

Sustainable Development Stakeholder Consultation

Ensuring the consultation of relevant stakeholders when implementing activities under Article 6 of the Paris Agreement

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This factsheet is produced by the Sustainable Development Dialogue ('Dialogue') on the implementation of Article 6 of the Paris Agreement under the UNFCCC process. It provides a summary of Party and stakeholder views expressed during a series of six engagement events held between January - June 2018. Views stated in this document are those of the authors¹ and do not represent any consensus among the Parties involved. The Dialogue is currently supported by Belgium, Germany, Liechtenstein, Norway, Sweden and Switzerland and receives technical assistance from UNEP-DTU Partnership and the Gold Standard Foundation.

Part 1 - Unpacking the issue: Stakeholder Consultation – a procedural condition for voluntary cooperation of Article 6

Consulting stakeholders – where does it come from?

Stakeholder Consultations provide a critical opportunity for an activity developer to engage with affected stakeholders and local communities, including indigenous people, to share information and promote understanding about the activity, its

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benefits and its potential adverse impacts. This may include exchanging views on risks (and their mitigation), impacts, benefits and opportunities. It provides a valuable entry point to improve the activity design and outcomes and can help the activity developer identify and control external risks. The ultimate goal for the stakeholder engagement is to ensure that stakeholders, especially local communities, are not adversely impacted by an activity.

The term “Stakeholder Consultation” is neither mentioned in Article 6 of the Paris Agreement nor do the corresponding Conference of Parties (COP) decisions refer to a necessity of engaging and consulting stakeholders. However, several Article 6 submissions from Parties call for an institutionalised engagement of stakeholders as a safeguard to sustainable development. In addition, most international finance instruments require consultation with interested and potentially affected stakeholders and communities. Therefore, it is highly unlikely that the rulebook related to Article 6 would ignore it.

Why it matters

The experience of the Clean Development Mechanism (CDM) shows the importance of allowing for stakeholder consultation and providing clear guidance on the process for these consultations. The rules governing stakeholder consultation under the CDM have been improved over time, based on practical experience and input from stakeholders. Requirements include which stakeholders should be involved and how their comments are to be invited and addressed. The CDM also provides the possibility for stakeholders to raise concerns at the first verification of projects, which may allow stakeholders to follow up on commitments made during project development or in the project design documents that do not relate directly to Greenhouse Gas (GHG) emissions reductions and to address any adverse impact that may have arisen after the implementation for the project activity.

Improvement of the stakeholder consultation processes in the CDM was a response to criticisms by civil society and to severe issues that occurred due to the lack of either adequate implementation of the requirements or the lack of

comprehensive requirements covering the life span of the project activity. The process of change and improvement was long, tedious and according to many stakeholders is still not completed.

Building on the CDM experience, it is of the utmost importance to get the consultation and engagement of stakeholders right from the start in the Article 6 rulebook to avoid overly politicised discussions later and to ensure that communities are safeguarded against possible adverse impacts of mitigation activities.

Examples of stakeholder engagement requirements in international climate policies

The majority of Parties to the Paris Agreement (if not all) already have corresponding national stakeholder consultation processes in place. However, those consultation processes are mainly part of environmental impact assessments. This means that activities that are not required by law to undergo an Environmental Impact Assessment (EIA) would not undertake a stakeholder consultation process. In addition, the requirements for such consultations vary greatly between countries: from very basic guidance to elaborate requirements. Furthermore, those practices are rarely transparent and made publically available. It should also be noted that the CMP² requested parties to share their stakeholder consultation practices and the Parties response was underwhelming, with very few sharing those practices. In addition, it may be assumed that the level of compliance to the national stakeholder consultation and the degree of implementation in practice varies greatly due to various factors.

Successful examples of stakeholder engagements can also be found in various multilateral organisations dealing with international climate policies. The Green Climate Fund (GCF) has adopted, on an interim basis, the International Finance

² Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP)

Corporation (IFC) performance standards that require stakeholder analysis and engagement planning, to ensure all affected persons and communities are identified, engaged and consulted. Most multilateral financial institutions have adopted the Equator Principles that call for mandatory stakeholder engagement for all category A and B projects at all stages, including appropriate documentation and the requirement of Free Prior and Informed Consent from Indigenous People. REDD+ also calls for effective participation of all relevant stakeholders in the development and implementation of the national action plans and explicitly mentions indigenous people and local communities.

Most multilateral climate instruments also provide for grievance mechanisms and the right to appeal. However, the design of those mechanisms varies. They could include an ombudsman, who would investigate complaints and attempt to resolve them, usually through recommendations or mediation, or an appeals process that would give stakeholders a formal process to request a change to a decision.

Under the CDM, the right of appeal and grievance mechanism has been a controversial issue. The CDM Executive Board (EB) has recently provided a grievance mechanism for affected stakeholders to submit objections or ill-treatment to the host country Designated National Authorities (DNAs). It is however not clear whether stakeholders are aware of this mechanism, how it is implemented or if it is an appropriate instrument. Appeals have not been resolved throughout the existence of the mechanism and are still under negotiations in the Subsidiary Body for Implementation (SBI) where they get postponed year after year.

These facts point out the necessity of the Article 6 rulebook to provide early clarification on requirements related to grievance and appeal rights and to elaborate those processes in a way that prevents infringement of rights of affected stakeholders.

Part 2 – Considerations relevant to the Article 6 work programme to be decided at COP24

Party submissions

In advance of COP23 Parties were invited to submit their views on the Article 6 approaches to the UNFCCC Secretariat by October/November 2017. The Secretariat received a total of 22 submissions. With respect to 'sustainable development' 11 submissions expressed views on the issue. In that context, the engagement of stakeholders was brought up various times. For example, one submission asks the Supervisory Body foreseen in Article 6.4 to define rules for the consultation of stakeholders during the design and the implementation of respective activities. Further stakeholder engagement would be ensured within applicable grievance processes building on the host country's national processes. Another submission suggests that the Supervisory Body should develop recommendations for best practice on stakeholder consultation processes. In another submission, a Party suggests building stakeholder provisions on the experience gained with CDM and REDD+.

Analysis of Party and stakeholder views – convergence and divergence

This section presents analysis of feedback from Parties and stakeholders during the six Sustainable Development Dialogue events with an aim to identify key areas of convergence and divergence of views. All events followed Chatham House Rules, which mean that views can be documented but not ascribed to a particular Party or stakeholder.

The discussions showed that the concept of stakeholder consultation is a generally accepted safeguarding element within the implementation of climate policies and measures. In that context, the Sustainable Development Dialogue identified convergence of Parties views towards the need for some international

guidance to ensure stakeholder involvement within Article 6 activities. Parties referred to the fact that stakeholder consultation already occurs in various areas of international climate policies, e.g. within the Green Climate Fund or REDD+. A considerable number of Parties already have corresponding national stakeholder legislation/processes or requirements in place (e.g. as part of Environmental Impact Assessments). Drawing from these experiences, most of the Parties see the benefits in asking for minimum requirements on stakeholder consultation in the context of Article 6 activities as well.

There was strong convergence on the need to ensure the process to define stakeholder consultation remains the sole responsibility of the host country. Some parties stated that stakeholder engagement may vary based on national circumstances and regulations. One specific Party for example has established guidelines that require comprehensive stakeholder consultation throughout all national policy making processes as part of a national peace consolidation plan.

In the context of Article 6.4, Parties identified three approaches that could be addressed by guidelines or tools to ensure an effective stakeholder consultation and engagement: Consultation procedures, consent and certification/approval processes.

About Article 6.2, Parties generally argued the need for flexibility, especially since cooperative approaches have a broad scope which goes beyond activity-related mitigation action. A possible tool to (at least) provide room for a common source of information about stakeholder consultations could be the establishment of an institutionalised information exchange platform linked to Article 6.8. Alternatively, such information exchanges could also be integrated into existing stakeholder fora like the Talanoa Dialogue. The overall objective of such an exchange would be to grant access to information from dedicated experiences from top down regulators to bottom up communities/project developers.

Part 3 – The Subsidiary Body for Scientific and Technological (SBSTA) Chair informal notes and Dialogue text recommendations

The SBSTA Chair informal notes

Draft elements of text are presented in the SBSTA Chair informal notes issued prior to the SB48 and were revised in the negotiations. Elements relevant to the issue of stakeholder consultations are summarised below.

Article 6.2 guidance on cooperative approaches: The draft proposal on Article 6.2 does not contain any reference to the engagement of stakeholders. The text also does not provide any provisions or details on safeguards per se, nor how possible safeguards such as stakeholder consultation can be implemented and verified.

Article 6.4 rules, modalities and procedures for the mechanism: Under Article 6.4 stakeholder consultation is listed as one of the eligibility requirements for the mechanism. Moreover, stakeholder engagement would be ensured via the establishment of a dedicated grievance process as part of the mitigation activity cycle.

It should be noted that the stakeholder consultation provisions in the co-chair text are placed under the responsibility of the host Party, where they are required to provide confirmation that local stakeholders consultations have been conducted. This is a new set-up compared to the CDM, where consultations were under the supervision of the Clean Development Mechanism Executive Board (CDM-EB). Indeed, consultations were undertaken by the project developer, assessed by the Designated Operational Entities (DOEs) and consequently by the CDM Executive Board. Under the CDM, requirements for stakeholder consultations were widely criticised for being too loose and not providing sufficient safeguards. The current proposition to have consultations fall under the supervision of the host country may further exacerbate issues encountered during the CDM and may be considered a step backwards. There is a risk that

consultations are run in a way that would make them meaningless, for example by not sharing consultation outcomes externally.

Text recommendations

The following recommendations have been produced by the Sustainable Development dialogue experts, please note that the proposed text does not reflect consensus.

Article 6.2:

- Clearly state that stakeholder consultation is a precondition for the promotion of sustainable development within the implementation of cooperative approaches under Article 6.2.
- Provide high-level principles on how to undertake stakeholder consultations and the minimum requirements for satisfactory engagement.
- Encourage Parties to establish or use existing international platforms to exchange information and experiences on stakeholder consultations in the implementation of cooperative approaches.
- Include clear and comprehensive provisions of a grievance mechanism and the right to appeal with clear processes including responsibilities and possible outcomes.

Article 6.4:

- Clearly state that stakeholder consultation is an eligibility requirement within the rules modalities and procedures of the Article 6.4 mechanism.
- Place the stakeholder consultation processes under the supervision of the Supervisory Body.
- Include principles and minimum requirements for the conduct of stakeholder consultations.
- Include provisions for stakeholder engagement throughout the life cycle of the Article 6.4 activity.
- Include clear and extensive provisions for a grievance mechanism and the right to appeal with clear processes including responsibilities and possible outcomes.

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