

AMNESTY INTERNATIONAL SUBMISSION

22 April 2024 Index number: IOR 40/7973/2024

COMMENTS ON DRAFT APPEAL AND GRIEVANCE PROCESS UNDER THE ARTICLE 6.4 MECHANISM OF THE UNFCCC

Amnesty International submits the following comments on the draft appeal and grievance process¹ issued by the Article 6.4 Supervisory Body (SB011) of the UN Framework Convention on Climate Change (UNFCCC) in preparation for its 11th meeting.²

SUBMISSIONS PROCESS

Amnesty International stresses that the one-week period allocated for submitting feedback on the draft is utterly inadequate and will exclude many of the most immediately impacted stakeholders, for example those who may not be connected to international civil society networks and/or whose access to the internet is unreliable. It thus demonstrates a lack of commitment to genuine transparency and accountability. In view of this, the comments submitted by Amnesty International cannot be considered to be exhaustive, as a full review and consultation with relevant stakeholders was impossible in the time frame provided.

STANDING

Para 36 (a) limits standing to grievants who “are connected to the jurisdiction, by means of residency or domicile”. Amnesty International urges to amend this to include grievants, including Indigenous Peoples, who have a claim to the lands within the jurisdiction, for example due to having been forcibly evicted from those lands, including prior to the establishment of the Art. 6.4 activity.

Para 36 (c) restricts the process to grievants who have a “concrete, tangible and particularized claim of harm to the health, property, local environment or other interest”. This could be interpreted as excluding claims based on impacts on intangible cultural heritage, including sites of cultural / religious / spiritual importance. Amnesty International urges that this be included explicitly.

PROCEDURE

Para 39 states that grievances must be submitted “within the valid crediting period”. This should be amended to ensure that grievances can be raised by affected persons/peoples/communities who were not informed or consulted on project activities and only became aware of them after the end of the activity.

Para 40 outlines a number of options for fees imposed on grievants. Amnesty International urges, in order to ensure full accessibility of the mechanism, to ensure that no fee (or bond, refundable depending on the outcome) will be imposed on grievants.

Para 50 specifies the outcome in the case that a grievance is upheld, indicating that this will take the form of recommendations. Amnesty International considers it essential that, where the panel finds a violation of international human rights law, that the process results in measures of redress for those violations which are binding on activity participants.

Para 55 specifies that the conclusion of the grievance panel will be final and unappealable. Amnesty International stresses the need for a process that allows for appeals based on demonstrable failings in the specified process, and / or failings in the application of the relevant standards / laws governing the grounds of the grievance.

¹ Draft Procedure Appeal and grievance processes under the Article 6.4 mechanism, Version 04.0, 15 April 2024, <https://unfccc.int/sites/default/files/resource/A6.4-SB011-AA-05.pdf>

² Call for input 2024 - Issues included in the annotated agenda and related annexes of the eleventh meeting of the Article 6.4 Supervisory Body | UNFCCC

ROSTER OF EXPERTS AND PANELS

Para 60 should be amended to explicitly include experts with expertise in human rights, and the cultural heritage of Indigenous Peoples and other affected rights-holders. The concept of expertise should explicitly include traditional knowledge relating to biodiversity, gained from lived experience and / or ancestral transmission, and Indigenous Peoples' scientific knowledge.

Paras 48 provides for a 14-day time frame for the consideration of grievances, while para 70 states that the chair of the panel shall "lead and conclude the consideration of the appeal or grievance, seeking the consensus of all panel members". These should be amended to ensure sufficient flexibility for the panel to be able to take into account the time frames of affected grievants, who for example may need to consult with their communities / peoples on issues arising in the process. Following the example of other processes, such as the World Bank Inspection Panel, the process should allow for visits to project sites in order to engage with affected communities/individuals/peoples.

OTHER MATTERS

Para 81 specifies the information that may be subject to confidentiality. Amnesty International recommends that grievants be enabled to specify any information that could be used to identify them, including regarding the substance of the grievance, as requiring confidentiality.

Para 83 allows for the exploration of options for provision of translation of documents relating to the process in languages other than English. Amnesty International urges that this provision be strengthened, ensuring that the accessibility of the process to non-English speakers is required.

The process should also be strengthened to ensure that grievants can raise grievances without fear of retaliation or reprisals and to enable redress for any harms caused by such retaliation. Without such safeguards, those wishing to raise grievances may be deterred from raising legitimate grievances and obtaining redress. Amnesty International urges that the process have a clear zero-tolerance approach to any form of reprisals, including a transparent and easily accessible mechanism to report any such reprisals and triggering prompt action to ensure grievants' security. Information about reprisals should also be transmitted to the UN Assistant Secretary-General for Human Rights for inclusion in the UN Secretary General's annual report on intimidation and reprisals for cooperation with the United Nations and to the Office of the High Commissioner for Human Rights.