



Article 6 of the Paris Agreement establishes cooperative approaches in the form of market and non-market mechanisms and approaches to achieve the goals of the Agreement. There are three main components of Article 6: using internationally transferred mitigation outcomes (ITMOs) (art. 6.2), a “Sustainable Development Mechanism” (art. 6.4), and non-market approaches (art. 6.8). If designed correctly, all three could help countries meet their individual climate commitments and help contribute to an overall reduction in emissions and meeting the global goal of keeping temperature rise to no more than 1.5 degrees Celsius. However, if designed poorly, these approaches could not only contribute to rising emissions, but also could cause significant environmental and social harm and human rights violations. Ensuring the respect for and protection of human rights in Article 6 activities is therefore critical. Preserving human rights in Article 6 activities includes three key components: social and environmental safeguards, public participation, and an independent grievance redress mechanism/process.

Current State of Play

Under the decision adopting the Paris Agreement (decision 1/CP.21), Parties were tasked with developing guidance on approaches involving ITMOs; the rules, modalities, and procedures for the Sustainable Development Mechanism; and a work programme for non-market approaches under Article 6.8. Over the last three years, Parties have been unable to come to an agreement on these critical elements and thus these rules remain one of the key incomplete components of the Paris Agreement Work Programme.

Heading into COP25, Parties have agreed to work on the basis of three draft texts, one each for Article 6.2, 6.4, and 6.8. However, these texts remain heavily bracketed and the discussions at the last negotiating session in June revealed that Parties' positions remain irreconcilable and that most seem fairly set in their positions. Most divisive in these discussions have been issues related to environmental integrity (i.e. whether these mechanisms might create loopholes undermining rather than strengthening the ambition and other provisions of the Paris Agreement). These technical aspects as well as double-counting, the share of proceeds for the Adaptation Fund, and the transition from the Kyoto Protocol mechanisms have been the subject of most of the discussions. However, the June meeting did see a greater number of Parties highlighting the need to include human rights and social safeguards, with more Parties voicing support for inclusion of human rights. It, however, also evidenced the divisions amongst Parties related to those topics.

Though much of the discussion on Article 6.2 relates to accounting for ITMOs, the current text includes reference to human rights in the section on safeguards and it says that participating Parties shall provide information about how the activities it participates in are consistent with their human rights obligations. The majority of the discussions on human rights, social safeguards, public participation, and grievance redress took place in the context of Article 6.4. This included numerous Parties advocating for these issues, but also included numerous Parties questioning the need to include human rights, why other rights (namely the right to development) were not being mentioned, and mentioning that human rights are a matter of national prerogative. There was little discussion of the grievance mechanism and at least one Party said it did not see why public participation was necessary. However, there remains reference in the text to human rights, a grievance redress process (though it no longer includes principles that earlier text had), and stakeholder consultation. It also proposes ongoing work to further develop the rules, modalities, and procedures on certain topics including grievance redress and human rights provisions. All of the text around human rights, grievance redress, and stakeholder consultation remains in brackets.

Unlike articles 6.2 and 6.4, the discussions on the work programme for non-market approaches (Article 6.8) include no discussion of human rights. The current text mentions negative environmental and social impacts, sustainable development and poverty eradication, and explicitly references the preamble in recalling the Paris Agreement. However, there are no explicit mentions of human rights or social safeguards in relation to article 6.8 or its guiding principles.

Given the stalemate in the negotiations thus far and the heavily bracketed text, the likelihood of agreeing to full rules, modalities, and procedures seems low. It could instead be that COP25 concludes with a statement of principles for Article 6 and plan for further negotiations. Thus, it is critically important that these principles include a placeholder for human rights serving as a guide and for the inclusion and development of the three key components related to human rights: social and environmental safeguards, stakeholder consultation, and an independent grievance redress mechanism.

Messages from Human Rights Experts

These key elements of preserving human rights have been advocated for by human rights experts.

Prior to the first meeting of the Subsidiary Body on Scientific and Technical Advice (SBSTA), under which Article 6 negotiations take place, after the adoption of the Paris Agreement the then UN Special Rapporteur on the issues of human rights obligations relating to the enjoyment of a safe, clean and healthy environment, John Knox sent a letter to SBSTA regarding human rights and safeguards in Article 6.4. In his letter, the UN Special Rapporteur recommended having safeguards to protect against human rights abuses, providing for effective public participation, and having effective remedial procedures. See https://www.ohchr.org/Documents/Issues/Environment/Letter_to_SBSTA_UNFCCC_May2016.pdf.

Similarly, the Office of the UN High Commissioner for Human Rights submitted comments and recommendations to the UNFCCC on the future Sustainable Development Mechanism under Article 6.4. It echoed similar themes to the letter from the UN Special Rapporteur and highlighted these as critical elements to ensuring that communities' rights are respected and that they also benefit from these activities. See https://www.ohchr.org/Documents/Issues/ClimateChange/OHCHR_APA%20submission_May2017.pdf.

Learning From the Past

The history of the Kyoto Protocol mechanisms illustrates the importance of ensuring human rights are respected, protected, and promoted in the new market and non-market approaches established under the Paris Agreement. The rules for Article 6 should heed the lessons of the Clean Development Mechanism (CDM) and development finance institutions so as to not repeat the mistakes of the past.

As there are no safeguards in place that projects had to meet to qualify under the CDM, we have seen several CDM projects that have been accompanied with severe human rights abuses. For example, the Barro Blanco dam in Panama, which the government eventually withdrew from the CDM, caused numerous harms including displacement of indigenous peoples without their free, prior, and informed consent, destruction of biodiversity, and flooding of their lands and cultural heritage sites, among other problems. However, this withdrawal of the project from the CDM came long after numerous investors had contributed to the development of the project and it did not redress the harms that occurred nor stop the dam from going forward. Similarly the Alto Maipo run-of-the-river hydropower project, which is currently under construction in Chile, has led to numerous human rights violations including impacting the right to water, right to food, rights to life and health, right to adequate housing, and right to a healthy environment, among others.


The history of projects such as these has led to the recognition in international development finance and climate finance, as well as in regards to corporations (for example as evidenced by the UN Guiding Principles on Business and Human Rights), that it is critically important to have social and environmental safeguards, meaningful stakeholder consultation, and an independent grievance redress mechanisms when engaging in these activities.


Preserving Human Rights

As climate change exacerbates human rights impacts, it is critically important that the rules for Article 6 ensure environmental integrity so that it is not used in a manner that undermines the goals of the Paris Agreement. As such there need to be strong rules to ensure that there is no double-counting or loopholes that can be exploited and to ensure that Article 6 activities enhance the ambition of climate action.

Equally important is the inclusion of three key components in the rules for Article 6 that are necessary to ensure that human rights are respected, protected, and considered in Article 6 activities: the inclusion of rights-based social and environmental safeguards, ensuring public participation in the design and implementation of activities, and adopting an independent grievance mechanism and process for communities to use if they have been harmed. Further, these three components can help ensure that Article 6 activities contribute to a just transition.

Essential elements to ensure that Article 6 mechanisms respect human rights

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Meaningful stakeholder consultation and effective participation
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Robust social and environmental safeguards
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Independent grievance mechanism

Rights-Based Social and Environmental Safeguards

Climate action, including actions related to carbon markets and trading under Article 6 mechanisms, should be guided by Parties' human rights obligations and should not facilitate projects or activities (or allow them to generate carbon credits) that undermine existing human rights obligations. As a whole, Article 6 should promote sustainable development and its activities

should be guided by principles including respect for human rights, the rights of indigenous peoples, and gender equality. Social and environmental safeguards reflecting these rights should be established under Article 6, and any proposed project or activity should have to demonstrate compliance with these safeguards in order to be approved for registration or qualification under Article 6. These safeguards can help ensure that Article 6 activities do not harm people and the environment and do achieve sustainable development. All major international financial institutions as well as the financial mechanisms of the UNFCCC, including the Green Climate Fund and the Adaptation Fund, have social and environmental safeguards with the GCF's safeguards being mandated by the COP. Furthermore, these safeguards should be agreed upon and put in place prior to the operation of the Sustainable Development Mechanism or Parties' engagement in other forms of cooperative approaches.

Meaningful Consultation and Ensuring Stakeholder Participation

Projects are better designed and more sustainable when local communities, indigenous peoples, women, and those in the potentially impacted area are consulted and participate in project design and throughout the life of the project. The right to participate is enshrined in both human rights treaties and regional agreements, including the Aarhus Convention and Escazú Agreement and, like other social safeguards, is required by most international financial institutions. Additionally, it is essential to respect the rights of indigenous peoples and to ensure their free, prior, and informed consent (FPIC) when activities may affect them. Ensuring meaningful stakeholder participation is not a check-the-box exercise, but requires that project proponents ensure there is adequate access to information and proper space for the consultation of all relevant stakeholders, including ensuring that those participating do not face retaliation. Meaningful stakeholder consultation can help ensure that Article 6 activities are better designed, more likely to provide positive benefits to local communities, and more sustainable as involving people in the project-affected area throughout the project also helps minimize conflict around the project. It is therefore critical that those who may be affected, either positively or negatively, are consulted throughout. This includes obtaining FPIC when indigenous peoples may be affected, and that these consultation processes meet or exceed international best practice standards.

Independent Grievance Mechanism

The rules for Article 6 must not only prevent harm, but must also provide an adequate avenue for redress if harms do occur, as even when strong social and environmental safeguards are in place, things can and do cause harm. Over the last twenty-five years, there has been increased recognition in development finance and corporate arenas that having systems in place to address grievances and remedy harm was essential. Having such systems in place helps ensure access to justice and remedy as they provide a place for affected people and communities to go in the event that a project designed to help mitigate climate change also harms them. Currently, the CDM has no such mechanism and, as such, communities harmed by a CDM project have no adequate avenue to seek redress and recourse if they are harmed by a project. The modalities for the new Sustainable Development Mechanism should heed this lesson and not repeat these mistakes and should put in place a grievance system. To be effective, this process for grievance redress should be independent, rights-based, equitable, accessible, transparent, and efficient.