August 11, 2025
Azul Memorandum for INC-5.2: Article 11

Closing Loopholes in Article 11 — Reining in Public–Private Financing Networks, Enforcing Community Rights, and Ensuring Transparent, Just Climate Finance

MEMORANDUM

Relevant Authorities

- Article 11 draft (paras. 6, 8 [Option 2 bis], 10, 13 bis) – References to private finance facilitation, public–private partnership financing networks, and corporate engagement.
- ICJ Advisory Opinion on Climate Obligations (2024) – Recognizes the binding duty of States to prevent environmental harm, safeguard affected communities, and provide effective remedies.
- Vienna Convention on the Law of Treaties (VCLT) – Precision and enforceability in treaty text to avoid interpretive abuse.
- OECD Guidelines / UNCAC Arts. 5 & 9 – Transparency and anti-corruption in public–private financial arrangements.
- IFRS / TCFD – International standards for environmental and financial disclosure.

Problem

The current Article 11 is structurally vulnerable to exploitation by loosely defined public–private financing networks that can operate with minimal oversight, vague mandates, and voluntary disclosure. Such ambiguity invites greenwashing, facilitates the displacement of public obligations by private actors driven by profit motives, and opens the door to conflicts of interest in climate finance allocation. The absence of binding transparency rules and enforceable disclosure obligations means public funds and climate resources can be diverted without scrutiny, undermining the Convention's objectives. Worse, the draft ignores the ICJ's recognition that communities have a legal right to remedies for environmental harm—denying those most affected by climate-related projects any pathway to restitution, compensation, or corrective

measures. Without enforceable governance structures and rights-based access to justice, Article 11 risks becoming a loophole-ridden financing platform that legitimizes harmful projects and shields private actors from accountability.

Solution

Article 11 must explicitly reject the use of undefined public–private financing networks as primary financial mechanisms unless they are fully subordinated to Conference of the Parties (COP) authority, subject to mandatory transparency, and bound by enforceable fiduciary and environmental obligations. All financing entities—public or private—must be compelled to provide standardized, audited, and publicly accessible disclosures on fund sources, allocations, beneficiaries, and environmental/social outcomes, in compliance with IFRS and TCFD standards. Private contributions must be additional to state obligations, tied to measurable climate benefits, and independently verified to prevent double counting. A legally binding Community Suit Provision should grant standing to communities in domestic and international forums to challenge harmful financing decisions, demand equitable remedies, and compel restitution. These rights must be justiciable, not aspirational, ensuring that climate finance flows cannot be shielded from legal scrutiny by corporate or multilateral actors. By embedding community standing, stringent disclosure requirements, and COP-governed oversight, Article 11 can close the door on exploitative financing structures and guarantee that climate finance serves its intended purpose—addressing the climate crisis without sacrificing justice, equity, or transparency.

Additional Considerations

- Replace non-committal “encourage” or “promote” language with mandatory “shall” provisions.
- Condition any private sector involvement in full compliance with anti-corruption, human rights, and environmental obligations.
- Make COP reviews binding, with the power to suspend or debar non-compliant financing actors.
- Ensure affected communities have procedural parity in financial decision-making processes.

Possible Community Suit Provision

“Any community adversely affected by activities or omissions arising from the implementation or financing of measures under this Convention, including through public–private financing networks, shall have standing to bring claims before a designated

international or national body. Such body shall have authority to order equitable remedies, including restitution, compensation, injunctive relief, and measures of satisfaction, in accordance with the principles recognized by the International Court of Justice regarding environmental harm and state responsibility. Parties shall ensure that domestic legal systems provide such access without discrimination, procedural obstruction, or prohibitive cost."