



Carbon Market Watch inputs to the Article 6.4 Supervisory Body ahead of its 10th meeting: appeal and grievance processes

Brussels, 15 February 2024

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

Carbon Market Watch welcomes the Call for Input for the annotated agenda and related annexes of the next meeting of the Article 6.4 Supervisory Body. We would hereby like to submit input on [A6.4-SB010-AA-A04 - Draft procedure: Appeal and grievance processes under the Article 6.4 mechanism.](#)

For a grievance process, it is of utmost importance that it is designed by and with those who will be engaging with it. Therefore, more input is essential to ensure it works for, rather than against, its users. Carbon Market Watch urges the Supervisory Body to actively seek input from IPLCs and other rightsholders as part of a structured consultation, in addition to the one-week window of the current Call for Input,. This consultation should be open for submissions for at least a month, and could take place after the 10th meeting of the Supervisory Body. We also urge the 6.4 SB to actively reach out to the Indigenous Peoples constituency to flag this consultation and encourage their participation. Due to its current condition and the need for further consultation, we do not expect the draft procedure to be ready for adoption at the 11th meeting of the Supervisory Body.

Our recommendations can be found below.

General

Carbon Market Watch regrets that the draft procedure has only been edited rather than rewritten since its last iteration. The newest iteration of the draft procedure still seems to prioritize limiting access out of a fear of abuse of the mechanisms, rather than minimizing barriers to uphold human rights and provide remedy. Preventing abuse of the mechanism is a worthwhile objective, but cannot be the priority in the establishment of mechanisms meant to protect and uphold rights; this is an entirely backwards approach to the design of safeguards such as appeal and grievance mechanisms. This is why we recommend **rewriting the entirety of the draft procedure** from the starting point of the following principles: accessibility, transparency, predictability, independence, adequacy and safeguards. These principles and other key design factors are described in detail in our [briefing](#) on grievance mechanisms from March 2023, based on an underlying [report](#) commissioned to Perspectives Climate Group, which we have submitted on previous occasions to the Supervisory Body. We also recommend that the experience of those who will be using the grievance mechanism be the guiding principle of the revised draft procedure, based on a structured consultation process mentioned previously.

In addition to this pressing advice, please find below our recommendations for particular sections and paragraphs of significance from the draft procedure.

4 Appeal process

PARA	DRAFT PROCEDURE TEXT	COMMENTS
12(b)	<p>Reduced appeal fee of USD [2,500] [No appeal fee] if the appeal is submitted by Indigenous Peoples, local communities or non-profit organizations or is in relation to the activities located in least developed countries, small island developing States or specially underdeveloped zones in developing countries as designated by the host Party governments in an official notification for development assistance, including for planning, management or investment, satisfying any one of the following conditions using most recent available data:</p> <p>(i) The proportion of the population in the zone with income of less than USD 2.15 per day, adjusted by purchasing power parity, is greater than 50 per cent;</p> <p>(ii) The gross national income per capita of the country is less than USD 3,000 and the population of the zone is among the poorest 20 per cent in the poverty ranking of the host country as per the applicable national policies and procedures;</p> <p>(iii) The proportion of the population in the zone with income of less than the national poverty line used by the host country for reporting on the Sustainable Development Goals is greater than 50 per cent.]</p>	<p>While an appeal fee may be warranted in certain cases, a reduced appeal fee of USD 2500 would not make the appeal process accessible for everyone. This is still a large sum of money and will be a barrier for those without sufficient means to make an appeal. There should therefore be no appeal fee if the appellant fits any of the described categories.</p>
19	<p>Upon publishing of the eligible appeal on the UNFCCC website, the processing of the case within the respective procedure shall be suspended immediately until the conclusion of the appeal</p>	<p>We support the immediate suspension of the processing of the case within the respective procedure until the conclusion of the appeal proceedings.</p>

	proceedings made in accordance with sections 4.4.5–4.4.6 below. The secretariat shall immediately notify the Supervisory Body of the publishing of the eligible appeal and the suspension of the process.	
31	[If the ruling of the appeal panel is a remand ruling referred to in paragraph 24(b) above, the secretariat shall reimburse the appeal fee in full to the appellant.]	We support reimbursement of the appeal fee, if any, if the ruling of the appeal panel is a remand ruling. However, we stress that this is not a sufficient measure to alleviate the barrier that fees constitute in the first place. Having to pay a fee and face the uncertainty of getting reimbursed or not is likely to be a real barrier for IPs, LCs, and non-profit organisations, especially those of smaller sizes and/or based in developing countries.

5 Grievance process

PARA	DRAFT PROCEDURE TEXT	COMMENTS
34	A grievance may be submitted by individuals, communities and organizations (hereinafter referred to as grievants) that meet all the following eligibility requirements: (a) [They are connected to the jurisdiction, by means of residency or domicile, where the activity in question is implemented; in the absence of documentary evidence, the residency or domicile can be proven by any other means that demonstrate the grievant's connection to the jurisdiction.] (b) [They have substantial presence in the	Restricting the access to file a grievance by requiring grievance to meet all the eligibility requirements in this paragraph is unreasonable. Requirements a and b risk preventing marginalised and vulnerable groups from being supported by more powerful actors. For example, it could make it very difficult for a non-profit organisation to provide technical support to communities and to register a grievance against a project harming communities.

	<p>geographic area, by means of their business activity or community-related activity, which is directly affected by the activity in question;] (c) They suffer direct adverse effects from the implementation or treatment of the activity in question within the activity cycle under the Article 6.4 mechanism by way of concrete, tangible and particularized claim of harm to the health, property, local environment or other interest.</p>	<p>Moreover, requirement (c) should be broadened to cover a wider scope of potential grievances. First, it can be difficult to establish a direct causal relation to the harm suffered, despite a clear relationship between the A6.4 activity and the grievance. Second, it should be possible to lodge a grievance when there is reasonable and justifiable potential of adverse effects, rather than all grievances having to be filed ex-post. Requirement (c) should therefore be broadened to include indirect and potential adverse effects.</p>
37	<p>A grievant may submit a grievance, through a dedicated interface on the UNFCCC website, a duly completed “Grievance form” (A6.4M-GRI-FORM)⁴ covering the following information within the valid crediting period of the Article 6.4 activity in question: (a) The name and category (e.g. individual, community, organization) of the grievant. The grievant may indicate if the personal identification and data shall be treated as confidential; (b) The relationship of each individual, community and organization listed as the grievant to the activity in question to demonstrate the eligibility requirements of the grievant as per the requirements of paragraph 34 above; (c) The name and contact information (email address, phone number, physical address) of the focal point of the grievant. The grievant may indicate if the personal identification and data shall be treated as confidential; (d) The title and UNFCCC reference number of the A6.4 activity in question; (e) Description of the [potential or] actual direct adverse effect on the grievant and how it is related to the implementation of the Article 6.4 activity in question; (f) Description of a suggested remedy; (g)</p>	<p>Requiring grievants to file their grievance through a website form means requiring all to have access to the Internet and to be able to read and write. The paragraph also does not explicitly state that the form will be accessible in multiple languages.</p> <p>A grievant should be able to access the grievance process through a wide variety of means. For example, in addition to submissions via an online complaints form, options to lodge a grievance can be through Whatsapp, mail, email, voice or video recording, by calling a toll-free hotline, or during an in-person meeting, which are all possible under the Green Climate Fund’s Independent Redress Mechanism. Limiting the submission to written or online channels only is exclusionary, and will especially risk excluding those who already have limited access to other legal or jurisprudential means.</p>

	References to supporting documents, which may be attached, and other sources of information, with an explanation as to how the supporting documents and other information support the arguments made in the grievance; (h) Reference to or evidence of any previous or ongoing attempt to resolve the issue directly with any other individual or organization.	
38	[The secretariat shall issue a statement of the grievance fee due and the bank transfer instruction, and shall communicate this to the grievant. The grievant shall pay the grievance fee within 30 days of receipt of such statement. The grievance fee shall be determined as follows: (a) Standard grievance fee of USD [5,000][2,500]; (b) [Reduced grievance fee of USD [2,500]][No grievance fee] if the grievance is submitted by Indigenous Peoples, local communities or non-profit organizations or is in relation to the activities located in least developed countries, small island developing States or specially underdeveloped zones in developing countries as defined in paragraph 12(b) above.]	By the very nature of a grievance, and by virtue of the many restrictions on who can file a grievance, it makes no sense to request a fee. The access to the grievance process is already limited to those experiencing adverse effects and/or present in the geographic area where the activity in question is implemented. The only impact of a fee, therefore, is to raise a financial barrier to the filing of a grievance, which is unacceptable.
45	Over the entire course of the processing of a grievance, the grievant's personal details (name and contact information) shall be made available only to limited members of the secretariat as necessary, unless otherwise expressly agreed by the grievant.	This paragraph is not sufficient to address the issue of confidentiality. While CMW appreciates the addition of several provisions to ensure confidentiality, namely in paragraphs 11(a) and (c), 17, 37(a) and (c), 43 and 50, these provisions only create an option for information being classified as confidential, rather than confidentiality being the default. Moreover, requirements to ensure the safety and protection of grievants entail more than just designating information as confidential. This includes options to sign a non-disclosure agreement or, while clearly

		<p>indicating its downsides, the option to file a complaint anonymously. Additionally, as (fear of) retaliation can be a deterrent and a serious safety risk for grievants, this must be prevented by having retaliation safeguards in place. This includes confidentiality, but also other proactive precautionary measures, such as risk assessments, secure communication channels, and logistical arrangements. More examples of such measures can be found in the CAO guidelines.</p>
46	<p>The grievance panel shall consider the grievance and prepare recommendations or reject the grievance within 14 days after its establishment receiving the grievance form and any supporting documentation submitted by the grievant as per paragraph 41 above. In doing so, the grievance panel may, through the secretariat, request the grievant or other relevant individual or organization to provide additional information, specifying the deadline that the grievance panel deems reasonable for the grievant or other individual or organization to prepare such additional information.</p>	<p>A deadline for submitting additional information must be as lenient as possible. The additional information required, the situation of a grievant, as well as the grievance in question, can be such that obtaining this information can be a lengthy process. The deadline should thus be set to accommodate these circumstances, and should be 30 days at a minimum, in line with best practice (the timeframe of the Green Climate Fund's Independent Redress Mechanism)</p>
47	<p>The grievance panel shall reject the grievance if:</p> <ul style="list-style-type: none"> (a) Insufficient information is provided to prepare a recommendation (e.g. the information is too general, unspecified and therefore non-actionable); (b) Additional information requested in accordance with paragraph 46 above is not provided by the specified deadline particularly for the grievant; (c) The grievant organization's legitimacy to represent [potentially] 	<p>A blanket statement that a grievance will be rejected if the deadline for submission of requested additional information has passed, without provisions for an extension of the deadline, is unreasonable and unjustified. Special circumstances should be considered.</p>

	affected individuals, entities or communities is not explicit and proven, as applicable.	
56	If the grievance panel issued recommendations referred to in paragraph 48(c) above, the Supervisory Body shall either: (a) Take actions within the activity cycle as it deems appropriate; or (b) Decide not to take actions regarding the activity in question within the activity cycle.	This paragraph gives the impression that it is optional for the Supervisory Body to take actions based on the recommendations by the grievance panel. The recommendations from the grievance panel should have implications for the Supervisory Body, and it should not be possible for the Supervisory Body to disregard these recommendations.

7 Other matters

PARA	DRAFT PROCEDURE TEXT	COMMENTS
81	Information marked as proprietary or confidential that is obtained from appellants, grievants, activity participants or any other individuals and organizations for the purpose of processing appeals and grievances in accordance with this procedure shall not be disclosed by appeal and grievance panels, the Supervisory Body and the secretariat without the prior written consent of the provider of the information. In this context, the following information shall not be considered as proprietary or confidential: (a) Information required to be disclosed by the national law of the host Party; (b) Information required to be disclosed by relevant	According to this paragraph, information used to support assessments on environmental and social impacts and contribution to sustainable development shall not be considered confidential. However, in the case of, for example, testimonies used as evidence to support assessments, these will contain sensitive and personal information. Any information that is personal, or that can be traced to specific individuals, must be treated confidentially with the utmost regard for the protection of the grievant and others involved.

	provisions in the rules and regulations of the Article 6.4 mechanism; (c) Information used to support assessments on environmental and social impacts and contribution to sustainable development.	
83	The working language of the appeal and grievance mechanism shall be English. [However, an appeal may be filed or a grievance may be submitted in any of the other five United Nations official languages.]	In order to create an accessible appeals and grievance mechanism, it is imperative that English is not the only language in which an appeal or grievance can be filed. This will create an insurmountable barrier to those who do not master the English language, without access to funds for translation. Paragraph 82 must therefore be retained and unbracketed. Moreover, the burden should be on the UNFCCC to ensure an accessible system, rather than on the people affected by UNFCCC mechanisms. Even better would therefore be to not limit the appeal and grievance process to the official UN languages, but to offer translation services on a case by case basis.

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