of two mechanisms through which countries can buy credits for emissions reductions, either directly from other countries⁶ or from project developers.⁷ The States parties agreed to establish guidelines for country-to-country trades and rules and procedures for a “Sustainable Development Mechanism” (SDM) that would

certify project-level emissions reductions. However, negotiations regarding these guidelines and rules have yet to conclude, largely because of disagreements on accounting principles.

The mandate for Article 6 demands that any such mechanisms deliver an “overall mitigation in global emissions” compared to the situation without carbon trading. Because trading mechanisms have a high likelihood of significantly undermining ambition and disguising failures to reduce emissions, their use should be permitted only as a last resort, if at all. States parties should be required to report on their efforts to first meet their NDCs through domestic mitigation measures before



purchasing credits. The deep and rapid decarbonization needed to avert climate catastrophe cannot be achieved by continuing greenhouse-gas-intensive activities, including fossil fuel combustion, and merely paying to lower emissions from other sources, elsewhere. Richer countries have a responsibility to provide financial support for climate actions in less well-resourced countries, but those actions must supplement, not supplant, emissions reductions at home.

Fundamentally, any mechanisms established under Article 6 must comply with human rights. The States parties to the UNFCCC have a duty to respect, protect, and fulfill human rights, in their collective and individual conduct. That duty informs State obligations both to reduce emissions and to do so in a rights-compliant manner.

Rights, Carbon, Caution: Upholding Human Rights under Article 6 of the Paris Agreement identifies three core policy pillars that experts agree are prerequisites for ensuring that human rights are protected within trading mechanisms and the projects they certify.⁸ The report also provides examples of “good policies” from development and climate finance institutions that should inform the design and implementation of the three pillars under Article 6, and that underscore the necessity and feasibility of including those pillars in any guidelines and rules adopted by the States parties. Those three pillars concern public participation, social and environmental safeguards, and grievance redress.

Robust Public Participation

The policies and projects generating emissions reductions under Article 6 mechanisms may negatively impact significant numbers of people. People whose

rights are at risk are entitled to a say about whether and how activities affecting them are undertaken. Accordingly, they must be empowered to participate in the creation and implementation of Article 6 mechanisms and the projects pursued thereunder. The rules agreed by the States parties must guarantee access to information and facilitate robust participation by rightsholders during project approval and supervision at the UNFCCC. These rightsholders must also be empowered to participate at a local level throughout the project and policy lifecycle, from conception and design to implementation and monitoring.

Social and Environmental Safeguards

The framework for implementation of Article 6 should establish social and environmental safeguards systems centered on human rights, including specific policies to secure gender equality and Indigenous Peoples’ rights, including Free, Prior, and Informed Consent. Demonstrated compliance with these safeguards must be a prerequisite for registering or qualifying activities under Article 6. Further, the States parties should establish an “exclusion list” of types of projects that are categorically barred from registration under the SDM, and mandate procedures for the Supervisory Body to follow in verifying compliance with safeguards.

Grievance Mechanisms

Even if key participation and safeguard policies are enacted, projects under trading mechanisms may cause harm, and when they do, affected people have a right to remedy. Remedial procedures can include but must not be limited to opportunities for collaborative problem-solving. Therefore, the rules for Article 6

should mandate project-level grievance mechanisms and create a grievance mechanism within the UNFCCC to which affected people may bring complaints. Such grievance mechanisms must be legitimate, accessible, predictable, equitable, transparent, rights-respecting, and a source of continuous learning.⁹ To ensure that grievance mechanisms have these features, their independence must be guaranteed and they should have a mandate to recommend and monitor changes; they must be well-publicized and well-resourced; and they should have simple requirements for bringing claims.

Creating such institutions and requirements through the Article 6 guidance and rules is necessary, but insufficient, to ensure that Parties using market mechanisms to meet their emissions reduction obligations satisfy their duties under international law to respect, protect, and fulfill human rights. Additional policies will likely be needed, and implementation is of paramount importance. *Failing* to include the key pillars identified in this report, however, would ignore the critical lessons learned from decades of experience with development finance institutions: that real, meaningful, and sustained stakeholder participation improves outcomes; that setting clear rights-based safeguards for project developers, and independently verifying their attainment, is necessary to prevent human rights violations; and that grievance mechanisms are essential to solve problems and redress harms. Carbon trading is an inherently dangerous activity, because it gambles with the world’s ability to achieve the ultimate objective of the UNFCCC: “to prevent dangerous anthropogenic interference with the climate system.”¹⁰ If international emissions trading is not prohibited entirely within the global climate architecture, then it must be contained, by rules that are robust enough to guarantee the integrity of claimed emissions reductions and to protect human rights.

PART 1

Introduction

The climate crisis is unfolding here and now. Preserving our collective future demands urgent and ambitious action.

Current levels of warming have already had severe and accelerating effects.¹¹ Achieving the Paris Agreement’s goal of limiting warming to 1.5°C — a target that will still pose severe risks to human rights and the environment¹² — requires a dramatic acceleration of efforts to reduce greenhouse gas emissions from all sectors globally.¹³ Collectively, the mitigation measures outlined by States parties’ in their NDCs under the Paris Agreement — even if fully implemented — would leave the world on course for at least 3°C of warming by the end of the century.¹⁴ Even if some states’ announced mid-century “net zero” targets were met, warming would still exceed 2°C warming.¹⁵

Proposals to create “market mechanisms” that allow for offsetting or trading of emissions reductions between countries must be evaluated against this backdrop. Fundamentally, countries that aim to meet a significant portion of their NDCs through such offsets — and about half of all countries that submitted NDCs by 2018 indicated an intent to participate in the markets¹⁶ — are less likely to pursue deep decarbonization swiftly than those that focus on domestic cuts. And those countries with a financial interest in exceeding their self-determined contributions, to sell “excess” reductions, are less likely to set ambitious targets. The Intergovernmental Panel on Climate Change (IPCC) has warned of the risks inherent in climate policies that assume humanity will collectively “overshoot” the target of

limiting warming to 1.5°C and then return the atmosphere to a lower concentration of greenhouse gases through technological interventions that are unproven at scale and threaten enormous harm to human rights and the environment.¹⁷ The modelled pathways that *avoid* such risks rely on near complete decarbonization of the energy sector globally by 2050.¹⁸ In short, the safest way to avoid dangerous climate change is to maximize the ambition of domestic action to reduce greenhouse gas emissions, especially through phase-out of fossil fuel use and particularly in those countries that bear the greatest historical responsibility for climate change.

Article 6 of the Paris Agreement creates a basic framework for such mechanisms and cooperative approaches that States parties to the Agreement may employ to pursue their emissions reduction targets. There are two market-based and one non-market component of Article 6:

1. “Internationally transferred mitigation outcomes” (ITMOs), a mechanism for the exchange of emissions reductions between States parties, as one type of “cooperative approach” (art. 6.2);
2. The so-called “Sustainable Development Mechanism” (SDM), which certifies the validity of emissions reductions generated at a subnational level by public or private actors for sale to States parties (art. 6.4); and
3. Non-market approaches to the mitigation of greenhouse gas emissions and promotion of sustainable development (art. 6.8).

Article 6 recognizes these mechanisms as valid only to the extent that they “allow for higher ambition in... mitigation and adaptation actions and... promote sustainable development and environmental integrity.” And Article 6.4 states that one goal of the SDM must be “to deliver an overall mitigation in global emissions.”

There is good reason to be skeptical of market mechanisms’ ability to contribute to an overall reduction in emissions, given well-publicized problems with the efficacy and collateral impacts of carbon markets and offsetting schemes to date.¹⁹ These challenges have been documented in numerous projects certified under the Clean Development Mechanism (CDM)²⁰ (the Kyoto Protocol-era predecessor to the SDM) or implemented under the banner of “REDD+” (approaches that pay countries for reducing emissions by slowing or avoiding deforestation or forest degradation while meeting other metrics for sustainability).²¹ They include accurately measuring reductions (i.e., ensuring parties set scientifically derived baselines in both their NDCs and project-level accounting) and ensuring permanence, additionality, and non-leakage.²² Experience suggests that there is a significant risk that Article 6 mechanisms will undermine, rather than advance, the goal of the Paris Agreement to limit temperature rise to 1.5°C. Given the risk, the safest way to protect against dangerous climate change is not to allow trading of emissions reductions to meet NDCs at all, but instead to ensure that NDCs are satisfied through domestic action and channel resources into pursuing greater domestic ambition. If the final Article 6 rules allow markets at all, their use should

be permitted only as a last resort — with States parties required to report on their efforts to first meet their NDCs through domestic mitigation measures before purchasing ITMOs or certified emissions reductions (CERs).

Further, if States parties allow markets under Article 6, strong provisions must be enacted to ensure that the emissions reduction activities generating tradeable mitigation outcomes do not cause or contribute to human rights violations. Experience shows that projects undertaken pursuant to carbon trading mechanisms like those under the CDM²³ and REDD+²⁴ pose significant environmental and social risks. As the preamble to the Paris Agreement acknowledges, and as international law demands, parties must “respect, promote and consider their respective obligations on human rights” when taking actions to address climate change, including any actions undertaken pursuant to Article 6.

To ensure compliance with these human rights obligations and moral imperatives, implementation of Article 6 must integrate three key “pillars”:

1. **Strong rules for public participation,**
1. **Social and environmental safeguards, and**
2. **Independent grievance mechanisms at the project and international level.**

Under the decision adopting the Paris Agreement (decision 1/CP.21), States parties were tasked with developing guidance on approaches involving ITMOs; the rules, modalities, and procedures for the SDM; and a work program for non-market approaches under Article 6.8 (“the Article 6 rulebook”). Yet, in successive meetings from 2017 to 2020, States parties have been unable to agree on these critical elements. The most divisive issues in the negotiations regarding the Article 6 rules relate to environmental integrity: how to ensure that mechanisms for the



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exchange of emissions reductions strengthen the ambition of greenhouse gas mitigation measures and advance other objectives of the Paris Agreement (such as aligning financial flows with mitigation and climate-resilient development) without creating loopholes that undermine overall progress toward limiting warming to 1.5°C. Specifically, debates continue on:

- How to ensure there is no double-counting (whereby more than one State party counts an emissions reduction toward its own climate target or NDC);
- Whether to transfer unsold credits generated under the flawed CDM into the SDM registry; and
- What share of proceeds from one or both of the two market mechanisms under Article 6 should be directed to the Adaptation Fund (AF) (a fund initially established by the States parties under the Kyoto Protocol, but now serving the Paris Agreement, to finance adaptation measures in developing countries).

Article 6 mechanisms that do not clearly and demonstrably lead to an overall improvement in mitigation of global emissions — relative to what would be realized without them — would be failures. Rules and procedures to ensure that human rights are respected through public participation, safeguards, and grievance

mechanisms are necessary both to prevent the violation of rights, in line with States’ legal obligations, and to secure the overall mitigation of emissions. The various States parties that presented draft text incorporating measures on participation, safeguards, and grievance mechanisms at the meetings of the Subsidiary Bodies for the UNFCCC in June 2019 recognized those elements as critical to the success and acceptability of action under Article 6. While some of that language was removed or watered down in the three draft texts presented by the COP President at the close of COP-25 in December 2019, none of those drafts represented consensus. Indeed, numerous parties confirmed through their closing statements their support for the inclusion of human rights pillars in the Article 6 rules.²⁵ The parties will again take up discussions on the Article 6 rulebook at the 52nd meeting of the Subsidiary Bodies to the UNFCCC, currently scheduled for sometime in 2021. When they do — and if they are determined to create market mechanisms despite their inherent risks — they must include public participation, safeguards, and grievance mechanisms. The remainder of this paper describes what each of these three pillars entails, outlines why their inclusion is necessary both to comply with international law and to achieve an overall mitigation of emissions, and identifies good policies gleaned from development and climate finance institutions that represent minimum starting points for robust Article 6 rules.

PART 2

Participation, Safeguards, and Grievance Mechanisms: An Overview

As the UN High Commissioner for Human Rights;²⁶ the former UN Special Rapporteur on Human Rights and the Environment;²⁷ the Climate Action Network;²⁸ the Climate Land, Ambition, and Rights Alliance (CLARA);²⁹ and others³⁰ have advocated, States parties' human rights obligations require that the rules for implementing Article 6:

1. Guarantee access to information and opportunities for meaningful stakeholder engagement and public participation;
2. Reflect the 'do no harm' principle, by establishing environmental and social safeguards for projects; and
3. Ensure access to remedy, by requiring project-level grievance mechanisms and creating an independent grievance mechanism at the Supervisory Body level.

The parties have already created these pillars in other mechanisms. In addition to generally committing to respect human rights through all climate action in the Cancun Agreements,³¹ the States parties to the UNFCCC have called for each of these three pillars in various mechanisms and institutions established under their auspices, including REDD+³², the technology mechanism,³³ and the Green Climate Fund (GCF).³⁴ Outside of the UNFCCC context, these pillars have been widely adopted by States in development and climate finance institutions' policies. Although the implementation of

those policies is uneven, and more must be done to ensure they are comprehensively applied and robustly enforced,³⁵ States broadly recognize the policies as necessary for successful implementation of development and climate finance projects. As detailed in Part 3 of this paper, establishing and ensuring effective implementation of these three pillars will help States parties comply with their existing obligations under international law. The pillars will also help ensure that mechanisms and approaches under Article 6 create environmentally sound outcomes and contribute to the overall mitigation of global emissions. This section clarifies the principal components of each pillar.

Public Participation

Under international human rights and environmental law, the institutions and approaches provided for under Article 6 should not be designed or operated without meaningful participation by interested and affected communities and individual members of the public. The same is true for the design, implementation, and oversight of the individual projects and policies that would generate the emissions reductions certified, traded, or otherwise paid for under Article 6.

In this regard, there are several positive elements in the President's draft texts out of COP-25 that should be retained and, in some instances, strengthened. These include:

- Mandating the creation of a publicly accessible "centralized accounting and reporting platform" that contains information on all ITMOs under 6.2.
- Requiring that the Supervisory Body for 6.4 operates transparently and that meetings and documents be made publicly available.
- Creating a mandate for the Supervisory Body to make information about accredited projects under 6.4 publicly available.
- Requiring that activities under 6.4 undergo local and subnational stakeholder engagement.
- Indicating local stakeholders "may" participate in developing mechanism methodologies to set baselines and determine how emissions reductions are to be calculated under 6.4.
- Indicating stakeholders can bring grievances to and appeal the decisions of the Supervisory Body under 6.4.
- Making "[m]eetings with public and private sector stakeholders, including technical experts, businesses, civil society organizations and financial institutions, and publication of the outcomes of such meetings" one of the modalities for developing non-market approaches in the work plan under 6.8.

However, to truly ensure meaningful public participation, more detailed

guidance is required, particularly on several areas of deficiency. At a minimum, the rules for implementation of Article 6 should provide for or require:

- Provisions to strengthen stakeholders' rights so that they may bring grievances and appeal decisions to an independent entity within the UNFCCC separate from the Supervisory Body.
- A presumption that meetings and documents of the Supervisory Body are public, except when they are deemed confidential in accordance with clear and detailed criteria,³⁶ consistent with best practices.
- More formal arrangements for public participation at the meetings of the Supervisory Body. This includes setting aside one or more positions among members of the Supervisory Body to be filled by civil society and Indigenous Peoples' organizations, with rotation among stakeholder groups.
- Assurances that consultation at the project level is not a box-checking exercise: Local communities and Indigenous Peoples must have a meaningful opportunity to offer input both in the early stages of project design and on an ongoing basis throughout the lifecycle of the project, and feel empowered to do so, without fear of retaliation. The right of Indigenous Peoples to give or withhold their FPIC to projects must also be respected.
- Guarantees that affected and interested parties shall have full access to information on proposed strategies, technologies, and alternatives.
- Developing criteria for assessing the consistency of policies for local stakeholder engagement with international human rights law and standards in addition to "applicable domestic arrangements."³⁷
- Guarantees of public participation and respect for FPIC under 6.2 and

6.8, i.e., by requiring countries to demonstrate that they have engaged interested members of the public, civil society, and Indigenous Peoples in a discussion of emissions reduction and adaptation strategies and that there was broad support, e.g., for transferring or purchasing ITMOs, as applicable.

Social and Environmental Safeguards

One of the notable flaws of the CDM is that it lacks an environmental and social safeguards system.³⁸ This flaw was apparent at the time the CDM was created and is glaring now. Not only have the parties to the UNFCCC subsequently mandated that safeguards be developed for the system of positive incentives for avoided deforestation (REDD+) created under the UNFCCC³⁹ and for the GCF;⁴⁰ it is also the near-universal practice of development finance institutions (DFIs) to adopt such safeguards. The term "safeguards" is frequently used to refer to the human rights, environmental, and social standards established by a funding or accrediting entity, which the projects it funds or institutions it accredits must meet and uphold. Such standards include both procedures that project developers and implementers must follow and outcomes they must achieve. For example, the AF requires that projects respect human rights, provide women and men an equal opportunity to participate and generate comparable levels of benefits for women and men, meet the core labor standards identified by the International Labour Organization (ILO), and conserve biodiversity.⁴¹ The World Bank requires, among other things, that borrowers systematically undertake an assessment of environmental and social risks and impacts⁴² and consult with and involve Indigenous Peoples living in the area of a proposed project in project design.⁴³

However, these operational requirements for borrowers or accredited entities are, in

reality, just one component of a "safeguards system" for most of the DFIs and the financial mechanisms and institutions that serve the UNFCCC and Paris Agreement. Safeguards systems establish mechanisms for oversight and compliance and responsibilities for project developers and implementers, as well as the funding entity. For example, most safeguards systems typically include:

- A statement of policy setting forth the financial institution's commitment to avoid funding projects that cause social or environmental harm;
- A description of the review procedures by which the institution will assess applicants' compliance with the operational requirements at different stages in the lifecycle;
- Policies ensuring the public's access to information for documents received and produced by the institution, including proper stakeholder engagement; and
- Non-binding guidelines or best practices that provide concrete suggestions for implementing the operational requirements, such as guidance regarding fragile, conflict, and violent states, guidance on disadvantaged and vulnerable individuals or groups, and strategies on gender equality and gender-based violence.⁴⁴

While it will not finance projects directly, the SDM under Article 6.4 will be putting its imprimatur on them, with the explicit goal of creating fiscal support. At its core, the mission of the SDM is to generate emissions reductions additional to any that would have occurred in its absence.⁴⁵ In other words, the parties anticipated that the opportunity to register with the SDM, and therefore to sell certified emissions reductions to States parties, would incentivize the expansion or development of certified emissions-reducing projects. The certifying entity's foreseeable and indeed intended impact on the conduct of emissions reduction activities triggers its responsibility to ensure that those activities do not cause or

contribute to rights violations. This responsibility for certified projects is why the most widely used private standards for certifying project-level emissions reductions, the Verified Carbon Standard (VCS) — at least where enhanced by the Climate, Community and Biodiversity Standard — and the Gold Standard, include safeguards for the projects they certify.⁴⁶ These safeguards are of varying quality, and their implementation falls far short of what is required to actually protect rights. Their inclusion in private standards, however, affirms that social and environmental safeguards are a minimum prerequisite for any emissions trading activities under the UNFCCC. To leave out safeguards from 6.4 and 6.2 would represent a failure to learn from the past and would make the resulting programs antiquated.

While the non-consensus draft Article 6 texts circulated by the COP-25 President did state that activities under 6.4 must avoid negative environmental and social impacts, they omitted all references to human rights included in an earlier draft. Such text does not accord with States parties' international obligations or the text of the Paris Agreement. The final decision States parties take should clearly state that activities under Article 6 must respect human rights. It should also direct the Subsidiary Body on Scientific and Technical Advice (SBSTA), in consultation with stakeholders, to develop a detailed social and environmental safeguards system that ensures respect for human rights and protection of the local environment, adopting and adapting some of the good policies outlined in Part 4 of this paper.

Moreover, cooperative approaches under Article 6.2 also must respect human rights. Since COP-25, the Swiss Confederation and the Republic of Peru have reached a first-of-its-kind bilateral agreement on a legal framework to govern the transfer of mitigation outcomes between them. The agreed framework includes a verification requirement that activities generating those reductions respect human rights.⁴⁷ The adoption of this bilat-



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eral framework demonstrates the desire for and possibility of crafting human rights pillars within international rules on ITMOs. The draft texts under 6.2 that emerged from COP-25 direct the SBSTA to consider the need for safeguards, but took a step backward by removing any stronger mention of the need to prevent negative environmental and social impacts. Regardless of the text, countries selling or trading any emissions reductions remain obligated under international law to ensure that all the activities leading to those emissions reductions respect human rights. As detailed below, there are strong arguments that this is a responsibility of buyer countries as well. International human rights law furnishes the framework for evaluating the impacts of emissions reduction activities. Clearly defined standards for Article 6 activities, based on human rights law, are essential for reporting on national safeguards policies and measuring negative social and environmental impacts associated with nationwide reductions. Countries that violate human rights law in implementing policies to mitigate or adapt to climate change should not be eligible for buying or selling ITMOs.

Independent Grievance Mechanisms

Even with strong rules on public participation and social and environmental safeguards, large infrastructure or landscape management projects and climate policies may generate adverse impacts, such as loss of local communities' livelihoods, failure

to deliver on promised community benefits, or multiple other harms. Therefore, the rules for Article 6 must ensure adequate avenues for redress and problem-solving if harms or conflicts occur.⁴⁸ Just as safeguards policies have become mainstream, it is now standard at DFIs as well as at the GCF and the AF to require fair, accessible, transparent, and independent grievance mechanisms at both the project level and at the level of the financing institution. Grievance mechanisms must allow those who are negatively impacted by projects to raise concerns safely and without fear of retaliation. Grievance mechanisms should further be empowered to order redress for injuries and/or operational changes when needed to prevent further harm. Omitting a requirement of project-level grievance mechanisms or failing to create a grievance mechanism within the UNFCCC architecture independent of the Supervisory Body would render the SDM and the mechanisms under 6.2 and 6.8 both outdated and insufficiently protective of affected communities and individuals.

The UN Guiding Principles on Business and Human Rights (UNGPs) set forth effectiveness criteria for grievance mechanisms that should inform the architecture of both project- and UNFCCC-level mechanisms. Under these principles, a grievance mechanism should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, based on engagement and dialogue, and a source of continuous learning.⁴⁹ More details on good policies for creating an effective grievance mechanism are included in Part 4 of this paper.

PART 3

An Obligation Under International Law and a Necessity to Meet the Paris Mandate

The standards described above are essential to protecting people and the environment as required by international and domestic law. They are also critical to ensuring the environmental integrity of activities under Article 6. Standards guaranteeing access to information and meaningful public participation, social and environmental safeguards, and grievance redress are also key to sustaining support for international cooperation.

Protecting and Respecting Human Rights

First, and most importantly, climate mitigation projects designed and implemented without regard to the above-described human rights standards have violated human rights, including the right to remedy. Human rights violations have occurred as a result of a number of projects certified by the CDM. For example, the Barro Blanco dam in Panama has been associated with well-documented FPIC violations, forced evictions, violence against protestors, and destruction of livelihoods.⁵⁰ The government of Panama ultimately withdrew this project from the CDM.⁵¹

Similarly, in Kenya's Kinangop wind project, security forces quashed protests by farmers over inadequate consultation and lack of compensation, killing one farmer and injuring several others.⁵² The project developer subsequently canceled the project.⁵³

The projects mentioned above (and the case study on the following page) are but three of the CDM-certified projects marred by major rights violations.⁵⁴ Many of these harms could likely have been prevented and/or remedied with adherence to human rights standards, including greater and timely access to information, meaningful public participation, strong social and environmental safeguards overseen by an independent body, and independent grievance mechanisms. Without such elements in any mechanisms under Article 6, similar tragedies are likely to occur.

Emissions reduction projects that infringe on or jeopardize rights are not just moral outrages; they can also entail legal responsibility under international law for the States involved, and potential liability for private actors under applicable civil or criminal law regimes. All States parties to the UNFCCC are obliged to comply with international human rights law throughout their actions to address climate change. Including strong rules around participation, safeguards, and remedy in the Article 6 rulebook will not create new obligations for States parties but rather reflect and help them meet their existing obligations under international law. Every State party has agreed to at least three international human rights instruments that apply to all forms of State conduct and whose requirements impose obligations that cannot be waived by the need for urgent climate action.⁵⁵ These obligations include a duty to respect, protect, and fulfill the rights guaranteed in the International Bill of Hu-

man Rights and in numerous other human rights instruments that bind the various States parties. The right of victims to remedy for violations of substantive rights is one such right.⁵⁶ Furthermore, the right to participate in environmental decision-making is enshrined in human rights instruments and regional agreements, including the Aarhus Convention and Escazu Agreement, and core texts of international environmental law, such as the Rio Declaration.⁵⁷ This right to participation extends to the workings of international fora, such as at the UNFCCC.⁵⁸ Like other social safeguards, access to information and the right to participate are also required by most DFIs for the projects they fund.⁵⁹ Additionally, international law requires States to respect Indigenous Peoples' rights, including their right to give or withhold FPIC with respect to activities that may affect them, their ancestral lands, territories, or other natural resources.⁶⁰

States parties' duties to fulfill these obligations are reflected in the texts of the UNFCCC.⁶¹ The Cancun Agreements both recognize the impacts of climate change on a range of human rights and commit the States parties to respect human rights in all climate action, while the preamble to the Paris Agreement acknowledges that States parties should "respect, promote & consider their respective human rights obligations" in taking climate action. Furthermore, the Convention commits States parties to encourage the widest participation of NGOs in the climate process.⁶² The Convention and the Paris Agreement both engage States

CASE STUDY:

Chile's CDM-Registered Alto Maipo Hydroelectric Project Violates Chileans' Human Rights

Chile's large-scale run-of-the-river hydroelectric project, Alto Maipo — currently under construction just outside of Santiago — would reroute water from the three main tributaries of the critical Maipo River for 100 kilometers via tunnels bored through the Andes Mountains in order to generate electricity using underground turbines. For more than a decade, serious concerns have been raised by residents of the Maipo River valley regarding issues such as flawed environmental impact assessments and deficient environmental and social due diligence for the project. Opposition to Alto Maipo has ranged from legal challenges to multiple marches organized by a grassroots movement supported by thousands of Chileans calling for the project's cancellation and the protection of the Maipo River basin.



MAIPO RIVER IN SAN JOSÉ DE MAIPO, CHILE, SEPTEMBER 2019
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Alto Maipo has been verified under the CDM despite the project's many violations of Chileans' human rights to water, food, health, and life, as well as their right to a healthy environment. The significant environmental and social damage already caused by the project includes exacerbated water shortages, damage to aquifers, contamination of groundwater, and fissuring of surrounding glaciers, as well as social cleavages, sexual harassment experienced by local residents, and loss of adequate housing and livelihoods.

As this briefing note points out, any mechanism established under Article 6 must be governed by robust social and environmental safeguards — as well as requirements for meaningful and effective stakeholder engagement and independent grievance mechanisms — in order to ensure that “sustainable development” projects do not repeat the human rights violations associated with past CDM projects, such as Alto Maipo.

parties to promote and facilitate public access to information and public participation in climate policies,⁶³ commitments put into practice through successive work programs on implementing these two articles, including the current Doha Work Programme.

In a given transaction that may be carried out under Article 6.2 or 6.4, one State party is the “buyer” of the emissions reductions and the other, the “host” of those reductions. Both parties are bound by their international human rights obli-

gations in pursuing the exchange. Host countries' obligations to respect, protect, and fulfill human rights while conducting, regulating, and overseeing Article 6 activities are clear. Emissions reductions under 6.2 can be expected to result from a combination of State efforts (for example, through projects run by subnational governments) and private activities.⁶⁴ States must respect human rights in all their own conduct, whether undertaken at the national or subnational level. And regardless of whether public or private actors generate emissions reductions,

States have a duty to protect human rights from foreseeable harms that such actors may cause or to which they contribute. Moreover, host governments are also expected to play an active role in project development: Under the current draft texts, host parties must notify the Supervisory Body of their approval of the activities generating CERs prior to registration, certifying that these activities contribute to sustainable development in the host country. This active role in facilitating the registration of projects with the SDM triggers the State duty to

respect all applicable rights as well. International bodies and tribunals have recognized that the concept of “sustainable development,” which is foundational to the SDM, as its name suggests, means meeting the essential needs of present generations without compromising future generations’ ability to meet their own essential needs.⁶⁵ Achieving this balance requires a State’s active role in creating appropriate legal structures to govern the use of natural resources equitably.⁶⁶ Therefore, to qualify for the SDM, climate mitigation projects should not impair either present or future generations’ ability to meet their own essential needs.

The human rights obligations of buyer countries also apply with full force to their participation in Article 6 mechanisms. Just as a State party may not engage in, induce, or acquiesce to conduct that violates rights to achieve emissions reductions domestically, neither may it cause or contribute to the violation of human rights extraterritorially to obtain emissions reductions abroad. Fundamentally, the mechanisms created under Article 6 must not provide the opportunity for buyer countries to “achieve” emissions reductions abroad in ways that foreseeably violate human rights. States cannot be permitted to outsource harmful conduct that would be prohibited in their

own jurisdiction⁶⁷ or participate in conduct that foreseeably results in violations of rights — regardless of where those violations occur.⁶⁸ If Article 6 were designed or interpreted to permit such conduct, it would run counter to the States parties’ obligation, under the UN Charter, to achieve the purposes set forth in Article 55 of the Charter through their cooperative actions, including “universal respect for, and observance of, human rights.”⁶⁹ More concretely, where buyer countries knowingly or foreseeably obtain emissions reductions resulting from activities that violate human rights, those States could incur legal responsibility under a variety of principles in international human rights law. For example, a State’s purchase of an emissions reduction may constitute an act of public procurement. Numerous sources, including the Committee on Economic, Social and Cultural Rights (CESCR); the UNGPs; and the Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights detail States’ responsibility to use their influence as purchasers of goods and services to ensure respect for human rights among their suppliers.⁷⁰

To the extent that the acquisition of emissions reduction credits by a State is considered a form of investment and fi-

nancing, such activity would trigger the State’s obligation to undertake due diligence regarding risks and impacts of such funding. States engaging in overseas public financing, including through sovereign wealth funds, must exercise human rights due diligence to avoid financially contributing to and benefiting from activities that violate human rights.⁷¹

Finally, in addition to the obligation of a State to adequately regulate emissions reduction activities occurring within its jurisdiction, pursuant to the duty to protect, Article 6 may trigger State duties to adequately regulate private persons subject to their jurisdiction whose extraterritorial conduct poses foreseeable risks to rights and to hold them accountable when those risks materialize. Under proposed rules for Article 6.4, private actors may be engaged in credit-generating activities outside their home countries, triggering those home countries’ responsibilities to protect against extraterritorial human rights violations by their domiciliaries.⁷² As CESCR noted, “a State party would [in the situation of overseas human rights violations by a domiciliary] be in breach of its obligations under the Covenant where the violation reveals a failure by the State to take reasonable measures that could have prevented the occurrence of the event.”⁷³ Creating and enforcing a consistent human rights-protective set of rules governing these activities is such a measure. While effectively reducing greenhouse gas emissions is essential to protecting human rights, the pursuit of such reductions is neither an excuse nor justification for violating human rights. Measures to mitigate climate change cannot come at the expense of human rights.

Ensuring Environmental Integrity

Beyond being required by international law, rules for enabling public participation, respect for safeguards, and ensuring



access to remedy are also critical to ensuring that Article 6 mechanisms “promote sustainable development and environmental integrity” and deliver “an overall mitigation of global emissions,” as required by the Paris Agreement.⁷⁴ To fulfill these mandates, the rules governing Article 6 mechanisms must: (1) prevent double counting through the application of corresponding adjustments for all credits transferred, and (2) exclude projects certified under the CDM, which by and large have not generated real emissions reductions,⁷⁵ from the SDM registry.⁷⁶ Meeting the goals will also require prohibiting activities under Article 6 from depleting local natural resources, polluting local air and water, or reducing biodiversity. Adherence to the rights-protecting pillars described above will facilitate the achievement of these objectives — an observation the UNFCCC parties have made repeatedly, e.g., in acknowledging the importance of public participation to meeting the goals of the UNFCCC and the Paris Agreement.⁷⁷ The IPCC has similarly recognized the importance of public participation to effective climate action, for example, in its Special Report on the impacts of global warming of 1.5°C.⁷⁸

Research demonstrates that projects in which the affected local communities have a decision-making role are — unsurprisingly — more likely to meet their stated development and environmental goals than those that exclude affected peoples or deny them the exercise of their participatory rights.⁷⁹ Standards on access to information, participation, safeguards, and remedy help guarantee communities’ ability to influence decisions about projects that affect their lands, resources, and lives, including Indigenous Peoples’ ability to exercise their right to FPIC, consistent with international law. In contrast, when consultation does not occur or safeguards are not respected, projects more frequently fail to achieve their intended targets or cause harmful side effects. For example, numerous studies have found that respect for Indigenous land tenure (a core environmental and social safeguard



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in many systems and a right under international law) and provision for Indigenous Peoples’ participation in the design and management of protected areas, including respecting their right to FPIC, improves conservation and biodiversity protection outcomes.⁸⁰

Greater community participation in the design of a project, including the choice of alternative livelihood strategies where a project is expected to impact existing livelihoods negatively, can help reduce “leakage,” or the displacement of environmentally harmful activities from a project zone to neighboring areas. This positive impact of participation was implicitly recognized by the States’ parties when they encouraged countries receiving payments under REDD+ to involve local communities and Indigenous Peoples in monitoring and reporting on forest cover change.⁸¹ It is also likely that both participation and adequate independent grievance mechanisms will lead to greater long-term community support for projects, not only minimizing the likelihood of rights violations but also mitigating some sources of potential risk to the permanence of emissions reductions.⁸²

Maintaining Support for International Cooperation

Putting the UNFCCC imprimatur on projects that violate human rights could also undermine support for international climate action. Evidence indicates that trust in political and judicial institutions at the national level is positively correlated with support for climate policies.⁸³ The same likely holds true for trust in international climate institutions. Were UNFCCC bodies to be seen approving or endorsing the transfer of ITMOs or CERs associated with policies or projects that have publicized, negative impacts on human rights, it could undermine trust in the UNFCCC, both locally and globally, and limit support for ambitious domestic and international climate action. Such practices also risk tarnishing the image of the UNFCCC, among other international bodies. In this regard, it is worth noting that the shortcomings of the CDM have been mentioned repeatedly by the parties to the Aarhus Convention for failing to uphold the principles of that Convention.⁸⁴

PART 4

Some Good Policies on Participation, Safeguards, and Grievance Mechanisms, Within and Outside the UNFCCC

In designing rights-compatible rules for Article 6, parties need not begin with a blank slate. They can and should draw on good policies available from development and climate finance institutions, other treaty processes, and work programs within institutions set up under the UNFCCC. What follows is a non-exhaustive overview of such policies and concrete design suggestions to ensure robust public participation, effective social and environmental safeguards, and independent grievance mechanisms.

Public Participation

There are good policies regarding public participation on which to draw at both the international level (i.e., in the operations of the Supervisory Body overseeing the SDM) and at the project or national level. While the principles requiring public participation are the same in these different settings, some application details may differ, so they are treated separately.

At the International Level

Multiple financing institutions and work processes established under the UNFCCC guarantee representation of affected parties in their management, or at the very least provide a role for them as active participants. For example, the Facilitative Working Group of the Local Communities and Indigenous Peoples' Platform (LCIPP) is composed of equal numbers of representatives of States parties and Indigenous Peoples' organizations.⁸⁵ At the GCF, two "active observers" from

civil society and two from the private sector are invited to provide views in the open portions of board meetings and some committee and working group meetings,⁸⁶ while other accredited observer organizations may also attend such meetings, including virtually. The Global Environment Facility (GEF) sponsors civil society organizations' representatives in countries with facility-funded projects to appear at council meetings.⁸⁷ The AF organizes a dialogue between members of the board and civil society organizations at every board meeting, with the option to speak via video conference.⁸⁸

Additionally, both the GCF and AF have made strides to enhance information disclosure. They now include critical elements representing good international

practice in their policies. The GCF, for example, has adopted a principle in favor of maximum disclosure of information about projects and functioning of the board; exceptions are limited and clearly defined.⁸⁹ Critically, the standard for designating information about the GCF's processes as confidential is clearly, if too broadly, defined; there is a general right to request information that has not already been publicly disclosed and a general right to appeal denials of such requests to an independent panel.⁹⁰ The AF, meanwhile, resolved in 2013 to comply with the International Aid Transparency Initiative (IATI) standard, becoming the first climate fund to do so.⁹¹ The AF thereby committed to publishing general data about the fund's operations, and specific financial and non-financial



information about projects.⁹² While these commitments and policies reflect good international principles, their implementation requires oversight and accountability. To date, the GCF and AF have not fully or consistently implemented them, so their potential positive impacts have yet to be realized.

At the Project or National Level

Parties should also adopt good policies regarding information and participation at the project or national level as they continue to improve on the draft texts from COP-25. Specifically, the parties should: (1) provide more detailed requirements for consultation of local stakeholders during project design, and (2) establish opportunities for public participation during the project approval, verification, registration, and monitoring phases of the project lifecycle (in the case of 6.4), and during formulation of national policies (in the case of 6.2 and 6.8).

There are numerous examples and elaborations of good policies for stakeholder consultation. For example, although both the policy and its implementation could be improved,⁹³ the World Bank requires clients to demonstrate at an early stage of project design that they have conducted a comprehensive identification of stakeholders and created a stakeholder engagement plan that sets out the precise information clients will share and meetings they will conduct.⁹⁴ The parties' conclusions in the Doha Work Programme on Article 6 of the UNFCCC on the importance of making information available in local languages and accessible formats⁹⁵ are equally valid in the context of Article 6 of the Paris Agreement. Parties should also incorporate Carbon Market Watch's recommendations on information to communicate with stakeholders in early consultations. These consultations provide a critical opportunity for the community to understand what they can expect from participation and make an informed decision to participate or not. At the consultations, the developer should

share a non-technical description of the project proposal, its likely positive and negative impacts, key technologies, and their available alternatives.⁹⁶

There are a number of good policies on participation of particular rights-holding groups. The AF has undertaken the following actions:

- Provided guidance that project proponents should pursue equal gender participation in consultations,⁹⁷
- Emphasized the importance of identifying vulnerable populations during the stakeholder mapping and including them in participation, and
- Made respect for the right of Indigenous Peoples to give or withhold their FPIC to a project one of its safeguards.⁹⁸

The Food and Agriculture Organization (FAO) has provided comprehensive guidelines on the meaning and requirements of the international legal obligation to obtain FPIC. Though couched in terms of processes for land acquisition, much of the FAO's guidance on how to identify populations whose FPIC is required, how to engage with representatives of the communities' choosing, how to document and respond to emergent disagreement, and the need to provide access to independent sources of information and advice, is all extremely pertinent to other situations in which FPIC is required.⁹⁹

The COVID-19 pandemic has drawn fresh attention to the problem of providing for adequate public participation in both international fora and local decision-making when in-person meetings are not possible. Given the strong likelihood of future disruptive pandemics or disasters fueled by climate change that will hinder in-person participation, it is critical to incorporate contingency planning for such scenarios in the participation requirements under Article 6. As the Compliance Committee of the Aarhus Convention has emphasized, alternatives to in-person meetings must not place an

extra financial burden on the members of the public wishing to use them and must guarantee that members of the public can speak as well as listen (e.g., by providing toll-free hotlines in addition to web-based conferencing). Furthermore, the Committee stated, those arranging for the consultations may need to make additional efforts to disseminate information about the new procedures for such meetings well in advance and provide timely access to transcripts of what was said for participants to review.¹⁰⁰ International fora also have unique dynamics due to the importance of informal meetings that take place on their sidelines and the multiple time zones from which participants normally travel. In a letter to the GCF Board on a board meeting held virtually during the pandemic, a group of civil society and Indigenous Peoples' organizations therefore recommended: (1) postponing substantive decisions, including, in particular, discussions on approval of funding for risky projects, until in-person meetings are once again possible; (2) implementing staggered start times for virtual meetings; and (3) providing funding to grassroots groups to improve internet access for the meetings.¹⁰¹

Social and Environmental Safeguards Systems

As described in Part 2, safeguards frameworks typically include several elements, including a statement of organizational policy, operational requirements that borrowers or accredited projects must meet, and review and implementation procedures. A number of institutions have policy statements that commit to requiring clients to respect human rights and address negative human rights impacts (such as the European Bank for Reconstruction and Development (EBRD))¹⁰² or broadly recognize the responsibility of businesses to respect human rights (such as the International Finance Corporation (IFC), the private lending arm of the World Bank).¹⁰³

Much could be — and has been — written about the content of operational requirements or performance standards, also colloquially known as safeguards. This paper focuses broadly on the initial risk assessment, the thematic coverage of the operational requirements, and exclusionary lists. One can readily find information on or examples of safeguards systems in public-facing documents of DFIs, as well as the GCF, AF, and GEF. Most, if not all, safeguards systems direct the implementing and/or accredited entity to conduct an initial assessment of environmental and social risks entailed by the project. Such entities must then inform local communities of these risks in consultations and develop a plan to mitigate each source of risk in detail with community input.¹⁰⁴ The EBRD has established a number of good policies in this regard, including requiring clients to assess the cumulative risks associated with projects (e.g., where the project poses risks of exacerbating or co-creating harms) and requiring an assessment of risks associated with the activities of primary suppliers over whom the client can reasonably exercise control.¹⁰⁵

In terms of thematic coverage, the AF makes respect for human rights a project requirement (and therefore requires explicit consultation with stakeholders on likely human rights impacts),¹⁰⁶ as does the newly approved but yet-to-be implemented policy at the Inter-American Development Bank (IDB).¹⁰⁷ The AF also requires implementing entities to assess the risk of and prevent specific types of likely environmental impacts (e.g., loss of biodiversity and land degradation)¹⁰⁸ and to design and implement every aspect of funded projects in a gender-equitable and responsive way.¹⁰⁹ Respecting Indigenous Peoples' rights (including but not limited to FPIC) is also included in numerous safeguards policies, such as the GCF's Indigenous Peoples' Policy.¹¹⁰ Through its Climate, Community & Biodiversity Standard, Verra, a private certifier of emissions reductions, requires project developers to obtain FPIC from Indigenous Peoples as well as from any local communities whose property rights

would be impacted by the proposed project.¹¹¹ This requirement parallels the broader application of FPIC encouraged in the FAO's technical guidance on land acquisition projects.¹¹²

It is a common practice of DFIs to publish exclusion lists as part of their safeguards systems.¹¹³ These are lists of types of projects that the bank will not fund because they are categorically associated with negative environmental or social impacts. The best of existing such policies from a climate change perspective commit not to fund any coal mining or coal-fired power plants and any upstream oil or gas activities.¹¹⁴ Clearly, the SDM, with its purpose of achieving an overall mitigation of emissions, must go further still. At a minimum, the SDM should further exclude both upstream and downstream oil and gas projects; large scale hydroelectric projects¹¹⁵ (which are often associated with significant emissions);¹¹⁶ and projects involving carbon capture, carbon dioxide removal, and other geoen지니어링 technologies (which are unproven or nonviable at scale, pose significant risks of harm to human rights and the environment, and/or perpetuate reliance on fossil fuels). This latter category includes but is not limited to: carbon capture and storage (CCS), carbon capture utilization and storage (CCUS), bioenergy with carbon capture and storage (BECCS), direct air capture (DAC), enhanced weathering, and solar radiation management (SRM) technologies.¹¹⁷ Excluding such activities minimizes risks of overshooting temperature targets while also ensuring coherence between the UNFCCC and the parties' relevant decisions to the Convention on Biological Diversity (CBD), including Decision X/33, para. 8(w).¹¹⁸

The guidance for cooperative approaches under 6.2 should also state that these activities must not lead to human rights violations. The recent agreement signed by Peru and Switzerland to create a framework for transfers of ITMOs offers some positive examples in this regard: The agreement mandates that any ITMOs “shall result from activities that pre-

vent any negative environmental and social impacts, including on air quality and biodiversity, social inequality and discrimination against population groups...”¹¹⁹ The government generating the mitigation outcomes must also “prevent other environmental-related negative impacts and respect national and international environmental regulations,” “prevent social conflict and respect human rights,” and certify that it has done so.¹²⁰ The parties to this agreement should further clarify the requirements for independent verification of mitigation outcomes and require the independent verifier to investigate whether all of the above conditions regarding rights compliance were met.

Grievance Mechanisms

There is a rich body of literature assessing the institutional grievance mechanisms (also referred to as “Independent Accountability Mechanisms” or IAMs) of major DFIs, as well as grievance mechanisms at the project level. The effectiveness criteria for grievance mechanisms set forth in the UNGPs¹²¹ provide the framework for a comprehensive review of DFIs' grievance mechanisms prepared by civil society organizations in 2016,¹²² and for the IFC Compliance Advisor/Ombudsman's (CAO) guidelines on project-level grievance mechanisms.¹²³ Those criteria form the starting point for this analysis as well. The UNGPs state that the most effective grievance mechanisms are legitimate, accessible, predictable, equitable, transparent, rights-respecting, and a source of continuous learning. The following overview identifies some good policies that can help both project-level and institutional grievance mechanisms conform to these criteria.

Legitimacy

Grievance mechanisms need to be legitimate in stakeholders' eyes in order to provide redress for harms and resolve disputes effectively. Certain features contribute to such legitimacy. Firstly,

mechanisms should be independent — able to reach conclusions based on the facts without interference or fear of consequences from other parts of their organization. Creating protections so that members cannot be removed except for cause¹²⁴ and giving oversight of the mechanism to a board of directors rather than an operational arm such as a secretariat¹²⁵ helps ensure this independence. Furthermore, the grievance mechanism should not need to seek board approval to issue recommendations (even if enforcement may depend on the board). While much remains to be decided about the institutions to be created under Article 6, if the Supervisory Body is to play the role currently envisioned in overseeing project validation and registration, the grievance mechanism should not report to the Supervisory Body. To ensure legitimacy and independence, it should instead report to an actor at a higher level within the UNFCCC framework. At a bare minimum, the grievance mechanism should not simply be the Supervisory Body itself, but must be a separate entity, albeit one that acts with the full support of the Supervisory Body.

At the project level, grievance mechanisms must also be independent of local management.¹²⁶ Project-level grievance mechanisms should be designed chiefly by or at least in partnership with the community, who will have the best sense of the risks associated with the project and their preferences for different types of grievance redress procedures.¹²⁷ The community may wish to use existing mechanisms, including independent arbitrators or dispute resolution facilities, such as those at a National Human Rights Institution (NHRI).¹²⁸

Involving representatives of affected communities in the nomination or selection of the professional staff of a grievance mechanism is another important way to create legitimacy in communities' eyes. The CAO and EBRD allow such participation in the staffing of their institutional grievance mechanisms.¹²⁹ Similarly, non-governmental organizations (NGOs) may nominate members to serve on the Compliance Committee of the Aarhus Convention.¹³⁰ To ensure representation of Indigenous Peoples and local communi-

ties' voices on an institutional grievance mechanism, the parties should consider involving the Facilitative Working Group of the LCIPP in the screening of staff.

Accessibility

The grievance mechanism must be approachable, with rules and procedures that are easily understood and do not require special expertise or resources. For example, at the GCF's Independent Redress Mechanism (IRM), complaints may be made in any language and any format, and there is no need to refer to which GCF policies were violated. Complaints may be made up to two years after a project's closing date or discovery of the harm, whichever came later.¹³¹

Another critical component of accessibility is simply that affected parties are aware of the existence of the grievance mechanism in the first place. The Asian Development Bank (ADB) and the IDB (in its recently updated procedures) both now mandate that clients inform local stakeholders of the availability of local and institutional grievance mechanisms.¹³² Finally, in order to be truly accessible, affected parties need to be confident that filing a complaint will not put them in danger. In addition to a strong, publicized, and enforced policy against reprisals (see below under Rights Compatibility), an important initial step in this regard is for the grievance mechanism to guarantee the confidentiality of complainants' identity throughout the process of the investigation, if they request it. Given that Article 6 activities would likely take place across the globe, such language and format flexibility features and publicity requirements would be important to incorporate into the institutional grievance mechanism.

Predictability and Equitability

Predictability and equitability are two core components of a grievance mechanism's fairness. Predictable mechanisms



fulfill their mandated functions within stated time-frames and apply general rules in a transparent manner. Predictability is often undercut by an insufficient capacity leading to delays in communication with complainants or, frequently, delayed decisions. Just as activity participants should be required to demonstrate general capacity to uphold the various safeguards, they also should show that they have committed sufficient resources to project-level grievance mechanisms. Similarly, the States parties must ensure the grievance mechanism at the UNFCCC is adequately staffed. A second feature that promotes predictability is a mandate to monitor the implementation of recommendations. For example, if the GCF's IRM finds non-compliance with the GCF's operational policies, then it is required to approve any remedial action plans of the secretariat and to monitor their implementation.¹³³

Equitability refers to ensuring that a grievance mechanism's procedures do not privilege one party over the other. Experts' recommendations in this regard include making sure complainants have the same participation rights as the funding or accrediting institution and project developer.¹³⁴ While no DFI's grievance mechanism currently meets this standard in full, the EBRD's Independent Project Accountability Mechanism (IPAM) and the ADB's Accountability Mechanism submit complainants' comments on draft findings to the board along with the secretariat's response.¹³⁵ Similarly, the GCF's IRM requires consultation with the complainant on the development of a draft remedial action plan and generally gives the complainant an equal opportunity to comment on monitoring reports.¹³⁶

Transparency

To be seen as legitimate and protect the important public interests at stake, grievance mechanisms must operate transparently. One way to do this is to provide information about all complaints and

their results. For example, the African Development Bank's (AfDB) Independent Review Mechanism (IRM) publishes information about registered and non-registered complaints on its website and documents pertaining to all registered complaints, such as the results of the compliance review and monitoring reports.¹³⁷

As others have noted, to adequately make use of a grievance mechanism, not only do the mechanism's processes need to be transparent, but the processes by which the funding or accrediting entity works must be transparent.¹³⁸ Operationalizing the commitment in the latest draft Article 6 rulebook negotiating texts on transparency¹³⁹ will therefore be crucial to the institutional grievance mechanism's effectiveness. In particular, decisions about the accreditation of operational entities, which play a significant role in reviewing and monitoring projects under the present design,¹⁴⁰ must be made public, including information about those entities' own performance in respecting human rights.

Rights Compatibility

Grievance mechanisms, which in many cases respond to an alleged failure to respect the human rights of project-affected communities, must themselves operate in a rights-compatible manner. Fundamentally, this means ensuring that the dignity of those who appear before the mechanism is protected, which may require training staff on sensitivity to local cultural norms and power dynamics between affected communities and project developers.¹⁴¹ It also means ensuring that whatever outcomes are reached fulfill the right to remedy by providing adequate and effective reparation for those whose rights have been violated.¹⁴²

One significant threat to human rights in conjunction with grievance procedures is reprisals against the complainant. Therefore, the project-level and UNFCCC-level

grievance mechanisms both must establish not only a policy against reprisals but systems to monitor for and prevent them. The IFC's CAO does better than most institutional grievance mechanisms in this regard, with a public set of policies on how it will seek to predict and prevent reprisals, including taking steps to work with complainants to secure their safety.¹⁴³ The SDM and its grievance mechanisms should go further still, by screening all projects and complaints for risks to human rights defenders, employing heightened due diligence in situations where significant risks are identified, and creating a hotline to respond to reprisals, among other steps.¹⁴⁴ A robust set of further measures to prevent reprisals, and tools to implement them, have been compiled in the "Guide for IAMs on Measures to Address the Risk of Reprisals in Complaint Management: A Practical Toolkit" released by the IDB's Independent Consultation and Investigation Mechanism (MICI).¹⁴⁵

Source of Continuous Learning

A grievance mechanism is often where the gaps in an institution's safeguards systems first become apparent. As such, grievance mechanisms should use the cases before them to offer insight into failures in rights-protecting systems to project managers and institutions (respectively, at the project and institution level). In this regard, a best practice is explicitly establishing an advisory mandate for the institutional grievance mechanism, as the IFC has for the CAO¹⁴⁶ and the GCF has for the IRM.¹⁴⁷ This mandate should entail a responsibility to analyze complaints to identify any types of projects or actors that are a source of repeated complaints, which should inform the SDM's exclusionary list. Similarly, grievance mechanisms should play a critical role in reviewing the risk management frameworks of activity participants and the safeguards system of the SDM.¹⁴⁸

PART 5

Conclusion

The rules for Article 6 must ensure respect for human rights. False solutions to problems as dire as the climate crisis can be worse than inaction, especially when they carry the risk of undermining ambition and of violating human rights. The possibility of acquiring internationally traded offsets to meet domestic emissions reduction targets carries these risks. If, however, States parties go ahead with creating mechanisms for trading emissions reductions, they must at the very least ensure that such mechanisms do not lead to violations of human rights — either by erod-

ing ambition and diluting resources for necessary domestic mitigation measures (without which it is impossible to avoid dangerous climate change), or by causing or contributing to harms engendered through the credit-generating activity itself. States have a legal obligation under international human rights law to refrain from causing or contributing to violations of human rights and to take measures to prevent foreseeable threats of such violations. Further, the very institutions and measures that will protect human rights — participation rules, safeguards, and grievance mechanisms — are important

for ensuring environmental integrity and delivering true emissions reductions. States parties recognized as much when they required one or more of these rights-protecting pillars in various funds and work programs under the UNFCCC.¹⁴⁹ Examples of good policies are widely available, within the UNFCCC architecture, in some bilateral agreements regarding the use of ITMOs,¹⁵⁰ and from DFIs. Article 6 mechanisms must learn from and improve upon these examples — and from the failure of past endeavors such as the CDM — so that they do not undermine the promise of the Paris Agreement.



Endnotes

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13. *Summary for Policymakers*, Part D in “Global warming of 1.5°C.”
14. UNEP, *supra* note 3
15. Climate Action Tracker, Paris Agreement turning point: Wave of net zero targets reduces warming estimate to 2.1°C in 2100 All eyes on 2030 targets, at 4 (Dec. 2020), <https://climateactiontracker.org/publications/global-update-paris-agreement-turning-point/>.
16. Christina Hood, Center for Climate and Energy Solutions, “Completing the Paris ‘Rulebook’: Key Article 6 Issues” (2019)
17. J. Rogelj et al., *Mitigation Pathways Compatible with 1.5°C in the Context of Sustainable Development* § 2.3.5, in “Global warming of 1.5°C”;
18. *Id.*
19. See generally Jessica F. Green, “Does Carbon Pricing Reduce Emissions? A Review of Ex-Post Analyses,” *Environ. Res. Letters* (accepted manuscript, forthcoming 2021) (“the overall effect on reductions for both [carbon taxes and cap-and-trade schemes] is quite small, generally between 0-2% per annum... [though] on the whole, taxes appear to do slightly better than ETSs...”)
20. Martin Cames et al., How Additional is the Clean Development Mechanism? at 10-11 (March 2016), https://ec.europa.eu/clima/sites/clima/files/ets/docs/clean_dev_mechanism_en.pdf (“Overall, our results suggest that 85% of the projects covered in this analysis and 73% of the potential 2013-2020 Certified Emissions Reduction (CER) supply have a low likelihood that emissions reductions are additional and are not overestimated.”); Carbon Market Watch, “Carbon Markets 101: The Ultimate Guide to Global Offsetting Mechanisms” (2020) (detailing the failures of the CDM and two other carbon market mechanisms established under the Kyoto Protocol, International Emissions Trading and Joint Implementation to deliver emissions reductions).
21. Lisa Song, “An Even More Inconvenient Truth,” *ProPublica* (May 22, 2019), <https://features.propublica.org/brazil-carbon-offsets/inconvenient-truth-carbon-credits-dont-work-deforestation-redd-acre-cambodia/>; Bas Arts et al., “The Performance of REDD+: From Global Governance to Local Practices,” 10 *Forests* 837, 838 (2019) (noting numerous instances, in Brazil, the Democratic Republic of Congo and Guyana where REDD+ projects led to increased emissions or no or modest decreases in emissions).
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23. See Business and Human Rights Resource Center, “Case studies: Renewable energy & human rights,” available at https://old.business-humanrights.org/en/case-studies-renewable-energy/?page=0§or=&country=&tool=&directory_nid=141756 and filter “UN CDM registered.” (last accessed Jan. 14, 2021). Carbon Market Watch has also documented additional CDM projects associated with human rights violations, see Carbon Market Watch, “The Clean Development Mechanism: Local Impacts of a Global System” (2018); The Wuppertal Institute has provided further reporting on these and other instances of human rights violations, see Wolfgang Obergassel et al., “Human rights and the Clean Development Mechanism,” 8 *J. Hum. Rights & Env’t.* 51 (2017).
24. Juan Pablo Sarmiento Barletti & Anne M. Larson, “Rights Abuse Allegations in the Context of REDD+ Readiness and Implementation: A Preliminary Review and Proposal for Moving Forward,” CIFOR (2017).
25. See statements during the closing plenary of COP-25 of Switzerland, Costa Rica, New Zealand, Canada, Tuvalu, and Australia; video available at <https://unfccc-cop25.streamworld.de/webcast/cop-cmp-cma-closing-plenary-blank-template-2>
26. Office of the United Nations High Commissioner for Human Rights, “Comments and recommendations of OHCHR regarding the future UNFCCC Sustainable Development Mechanism” (Nov. 4, 2016).
27. John H. Knox, “Human Rights and Safeguards in the New Climate Mechanism established in Article 6, paragraph 4 of the Paris Agreement” (May 3, 2016), available at https://www.ohchr.org/Documents/Issues/Environment/Letter_to_SBSTA_UNFCCC_May2016.pdf.
28. Climate Action Network, “Briefing on Implementation Guidelines for Article 6 of the Paris Agreement,” at 2 (June 2019), available at climatenetwork.org/publication/briefing-implementation-guidelines-article-6-paris-agreement-june-2019.

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31. UNFCCC Conference of the Parties, Decision 1/CP.16, The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, para. 8, FCCC/CP/2010/7/Add.1 (Mar. 15, 2011) [hereinafter “Cancun Agreements”].
32. See Cancun Agreements para. 69 & app’x I para. 2 (directing parties interested in receiving payments for avoided deforestation to establish a set of safeguards and ensure full stakeholder participation).
33. UNFCCC Conference of the Parties, Decision 14/CP.18, para. 20, FCCC/CP/2012/8/Add.2 (Feb. 28, 2013) (stating that the Climate Technology Centre and Network, which is the operational arm of the technology mechanism, should develop safeguards).
34. UNFCCC Conference of the Parties, Decision 3/CP.17, annex, paras. 18(e), 65-66, 69, FCCC/CP/2011/9/Add.1 (Mar. 15, 2012) (establishing in the GCF’s Governing Instrument that there must be environmental and social safeguards and an avenue to seek redress); UNFCCC Conference of the Parties, Decision 7/CP.20, para. 17, FCCC/CP/2014/10/Add.2 (Feb. 2, 2015) (encouraging the GCF to enhance stakeholder participation); UNFCCC Conference of the Parties, Decision 8/CP.20, para. 6, FCCC/CP/2014/10/Add.2 (Feb. 2, 2015) (encouraging the GEF to provide access to information and remedy); UNFCCC Conference of the Parties, Decision 7/CP.21, FCCC/CP/2015/10/Add.2 (Jan. 29, 2016) (urging the GCF to operationalize the Independent Redress Mechanism).
35. Harvey Himberg, “Comparative Review of Multilateral Development Bank Safeguard Systems” (2015); Accountability Counsel et al., “Glass Half Full? The State of Accountability in Development Finance” (2016); Coalition for Rights in Development, “International Financial Institutions’ Responsibility to Ensure Meaningful and Effective Participation,” available at <https://rightsindvelopment.org/our-work/hrd/participationstatement/> (letter signed by over 160 organizations) (noting the rise in DFIs having policies around participation and accountability, while acknowledging the work that needs to be done in practice).
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44. Himberg, *supra* note 35 at 3-4; see, e.g., Adaptation Fund, “Environmental and Social Policy” and World Bank, “Environmental and Social Framework” (statements of policy); European Bank for Reconstruction and Development (EBRD), “Environmental and Social Policy,” (detailing application and project review procedures); The World Bank, “Guidance Notes for Borrowers,” available at <https://www.worldbank.org/en/projects-operations/environmental-and-social-framework/brief/environmental-and-social-framework-resources#guidancenotes>.
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46. See Verra, Verified Carbon Standard v4.0 at 3.16, available at https://verra.org/wp-content/uploads/2020/03/VCS-Standard-v4.0_Updated.pdf; Verra, Climate, Community & Biodiversity Standard v3.1 at *passim*, available at https://verra.org/wp-content/uploads/2017/12/CCB-Standards-v3.1_ENG.pdf; Gold Standard, “Stakeholder Consultation and Engagement Requirements,” “Safeguarding Principles and Requirements,” and “Gender Equality Requirements & Guidelines,” available at <https://www.goldstandard.org/project-developers/standard-documents>.
47. See Implementing Agreement to the Paris Agreement between the Swiss Confederation and the Republic of Peru, arts 4.4, 7.5(c) (signed 2020) [hereinafter “Switzerland-Peru Agreement”].
48. The most recent texts coming out of COP-25 — which did not reflect consensus — do suggest a right of stakeholders to appeal decisions of or raise grievances with the Supervisory Body under 6.4, see, e.g., Draft Decision CMA 1, *supra* note 36 at para. 72.
49. United Nations Guiding Principles on Business and Human Rights, Principle 31, “Effectiveness Criteria for Non-judicial Grievance Mechanisms” (2011), available at https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.
50. Daniel Grossman, “Dam Lies: Despite Promises, an Indigenous Community’s Land Is Flooded” (Mar. 5, 2018), <https://pulitzercenter.org/reporting/dam-lies-despite-promises-indigenous-communities-land-flooded>.
51. CIEL, “Panama withdraws Problematic Barro Blanco Dam Project,” <https://www.ciel.org/panama-withdraws-problematic-barro-blanco-dam-project-cdm-registry/>; Carbon Market Watch, “In landmark decision, Panama withdraws UN registration for Barro Blanco hydrodam project,” <https://carbonmarketwatch.org/2016/11/10/press-statement-in-landmark-decision-panama-withdraws-un-registration-for-barro-blanco-hydrodam-project/>.
52. Business and Human Rights Resource Center, “Kenya: Kinangop Wind Park impacts communities in Nyandarua,” <https://old.business-humanrights.org/en/kenya-kinangop-wind-park-impacts-communities-in-nyandarua>
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54. These are among the cases documented by the Business and Human Rights Resource Center, see BHRRC, “Case studies: Renewable energy & human rights,” available at https://old.business-humanrights.org/en/case-studies-renewable-energy/?page=0§or=&issue=&country=&tool=&directory_nid=141756 and filter “UN CDM registered.” Carbon Market Watch has also documented additional CDM projects associated with human rights violations, see CMW, “The Clean Development Mechanism: Local Impacts of a Global System”; The Wuppertal Institute has provided further reporting on these and other instances of human rights violations, see Obergassel et al., *supra* note 23.
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57. U.N. Conference on Environment and Development, Rio Declaration on Environment and Development, U.N. Doc. A/Conf.151/26/Rev.1 (Vol. 1), principle 10

- (Aug. 12, 1992) [hereinafter Rio Declaration]; Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, June 25, 1998, 2161 U.N.T.S. 447 [hereinafter Aarhus Convention]; Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, opened for signature Sept. 27, 2018, C.N.195.2018, http://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428_en.pdf [hereinafter Escazu Agreement].
58. See Almaty Guidelines on Article 3.7 of the Aarhus Convention.
59. Himberg, *supra* note 35 at Annex I (summaries of various safeguards systems with requirements for stakeholder engagement and/or access to information).
60. See G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007) [hereinafter UNDRIP]; International Labour Organization (ILO), Indigenous and Tribal Peoples Convention (No. 169) (1989).
61. See generally CIEL, *supra* note 55.
62. United Nations Framework Convention on Climate Change, art. 4.1(i), May 9, 1992, 1771 U.N.T.S. 107 [hereinafter UNFCCC].
63. UNFCCC art. 6; Paris Agreement art. 12, Dec. 15, 2015, T.I.A.S. No. 16-1104.
64. See IGES database of CDM projects, <https://www.iges.or.jp/en/pub/iges-cdm-project-database/en> (indicating many, if not most, projects initiated by private actors and subnational governments). See also COP-25 President's draft texts on art. 6.4 para. 30 (referring to activities by public or private actors).
65. Report of the World Commission on Environment and Development to General Assembly, "Our Common Future," Ch. 2, para. 1 (A/42/427, 4 August 1987) (hereinafter, "Brundtland Report"); Johannesburg Declaration on Sustainable Development, para. 11; Pulp Mills on the River Uruguay (Argentina v. Uruguay), Separate Opinion of Judge Cançado Trindade, Judgment, I.C.J. Reports 2010, p. 164.
66. See Brundtland Report, *supra* note 65, esp. ch. 2 paras. 55-56, 76.
67. Cf. Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, UN Doc. A/75/50354 (Aug. 5, 2020) (arguing that State exports of hazardous pesticides and toxic industrial chemicals that are banned for domestic use contravenes States' extraterritorial obligations and recommending an immediate end to this practice).
68. Cf. Human Rights Committee, Sergio Euben Lopez Burgos v. Uruguay, Communication No. R.12/52, U.N. Doc. Supp. No. 40 (A/36/40) at 176 (1981) ("it would be unconscionable to so interpret the responsibility under article 2 of the Covenant [on Civil and Political Rights] as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory").
69. United Nations, *Charter of the United Nations*, arts. 54-55 (1945), 1 U.N.T.S. XVI.
70. CESCR General comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, UN Doc. E/C.12/GC/24 (Aug. 10, 2017), directs States to "revise relevant tax codes, public procurement contracts, export credits and other forms of State support, privileges and advantages in case of human rights violations, thus aligning business incentives with human rights responsibilities," suggesting a clear obligation to avoid procuring goods associated with human rights violations. Even more directly, the Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social, and Cultural Rights dictate that "States that are in a position to influence the conduct of non-State actors even if they are not in a position to regulate such conduct, such as through their public procurement system or international diplomacy, should exercise such influence..." This responsibility is echoed by the UN Guiding Principles on Business and Human Rights (principle 6 and commentary) and the Sustainable Development Goals (SDG 12.7). The best opportunity prospective buyer countries will have to influence the activities generating credits under 6.4 is by creating strong participation requirements, safeguards, and grievance mechanisms in the rulebook.
71. See, e.g., CESCR, "Concluding Observations on the Fifth Periodic Report of Norway," UN Doc. E/C.12/NOR/CO/5 (Dec. 13, 2013) ("The Committee recommends that the State party ensure that investments by the Norges Bank Investment Management in foreign companies operating in third countries are subject to a comprehensive human rights impact assessment (prior to and during the investment)"; see also Five UN Human Rights Treaty Bodies issue a Joint Statement on Human Rights and Climate Change, Joint Statement on "Human Rights and Climate Change" (Sept. 16, 2019), <https://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E> [hereinafter "Joint Statement on 'Human Rights and Climate Change'"] ("States should also discontinue financial incentives or investments in activities and infrastructure which are not consistent with low greenhouse gas emissions pathways...").
72. CESCR, "Statement on the obligations of States parties regarding the corporate sector and economic, social and cultural rights," UN Doc. E/C.12/2011/1 (July 12, 2011); CESCR General Comment 24, *supra* note 70, paras. 26-27, 30-34.
73. CESCR General Comment 24, *supra* note 70, para. 32.
74. Paris Agreement, *supra* note 63, art. 6.1
75. Cames et al., *supra* note 20 at 10-11, (March, 2016),
76. See, e.g., CLARA, *supra* note 29.
77. See, e.g., UNFCCC Conference of the Parties, Decision 11/CP.8, New Delhi Work Programme on Article 6 of the Convention, FCCC/CP/2002/7/Add.1 (Mar. 28, 2003) (amended 2007);
78. J. Roy et al., "Chapter 5: Sustainable development, poverty eradication and reducing inequalities," at 447 in IPCC, Global Warming of 1.5°C: An IPCC Special Report on the Impacts of Global Warming of 1.5°C Above Pre-Industrial Levels and Related Global Greenhouse Gas Emissions Pathways, in the Context of Strengthening the Global Response to the Threat of Climate Change, Sustainable Development, and Efforts to Eradicate Poverty (2018) ("Many strategies for sustainable development enable transformational adaptation for a 1.5°C warmer world, provided attention is paid to reducing poverty in all its forms and to promoting equity and participation in decision-making (medium evidence, high agreement)").
79. See, e.g., Jonathan Isham et al., "Does Participation Improve Performance? Establishing Causality with Subjective Data," 9 World Bank Econ. Review 176, 180-181 (1995).
80. These studies are synthesized in S. Diaz, et al., Summary for policymakers of the global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services Key Messages B.6 & D.5, Background A.7 & Figure 1, Table SPM.1, UN Doc. IPBES/7/10/Add.1 (May 29, 2019).
81. UNFCCC Conference of the Parties, Decision 4/CP.15, "Methodological guidance for activities relating to reducing emissions from deforestation and forest degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries," FCCC/CP/2009/11/Add.1.
82. Cf. WD Sunderlin et al., "Land and carbon tenure: Some – but insufficient – progress" in *Transforming REDD+: Lessons and New Directions* 93–102. (A Angelsen et al., eds. 2018).
83. Joakim Kulin & Ingemar Johansson Seva, "Who Do You Trust? How Trust in Partial and Impartial Government Institutions Influences Climate Policy Attitudes" *Climate Policy* (2020).
84. Report of the Sixteenth Meeting of the Working Group of the Parties to the Aarhus Convention, https://www.uncece.org/fileadmin/DAM/env/pp/wgp/WGP_16/ece.mp.pp.wg.1.2013.2.e.pdf; Report of the Seventeenth Meeting of the Working Group of the Parties to the Aarhus Convention https://www.uncece.org/fileadmin/DAM/env/pp/wgp/WGP_17/ece.mp.pp.wg.1.2014.2_e.pdf; Report of the Twenty-third Meeting of the Working Group of the Parties to the Aarhus Convention https://www.uncece.org/fileadmin/DAM/env/pp/wgp/WGP-23/ODS/ECE_MP_PP_WG.1_2019_2_E.pdf.
85. UNFCCC Conference of the Parties, Decision 2/CP.24, Local Communities and Indigenous Peoples Platform, UN Doc. FCCC/CP/2018/10/Add.1 (March 19, 2019).
86. Green Climate Fund, "Guidelines relating to the Observer participation, accreditation of Observer organizations and participation of active Observers."

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88. GermanWatch, “The Future Role of the Adaptation Fund In the International Climate Finance Architecture.”
89. Green Climate Fund, “Information Disclosure Policy of the GCF.”
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91. Report of the Adaptation Fund Board to the Ninth Session of Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, FCCC/KP/CMP/2013/2.
92. International Aid Transparency Initiative, *About the Standard*, <https://iatistandard.org/en/about/iati-standard/>.
93. See World Bank Inspection Panel, “Consultation, Participation & Disclosure of Information: Emerging Lessons Series No. 4” at 3 (“Of the Panel’s 34 investigated cases, 30 have involved consultation, participation and disclosure of information issues.”).
94. World Bank, “Environmental and Social Framework,” *supra* note 34, Environmental and Social Standard 10: Stakeholder Engagement and Information Disclosure.
95. UNFCCC Conference of the Parties, Decision 15/CP.18, Doha Work Programme on Article 6 of the Convention, FCCC/CP/2012/8/Add.2 (Feb. 28, 2013).
96. Carbon Market Watch, “Practitioner’s Guide for Local Stakeholder Consultation” (2018).
97. Adaptation Fund, “Guidance document for Implementing Entities on compliance with the Adaptation Fund Environmental and Social Policy” 10 [hereinafter “ESP Guidance”]
98. Adaptation Fund, Environmental and Social Framework, *supra* note 31, Principle 7 & Adaptation Fund, ESP Guidance, *supra* note 88.
99. See, e.g., Food and Agriculture Organization, “Respecting Free, Prior and Informed Consent: Practical Guidance for Governments, Companies, NGOs, Indigenous Peoples and Local Communities in Relation to Land Acquisition” at 16, 25, 28, 33 (2014).
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102. EBRD, “Environmental and Social Policy,” *supra* note 34 at 2.4 (2019).
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104. See, e.g., EBRD, “Environmental and Social Policy,” *supra* note 34, *Performance Requirement 1: Assessment and Management of Environmental and Social Risks and Impacts*, paras. 11, 20-23.
105. *Id.*, paras. 10, 28.
106. Adaptation Fund, ESP Guidance, *supra* note 89, Principle 4 (pg. 8).
107. Interamerican Development Bank, “Environmental and Social Policy Framework 2020,” *Environmental and Social Performance Standard 1* (Sept. 2020).
108. Adaptation Fund, “Environmental and Social Policy,” *supra* note 34, paras. 15, 20, 21.
109. Adaptation Fund ESP Guidance, *supra* note 97, Principle 5; Adaptation Fund, “Gender Policy and Action Plan,” para. 13
110. Green Climate Fund, “Indigenous Peoples Policy” (which not only requires GCF financed activities to follow FPIC, but also requires due diligence to prevent contact with uncontacted Indigenous Peoples, tailored consultation, and other unique elements.
111. Verra, Climate, Community & Biodiversity Standard, *supra* note 46 at 22-23.
112. Food and Agriculture Organization, *supra* note 99 at 9 (“Understood as an expression of the right to self-determination, FPIC can fairly be interpreted as applying to all self-identified peoples who maintain customary relationships with their lands and natural resources, implying it is enjoyed widely in rural Africa and Asia, and by many rural Afro-American societies.”).
113. Himberg, *supra* note 35 at 13.
114. What the IDB’s new proposed exclusionary list includes, though it notes the possibility, in exceptional circumstances of approving an upstream gas project. The EBRD list includes coal and oil.
115. This recommendation also recognizes the significant human rights violations associated with the Bujagali Dam, Barro Blanco, and many others.
116. See Bridget R. Deemer et al., “Greenhouse Gas Emissions from Reservoir Water Surfaces: A New Global Synthesis,” 66 *BioScience* 949 (2016).
117. See CIEL, “Fuel to the Fire: How Geoengineering Threatens to Entrench Fossil Fuels and Accelerate the Climate Crisis” (2019)
118. Convention on Biological Diversity COP 10 Decision X/33, para. 8(w), UN Doc. UNEP/CBD/COP/DEC/X/33 (Oct. 29, 2010).
119. Switzerland-Peru Agreement, *supra* note 47, art. 3(k).
120. *Id.*, art. 4(4) & 7(5)(c)
121. UN Guiding Principles, *supra* note 49, Principle 31.
122. Accountability Counsel et al., *supra* note 35.
123. CAO, “A Guide to Designing and Implementing Grievance Mechanisms for Development Projects” 17-18 (2008); See also CAO, “Grievance Mechanism Toolkit, A practical guide for implementing grievance mechanisms in different sectors” (2016).
124. As with the head of the IRM, see GCF, “Terms of Reference of the Independent Redress Mechanism (Revised),”
125. E.g., the Independent Redress Mechanism at the GCF, see GCF, *supra* note 124; see also Kristen Lewis, “Citizen-driven Accountability for Sustainable Development: Giving Affected People a Greater Voice— 20 Years On” at 9 (2012).
126. CAO, (2008), *supra* note 123 at 17.
127. CAO, (2008), *supra* note 123 at 2; EarthRights International and SOMO, “Community-Driven Operational Level Grievance Mechanisms: Discussion Paper for a New Model” (2015).
128. CAO, (2008), *supra* note 123 at 42, 46.
129. Accountability Counsel et al., *supra* note 35 at 55
130. United Nations Economic Commission for Europe, “Guide to the Aarhus Convention Compliance Committee,” para. 57(a) (2d ed. 2019).
131. Green Climate Fund, “Independent Redress Mechanism Procedures and Guidelines,” paras. 23-29.
132. Accountability Counsel et al., *supra* note 35 at 57 (commenting on the ADB); Bank Information Center, “Analysis of the main improvements of the IDB’s Environmental and Social Policy Framework (ESPF)” 2 (2020).
133. Green Climate Fund, *supra* note 131, paras. 67 & 77-78.
134. Accountability Counsel et al., *supra* note 35 at 60.
135. *Id.*
136. Green Climate Fund, *supra* note 131, paras. 67 and 77.
137. See African Development Bank, *Independent Review Mechanism*, <https://www.afdb.org/en/independent-review-mechanism-irm> (last accessed Jan. 14, 2021).
138. Accountability Counsel et al., *supra* note 35 at 62.
139. See, e.g., Draft CMA decision on guidance on cooperative approaches referred to in Article 6, paragraph 2, of the Paris Agreement, Version 1 of December 13th, Annex para. 32; Draft CMA decision, *supra* note 36, Annex para. 21.
140. See, e.g., Draft CMA decision, *supra* note 36, Annex paras. 53-54, 59-60.
141. Cf. CAO, *supra* note 123 at 31.
142. See, e.g., ICCPR, *supra* note 56, art. 2.3(a); Cf. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Para. 15, GA Res. 60/147 (2005) (“In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.”).
143. CAO “Approach to Responding to Concerns of Threats and Incidents of Reprisals in CAO Operations.”
144. These and other recommendations can be found in the Coalition for Human Rights in Development’s comments on the Asian Infrastructure and Investment Bank’s review of its Environmental and Social Framework, see Carmina F. Obaniil, Coalition for Human Rights in Development, Letter Re: Joint submission on policy recommendations regarding reprisals against human rights defenders (March 3, 2020), <https://rightsindvelopment.org/wp-content/uploads/2020/03/2020.03.20-Coalition-Members-Submission-for-AIIB-ESF-Review-with-Annex-1.pdf>.
145. [http://independentaccountabilitymechanism.net/ocrp002p.nsf/0/ce43d67170fcd8f3482583a20026ab13/\\$file/guide_for_iam_s_on_measures_to_address_the_risk_of_reprisals_in_complaints_management_february_2019.pdf](http://independentaccountabilitymechanism.net/ocrp002p.nsf/0/ce43d67170fcd8f3482583a20026ab13/$file/guide_for_iam_s_on_measures_to_address_the_risk_of_reprisals_in_complaints_management_february_2019.pdf)
146. CAO, “Office of the Compliance Advisor/Ombudsman (CAO) Terms of Reference”
147. GCF, *supra* note 124.
148. Accountability Counsel et al., *supra* note 35 at 65-66.
149. See *supra* notes 33-36 and accompanying text.
150. See Switzerland-Peru Agreement, *supra* note 47.

RIGHTS, CARBON, CAUTION

Upholding Human Rights under Article 6 of the Paris Agreement

The climate crisis is unfolding here and now. Preserving our collective future demands urgent and ambitious action, and the Paris Agreement is perhaps the best hope we have of coming together to reverse and prevent the catastrophic effects of warming. Achieving the Paris Agreement's target of limiting warming to 1.5°C is crucial, if still risky for human rights and the environment. Doing so will require a dramatic acceleration of efforts to reduce greenhouse gas emissions from all sectors globally.

As it stands, the mitigation measures outlined in NDCs under the Paris Agreement would overshoot the target, leaving the world on course for warming in excess of 3°C by the end of the century. This reality necessitates exercising caution around any proposals to create "market mechanisms" that allow for offsetting or trading of emissions reductions between countries — a system that is fundamentally at odds with deep decarbonization.

At the 26th Conference of the Parties to the UNFCCC (COP-26), States parties are poised to finalize the framework regulating these mechanisms under Article 6 of the Paris Agreement. In so doing, they are obligated to consider their legal and moral duty to protect human rights *through* ambitious climate action and *from* adverse impacts of that action. This report lays out the minimum requirements that any proposed rules must meet to ensure that any such mechanisms uphold human rights.



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