

WOMEN & GENDER CONSTITUENCY

Submission from the Women and Gender Constituency (WGC) in response to the Call for Inputs to the Article 6.4 SBM ahead of its 13th meeting: Sustainable Development Tool

Name of submitter: Hwei Mian Lim

Organization of the submitter: Women and Gender Constituency (WGC)

Email of submitter: Amy.lim.h.m@gmail.com

Date: 8 July 2024

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

The Women and Gender Constituency (WGC) welcomes the opportunity to respond to the call for input prior to the Article 6.4 SBM's 13th meeting from 15-18 July 2024. The WGC's inputs are related to the Sustainable Development Tool (version 0.70). Our previous submission was dated 17th May 2023 and we acknowledged that some inputs have been incorporated into the latest version. However, there are other substantial inputs that have yet to be taken into account. We hope with the rationale provided in the general comments and specific comments, the SBM will take the inputs below into account before finalizing and adopting this SD tool.

General Comments

1. Standards and obligations

In this updated version, we noticed that throughout the document the standards and obligations is weakened.

For example, in the section on Scope :

Para 5 of version 06.0: "...the activities are consistent with host country regulations, and/or relevant standards, best practices and obligations."

Para 5 of version 07.0: "...host party regulations...Activity participants are also encouraged to apply relevant standards, industry best practices and their own voluntary corporate policies,..."

In our previous submission dated 17th May 2023, we had suggested the text below:

"...the activities are consistent with host party regulations and/or relevant international standards, best practices and obligations." We opined that the benchmark used must be an agreed minimum international standards rather than the host party's or activity participant's regulations if the latter are below the minimum international standards.

2. Post-crediting period

In our previous submission dated 17th May 2023, we have suggested that the A6.4 Environmental and Social Safeguards Risk Assessment Form, the A6.4 Environmental and Social Management Plan and the A6.4 Sustainable Development Tool Form, as well as the Table for each principle, as appropriate (see our previous submission for details), need to include post-crediting period. Besides crediting period, post-crediting period must be included as post-crediting monitoring and reporting is a component in the Activities Involving Removals draft document.

Also, in Table 1 (version 07.0) there is a new text for the description on “Potentially” that reads: “This means that the risk or expected impact~~issue~~ may be relevant ~~at some point in the activity’s cycle~~ during its implementation, operation and decommissioning if applicable, but is not necessarily relevant now and/or may never arise.”

As decommissioning occurs during post-crediting period, this also justifies the need to include post-crediting period.

For example:

Para 11 of version 07.0 reads:

“The validated A6.4 Environmental and Social Safeguards Risk Assessment Form, the A6.4 Environmental and Social Management Plan and the A6.4 Sustainable Development Tool Form shall be part of the registered activity documentation and will be used for ex-post monitoring during the crediting period and shall...”

WGC’s proposed text:

“The validated A6.4 Environmental and Social Safeguards Risk Assessment Form, the A6.4 Environmental and Social Management Plan and the A6.4 Sustainable Development Tool Form shall be part of the registered activity documentation and will be used for ex-post monitoring during the crediting period and post-crediting period and shall...”

3. Other matters

We welcome the strengthening of the following paragraphs:

- Definition on gender (Para 16 (f)).
- Definition on child labour (Para 16(c)).
- Section 6.2 on Identification of positive and negative impacts to the 17 SDGs.
- Conclusion of the do-no-harm risk assessment for each principle (Appendix 1, Tables 1 to 13). We welcome the new text in this box which states that activity participants are required to prepare mitigation measures under a specific principles’ criteria in the A6.4 Environmental and Social Management Plan.

Specific Comments

4. Para 10

Comment: Between the host Party rules, Article 6.4 mechanism activity cycle procedures and section 6.9 and appendix 2 of the Article 6.4 mechanism activity standards, the criterion for selection should be based on whichever is the more progressive and comprehensive among the documents listed.

Our proposed text from the previous submission dated 17th May 2023 is as follow:

“...in accordance with host Party rules and/or the Article 6.4 mechanism activity cycle procedures and section 6.9 and appendix 2 of the Article 6.4 mechanism activity standards, whichever is more progressive and comprehensive.”

5. Transition of CDM activities

Cover note (para 13(c)) reads:

“Agrees that the application of A6.4 SD tool to become mandatory for transition of CDM activities to Article 6.4 mechanism only when the above three forms become available.”

2.2 Applicability (para 13) reads:

“The use of the A6.4 SD tool is mandatory for all proposed Article 6.4 activities to identify, evaluate potential risks ~~and adverse outcomes~~, adopt risk mitigation measures and demonstrate their impacts on sustainable development. This includes mandatory use for all interested CDM activities to be eligible for transition to the Article 6.4 mechanism. The A6.4 SD tool and the three A6.4 SD tool forms provide...”

Comment: In the cover note, the secretariat has recommended to the A6.4 SMB that the application of the A6.4 SD tool only becomes mandatory for transition of CDM activities when the three forms become available. We are very concerned with this recommendation as it gives the impression that the transition of CDM activities will be exempted from applying the SD tool as long as the three forms are not ready/available. Due diligence on safeguarding is vital and we fully support Section 2.2 Applicability, para 13, especially when it pertains to CDM activities transitioning to A6.4 mechanism. Therefore, we think that all the three forms must be available before the operationalization of transition of CDM activities to Article 6.4 mechanism.

6. Para 19(d)(iv)

Comment: Our proposed text:

“Safeguard communication channel maintained by activity participants to offer local stakeholders an **easily accessible and** effective avenue for expressing concerns and achieving remedies and promote a mutually constructive relationship during the activity crediting period. Such process shall be established as part of the process for continuous engagement of local stakeholders in accordance with the “Article 6.4 activity standard for projects” or the “Article 6.4 activity standard for programmes of activities, **and the Article 6.4 appeal and grievance processes.**”

7. Para 19(f)

Comment: “including any records of a safeguard communication channel” should not be deleted.

8. Figure 1: Do-No-Harm Risk Assessment flow chart

Comment: We find the flow chart in both the ‘Activity participant to review principle’s level questions’ and ‘Activity participant to review additional guiding questions’ columns very concerning. Specifically, when the question is applicable but there are no host country regulations and no relevant standards, industry best practices or its own voluntary corporate policies it is then concluded as ‘no assess risk.’ This is a false negative because having no country regulations and industry best practices/voluntary corporate policies on a particular

risk does not mean that there is no assess risk; it only points out that the regulations and policies are lacking or inadequate. Therefore, as underscored in the general comments, international standards and obligations must be the minimum benchmark. The failure to adhere to these standards and obligations will result in glaring loopholes when gauging assess risk, which will have tremendous adverse impacts—including irreversible ones—on the indigenous peoples and local communities, and environment.

9. Principle 2 (Air, land and water) criteria

Paragraphs 27, 28 and 34 reads:

- a) “When complete avoidance is not technically and financially feasible,...”

Comment: Suggest “financially” to be deleted. Not financially feasible should not be used as a criterion. As activity participants are profit/return of investment (ROI) oriented, they may misuse this criterion to gain higher profit/ROI, which is contradictory to the due diligence and Do-No-Harm principles.

- b) “...in accordance with host Party regulations. This applies to the release of pollutants due to routine, non-routine, and accidental circumstances with the potential for local, regional and transboundary impacts.”

Comment: As the potential impacts include regional and transboundary levels, host Party regulation may be inadequate. Therefore, it is essential to include “relevant international/regional standards, best practices and obligations” in the abovementioned paragraphs and Tables 2 to 4. Please see our previous submission dated 17th May 2023 for details.

10. Paragraphs 27 and 29

Comment: Firstly, in general, the national laws/regulations are more progressive compared to the subnational or local regulations due to the top-down approach in nations’ policies and law/regulations. Hence, when national law is silent, the subnational or local regulations is equally silent on the same thematic area. Therefore, referring to subnational or local regulations when the national law is silent is not a best practice. Secondly, there should be a specific mention of communities affected as these groups must be consulted since they are directly impacted.

Our proposed text (WGC submission dated 17th May 2023):

“If it is determined that the activity participant is legally responsible, then these liabilities will be resolved in accordance with national law, or where this is silent, in accordance with **relevant international standards, best practices and obligations**. Mitigation measures shall be defined and implemented in coordination with national and local government agencies, **the affected communities**, and the contributors to the contamination.”

11. 5.3.1 Principle 4: Human rights

Para 48 reads:

Human rights constitute an overarching legally binding framework that informs and guides all environmental and social safeguards. These rights, enshrined in national laws and/or international treaties such as the Universal Declaration of Human Rights, establish fundamental standards to ensure dignity, equality, and justice for all. Consequently, the implementation of environmental and social safeguards within project activities must align with and uphold these human rights principles. Additionally, Human rights are central for

sustainable development, poverty alleviation and ensuring fair distribution of development opportunities and benefits. Also, The activity participant shall respect to international human rights regarding sustainable development, poverty alleviation and ensuring fair distribution of development opportunities and benefits. Also, an activity is to be implemented with due respect for human rights by avoiding infringement on the human rights of others and addressing adverse human rights impacts that the activity may cause or to which it may contribute.

Para 49 reads:

Activity participants shall commit to the Universal Declaration of Human Rights by carrying out human rights' due diligence for the proposed A6.4 activity. Activity participants shall identify, prevent and mitigate actual or potential adverse human rights impact caused by the proposed activity during the human rights' due diligence.

Comment: We welcome the revised and detailed text in para 48. However, for paragraphs 48 and 49, the example of international treaties should not be limited to the Universal Declaration of Human Rights. Other human rights treaties need to be mentioned. For example, the Convention of the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW).

12. Para 52

Comment: There should be a reference to the International Labour Organization guidelines in this paragraph.

13. Para 54 and Table 7

Comment: Our proposed text:

"The activity participant shall ensure education programmes **and/or vocational skills** for local communities, **in particular women and girls in all their diversity**, to access labour opportunities created by the proposed activity."

14. Para 62

Comment: Health risks are categorized into short-, medium- and long-term. It is important to identify whether the health risks are short-, medium- and long-term as this will enable the activity participant to plan specific mitigation actions in the ESMP. For example, the mitigation actions of a particular short-term health risk to an affected community will be different from the mitigation actions of a particular long-term health risk to the same community.

Our proposed text (WGC submission dated 17th May 2023):

"The activity shall avoid or prevent community exposure to **short-term, medium-term and long-term** health risks (e.g. pollution, contaminated areas/resources) and shall not adversely affect the health of the community.)"

15. Para 66

Comment: Our proposed text (WGC submission dated 17th May 2023):

“The activity participant shall **reinforce zero-tolerance towards** gender-based discrimination and shall not lead/contribute to adverse impacts on gender equality and/or the situation of women and girls in all their diversity.”

16. Para 88

Comment: This paragraph should not be deleted.

17. Para 98

Comment: This paragraph should not be deleted and needs to be aligned with para 101(b).

Our proposed text (WGC submission dated 17th May 2023):

“Once activity participants completed the A6.4 Sustainable Development Form, the outcome (including the form) must be shared during the local stakeholder consultation **with the aim to obtain inputs, especially from the affected communities and local experts. The inputs must be taken into consideration before finalizing the form.**”

18. Tables 1 to 13

Comment: Proposed that the option for N/A be deleted. For due diligence in environmental and social safeguards principles and criteria, the options should be limited to Yes, Potentially and No. Also, the column heading on ‘Host Party regulations assessment’ should be revised to ‘Host Party regulations and/or international standards, best practices and obligations’ as per the earlier comment in the General Comments section.

19. Table 3, AGQ 2.2.5 (Land)

Comment: Suggest the deletion of “appropriate and culturally sensitive” as per our submission dated 17th May 2023.

20. Table 7, AGQ 5.2 (Labour)

Comment: Our proposed text (WGC submission dated 17th May 2023):

“Does the proposed A6.4 activity have any risk that could compromise the promotion of the fair treatment, non-discrimination and equal opportunity of activity workers **regardless of gender?**”

21. Table 7, AGQ 5.6 (Labour)

Comment: Our proposed text (WGC submission dated 17th May 2023):

“Does the proposed A6.4 activity have any risk of providing activity workers with accessible means to raise workplace concerns **and grievance?**”

22. Table 8, PLQ6 (Health and Safety)

Comment: Reference to good international practices (e.g. WHO and ILO guidelines) needs to be included. Our proposed text:

“Have the activity participants identified any activity risks to and impacts on the health and safety of the affected communities, including those who, because of their circumstance **and/or pre-existing health conditions**, may be vulnerable, as per host country regulatory requirements **and good international practices** applicable to the proposed activity?”

23. Table 8, AGQ 6.3 (Health and Safety)

Comment: Our proposed text (WGC submission dated 17th May 2023):

“Has the activity participant identified any health and/or safety risk exposure of women and men **in all their diversity**, as well as marginalized and disadvantaged groups, including children, older persons, persons with disability, minorities, and Indigenous Peoples?”

24. Table 9, AGQ 7.2-1 (Gender equality)

Comment: Our proposed text (WGC submission dated 17th May 2023):

“Does the proposed A6.4 activity have a risk to the principle of non-discrimination, equal treatment, equal pay for equal work? (e.g. risk of equal payment for women and men for the implementation work of the activity; fair conditions for women and men to participate in the implementation of the activity considering pregnancy/maternity/paternity leave/marital status; **prevention of sexual abuse and harassment**, inform community (women and men) about the implementation of the activity in an accessible manner to ensure full engagement), including access to leadership positions.”

25. Table 9 (Gender equality)

Comment: Suggestion for an additional question and the proposed text (WGC submission dated 17th May 2023):

“Does the proposed A6.4 activity involve or lead to reproducing gender-based discriminations by adding to the unpaid workload of women and girls, in particular the design and implementation of the activity does not increase care work responsibilities for women and girls **in all their diversity?**”