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Text Proposals

Promoting sustainable development through article 6 of the Paris Agreement

by Karen Holm Olsen and Fatima-Zahra Taibi, UNEP DTU Partnership, Marion Verles, Gold Standard Foundation and Sven Braden, Independent Consultant

This article is a product of the Sustainable Development Dialogue (SDD) on the implementation of Article 6 of the Paris Agreement under the UNFCCC. Building on six Policy Briefs that unpack the issues related to sustainable development, this article proposes text recommendations relevant to the work program to be decided at COP24 in Katowice.¹

Why and how sustainable development in Article 6 of the Paris agreement matters

Sustainable development (SD) features prominently in Article 6.1 as a unitary objective together with rais-

ing climate action ambition and ensuring environmental integrity. Thus, in each of the Article 6 cooperative approaches, SD is an objective to be pursued in parallel with climate action. The text in Articles 6.2 and 6.3 states that Parties can decide to enter into voluntary cooperation and transfer mitigation outcomes (ITMOs) and in doing so “Parties shall [...] promote sustainable development and ensure environmental integrity”. In Articles 6.4 to 6.7 “a mechanism to contribute to mitigation and support sustainable development” is established. Finally, Articles 6.8 and 6.9 define a “framework for non-market approaches to sustainable development”.

Despite a clear mandate to promote SD, without clear guidance and rules, there is a high risk of



Aligning the agendas: SD provisions help ensure that Article 6 activities make tangible contributions to sustainable development.

¹ Views stated are those of the authors. The SDD is currently supported by Belgium, Germany, Liechtenstein, Norway, Sweden and Switzerland and receives technical assistance from UNEP DTU Partnership and the Gold Standard Foundation, and Sven Braden, Independent Consultant.

repeating the CDM's failure to deliver tangible SD contributions (Olsen 2007, CDM Policy Dialogue 2012). Building on the experience and lessons learned from SD assessment under the Kyoto and voluntary market mechanisms, the challenge is to determine how the Article 6 SD provisions can be operationalised to incentivise a 'race to the top' as opposed to a 'race to the bottom' (Sutter and Parreño 2007).

The question of how to govern the synergies and trade-offs between climate action and SD has been a controversial issue for many years, with diverse political and stakeholder interests constituting the main barriers to promote SD benefits (Dransfeld, Wehner et al. 2017). To help overcome such barriers, the SDD has identified high-level options to operationalize the SD provisions in Article 6 based on Party submissions (for an introduction to the SDD's work see CMR 1/2018). In the latest round of submissions leading up to COP23 hosted by Fiji in Bonn 2017, the Secretariat received 22 submissions. The following summarizes Party views on SD under Article 6:

- Deciding on SD criteria/standards/priorities is a national prerogative

- SD criteria to be publicly available
- Global SDGs can serve as a framework for comparable reporting and assessment
- An international voluntary tool can be helpful to Parties
- Conformity with human rights and safeguards for no-harm-done to be confirmed
- Certification of SD impacts related to units/ITMOs traded, do-no-harm and respect for human rights
- Tools to be developed for assessment of negative impacts of climate actions
- Reporting under the transparency framework on how activities promote SD to be enabled
- International minimum requirements for SD to be applied by Parties nationally

Figure 2 illustrates the high-level options developed by the SDD and their interlinkages particularly in striking the right balance between Parties' national



Figure 2: High-level options to operationalize Article 6 SD provisions

prerogative to decide on SD priorities at national level and the need for common provisions at international level for governance of the Article 6 approaches.

The high-level options (HLOs) and issues to operationalize the Article 6 SD provisions are unpacked in detail in six Policy Briefs published by the SDD (Verles, Braden et al. 2018) 2018, see footnote below.

In the following, we analyze the provisions in the draft texts as compiled after the meeting of the Subsidiary Body for Scientific and Technological Advice (SBSTA 48-2) in Bangkok in September 2018 (SBSTA 48-2a, 2018, SBSTA 48-2b, 2018). We summarize how they relate to the six high-level options and issues to operationalize the SD provisions in Article 6. Moreover, we make recommendations to ensure that the cooperatives approaches of Article 6 make tangible contributions to SD, respect human rights and have no negative impacts.

SDD analysis and text proposals

The draft negotiation texts of 6.2 and 6.4 do not contain standardized provisions for SD. Hence, we will analyze and provide recommendations for each of them separately. Those recommendations are based on our own SDD analysis, the various submissions from parties and the outcome of the SDD events. The draft texts contain various options with differing provisions. This makes the analysis difficult, as it is hard to foresee what Parties will agree to in Katowice.

For a clear overview of the structure of the negotiation text and easy reference to each of the elements, the SDD text proposals are provided in a separate Annex.¹

The background and rationale for the SDD text proposals are presented below following the structure of the negotiation texts. The text proposals in the Annex will be updated based on Party feedback and the SBSTA Chairs joint reflections note, Addendum 2 released 15 October 2018.

Article 6.2

Principles (II)

Option A of the principles section of the draft text contains the promotion of SD as one of its provisions. Although it is clear from the Paris Agreement text in Article 6.2 that the promotion of SD is a "shall" requirement, the draft text still contains the option for either a "shall" or a "should" provision. Agreement on a 'should' provision would constitute a watering down of the importance of SD.

Furthermore, the principles section does not contain any further provisions relating to human rights and avoidance of negative impacts. Respect of human rights is one of the requirements of the Paris Agreement, is an important element of any multilateral agreement and should be one of the principles of Article 6.2. In addition, the principle that Article 6.2 activities shall avoid negative impact and harm of the environment should also be included.

Governance (VII)

Governance and oversight options for Article 6.2 are still very divergent, but the current provisions fall short of ensuring that Article 6.2 activities promote sustainable development. Further elaboration is needed to ensure that the oversight and governance arrangements promote sustainable development at the appropriate levels of decision making. Such provisions could include that:

- The Article 6.2 oversight to provide a structured, comparable approach to assess the contributions of ITMOs to sustainable development in the host Party.
- The ex-ante review by the Article 13 technical expert review determines that a Party meets the participation responsibilities in addition to the participation requirements.
- The participating Parties have procedures for a grievance/appeal and redress mechanism, including the possibility for stakeholders to effectively appeal in the context of Article 6.2 oversight.

¹ <http://www.unepdtu.org/what-we-do/thematic-programmes/low-carbon-development/sustainable-development-dialogue-on-the-implementation-of-article-6-of-the-paris-agreement-under-the->

Participation requirements (VIII.A)

Option A of the participation requirements has extensive provisions for accounting of ITMOs but is silent on participation requirements to promote SD, even though SD is one of the objectives of the cooperative approach.

Consequently, in line with the spirit of the Paris Agreement and the Article 6 objectives, provisions would have to be added and could include that the Party:

- Has published its national criteria and/or objectives for sustainable development or communicated its intention to use SDGs. This would allow for an objective evaluation on whether and how an activity promotes SD.
- Has published its procedures for ensuring that ITMOs promote SD, do not result in environmental or societal harm and conform to its obligations on human rights.
- Has published its procedures for local stakeholder consultations. Stakeholder consultations is a main safeguard adopted by various climate instruments. It shall therefore be featured as part of the participation requirement for a host Party.
- Has procedures for a grievance/appeal and redress mechanism, including the possibility for stakeholders to effectively appeal in the context of Article 6.2 oversight. This is actually a main building block in all multilateral instruments.

Participation responsibilities (VIII.B)

The participation responsibilities of Parties, also in option A, are comprehensive in respect to avoiding negative environmental impacts, ensuring SD and respect of human rights. To ensure compliance, a "shall" requirement rather than a "should" is recommended. The responsibility to demonstrate that local stakeholder consultation has been undertaken in compliance with a certain set of minimum requirements is missing and should be added.

Reporting (IX)

The ex-ante reporting section of the draft text focuses on reporting of accounting elements that would ensure the environmental integrity of the Article 6.2 activities. It is, nevertheless, silent on the promotion of SD, environmental and social safeguards as well as human rights. Further elaboration of those provisions is therefore recommended. For Option A, elements of this elaboration could include reporting on the participation responsibilities. Option B and C of the draft text should include the following reporting elements:

- (a) SD objectives and/or criteria
- (b) Procedures for ensuring that Article 6.2 activities contribute to promoting SD
- (c) Local stakeholder consultations procedures
- (d) Grievance/appeals/redress mechanism procedures
- (e) Procedures for ensuring Article 6.2 activities do not result in environmental or societal harm
- (f) Procedures to ensure that Article 6.2 procedures do not adversely affect human rights

Option A of the ex-post reporting section of the draft text is comprehensive and includes critical elements necessary to ensure promotion of SD, avoidance of environmental harm and respect of human rights.

Article 6.4

Principles (II)

Option A of the principles section of the draft text contains fostering of SD as one of its provisions. Although Article 6.4 states that fostering SD is a "shall" requirement, the draft text still contains the option for either a "shall" or a "should" provision. Here again, agreement on a 'should' provision would constitute a watering down of the importance of SD.

The section contains respect of human rights as a provision. While this is commendable and a step for-

ward compared to both the CDM and the Article 6.2 text, again, the possibility of it being a "should" requirement" remains.

To promote safeguards for no-harm-done, a provision on ensuring avoidance of negative environmental and socio-economic impacts is recommended.

Governance (V, VI)

According to the draft text, the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA) has authority over Article 6.4.

Among its roles is the provision of guidance and taking decisions on a grievance and redress process. The CMA might act as the appeal body in case of grievances against the Supervisory Body or it could designate another body for this role.

These provisions are to be commended, as they would ensure accountability of the body supervising the mechanism. It is however important that the CMA agrees on rules and procedures for such a body early on to avoid the standstill that happened with the Kyoto mechanisms that rendered the creation of such a body impossible.

Participation requirements (VIII.A, IX.A)

The participation requirements section for host parties (VIII.A) is silent on SD and safeguards participation requirements. Only a few hints are implicit in the text, such as the reference to compliance with Articles 6.2 or 6.4 that has fostering/promotion of SD in its requirements. However, given how extensive other participation requirements are, it is recommended that provisions related to SD and respect of human rights are also spelled out in the draft text. Such provisions could include that the Party:

- Ensures that its procedures ensuring for Article 6.4 activities do not result in environmental harm and do not adversely affect human rights
- Has published its national criteria and/or objectives for SD or communicated its intention to use the SDGs

- Has published its procedures for stakeholders

Participation responsibilities (VIII.B, IX.B)

The participation responsibilities of Parties cited in Option A are quite comprehensive though weak. Indeed, most requirements related to SD ask only for confirmation rather than an explanation/demonstration. This has the potential to perpetuate the practices observed under the CDM, where no real assessment of activities' SD contributions took place (including negative impacts and human rights). We therefore recommend using a more affirmative language, such as substituting the terms "confirm" and "explain" with "demonstrate". In addition, provisions ensuring that potential negative impacts are avoided and, if unavoidable, mitigated, is missing, and must be included.

Role of Designated Operational Entities (XI)

The draft text provides the Designated Operational Entities (DOEs) with the roles of validation of the Article 6.4 activity, and verification and certification of the resulting emission reductions. Most requirements related to the promotion of SD fall under the oversight of the participating Parties, particularly the Host Party. This leaves a significant share of the requirements of a 6.4 activity (those not related to emission reduction) un-validated and/or unverified by an independent third party. This situation at best imposes significant burdens on Host Parties to ensure all requirements are met; at worst it would result in no assurance that SD requirements are complied with.

The same situation occurred under the CDM, where SD benefits requirements were not followed, as Parties had neither the capacity nor the willingness to do so. The stakeholder consultation had been, however, placed under the supervision of the CDM Executive Board, which led to significant improvements as a result of the close scrutiny by civil society. Under the current text proposal, the stakeholder consultation process is under the supervision of the Host



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Topping it up: Cook stoves projects deliver a number of sustainable development benefits.

Party. Consequently, it might have the same fate as the SD benefits under the CDM.

It is vital, therefore, that DOEs are also tasked with validation and verification of requirements that are overseen by host Parties, too. This would ensure all requirements are equal and would avoid burdening Parties with lengthy assessments and reports to demonstrate compliance.

Delegating these tasks to DOEs will not constitute an infringement of the national prerogative. Requirements would be defined by the participating Parties and placed under their authority.

Eligible mitigation activities (XII)

The section containing eligibility requirements for an Article 6.4 activity are exhaustive and ensure that 6.4 activities foster SD, do not have negative impacts and do not constitute a threat to human rights. To ensure compliance, these provisions should nonetheless be a "shall" requirement rather than a "should".

Mitigation activity cycle (XIII)

The mitigation activity cycle as per the draft text is very climate centric, leaving out the SD objective. Stakeholder

consultations are omitted. Consequently, it is recommended to add an additional activity relating to stakeholder consultation and to specify that it should be undertaken at an early stage of the mitigation activity cycle to allow stakeholder views to be reflected in the activity's design.

It is also recommended that the Supervisory Body develop a set of minimum requirements in accordance with international best practices for stakeholder consultations in order to ensure that stakeholders are adequately consulted.

The requirements for validation, monitoring and verification are exclusively related to emissions reduction. As specified above in the section on DOE responsibilities, it is of utmost importance that the SD aspects of an Article 6.4 activity are adequately validated, monitored and verified in accordance with the provisions of the CMA, the Host Party and the Supervisory Body.

Other processes associated with mitigation activities (XIII.J)

The draft text provides for grievance and appeal rights, which is commendable. It also provides for stakeholders, participants and participating Parties to inform the Board about alleged violations of human rights. While these provisions are impor-

tant, it is equally important to specify that the Supervisory Body is to take action based on the information received (triggering an investigation by a third party, for example) and is to take decisions commensurate with the violations confirmed.

The possibility to inform the Supervisory Body of cases of non-compliance should also extend to the potential negative impacts observed after implementation of the mitigation activity. The subsequent investigation and decision making process should follow the same process as for the alleged violations of human rights. Those elements need adequate attention in the 2019 work plan.

Conclusion

Efforts, in the draft texts, to ensure that human rights are respected are particularly commendable. The texts also contain a number of elements ensuring the promotion of SD and the avoidance of negative impacts. Nonetheless, several important changes and additions are needed to warrant adequate implementation of the SD provisions. These include the use of 'shall' provisions for SD requirements, minimum quality requirements for stakeholder consultations and third party assessment of SD provisions.

Failing to demonstrate SD contributions in an objective way could lead to criticism, which would in turn undermine the credibility of the cooperative approaches. Accountability and review mechanisms are needed to ensure provisions related to SD are complied with and that remedies are implemented in the case of non-compliance. Similar provisions as those applicable to the emissions reduction and ITMOs environmental integrity are to be used to guarantee the promotion of SD, respect of human rights and avoidance of negative impacts.

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